Civil Justice Subcommittee

Wednesday, April 13, 2011
9:00 AM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, April 13, 2011 09:00 am

End Date and Time: Wednesday, April 13, 2011 11:00 am

Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 139 Child Care Facilities by Health & Human Services Access Subcommittee, Ahern
HB 179 Relief/Kirby/University of South Florida by Passidomo
HB 185 Relief/Angela Isham/City of Ft. Lauderdale by Mayfield
HB 459 Self-Service Storage Space by Caldwell
HB 569 Relief/Ronald Miller/City of Hollywood by Cruz
HB 609 Relief/Harris & Williams/North Broward Hospital District by Coley
HB 629 Relief/Estate of Cesar Solomon/JTA by McBurney
HB 855 Relief/Brown/North Broward Hospital District by Thurston
HB 1013 Relief/James D. Feurtado, III/Miami-Dade County by Ingram
HB 1487 Relief/Carl Abbott/Palm Beach County School Board by Workman

NOTICE FINALIZED on 04/11/2011 16:22 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 139 Child Care Facilities
SPONSOR(S): Health & Human Services Access Subcommittee; Ahern
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee		Billmeier LMB	Bond MB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Current law provides for minimum standards for the care and protection of children in child care facilities. This bill creates a definition for household children and requires that certain household children be included in the capacity calculation of licensed family day care homes and large family child care homes. Specifically, this bill defines household children to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The definition also leaves supervision of the operator's household children to the discretion of the operator unless those children receive subsidized child care to be in the home. This bill provides that household children under the age of 13 be included in the overall capacity of the licensed home when on the premises of a family day care home, large family child care home or on a field trip with children enrolled in child care.

This bill also requires persons advertising or publishing an advertisement for a child care facility, family day care home, or large family child care home to include in the advertisement the state or local agency license number or registration number of such facility or home.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Licensing

The Department of Children and Family Services (DCF) licenses child care facilities based on licensing standards established in statute and rule.[1] However, current law permits any county with local licensing standards that meet or exceed the state minimum standards to either designate a local licensing agency to license child care facilities or contract with DCF to administer the state minimum standards in the county.[2] Currently, DCF is responsible for administering child care licensing and training in 61 of Florida's 67 counties. The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) have licensing standards that exceed the state's minimum licensing standards for family day care homes.[3] These counties license family day care homes as a function of county government.

Family Day Care Homes

A family day care home is, "an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit."[4] Care can be provided for one of the following groups of children, including children under the age of 13 who are related to the caregiver:

- A maximum of four children from birth to 12 months;
- A maximum of three children from birth to 12 months, and other children over the age of 12 months, up to a total of six children;
- A maximum of six preschool children if all are older than 12 months;
- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months.[5]

Current law requires family day care homes have either a license or registration. The home must have a license if it is presently being licensed under an existing county ordinance, participating in the subsidized child care program, or if the county passes a resolution requiring licensure.[6] If not subject to license, then the family day care home shall register annually with DCF and receive a registration number.[7]

Large Family Child Care Home

A large family child care home is an occupied residence in which child care is provided for children from at least two unrelated families for a payment, fee, or grant for any of the children receiving care, whether or not operated for profit; and which has at least two full-time child care personnel.[8] Before seeking licensure, large family child care homes must first have operated for a minimum of 2 consecutive years, with an operator who has had a child development associate credential or its

[1] Section 402.305(1), F.S.
[2] Section 402.306(1), F.S.
[3] Staff Analysis HB 411(2010), Florida House of Representatives
[4] Section 402.302(8), F.S.
[5] Section 402.302(8), F.S.
[6] Section 402.313(1), F.S.
[7] Section 402.313(1)(a), F.S.
[8] Section 402.302(9), F.S.

equivalent for 1 year.[9] Care can be provided to one of the following groups, which includes those children under 13 years of age who are related to the caregiver:

- A maximum of 8 children from birth to 24 months;
- A maximum of 12 children, with no more than 4 children under 24 months.[10]

Large family day care homes are required to be licensed and are subject to minimum standards established by rule.[11] DCF is permitted to provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.[12]

Supervision

DCF has promulgated administrative rules related to supervision of children and staffing requirements.[13] These rules apply to all children in the home including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping.[14] When children are napping or sleeping in bedrooms, the rules require that the room's doors must remain open.[15] All children, during the daytime, must have adult supervision consisting of watching and directing their activities, both indoors and outdoors.[16] If a child is sick and placed in isolation, he or she must remain within sight and hearing of the operator.[17] Additionally, children being diapered or when changing clothes must be attended to at all times.[18]

Advertisement

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility.[19] Failure to do so is a misdemeanor of the first degree.[20] This advertisement requirement does not address whether registered family day care homes have to list their DCF-issued registration number in an advertisement. Therefore under current law, registered family day care homes are not required to list their registration number in advertisements.

Financial Assistance for Childcare through School Readiness Program

The School Readiness program administered by the Agency for Workforce Innovation (AWI) provides at risk or low income families with financial assistance for child care through a variety of services.[21] This program is sometimes referred to as subsidized child care.

Effect of Proposed Changes

This bill creates the definition, "household children," to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The effect of this definition will increase the number of children considered to be part of the child care home. Current law only includes children under 13 years of age who are related to

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[9] Section 402.302(9),F.S., Rule 65C-20.013(1)(a), F.A.C.
[10] Section 402.302(9), F.S.
[11] Sections 402.3131(1),(7), F.S.
[12] Section 402.3131(1)(b), F.S.
[13] Rule 65C-20.009, F.A.C
[14] Rule 65C-20.009(5)(a), F.A.C
[15] *Id*
[16] *Id*
[17] Rule 65C-20.009(5)(b), F.A.C.
[18] Rule 65C-20.009(5)(c), F.A.C.
[19] Section 402.318, F.S.
[20] *Id*
[21] Section 411.0101, F.S.

the caregiver. This definition counts children who may be related to the care-giving operator as well as to an adult household resident who is not the caregiver, such as a temporary or permanent resident.

The definition also conditions supervision of the operator's household children to the discretion of the operator unless those children receive subsidized care to be in the home. In effect, the law will require DCF inspectors to distinguish between an operator's household children, and other children in the home when applying rules for supervision related to the child care program.[22]

This bill also amends the definitions for both "family day care home" and "large family child care home" to clarify that "household children" are included in the calculations to determine the maximum number of children that can receive care. While current law includes children under 13 years of age that are related to the caregiver in determining the amount of children that can be cared for, the use of "household children" will provide more clarification and direction as to what is considered for calculation purposes. The meaning of the term is expanded to include children related by blood, marriage, or legal adoption to, or who are the legal wards of, the operator or a permanent or temporary adult household member. Thus, children who are related to any adult household guest over the age of 13, such as an adult household guest on vacation with his or her children would also be included in the calculation. Additionally, the bill provides that the household children be included in the overall capacity of the licensed home when they are on the premises or on a field trip with children enrolled in licensed care. The effect of this change will ensure that the capacity is adjusted if household children are not either on the premises or participating in a fieldtrip.

The bill amends advertising requirements in s. 402.318, F.S., to include family day care homes and large family child care homes. It also requires registered family day care homes or large family child care homes to include their registration numbers in advertisements. Violation of these advertising requirements is a misdemeanor of the first degree.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.302, F.S., relating to definitions.

Section 2: Amends s. 402.318, F.S., relating to advertisement.

Section 3: Amends s. 411.01, F.S., relating to School readiness programs; early learning coalitions

Section 4: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[22] Rule 65C-20.009(5), F.A.C.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce the income of any facility compelled to reduce its capacity for paying customers as a result of the restrictions imposed by this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Children and Families provided the following comments:

> Creating the definition, "household children," may cause confusion, where very little currently exists. "Household children" is a non-intuitive term, and the definition is framed in terms of relationship, rather than residence in the household. Legally, the term, as defined in the bill, is clear, but the definition may not reflect the common understanding of "household" and may leave a gap in terms of accomplishing the bill's apparent intent. For example the bill's intent appears to be that any child in the family day care home who is the provider's responsibility must count against the home's licensed child care capacity, but the definition of household children appears to exclude foster children, children unrelated to the owner/operator who may be in the home on a non-paying basis, children left in the care of the provider without legal documentation of guardianship, etc. The proposed definition could, therefore, leave a significant enforcement loophole.
>
> Additionally, there would be some extra labor as to the Department verifying and reporting to the State Attorney instances of child care providers advertising without correct identifiers. This additional labor may become cumbersome as a result of many child care arrangements are legally not required to be licensed, and therefore, cannot publish a licensure number. It is also unclear if staff are to monitor advertising venues to identify these individuals, which would be impossible given the vast array of advertising opportunities within a community, the state, and the nation.[23]

[23] Department of Children and Families Staff Analysis and Economic Impact, January 7, 2011 at p. 2.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2011, the Health & Human Services Access Committee adopted two amendments to House Bill 139.

The first amendment specifies subsidized child care to mean the School Readiness Program.

The second amendment removes provisions that an individual or a local licensing agency has a cause of action against an unlicensed or unregistered individual who falsely advertises. It also removes provisions that would allow the prevailing party in a suit to reasonable attorney's fees and costs incurred in connection with a claim filed under this section.

This bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

A bill to be entitled

An act relating to child care facilities; amending s. 402.302, F.S.; revising and providing definitions; providing for certain household children to be included in calculations regarding the capacity of licensed family day care homes and large family child care homes; providing conditions for supervision of household children of operators of family day care homes and large family child care homes; amending s. 402.318, F.S.; revising advertising requirements applicable to child care facilities; providing penalties; amending s. 411.01, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 402.302, Florida Statutes, is amended to read:

402.302 Definitions.—As used in this chapter, the term:

(1) "Child care" means the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care,

wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025;

(b) Summer camps having children in full-time residence;

(c) Summer day camps;

(d) Bible schools normally conducted during vacation periods; and

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(3) "Child care personnel" means all owners, operators, employees, and volunteers working in a child care facility. The term does not include persons who work in a child care facility after hours when children are not present or parents of children in a child care facility. For purposes of screening, the term includes any member, over the age of 12 years, of a child care facility operator's family, or person, over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family member of, or person residing with, the child care facility operator has any direct contact with the children in the facility during its hours of operation. Members of the operator's family or persons residing with the operator who are between the ages of 12 years and 18 years are not required to be fingerprinted but must be screened for delinquency records. For

purposes of screening, the term also includes persons who work in child care programs that provide care for children 15 hours or more each week in public or nonpublic schools, family day care homes, or programs otherwise exempted under s. 402.316. The term does not include public or nonpublic school personnel who are providing care during regular school hours, or after hours for activities related to a school's program for grades kindergarten through 12. A volunteer who assists on an intermittent basis for less than 10 hours per month is not included in the term "personnel" for the purposes of screening and training if a person who meets the screening requirement of s. 402.305(2) is always present and has the volunteer in his or her line of sight. Students who observe and participate in a child care facility as a part of their required coursework are not considered child care personnel, provided such observation and participation are on an intermittent basis and a person who meets the screening requirement of s. 402.305(2) is always present and has the student in his or her line of sight.

(4) "Child welfare provider" means a licensed child-caring or child-placing agency.

(5) "Department" means the Department of Children and Family Services.

(6) "Drop-in child care" means child care provided occasionally in a child care facility in a shopping mall or business establishment where a child is in care for no more than a 4-hour period and the parent remains on the premises of the shopping mall or business establishment at all times. Drop-in child care arrangements shall meet all requirements for a child

care facility unless specifically exempted.

(7) "Evening child care" means child care provided during the evening hours and may encompass the hours of 6:00 p.m. to 7:00 a.m. to accommodate parents who work evenings and late-night shifts.

(8) "Family day care home" means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. Household children under 13 years of age, when on the premises of the family day care home or on a field trip with children enrolled in child care, shall be included in the overall capacity of the licensed home. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include household ~~those~~ children under 13 years of age ~~who are related to the caregiver~~:

(a) A maximum of four children from birth to 12 months of age.

(b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.

(c) A maximum of six preschool children if all are older than 12 months of age.

(d) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

(9) "Household children" means children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family

child care home operator, or an adult household member who permanently or temporarily resides in the home. Supervision of the operator's household children shall be left to the discretion of the operator unless those children receive subsidized child care through the School Readiness Program pursuant to s. 411.0101 to be in the home.

(10) "Indoor recreational facility" means an indoor commercial facility which is established for the primary purpose of entertaining children in a planned fitness environment through equipment, games, and activities in conjunction with food service and which provides child care for a particular child no more than 4 hours on any one day. An indoor recreational facility must be licensed as a child care facility under s. 402.305, but is exempt from the minimum outdoor-square-footage-per-child requirement specified in that section, if the indoor recreational facility has, at a minimum, 3,000 square feet of usable indoor floor space.

(11) ~~(9)~~ "Large family child care home" means an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation. One of the two full-time child care personnel must be the owner or occupant of the residence. A large family child care home must first have operated as a licensed family day care home for 2 years, with an operator who has had a child development associate credential or its equivalent for 1 year,

before seeking licensure as a large family child care home. Household children under 13 years of age, when on the premises of the large family child care home or on a field trip with children enrolled in child care, shall be included in the overall capacity of the licensed home. A large family child care home shall be allowed to provide care for one of the following groups of children, which shall include household ~~those~~ children under 13 years of age ~~who are related to the caregiver~~:

(a) A maximum of 8 children from birth to 24 months of age.

(b) A maximum of 12 children, with no more than 4 children under 24 months of age.

(12) ~~(11)~~ "Local licensing agency" means any agency or individual designated by the county to license child care facilities.

(13) ~~(12)~~ "Operator" means any onsite person ultimately responsible for the overall operation of a child care facility, whether or not he or she is the owner or administrator of such facility.

(14) ~~(13)~~ "Owner" means the person who is licensed to operate the child care facility.

(15) ~~(14)~~ "Screening" means the act of assessing the background of child care personnel and volunteers and includes, but is not limited to, employment history checks, local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through the Department of Law Enforcement, and federal criminal records checks through the

Federal Bureau of Investigation.

(16) ~~(15)~~ "Secretary" means the Secretary of Children and Family Services.

(17) ~~(16)~~ "Substantial compliance" means that level of adherence which is sufficient to safeguard the health, safety, and well-being of all children under care. Substantial compliance is greater than minimal adherence but not to the level of absolute adherence. Where a violation or variation is identified as the type which impacts, or can be reasonably expected within 90 days to impact, the health, safety, or well-being of a child, there is no substantial compliance.

(18) ~~(17)~~ "Weekend child care" means child care provided between the hours of 6 p.m. on Friday and 6 a.m. on Monday.

Section 2. Section 402.318, Florida Statutes, is amended to read:

402.318 Advertisement.—A ~~No~~ person, as defined in s. 1.01(3), may not ~~shall~~ advertise a child care facility, family day care home, or large family child care home without including within such advertisement the state or local agency license number or registration number of such facility or home. Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Paragraph (c) of subsection (5) of section 411.01, Florida Statutes, is amended to read:

411.01 School readiness programs; early learning coalitions.—

(5) CREATION OF EARLY LEARNING COALITIONS.—

(c) Program expectations.—

1. The school readiness program must meet the following expectations:

a. The program must, at a minimum, enhance the age-appropriate progress of each child in attaining the performance standards and outcome measures adopted by the Agency for Workforce Innovation.

b. The program must provide extended-day and extended-year services to the maximum extent possible without compromising the quality of the program to meet the needs of parents who work.

c. The program must provide a coordinated professional development system that supports the achievement and maintenance of core competencies by school readiness instructors in helping children attain the performance standards and outcome measures adopted by the Agency for Workforce Innovation.

d. There must be expanded access to community services and resources for families to help achieve economic self-sufficiency.

e. There must be a single point of entry and unified waiting list. As used in this sub-subparagraph, the term "single point of entry" means an integrated information system that allows a parent to enroll his or her child in the school readiness program at various locations throughout a county, that may allow a parent to enroll his or her child by telephone or through an Internet website, and that uses a unified waiting list to track eligible children waiting for enrollment in the school readiness program. The Agency for Workforce Innovation shall establish through technology a single statewide information system that each coalition must use for the purposes

of managing the single point of entry, tracking children's progress, coordinating services among stakeholders, determining eligibility, tracking child attendance, and streamlining administrative processes for providers and early learning coalitions.

f. The Agency for Workforce Innovation must consider the access of eligible children to the school readiness program, as demonstrated in part by waiting lists, before approving a proposed increase in payment rates submitted by an early learning coalition. In addition, early learning coalitions shall use school readiness funds made available due to enrollment shifts from school readiness programs to the Voluntary Prekindergarten Education Program for increasing the number of children served in school readiness programs before increasing payment rates.

g. The program must meet all state licensing guidelines, where applicable.

h. The program must ensure that minimum standards for child discipline practices are age-appropriate. Such standards must provide that children not be subjected to discipline that is severe, humiliating, or frightening or discipline that is associated with food, rest, or toileting. Spanking or any other form of physical punishment is prohibited.

2. Each early learning coalition must implement a comprehensive program of school readiness services in accordance with the rules adopted by the agency which enhance the cognitive, social, and physical development of children to achieve the performance standards and outcome measures. At a

minimum, these programs must contain the following system support service elements:

a. Developmentally appropriate curriculum designed to enhance the age-appropriate progress of children in attaining the performance standards adopted by the Agency for Workforce Innovation under subparagraph (4)(d)8.

b. A character development program to develop basic values.

c. An age-appropriate screening of each child's development.

d. An age-appropriate assessment administered to children when they enter a program and an age-appropriate assessment administered to children when they leave the program.

e. An appropriate staff-to-children ratio, pursuant to s. 402.305(4) or s. 402.302(8) or (11) ~~(7) or (8)~~, as applicable, and as verified pursuant to s. 402.311.

f. A healthy and safe environment pursuant to s. 401.305(5), (6), and (7), as applicable, and as verified pursuant to s. 402.311.

g. A resource and referral network established under s. 411.0101 to assist parents in making an informed choice and a regional Warm-Line under s. 411.01015.

The Agency for Workforce Innovation, the Department of Education, and early learning coalitions shall coordinate with the Child Care Services Program Office of the Department of Children and Family Services to minimize duplicating interagency activities pertaining to acquiring and composing data for child

care training and credentialing.

Section 4. This act shall take effect July 1, 2011.

STORAGE NAME: h0179.CVJS.DOCX
DATE: 4/11/2011

April 11, 2011

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 179 - Representative Passidomo
Relief/Kirby/University of South Florida

THIS IS AN UNCONTESTED CLAIM FOR $1,800,000 PREDICATED ON THE SETTLEMENT AGREEMENT ENTERED BETWEEN STEPHEN AND MEREDITH KIRBY, PARENTS AND NATURAL GUARDIANS OF THEIR DAUGHTER, HARPER KIRBY, AND THE UNIVERSITY OF SOUTH FLORIDA, BASED ON DAMAGES SUSTAINED DUE TO THE NEGLIGENCE OF AN EMPLOYEE OF THE UNIVERSITY WHO FAILED TO PROPERLY ASSESS THE KIRBYS' RISK OF HAVING A CHILD WITH CYSTIC FIBROSIS. THE UNIVERSITY HAS ALREADY PAID $200,000 PURSUANT TO SECTION 768.28, F.S.

FINDING OF FACT:

Procedural History: Mr. and Mrs. Kirby filed a medical negligence lawsuit for wrongful birth on December 5, 2008, in the Circuit Court of the Thirteenth Judicial District, against the Board of Trustees of the University of South Florida for damages related to the extraordinary expenses of raising a child who has cystic fibrosis. On July 20, 2010, the parties mediated the case and reached a settlement of all claims prior to trial. The University of South Florida has paid Stephen and Meredith Kirby $200,000 pursuant to the statutory limits of liability set forth in s. 768.28, F.S.

