

NULLUM TEMPUS *Compendium of Law*



The doctrine of *nullum tempus occurrit regi*—literally, no times runs against the King—is an old English common law doctrine that governments have used to bring suits for damages that would otherwise be barred by the statute of limitations.

Nullum tempus was inherited in the United States during this nation’s birth as part of the English common law related to state sovereignty. After our nation’s independence, *reipublicae*—state— has often replaced *regi*—king— in referencing this doctrine.

At its heart, *nullum tempus* stands for the doctrine that says the State is not bound by a statute of limitation unless the statute expressly mentions the State by name. Today, the doctrine is justified on the public policy grounds that public remedies ought not be lost by the failures of public officers to seek timely relief, as they are burdened with serving the public.

Table of Contents

Please click on any of the below states to access their summary of the Nullum Tempus Occurrit Regi doctrine.

<u>Alabama</u>	<u>Kentucky</u>	<u>North Dakota</u>
<u>Alaska</u>	<u>Louisiana</u>	<u>Ohio</u>
<u>Arizona</u>	<u>Maine</u>	<u>Oklahoma</u>
<u>Arkansas</u>	<u>Maryland</u>	<u>Oregon</u>
<u>California</u>	<u>Massachusetts</u>	<u>Pennsylvania</u>
<u>Colorado</u>	<u>Michigan</u>	<u>Rhode Island</u>
<u>Connecticut</u>	<u>Minnesota</u>	<u>South Carolina</u>
<u>Delaware</u>	<u>Mississippi</u>	<u>South Dakota</u>
<u>District of Columbia</u>	<u>Missouri</u>	<u>Tennessee</u>
<u>Florida</u>	<u>Montana</u>	<u>Texas</u>
<u>Georgia</u>	<u>Nebraska</u>	<u>Utah</u>
<u>Hawaii</u>	<u>Nevada</u>	<u>Vermont</u>
<u>Idaho</u>	<u>New Hampshire</u>	<u>Virginia</u>
<u>Illinois</u>	<u>New Jersey</u>	<u>Washington</u>
<u>Indiana</u>	<u>New Mexico</u>	<u>West Virginia</u>
<u>Iowa</u>	<u>New York</u>	<u>Wisconsin</u>
<u>Kansas</u>	<u>North Carolina</u>	<u>Wyoming</u>

Alabama	Alabama follows a limited version of the <i>nullum tempus occurrit regi</i> doctrine (though they use the term <i>republicae</i> instead of <i>regi</i>) in which a statute of limitation, unless it expressly states otherwise, does not run against the state or commonwealth. <i>Board of School Com’rs of Mobile Co. v. Architects Group, Inc.</i> , 752 So.2d 489, 491 (Ala. 1999). However, this rule only applies “to the State itself, and not to the political subdivisions thereof.” <i>Id.</i> at 492. A statute of limitations, as a result, can run against cities and other “authorities created to manage the public subdivisions of the State.” <i>Id.</i> Thus, Alabama follows a strict form of <i>nullum tempus occurrit regi</i> that seemingly requires the State specifically, as an entity, to be the public actor seeking to avoid the running of the statute of limitations on the basis of its sovereignty. <i>See Miller v. State</i> , 38 Ala. 600 (Ala. 1863).
Alaska	Alaskan Courts do not have a published opinion addressing, discussing, or even mentioning <i>Nullum tempus</i> .
Arizona	<p>Arizona Revised Statute § 12-510 provides that the state shall not be barred by the statutes of limitations except for lands, or for the rents or profits from lands, based on a claim of navigability of any watercourse. Ariz. Rev. Stat. § 12-529. There are also several claim specific statutes of limitations. <i>See. e.g.</i>, Ariz. Rev. Stat. Ann. § 9-462.02 (“A municipality must issue a citation and file an action involving an outdoor advertising use or structure zoning or sign code violation within two years after discovering the violation.”) Section 12-510 exists to protect the public from the negligence of public officers that might deprive the public of its rights to redress against wrongdoers. <i>See Trimble v. American Sav. Life Ins. Co.</i>, 152 Ariz. 548, 555, 733 P.2d 1131, 1138 (App. 1986).</p> <p>Inapposite to several jurisdictions, Arizona does not decipher between the public versus proprietary function of the state to determine if the statute of limitation applies because such analysis required speculation by courts. <i>State v. Versluis</i>, 120 P.2d 410, 415 (Ariz. 1941); <i>Ryan v. State</i>, 656 P.2d 597, 599 (Ariz. 1982). Such a distinction is also inconsistent with the plain language of A.R.S. § 12-510. <i>Tucson Unified Sch. Dist. v. Owens-Corning Fiberglas Corp.</i>, 849 P.2d 790, 793 (1993) (holding that the governmental-proprietary test is not applicable to the statute because the state is always exercising its sovereign powers). A political subdivision of the state, such as a county or a municipality, is similarly exempt from the running of the statute of limitations if it acts in a governmental capacity as an agent of the state in a matter of state-wide concern, or performs a governmental function akin to that of the state. <i>See City of Bisbee v. Cochise County</i>, 78 P.2d 982 (Ariz. 1938) (municipal corporations are not subject to statutes of limitation when they are suing to collect money due them.); <i>see also City of Tucson v. Clear Channel Outdoor, Inc.</i>, 209 Ariz. 544, 548, 105 P.3d 1163, 1167 (2005).</p> <p>In 2010, in a challenge to the constitutionality of A.R.S. § 12-510, the Arizona Supreme Court held, in an unpublished decision, that the statute remains viable, but “[w]hether or not this statute still represents sound public policy is ultimately a question for the legislature.” <i>Stallings v. Arizona Health Care Cost Containment Sys. Admin.</i>, 2010 WL 1487995 (Ariz. Ct. App. Apr. 13, 2010) (rejecting a statute of limitations defense on a health care lien sought by the Arizona Health Care Cost Containment System).</p>
Arkansas	The general rule in Arkansas regarding the <i>nullum tempus</i> doctrine is that the statute of limitations will not limit the actions of political subdivisions of the state when the political subdivisions are seeking to enforce a public right. <i>Alcorn v. Arkansas State Hosp.</i> , 236 Ark. 665, 670-71 (1963). However, this sovereign exemption from the statute of limitations is not absolute, as “the statute of limitations may be interposed against, or in behalf of, counties, cities and school districts where the enforcement of mere private or proprietary rights are involved.” <i>Jensen v. Fordyce Bath House</i> , 209 Ark. 478, 482 (1945).

