

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 Judiciary

BILL: SB 1366

INTRODUCER: Senator Brodeur and Senator Rouson

SUBJECT: Claims Against the Government

DATE: February 2, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Pre-meeting
2.			AP	
3.			RC	

I. Summary:

SB 1366 revises the statutory cap, attorney fee, and filing timeframe provisions of s. 768.28, F.S., which is the state's limited waiver of sovereign immunity statute.

Under common law, the state and its agencies and subdivisions (i.e. the "sovereign") are immune from lawsuits for the tortious conduct of their agents and employees. However, the statute modifies the common law by generally allowing for suits in tort against the state and its agencies and subdivisions but generally limits the payment of claims and the collectability of judgments absent the approval of a claim bill by the Legislature.

Specifically, the bill:

- Increases the statutory caps on payment of claims or the collectability of judgments against the state or its agencies or subdivisions, from \$200,000 per person and \$300,000 per incident, to \$300,000 per person and \$450,000 per incident.
- Requires the Department of Financial Services to adjust, beginning July 1, 2031, and every 5 years thereafter, the limitations of liability in the statute to reflect changes in the Consumer Price Index.
- Provides that the Legislature has the sole discretion to determine attorney fees and costs that are payable from the proceeds of a claim bill.
- Revises certain statutes of limitation and presuit procedures for certain types of claims against government entities, including claims for negligence, contribution, medical malpractice, wrongful death, and sexual battery on victims under 16 years of age.
- Provides that it applies to causes of action accruing on or after October 1, 2026.

The bill takes effect October 1, 2026.

II. Present Situation:

Civil Tort Action

One of the goals of the civil justice system is to redress tortious conduct, or “torts.” A tort is a wrong for which the law provides a remedy. Torts are generally divided into two categories, as follows:

- An intentional tort, examples of which include an assault, battery, or false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy, the “plaintiff,” must demonstrate that the:
 - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks.
 - Defendant breached his or her duty of care by failing to conform to the required standard.
 - Defendant’s breach caused the plaintiff to suffer an injury.
 - Plaintiff suffered actual damage or loss resulting from such injury.¹

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.² Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Consistent with this provision, 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 within the scope of their employment.³ This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under s. 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.”⁴

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken within the scope of their 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.⁵ A government entity is not liable for any damages resulting from 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

¹ *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508, 513-14 (Fla. 2020).

² Cornell Law School, Legal Information Institute, *Sovereign immunity*, <https://www.law.cornell.edu/wex/sovereign-immunity> (last visited Jan. 28, 2026). Sovereign immunity is a common law doctrine under which a sovereign cannot be sued in its courts without its consent. *Id.* The doctrine had its origin with the judge-made law of England. During English feudal times, the king was the sovereign. One could not sue the king in his own courts; hence the phrase, “the king can do no wrong.” *Id.*; see also *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981). Today, the term “sovereign” in Florida refers to state agencies and subdivisions including local governments.

³ Section 768.28(1), F.S.

⁴ *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).

⁵ Section 768.28(9)(a), F.S.

bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.⁶

Statutory Caps on Recovery of Damages

Section 768.28(5), F.S., caps damages recoverable in a tort action against a state or local governmental entity at \$200,000 per person and \$300,000 per incident.⁷ Although a court may enter an excess judgment, absent a claim bill passed by the Legislature or private insurance, a claimant may not actually collect more than the caps provide.⁸

State Agency

A state agency means any department, agency, or instrumentality of a state or of a political subdivision of a state. Generally, a state agency is a government department, office, or board that operates within a state; state agencies are responsible for carrying out laws enacted by the state legislature.⁹ Some examples of current state agencies include the Agency for Health Care Administration, the Department of Management Services, the Florida Department of Agriculture and Consumer Services, the Florida Department of Environmental Protection, and the University of South Florida.¹⁰

Subdivision

A political subdivision is a separate legal entity of the State which usually has specific governmental functions.¹¹ Section 218.077(1)(f), F.S., defines a political subdivision as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Local governments are incorporated by special acts of the Florida Legislature and include counties, municipalities, school districts, and special districts.¹²

Legislative Claim Bill

A plaintiff may recover an amount greater than the caps described in s. 768.28(5), F.S., by way of a legislative 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.¹³ Such obligations typically arise from the negligence of officers or employees of the State or a local governmental entity.¹⁴ Legislative claim bills are typically pursued after procurement of a judgment or settlement in an action at law where the full amount of damages awarded cannot be

⁶ *Id.*

⁷ Section 768.28(5), F.S.

