

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 829 Civil Actions for Deprivation of Rights, Privileges, or Immunities

**SPONSOR(S):** Civil Justice & Property Rights Subcommittee, Byrd

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	11 Y, 5 N, As CS	Mawn	Jones
2) Public Integrity & Elections Committee			
3) Appropriations Committee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

Section 1 of the Fourteenth Amendment to the United States Constitution prohibits states from abridging the privileges and immunities of U.S. citizens and establishes due process and equal protection requirements. Section 5 of the Fourteenth Amendment in turn authorizes Congress to enforce section 1 by appropriate legislation. In 1871, under its section 5 powers, Congress enacted 42 U.S.C. s. 1983 ("section 1983"), creating civil liability for any person who subjects or causes to be subjected a U.S. citizen or a person within U.S. territory to a deprivation of his or her rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution, if the wrongdoer acts under color of any state statute, ordinance, regulation, custom, or usage.

Article I of the State Constitution contains a declaration of the rights of Floridians. These rights include religious freedom, freedom of speech and of the press, the right to assemble, and the right to bear arms, set out in article I, sections 3, 4, 5, and 8 of the State Constitution, respectively.

CS/HB 829 creates a state equivalent to a section 1983 cause of action with respect to several provisions of the State Constitution. Specifically, the bill:

- Provides that it is unlawful for a person to, under color of law, including any statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten:
  - Promulgate or cause to be enforced any statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten, that deprives any resident of the state or other person within the state's jurisdiction of any rights, privileges, or immunities secured by article I, sections 3, 4, 5, or 8 of the State Constitution; or
  - Otherwise cause any state resident or other person within the state's jurisdiction to be subjected to the deprivation of any rights, privileges, or immunities secured by article I, sections 3, 4, 5, or 8 of the State Constitution.
- Creates a civil cause of action for such a deprivation of rights and waives sovereign immunity for such suits for the state and its agencies and political subdivisions.
- Authorizes the award of damages and of attorney fees and costs to a prevailing plaintiff, which may include a contingency fee multiplier and expert witness fees.
- Prohibits the granting of injunctive relief against a judicial officer for an act or omission taken in his or her judicial capacity unless a declaratory decree is violated or declaratory relief is unavailable.
- Specifies that a plaintiff is a prevailing plaintiff if the defendant substantially modifies or repeals a statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy after a complaint has been filed alleging a deprivation of rights based on such statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy.
- Specifies how interest on sums awarded by the court will accrue.

The bill may have a significant fiscal impact on the state and local governments. The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Section 1983 Claims

Section 1 of the Fourteenth Amendment to the United States (“U.S.”) Constitution prohibits states from abridging the privileges and immunities of U.S. citizens and establishes due process and equal protection requirements. Section 5 of the Fourteenth Amendment authorizes Congress to enforce section 1 by appropriate legislation. In 1871, pursuant to its section 5 powers, Congress enacted 42 U.S.C. s. 1983 (“section 1983”),<sup>1</sup> creating civil liability for any person who subjects or causes to be subjected a U.S. citizen or a person within U.S. territory to a deprivation of his or her rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution, if the wrongdoer acts under color of any state statute, ordinance, regulation, custom, or usage.

##### *Jurisdiction*

Federal law authorizes federal courts to hear section 1983 cases.<sup>2</sup> State courts may also hear section 1983 cases under the Supremacy Clause of Article IV of the U.S. Constitution, which requires states to provide hospitable forums for federal claims and the vindication of federal rights.<sup>3</sup> However, if a plaintiff brings a section 1983 claim in state court, the defendant may remove the case to federal court.<sup>4</sup>

##### *Persons Subject to Suit*

The U.S. Supreme Court has held that states and state agencies are not “persons” subject to suit under section 1983, and neither are state officials named in their official capacity, as the Eleventh Amendment to the U.S. Constitution generally bars suits against the state and its agencies and officials unless the state waives its sovereign immunity or Congress overrides that immunity under its section 5 powers.<sup>5</sup> However, state and local officials sued in their personal capacities are “persons” subject to suit under section 1983.<sup>6</sup> Municipalities and other local government entities are also “persons” subject to suit when their actions embody official policy or custom.<sup>7</sup>

##### *Deprivation of Rights*

Section 1983 creates a civil remedy for the deprivation of federal rights but does not create any rights itself; thus, a plaintiff bringing a section 1983 claim must prove the deprivation of a right already secured by federal law or the U.S. Constitution.<sup>8</sup> However, just because a federal law exists does not mean it creates a federal right. To prove the existence of a federal right, a plaintiff must show that:

- Congress clearly intended the provision to benefit the plaintiff;
- The right is not so vague and amorphous that its enforcement would strain judicial competence; and

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<sup>1</sup> Section 1983 was originally enacted as section 1 of the Civil Rights Act of 1871.

