

**SUBJECT:** Applying statutes of limitation to the state and to government entities

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 6 ayes — Nixon, Rose, King, Madden, Strama, Talton  
0 nays  
3 absent — Martinez Fischer, Raymond, Woolley

**WITNESSES:** None

**BACKGROUND:** Civil Practice and Remedies Code, ch. 16 imposes limitations on lawsuits, including statutes of limitations. In order to comply with the statute of limitations, a plaintiff must file a suit within a certain amount of time after which the cause of action arose.

Sec. 16.002 establishes a one-year statute of limitations for civil actions such as libel and slander. Sec. 16.003 establishes a two-year statute of limitations for civil actions such as personal injury and forcible entry. Sec. 16.004 establishes a four-year statute of limitations for civil actions such as fraud and breach of fiduciary duty.

Sec. 16.061(a) states that the statutes of limitation established in secs. 16.002-16.004 do not apply to the state or a political subdivision such as a city or a school district, allowing them to bring a cause of action against another party even if the required time to file suit has passed.

**DIGEST:** CSHB 2989 would apply the statutes of limitation in secs. 16.002-16.004 to the state and to political subdivisions of the state.

The bill would take effect September 1, 2005, and would apply to causes of action that accrued on or after this date.

**SUPPORTERS SAY:** Statutes of limitations reduce the unfairness of defending actions after a substantial period of time has elapsed. With the passage of time, memories fade and documents are lost. A defendant will have greater difficulty defending a law suit 10 or 15 years after an event than within two or three

years. Moreover, the law favors stability. The legal system seeks to avoid the disruption resulting from longstanding threats of legal action.

Under current law, government entities are not bound by statutes of limitation. This means that the state can file a lawsuit for fraud, for example, 20 years after the fraud occurred. Statutes of limitation should apply to the state for the same reasons they apply to individuals and businesses.

**OPPONENTS  
SAY:**

The state is fundamentally different than individuals in that the state does not protect its own money — as individuals and businesses do — but instead protects taxpayer dollars. Applying statutes of limitation to the state would limit the ability of taxpayers to recover for legitimate wrongs against the state, which is not in the taxpayers' best interests. In the event that a government entity did not file a cause of action within the statutory period, that entity would lose entirely its ability to collect for the wrong done against it. In some cases, this could result in a loss of millions of dollars.

Further, no single person makes decisions for the state, and officials frequently change. Torts against the state thus can go unnoticed for long periods of time. Holding private parties responsible for bringing lawsuits within a certain period of time makes more sense because private parties can exercise greater oversight in detecting wrongs against them than the state.

**NOTES:**

The original bill also would have applied sec. 16.001 to the state in addition to secs. 16.002-16.004. Sec. 16.001 states that if a party is under a legal disability (younger than 18 years of age or of unsound mind), then the statute of limitations does not begin to run against that party until the disability is removed.

The fiscal note anticipates no significant fiscal impact to the state. There also is no significant fiscal impact anticipated for local government unless a government entity failed to bring an action within the statutory time limit and that failure resulted in an inability to recover a large monetary award.