



Judiciary Committee

**Thursday, March 16, 2017
12:00 PM
404 HOB**

Meeting Packet

**Richard Corcoran
Speaker**

**Chris Sprowls
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, March 16, 2017 12:00 pm
End Date and Time: Thursday, March 16, 2017 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs


Consideration of the following bill(s):

CS/CS/HB 39 Autism Awareness Training for Law Enforcement Officers by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Jenne, Stafford
CS/CS/HB 107 Criminal Offenses Involving Tombs and Memorials by Local, Federal & Veterans Affairs Subcommittee, Criminal Justice Subcommittee, Cortes, B.
CS/HB 111 Pub. Rec./Identity of Witness to a Murder by Criminal Justice Subcommittee, Stafford, McGhee
CS/CS/HB 151 Proceedings Involving Minors or Certain Other Persons by Children, Families & Seniors Subcommittee, Civil Justice & Claims Subcommittee, Brodeur, Moskowitz
CS/HJR 187 Selection and Duties of Property Appraisers by Local, Federal & Veterans Affairs Subcommittee, Diaz, M.
HB 305 Law Enforcement Body Cameras by Harrison
CS/HB 377 Limitations on Actions other than for the Recovery of Real Property by Civil Justice & Claims Subcommittee, Leek
CS/HB 505 Florida Comprehensive Drug Abuse Prevention and Control Act by Criminal Justice Subcommittee, Trumbull
HB 965 Sales and Use Tax on Investigation and Detective Services by Donalds
CS/HB 6503 Relief/Sean McNamee, Todd & Jody McNamee/School Board of Hillsborough County by Civil Justice & Claims Subcommittee, Shaw
CS/HB 6509 Relief/Robert Allan Smith/Orange County by Civil Justice & Claims Subcommittee, Cortes, B.
CS/HB 6521 Relief/Mary Mifflin-Gee/City of Miami by Civil Justice & Claims Subcommittee, Jenne
CS/HB 6529 Relief/Lillian Beauchamp/St. Lucie County School District by Civil Justice & Claims Subcommittee, Byrd

NOTICE FINALIZED on 03/14/2017 4:00PM by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 39 Autism Awareness Training for Law Enforcement Officers
SPONSOR(S): Justice Appropriations Subcommittee and Criminal Justice Subcommittee, Jenne, Stafford and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Hall	White
2) Justice Appropriations Subcommittee	14 Y, 0 N, As CS	Welty	Gusky
3) Judiciary Committee		Hall <i>WH</i>	Camechis 

SUMMARY ANALYSIS

Autism Spectrum Disorder (ASD) is a developmental disorder characterized by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The Centers for Disease Control and Prevention estimates that approximately one in 68 children has ASD. Individuals with ASD are estimated to have up to seven times more contacts with law enforcement agencies during their lifetimes than others.

Currently, individuals seeking law enforcement officer certification receive information relating to ASD in two sections of the *basic* recruit curriculum developed by the Criminal Justice Standards and Training Commission (CJSTC). Law enforcement officers must complete at least 40 hours of continued employment training (CET) every four years, however, the CJSTC does not currently offer specific *post-basic* training on ASD. The Florida Department of Law Enforcement (FDLE) is developing a CET course that will address the symptoms of ASD and how to respond to individuals who exhibit such symptoms and it will be available in Spring 2017.

The committee substitute creates s. 943.1727, F.S., requiring FDLE to establish a CET component relating to ASD. The training must include, but is not limited to, instruction on the recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to such individuals. Completion of the training may count toward a law enforcement officer's required 40 hours of CET under s. 943.135, F.S.

The bill has a fiscal impact of \$10,548, which can be absorbed within the existing resources of the FDLE.