<p>Arkansas (Continued)</p>	<p>Courts have been hesitant to deviate from the rule that “the statute of limitations does not operate in matters where the public interest is concerned” unless the statute of limitations specifically states that it applies to a sovereignty. <i>Alcorn</i>, 236 Ark. at 671. As recently as 2003, the Arkansas Supreme Court applied the <i>nullum tempus</i> doctrine when it held that the statute of limitations did not bar the Arkansas Department of Environmental Equality from enforcing environmental restrictions that qualified as a public rights/interests sufficient to exempt the sovereignty from being time barred. <i>Arkansas Dep’t of Environmental Equality v. Brighton Corp.</i>, 352 Ark. 396, 413 (2003).</p>
<p>California</p>	<p>The rule regarding <i>nullum tempus</i> in California is that “[t]he rights of the sovereign ‘are not barred by lapse of time unless by legislation the immunity is expressly waived.’” <i>Marin Healthcare Dist. v. Sutter Health</i>, 103 Cal. App. 4th 861, 873 (Ct. App. 2002) (quoting <i>City of Los Angeles v. County of Los Angeles</i>, 9 Cal. 2d 624 (1937)). Therefore, the doctrine is still recognized unless waived or modified by statute.</p> <p>California has enacted some statutes that expressly waive the state's legislative immunity by applying statutes of limitations to various types of actions by the state and its agencies, such as California Code of Civil Procedure section 315 and 345. Section 345 deals with civil actions by or for the benefit of the state where the action is not for the recovery of real property and sets a four-year statute of limitations. Section 315 deals with civil actions for the recovery of real property and sets a ten-year statute of limitations.</p>
<p>Colorado</p>	<p>Colorado has abolished the <i>nullum tempus</i> doctrine. In 1992, the Colorado Supreme Court abolished the doctrine as applied to local governments because it perceived “no substantial benefit in tolerating official tardiness.” <i>Colo. Springs v. Timberlane Assoc.</i>, 824 P.2d 776, 783 (Colo. 1992). In <i>Shootman v. DOT</i>, the court abolished the doctrine as applied to the state because “the foundation of the common law doctrine of nullum tempus as applied to the State has been so extensively eroded that the doctrine is no longer supportable.” 926 P.2d 1200, 1206 (Colo. 1996). Thus, there is no government immunity to the statute of limitations in Colorado.</p>
<p>Connecticut</p>	<p>Connecticut recently upheld the doctrine of <i>nullum tempus</i> in <i>State v. Lombardo Brothers Mason Contractors, Inc.</i>, 307 Conn. 412 (2012). In this case, the state brought suit to recover damages in regard to the construction of the library at the University of Connecticut School of Law. Construction on the library began in 1994 and was completed in 1996. Thereafter, the state experienced several problems and commenced the underlying lawsuit in March 2008. The Connecticut Supreme Court held that “the doctrine of nullum tempus is well established in this state’s common law and [] the doctrine exempts the state from the operation of [Conn. Gen. Stat.] §§ 52-576, 52-577, 52-577a, 52-584 and 52-584a.” <i>Id.</i> at 420. Additionally, the court held that a contractor cannot “waive the state’s immunity from the operation of the repose period of § 52-584a.” <i>Id.</i> The court also stated that “nullum tempus and sovereign immunity may be viewed as opposite sides of the same coin.” <i>Id.</i> at 429. However, the court rejected defendants’ argument “that the legislature waived nullum tempus by necessary implication through its enactment of [Conn. Gen. Stat.] § 4-61, ‘which waives the state’s sovereign immunity with respect to certain claims arising under public works contracts’” <i>Id.</i> at 450.</p>
<p>Delaware</p>	<p>Delaware generally recognizes the doctrine of <i>nullum tempus occurit regi</i> for a state acting and suing in its sovereign capacity. Generally, however, issue arises as to whether it may apply to state agencies or municipalities. In <i>Mayor and City Council of Wilmington v. Dukes</i>, 52 Del. 318 157 A.2d 789 (1960), the Supreme Court of Delaware referred to 17 Del.Laws, Ch. 207, Sec. 2, which provides that the City of Wilmington is given the right “to sue and be sued...and generally</p>

Delaware (Continued)	to have all the privileges and franchises incident to a corporation or body politic". The Court interpreted this provision to indicate the legislative intent for a "municipality should be bound by the disabilities of a private corporation as well as have the advantages of those in its favor." Thus, the doctrine of sovereign immunity from the defense of statute of limitations does not extend to state municipalities. <i>Id.</i> at 328.
District of Columbia	The District is immune from statutes of limitation in suits relating to a public function. This is derived from both common law and statute: <p style="padding-left: 40px;">[t]he District of Columbia, as a municipality, enjoys limited sovereign immunity from the operation of statutes of limitation under the common law doctrine of <i>nullum tempus occurit regi</i> ("no time runs against the sovereign"), and under D.C.Code § 12–301, while in the performance of public functions.</p> <i>Solid Rock Church, Disciples of Christ v. Friendship Pub. Charter Sch., Inc.</i> , 925 A.2d 554, 559 (D.C. 2007). The statutory provision referenced above is the District's standard statute of limitations for actions, but contains the following exemption: "[t]his section does not apply...to actions brought by the District of Columbia government." D.C.Code § 12–301. Conversely, when the District pursues an action not related to a public function, and only related to a proprietary interest, there is no such immunity from the statute of limitations. <i>Dist. of Columbia Water & Sewer Auth. v. Delon Hampton & Associates</i> , 851 A.2d 410, 415 (D.C. 2004) (citing <i>Dist. of Columbia v. Owens-Corning Fiberglass Corp.</i> , 572 A.2d 394, 401 & n. 8) (D.C. 1989)).
Florida	A civil action or proceeding, called "action" in this chapter, <u>including one brought by the state</u> , a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or officer of any of them, or any other governmental authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere. (emphasis added). § 95.011, Fla. Stat. Ann. (2013).
Georgia	Georgia abrogates <i>nullum tempus</i> as follows: <p style="text-align: center;">Except as otherwise provided by law, the state shall be barred from bringing an action if, under the same circumstances, a private person would be barred.</p> <p>Ga. Code Ann. § 9-3-1 (2013).</p>
Hawaii	Hawaii has eleven published cases addressing or mentioning <i>nullum tempus</i> . Hawaii's first case mentioning the doctrine came in 1875, when it found that—similar to the Utah cases—that Hawaiian lands cannot be adversely possessed. <i>Kahoomana v. Moehonua</i> , 3 Haw. 635, 640 (1875). Six years later, the Supreme Court of the Kingdom of Hawaii relied on <i>nullum tempus</i> in finding that the statute of limitations did not bar the Minister of the Interior from seeking rents owed to the Kingdom from the estates of those who were yet to pay. <i>Minister of Interior v. Parke</i> , 4 Haw. 366, 368 (1881). In 1907, in <i>Kunewa v. Kaanaana</i> , the Supreme Court of the Territory of Hawaii addressed whether <i>nullum tempus</i> applied to Hawaii now that it was a territory and neither a kingdom nor a state. 18 Haw. 252, 255 (1907). The Court relied on the act of 1894–5 which exempted the Hawaiian government from liability of suits except as specifically referenced, and in this same vein ruled that <i>nullum tempus</i> likewise applies to Hawaii and that unless the territory is specifically mentioned in a statute of limitation no time runs. <i>Id.</i>

<p>Hawaii (Continued)</p>	<p>Again, fifty years later after it was first addressed, the Hawaiian court revisited the issue addressed in <i>Pyke</i>—whether a statute of limitations prevented the kingdom or territory from collecting against an estate for unpaid sums. <i>Territory of Hawaii v. Makaaa</i>, 43 Haw. 237, 239 (1959). By this point in history, a split of opinion had developed among the states. <i>Id.</i> The Court held that the holding in <i>Pyke</i> was still good law, as a large part of the holding was based on an interpretation of the statute, and if the holding of <i>Pyke</i> should be overturned, it was better for the legislature to amend the statute and implicitly overrule <i>Pyke</i>. <i>Id.</i> at 240.</p> <p>Finally, in Hawaii’s most recent case—nearly 50 years ago—and its only case as a state where the majority addresses the issue, the Supreme Court of Hawaii held that while a person cannot adversely possess state land, a person may have claim to title of state lands under the theory of acquiescence—a theory where the state mistakenly allows a person to use the states land.¹ <i>State by Kobayashi v. Midkiff</i>, 49 Haw. 456, 485, 421 P.2d 550, 566 (1966).</p>
<p>Idaho</p>	<p>In Idaho, <i>nullum tempus</i> has only been addressed in two cases, <i>Elmore Cnty. v. Alturas Cnty.</i> 37 P. 349, 350 (1894) and <i>Bannock Cnty. v. Bell</i>, 65 P. 710, 712 (1901). Both cases address the doctrine and how it relates to municipal corporations and address the issue by quoting Wood on Limitations of Actions § 53:</p> <p style="text-align: center;">The maxim, “Nullum tempus occurrit regi” (“Lapse of time does not bar the right of the crown”), only applies in favor of the sovereign power, and has no application to municipal corporations deriving their powers from the sovereign, although their powers, in a limited sense, are governmental. Thus the statute runs for or against towns and cities in the same manner as it does for or against individuals.</p> <p>In both cases, a county of Idaho was seeking damages and brought an action that would otherwise be barred by the statute of limitations. The Supreme Court of Idaho interpreted Wood to mean that <i>nullum tempus</i> only applies to the state and does not apply to cities, counties, or municipalities. <i>Bannock Cnty.</i> 65 P. at 712; <i>Elmore Cnty.</i> 37 P. at 350. <i>Elmore Cnty. v. Alturas Cnty.</i> 37 P. 349, 350.</p>
<p>Illinois</p>	<p>In Illinois, a government entity is provided immunity from a relevant statute of limitation provided that the right it seeks to assert is a right belonging to the general public. <i>Shelbyville</i> 96 Ill.2d at 462-63. Government claims that benefit only the government or some small and distinct subsection of the public at large are not immune. <i>Id.</i> Illinois courts consider three factors when determining whether a governmental entity is asserting a public or private right: (1) the effect of the interest on the public; (2) the obligation of the governmental entity to act on behalf of the public; and (3) the extent to which public funds must be expended. <i>People ex rel. Department of Labor v. Tri State Tours, Inc.</i> 795 N.E.2d 990, 993 (1st Dist. 2003).</p> <p>However, it is well established that where a statute of limitations expressly includes the state, county, municipality, or other governmental agency, common law governmental limitations immunity will not bar a limitations defense. <i>County of Du Page v. Graham, Anderson, Probst & White, Inc.</i>, 485 N.E.2d 1076 (Ill. 1985).</p>

¹ For example: when both the individual and the state are mistaken about the boarder of their property and the individual extends his property border onto the State’s lands. While the state is aware of the individual’s claimed boarder, it is unaware that it is encroaching on its land.