The University has admitted liability and fully supports passage of this claim bill.

Findings: In 2004, Meredith and Stephen Kirby had their first child. The pregnancy was normal, but during routine screening, the Kirbys learned they were both carriers for cystic fibrosis, but with different mutations of the gene. Their child, Raley, tested negative for cystic fibrosis but is a carrier, as well.

In 2006, the Kirbys desired to have a second child. Before conceiving a second child, the Kirbys sought genetics counseling on October 18, 2006, from a physician at the University of South Florida to assess their risks of having a child with cystic fibrosis. The physician incorrectly and in violation of the standard of care informed Mr. and Mrs. Kirby that since they had different mutations of the gene, they were not at risk and that their second child would not be born with cystic fibrosis. Based on the physician's assertion that the Kirbys were not at risk for conceiving a child with cystic fibrosis, Mr. and Mrs. Kirby chose to conceive a second child, who was born on August 22, 2007.

Newborn screening tests revealed that the Kirbys' new baby, Harper Kirby, had cystic fibrosis. Harper currently requires medical care and treatment for cystic fibrosis and will require such care and treatment for the rest of her life. Past medical bills are in excess of $17,000 and future medicals bills are expected to exceed $1,800,000.

CONCLUSION OF LAW:

DUTY: Whether or not there is a jury verdict or a settlement agreement, as there is here, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. From my review of the evidence, I find that the University of South Florida had a duty to provide adequate medical advice to the Kirbys. Specifically, the University's physician had the duty to provide medical advice based on the prevailing standard of care.

BREACH: A preponderance of the evidence establishes that the University's physician breached his duty to properly provide medical advice. In his deposition, the physician admitted "he made a mistake" but could not explain why.

PROXIMATE CAUSE: The negligence of the physician was the legal proximate cause of the damages suffered by the Kirbys. While the Kirbys obviously love Harper, the evidence in the record demonstrates that had the Kirbys been given the proper medical advice, they would not have taken the chance of having a child with cystic fibrosis as they already had one healthy child.

DAMAGES: Damages in the amount of $2,000,000 are

reasonable under these circumstances, and fully supported by the weight of the evidence. As noted above, this amount will only cover the actual economic damages and will not provide any noneconomic damages for the stress and anguish caused by this debilitating condition and Harper's shortened life expectancy. $200,000 of this amount has already been paid by the University.

ATTORNEY'S/ LOBBYING FEES: The Claimants' attorneys have acknowledged in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees, lobbyist fees, or costs.

PRIOR LEGISLATIVE HISTORY: This is the first year a claim bill has been filed in this matter.

RECOMMENDATION: Accordingly, I recommend that House Bill 179 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master, House of Representatives

cc: Representative Passidomo, House Sponsor
Senator Norman, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master

A bill to be entitled

An act for the relief of Stephen and Meredith Kirby, parents and natural guardians of their daughter, Harper Kirby, by the University of South Florida; providing for an appropriation to compensate Stephen and Meredith Kirby, parents and natural guardians of Harper Kirby, for damages sustained due to the negligence of an employee of the University of South Florida; providing a limitation on the payment of attorney's fees and costs; providing an effective date.

WHEREAS, Stephen and Meredith Kirby are carriers of the cystic fibrosis gene, and

WHEREAS, in 2006 the Kirbys desired to have a second child, and

WHEREAS, before conceiving a second child, the Kirbys sought genetics counseling on October 18, 2006, from a physician at the University of South Florida to assess their risks of having a child with cystic fibrosis, and

WHEREAS, the physician informed Mr. and Mrs. Kirby that they were not at risk and their second child would not be born with cystic fibrosis, and

WHEREAS, based on the physician's assertion that the Kirbys were not at risk for conceiving a child that has cystic fibrosis, Mr. and Mrs. Kirby chose to conceive a second child, who was born on August 22, 2007, and

WHEREAS, newborn screening tests revealed that the Kirbys' new baby, Harper Kirby, had cystic fibrosis, and

WHEREAS, Harper currently requires medical care and treatment for cystic fibrosis and will require such care and treatment for the rest of her life, and

WHEREAS, Mr. and Mrs. Kirby filed a medical negligence lawsuit for wrongful birth on December 5, 2008, in the Circuit Court of the Thirteenth Judicial District, Hillsborough County, case number 08-CA-027501, against the Board of Trustees of the University of South Florida for damages related to the extraordinary expenses of raising a child who has cystic fibrosis, and

WHEREAS, on July 20, 2010, the parties mediated the case and reached a settlement of all claims, and

WHEREAS, the University of South Florida has paid Stephen and Meredith Kirby $200,000 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the University of South Florida and Stephen and Meredith Kirby agreed to jointly seek a claim bill in the amount of $1.8 million in favor of Stephen and Meredith Kirby to provide for compensation for the medical care and treatment associated with raising and caring for a child who has cystic fibrosis, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The University of South Florida is authorized and directed to appropriate from funds of the university not

otherwise appropriated and to draw a warrant in the sum of $1.8 million, payable to Stephen and Meredith Kirby, parents and guardians of Harper Kirby, a minor, as compensation for the extraordinary expenses of raising and caring for Harper Kirby, a child who has cystic fibrosis, due to the negligence of the University of South Florida.

Section 3. The amount paid by the University of South Florida pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the wrongful birth of Harper Kirby. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

STORAGE NAME: h0185.CVJS.DOCX
DATE: 4/11/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 185; Relief/Angela Isham/City of Ft. Lauderdale
Sponsor: Mayfield
Companion Bill: SB 34 by Dean

Special Master: Thomas

Basic Information:

Claimants:	Angela Isham, individually, and as co-personal representative of the Estate of David Isham
Respondent:	City of Fort Lauderdale
Amount Requested:	$600,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Agrees that the settlement in this matter and the passage of this claim bill is appropriate.
Collateral Sources:	None.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	HB 827 (2009) was filed by Representative Poppell. The bill was referred to the Civil Justice & Courts Policy Committee and died in that committee. SB 40 (2009) was introduced by Senator Pruitt. The bill was referred to the Criminal Justice Committee where it was amended and passed by the Committee. The bill passed the Senate and died in Messages. HB 1119 (2010) was filed by Representative Poppell. The bill was referred to the Civil Justice & Courts Policy

Committee and died in that committee.

SB 38 (2010) was filed by Senator Dean. The bill was referred to the Senate Special Master where it died.

Procedural Summary: Claimant filed a lawsuit against the City of Ft. Lauderdale in 2003 in the circuit court for Broward County on behalf of herself and the estate of David Isham, her husband. Prior to trial, the parties stipulated to economic damages of $1,270.438.50, but not on liability. In February 2008, after a five-day trial, the jury found that the City and the BMW driver were each 50 percent liable for Mr. Isham's death. The jury also determined that Angela Isham's damages for the loss of her husband's companionship and for pain and suffering was $600,000. Based upon the division of damages under the version of s. 768.81, F.S, then in effect, the City is liable for $1,435,219.25. Of this amount, the City has already paid the sovereign immunity limit of $200,000, leaving $1,235,219.25. However, in 2010, the parties reached a settlement agreement that requires the City to pay $600,000, in addition to the $200,000 already paid, to resolve this matter.

Facts of Case: In the late afternoon of November 15, 2001, three Ft. Lauderdale narcotic detectives were patrolling an area of the City where drug transactions frequently occur. The detectives were in an unmarked car driven by Detective Carl Hannold. They were wearing black t-shirts with the word "POLICE" printed in large letters across the front. Although the detectives were in an unmarked vehicle, many people in the neighborhood saw the vehicle frequently and knew it was a police car. The detectives observed a parked BMW with several persons standing around it. When the driver of the BMW saw the police vehicle, he immediately sped off with tires squealing. No drug related activity was seen by the detectives.

The detectives turned around to follow the BMW. The driver of the BMW took evasive maneuvers on the neighborhood streets and the detectives lost sight of the BMW for several minutes. The detectives circled back and spotted the BMW again. Detective Hannold pulled behind the BMW, which made a right turn at the next intersection without stopping at the stop sign. Detective Hannold followed. The detectives got behind the BMW and turned on their blue light inside the police car. The BMW accelerated away and ran the next stop sign at the intersection with a busy four-lane road. The BMW collided with a pickup truck driven by 42-year-old David Isham. Mr. Isham died at the scene from his injuries.

The driver of the BMW was identified as Jimmie Jean Charles, 20 years old. Charles was injured in the collision and was hospitalized for a short time. The BMW he was driving had been stolen. Charles was tried and convicted of vehicular homicide. He was sentenced to 15 years in prison.

The central dispute in this case was whether Detective Hannold was engaged in a pursuit of the BMW. The Ft. Lauderdale Police Department's policy manual defines a "pursuit" as:

> The operation or use of a police vehicle so as to pursue and attempt to apprehend a subject operating a motor vehicle who willfully or knowingly uses either high speed, illegal, or evasive driving tactics in an effort to avoid detention, apprehension, or arrest.

The pursuit policy prohibits police pursuit in an unmarked car "except when it is necessary to apprehend an individual who has caused serious bodily harm or death to any person." Pursuit for a traffic violation would be contrary to the policy. The pursuit policy also states that "accountability cannot be circumvented by verbally disguising what is actually a pursuit by using terms such as monitoring, tracking, shadowing, or following."

The City's pursuit policy was revised in 1996 to make it more restrictive. Doing so was consistent with a trend for police departments throughout the United States in response to the injuries, deaths, and associated liability that often resulted from high speed police pursuits. Detective Hannold said he was familiar with the pursuit policy and that he was not engaged in a pursuit. He claims that he followed the BMW because it is common for drug dealers to speed away and then "ditch" their cars and run away on foot. Hannold said that when the BMW sped away again when the blue light was activated in the unmarked police car, he did not accelerate to overtake the BMW, but, instead, came to a stop "to make it clear [to the driver of the BMW] that we were in no manner trying to catch up with him."