The bill takes effect October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Autism Spectrum Disorder

Autism Spectrum Disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication.¹ The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published.²

Current Florida law provides the following definitions of terms relating to autism:

- “Autism” is defined as a “pervasive, neurologically based developmentally based disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and non-verbal communication and imaginative ability, and markedly restrictive repertoire of activities and interests.”³
- “Developmental disability” is defined as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”⁴
- “Autism spectrum disorder” is defined as “any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: 1. Autistic disorder. 2. Asperger’s syndrome. 3. Pervasive developmental disorder not otherwise specified.”⁵

The latest analysis from the Centers for Disease Control and Prevention estimates that approximately one in 68 children have been identified with ASD.⁶ This estimate is based on surveys of eight-year-old children living in 11 communities in the United States in 2012.⁷ According to this data, boys are almost 5 times more likely than girls to be identified with ASD and white children are more likely to be identified than black or Hispanic children.⁸

Law Enforcement and ASD

Individuals with ASD are estimated to have up to seven times more contacts with law enforcement agencies during their lifetimes than other individuals. Yet, only 20 percent of patrol responses related to autistic individuals are for criminal activity.⁹ Instead, reports regarding autistic individuals are often

¹ CENTER FOR DISEASE CONTROL & PREVENTION, *Facts about ASD*, <http://www.cdc.gov/nbcddd/autism/facts.html> (last visited Jan. 26, 2017).

² NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE, *Autism Spectrum Disorder Fact Sheet*, <https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Autism-Spectrum-Disorder-Fact-Sheet> (last visited Jan. 26, 2017).

³ s. 393.063(5), F.S.

⁴ s. 393.063(12), F.S.

⁵ ss. 627.6686(2)(b), F.S. and 641.31098(2)(b), F.S.

⁶ CENTERS FOR DISEASE CONTROL & PREVENTION, *Data and Statistics*, <https://www.cdc.gov/nbcddd/autism/data.html> (last visited Jan. 26, 2017).

⁷ CENTERS FOR DISEASE CONTROL & PREVENTION, *10 Things You Need to Know about CDC’s Latest Report from The Autism and Developmental Disabilities Monitoring Network*, <http://www.cdc.gov/features/dsautismdata/index.html> (last visited Jan. 26, 2017).

⁸ *Id.*

⁹ Pamela Kulbarsh, *Law Enforcement and Autism*, OFFICER.COM (Feb. 15, 2013), <http://www.officer.com/article/10880086/law-enforcement-and-autism> (last visited Jan. 26, 2017).

made by individuals who are observing a domestic disturbance or suspicious person acting in an unusual manner or requesting assistance with a medical emergency.¹⁰

Law Enforcement Training on Autism Spectrum Disorder

Basic Training

The current Florida Law Enforcement Academy basic recruit curriculum includes the topic of ASD in two sections:

- 1) Chapter 3 (Interactions in a Diverse Community- 40 classroom hours), Unit 2 (Communicating in a Diverse Society), Lesson 3 (Developmental Disabilities); and
- 2) Chapter 6 (Calls for Service- 36 classroom hours), Unit 6 (Responding to a Person in Crisis), Lesson 2 (Intervention and Referral).¹¹

Instructors for the courses described above are provided with resources such as videos and links to informational websites to aid classroom instruction. A guide is provided to all instructors that, along with required activities, include suggested activities such as: reviewing websites related to autism, reviewing case law, and inviting a guest speaker from the Autism Society or a member of the Exceptional Student Education Program.¹²

Post-Basic Training

Currently, as a condition of continued employment or appointment, s. 943.135, F.S., requires law enforcement officers to receive at least 40 hours of continued employment training (CET) every four years. Current Florida law requires the department to develop training relating to several topics, such as training for diabetic emergencies¹³, juvenile sexual offender investigations¹⁴, and interpersonal skills relating to diverse populations¹⁵. The employing agency must document that the CET is job-related and consistent with the needs of the employing agency, and report training completion to the Criminal Justice Standards and Training Commission (CJSTC).¹⁶

The CJSTC does not currently offer specific post-basic training on ASD. Agencies wishing to offer training to their officers rely on CJSTC-certified training schools or vendors to provide training on the topic. Training schools may use CJSTC Trust Fund Officer Training Monies to deliver the training. The training topic is provided in the Crisis Intervention Team (CIT) training program (the Memphis Model) that is independently offered through training facilitated by the Florida Sheriffs Association through June 2018.¹⁷