Indiana	<p>In Indiana, the state is not subject to a statute of limitations. <i>City of East Chicago v. East Chicago Second Century, Inc.</i>, 908 N.E.2d 611 (In. 2009). However, the doctrine only applies in favor of the state, and has no application to municipal corporations deriving their powers from the state. <i>State v. Stuart</i>, 91 N.E. 613, 615 (In. 1910). Therefore, statutes of limitation run for or against towns and cities, and also for or against counties. <i>Id.</i></p>
Iowa	<p>In Iowa, a statute of limitations does not run against the state unless specifically provided by statute. <i>Fennelly v. A-1 Machine & Tool Co.</i>, 728 N.W. 2d 163, 168 (Iowa 2006). The same considerations that support immunity for states, however, do not necessarily support immunity for political subdivisions of the state. <i>Id.</i> Subdivisions of state government such as municipalities and counties are subject to general statute of limitations unless, the action the entity brings involves a public or governmental activity, as opposed to a private or proprietary activity. <i>Chi. & N.W. Ry. v. City of Osage</i>, 176 N.W.2d 788, 791 (Iowa 1970).</p> <p>If the action is determined to benefit the welfare of the state, the government entity will be afforded protection. <i>Fennelly</i> 728 N.W.2d at 171. Whereas, an action brought by a government entity that merely attempts to regulate its own affairs will not be afforded protection. <i>Id.</i> The goal of this doctrine is to afford immunity from statute of limitations to political subdivisions that are acting as an arm or instrumentality of the state. <i>Payette v. Marshall County</i>, 163 N.W. 592, 593 (Iowa 1917).</p>
Kansas	<p>In Kansas, the statute of limitations applies against the state when it acts in a proprietary function but not when it acts in a government function. Kan. Stat. Ann. § 60-521 reads:</p> <p style="padding-left: 40px;">As to any cause of action accruing to the state, any political subdivision, or any other public body, which cause of action arises out of any proprietary function or activity, the limitations prescribed in this article shall apply to actions brought in the name or for the benefit of such public body in the same manner as to actions by private parties, except in (1) actions for the recovery of real property or any interest therein, or (2) actions to recover from any former officer or employee for his or her own wrongdoing or default in the performance of his or her duties.</p> <p>The Kansas Supreme Court has held that, because the statute omits reference to governmental functions, the statute of limitations only runs against the state when it acts in a proprietary function. <i>State Highway Com. v. Steele</i>, 528 P.2d 1242, 1244 (Kan. 1974). "Governmental functions are those which are performed for the general public with respect to the common welfare for which no compensation or particular benefit is received, while proprietary functions are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit or advantage of the governmental unit conducting the activity." <i>Kan. Pub. Employees Retirement Sys. v. Reimer & Koger Assocs.</i>, 941 P.2d 1321, 1336 (Kan. 1997).</p>
Kentucky	<p>Applicable Statute & Notes: Ky. Rev. Stat. Ann. § 413.135 Extension: One-year extension available if injury occurs during seventh year. See also § 413.120(14), imposing 5-year statute of limitation for personal injury claims against a builder.</p> <p>Key Case: The Kentucky Supreme Court held that statutes of repose are unconstitutional, at least in the personal injury context. See <i>Perkins v. Ne. Log Homes</i>, 808 S.W.2d 809 (Ky. 1991). The <i>Perkins</i> court did not state whether the statute was totally invalid, or merely</p>

<p>Kentucky (Continued)</p>	<p>unconstitutional in application to the particular case at issue. Thus, the propriety of § 413.135 as a statute of repose for non-personal injury, non-wrongful death claims is unclear; note, however, that the statute has not been amended or repealed since <i>Perkins</i>.</p> <p>Application of Doctrine of <i>nullum tempus occurrit regi</i> (“no time runs against the king”): Unclear; however, since statutes of repose have not been upheld at all in recent years, claims brought by states will not likely be barred by § 413.135.</p>
<p>Louisiana</p>	<p>The Louisiana Constitution provides, “Prescription shall not run against the state in any civil matter, unless otherwise provided in this constitution or expressly by law.” La. Const. Art. 12, § 13. However, “the state” for purposes of this constitutional immunity from prescription has been narrowly interpreted to exclude any state agency, as a state agency is a distinct legal entity from the state. <i>State, Through Dept. of Highways v. City of Pineville</i>, 403 So.2d 49, 52-53 (La. 1981) (Department of Highways is not considered “the state” for purposes of immunity from tolling of prescription in suit for repayment of money advanced); <i>State ex rel. Louisiana Dept. of Education-Food Service v. Bright Beginnings Child Care, Inc.</i>, 42,146 (La. App. 2 Cir., 5/16/07); 957 So.2d 362, 365 (Department of Education is not considered “the state” for purposes of immunity from tolling of prescription in suit for overpayments made by State in food service program); <i>Board of Com’rs of Port of New Orleans v. Toyo Kisen Kaisha</i>, 163 La. 865 (La. 1927) (Board of Commissioners is not “the state” for purposes of immunity from tolling of prescription in tort suit); <i>Mitchel v. Board of Com’rs of Jefferson and Plaquemines Drainage Dist.</i>, 161 So.2d 384 (La. App. 4 Cir. 1964) (prescription ran against Drainage District Board of Commissioners as it is not the “the state” for purposes of immunity from tolling of prescription); <i>Terrebonne Parish School Bd. v. Mobil Oil Corp</i>, 01-31190 (C.A. 5 Cir. 11/13/02); 310 Fo.3d 870 (School Board is not “the state” for purposes of immunity from prescription). Because most suits that sound in contract or tort are brought on behalf of a state agency rather than “the state,” this provision does not appear to affect many contract or tort suits. In fact, there appears to be no tort or contract suits wherein this constitutional provision operated to provide the state with immunity from prescription.</p> <p>Louisiana law provides for a five year preemptive period for actions involving deficiencies in the construction of immovables or improvements thereon. La. R.S. 9:2772. Although it has been held that state immunity from the tolling of prescription also extends to the tolling of preemption, it does not appear such immunity will affect many suits filed pursuant to La. R.S. 9:2772. <i>Flowers, Inc. v. Mrs. Lucy Reid Rausch, Clerk of Court, Parish of St. Tammany and Collector of Revenue, State of Louisiana</i>, 364 So.2d 928, 932 (La. 1978). As stated above, Louisiana courts narrowly interpret the state’s constitutional immunity from prescription (and preemption) to only operate in favor of the state, and such courts exclude any state agency from this immunity. <i>State, Through Dept. of Highways</i> 403 So.2d at 52-53. As many of the suits for defective construction are brought on behalf of the state agency that contracted for the construction, such agency cannot benefit from the constitutional immunity from the tolling of prescription.</p>
<p>Maine</p>	<p>The doctrine of <i>nullum tempus occurrit regi</i> also remains viable in Maine. Applying the doctrine, courts have held that statutes of limitation do not apply against the State unless the State is expressly referenced in the statute. <i>See Portland Water District v. Town of Standish</i>, 905 A.2d 829 (2006) (doctrine applied to prohibit the taking of government owned land by adverse possession or prescriptive easement) and <i>State v. Crommett</i>, 151 Me. 188 (1955) (relying on the doctrine of <i>nullum tempus occurrit regi</i>, court held that statutes of limitation do not apply against the State unless the State is expressly named therein). It should be noted that, in <i>Portland Water District v. Town of Standish, supra</i>, the court concluded that a water district is a governmental entity against which a prescriptive easement</p>