At the scene of the collision, there was a large gathering of people from the neighborhood and some of them were telling media representatives and police investigators that the police were pursuing the BMW in a high-speed chase. The Police Department obtained several witness statements. One teenage boy said the police car was a block behind the BMW when the collision occurred, but the other witnesses, including two adult women closer to the scene of the collision, testified that the unmarked car was close behind the BMW and that both cars were going fast. One woman said that when the police car turned on its blue light, the BMW immediately accelerated away and the police car also "gunned it." The speed limit on the narrow residential street was 25 mph.

A traffic accident reconstruction conducted by the Police Department estimated that the BMW was traveling about 54 mph when it struck David Isham's truck. At trial, the City presented another accident reconstruction that concluded the BMW was going between 61 and 70 mph.

The action of Detective Hannold, the reaction of the BMW driver, and the crash that killed David Isham, fall squarely within the predictable scenarios that the City's pursuit policy was designed to avoid. Pursuing a "subject" who is trying to avoid apprehension can cause the subject to react by driving dangerously so as to cause injury or death. Therefore, a pursuit is prohibited if the only infraction known to the police officer is a traffic violation.

Recommendation: For the reasons set forth above, I respectively recommend that House Bill 185 (2011) be reported FAVORABLY.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative Mayfield, House Sponsor
Senator Dean, Senate Sponsor
Judge Bram D.E. Canter, Senate Special Master

A bill to be entitled

An act for the relief of Angela Isham by the City of Ft. Lauderdale; providing for an appropriation to compensate Angela Isham, individually, and as co-personal representative of the Estate of David Isham, deceased, for the death of Mr. Isham, which was due to the negligence of employees of the City of Ft. Lauderdale; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 15, 2001, David Isham, the owner of a landscaping business and a pest control business, was driving along N.W. 13th Street in Ft. Lauderdale, and

WHEREAS, in an unmarked police vehicle, police officers from the Ft. Lauderdale Police Department were engaged in an undercover narcotics surveillance and were in pursuit of a suspect who was driving a 1994 BMW, and

WHEREAS, while being chased by the police officers, the suspect collided with Mr. Isham's vehicle and caused Mr. Isham's vehicle to flip upside down, catch on fire, and trap Mr. Isham inside, and

WHEREAS, as a result of the collision, Mr. Isham died and left behind his grieving widow, Angela Isham, and

WHEREAS, Mrs. Isham filed a lawsuit against the City of Ft. Lauderdale, and a week-long jury trial ensued in which the jury found that the police officers, acting in an official capacity as employees of the City of Ft. Lauderdale, were negligent with regard to the vehicle chase that ultimately resulted in the

death of Mr. Isham and that their actions were the legal cause of injury and death to Mr. Isham, and

WHEREAS, the jury returned a verdict on February 1, 2008, in favor of Mrs. Isham, and final judgment was entered in the amount of $1,435,219.25, plus postjudgment interest at the statutory rate of 11 percent per annum, and

WHEREAS, the City of Ft. Lauderdale has paid only $200,000 of the judgment to date, and

WHEREAS, the City of Ft. Lauderdale has sufficient funds in its Risk Management Fund available to pay this claim, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Ft. Lauderdale is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw warrants payable to Angela Isham, individually, and as co-personal representative of the Estate of David Isham, deceased, in the amounts and in the timeframe contained in the Partial Satisfaction and Settlement Agreement between the City of Ft. Lauderdale and Angela Isham, said amount totaling $600,000 above the amount already paid by the City of Ft. Lauderdale pursuant to s. 768.28, Florida Statutes.

Section 3. The amount paid by the City of Ft. Lauderdale pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for

all present and future claims arising out of the factual situation described in this act which resulted in the death of David Isham. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 459 Self-Service Storage Space
SPONSOR(S): Caldwell
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier LMB	Bond NB
2) Judiciary Committee			

SUMMARY ANALYSIS

The Self-storage Facility Act allows an owner to sell personal property in a storage facility if the tenant fails to pay rent for the storage facility. The owner is required to give notice of the intent to sell the property to the tenant before selling the property and is required to give notice to the tenant if the sale of the property results in more money than is necessary to pay the rent due. Notices must be delivered to the tenant or mailed by certified mail. The bill removes the requirement to use certified mail and allows notices to be provided to the tenant by first-class mail.

If a tenant does not respond to the notice of deliquency, the owner may sell the contents at a public auction. Current law requires publication of a notice of the sale. This bill removes the publication requirement.

This bill also provides that parties to a self-service storage contract may limit remedies for violations of the Self-storage Facility Act.

This bill does not appear to have a fiscal impact on state or local governments. The bill appears to have private party fiscal effects.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - Notice Requirements

Sections 83.801- 83.809, F.S., are Florida's "Self-storage Facility Act" (the "Act"). The Act provides remedies for the owners of self-storage facilities[1] or self-contained storage units[2] in the event that tenants do not pay rent. The Act gives the owner the ability to deny a tenant's access to his or her property if the tenant is more than five days delinquent in paying rent.[3] The Act provides that the owner of a self-storage facility or self-contained storage unit has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges in relation to the personal property and for expenses necessary to preserve or dispose of the property.[4]

The owner's lien is enforced as follows:

- The tenant is notified by written notice[5] delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If mailed, the notice given is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid;

- After the expiration of the time given in the notice, an advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.[6]

In the event of a sale, the owner may satisfy the lien from the proceeds of the sale.[7] The balance, if any, is held by the owner for delivery on demand to the tenant.[8] A notice of any balance must be delivered by the owner to the tenant in person or by certified mail.[9] The balance is considered abandoned if the tenant does not claim it within two years.[10]

Current law also requires the owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the owner's lien. The owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.[11]

Current law requires that notices required by s. 83.806, F.S., be sent by certified mail. Certified mail is described by the U.S. Postal Service as follows:

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[1] "Self-service storage facility" is defined by s. 83.803(1), F.S.
[2] "Self-contained storage unit" is defined by s. 83.803(2), F.S.
[3] *See* s. 83.8055, F.S.
[4] *See* s. 83.805, F.S.
[5] The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.
[6] *See* s. 83.806, F.S.
[7] *See* s. 83.806(8), F.S.
[8] *See* s. 83.806(8), F.S.
[9] *See* s. 83.806(8), F.S.
[10] *See* s. 83.806(8), F.S.
[11] *See* s. 83.806(8), F.S.

> With Certified Mail you can be sure your article arrived at its destination with access to online delivery information. When you use Certified Mail, you receive a receipt stamped with the date of mailing. A unique article number allows you to verify delivery online. As an additional security feature, the recipient's signature is obtained at the time of delivery and a record is maintained by the Post Office.[12]

Currently, the USPS charges $2.80 for certified mail service in addition to applicable postage for the piece.[13]

Effect of the Bill - Notice Requirements

This bill provides that all notices required by s. 83.806, F.S., must either be delivered to the tenant or lienholder or mailed by first-class mail, rather than certified mail.

This bill removes the requirement that an owner advertise the sale of a tenant's property in a newspaper of general circulation in the area in advance of the sale. It also removes the requirement that the owner advertise the sale of a tenant's property by posting in the neighborhood if there is no newspaper in the area.

Background - Limitations on Liability

In *Muns v. Shurgard Income Properties Fund 16-Ltd. Partnership*, 682 So. 2d 166 (Fla. 4th DCA 1996), the court considered whether a contract limiting the liability for wrongful foreclosure on the contents of a storage unit was allowed under Florida law. In *Muns*, a tenant claimed to have placed at least $50,000 worth of goods in a self-storage facility but signed a lease that contained an exculpatory provision limiting damages for wrongful foreclosure for nonpayment of rent to $250.[14] When the rent became delinquent by $16, the owner sold the property for a "pittance" but did not comply with the notice requirements of s. 83.806, F.S., so the tenant did not have notice of the sale.[15] The trial court dismissed Muns's claims and the appellate court affirmed. The court did not address arguments that the exculpatory clause was unconscionable[16] and held, in a subsequent case, that the a tenant has no private cause of action if an owner fails to comply with s. 83.806, F.S.[17]

Effect of the Bill - Limitations on Liability

This bill provides that the parties to a self-storage lease may create limitations on liability by contract. This would have the effect of codifying the result in *Muns* and allowing parties to provide for contract remedies in the event of a violation of s. 83.806, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 83.806, F.S., relating to enforcement of liens.

Section 2 amends s. 83.808, F.S., relating to contractual liens.

Section 3 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[12] *See* http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm (accessed March 10, 2011).
[13] *See* http://www.usps.com/prices/extra-services-prices.htm (accessed March 10, 2011).
[14] *See Muns*, 682 So. 2d at 167.
[15] *Muns*, 682 So. 2d at 167.
[16] *Muns*, 682 So. 2d at 167 (declining to address arguments that exculpatory clause was unconscionable because the issue was not properly before the court).
[17] *See Shurgard Income Properties Fund 16-Ltd Partnership v. Muns*, 761 So. 2d 340 (Fla. 4th DCA 1999).

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of self-service storage facilities and self-contained storage units will save the cost of certified mail service related to notices required by s. 83.806, F.S.

Owners of self-service storage facilities and self-contained storage units will also save the cost of legal advertisements of sales which will result in a corresponding loss of revenue by publishers of legal advertisements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to self-service storage space; amending s. 83.806, F.S.; revising notice requirements relating to the enforcement of liens; amending s. 83.808, F.S.; specifying nonapplication of certain provisions to limitations on liability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and subsections (4) through (8) of section 83.806, Florida Statutes, are amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(1) The tenant shall be notified by written notice delivered in person or by first-class ~~certified~~ mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit.

~~(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.~~

~~(a) The advertisement shall include:~~

~~1. A brief and general description of what is believed to~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).~~

~~2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.~~

~~3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication.~~

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(4)~~(5)~~ Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section and shall be conducted in a commercially reasonable manner, as that term is used in s. 679.610.