The Criminal Justice Professionalism Division within the Florida Department of Law Enforcement (FDLE) is currently developing a CET course that will address the symptoms of ASD and how to respond to individuals who exhibit such symptoms. The course will be available to all Florida law enforcement officers in the Spring of 2017. Completion of the training may count toward an officer's mandatory CET requirement.¹⁸

Effect of the Bill

The bill creates s. 943.1727, F.S., requiring FDLE to establish a CET component relating to ASD as defined in s. 627.6866, F.S. The training must include, but is not limited to, instruction on the

¹⁰ *Id.*

¹¹ Florida Department of Law Enforcement, Agency Bill Analysis for HB 39 (2017) (on file with the Justice Appropriations Subcommittee).

¹² *Id.*

¹³ s. 943.1726, F.S.

¹⁴ s. 943.17295, F.S.

¹⁵ s. 943.1716, F.S.

¹⁶ Florida Department of Law Enforcement, Agency Bill Analysis for HB 39 (2017) (on file with the Justice Appropriations Subcommittee).

¹⁷ *Id.*

¹⁸ *Id.*

recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to such individuals. Completion of the training component may count toward a law enforcement officer's required 40 hours of instruction for CET under s. 943.135, F.S.

The bill takes effect October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Creates s. 943.1727, F.S., requiring FDLE to establish a continued employment training component relating to ASD.

Section 2: Provides an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have any impact on state revenues.
2. Expenditures: The bill requires FDLE to develop continued employment training relating to Autism Spectrum Disorder (ASD). The department estimates the cost of developing the training is \$10,548, which is based on curriculum development workshops and production of training.¹⁹ However, the Criminal Justice Professionalism Division within FDLE is currently developing a course that will address ASD, and the fiscal impact of the bill can be absorbed within existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not appear to have any impact on local government revenues.
2. Expenditures: This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.
2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.

¹⁹ Florida Department of Law Enforcement, Agency Bill Analysis for HB 39 (2017) (on file with the Justice Appropriations Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS removed the bill's requirements for the CET component relating to Autism Spectrum Disorder to be a minimum of four hours and consist of in-person instruction.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.

On February 22, 2017, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute (CS). The CS changed the word "idiosyncrasies" to "characteristics" as it describes a person with ASD.

This analysis is drafted to the CS as passed by the Justice Appropriations Subcommittee.

1 A bill to be entitled
 2 An act relating to autism awareness training for law
 3 enforcement officers; creating s. 943.1727, F.S.;
 4 requiring the Department of Law Enforcement to
 5 establish a continued employment training component
 6 relating to autism spectrum disorder; providing a
 7 definition; specifying instruction to be included in
 8 the training component; providing that completion of
 9 the training may count toward continued employment
 10 instruction requirements; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 943.1727, Florida Statutes, is created
 15 to read:

16 943.1727 Continued employment training relating to autism
 17 spectrum disorder.—The department shall establish a continued
 18 employment training component relating to autism spectrum
 19 disorder as defined in s. 627.6686. The training component shall
 20 include, but need not be limited to, instruction on the
 21 recognition of the symptoms and characteristics of an individual
 22 on the autism disorder spectrum and appropriate responses to an
 23 individual exhibiting such symptoms and characteristics.
 24 Completion of the training component may count toward the 40
 25 hours of instruction for continued employment or appointment as

CS/CS/HB 39


2017

26 | a law enforcement officer required under s. 943.135.

27 | Section 2. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 107 Disturbing the Contents of a Grave or Tomb
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Criminal Justice Subcommittee; Cortes, B.
TIED BILLS: IDEN./SIM. **BILLS:** SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Merlin	White
2) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Darden	Miller
3) Judiciary Committee		Merlin	Camechis 

SUMMARY ANALYSIS

Currently, s. 872.02, F.S., provides that it is a third degree felony to willfully and knowingly damage or remove a tomb, monument, or other specified structure and a second degree felony to willfully and knowingly disturb the contents of a tomb. These offenses, however, do not apply to a:

- Person acting under the direction of the Division of Historical Resources of the Department of State;
- Cemetery regulated by the Department of Financial Services (DFS) under ch. 497, F.S.; or
- Person otherwise authorized by law to disturb a tomb, monument, or other specified structure.