<p>Maine (Continued)</p>	<p>may not be asserted. There, the court looked to the fact that the water district was created by the State, was exempted from taxation and was granted authority by the State to exercise extensive, uniquely governmental functions. Conversely, municipal corporations, even in their public character, have been found to be not so vested with the rights and privileges of sovereignty as to be within the protection of the doctrine. <i>See Inhabitants of Topsham v. Blondell</i>, 82 Me. 152 (1889).</p> <p>The Maine Federal court has also upheld and relied on the doctrine of <i>null tempus occurrit regi</i>. <i>See U.S. v. Thurston</i>, 346 F. Supp.2d 215 (D. Me. 2004). There, the District Court applied <i>nullum tempus occurrit regi</i> and held that a private defendant cannot assert laches against the government as the sovereign is exempt from the consequences of its laches and from the operation of statutes of limitation. <i>Id.</i> at 219.</p>
<p>Maryland</p>	<p><i>Baltimore County v. RTKL Associates, Inc.</i> 380 Md. 670, 846 A.2d 433 (2004) is the most recent and thorough decision on the issue of the application of the doctrine of <i>nullum tempus occurrit regi</i>. The doctrine of <i>nullum tempus</i> is applied for state actions where either the state or someone entitled to stand in the states position, i.e. subrogee of the state. <i>Bonding Co. v Nat’l Mechanics’ Bank</i>, 97 Md. 598, 55 A. 395 (1903). <i>Goldberg v. Howard County Welfare Board</i>, 360 Md. 351, 272 A.2d 397 (1971) provided that the doctrine will apply when an action is brought by a “governmental agency or political subdivision or municipality [where the cause of action] has arisen out of its exercise of a strictly governmental function, such as rendering assistance to the aged, infirm, indigent and mentally incompetent.” <i>See Central Coll. Unit v. Alt. Con. Line</i>, 277 Md. 626, 627, 356 A.2d 555, 556 (1976) (limitations may be not asserted against the State when, in its sovereign capacity, it sues in its own courts.); <i>Wash. Sub. San. Comm’n v. Pride Homes</i>, 291 Md. 537, 544, 435 A.2d 796, 801 (1981) (limitations do not run against the state stems from the theory of sovereign immunity). While the state and its agencies are exempt from the bar of a statute of limitations, the state’s political subdivisions are subject to a governmental/proprietary test, in that counties and municipalities can only avoid dismissal on the basis of the statute of limitations if the action arises from the exercise of a government, rather than a proprietary or corporate function. <i>See Anne Arundel County v. McCormick</i>, 323 Md. 688, 594 A.2d 1138 (1991). Counties and municipalities do not enjoy the benefit of the doctrine for contract actions, and thus the governmental/proprietary test need not be used. <i>Balt. Co. v. RTKL Associates, Inc.</i> 380 Md. at 688.</p>
<p>Massachusetts</p>	<p>While <i>nullum tempus</i> remains technically viable in Massachusetts, the consent provision of M.G.L. c. 260, § 18 subjects the Commonwealth to the applicable statute of limitations or statute of repose in nearly all instances. <i>See Commonwealth v. Owens-Corning Fiberglas Corp.</i>, 38 Mass. App. Ct. 600, 603, 650 N.E.2d 365, 367 (1995)(the Commonwealth is not bound by a statute of limitations unless it expressly consents to be bound by it); <i>Attorney General v. Revere Copper Co.</i>, 152 Mass. 444, 449, 25 N.E. 605, 606 (1890)(the last reported case in Massachusetts explicitly referring to the doctrine by the maxim phrase <i>nullum tempus occurrit regi</i>). The Massachusetts Legislature provided such consent through the enactment of M.G.L. c. 260, § 18, which provides that the time limitations on actions set forth under M.G.L. c. 260, et seq. shall apply to actions brought by or for the Commonwealth. M.G.L. c. 260, § 18. The limitations set forth in M.G.L. c. 260, et seq. include, among others, the Commonwealth’s three-year statute of limitations for actions in tort for personal injuries under M.G.L. c. 260, § 2A, the six-year statute of limitations under M.G.L. c. 260, § 2 for bringing actions of contract in general, and the six-year statute of repose under M.G.L. c. 260, § 2B for an action of tort for damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property. <i>See Owens-Corning</i>, 38 Mass. App. Ct. at 603, 650 N.E.2d at 367 (noting that the consent provision of M.G.L. c. 260, § 18 applies equally to the conventional statutes of limitations that appear throughout M.G.L. c. 260, et seq., and to</p>

<p>Massachusetts (Continued)</p>	<p>the statute of repose under M.G.L. c. 260, § 2B). As a result of the enactment of M.G.L. c. 260, § 18, the Commonwealth will be subject to the applicable statute of limitations in nearly all instances, even though the <i>nullum tempus</i> doctrine remains technically valid. Indeed, there are no reported cases in Massachusetts in which <i>nullum tempus</i> governed because the statute of limitations at issue fell outside M.G.L. c. 260, et seq. It is also worth noting that the Commonwealth's consent, by virtue of M.G.L. c. 260, § 18, to the limitations set forth under M.G.L. c. 260, et seq. applies equally to cities and municipalities, and irrespective of whether suit is brought to enforce a public or governmental right. See <i>City of Boston v. Nielson</i>, 305 Mass. 429, 431, 26 N.E.2d 366, 367 (1940).</p>
<p>Michigan</p>	<p>In Michigan, statutes of limitation do not apply against the state unless there is a statute expressly providing otherwise. <i>Crane v. Reeder</i>, 21 Mich. 24, 44 (1870). However, Mich. Comp. Laws Ann. § 600.5821 provides, “[t]he periods of limitations prescribed for personal actions apply equally to personal actions brought in the name of the people of this state, or in the name of any officer, or otherwise for the benefit of this state.” M.C.L. § 600.5821. As a result actions that are brought <i>in rem</i> are provided immunity, whereas actions brought by a government plaintiff <i>in personam</i> are not. <i>City of Detroit v. 19675 Hasse</i>, 671 N.W.2d 150, 161 (Mich. 2003).</p> <p>Claims brought <i>in personam</i> attempt to enforce an obligation imposed on the defendant by contract or to force him to perform some service or to repair some loss. <i>Id.</i> (citing Black's Law Dictionary (6th ed.), p. 29). In contrast, the term action <i>in rem</i> signifies an action determining the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property. <i>Id.</i> (citing Black's Law Dictionary (7th ed.), p. 30). Actions <i>in personam</i> differ from actions <i>in rem</i> in that actions or proceedings <i>in personam</i> are directed against a specific person, and seek the recovery of a personal judgment, while actions or proceedings <i>in rem</i> are directed against the thing or property itself, the object of which is to subject to the power of the state, to establish the status or condition thereof, or determine its disposition, and procure a judgment which is binding and conclusive. <i>Id.</i></p>
<p>Minnesota</p>	<p>The doctrine has no effect in Minnesota. The Minnesota legislature has established that statutory limitations periods “shall apply to actions by or in behalf of the state and the several political subdivisions thereof” Minn. Stat. § 541.01; <i>State v. Standard Oil Co. (Indiana)</i>, 568 F. Supp. 556, 567-68 (D. Minn. 1983).</p>
<p>Mississippi</p>	<p>Under Mississippi constitutional and statutory law, statutes of limitations in civil cases are prohibited from running against the state and its political subdivisions. See Miss. Const. art. 4, § 104 (statutes of limitations “shall not run against the State, or any subdivision or municipal corporation thereof”); see also Miss. Code Ann. § 15-1-51 (2013) (LexisNexis through 2012 Reg. Sess.) (same). There is an exception for judgments in favor of the state and its political subdivisions. See Miss. Code Ann. § 15-1-51 (seven-year limitation on judgment liens unless action on lien or notice re-filed before then).</p> <p>See, e.g., <i>Mississippi State Highway Comm’n v. New Albany Gas Sys.</i>, 534 So. 2d 204, 207 (Miss. 1988) (chancery court’s opinion holding statute of limitations had run was in error); <i>Parish v. Frazier</i>, 195 F.3d 761, 764 (5th Cir. 1999) (statute of limitations did not run because debt was owed to a governmental entity).</p> <p>The prohibition is based on public policy. See <i>State Highway Comm’n</i>, 534 So. 2d at 207 (“[T]he body politic should not suffer because of the neglect or procrastination of its public servants in promptly asserting and protecting the rights and interests of the general public in civil matters.”) (quoting <i>Gibson v. State Land Comm’r</i>, 374 So. 2d 212, 216 (Miss. 1979)).</p>