⁸ *Breaux v. City of Miami Beach*, 899 So. 2d 1059, 1061 fn. 2 (Fla. 2005).

⁹ Sections 20.02(1) and 20.03(1), F.S.

¹⁰ Florida Executive Office of the Governor, *Info Center: State Agencies*, <https://www.flgov.com/eog/info/agencies> (last visited Jan. 28, 2026).

¹¹ Social Security Administration, *How to Determine an Entity's Legal Status*, https://www.ssa.gov/section218training/advanced_course_9.htm#3 (last visited Jan. 28, 2026).

¹² Susan A. MacManus, et al, *Politics in Florida* (4th ed. 2015).

¹³ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

¹⁴ *Id.*

satisfied because of statutory caps.¹⁵ 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.¹⁶ Unlike civil judgments, claim bills are not obtainable by right; rather, they are granted as a matter of legislative grace.¹⁷

Once a legislative claim bill is formally introduced, a special master¹⁸ usually conducts a hearing.¹⁹ 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.²⁰ 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.²¹

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., but only if that amount is within the limits of its insurance coverage.²²

Claim Bill Attorney Fees Cap

Section 768.28(8), F.S., provides that no attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement. Fees contingent upon the outcome of any specific legislative action are generally prohibited by s. 11.047(2), F.S., except in the case of claim bills. It is considered a conflict of interest for a legislator to file a claim bill if that legislator, or the legislator's law partner, would receive a fee for services.²³

In 2017, the Florida Supreme Court issued its opinion in *Searcy, Denney, Scarola, Barnhart & Shipley v. Florida*.²⁴ In that case, the Legislature passed a claim bill that authorized payment of \$15 million to a child whose family obtained a \$28.3 million negligence judgment against a state hospital. The law firm that had assisted the family in obtaining the judgment and claim bill petitioned for approval of a closing statement authorizing payment of \$2.5 million in attorney fees.²⁵

¹⁵ See generally *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

¹⁶ *Wagner*, 960 So. 2d at 788 (internal citation omitted).

¹⁷ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

¹⁸ The "Special Master" is a role appointed by the Senate President and the Speaker of the House of Representatives, respectively. The special master oversees factfinding, which may include holding a *de novo* hearing on the claim which is administrative in nature, and may prepare a report and recommendation to the respective chamber. See *Legislative Claim Bill Manual*, 8-10 (Nov. 2024), available at <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Section 768.28(5), F.S.

²³ *Legislative Claim Bill Manual*, 4 (Nov. 2024), available at <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf>.

²⁴ 209 So. 3d 1181 (Fla. 2017).

²⁵ *Id.* at 1184-86.

The Fifteenth Judicial Circuit Court denied the request for fees pursuant to a provision of the claim bill that limited fees to \$100,000. The Fourth District Court of Appeal affirmed.²⁶ However, the Supreme Court majority reversed, holding that although the Legislature has complete discretion in its decision whether to grant a legislative claim bill, which is an act of grace, impairing a preexisting contract between the claimant and a law firm for attorney fees was unconstitutional.²⁷ The dissent disagreed, noting that the enactment of s. 768.28, F.S., did not undermine the reasoning in the Court's earlier decision in *Gamble v. Wells*, which concluded that the Legislature was in no way bound to pass legislation conforming with the provisions of a prior contingent fee contract.²⁸ Moreover, because the parties explicitly anticipated and agreed in the fee agreement to an award of fees as limited by Florida law and in the amount provided by law, there could be no unconstitutional impairment of contract.²⁹

Accrual of a Claim

An important date for the purpose of a claim bill is the date a claim accrues. Under s. 95.031(1), F.S., a claim accrues when the last element constituting the cause of action occurs. In a negligence claim, the cause of action accrues “upon the happening of an accident and the attendant injuries.”³⁰ Further, s. 768.28(6)(b), F.S., specifies that the requirements of notice to an agency and denial of the claim required under sovereign immunity are not deemed to be elements of the cause of action and do not affect the date on which the cause of action accrues.

Statutes of Limitations

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A statute of limitations specifies when such time period begins, how long the limitation period runs, and the circumstances by which the running of the statute may be “tolled,” or suspended. A statute of limitations usually begins to run when a cause of action accrues, which generally, is when the harm occurs.