(5)~~(6)~~ Before any sale or other disposition of personal property pursuant to this section, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the property to the tenant and thereafter shall have no liability to any person with respect to such personal property. If the tenant fails to redeem the personal property or satisfy

the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.

(6) ~~(7)~~ A purchaser in good faith of the personal property sold to satisfy a lien provided for in s. 83.805 takes the property free of any claims, except those interests provided for in s. 83.808, despite noncompliance by the owner with the requirements of this section.

(7) ~~(8)~~ In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by first-class ~~certified~~ mail to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the balance. In the event that the owner's lien does not have priority over all other liens, the sale proceeds shall be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds shall be delivered by the owner to the tenant or secured lienholders in person or by first-class ~~certified~~ mail to their last known addresses. If the tenant or the secured

lienholders do not claim the sale proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the proceeds.

Section 2. Section 83.808, Florida Statutes, is amended to read:

83.808 Contractual liens.—This part does not impair or affect ~~Nothing in ss. 83.801-83.809 shall be construed as in any manner impairing or affecting~~ the right of parties to create liens and limitations on liability by special contract or agreement or ~~nor shall it in any manner~~ impair or affect any other lien arising at common law, in equity, or by any statute of this state or any other lien not provided for in s. 83.805.

Section 3. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

favorable 3.14.11

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative(s) Caldwell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (6) of section 83.803, Florida Statutes, is amended to read:

83.803 Definitions.—As used in ss. 83.801-83.809:

(6) "Last known address" means the street ~~that~~ address, post office box, or electronic mail address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided ~~the address provided by the tenant~~ by hand delivery, first-class mail, or electronic ~~certified~~ mail ~~in a subsequent written notice of a change of address~~.

Section 2. Section 83.806, Florida Statutes, is amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

Amendment No. 1

(1) The tenant shall be notified by written notice delivered in person or by first-class ~~certified~~ mail, along with a certificate of mailing, to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit.

(2) The notice shall include:

(a) An itemized statement of the owner's claim, showing the sum due at the time of the notice and the date when the sum became due.

(b) The same description, or a reasonably similar description, of the personal property as provided in the rental agreement.

(c) A demand for payment within a specified time not less than 14 days after delivery of the notice.

(d) A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(e) The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service~~, registered,~~ and properly addressed with postage prepaid.

~~(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage~~

~~facility or self-contained storage unit is located. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.~~

~~(a) The advertisement shall include:~~

~~1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).~~

~~2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.~~

~~3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication.~~

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(4) ~~(5)~~ Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section and shall be conducted in a commercially reasonable manner, as that term is used in s. 679.610.

(5) ~~(6)~~ Before any sale or other disposition of personal property pursuant to this section, the tenant may pay the amount

necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the property to the tenant and thereafter shall have no liability to any person with respect to such personal property. If the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.

(6) ~~(7)~~ A purchaser in good faith of the personal property sold to satisfy a lien provided for in s. 83.805 takes the property free of any claims, except those interests provided for in s. 83.808, despite noncompliance by the owner with the requirements of this section.

(7) ~~(8)~~ In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by first-class ~~certified~~ mail, along with a certificate of mailing, to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years after ~~of~~ the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the

payment of the balance. In the event that the owner's lien does not have priority over all other liens, the sale proceeds shall be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds shall be delivered by the owner to the tenant or secured lienholders in person or by first-class ~~certified~~ mail, along with a certificate of mailing, to their last known addresses. If the tenant or the secured lienholders do not claim the sale proceeds within 2 years after ~~of~~ the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the proceeds.

Section 3. Section 83.808, Florida Statutes, is amended to read:

83.808 Contractual liens.—This part does not impair or affect ~~Nothing in ss. 83.801-83.809 shall be construed as in any manner impairing or affecting~~ the right of parties to create liens or limitations on liability by special contract or agreement or ~~nor shall it in any manner~~ impair or affect any other lien arising at common law, in equity, or by any statute of this state or any other lien not provided for in s. 83.805.

Section 4. This act shall take effect July 1, 2011.

T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to self-service storage facilities; amending s. 83.803, F.S.; redefining the term "last known address," to

conform to changes made by the act; amending s. 83.806, F.S.; revising notice requirements related to enforcing an owner's lien; allowing postal notice by first-class mail, along with a certificate of mailing; allowing electronic mail notice; deleting provisions relating to advertisement requirements; amending s. 83.808, F.S.; clarifying provisions relating to the right to create contractual liens or limitations on liability; providing an effective date.

Council/Committee/Subcommittee on Civil Justice

Date 3/14/2011

favorable 3-14-11

Action _____

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY

(may be used in Council/Committee/Subcommittee, but **not** on House Floor)

Amendment No. 2 Bill No. 459

(For filing with the Clerk, Council, Committee and Member Amendments **must** be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee/Subcommittee on Steinberg

offered the following amendment:

Amendment to Amendment 1

on page Remove line(s) ~~19~~ 9-13 and insert:

(b) "Last known address" means the street ~~that~~ address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided ~~the address provided by the tenant~~ by hand delivery or first-class ~~mail~~ or electronic

H-62 (Revised, 2005)

Copy to Council/Committee Administrative Assistant

STORAGE NAME: h0569.CVJS.DOCX
DATE: 4/9/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 569; Relief/Ronald Miller/City of Hollywood
Sponsor: Cruz
Companion Bill: SB 64 by Siplin
Special Master: Thomas
Basic Information:

Basic Information:

Claimants:	Ronald Miller
Respondent:	City of Hollywood
Amount Requested:	$100,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Agrees that the settlement in this matter and the passage of this claim bill is appropriate.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 191 by Representative Gibson and Senate Bill 60 by Senate Rich were filed during the 2009 Legislative Session. Neither of these bills received a hearing in any Committee. House Bill 519 by Representative Gibson and Senate Bill 44 by Senator Gelber were filed during the 2010 Legislative Session. Neither of these bills received a hearing in any Committee.

Procedural Summary: In January 2005, Mr. Miller filed suit in the Circuit Court of the 17th Judicial Circuit in and for Broward County. After trial, the jury found in favor of Ronald Miller and a final

judgment was entered in the amount of $1,130,731.89, which included approximately $75,000 for past medical bills and $415,000 for future medical expenses, $200,000 for past pain and suffering, and $500,000 for future pain and suffering. A cost Judgment was entered in favor of Mr. Miller for $17,257.82. The City of Hollywood appealed and the Fourth District Court of Appeal affirmed the judgment per curiam. The City has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, F.S. The parties have now settled the matter and the City has agreed to pay Mr. Miller an additional $100,000 to resolve this claim.

Facts of Case: This case arises out of a motor vehicle accident that occurred on July 30, 2002. Mr. Miller was traveling northbound in his pickup truck on North Federal Highway, just south of Sheridan Street in the City of Hollywood, Florida. At approximately 5:30 p.m., Mr. Miller entered the center lane, planning on turning left at Sherman Street, the westbound street immediately south of Sheridan Street, traveling at approximately 15 miles-per-hour.

At the same time, Robert Mettler, an employee of the City of Hollywood driving a City utilities truck, was exiting a Burger King Restaurant immediately to the right (on the east side of North Federal Highway). Stopped northbound traffic on North Federal Highway parted to allow Mr. Mettler to drive across the two northbound lanes into the center lane. As Mr. Mettler entered the center lane, he turned left in order to merge onto southbound North Federal Highway where he collided head-on into Mr. Miller.

Mr. Miller was wearing his seatbelt and did not seek medical treatment at the scene of the accident. Though belted, Mr. Miller later testified that he banged his knees on the dashboard of his truck as a result of the crash impact. Later that night, Mr. Miller went to the emergency room to seek medical treatment.

In March of 2003, Dr. Steven Wender, M.D., performed extensive knee surgery on Mr. Miller (a right knee partial medial and lateral menisectomy and tricompartmental chondroplasty, and a left knee lateral menisectomy and chondroplasty of the medial compartment and lateral compartmental and patella with synovectomy). Mr. Miller developed post operative complications including pneumonia and deep vein thrombosis. Dr. Wender testified that Mr. Miller will need to have at least one bilateral knee replacement surgery in the future. Mr. Miller did have knee surgeries prior to the accident.

The City's expert, Dr. Phillip Averbach, testified at trial that Mr. Miller did not sustain any permanent orthopedic or neurological injuries related to the accident. Dr. Averbach also testified that he believed at least 90 percent of Mr. Miller's current complaints and injuries were pre-existing to the accident.

While there is testimony on both sides of how extensively Mr. Miller was injured as a result of the accident, the parties have agreed to settle the matter.

Recommendation: For the reasons set forth above, I respectively recommend that House Bill 569 (2011) be reported FAVORABLY.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative Cruz, House Sponsor
Senator Siplin, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

A bill to be entitled

An act for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of the City of Hollywood; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on July 30, 2002, Ronald Miller was driving his pickup truck home from work, northbound on Federal Highway in the left-turn lane, and

WHEREAS, at that time, a City of Hollywood employee, Robert Mettler, who was driving a city utilities truck, cut across the lanes of northbound traffic and crashed into Mr. Miller's vehicle head-on, and

WHEREAS, Mr. Mettler should have not been allowed to drive a city vehicle, given his extensive history of drunken driving and traffic violations, and

WHEREAS, the impact of the crash caused Mr. Miller to suffer two herniated disks in his neck and he has had multiple surgeries to correct torn ligaments in both knees, and

WHEREAS, after the knee surgeries, Mr. Miller had to be rehospitalized due to complications, including deep-venous thrombosis and pulmonary embolism, and

WHEREAS, according to his orthopedic surgeon, Steven Wender, M.D., Mr. Miller will require knee replacements on both legs over the next 40 years of his life every 7 to 13 years, at a cost of approximately $100,000 per surgery, and is likely to require additional medical care for his neck, and

WHEREAS, Mr. Miller's past medical expenses total approximately $75,000, and

WHEREAS, the City Attorney informed the Hollywood City Commission that it was likely to face a substantial adverse verdict in the case but did not attempt to reach a reasonable settlement given the city's exposure to liability and damages, and

WHEREAS, the jury found in favor of Ronald Miller and a Final Judgment was entered in the amount of $1,130,731.89, which included approximately $75,000 for past medical bills and $415,000 for future medical expenses, $200,000 for past pain and suffering, and $500,000 for future pain and suffering, and

WHEREAS, a Cost Judgment was entered in favor of Mr. Miller for $17,257.82, and

WHEREAS, the City of Hollywood filed a frivolous posttrial motion, which was summarily denied by the trial judge, an appeal, for which the Fourth District Court of Appeal affirmed the judgment per curiam, and a motion for rehearing of the appeal, which was summarily denied by the appellate court, and

WHEREAS, the City of Hollywood has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving the sum of $1,047,989.71 unpaid, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. <u>The facts stated in the preamble to this act are found and declared to be true.</u>

Section 2. The City of Hollywood is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant, payable to Ronald Miller, for the total amount of $1,047,989.71 as compensation for injuries and damages sustained as a result of the negligence of the City of Hollywood.