Missouri	The maxim “ <i>nullum tempus occurrit regi</i> ” has been abolished in Missouri. In 1939 the state legislature adopted Section 516.360 RSMo. According to its terms the limitations statutes prescribed in Sections 516.010 to 515.370 that apply for real and personal actions apply to actions brought in the name of the State, or for its benefit, in the same manner as they do to actions brought by private parties.
Montana	The doctrine of <i>nullum tempus</i> is not viable in Montana. Since territorial days, Montana has had a statute in place -- now codified as sec. 27-2-103 of the Montana Code Annotated -- which provides that "[t]he limitations prescribed in part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties." There is no suggestion that political subdivisions or other public entities enjoy any sort of exemption from the application of Montana's statutes of limitations. See, for example, <i>Tin Cup Water and/or Sewer District vs. Garden City Plbg. & Htg., Inc.</i> , 347 Mont. 468, 200 P.3d 60 (2008).
Nebraska	Aside from a few exceptions regarding fiscal matters, Nebraska does not have a <i>nullum tempus</i> doctrine. Neb. Code § 25-218 states: “Every claim and demand on behalf of the state, except for revenue, or upon official bonds, or for loans or money belonging to the school funds, or loans of school or other trust funds, or to lands or interest in lands thereto belonging, shall be barred by the same lapse of time as is provided by the law in case of like demands between private parties.” The term “revenue” is “broad and general, and includes all public moneys which the state collects and receives, from whatever source and in whatever manner.” <i>State v. Stanton County</i> , 161 N.W. 264, 266 (Neb. 1917).
Nevada	Nevada has abolished the <i>Nullum tempus</i> doctrine. The Nevada Supreme Court noted in <i>County of Eureka v. County of Lander</i> , 21 Nev. 144 (1891), that “[t]he statute of limitations runs against counties. Section 3649 of the Gen. Stat. of Nev. makes the statute of limitations apply to the state and abolishes the maxim: <i>Nullum tempus occurrit regi</i> .” General Statute 3649 of Nevada held “[t]he limitations prescribed in this Act shall apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties.”
New Hampshire	<p>The common law doctrine of <i>nullum tempus occurrit regi</i> remains viable in New Hampshire. See <i>State v. Lake Winnepesaukee Resort, LLC</i>, 159 N.H. 42 (2009); <i>Thompson v. Major</i>, 58 N.H. 242 (1878); and <i>State v. Franklin Falls Co.</i>, 49 N.H. 240 (1870).</p> <p>In <i>State v. Lake Winnepesaukee Resort, LLC</i>, the State commenced an action seeking civil monetary penalties for alleged violations of environmental statutes during the construction of a golf course. A general contractor for the construction project raised a statute of limitation defense and moved to dismiss. The State argued that the doctrine of <i>nullum tempus occurrit regi</i> precluded any such defense. The trial court denied the motion to dismiss finding that the doctrine applied to the case. In holding that <i>nullum tempus occurrit regi</i> endures as a recognized doctrine of law in New Hampshire, the Supreme Court affirmed the trial court’s ruling. The Supreme Court held that “unless a statute of limitations expressly waives <i>nullum tempus</i> by making a limitations period specifically applicable to the State, the sovereign remains immune from general statutes of limitations.” <i>Id.</i> at 49.</p> <p>New Hampshire courts have followed Massachusetts courts and held that the doctrine is founded upon “the great public policy of preserving the public rights, revenues and property from injury and loss, by the negligence of public officers.” <i>Id.</i> at 45 and <i>State v. Franklin Falls Co., supra</i>. In applying the doctrine to the abandonment of the use of a highway, the Supreme Court in <i>Thompson v. Major, supra</i>, found that the abandonment of the highway by the public does not alone result in a loss of the public right to use it, nor any discontinuance of the highway. There, the Court held that an adverse user for twenty years, originating without right,</p>

New Hampshire (Continued)	will not bar the rights of the public. The Court further held that the public can lose no rights in its establishments by non-users, and individuals can acquire no title in them by prescription. See <i>Thompson v. Major, supra</i> .
New Jersey	<p>New Jersey no longer recognizes the doctrine of <i>nullum tempus</i>. In <i>State of New Jersey Department of Environmental Protection v. Caldeira</i>, 171 N.J. 404 (2002), the Supreme Court of New Jersey traced the history of <i>nullum tempus</i> in New Jersey and the court noted that “[i]n a series of 1991 opinions, we abolished the <i>nullum tempus</i> doctrine ‘insofar as it would preclude the application of general statutes of limitations to the State.’” <i>Id.</i> at 408-09 (collecting cases). The New Jersey Legislature then enacted N.J. Stat. Ann. § 2A:14-1.2, which “provides a general ten-year limitations period for actions brought by the State or its agencies.” <i>Caldeira</i>, 171 N.J. at 409. Specifically in relation to actions to recover damages in the construction context, there is a ten year statute of limitations, N.J. Stat. Ann. § 2A:14-1.1 (West 2013), and it contains four exceptions:</p> <p style="padding-left: 40px;">(b) This section shall not bar an action by a governmental unit:</p> <p style="padding-left: 80px;">(1) on a written warranty, guaranty or other contract that expressly provides for a longer effective period;</p> <p style="padding-left: 80px;">(2) based on willful misconduct, gross negligence or fraudulent concealment in connection with performing or furnishing the design, planning, supervision or construction of an improvement to real property;</p> <p style="padding-left: 80px;">(3) under any environmental remediation law or pursuant to any contract entered into by a governmental unit in carrying out its responsibilities under any environmental remediation law; or</p> <p style="padding-left: 80px;">(4) Pursuant to any contract for application, enclosure, removal or encapsulation of asbestos.</p> <p><i>Id.</i></p>
New Mexico	<p>In New Mexico, it is generally held that statutes of limitation do not apply to actions in behalf of the State, unless it is specifically so provided in the statute, or the government has consented to be bound by the statute. <i>State v. Roy</i>, 68 P.2d 162, 164 (N.M. 1937). But this rule only applies when the general government is the sole and real party in interest. <i>Roy</i>, 68 P.2d at 164. The statute will run against county and other political subdivisions, including school districts, unless such may be deemed to be an arm of the state because of the particular governmental functions or purposes involved. <i>Bd. of Ed., Sch. Dist. 16, Artesia, Eddy Cnty. v. Standhardt</i>, 458 P.2d 795, 801 (N.M. 1969). This is codified in N.M. Stat. §37-1-19, which states:</p> <p>The above limitations and provisions shall not apply to evidences of debt intended to circulate as money; but shall, in other respects, be applicable in all other actions brought by or against all bodies corporate or politic, except when otherwise expressly declared.</p> <p>If the suit is brought in the name of the state, but it is only the nominal party of record and its name is used to enforce a right which ensures solely to the benefit of the body corporate or politic, then the statute of limitations can be pled as a bar to the action. <i>Id.</i> at 802. To determine the real party in interest the court must look to the facts in the record and not merely rely on the name in which the action is brought. <i>In re Valdez</i>, 136 B.R. 874, 877 (Bankr. D.N.M. 1992), citing 51 Am.Jur.2d Limitations of Actions § 411 (1970).</p> <p>In <i>Valdez</i>, the Employment Security Division of the New Mexico Department of Labor, which was created to remedy the “serious menace” of economic security, was a branch of the state, sufficient bar to bar a statute of limitations defense. <i>Id.</i> In a similar vein, an action in name of territory for delinquent taxes which were declared by law to be property of county in which assessed and, when collected, were payable directly into funds of such county was not barred</p>