Section 95.11(5)(a), F.S., currently provides that general actions against a private citizen or entity founded on negligence are subject to a 2-year statute of limitations. This limitations period was recently reduced from 4 years to 2 years in ch. 2023-15, s. 3, Laws of Florida. But general actions based on negligence against the government remain subject to a 4-year statute of limitations.³¹

Contribution

Section 768.31, F.S., provides for the right to contribution. Generally, contribution is a legal action that allows a tortfeasor to collect from others responsible for the same tort after the tortfeasor has paid more than his or her pro rata share of the damages. No single tortfeasor is compelled to make contribution beyond his or her own pro rata share of the entire liability.³²

²⁶ *Id.* at 1186-88.

²⁷ *Id.* at 1188-97.

²⁸ *Id.* at 1197 (Canady, J., dissenting).

²⁹ *Id.* at 1198-99 (Polston, J., dissenting).

³⁰ *Dep't. of Transp. v. Soldovere*, 519 So. 2d 616, 616 (Fla. 1988).

³¹ Section 768.28(14), F.S.

³² Section 768.31(2)(b), F.S.

An action for contribution must be filed within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.³³

Medical Malpractice

Section 766.102, F.S., provides for the recovery of damages based on the death or personal injury of any person in which it is alleged the injury resulted from the negligence of a health care provider. In a medical malpractice case, the claimant has the burden of proving by a greater weight of the evidence that the alleged actions of the provider represented a breach in the prevailing professional standard of care for that healthcare provider.³⁴

An action for medical malpractice must be filed within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence.³⁵ However, generally, no medical malpractice action may be filed more than 4 years after the date of the incident or occurrence out of which the cause of action accrued.³⁶

Wrongful Death

Generally, an action for wrongful death may be brought when a person dies due to the wrongful act, negligence, default, or breach of contract or warranty of any person, and the event would have entitled the person injured to bring an action and recover damages if the death had not ensued.³⁷ An action for wrongful death must be initiated within 2 years after the death of the subject person.³⁸

Civil Claim for Sexual Battery

Section 794.011, F.S., establishes the criminal offense of sexual battery. Pursuant to statute, sexual battery means oral, anal, or female genital penetration, by or union with, the sexual organ of another or the anal or female genital penetration of another by any other object. The definition of sexual battery, however, does not include an act done for a bona fide medical purpose. Sexual battery by an adult (18 years of age or older) upon another adult is a first-degree felony punishable, in general, by imprisonment for up to 30 years and a fine of up to \$10,000.³⁹ The penalties for sexual battery are increased for victims under the age of 18, vulnerable victims, and habitual offenders.

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.⁴⁰

³³ Section 768.31(4)(c), F.S.

³⁴ Section 766.102(1), F.S.

³⁵ Section 95.11(5)(c), F.S.

³⁶ *Id.*

³⁷ Section 768.19, F.S.

³⁸ Section 95.11(5)(e), F.S.

³⁹ Section 794.011(4)(b), F.S. (referencing ss. 775.082, F.S. and 775.083, F.S.).

⁴⁰ Chapter 2010-54, s. 1, Laws of Fla. (codifying s. 95.11(9), F.S.).

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.⁴¹

Presuit Procedures

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 3 years.⁴² If the claim is brought against the state, the claimant must also present the claim to the Department of Financial Services. 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.⁴³

Private Correctional Facility Vendor Indemnification

Pursuant to s. 944.713, F.S., a private vendor who submits a bid to contract for the construction, lease, or operation of a correctional facility to the state must provide proof of certain insurance coverage to cover liability for any claim or judgment which arises. Under current law, such private vendor must provide insurance for claims up to \$100,000 for a single person or \$200,000 for the total aggregate claims arising out of a single incident or occurrence.⁴⁴

A “contractor-operated correctional facility” is defined as any facility, which is not operated by the Florida Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department.⁴⁵

III. Effect of Proposed Changes:

Amendments to the Waiver of Sovereign Immunity Statute

Section 1 of the bill revises the statutory cap, attorney fee, and filing timeframe provisions of s. 768.28, F.S., which is the waiver of sovereign immunity statute.

Statutory Caps

The bill amends s. 768.28(5), F.S., which allows for suits in tort against the state and its agencies and subdivisions subject to statutory caps.

Specifically, the bill increases the statutory caps on the payment of claims or the collectability of judgments against the state or its agencies or subdivisions, from \$200,000 per person and \$300,000 per incident, to \$300,000 per person and \$450,000 per incident. It also provides that when determining liability limits for a claim, the caps in effect on the date the claim accrues will apply to the underlying claim.

⁴¹ *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

⁴² See s. 768.28(6)(a), F.S.

⁴³ See s. 768.28(6)(d), F.S.

⁴⁴ Section 944.713, F.S.

⁴⁵ Section 944.710(3), F.S.