On occasion, a cemetery may seek to remove or relocate the contents of a tomb for a legitimate purpose such as maintenance, expansion, or modernization. Currently, a cemetery regulated by DFS may remove or relocate the contents of a tomb only after receiving written authorization from a legally authorized representative of the decedent or a court. For cemeteries that are exempt from DFS regulation, there are no statutorily-specified requirements for the removal or relocation of the contents of a tomb.

Theoretically, an exempt cemetery that relocates the contents of a tomb could be in violation of the criminal offenses specified in s. 872.02, F.S.; however, in a recent case involving the relocation of a tomb by an exempt cemetery, which was not authorized by a representative of the decedent or the court, law enforcement authorities declined to prosecute due to a belief that the criminal offenses apply only to someone entering a cemetery without permission to commit a criminal act.

The bill amends s. 872.02, F.S., to:

- Clarify that the second degree felony offense of disturbing the contents of a tomb includes conduct such as excavation, exposure, movement, or removal of the contents of a tomb.
- Provide an exemption from the section's criminal offenses for an exempt cemetery that:
 - Conducts ordinary maintenance that does not relocate the tomb;
 - Obtains written authorization for the relocation from a legally authorized person or a court;
 - Relocates a tomb if the relocation is necessitated by damage from a natural disaster; or
 - Publishes a notice of the relocation of tomb that is more than 75 years old in a newspaper in the relevant county and does not receive an objection or, if an objection is received, is granted approval for the relocation by the local governing body.

The Criminal Justice Impact Conference has not yet met to determine the impact of this bill. The bill may increase the need for prison beds to the extent that it clarifies the type of conduct that results in commission of the second degree felony offense of disturbing the contents of a tomb. The bill may also have a fiscal impact on local government entities for hearings required by the bill in specified circumstances and on exempt cemeteries that publish notice in newspapers for certain tomb relocations.

The bill provides an effective date of October 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0107d.JDC.DOCX

DATE: 3/14/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Criminal Offenses Concerning Dead Bodies and Graves under Chapter 872, F.S.

In Florida, criminal offenses concerning dead bodies and graves are governed by Chapter 872, F.S.¹ Within that chapter are a number of statutory prohibitions and limitations.² In part relevant to this bill, s. 872.02(1) and (2), F.S., make it a:

- Third degree felony³ for a person to willfully and knowingly destroy, mutilate, deface, injure, or remove any:
 - Tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead; or
 - Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or structure or thing placed or designed for a memorial of the dead or for any enclosure for the burial of the dead.
- Third degree felony for a person to willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant placed or being within any enclosure for the burial of the dead.
- Second degree felony⁴ to willfully and knowingly disturb the contents of a tomb or grave.⁵

The section provides that a “tomb” includes any mausoleum, columbarium, or belowground crypt.”⁶

Finally, the section specifies that the offenses described above do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;⁷
- Cemeteries operating under ch. 497, F.S.; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents.”⁸

¹ Ch. 872, F.S. is entitled, “Offenses Concerning Dead Bodies and Graves.”

² This includes selling or trafficking in dead bodies; injuring or removing a tomb or monument; disturbing the contents of a grave or tomb; cremating human bodies less than 48 hours after death; performing autopsies without consent; discovering human remains; and abusing dead bodies. *See* ss. 872.01-872.06, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁵ Violations of s. 872.02, F.S., are not frequently charged. According to data from the Florida Department of Law Enforcement, there were 158 arrests for a violation of s. 872.02, F.S., during the 11-year period between 2006 and 2016, i.e., less than an average of 15 arrests per year. Email from Ronald Draa, Director of External Affairs, Florida Department of Law Enforcement (January 17, 2017) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

⁶ Section 872.02(4), F.S.

⁷ The powers and duties of the Division of Historical Resources of the Department of State are set forth in s. 267.031, F.S. Subject to some limitations, a State Archaeologist, as employed by the Division, may assume jurisdiction over an unmarked human burial site in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. *See* ss. 872.05(4), (5), and (6), F.S.