New Mexico (Continued)	by the statute. <i>Hagerman v. Territory</i> , 66 P. 526 (N.M. 1901). On the other hand, a local school board was subject to the statute of limitations because the obligation sued upon was “owed solely to the district as administered by appellee Board.” <i>Standhardt</i> , 458 P.2d at 803. Most recently, the Court of Appeals of New Mexico held that a municipality was subject to the four-year statutes of limitations set forth in Section 37–1–4 on a claim for municipal water liens on property because it has not demonstrated that the State was a real party in interest in this case. <i>Hurley v. Vill. of Ruidoso</i> , , 131 P.3d 693, 695 (N.M. App. 2006).
New York	<p>New York does not recognize the doctrine of <i>nullum tempus</i>. N.Y. C.P.L.R. § 201 (McKinney 2013) provides that:</p> <p style="padding-left: 40px;">An action, including one brought in the name or for the benefit of the state, must be commenced within the time specified in this article unless different time is prescribed by law or a shorter time is prescribed by written agreement. No court shall extend the time limited by law for the commencement of an action.</p> <p><i>Id.</i> In <i>State v. Seventh Regiment Fund</i>, 98 N.Y.2d 249 (2002), the Court of Appeals noted that there was no distinction between the State acting “as a proprietor . . . [or] as a sovereign claiming irreplaceable personal property.” <i>Id.</i> at 254. The court declined to add an exception to the statute of limitations and noted that “the Appellate Division has done so once, relying on the common-law rule that ‘no time runs against the King.’” <i>Id.</i> (citing <i>State v. Vernooy</i>, 109 A.D.2d 682, 683 (App. Div. 1st Dep’t 1985). However, the Court of Appeals noted that “the Legislature enacted the precursor to Civil Practice Act § 54 and CPLR 201 in a deliberate departure from the common-law rule that, in general, ‘no time runs against the King.’” <i>Seventh Regiment Fund</i>, 98 N.Y.2d at 255. Furthermore the Court of Appeals stated that “aside from the statutory language itself, which is clear enough, the legislative history plainly expresses an intent to repudiate this doctrine.” <i>Id.</i></p>
North Carolina	North Carolina still recognizes the principle of <i>nullum tempus</i> . See <i>Rowan County Bd. Of Educ. v. U.S. Gypsum Co.</i> , 418 S.E.2d 648 (1992) (holding when the State or one of its policial subdivisions is pursuing a governmental purpose, the doctrine of <i>nullum tempus</i> protects that political body from the running of statutes of limitation and repose <i>unless the pertinent statute expressly includes the state</i>) (emphasis added).
North Dakota	The doctrine has no effect in North Dakota. The North Dakota legislature has established that statutory limitations periods “apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties.” N.D.C.C. § 28–01–022.1.
Ohio	<p>Applicable Statute & Notes: Ohio Rev. Code Ann. § 2305.131 Extension: Two-year extension if cause of action accrues in the eighth or ninth year. Exceptions: Fraud/ misrepresentation, ownership, express warranty.</p> <p>Key Case: <i>McClure v. Alexander</i>, 2008 Ohio App. LEXIS 1136 (Ohio Ct. App. Mar. 21, 2008) (upholding constitutionality).</p> <p>Application of Doctrine of <i>nullum tempus occurrit regi</i> (“no time runs against the king”): Unclear; however, since statutes of repose have not been upheld at all in recent years, claims brought by states will not likely be barred by § 413.135.</p>
Oklahoma	In Oklahoma, the general rule is that the statutes of limitation do not bar suit by any governmental entity acting in its sovereign capacity to vindicate public rights and that public policy requires that every reasonable presumption favors governmental immunity from such

<p>Oklahoma (Continued)</p>	<p>limitation. <i>State ex rel. Schones v. Town of Canute</i>, 858 P.2d 436 (Okla. 1993), <i>superseded by statute</i>, 62 Okl. St. Ann. § 734, <i>citing Okla. City. Mun. Improvement Auth. v. HTB, Inc.</i>, 769 P.2d 131 (Okla. 1988). The test for determining whether a public or private right is involved is simply whether the right affects the public generally or only affects a limited class of individuals within the political subdivision. This approach has been criticized by Courts in Oklahoma as encouraging “slothful, dilatory behavior” by those who serve governmental bodies, since nearly every action can be shielded by the armor of <i>nullum tempus</i>. <i>Id.</i> at 446 (Opala, J., dissenting).</p> <p>By example, an action by a county in connection with the contract of a purchase of realty for a courthouse and street is not subject to the statutes of limitation. <i>Herndon v. Pontotoc County</i>, 11 P. 2d 939 (Okla. 1932). Similarly, a five-year statute of limitations did not run against county right to recover principal and interest due on bridge bonds issued by township. <i>Board of Com’rs of Oklahoma County v. Good Tp., Harper County</i>, 107 P.2d 805 (Okla. 1940).</p> <p>On the other hand, common-law doctrine of <i>nullum tempus occurrit regi</i> did not confer upon the State an exemption from compliance with the four-month time limit during which creditors are required to file their claims against a decedent’s estate. <i>State ex rel. Cent. State Griffin Mem. Hosp. v. Reed</i>, 493 P.2d 815, 817-818 (Okla. 1972). In addition, statutes of limitation apply to a civil action to foreclose the lien of a municipal special improvement assessment represented by municipal improvement bonds, and action by county to recover sums illegally paid in excess of salary of county attorney. <i>Mefford v. Oklahoma City ex rel. Simpson</i>, 155 P.2d 523 (Okla. 1945); <i>Woodward County v. Willett</i>, (1915) 152 P. 365 (Okla. 1915).</p>
<p>Oregon</p>	<p>Similar to California, the doctrine of <i>Nullum tempus</i> is still recognized in Oregon unless a statute provides otherwise and imposes a statute of limitations. <i>See Shasta View Irrigation Dist. v. Amoco Chems. Corp.</i>, 329 Ore. 151 (1999) (“The common-law variation of ORS 12.250 is that general statutes of limitations do not run against the government unless the statute ‘otherwise expressly provided.’ . . . “The rule is said to be founded upon the legal fiction expressed in the maxim <i>nullum tempus occurrit regi</i>. However, it is not necessary to predicate this salutary precept upon any fiction, since sound reason for the rule is found in the fact that as a matter of public policy it is necessary to preserve public rights, revenues and property from injury and loss by the negligence of public officers.” (citations omitted)); <i>DeFazio v. Wash. Public Power Supply System</i>, 296 Ore. 550 (1984) (“The court early postulated that statutes of limitation do not run against the state, a postulate it found in the Latin <i>nullum tempus occurrit regi</i>, unless the statute provides otherwise.”).</p>
<p>Pennsylvania</p>	<p>The general rule in Pennsylvania is that there is a twelve year statute of limitations for actions to recover damages relating to the construction and design of real property. <i>See</i> 42 Pa. Cons. Stat. § 5536 (2013). Moreover, the statute of limitations in other actions which are not expressly limited by other statutes is six years. <i>See</i> 42 Pa. Cons. Stat. § 5527(b). In <i>Commonwealth v. Rockland Construction Co.</i>, 498 Pa. 531 (1982), the Supreme Court of Pennsylvania “reaffirm[ed] the well-established rule that statutes of limitations are not applicable to actions brought by the Commonwealth unless the statutes expressly so provides.” <i>Id.</i> at 533. Additionally, in <i>Delaware County v. First Union Corporation</i>, 929 A.2d 1258 (Pa. Commw. Ct. 2007), the appellate court noted that “[t]he purpose of the <i>nullum tempus</i> doctrine is to further the goal of protecting ‘public rights, revenues and property from injury and loss.’” 929 A.2d at 1261 (citation omitted). The court also stated that “[i]n order for <i>nullum tempus</i> to apply, a municipality’s claims must (1) accrue to the municipality in its governmental capacity and (2) seek to enforce an obligation imposed by law as distinguished from one arising out of an agreement voluntarily entered into by the defendant.” <i>Id.</i> (internal quotation marks and citation omitted). In <i>Selinsgrove Area School District v. Lobar, Inc.</i>, 29 A.2d 137 (Pa. Commw. Ct. 2011), the court held that the doctrine of <i>nullum tempus</i> can be waived as a</p>