Section 3. The amount paid by the City of Hollywood pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries to Ronald Miller. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative(s) Cruz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Hollywood is authorized and directed to appropriate from funds of the city and to draw a warrant, payable to Ronald Miller, for the total amount of $100,000.00 as compensation for injuries and damages sustained as a result of the negligence of the City of Hollywood.

Section 3. The amount paid by the City of Hollywood pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are the sole and final compensation for all present and future claims arising out of the facts described in this act that resulted in injuries to Ronald Miller. All expenses that constituted part of Ronald Miller's judgments described herein shall be paid from the amount awarded under

this act on a pro-rata basis. The total amount paid from all sources for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

T I T L E A M E N D M E N T

Remove the entire title and insert:

An act for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of the City of Hollywood; providing a limitation on the payment of attorney and lobbyist fees and costs; providing an effective date.

WHEREAS, on July 30, 2002, Ronald Miller was driving his pickup truck home from work, northbound on Federal Highway in the left-turn lane, and

WHEREAS, at that time, a City of Hollywood employee, Robert Mettler, was driving a city utilities truck and crashed into Mr. Miller's vehicle, and

WHEREAS, the impact of the crash caused Mr. Miller to have corrective surgeries for damage to both knees, and

WHEREAS, the jury found in favor of Ronald Miller and a Final Judgment was entered in the amount of $1,130,731.89, and a cost judgment of $17,257.82, and

WHEREAS, the City of Hollywood has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the parties have negotiated in good faith and have arrived at a stipulated resolution of this matter by the payment by the City of Hollywood of an additional $100,000.00 to Ronald Miller, NOW, THEREFORE,

STORAGE NAME: h0609.CVJS.DOCX
DATE: 4/11/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 609; Relief/Harris & Williams/North Broward Hospital District
Sponsor: Coley
Companion Bill: SB 16 by Ring
Special Master: Thomas

Basic Information:

Claimants:	Laron S. Harris, Jr., by and through his parents, Melinda Williams and Laron S. Harris, Sr., and Melinda Williams and Laron S. Harris, Sr., individually
Respondent:	North Broward Hospital District, d/b/a Coral Springs Medical Center
Amount Requested:	$2,000,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Hospital District agrees to fully support the claim bill in the total amount of $2,000,000 and agrees to take no action nor present any evidence at any stage of the claim bill process that could result in the rejection or diminution of the claim.
Collateral Sources:	$4,250,000 in settlements from other medical participants.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year a claim bill has been filed in this matter.

Procedural Summary: Laron S. Harris, Jr., and his parents Melinda Williams and Laron S. Harris, Sr., filed a lawsuit against the North Broward Hospital District, d/b/a Coral Springs Medical Center, in the Seventeenth Judicial Circuit, in and for Broward County. Prior to trial, the parties resolved the matter through a mediated consent judgment for the sum of $2.2 million, $200,000 of which has already been paid pursuant to the state's limited waiver of sovereign immunity under s. 768.28, Florida Statutes.

Facts of Case: Laron S. Harris, Jr., was born at the Coral Springs Medical Center on April 1, 2003, suffering from severe perinatal asphyxia and severe hypoperfusion. As a result, Laron, has significant brain damage and will be dependent upon others for the remainder of hislife. Laron's mother, Melinda Williams, approximately 8 months pregnant, arrived by ambulance at the medical center at or around 5:45 a.m. on April 1, 2003, and was bleeding significantly and having abdominal pain. At 7:55 a.m., Dr. Richard Spira performed an ultrasound and strongly suspected that a placental abruption had occurred and recommended that another sonogram be performed in the ultrasound department of the medical center.

At 8:45 a.m., a registered nurse performed a bedside ultrasound on Ms. Williams using a portable ultrasound machine rather than the more reliable ultrasound equipment recommended by Dr. Spira in the ultrasound department. Ms. Williams was not taken to the ultrasound department for the further examinations as requested by Dr. Spira until after 9:20 a.m. Ms. Williams finally was sent to the operating room at 9:45 a.m. for an emergency cesarean section that was performed by Dr. Desouza; however, the surgery, which showed that the placenta was 40 to 50 percent abrupt, did not begin until 10:14 a.m.

The District was insured at the time of the incident and will pay for the claim, if awarded.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative Coley, House Sponsor
Senator Ring, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

A bill to be entitled

An act for the relief of Laron S. Harris, Jr., by and through his parents, Melinda Williams and Laron S. Harris, Sr., and Melinda Williams and Laron S. Harris, Sr., individually, by the North Broward Hospital District, d/b/a Coral Springs Medical Center; providing for an appropriation to compensate them for injuries sustained as a result of the negligence of the Coral Springs Medical Center; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Laron S. Harris, Jr., was born at the Coral Springs Medical Center on April 1, 2003, suffering from severe perinatal asphyxia and severe hypoperfusion, and has significant brain damage as a result of those conditions, and

WHEREAS, Laron's mother, Melinda Williams, who was approximately 8 months pregnant, arrived by ambulance at the medical center at or around 5:45 a.m. on April 1, 2003, and was bleeding significantly and having abdominal pain, and

WHEREAS, at 7:55 a.m., Dr. Richard Spira performed an ultrasound and strongly suspected that a placental abruption had occurred and recommended that another sonogram be performed in the ultrasound department of the medical center, and

WHEREAS, at 8:45 a.m., a registered nurse performed a bedside ultrasound on Ms. Williams using a portable ultrasound machine rather than the more reliable ultrasound equipment recommended by Dr. Spira in the ultrasound department, and

WHEREAS, Ms. Williams was not taken to the ultrasound

department for the further examinations as requested by Dr. Spira until after 9:20 a.m., and

WHEREAS, Ms. Williams finally was sent to the operating room at 9:45 a.m. for an emergency cesarean section that was performed by Dr. Desouza; however, the surgery, which showed that the placenta was 40 to 50 percent abrupt, did not begin until 10:14 a.m., and

WHEREAS, the injuries Laron sustained were foreseeable and preventable and the medical center had a duty to prevent his injuries, and

WHEREAS, the medical center breached its duties to Laron and Ms. Williams by failing to timely diagnose the existence of the placental abruption and to timely perform an emergency cesarean section upon diagnosing the placental abruption, and

WHEREAS, if the doctors at the medical center had promptly diagnosed the placental abruption and timely performed the emergency cesarean section, Laron most likely would not have suffered from severe perinatal asphyxia and would not have developed permanent neurological damage, and

WHEREAS, Laron S. Harris, Jr., and his parents Melinda Williams and Laron S. Harris, Sr., filed a lawsuit against the North Broward Hospital District, d/b/a Coral Springs Medical Center, which was resolved through a mediated consent judgment for the sum of $2.2 million, the payment of $200,000 authorized by the state's limited waiver of sovereign immunity under s. 768.28, Florida Statutes, and an agreement to support a claim bill for the remaining amount of $2 million, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The North Broward Hospital District, d/b/a Coral Springs Medical Center, is authorized and directed to appropriate from funds of the district not otherwise appropriated and to draw a warrant in the sum of $2 million payable to Laron S. Harris, Jr., by and through his parents Melinda Williams and Laron S. Harris, Sr., and to Melinda Williams and Laron S. Harris, Sr., individually, as compensation for injuries and damages sustained.

Section 3. The amount paid by the North Broward Hospital District pursuant to s. 768.28, Florida Statutes, and this award are intended to provide the sole compensation for all present and future claims arising out of the factual situation that resulted in the injuries to Laron S. Harris, Jr., and his parents Melinda Williams and Laron S. Harris, Sr. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

STORAGE NAME: h0629.CVJS.DOCX
DATE: 4/11/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 629; Relief/Estate of Cesar Solomon/JTA
Sponsor: McBurney
Companion Bill: SB 22 by Hill
Special Master: Thomas

Basic Information:

Claimants:	Estate of Cesar Solomon
Respondent:	Jacksonville Transportation Authority
Amount Requested:	$1,050,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Jacksonville Transportation Authority has admitted liability and has agreed to remain neutral and not take any action adverse to the pursuit of a claim bill by the Estate of Cesar Solomon to authorize and direct the Authority to pay the remaining $1.05 million pursuant to the stipulated judgment.
Collateral Sources:	Ms. Solomon received $160,000 in life insurance benefits, $105,000 from auto insurance, and a $255 Social Security death benefit.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year a claim bill has been filed in this matter.

Procedural Summary: The Estate of Cesar Solomon filed a lawsuit against the Jacksonville Transportation Authority for negligence in the Fourth Judicial Circuit Court, in and for Duval County. Prior to trial, the parties settled the matter for $1,250,000, of which $200,000 has been paid by the Authority pursuant to the statutory cap on liability imposed by section 768.28, F.S.

