

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB JDC 23-03 Statutes of Limitations for Negligence Actions

**SPONSOR(S):** Judiciary Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	14 Y, 6 N	Mathews	Kramer

**SUMMARY ANALYSIS**

The main purpose of Florida’s civil justice system is to properly and fairly redress the civil wrongs caused throughout the state, whether such wrongs be in the form of tortious conduct, breaches of contract, or other non-criminal harm for which the law provides a remedy. The civil justice system accomplishes this goal by providing a neutral court system empowered to decide the amount of monetary damages required to make each wronged person whole again.

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 accordance with this provision, 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. 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 ....”

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 specified timeframe prescribed by law. In some situations, the claimant must also present the claim to the Department of Financial Services (DFS). The government entity generally then has six months to 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.

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(3)(a), F.S., was amended on March 24, 2023, lowering the statute of limitations for general actions founded on negligence from four years to two years. However, s. 768.28, F.S., provides that actions founded on negligence brought against a government entity are subject to a four-year statute of limitations.

PCB JDC 23-03 amends s. 768.28, F.S., to reduce the statute of limitations from four years to two years for a negligence claim against the state or an agency or subdivision of the state. The bill also reduces the presuit notice period from three years to 18 months for such claims. The bill decreases from six months to four months the amount of time a government entity has to make a final disposition of a claim during the pre-suit process within s. 768.28(6), F.S., after which time the plaintiff may bring a lawsuit.

The bill may have a significant positive fiscal impact on the state and local governments.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### The Civil Justice System and Tort Law

The main purpose of Florida's civil justice system is to properly and fairly redress the civil wrongs caused throughout the state, whether such wrongs be in the form of tortious conduct, breaches of contract, or other non-criminal harm for which the law provides a remedy. The civil justice system accomplishes this goal by providing a neutral court system empowered to decide the amount of monetary damages required to make each wronged person whole again. A functioning civil justice system, when it operates justly:

- Provides a fair and equitable forum to resolve disputes;
- Discourages persons from resorting to self-help methods to redress wrongs;
- Appropriately compensates legitimately harmed persons;
- Shifts losses to responsible parties;
- Provides incentives to prevent future harm; and
- Deters undesirable behavior.<sup>1</sup>

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, a battery, or a 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>2</sup>

##### Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>3</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, 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. 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>4</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>5</sup> Although a court may enter an excess judgment, the statutory caps make it

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<sup>1</sup> Cf. Am. Jur. 2d Torts s. 2.

<sup>2</sup> 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

<sup>3</sup> *Sovereign immunity*, Legal Information Institute, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited April 7, 2023).

<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> S. 768.28(5), F.S.

impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps provide.<sup>6</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>7</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>8</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 specified timeframe prescribed by law.<sup>9</sup> For a general claim, the presuit notice timeframe is three years, and for a wrongful death claim, the presuit notice timeframe is two years. 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 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>10</sup>

### Statute 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(3)(a), F.S., was amended on March 24, 2023, lowering the statute of limitations for general actions founded on negligence from four years to two years.<sup>11</sup> However, section 768.28, F.S., currently provides that general actions founded on negligence brought against a government entity are subject to a four-year statute of limitations.

### **Effect of Proposed Changes**

PCB JDC 23-03 amends s. 768.28, F.S., to reduce the statute of limitations from four years to two years for a claim based on negligence against the state or an agency or subdivision of the state. The bill also reduces the presuit notice period from three years to 18 months for claims against the state or one of its agencies or subdivisions. As such, a party seeking to initiate a claim against the state or an agency of the state must provide written notice of the intent to sue to the appropriate entity within 18 months after the claim accrues.

The bill also decreases from six months to four months the amount of time a government entity has to make a final disposition of a claim during the pre-suit process within s. 768.28(6), F.S., after which time the plaintiff may bring a lawsuit.

The bill is effective upon becoming law.

## **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions.

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<sup>6</sup> *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

<sup>7</sup> S. 768.28(9)(a), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> See s. 768.28(6)(a), F.S.

<sup>10</sup> See s. 768.28(6)(d), F.S.

<sup>11</sup> Ch. 2023-15, Laws of Fla.

**Section 2:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

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

The bill may reduce the number of negligence lawsuits filed against the state. By reducing the statute of limitations to two years, a plaintiff will be required to prepare his or her case and file it within two years, rather than four years, from the date of the negligent act.

### D. FISCAL COMMENTS:

The bill may have a significant positive fiscal impact on the state and local governments by limiting the timeframe in which a person can initiate a lawsuit based on negligence against the state or an agency or subdivision of the state. This may result in fewer lawsuits being filed and less funds expended on litigation, settlements, and claim awards.

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 have an impact on the pre-suit settlement process.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Not applicable.

### B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**