<sup>2</sup> 28 U.S.C. ss. 1331 and 1343.

<sup>3</sup> *Felder v. Casey*, 487 U.S. 131 (1988).

<sup>4</sup> 28 U.S.C. ss. 1331 and 1441(a).

<sup>5</sup> A suit for prospective relief may be filed against a state official, because official capacity actions for prospective relief are not treated as actions against the state. *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 58-59 (1989); *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985).

<sup>6</sup> *Will*, 491 U.S. at 58-59; *Hafer v. Melo*, 502 U.S. 21, 26-27 (1991).

<sup>7</sup> Examples include the decision of a lawmaker, an act of a policymaking official, or a practice so persistent and widespread that it practically has the force of law. *Connick v. Thompson*, 563 U.S. 51, 60-61 (2011); *Monell*, 436 U.S. at 690-691.

<sup>8</sup> *Blessing v. Freestone*, 520 U.S. 329, 340 (1997).

- The law unambiguously imposes obligations on states.<sup>9</sup>

Applying this analysis, the Court held that the right to welfare benefits under the federal Social Security Act is a federal right stemming from a federal law, the deprivation of which subjects the wrongdoer to section 1983 liability.<sup>10</sup> However, the Court later clarified that federal laws requiring substantial compliance by state and local agencies do not give rise to individual rights; and thus, individuals cannot sue state and local agencies to force substantial compliance with federal laws.<sup>11</sup>

### *Rebuttable Enforceability Presumption*

Even if a plaintiff shows that a federal law creates a federal right, there is only a rebuttable presumption that the right is enforceable under section 1983.<sup>12</sup> Dismissal of a section 1983 suit is proper if Congress foreclosed a section 1983 lawsuit expressly or impliedly (such as by creating a comprehensive enforcement scheme incompatible with section 1983 enforcement).<sup>13</sup>

### *Actions Under Color of Law, Custom, or Usage*

The U.S. Supreme Court has broadly construed “actions under color of law” to include misuse of power “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”<sup>14</sup> Under this interpretation, the Court found that elections commissioners who willfully altered and falsely counted and certified ballots in a primary election conducted under state law violated section 1983 by depriving voters of their constitutional right to have their ballots counted.<sup>15</sup> The Court has also found that, even if an alleged wrongdoer did not act under color of law, the plaintiff may support a finding of section 1983 liability by showing that the wrongdoer acted under a custom or usage with the force of law.<sup>16</sup> Thus, the Court found that a plaintiff could prevail in a section 1983 action by proving she was refused service in a restaurant based on her race under a state-enforced custom of racial segregation, even though no state law required racial segregation in restaurants.<sup>17</sup>

### *Monetary Damages and Equitable Relief*

A plaintiff who prevails in a section 1983 action generally may recover monetary damages, including compensatory damages<sup>18</sup> where proven or nominal damages<sup>19</sup> where compensatory damages are not proven.<sup>20</sup> A prevailing plaintiff may also recover punitive damages<sup>21</sup> for “reckless or callous disregard of the plaintiff’s rights, as well as intentional violations of federal law,” except when the defendant is a municipality or other local government entity.<sup>22</sup> In prohibiting the award of punitive damages against a municipality or other local government entity, the U.S. Supreme Court reasoned that such an award “punishes only the taxpayers, who took no part in the commission of the tort...Punitive damages

<sup>9</sup> *Id.* at 340-341.

<sup>10</sup> *Maine v. Thiboutot*, 448 U.S. 1, 2-4 (1980).

<sup>11</sup> *Blessing*, 520 U.S. at 341.

<sup>12</sup> *Id.* at 341.

<sup>13</sup> *Id.* at 341.

<sup>14</sup> *U.S. v. Classic*, 313 U.S. 299, 326 (1941).

<sup>15</sup> *Id.* at 307, 325-329.

<sup>16</sup> *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167-171 (1970).