⁸ Section 872.02(3), F.S. Few appellate cases in Florida reference s. 872.02, F.S. Only one case has discussed the interpretation of s. 872.02, F.S., and that case involved interpretation of language that has since been amended. *See Newman v. State*, 174 So. 2d 479 (Fla.

Cemetery Regulation under Chapter 497, F.S.

As referenced above, one of the statutory exceptions to the criminal offenses established in s. 872.02, F.S., is for “cemeteries operating under ch. 497.” Chapter 497, F.S., is entitled the Florida Funeral, Cemetery, and Consumer Services Act (“the Act”).⁹ The Act authorizes the Board of Funeral, Cemetery, and Consumer Services (“the Board”) within the Department of Financial Services (“DFS”) to regulate cemeteries,¹⁰ columbaria,¹¹ cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.¹²

The Act specifically exempts, however, certain types of cemeteries from its regulations. To be exempt, a cemetery must be a:

- Religious institution cemetery of less than five acres which provide only single-level ground burial;
- County or municipal cemetery;
- Community and nonprofit association cemetery that provides only single-level ground burial and does not sell burial spaces or burial merchandise;
- Cemetery owned and operated or dedicated by a religious institution before June 23, 1976;
- Cemetery beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- Columbarium consisting of less than one-half acre contiguous to and owned by an existing religious institution subject to local government zoning;
- Family cemetery of less than two acres not selling burial spaces or merchandise;
- A mausoleum of two acres or less contiguous to and owned by a religious institution subject to local government zoning, incorporated at least 25 years and possessing sufficient funds in an endowment fund to construct the mausoleum; or
- Columbarium consisting of five acres or less which is located on the main campus of a state university.¹³

Cemeteries Seeking to Remove or Relocate a Tomb or Grave

On occasion, a cemetery may seek to remove or relocate the contents of a tomb or grave for a legitimate purpose such as maintenance, expansion, or modernization. Currently, a cemetery operating under ch. 497, F.S., may disinter or reinter human remains only after receiving written authorization from a legally authorized representative¹⁴ or written authorization from a court of competent jurisdiction. Failure to comply with such requirements subjects the cemetery to discipline by the Board.¹⁵

2d DCA 1965) (reversing a conviction for wantonly and maliciously disturbing the contents of a tomb or grave under a prior version of s. 872.02, F.S., where there was no evidence that the grave was on Native American land; the grave was open without any fencing or warning; the skull found by the defendant was not attached to the body; the defendant never made any attempt to conceal the fact that he took the skull; and defendant testified that he did not intend to commit a moral wrong).

⁹ s. 497.001, F.S.

¹⁰ Section 497.005(11), F.S., defines a “cemetery” as comprising one of the following: “land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.”

¹¹ Section 497.005(16), F.S., defines a “columbarium” as “a structure or building that is substantially above the ground and that is intended to be used for the inurnment of cremated remains.”

¹² Section 497.103(1) and (2), F.S.

¹³ Section 497.260(1), F.S. All cemeteries in this state, whether exempt or subject to regulation under ch. 497, F.S., must comply with the regulations specified in ss. 497.276(1), 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284, F.S. s. 497.260(2), F.S. Regulations imposed under these sections of law include requirements for the maintenance of burial records and solicitation of certain sales and prohibitions against discrimination based on race, color, creed, marital status, sex, or national origin. These regulations do not address the removal or relocation of the contents of a tomb.