<p>Pennsylvania (Continued)</p>	<p>matter of law. The <i>Selinsgrove</i> court construed the express terms of the contract, “any applicable statute of limitations,” as providing “clear and unambiguous language [] demonstrat[ing] the intent of the contracting parties to give effect to the applicable statute of limitations, carefully defining the starting point thereof, and thereby negating the applicability of the doctrine of <i>nullum tempus</i>.” <i>Id.</i> at 140.</p>
<p>Rhode Island</p>	<p>The common-law doctrine of <i>nullum tempus</i> appears to have continuing viability in Rhode Island and potentially broad sweeping application, though the ongoing viability and scope of the doctrine has not been examined by Rhode Island’s appellate courts in recent years. In a handful of older adverse possession cases, the Rhode Island Supreme Court repeatedly recognized that the doctrine of <i>nullum tempus</i> remained “in force” in Rhode Island. <i>Searle v. Laraway</i>, 27 R.I. 557 (1906) <i>citing</i> <i>Almy v. Church</i>, 18 R. I. 182, 187-88 (1893); <i>see also</i> <i>Armour & Co. v. City of Newport</i>, 43 R.I. 211, 110 A. 645, 648 (1920); <i>State of Rhode Island v. Pawtuxet Turnpike Co.</i>, 8 R. I. 521, 524 (1867). According to these older cases, under the doctrine of <i>nullum tempus</i>, the sovereign is exempt from the consequences of its laches, and from the operation of statutes of limitations, unless the statute specifically provides otherwise. <i>See State v. Lead Indus. Ass’n, Inc. et al.</i>, C.A. No. 99-5226, 2001 R.I. Super. LEXIS 37, *41 (R.I. Super. Ct. Apr. 2, 2001) <i>citing</i> <i>Guaranty Trust Co. v. United States</i>, 304 U.S. 126, 132-33, 58 S.Ct. 785, 82 L.Ed. 1224 (1938). Since the last of these early adverse possession cases was decided in 1920, no appellate court in Rhode Island has applied the <i>nullum tempus</i> doctrine. The closet any appellate court has come was the Rhode Island Supreme Court in <i>In re Estate of Manchester</i>, 66 A.3d 426, 430 n.11 (R.I. 2013), where the court acknowledged that a <i>nullum tempus</i> argument had been raised, but the court did not reach the issue, concluding that the statute of limitations arguments were disposed of on other grounds. <i>See id.</i> The doctrine was also addressed in two fairly recent Rhode Island trial court decisions. In 2001, the Rhode Island trial court in <i>State v. Lead</i> held that the <i>nullum tempus</i> doctrine applies only where the state is acting in its governmental capacity to preserve a public right, and not where the state is prosecuting claims on behalf of individual citizens. <i>See Lead Indus. Ass’n</i>, 2001 R.I. Super. LEXIS at *42-43. In applying this principle, the trial court held that the <i>nullum tempus</i> doctrine did not apply to the state’s tort claims for reimbursement of medical expenses for lead-poisoned residents, but the doctrine did apply to the state’s claim for remediation of lead-contamination of publicly owned buildings. <i>See id.</i> at *1, 42-43. Despite the trial court’s recognition of a public-right protection requirement, this element is not clearly established by any other Rhode Island cases. In 2002, the Rhode Island trial court held that the <i>nullum tempus</i> doctrine did not exempt the Economic Development Corporation from the applicable statute of limitations, R.I.G.L. § 28-5-1 et seq., because it included a specific consent provision subjecting “all state agencies to its mandates.” <i>Rhode Island Econ. Dev. Corp. v. State Comm’n for Human Rights</i>, 2002 R.I. Super. LEXIS 88, *8-9 (R.I. Super. Ct. 2002). Importantly, unlike the specific statute of limitations at issue in <i>Rhode Island Econ Dev. Corp.</i>, most statutes of limitations and statutes of repose in Rhode Island do not contain a specific consent provision. <i>See, e.g.</i>, R.I.G.L. § 9-1-14(b) (three-year statute of limitations for personal injuries); R.I.G.L. § 9-1-13 (ten-year catch-all statute of limitation); R.I.G.L. § 9-1-29 (ten-year statute of repose for improvements to real property). Moreover, Rhode Island has not enacted a general consent provision making the state subject generally to most statutes of limitation and statutes of repose. <i>Compare</i> M.G.L. c. 260, § 18 (Massachusetts statute providing that the various statutes of limitations and statutes of repose under M.G.L. c. 260, et seq. apply to the Commonwealth). Given the absence of a general consent provision in Rhode Island, if the <i>nullum tempus</i> doctrine has the ongoing viability suggested by these recent trial court decisions, the doctrine could have broad sweeping application. Nevertheless, the ongoing viability and scope of the doctrine has not been the subject of any recent decisions by the Rhode Island appellate courts.</p>
<p>South Carolina</p>	<p>South Carolina abolished the <i>nullum tempus</i> doctrine. The most recent case highlighting this is <i>State ex. rel. Condon v. City of Columbia</i>, 528 S.E.2d 408 (2000).</p>

<p>South Dakota</p>	<p>South Dakota has generally abrogated the doctrine, but with two exceptions: (1) the doctrine applies where the legislature specifically says it applies; and (2) the doctrine applies in cases where the state seeks to recover damages from a party who failed to warn about defective products provided to the state. The relevant statute reads as follows:</p> <p style="text-align: center;">The limitations prescribed in this chapter and chapter 15-3 shall apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties, unless otherwise specifically prescribed by law. However, no statute of limitation or repose may apply against the state or other governmental entity seeking to recover damages from any person who has failed to warn the state or other governmental entity of known defects in any product provided by him to the state or other governmental entity or to a contractor on behalf of the state or other governmental entity. SDCL § 15–2–2.</p>
<p>Tennessee</p>	<p>Application of the Doctrine of <i>nullum tempus occurrit regi</i> (“no time runs against the king”) is unclear; however, interpretation of analogous statute of limitation doctrine indicates that Tenn. Code Ann. § 28-3-202 will likely NOT bar State from bringing claim. <i>See Hamilton Cnty. Bd. of Educ. v. Asbestospray Corp.</i>, 909 S.W.2d 783 (Tenn. 1995) (holding that the doctrine of <i>nullum tempus</i> exempted the suit’s eponymous Board of Education from the expiration of a three-year statute of limitations. Applicable Statute & Notes: Tenn. Code Ann. § 28-3-202 <i>See also</i> §§ 28-3-201 through 28-3-205 Exceptions: Fraud/ misrepresentation; ownership. Key Case: <i>Chrisman v. Hill Home Dev., Inc.</i>, 978 S.W.2d 535 (Tenn. 1998).</p>
<p>Texas</p>	<p>Texas courts draw a distinction between public rights and private or proprietary rights in determining whether or not the statute of limitations applies to a governmental entity. In actions involving the public and pertaining purely to governmental affairs, in which the political subdivision represents the public at large, or the state in favor of sovereignty affairs, the general statutes of limitation do not apply. <i>Jackson v. Nacogdoches County</i>, 188 S.W.2d 237 (Tex. Civ. App. Dallas 1945). Examples of actions not barred by the statute of limitations include a county trying to recover the purchase price of school lands or an action by a county to recover funds on deposit in a closed bank. <i>Delta Cty. v. Blackburn</i>, 93 S.W. 419 (Tex. 1905); <i>Linz v. Eastland Cty.</i>, 39 S.W.2d 599 (Tex. 1931).</p> <p>On the other hand, actions involving the private rights of the governmental subdivision are subject to the statutes of limitation. For example, in <i>Cow Bayou Canal Co. v. Orange County</i>, 158 SW 172 (Tex. Civ. App. 1913), the court held that an action by the county against a canal company to recover disbursements for bridge repair made necessary by the construction of the canal was subject to the statute of limitations. Similarly, an action by the county against a former tax collector and his bondsmen for fees alleged to have been unlawfully retained was also subject to the statute of limitations. <i>McKenzie v. Hill County</i>, 263 S.W. 1073 (Tex Civ. App. 1924).</p> <p>It is important to note that the private versus public distinction only applies to actions by counties, and not to actions by cities, towns, or districts, although there are exceptions to the rule. <i>See American Surety Co. v. Independent School Dist.</i>, 224 S.W. 292 (Tex. Civ. App. 1919) (holding that the statute of limitations do not apply to an action by an independent school district where such district is acting in the interest of the public); <i>see also City of Fort Worth v. Johnson</i>, 38 S.W.2d 400, 403 (Tex. 1964) (explaining that a city is not subject to a bar by the statute of limitations when enforcing a zoning ordinance); <i>see also Kaufman v. French</i>, 171 SW</p>