<sup>17</sup> *Id.*

<sup>18</sup> “Compensatory damages” (or “actual damages”) are “damages sufficient in an amount to [compensate] the injured person for the loss suffered.” Compensatory damages must be proved with some certainty, as the U.S. Supreme Court has found that “neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused.” Black’s Law Dictionary 174 (3rd pocket ed. 2006); *Carey v. Piphus*, 435 U.S. 247, 254 (1978).

<sup>19</sup> “Nominal damages” are a “trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated.” Black’s Law Dictionary 472 (10th ed. 2014).

<sup>20</sup> Judges, prosecutors, and state lawmakers are entitled to absolute immunity from monetary damages arising out of acts performed in the exercise of their official functions. R. Eric Sanders and Jeffrey K. Lewis, *Section 1983 Primer, Chapter 4: Recoverable Damages Under 42 U.S.C. Section 1983*, <https://rolfshenry.com/wp-content/uploads/2018/04/RES-Article.pdf> (last visited Feb. 2, 2022); *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Tenney v. Brandhove*, 341 U.S. 367 (1951).

<sup>21</sup> “Punitive damages” are not intended to compensate the injured party; rather, they are intended to punish a wrongdoer whose action was intentional or malicious and to deter the wrongdoer and others from similar conduct. *City of Newport v. Fact Concerts*, 453 U.S. 247 (1981); Restatement (Second) of Torts s. 908 (1979).

<sup>22</sup> Sanders and Lewis, *supra* note 20; *Smith v. Wade*, 461 U.S. 30, 51 (1983).

imposed on [such entities] are in effect a windfall to a fully compensated plaintiff and are likely accompanied by an increase in taxes or a reduction of public services for the citizens footing the bill.”<sup>23</sup>

In addition to awarding monetary damages, the court has broad power to grant equitable relief in a section 1983 claim,<sup>24</sup> including an injunction.<sup>25</sup> However, section 1983 prohibits the granting of injunctive relief against any judicial officer acting in his or her official capacity unless a declaratory decree<sup>26</sup> was violated or declaratory relief was unavailable.

### *Attorney Fees and Costs*

A plaintiff who prevails in a section 1983 claim generally may recover his or her reasonable attorney fees and costs, except that in an action brought against a judicial officer for an act or omission taken in his or her judicial capacity, such officer cannot be held liable for any costs or attorney fees unless the officer’s action clearly exceeded his or her jurisdiction.<sup>27</sup> Generally, the appropriate attorney fee awardable in a section 1983 claim is “the market rate for the legal services reasonably devoted to the successful portion of litigation,” and the court may in its discretion include expert fees as part of the attorney fees.<sup>28</sup> However, where a jury awards only nominal damages, a reasonable attorney fee is usually zero dollars.<sup>29</sup>

### State Remedies

#### *Florida*

The Florida Attorney General (“AG”) may bring a civil or administrative action against a person who, whether or not acting under color of law, interferes or attempts to interfere by threats, intimidation, or coercion with the exercise or enjoyment by any other person of rights secured by the State Constitution or state law.<sup>30</sup> Such action, which must be brought in the name of the state and may be brought on behalf of the injured person, may be an action for damages and for injunctive or other appropriate relief.<sup>31</sup> If she prevails, the AG is entitled to an award of her reasonable attorney fees and costs.<sup>32</sup>

Further, any person who interferes or attempts to interfere by threats, intimidation, or coercion with the exercise or enjoyment by any other person of rights secured by the State Constitution or state law is liable for a civil penalty of up to \$10,000 for each violation.<sup>33</sup> This penalty, recoverable in an action brought by the AG, accrues to the state for deposit into the General Revenue Fund.<sup>34</sup>

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<sup>23</sup> *Newport*, 453 U.S. at 267.

<sup>24</sup> “Equitable relief” compels the defendant to perform or refrain from performing a certain act. Legal information institute, *Equitable Relief*, [https://www.law.cornell.edu/wex/equitable\\_relief](https://www.law.cornell.edu/wex/equitable_relief) (last visited Feb. 2, 2022).

<sup>25</sup> An “injunction” is a court order compelling a person to do or cease doing a specific action. An injunction may be permanent or temporary. Legal Information Institute, *Injunction*, <https://www.law.cornell.edu/wex/injunction> (last visited Feb. 2, 2022).

