

**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 Transportation

BILL: SB 828

INTRODUCER: Senator Leek

SUBJECT: Sovereign Immunity for Public Transit Contractors

DATE: February 9, 2026 REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Vickers	TR	<u>Pre-meeting</u>
2. _____	_____	JU	_____
3. _____	_____	RC	_____

## **I. Summary:**

SB 828 provides sovereign immunity protections to contractors operating public transit services under a contract with the state or any of its agencies or its subdivisions. These protections apply when the contractor is acting within the scope of and pursuant to the contract's guidelines or by rule. These protections apply to any employee, agent, or subcontractor of such contractor.

This bill may reduce insurance costs for contractors operating public transit services and their subcontractors. See Section V., Fiscal Analysis Section for details.

This bill takes effect July 1, 2026.

## **II. Present Situation:**

### **Civil Tort Actions**

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; and

- Plaintiff suffered actual damage or loss resulting from such injury.<sup>1</sup>

### **Sovereign Immunity**

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>2</sup> Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with art. X, s. 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>3</sup> 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.”<sup>4</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>5</sup> 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 bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>6</sup>

Section 768.28(5), F.S., caps damages recoverable in a tort action against 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 actually collect more than the caps provide.<sup>8</sup>

For purposes of s. 768.28, F.S., the term “state agencies or subdivisions” includes the 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.<sup>9</sup>

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<sup>1</sup> *Florida Practice Series* s. 1.1; *see Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

<sup>2</sup> *Sovereign immunity*, Legal Information Institute, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited February 5, 2026).

<sup>3</sup> Section 768.28(1), F.S.

<sup>4</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>5</sup> Section 768.28(9)(a), F.S.

<sup>6</sup> Section 768.28, F.S.

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

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

<sup>9</sup> Section 768.28(2), F.S.

## Private Parties as Agents of the State

Sections 768.28(10)-(12), F.S., provides instances where specified private parties are considered agents of the state for sovereign immunity purposes, two of which are related to transportation.

The first is for operators, dispatchers, and providers of security for rail services and rail facility maintenance providers in the South Florida Rail Corridor (Tri-Rail), or any of their employees or agents, performing such services under contract with and on behalf of the South Florida Regional Transportation Authority or the Florida Department of Transportation (FDOT) while acting within the scope of guidelines established in the contract or by rule.<sup>10</sup>

The second instance is for a professional firm, or an employee of the firm, to provide monitoring and inspection services of the work required for construction projects on transportation facilities, as an agent of FDOT while acting within the scope of the firm's contract. This provision specifies certain requirements for the contract and provides that it does not apply to workers compensation or motor vehicle accidents.<sup>11</sup> These protections do not apply to firms engaged by FDOT to design or construct transportation facilities or their employees, agents, or subcontractors.<sup>12</sup>

In determining whether or not a private contractor for a public entity is entitled to sovereign immunity protections, courts have looked at the level of control that the public entity has over the private contractor, including control over employees and operations.<sup>13</sup>

## Public Transit

Florida law defines the term “public transit” to mean the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as “paratransit.”<sup>14</sup>

Florida’s public transit system consists of 40 urban and rural transit systems, two commuter rail systems, one heavy-rail commuter system, and two people mover systems.<sup>15</sup>

## Sovereign Immunity - Transportation Disadvantaged Program

In 1999, the Attorney General opined that nongovernmental community transportation coordinators within the transportation disadvantaged system<sup>16</sup> are instrumentalities of the state

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<sup>10</sup> Section 768.28(10)(d), F.S.

<sup>11</sup> Section 768.28(10)(e), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> See *Lovelace v. G4S Secure Solutions*, 320 So.3d 178 (2021).

<sup>14</sup> Section 341.031(6), F.S. The term “paratransit” to mean those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. See s. 341.031(5), F.S.

<sup>15</sup> Florida Public Transportation Association, *About FPTA*, <https://floridatransit.org/about-us> (last visited February 5, 2026).

<sup>16</sup> The Transportation Disadvantaged System is codified part I of ch. 427, F.S.

based on legislatively-mandated constraints regarding their day-to-day operations; and therefore, are able to claim sovereign immunity protections.<sup>17</sup>

In 2003, the Attorney General opined that subcontractors of community transportation coordinator are not entitled to the same level of sovereign immunity since, based on the statute alone, the statute does not provide extensive governmental control over the subcontractor's day-to-day operations for it to constitute an instrumentality of the state.<sup>18</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 768.28, F.S., to provide that a contractor operating public transit services under a contract with the state, or any of its agencies or subdivisions, or any employee, agent, or subcontractor of a contractor providing such services, is deemed an agent of the state, agency, or subdivision while acting within the scope of or pursuant to guidelines established in such contract or by rule.

As a result, the payment of any damages recoverable in a tort action against such contractors will be capped at \$200,000 per person and \$300,000 per incident. For a claimant to collect any judgement in excess of those amounts, the Legislature must pass a claim bill.

For this purpose, the term "public transit" has the same meaning as in s. 341.031(6), F.S., discussed above.

**Section 2** amends s. 766.1115, F.S., to conform a cross-reference.

**Section 3** provides that this bill takes effect July 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.

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<sup>17</sup> Fla. AGO 99-05 (Fla. A.G.), 1999 WL 68735

<sup>18</sup> Fla. AGO 2023-11, 2003 WL 21130219 (Fla. AG).

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

Sovereign immunity protections may result in lower insurance costs for contractors providing public transit services. However, any reduction in costs is indeterminate.

To the extent sovereign immunity applies to public transit contractors, there may be additional litigation costs and costs associated with the claims bill process. However, this amount is indeterminate.

The bill may have a negative economic impact on persons injured by the negligence of such public transit contractors, as their recovery would likewise be limited by the statutory recovery limits placed in s. 768.28, F.S., absent passage of a claim bill.

**C. Government Sector Impact:**

Governmental entities that contract for public transit services may incur litigation costs associated with claims against their public transit contractors. However, this amount is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

To the extent that the sovereign immunity protections created in the bill impact rail transit, such protections may have a negative impact on the rights of railroad employees under the Federal Employers Liability Act<sup>19</sup> and the Federal Rail Safety Act.<sup>20</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 768.28 and 766.1115.

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<sup>19</sup> 45 USC § 51.

<sup>20</sup> 49 U.S.C. § 20109.

**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.

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

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