¹⁴ Section 497.005(43), F.S., defines “legally authorized person” as meaning, in the priority listed: (a) the decedent, when written inter vivos authorizations and directions are provided by the decedent; (b) the person designated by the decedent as authorized to direct disposition pursuant to specified federal laws; (c) the surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28 that resulted in or contributed to the death of the deceased; (d) a son or

There are no statutorily-specified requirements for the disinterment or reinterment of human remains by a cemetery that is exempt from regulation by the Board. Accordingly, an exempt cemetery is not expressly required by law to first obtain the approval of a legally authorized representative of the decedent for such conduct. Theoretically, an exempt cemetery engaging in such conduct could be in violation of the criminal offenses specified in s. 872.02, F.S., proscribing the removal of a tomb, monument, and other specified items and proscribing the disturbance of the contents of a tomb or grave; however, based on an incident that occurred in 2013, it appears law enforcement authorities may be reluctant at times to prosecute such cases under the current language of s. 872.02, F.S.¹⁶

In December 2013, a complaint was filed with DFS in which it was alleged that an exempt cemetery in Casselberry, Florida relocated a grave without prior authorization from family members of the decedent. The matter was reviewed by DFS investigators and it was determined that the cemetery had moved the grave approximately three feet away from its former location.¹⁷ The cemetery owner admitted moving and lowering the grave as necessary for the cemetery's redevelopment plan and would reduce the risk of damage to the exposed grave vault by vandals or storms. The family, upset by the relocation, reported the matter to local law enforcement and DFS, but neither agency believed action could be taken against the cemetery. DFS was without jurisdiction in the matter because the cemetery was exempt from regulation under ch. 497, F.S. Further, DFS noted that in a previous report regarding an alleged unauthorized grave relocation that law enforcement had stated that s. 872.02, F.S. "is for 'grave robbers' or someone entering onto a cemetery without permission to commit a criminal act and does not relate to this . . . scenario" involving an exempt cemetery. DFS agreed with this finding.¹⁸

Effect of the Bill

The bill amends s. 872.02(1), F.S., to create definitions for the terms used in the statute. Under the bill:

- An "exempt cemetery" means a cemetery that is exempt from regulation pursuant to s. 497.260(1), F.S., i.e., a cemetery that is not subject to regulation by the Board.
- A "legally authorized person" has the same meaning as provided in s. 497.005, F.S.
- A "memorial" means a structure or thing placed or designed for a memorial of the dead, including a monument or gravestone.
- An "operator" means an owner, officer, employee, or agent.

daughter who is 18 years of age or older; (e) a parent; (f) a brother or sister who is 18 years of age or older; (g) a grandchild who is 18 years of age or older; (h) a grandparent; or (i) any person in the next degree of kinship. The term may also include, if no family member exists or is available, the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission, or administrator acting under part II of chapter 406 or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as the legally authorized person.

¹⁵ See s. 497.384(3), F.S. ("The funeral director shall obtain written authorization from a legally authorized person or a court of competent jurisdiction prior to the disinterment and reinterment of a dead human body."); see also s. 497.152, F.S. (imposing discipline or other enforcement action against a licensee for specified conduct which includes "[f]ailing to obtain written authorization from a legally authorized person before entombment, interment, disinterment, disentombment, or disinterment of the remains of any human being."); and Rule 69K-6.007(4)(a)-(c), F.A.C. (requiring cemeteries regulated by DFS to obtain all required permits and specified written authorization or a court order before performing a disinterment).

¹⁶ See "Report: Casselberry Cemetery Cleared of Wrongdoing After Moving Grave," WFTV 9 (April 25, 2014), available at <http://www.wftv.com/news/local/report-casselberry-cemetery-cleared-wrongdoing-aft/106726697> (last viewed on Feb. 13, 2017).

¹⁷ Kurt Schuller, Investigator, Florida Department of Financial Services, Report of Investigation, Case No. ATN-21993, at *2-3 (April 10, 2014) (on file with the House Subcommittee on Criminal Justice).

¹⁸ *Id.*

- A “tomb” includes a grave space,¹⁹ mausoleum,²⁰ columbarium,²¹ or belowground crypt,²² as those terms are defined in s. 497.005, F.S., and a burial mound or earthen or shell monument containing human skeletal remains or associated burial artifacts.

The bill also amends:

- Section 872.02(2), F.S., to make technical changes for purposes of eliminating redundancies, using consistent terminology, and clarifying the language.
- Section 872.02(3), F.S., to clarify that the second degree felony offense of disturbing the contents of a tomb includes conduct such as excavation, exposure, movement, and removal of the contents of a tomb.