<sup>26</sup> A “declaratory decree” is a binding declaration of a party’s right in equity without the awarding of consequential relief. The Law Dictionary, *What is a Declaratory Decree*, <https://thelawdictionary.org/declaratory-decree/> (last visited Feb. 2, 2022).

<sup>27</sup> 42 U.S.C. s. 1988.

<sup>28</sup> *Id.*; *Richardson v. City of Chi.*, 740 F. 3d 1099, 1103 (7th Cir. 2014).

<sup>29</sup> *Farrar v. Hobby*, 506 U.S. 103, 112 (1992); *Aponte v. City of Chi.*, 728 F. 3d 724, 726 (7th Cir. 2013).

<sup>30</sup> S. 760.51(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> S. 760.51(2), F.S.

<sup>34</sup> *Id.*

Other States

Several states impose civil liability on a person who subjects another person to a deprivation of rights, privileges, or immunities secured by state law or the state's constitution, including the states listed in the chart below:

State	Statute	Civil Liability
<b>Arkansas</b>	§ 16-123-105	A person, acting under color of law, who deprives another of any rights, privileges, or immunities secured by the state constitution.
<b>California</b>	§ 52.1	A person, whether or not acting under color of law, who interferes or attempts to interfere by threat, intimidation, or coercion with another's rights secured by the U.S. Constitution, federal laws, the state constitution, or state law.
<b>Colorado</b>	§ 13-21-131	A law enforcement officer employed by local governments who, under color of law, subjects or causes to be subjected any person to the deprivation of any individual rights creating binding obligations on government actors secured by the state constitution.
<b>Nebraska</b>	§ 20-148	A person, except a political subdivision, who subjects or causes to be subjected any citizen or person within the state's jurisdiction to the deprivation of any rights, privileges, or immunities secured by the U.S. Constitution, the state constitution, or state law.
<b>New Jersey</b>	§ 10:6-2	A person, whether or not acting under color of law, who subjects or causes to be subjected any person to the deprivation of any substantive due process or equal protection rights, privileges, or immunities secured by the U.S. Constitution or federal law or any substantive rights, privileges, or immunities secured by the state constitution or state law.  A person who, whether or not acting under color of law, interferes or attempts to interfere by threats, intimidation or coercion with such rights.
<b>New Mexico</b>	§ 41-4-12	A law enforcement officer acting within the scope of his or her duties who deprives a person of any rights, privileges, or immunities secured by the U.S. Constitution, federal law, the state constitution, or state law.
<b>North Carolina</b>	§ 99D-1	Two or more persons, motivated by race, religion, ethnicity, or gender, whether or not acting under color of law, who conspire to interfere with rights secured by the U.S. Constitution, federal law, the state constitution, or state law, if at least one uses force, harassment, violence, physical harm, or threats of physical harm to commit an act furthering the conspiracy and this interferes with the exercise or enjoyment of a right described above.
<b>Rhode Island</b>	§ 9-1-28.1	A person who subjects or causes to be subjected any state citizen or person within the state's jurisdiction to a deprivation or violation of the person's right to privacy created by state law.
<b>South Carolina</b>	§ 16-5-60	A county in which a citizen is hindered, prevented, or obstructed in the exercise of rights and privileges secured by the U.S. Constitution, federal law, the state constitution, or state law and injured in person or property because of such exercise.

## Interest Rates

Under Florida law, interest is generally payable on judgments from the time the judgment is obtained until the judgment is paid in full.<sup>35</sup> On December 1, March 1, June 1, and September 1 of each year, the Chief Financial Officer (“CFO”) of Florida sets the applicable interest rate for the calendar quarter beginning January 1 and adjusts the rate quarterly on April 1, July 1, and October 1 by averaging the discount rate<sup>36</sup> of the Federal Reserve Bank of New York<sup>37</sup> for the preceding 12 months, then adding 400 basis points<sup>38</sup> to the averaged federal discount rate.<sup>39</sup> The CFO must inform the clerk of courts and the chief judge for each judicial circuit of the rate established for the upcoming quarter, which rate takes effect on the first day of the new calendar quarter.<sup>40</sup>

## Contingency Fee Multiplier

Parties to a civil action must generally pay their own attorney fees and costs regardless of who prevails, unless the fees claim is based on a contract or statute.<sup>41</sup> Statutes authorizing the assessment of attorney fees must do so expressly and be strictly construed.<sup>42</sup> Generally, such statutes authorize the recovery of a reasonable fee.<sup>43</sup>