Additionally, under the bill, beginning July 1, 2031, and on July 1 every 5 years thereafter, the Department of Financial Services must adjust the limitations of liability in the statute to reflect changes in the Consumer Price Index for the South region or a successor index as calculated by the U.S. Department of Labor, not to exceed 3 percent for any such adjustment.

Claim Bill Attorney Fees

The bill revises s. 768.28(8), F.S., which caps attorney fees in actions against the state. Under the bill, an attorney may not charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any funds recovered as a result of judgment or settlement. In the enactment of a claim bill, as to payments made to the claimant in excess of the limits in s. 768.28(5)(a), F.S., the Legislature has the sole discretion to award an attorney fee applicable to the excess which is less than 25 percent, notwithstanding any agreement. The Legislature may also limit payments for costs or otherwise reserve a portion of the proceeds to the claimant. This provision is deemed to be a part of any fee agreement.

Timeframes for Filing an Action

Consistent with the shortened statute of limitations for negligence enacted by ch. 2023-15, s. 3, Laws of Florida, the bill changes the current general 4-year statute of limitations for filing a claim against the state or its agencies or subdivisions to the following timeframes:

- For claims based on negligence: the claim must be filed within 2 years.
- For claims based on contribution: the claim must be filed within the limitations established in s. 768.31(4), F.S.⁴⁶
- For claims based on medical malpractice or wrongful death: the claim must be filed within the limitations established in s. 95.11(5), F.S.⁴⁷
- For claims based on sexual battery on a victim under 16: the claim may be filed at any time; however, this does not resuscitate any claims that may have already been time barred by previous statutes of limitations.
- For any other claim: the claim must be filed within 4 years.

To accommodate these changes in the statutes of limitations, the bill decreases the allotted presuit notice period for a claimant to present the required written notice of the claim to the appropriate agency from 3 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 2 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, F.S., the claimant may present written notice of the claim at any time.

The bill also decreases from 6 months to 4 months, the time period in which the Department of Financial Services or the appropriate agency must dispose of a presuit notice of a claim. As such, the responding agency must dispose of a claim within 4 months of a claim being filed or it is

⁴⁶ An action for contribution must be filed within 1 year after the judgment has become final by lapse of time for appeal or after appellate review. Section 768.31(4)(c), F.S.

⁴⁷ An action for medical malpractice must be filed within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered or should have been discovered with the exercise of due diligence. However, generally, no medical malpractice action may be filed more than 4 years after the date of the incident or occurrence out of which the cause of action accrued. Section 95.11(5)(c), F.S. An action for wrongful death must be initiated within 2 years from the death of the subject person. Section 95.11(5)(e), F.S.

deemed a final denial (thus allowing the claimant to move forward with a civil suit). However, the bill does not change the time period by which an agency must dispose 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.

The bill provides that the statute of limitations for all prospective defendants, not just those in medical malpractice or wrongful death actions, is tolled for the period of time taken by the agency to deny the claim.

Applicability upon Accrual

Section 2 of the bill provides that it applies to causes of action accruing on or after October 1, 2026.

Private Correctional Facility Vendor Indemnification

Section 6 of the bill amends s. 944.713(2), F.S., clarifying that when a private vendor contracts to build, lease, or operate a correctional facility, it must agree to indemnify the state for certain incurred liability up to the amount of the sovereign immunity caps provided in the bill.

Cross-References and Reenactments

Sections 3-5 conform cross-references to the amendments provided in the bill.

Sections 7-67 of the bill reenact a number of statutes for the purpose of incorporating the changes made by the language of the bill.

Effective Date

Section 68 provides that the bill takes effect October 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises the statutory cap on attorney fees to provide that with respect to payments made to claimants in excess of the statutory caps on claims or judgment against the state, the Legislature has the sole discretion to award attorney fees and costs in a claim bill. Accordingly, the bill is likely to reduce attorney fees and other costs payable from the proceeds of a claim bill should the Legislature exercise this authority. Historically, before the Legislature's authority over fee and cost awards was invalidated by the Florida Supreme Court, the Legislature reduced awards of fees and costs only on rare occasions.

C. Government Sector Impact:

Because the bill increases the statutory caps on claims or judgments against the state or its agencies or subdivisions, the bill will likely have an indeterminate, significant negative fiscal impact on state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 768.28, 29.0081, 39.8297, 343.811, and 944.713.

This bill reenacts the following sections of the Florida Statutes: 45.061, 95.11, 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, 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, 768.1355, 768.1382, 768.295, 946.5026, 946.514, 961.06, 984.09, 1002.33, 1002.333, 1002.34, 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.)

None.

B. Amendments:

None.

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