<p>Texas (Continued)</p>	<p>831 (Tex Civ. App. 1914) (holding that a municipality’s claim of right to open the street was not barred.); <i>but see Hatcher v. State</i>, 81 S.W.2d (Tex. 1935) (holding that school districts “fall within the same class as cities, and the rules applicable to cities, that is, that the general limitations statutes may be invoked against them”).</p>
<p>Utah</p>	<p>In Utah, the doctrine of <i>nullum tempus</i> has been addressed in three published opinions. It was first addressed in 1895 in <i>Thompson v. Avery</i>, one year before Utah was given statehood, where the Utah Supreme Court of the Territory of Utah recognized the doctrine, but found that it was specifically referenced in the relevant statute of limitation. 39 P. 829, 836 (1895). The higher courts in Utah did not again address the doctrine for over a hundred years. Then in 2003, in the Utah Supreme Court case <i>Nyman v. Anchor Dev., L.L.C.</i>, the Court referenced the doctrine while explaining the rationale behind the State’s adverse possession statute that prohibited persons from adversely possession lands held by any town, city, county, or municipality. 2003 UT 27, ¶ 10, 73 P.3d 357, 360. Finally, in 2010 the Utah Court of Appeals addressed the doctrine, briefly, when it again discussed Utah’s adverse possession laws and government owed property. <i>Estate of Higley v. State, Dep’t of Transp.</i>, 2010 UT App 227, ¶ 14, 238 P.3d 1089.</p> <p>A. Thompson v. Avery – Utah Territory Recognizes the Doctrine</p> <p>The first published reference to <i>nullum tempus</i> in Utah is found in the 1895 case <i>Thompson</i>, 39 P. at 836. In this case, the Supreme Court of the Territory of Utah addresses the doctrine and its relationship to a judgment lien given in favor of the United States. <i>Id.</i> At issue was whether this judgment lien was a lien on the land and if so whether it clouded Thompsons claim to title on certain land. <i>Id.</i> at 833. Defendant Avery argued that this was the case. <i>Id.</i> Thompson argued that the lien was moot as it has expired. <i>Id.</i> at 833–34. Avery invoked <i>nullum tempus</i> and argued that the five year tolling of judgment liens does not apply to judgment liens in favor of the government. <i>Id.</i> at 836.</p> <p>The Supreme Court of the Territory of Utah recognized the doctrine of <i>nullum tempus</i> and stated that it stands for the rule that “statutes of limitation do not run against the government without its express provision,” but that the territory statute of limitation regarding judgment liens specifically referenced the government and therefore judgment liens were subject to the five year limitation.</p> <p>B. Utah’s Adverse Possession Laws And Nullum Tempus</p> <p>The only other cases to address <i>nullum tempus</i> in Utah are two cases discussing Utah’s adverse possession law that prohibits persons from adversely possessing any lands held by any town, city, county, or municipality. <i>Nyman</i> 2003 UT 27, ¶ 10, 73 P.3d 357, 360; <i>Estate of Higley</i> 2010 UT App 227, ¶ 14, 238 P.3d 1089.</p> <p>Both the Utah Appeals Court and the Utah Supreme Court related this law to the “ancient doctrine of <i>nullum tempus occurrit regi</i>” and reasoned that the Utah law was consistent with this doctrine. <i>Nyman</i> 2003 UT 27, ¶ 10, 73 P.3d 357, 360; <i>Estate of Higley</i> 2010 UT App 227, ¶ 14, 238 P.3d 1089.</p>
<p>Vermont</p>	<p>Although the courts of Vermont have not expressly relied on the doctrine of <i>nullum tempus occurrit regi</i> by name, the courts have applied the principles of the doctrine. Notably, the most recent case where the doctrine is mentioned (by the parties) is from 1850. Like the courts of New Hampshire and Maine, the Vermont courts have looked to the statutes of limitation and held that the statutes of limitation do not run against a State, unless the State is named therein. <i>See State v. Weeks</i>, 4 Vt. 215 (1832). Where the statutes of limitation contain express terms providing that the State shall not be exempt from its operation, such statutes will be enforced</p>

<p>Vermont (Continued)</p>	<p>against the public the same as against individuals. <i>See Knight v. Heaton</i>, 22 Vt. 480 (1850).</p> <p>Vermont’s statute of limitation of time for commencement of actions, 12 V.S.A. § 462, specifically states that the statute does not apply to “lands given, granted, sequestered or appropriated to a public, pious or charitable use, or to lands belonging to the State.” In light of the above, Vermont courts will look to the specific statute as to whether it applies against the State.</p>
<p>Virginia</p>	<p>The doctrine is applicable to actions in Virginia via statute: “No statute of limitations which shall not in express terms apply to the Commonwealth shall be deemed a bar to any proceeding by or on behalf of the same.” VA Code Ann. § 8.01-231.</p> <p>The right expressed in the maxim <i>nullum tempus occurrit regi</i> is an attribute of sovereignty and cannot be invoked by counties or other subdivisions of the State. As to such sub-divisions of the State the statute runs in the same manner and to the same extent as against natural persons. <i>Johnson v. Black</i>, 103 Va. 477, 492, 49 S.E. 633, 638 (1905). <i>See also Richmond Metro. Auth. v. McDevitt St. Bovis, Inc.</i>, 42 Va. Cir. 243 (1997).</p>
<p>Washington</p>	<p>The doctrine of <i>Nullum tempus</i> has been codified in Washington. Washington Code of Civil Procedure section 4.16.160 deals with civil actions:</p> <p>The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute.</p> <p>Therefore, while the doctrine still applies and there is generally no statute of limitations for the state when an action is brought in the name or for the benefit of the state, the doctrine does not apply to counties or municipalities. The exception, where a state is subject to the statute of limitations, is for actions brought in the name or for the benefit of the state that arise from construction, alteration, repair, design, planning, survey, or engineering of improvements upon real property under Washington Code of Civil Procedure 4.16.160. Section 4.16.160 states that there is a six-year statute of limitation from substantial completion of construction.</p>
<p>West Virginia</p>	<p>Applicable Statute & Notes: W. Va. Code § 55-2-6a Exceptions: Fraud/ Misrepresentation; ownership begins to toll after owner’s occupation or acceptance.</p> <p>Key Case: <i>Gibson v. West Virginia Department of Highways</i>, 406 S.E.2d 440 (W. Va. 1991), overruled in part on other grounds by <i>Neal v. Marion</i>, 664 S.E.2d 721 (W. Va. 2008).</p> <p>Application of Doctrine of <i>nullum tempus occurrit regi</i> (“no time runs against the king”): No. Claims brought by the state will likely be barred as well because “[t]he legislature . . . altered the common law rule of <i>nullum tempus occurrit regi</i> by expressly stating that ‘every statute of limitation, unless otherwise expressly provided, shall apply to the State.’”). <i>State v. Kermit Lumber & Pressure Treating Co.</i>, 488 S.E.2d 901 (W. Va. 1997) (citing § 55-2-19 (1923)). Often a state’s treatment of the statute of repose mirrors that of statutes of limitations. Most legal scholars predict that, besides a few states such as New Jersey, states will be exempted from</p>

West Virginia (Continued)	statutes of repose under the <i>nullum tempus</i> doctrine absent express statutory language. See, e.g., Wayne J. Martorelli, <i>State Statutes of Repose and Government Claims for Latent Defects in Design and Construction</i> , 25 Pub. Cont. L.J. 199, 213 (1996) (asserting that “if the government is to be subjected to the operation of repose statutes to the same extent as private parties, such a result will have to come from the state legislatures.”).
Wisconsin	In Wisconsin, claims brought by the state are subject to a general ten year statute of limitation. (“Any action in favor of the state, if no other limitation is prescribed in this chapter, shall be commenced within 10 years after the cause of action accrues or be barred.”) Wis. Stat. Ann. § 893.87 (West). Further, W.S.A. 893.87 does not alter any statute that expressly provides a specific statute of limitation on particular cause of action brought by the state, whether the limit is shorter or longer. <i>Village of Gilman v. Northern States Power Co.</i> , 7 N.W.2d 606, 609 (Wis. 1943). The W.S.A. 893.87 provides a special exception for fraud cases stating; “No cause of action in favor of the state for relief on the ground of fraud shall be deemed to have accrued until discovery on the part of the state of the facts constituting the fraud.” W.S.A. 893.87
Wyoming	In Wyoming, the <i>nullum tempus</i> doctrine is broadly applied to all authorities carrying out a government function, both state and local. So long as the “agency is carrying on a function of protecting public rights that citizens receive under our constitution, or is otherwise fulfilling a traditional function of government, the statute of limitations preclusion should be available.” <i>Laramie County Sch. Dist. Number One v. Muir</i> , 808 P.2d 797, 802 (Wyo. 1991). Furthermore, “. . . a public entity, authorized by statute and funded from state coffers or other public revenues, which performs functions for the public at large is simply another arm of the state . . . [that] will not be inhibited by the statute of limitations.” <i>Mountain View/Evergreen Improvement & Serv. Dist. v. Brooks Water & Sewer Dist.</i> , 896 P.2d 1355, 1359 (Wyo. 1995).

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