Finally, the bill adds exceptions providing that the law’s criminal offenses do not apply to an operator of an exempt cemetery:

- Who is conducting ordinary maintenance if such maintenance does not relocate the memorial, tomb, or contents of a tomb to another plot or site; or
- Who relocates a memorial, tomb, or contents of a tomb to another plot or site if:
 - Before the relocation, the operator obtains written authorization for the relocation from a legally authorized person or a court order authorizing the relocation;
 - A natural disaster causes damage to the exempt cemetery which necessitates the relocation; or
 - More than 75 years have elapsed since the interment, entombment, or inurnment²³ at the exempt cemetery and the operator of the exempt cemetery publishes a public notice, once a week for 4 consecutive weeks, in a newspaper of general circulation within the county in which the exempt cemetery is located.

The bill provides that a written and signed contract between the operator and a legally authorized person permitting relocation may serve as a written authorization for relocation.

The bill specifies that the public notice must include the:

- Name of the exempt cemetery;
- Name, address, and telephone number of the cemetery representative with whom written objections may be filed;
- Reason and necessity for the relocation;
- Name of the deceased person interred, entombed, or inurned;
- Date of initial interment, entombment, or inurnment;
- Proposed site of relocation; and
- Proposed date of relocation, which may not be less than 30 days from the last date of publication.

If a written objection to the relocation is not received from a legally authorized person within 30 days after the last date of publication of the notice, the exempt cemetery may proceed with the relocation.

¹⁹ Section 497.005(40), F.S., defines a “grave space” as “a space of ground in a cemetery intended to be used for the interment in the ground of human remains.”

²⁰ Section 497.005(46), F.S., defines a “mausoleum” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains.”

²¹ See Footnote 11.

²² Section 497.005(4), F.S., defines “belowground crypts” as “interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as ‘lawn crypts,’ ‘westminsters,’ or ‘turf-top crypts.’”

²³ The word “inurn” means “1. Entomb; 2. To place (as cremated remains) in an urn.” The noun form of “inurn” is “inurnment.” See <https://www.merriam-webster.com/dictionary/inurn> (last viewed Jan. 30, 2017).

If such objection is received, a public hearing shall be held before the city council if the exempt cemetery is located in a municipality or before the applicable county commission if the exempt cemetery is not located within a municipality. At the hearing, interested parties must have an opportunity to be heard and introduce testimony. The council or commission must determine whether to grant or deny the request for the relocation. If granted, the exempt cemetery may proceed with the relocation.

The bill takes effect on October 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 872.02, F.S., relating to injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties; exceptions.

Section 2. Provides an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the impact of this bill. It is anticipated that the bill may increase the need for prison beds to the extent that it clarifies the type of conduct that results in commission of the second degree felony offense of disturbing the contents of a tomb. Such potential increase, however, may be offset by the exceptions created by the bill for the relocation of tombs by exempt cemeteries that comply with the bill's requirements for such relocations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

A city council or county commission could incur expenses to hold hearings regarding relocations unless the council or commission assesses fees from the parties for such expenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be a fiscal impact to the operator of a cemetery who chooses to publish notice regarding a proposed relocation in a newspaper of general circulation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law. Additionally, it is anticipated that any fiscal impact of the bill on a municipality or county as a result of the bill's requirement for a hearing in specified circumstances would be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Added definitions for the terms used in the statute and made technical changes to create clearer and more consistent language.
- Provided that the offense of disturbing the contents of a tomb includes conduct such as excavation, exposure, movement, and removal of the contents of a tomb.
- Added exceptions for the operators of exempt cemeteries who conduct ordinary maintenance without relocating a memorial, tomb, or its contents or who conduct relocation or removal with a court order.
- Increased the amount of time that an exempt cemetery is must publish notice of its intent to relocate a memorial, tomb, or its contents from two weeks to four weeks.

On February 22, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies that a written and signed contract between the operator and a legally authorized person which permits relocation serves as a written authorization for relocation.

This analysis is drafted to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.

