

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 569 Suits Against the Government

**SPONSOR(S):** Appropriations Committee, Civil Justice Subcommittee, McFarland

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	17 Y, 1 N, As CS	Mathews	Jones
2) Appropriations Committee	27 Y, 0 N, As CS	Willson	Pridgeon
3) Judiciary Committee			

### SUMMARY ANALYSIS

Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In turn, s. 768.28(1), F.S., allows for suits in tort 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.

However, s. 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although a court may enter a judgment in excess of these caps, it is impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps allow. Further, s. 768.28(6), F.S., imposes pre-suit requirements upon a claimant seeking to recover against a state or local government entity, allowing a general six-month period for the government entity to review and dispose of a claim before the claimant may file a lawsuit.

The bill:

- Abolishes the common law doctrine of “home venue privilege” in relation to negligence suits against the state.
- Increases the sovereign immunity caps for damages against state and local government entities to \$400,000 per individual and \$600,000 per incident.
- Allows a local government to settle a claim and pay the settled amount without the need for a claim bill.
- Prohibits an insurance policy from conditioning the payment of benefits on the enactment of a claim bill.
- Provides that, when determining liability limits, the cap in effect when the claim accrues controls.
- Reduces the statute of limitations for filing a claim against a government entity for claims based in negligence from four to two years.
- Provides a fifteen-year statute of limitations for filing a claim against a government entity for sexual battery of a victim under the age of 16 from the time the victim has reached the age of majority.
- Reduces the time period by which a claimant must provide written notice of the claim to the state, agency, or subdivision in certain types of cases.
- Reduces from six months to four months the general pre-suit statutory time period for a government entity to review and dispose of a claim.
- Applies to all claims arising on or after October 1, 2024.

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments. The bill will affect the State Risk Management Trust Fund and the budgets of local governments and agencies.

The bill provides an effective date of October 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Common Law Doctrine of Home Venue Privilege

Common law is “law” that is derived from judicial decisions instead of from statutes.<sup>1</sup> Under the common law in Florida, the “home venue privilege” provides that venue for civil actions brought against the state or one of its agencies or subdivisions, absent waiver or exception, is proper in the county where the state, agency, or subdivision maintains its principal headquarters.<sup>2</sup> As such, absent waiver or exception, an action brought against a state agency in a county other than that of its official residence may be dismissed, severed, or transferred to the proper venue.<sup>3</sup>

##### Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>4</sup> Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, Florida law allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment.<sup>5</sup> This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under 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.”<sup>6</sup>

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident.<sup>7</sup> Although a court may enter an excess judgment, absent a claim bill passed by the Legislature, a claimant may not collect more than the caps provide.<sup>8</sup>

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 acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>9</sup> 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.<sup>10</sup>

##### Presuit Procedures for a Claim Against the Government

Before a claimant files a lawsuit against a government entity, the claimant generally must present the claim in writing to the government entity within a time period prescribed by law, which is generally three years.<sup>11</sup> 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 six months to

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<sup>1</sup> Legal Information Institute, *Common Law*, [https://www.law.cornell.edu/wex/common\\_law](https://www.law.cornell.edu/wex/common_law) (last visited Dec. 7, 2023).

<sup>2</sup> 56 Fla. Jur. 2d Venue § 43; *Bush v. State*, 945 So. 2d 1207 (Fla. 2006)

<sup>3</sup> 56 Fla. Jur. 2d Venue § 43.

<sup>4</sup> *Sovereign immunity*, Legal Information Institute, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited Dec. 7, 2023).

<sup>5</sup> S. 768.28(1), F.S.

<sup>6</sup> *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.) (internal punctuation omitted).

<sup>7</sup> S. 768.28(5), F.S.

<sup>8</sup> *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

<sup>9</sup> S. 768.28(9)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> See s. 768.28(6)(a), F.S.

review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.<sup>12</sup>

### Damages

Generally, damages are of two kinds: compensatory and punitive.<sup>13</sup> Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible.<sup>14</sup> They arise from actual and indirect pecuniary loss.<sup>15</sup> 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.”<sup>16</sup> 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.

### Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer, 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.<sup>17</sup> Such obligations typically arise from the negligence of officers or employees of the State or a local governmental entity.<sup>18</sup> Legislative claim bills are typically pursued after procurement of a judgment or settlement in an action at law.<sup>19</sup> The amount awarded 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.<sup>20</sup> Unlike civil judgments, claim bills are not obtainable by right upon the claimant’s proof of his entitlement; rather, they are granted as a matter of legislative grace.<sup>21</sup>

Once a legislative claim bill is formally introduced, a special master usually conducts a quasi-judicial hearing.<sup>22</sup> This hearing may resemble a trial during which the claimant offers testimony as well as documentary and physical evidence necessary to establish the claim. Trial records may be substituted for witness testimony. Testifying witnesses are sworn and subject to cross-examination.<sup>23</sup> A respondent may present a defense to contest the claim, and the special master may then prepare a report with an advisory recommendation to the Legislature if the bill is placed on an agenda.<sup>24</sup>

Alternatively, a government entity may, without the need for a claim bill, settle a claim or pay a judgment against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of its insurance coverage.<sup>25</sup>

### Statute of Limitations for 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 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.<sup>26</sup> The Legislature

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<sup>12</sup> See s. 768.28(6)(d), F.S.

<sup>13</sup> 22 Am. Jur. 2d s. 1 at 13 (1965).

<sup>14</sup> *Fisher v. City of Miami*, 172 So. 2d 455 (Fla. 1965).