To calculate an attorney fee award, Florida courts typically follow the lodestar method, in which attorney fees are calculated using the number of attorney hours reasonably expended on the matter multiplied by the reasonable hourly rate.<sup>44</sup> In some cases, however, a court may determine that the lodestar figure is not a “reasonable fee.” This is sometimes the case in matters litigated on a contingency fee basis, in which the attorney agrees to represent the client and receive no compensation for his or her services unless the client prevails (“contingency risk”). In *Florida Patient’s Compensation Fund v. Rowe*, the Florida Supreme Court instructed courts that they may adjust the lodestar amount in light of the contingency risk and apply a multiplier from 1.5 to 3 percent (“lodestar adjustment”) based on the likelihood of success at the case’s outset (“contingency fee multiplier”).<sup>45</sup> Several factors determine the amount of the lodestar adjustment, including the amount in controversy, results obtained, and type of fee arrangement between the attorney and his or her client (“Rowe factors”).<sup>46</sup>

In *Standard Guaranty Insurance Co. v. Quanstrom*, the Florida Supreme Court clarified that a court must consider whether or not to apply a contingency fee multiplier but is not required to apply a multiplier.<sup>47</sup> In determining whether a contingency fee multiplier is necessary, the court must consider whether:

- The relevant market requires a contingency fee multiplier to obtain competent counsel;
- The attorney was able to mitigate the risk of nonpayment in any way; and
- Any of the *Rowe* factors apply.<sup>48</sup>

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<sup>35</sup> S. 55.03(1), (2) and (3), F.S.

<sup>36</sup> “Discount rate” means the interest rate charged to commercial banks and other financial institutions for short-term loans taken from the Federal Reserve Bank. Bd. of Governors of the Fed. Reserve System, *The Discount Window and Discount Rate*, <https://www.federalreserve.gov/monetarypolicy/discountrate.htm> (last visited Feb. 2, 2022).

<sup>37</sup> The Federal Reserve is the central bank of the United States. There are twelve Federal Reserve Banks, including a New York branch. Bd. of Governors of the Fed. Reserve System, *About the Federal Reserve System*, <https://www.federalreserve.gov/aboutthefed/structure-federal-reserve-system.htm> (last visited Feb. 2, 2022).

<sup>38</sup> “Basis points” are a common unit of measurement for interest rates. One basis point is equal to 1/100<sup>th</sup> of one percent, or 0.01 percent, and is used to denote the percentage change in a financial instrument. The relationship between percentage changes and nd basis points can be summarized as follows: a 0.01 percent change equals one basis point, so a one percent change equals 100 basis points. Investopedia, *Basis Points (BPS)*, <https://www.investopedia.com/terms/b/basispoint.asp> (last visited Feb. 2, 2022).

<sup>39</sup> S. 55.03(1), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> *Campbell v. Goldman*, 959 So. 2d 223 (Fla. 2007); *Price v. Tyler*, 890 So. 2d 246 (Fla. 2004).

<sup>42</sup> *Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210 (Fla. 2003); *Knealing v. Puleo*, 675 So. 2d 593 (Fla. 1996).

<sup>43</sup> *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546 (1986).

<sup>44</sup> *Fla. Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

<sup>45</sup> *Id.* at 1151.

<sup>46</sup> *Id.* at 1151.

<sup>47</sup> 555 So. 2d 828 (Fla. 1990).

<sup>48</sup> *Id.* at 834.



Further, the application of a contingency fee multiplier must be justified by competent substantial evidence.<sup>49</sup>

### Expert Witness Fees

An “expert witness” is any witness who offers himself or herself in the trial of any action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is authorized by the court to qualify<sup>50</sup> and testify as such upon any matter pending before any court.<sup>51</sup> An expert witness who has testified in a cause is allowed a witness fee, including the cost of any exhibit used by such witness, in an amount agreed to by the parties, and the same is taxed as costs.<sup>52</sup>

### State Constitution

#### *Sovereign Immunity*

Sovereign immunity is a principle recognizing that a government cannot be sued without its consent.<sup>53</sup> The State Constitution itself may waive sovereign immunity for specified claims.<sup>54</sup> Further, article X, section 13 of the State Constitution authorizes the legislature to waive sovereign immunity by statute. However, any statute purporting to waive sovereign immunity must be strictly construed and narrowly interpreted, and a waiver may not be found unless it has been “unequivocally expressed.”<sup>55</sup>

#### *Article I*

Article I of the State Constitution contains a declaration of the rights of Floridians. These rights include religious freedom, freedom of speech and of the press, the right to assemble, and the right to bear arms, set out in article I, sections 3, 4, 5, and 8, respectively.