Facts of Case: On March 25, 2008, Cesar Solomon, in the course of his employment by the City

of Jacksonville, was standing in the bucket of an aerial lift truck while changing a traffic signal bulb at the intersection of Commonwealth and Melson Avenues. At the same time in the west-bound curb lane of Commonwealth Avenue, Gwendolyn Wells Mordecai, while in the course and scope of her employment, was driving a bus owned and operated by the Jacksonville Transportation Authority and crashed the bus into the aerial lift truck, knocking Cesar Solomon out of the bucket to his death. The information retrieved from the bus's event data recorder shows that the bus was travelling at approximately 37 miles per hour at the time of impact and that there was little or no braking of the bus prior to impact. The force of the impact was so severe that it pushed the lift truck well over 100 feet.

At the time of his death, Mr. Solomon was 52 years old and was survived by his wife of 23 years, Ruby Solomon, and two children, son Edison (age 22) and daughter Angeli (age 19). Mr Solomon was retired from the Navy after serving over 20 years as an electrician.

The Jacksonville Transportation Authority acknowledged that Gwendolyn Wells Mordecai was responsible for the accident and that Cesar Solomon was not comparatively negligent. The Jacksonville Transportation Authority entered into a stipulated judgment in favor of the Estate of Cesar Solomon for $1.25 million, of which $200,000 has already been paid.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative McBurney, House Sponsor
Senator Hill, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

A bill to be entitled

An act for the relief of the Estate of Cesar Solomon by the Jacksonville Transportation Authority; providing for an appropriation to compensate the Estate of Cesar Solomon for Mr. Solomon's death, which was the result of negligence by a bus driver of the Jacksonville Transportation Authority; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on March 25, 2008, Cesar Solomon, in the course of his employment by the City of Jacksonville, was standing in the bucket of an aerial lift truck while changing a traffic signal bulb at the intersection of Commonwealth and Melson Avenues, and

WHEREAS, at the same time Gwendolyn Wells Mordecai, while in the course and scope of her employment, was driving a bus owned and operated by the Jacksonville Transportation Authority and crashed the bus into the aerial lift truck, knocking Cesar Solomon out of the bucket to his death, and

WHEREAS, the Estate of Cesar Solomon filed a lawsuit against the Jacksonville Transportation Authority, Gwendolyn Wells Mordecai, and Jax Transit Management for negligence, and

WHEREAS, the Jacksonville Transportation Authority and Jax Transit Management acknowledged that Gwendolyn Wells Mordecai was responsible for the accident and that Cesar Solomon was not comparatively negligent, and

WHEREAS, the Jacksonville Transportation Authority entered into a stipulated judgment in favor of the Estate of Cesar Solomon for $1.25 million and acknowledged that a jury likely

would have entered a multi-million-dollar verdict if the lawsuit had proceeded to trial, and

WHEREAS, the Jacksonville Transportation Authority has paid $200,000 to the Estate of Cesar Solomon, the maximum amount authorized under s. 768.28, Florida Statutes, and

WHEREAS, the Jacksonville Transportation Authority has agreed to remain neutral and not take any action adverse to the pursuit of a claim bill by the Estate of Cesar Solomon to authorize and direct the Jacksonville Transportation Authority to pay the remaining $1.05 million pursuant to the stipulated judgment, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Jacksonville Transportation Authority is authorized and directed to appropriate from funds of the authority not otherwise appropriated and to draw warrants to pay $1.05 million to the Estate of Cesar Solomon as compensation for the death of Cesar Solomon. Each warrant shall be in the amount of $350,000 and shall be paid annually for 3 years.

Section 3. The amount paid by the Jacksonville Transportation Authority pursuant to s. 768.28, Florida Statutes, and this award are intended to provide compensation for all present and future claims arising out of the factual situation that resulted in the death of Cesar Solomon as described in this act. The total amount paid for attorney's

fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

STORAGE NAME: h0855.CVJS.DOCX
DATE: 4/11/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 855; Relief/Brown/North Broward Hospital District
Sponsor: Thurston, Jr.
Companion Bill: SB 306 by Rich
Special Master: Thomas

Basic Information:

Claimants:	Denise Gordon Brown and David Brown, parents of Darian Brown
Respondent:	North Broward Hospital District
Amount Requested:	$2,000,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	North Broward Hospital District agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of the claim bill.
Collateral Sources:	The Browns have received $10,550,000 from the District to date toward the settlement of this matter.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been before the Legislature.

Procedural Summary: The Browns filed a lawsuit against the Hospital District for negligence in the 17th Judicial Circuit Court, in and for Broward County. After trial, the jury returned a verdict in favor of the Browns, in the amount of $34,418,577. The jury's verdict was affirmed on appeal.

The District sued its insurers seeking a declaration of coverage for the damages awarded to the Browns. The coverage lawsuit led to a global settlement under which the District's insurers paid the Browns $10.35 million, the district paid its sovereign immunity limit of $200,000, and the parties agreed that the plaintiffs could seek an additional $2 million through an uncontested claim bill. Under the settlement agreements, the plaintiffs' net recovery to date (after satisfying medical and

legal expenses and attorneys' fees) is approximately $8.5 million. They have paid roughly $3.3 million to their attorneys.

Facts of Case: On January 10, 2000, Denise Gordon Brown, at 33 weeks gestation, was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida. Because the fetal heart rate of the baby she was carrying was elevated her physician ordered continuous fetal monitoring. Mrs. Brown had delivered prematurely in the past. On the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus. Denise Brown's obstetrician, Dr. Danoff, gave standing orders that the nurse on duty was to notify the obstetrician if the baby's heart rate ever exceeded 160 beats per minute.

On January 15, 2000, the monitoring indicated an accelerated heart rate (a condition known as tachycardia). The nursing staff did not notify the obstetrician of this development, despite the standing order to do so. Over the next few hours, the fetal monitoring strips showed increasingly worrisome signs, namely consistent fetal tachycardia and loss of fetal heart rate variability. Variability indicates fetal wellbeing. At 11:00 p.m., the baby's heart rate started to slow periodically after uterine contractions. When this occurs, it is called a "late deceleration." Late decelerations are an ominous sign, especially in conjunction with tachycardia and loss of variability. The nursing staff, however, did not notify the obstetrician, or any other physician, that Mrs. Brown's baby might be in trouble.

The continued fetal tachycardia and loss of reactivity, necessitating immediate delivery. Ms. Brown's unborn child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay. Darian had been oxygen-deprived in his mother's womb for hours before his birth. As a result, he was born with numerous complications, including respiratory distress syndrome, cystic kidney disease, neonatal jaundice, neonatal hypoglycemia, and newborn intraventricular hemorrhage. He required aggressive resuscitation. Eventually, Mrs. Brown and Darian were discharged from the hospital. The Browns were not told, however, that Darian might have suffered a serious brain injury.

In October 2000, Mrs. Brown became concerned that her son was not meeting developmental milestones. Her inquiries to the pediatrician resulted in a computed tomography (CT) scan of Darian's brain being ordered. The CT scan showed that Darian's brain had been seriously and irreversibly damaged by partial prolonged hypoxia (oxygen deprivation) in the hours before his birth. The damage to Darian's brain has left him suffering from cerebral palsy, spastic quadriplegia, and developmental delay. He is unable to talk but smiles at family members and communicates basic needs by gesturing. Darian has no bladder or bowel control, cannot feed himself, and is unable to perform any activities of daily living. He will be totally dependent on others for care and treatment for the rest of his life. The economic report prepared by Raffa Consulting Economists, Inc., concludes that the present value of Daran's future medical needs is between $11.5 and $13.6 million, and that his estimated lost earning capacity, reduced to present value, is approximately $0.68 million.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative Thurston, House Sponsor
Senator Rich, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

A bill to be entitled

An act for the relief of Denise Gordon Brown and David Brown by the North Broward Hospital District; providing for an appropriation to compensate Denise Gordon Brown and David Brown, parents of Darian Brown, for injuries and damages sustained by Darian Brown as result of the negligence of Broward General Medical Center; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on January 10, 2000, Denise Gordon Brown was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida, and

WHEREAS, Denise Gordon Brown's physicians at Broward General Medical Center ordered continuous fetal monitoring, and

WHEREAS, on the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus, and

WHEREAS, on January 15, 2000, the monitoring indicated continued fetal tachycardia and loss of reactivity, necessitating immediate delivery, and

WHEREAS, Denise Gordon Brown's unborn child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay, and

WHEREAS, Denise Gordon Brown and David Brown, the parents of Darian Brown, sought medical care and treatment that determined that Darian Brown's condition is permanent, has resulted in severe neurological damage, and requires a lifetime of round-the-clock care and treatment, and

WHEREAS, after a trial, a jury returned a verdict in favor of Denise Gordon Brown and David Brown, as parents and guardians of Darian Brown, in the amount of $35,236,000, for the cost of care for Darian Brown, resulting in a final judgment, less setoffs and costs, in the amount of $34,418,577, and

WHEREAS, the jury's verdict was affirmed on appeal, and

WHEREAS, pursuant to an agreement between the parties to the lawsuit, the judgment has been partially satisfied in the amount of $10,550,000, and

WHEREAS, pursuant to the agreement, the claim shall be considered fully satisfied by the stipulation that the North Broward Hospital District will seek its self-insured retention in the amount of $2 million as authorized by the Florida Legislature through a claim bill, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $2 million is appropriated out of funds not otherwise encumbered for payment by the North Broward Hospital District for the relief of Denise Gordon Brown and David Brown, as guardians of Darian Brown, for injuries and damages sustained by Darian Brown due to the negligence of Broward General Medical Center.

Section 3. A warrant shall be drawn in favor of Denise Gordon Brown and David Brown, as guardians of Darian Brown, in the amount of $2 million.