<sup>15</sup> *Margaret Ann Supermarkets, Inc. v. Dent*, 64 So. 2d 291 (Fla. 1953).

<sup>16</sup> *Gallagher v. Manatee Cty.*, 927 So. 2d 914, 918 (Fla. 2d DCA 2006).

<sup>17</sup> *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)

<sup>18</sup> *Id.*

<sup>19</sup> *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

<sup>20</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

<sup>21</sup> *United Servs. Auto. Ass’n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

<sup>22</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn at 26).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> S. 768.28(5), F.S.

<sup>26</sup> Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.

provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.<sup>27</sup>

## **Effect of Proposed Changes**

### Home Venue Privilege

The bill amends s. 47.011, F.S., to abolish the common law doctrine of home venue privilege with respect to suits against the state. Therefore, the standard venue provisions would apply to claims against the state, and venue would be proper in the county where the defendant resides, the county where the cause of action accrued, or the county in which the property in litigation is located.

### Statutory Caps

The bill also amends s. 768.28, F.S., to increase the statutory caps on judgments against the state or an agency or subdivision thereof from \$200,000 per person and \$300,000 per incident to \$400,000 per person and \$600,000 per incident. As such, a judgment against the state could be paid without action by the Legislature if it does not exceed \$400,000 per person or \$600,000 per incident.

Further, the bill authorizes a subdivision of the state to agree to settle a claim made or judgment rendered against it in excess of the statutory limits without further action by the Legislature. Thus, a county or municipality could agree to pay a claim that exceeds the \$400,000/\$600,000 caps without the need for a claim bill. However, a claimant suing the state or an agency of the state would still have to seek legislative approval in the form of a claim bill for any judgment exceeding the statutory caps.

The bill clarifies that when determining the liability limits for a claim, the applicable caps are those that are in effect on the date the claim accrues. The bill also prohibits an insurance policy from conditioning the payment of benefits, in whole or in part, on the enactment of a claim bill.

### Timeframes for Filing an Action

The bill imposes various statutes of limitations on the ability to file a claim against the state or an agency or subdivision thereof. As such, a claim against the state or an agency or subdivision of the state is forever barred unless civil action is commenced as follows:

- For claims based on negligence: within two years.<sup>28</sup>
- For claims based on contribution: within the limitations established in s. 768.31(4), F.S.
- For claims based on medical malpractice or wrongful death: within the limitations established in s. 95.11(4), F.S.
- For claims based on sexual battery on a victim under 16: within 15 years after the victim has reached the age of majority, except for an action that would have been time-barred on or before July 1, 2010.
- For any other claim: within four years.

The bill decreases the allotted time for a claimant to present the required written notice of the claim to the appropriate agency from three years to 18 months. Similarly, the bill decreases the time period in which a claimant must present written notice of a claim for wrongful death from two years to 18 months. However, if the claim is based on a sexual battery of a victim under the age of 16, in violation of s. 794.011, the claimant must present written notice of the claim within 13 years after the claimant reaches the age of majority. However, the bill does not resuscitate any such claims which would have been time-barred as of July 1, 2010.

The bill also decreases from six months to four months the time period in which DFS or the appropriate agency must make final disposition of a claim. As such, the responding agency must make final

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<sup>27</sup> *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

<sup>28</sup> This two-year period is the same as the statute of limitations for bringing a negligence claim against a private party. See s. 95.11(4)(a), F.S.

disposition of a claim within four months of such claim being filed or it is deemed a final denial. However, the bill does not change the time period by which an agency must make a final disposition of a claim for medical malpractice or wrongful death. As such, a final disposition for a claim made for medical malpractice or wrongful death must still be made within 90 days from the date of filing or it is deemed a final denial of the claim.

#### Applicability and Conforming Changes

The bill amends a number of statutory sections for the purpose of incorporating the changes made by the language of the bill and provides that the provisions of the bill are applicable to claims accruing on or after October 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 47.011, F.S., relating to where actions may be begun.

**Section 2:** Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.

**Section 3:** Reenacts provisions within the Florida Statutes for the purpose of incorporating the amendments made by the act.

**Section 4:** Provides that the act applies to claims accruing on or after October 1, 2024.

**Section 5:** Provides an effective date of October 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

By abolishing the Home Venue Privilege, representatives of the state government may be required to travel farther and more frequently to assist in litigation against the state. This may increase expenditures.

See *also* Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The cost resulting from the change to a local government's ability to settle claims without regard to any statutory limit on damages under s. 768.28, F.S., is indeterminate. However, local government expenditures may increase for settlements, awards, and other legal costs.

See *also* Fiscal Comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may enable more individuals who have tort claims against the state or one of its agencies or subdivisions to receive larger payments without the need to pursue a claim bill. The ability to collect larger settlements or judgments against government entities may also serve as an incentive for private attorneys to represent claimants in these matters. However, the bill may reduce government services to the public in proportion to additional amounts paid to satisfy tort claims.

#### D. FISCAL COMMENTS:

By increasing the sovereign immunity cap, the bill increases the possibility that the state and its agencies and subdivisions will spend more of their resources to satisfy tort claims. The provision of larger payments in satisfaction of tort claims, however, may also reduce the demand for other government services that would have otherwise been necessary for claimants.

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 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.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in that it maintained the current 25 percent cap on attorney fees.

On January 31, 2024, the Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that, for the purpose of determining liability limits for a claim, the cap in effect when the claim accrues will control rather than the date the final judgment is entered. Additionally, the amendment removed the provision requiring an annual adjustment to the liability caps based on changes to the CPI.

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.