### **Effect of Proposed Changes**

CS/HB 829 creates a state equivalent to a section 1983 civil cause of action with respect to some of the provisions within the State Constitution. Specifically, the bill provides that it is unlawful for a person to, under color of law, including any statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten:

- Promulgate or cause to be enforced any statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten, that deprives any resident of the state or other person within the state’s jurisdiction of any rights, privileges, or immunities secured by article I, sections 3, 4, 5, or 8 of the State Constitution; or
- Otherwise cause any state resident or other person within the state’s jurisdiction to be subjected to the deprivation of any rights, privileges, or immunities secured by article I, sections 3, 4, 5, or 8 of the State Constitution.

A person who violates the bill’s provisions is liable to the injured party in a civil action, but injunctive relief may not be granted in an action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity unless a declaratory decree is violated or declaratory relief is unavailable. The bill waives sovereign immunity for the state and its agencies and political subdivisions for causes of action brought under the bill.

The court may award a prevailing plaintiff compensatory, nominal, or punitive damages as appropriate, and must award a prevailing plaintiff his or her reasonable attorney fees and costs, which may include a contingency fee multiplier and expert witness fees. Interest on the sums awarded by the court begins

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<sup>49</sup> *Id.* at 834; *State Farm Fire & Cas. Co. v. Palma*, 555 So. 2d 863 (Fla. 1990).

<sup>50</sup> A witness maybe qualified as an expert by knowledge, skill, experience, training, or education. S. 90.702, F.S.

<sup>51</sup> S. 92.231(1), F.S.

<sup>52</sup> S. 92.231(2), F.S.

<sup>53</sup> Legal Information Institute, *Sovereign Immunity*, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited Feb. 2, 2022).

<sup>54</sup> Art. X, s. 6, Fla. Const.

<sup>55</sup> *Fla. Dept. of Transp. v. Schwefringhaus*, 188 So. 3d 840 (Fla. 2016).

on the date the plaintiff filed the complaint and accrues at the legal rate established by the CFO. However, a prevailing defendant is not entitled to recover attorney fees and costs under the bill. Further, if a defendant substantially modifies or repeals a statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten, with or without court action, after the filing of a complaint under the bill involving such statute, ordinance, regulation, measure, directive, rule, enactment, order, or policy, the plaintiff is considered the prevailing party and thus is entitled to recover his or her attorney fees and costs.

The bill provides an effective date of July 1, 2022.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 760.52, F.S., relating to civil action for deprivation of rights, privileges, or immunities.

**Section 2:** Provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government by increasing the number of lawsuits filed in the state court system. The bill may also have a significant fiscal impact on state government because it authorizes a person deprived by the State of a right, privilege, or immunity secured by article I, sections 3, 4, 5, or 8 of the State Constitution to sue the State for potentially unlimited monetary damages, which may include punitive damages where appropriate.

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

1. Revenues:

None.

2. Expenditures:

The bill may have a significant fiscal impact on local governments because it authorizes a person deprived by a local government of a right, privilege, or immunity secured by article I, sections 3, 4, 5, or 8 of the State Constitution to sue the local government for potentially unlimited monetary damages, which may include punitive damages where appropriate.

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

The bill may allow a person deprived of the rights, privileges, or immunities guaranteed to him or her by article I, sections 3, 4, 5, or 8 of the State Constitution to recover potentially unlimited monetary damages, including punitive damages, in a civil cause of action brought against the party responsible for the deprivation. Such suits may be brought against private parties or against the State and its political subdivisions.



D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This 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:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 2, 2022, the Civil Justice and Property Rights Subcommittee adopted a proposed committee substitute (“PCS”) and reported the bill favorably as a committee substitute. The PCS differed from the underlying bill in that it narrowed the scope of the bill to provide a cause of action only for the deprivation of those rights, privileges, and immunities secured by ss. 3, 4, 5, or 8, Art. I of the State Constitution.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.