Section 4. The amount paid pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries sustained by Darian Brown. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

STORAGE NAME: h1013.CVJS.DOCX
DATE: 4/11/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1013; Relief/James D. Feurtado, III/Miami-Dade County
Sponsor: Ingram
Companion Bill: CS/SB 324 by Rules, Flores
Special Master: Thomas

Basic Information:

Claimants:	James D. Feurtado, III
Respondent:	Miami-Dade County
Amount Requested:	$1,150,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of a claim bill by Mr. Feurtado.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been before the Legislature.

Procedural Summary: Mr. Feurtado filed a lawsuit against Miami-Dade County for negligence in the 11th Judicial Circuit Court, in and for Miami-Dade County. Prior to trial, the parties reached a settlement agreement by mediation for $1,250,000, of which $100,000 has been paid by the County pursuant to the statutory cap on liability imposed by section 768.28, F.S., and the remainder is conditioned upon the passage of a claim bill.

Facts of Case: On February 12, 2009, James D. Feurtado, III, while jogging, was hit by a bus owned by Miami-Dade County at approximately 7 p.m. at the intersection of Pisano Avenue and University Drive in Coral Gables. The operator of the bus failed to stop at the stop sign before

making a right-hand turn and collided into Mr. Feurtado, age 37 at the time. The bus operator was found guilty of violating s. 316.123(2)(a), F.S., for failing to obey the stop sign and was disciplined by Miami-Dade County for violations of safety policies and procedures. The Claimant, a 37-year-old pharmaceutical sales representative was in excellent health prior to the accident.

Mr. Feurtado was transported to the Jackson Memorial Hospital Ryder Trauma Center, where he was found to have sustained serious injuries to the skull and brain, a right maxillary sinus fracture, and underwent a craniotomy and placement of a drain. He later required further surgery to insert a shunt in order to reduce the brain swelling to a point where a cranioplasty was performed. Although the Claimant's physicians were able to replace a portion of the Claimant's skull approximately eight months after the accident (the skull was kept frozen), a visible defect is still present. Mr. Feurtado has profound hearing loss in his right ear. Mr. Feurtado has permanent brain damage, unilateral deafness, vertigo, headaches, psychiatric sequelae, a shunt, scarring, and skull defect, and sustained serious and permanent neurologic and orthopedic injuries.

While Mr. Feurtado has been able to return to work, he has great difficulty performing his duties and cannot do so as efficiently as he did prior to his brain injury. His ability to remember pertinent information has been impaired, and he often loses his train of thought when speaking with customers. His deafness in one ear makes it nearly impossible for him to successfully interact in social situations with physicians and other customers, which is an essential component of pharmaceutical sales.

The present value of Mr. Feurtado's economic damages from this incident is calculated to be $1,823,468, which consists of his future and past lost earning capacity of $508,083, anticipated future medical expenses of $1,176,840, and past medical expenses of $138,545. If the bill is passed, Miami-Dade Transit operating funds will be used to satisfy the claim.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative Ingram, House Sponsor
Senator Flores, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

A bill to be entitled

An act for the relief of James D. Feurtado, III, by Miami-Dade County; providing for an appropriation to compensate him for injuries he sustained as a result of the negligence of an employee of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on February 12, 2009, James D. Feurtado, III, age 38, sustained serious and permanent neurologic and orthopedic injuries in a bus accident at approximately 7 p.m. at the intersection of Pisano Avenue and University Drive in Coral Gables, and

WHEREAS, the Miami-Dade County bus operator failed to stop at the stop sign at this intersection before making a right-hand turn and collided into James D. Feurtado, III, a pedestrian, thereby causing him severe orthopedic and neurological injuries, and

WHEREAS, the bus operator was found guilty of violating s. 316.123(2)(a), Florida Statutes, for failing to obey the stop sign and was disciplined by Miami-Dade County for various violations of safety policies and procedures, and

WHEREAS, Mr. Feurtado was transported to the Ryder Trauma Center, where he was found to have sustained a large extra-axial hematoma in the left hemisphere of the brain with mass effect and mid-line shift, a large left hemispheric subarachnoid hemorrhage, as well as left temporal, parietal, and bi-frontal hemorrhagic contusions. He also sustained a right maxillary

sinus fracture involving the anterior and lateral wall extending into the floor and lateral wall of the orbit, and fracture to the right zygomatic arch and temporal bone, and

WHEREAS, Mr. Feurtado underwent a left frontoparietal craniotomy with evacuation of the subdural hematoma and placement of a drain. He developed post-traumatic communicating hydrocephalus, ultimately requiring further surgery to place a ventriculoperitoneal shunt in order to reduce the brain swelling to a point where a cranioplasty was performed, and

WHEREAS, Mr. Feurtado has profound sensorineural hearing loss to the right and has been evaluated for a BAHA implant procedure in the future, and

WHEREAS, Mr. Feurtado underwent extensive neuropsychological and psychological evaluation, and

WHEREAS, Mr. Feurtado has permanent brain damage, unilateral deafness, vertigo, headaches, psychiatric sequelae, a shunt, scarring, and skull defect, and

WHEREAS, Mr. Feurtado underwent assessment by a vocational rehabilitation and life-care planner, and

WHEREAS, the total present value of Mr. Feurtado's economic damages from this incident is calculated to be $1,823,468, which consists of his future and past lost earning capacity of $508,083, anticipated future medical expenses of $1,176,840, and past medical expenses of $138,545, and

WHEREAS, Miami-Dade County and Mr. Feurtado reached a settlement agreement by mediation in the amount of $1.25 million, of which $100,000 has been paid to Mr. Feurtado pursuant to the limits of liability set forth in s. 768.28,

Florida Statutes, and the remainder is conditioned upon the passage of a claim bill, which is unopposed, in the amount of $1.15 million, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $1.15 million, payable to James D. Feurtado, III, as compensation for injuries and damages sustained.

Section 3. The amount paid by Miami-Dade County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries to James D. Feurtado, III. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative(s) Ingram offered the following:

Amendment (with title amendment)

T I T L E A M E N D M E N T

Remove line 10 and insert:
37 at the time of the accident, sustained serious and permanent
neurologic and orthopedic

STORAGE NAME: h1487.CVJS.DOCX
DATE: 4/11/2011

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1487; Relief/Carl Abbott/Palm Beach County School Board
Sponsor: Workman
Companion Bill: CS/SB 70 by Rules, Negron
Special Master: Thomas

Basic Information:

Claimants:	David Abbott, guardian of Carl Abbott
Respondent:	Palm Beach County School Board
Amount Requested:	$1,900,000; to be made in payments of $211,111.11 each fiscal year beginning in 2011 through 2018, inclusive, and $211,111.12 in the 2019 fiscal year.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been before the Legislature.

Procedural Summary: David Abbott, the son and guardian of Carl Abbott, brought suit in 2008 claiming negligence against the School Board of Palm Beach County. The action was filed in the 15th Judicial Circuit Court, in and for Palm Beach County, Florida.

Prior to trial, the parties came to an agreement through mediation to settle the case for $2 million, $100,000 of which the School Board has already paid. Pursuant to the settlement agreement, the $1.9 million balance will be paid in eight yearly installments of $211,111.11, plus a ninth and final annual payment of $211,111.12. These yearly payments will commence on the effective date of the claim bill, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments, guaranteeing

a minimum payout of $633.333.33.

Out of the $100,000 settlement proceeds he has already received, Mr. Abbott paid $25,000 in attorney's fees and, after paying some expenses, netted $51,905.65. This amount was paid to Mr. Abbott's guardian, David Abbott.

Facts of Case: On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk.

At the time Mr. Abbott began to cross U. S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed north on U. S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U. S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation (CPR) at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbott presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbott has neurogenic bladder and bowel and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about $4 million, before a reduction to present value.

The school Board is self-insured and will pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of $100,000.

Tom Thomas, Special Master Date: April 11, 2011

cc: Representative Workman, House Sponsor
Senator Negron, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

A bill to be entitled

An act for the relief of Carl Abbott by the Palm Beach County School Board; providing for an appropriation to compensate Carl Abbott for injuries sustained as a result of the negligence of the Palm Beach County School District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was struck by a school bus driven by an employee of the Palm Beach County School District while Mr. Abbott was crossing the street in a designated crosswalk at the intersection of South Anchorage Drive and U.S. 1 in Palm Beach County, and

WHEREAS, as a result of the accident, Carl Abbott suffered a closed-head injury, traumatic brain injury, subdural hematoma, and subarachnoid hemorrhage, and

WHEREAS, as a result of his injuries, Carl Abbott suffers from loss of cognitive function, right-sided paralysis, immobility, urinary incontinence, bowel incontinence, delirium, and an inability to speak, and must obtain nutrition through a feeding tube, and

WHEREAS, the Palm Beach County School Board admitted liability and tendered payment of $100,000 to Carl Abbott, in accordance with the liability limits in s. 768.28, Florida Statutes, and unanimously passed a resolution to pay pursuant to a claim bill in favor of Carl Abbott the amount of $1,900,000, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw warrants in the amount of $211,111.11 each fiscal year beginning in 2011 through 2018, inclusive, and $211,111.12 in the 2019 fiscal year for a total of $1,900,000, payable to David Abbott, guardian of Carl Abbott, as compensation for injuries and damages sustained as a result of the negligence of an employee of the Palm Beach County School District. The payments shall cease upon the death of Carl Abbott if he dies prior to the last payment being made. However, David Abbott, as guardian of Carl Abbott, shall be guaranteed a minimum payment amount of $633,333.33 if Carl Abbott dies within 3 years after the effective date of this act. The amount represents three annual payments and shall be payable on the annual due dates.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and this award are intended to provide the sole compensation for all present and future claims against the Palm Beach County School District arising out of the factual situation that resulted in the injuries to Carl Abbott as described in this act. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative(s) Workman offered the following:

Amendment

Remove lines 22-27 and insert:

WHEREAS, the Palm Beach County School Board unanimously passed a resolution in support of settling the lawsuit that was filed in this case, tendered payment of $100,000 to Carl Abbott, in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and does not oppose the passage of this claim bill in favor of Carl Abbott in the amount of $1,900,000, as structured, NOW, THEREFORE,