1 A bill to be entitled
 2 An act relating to criminal offenses involving tombs
 3 and memorials; amending s. 872.02, F.S.; creating and
 4 revising definitions; making technical changes;
 5 prohibiting the excavation, exposition, movement,
 6 removal, or other disturbance of the contents of a
 7 tomb or memorial; providing criminal penalties;
 8 providing exceptions to the prohibition against
 9 disturbance of the contents of a tomb or memorial for
 10 cemeteries exempted from certain regulation; providing
 11 an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 872.02, Florida Statutes, is amended to
 16 read:

17 872.02 Injuring or removing tomb or memorial ~~monument~~;
 18 disturbing contents of ~~grave or~~ tomb; penalties; exceptions.-

19 (1) For purposes of this section, the term:

20 (a) "Exempt cemetery" means a cemetery that is exempt from
 21 regulation pursuant to s. 497.260(1).

22 (b) "Legally authorized person" has the same meaning
 23 provided in s. 497.005.

24 (c) "Memorial" means a structure or thing placed or
 25 designed for a memorial of the dead. The term includes a

26 monument or gravestone.

27 (d) "Operator" means an owner, officer, employee, or
 28 agent.

29 (e) "Tomb" includes a grave space, mausoleum, columbarium,
 30 or belowground crypt, as those terms are defined in s. 497.005,
 31 and also includes a burial mound or an earthen or shell monument
 32 containing human skeletal remains or associated burial
 33 artifacts.

34 (2) A person commits a felony of the third degree,
 35 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 36 if the person ~~who~~ willfully and knowingly:

37 (a) Destroys, mutilates, defaces, injures, or removes:

38 1. ~~A any tomb or memorial;~~ ~~monument, gravestone, burial~~
 39 ~~mound, earthen or shell monument containing human skeletal~~
 40 ~~remains or associated burial artifacts, or other structure or~~
 41 ~~thing placed or designed for a memorial of the dead, or~~

42 2. ~~A any fence, railing, curb, or other thing intended~~
 43 for:

44 a. The protection or ornamentation of ~~a any tomb or~~
 45 ~~memorial;~~ ~~monument, gravestone, burial mound, earthen or shell~~
 46 ~~monument containing human skeletal remains or associated burial~~
 47 ~~artifacts, or other structure before mentioned, or~~

48 b. ~~An for any enclosure for the burial of the dead,~~ ~~or~~
 49 willfully

50 (b) Destroys, mutilates, removes, cuts, breaks, or injures

51 a any tree, shrub, or plant placed or being within an any such
 52 enclosure for the burial of the dead, ~~commits a felony of the~~
 53 ~~third degree, punishable as provided in s. 775.082, s. 775.083,~~
 54 ~~or s. 775.084.~~

55 (3)(2) A person who willfully and knowingly excavates,
 56 exposes, moves, removes, or otherwise disturbs the contents of a
 57 tomb ~~or grave~~ commits a felony of the second degree, punishable
 58 as provided in s. 775.082, s. 775.083, or s. 775.084.

59 (4)(3) This section shall not apply to:

60 (a) A any person acting under the direction or authority of
 61 the Division of Historical Resources of the Department of State,
 62 to cemeteries operating under chapter 497, or to a any person
 63 otherwise authorized by law to commit an act ~~remove or disturb a~~
 64 ~~tomb, monument, gravestone, burial mound, or similar structure,~~
 65 ~~or its contents, as described in subsection (2)(1) or subsection~~
 66 (3).

67 (b) An operator of an exempt cemetery who is conducting
 68 ordinary maintenance, if such maintenance does not relocate a
 69 memorial, tomb, or the contents of a tomb to another plot or
 70 site.

71 (c) An operator of an exempt cemetery who relocates a
 72 memorial, a tomb, or the contents of a tomb to another plot or
 73 site if:

74 1. Before the relocation, the operator obtains written
 75 authorization for the relocation from a legally authorized

76 person or a court order authorizing the relocation. A written
 77 and signed contract between the operator and a legally
 78 authorized person permitting relocation may serve as a written
 79 authorization under this subparagraph;

80 2. A natural disaster causes damage to the exempt cemetery
 81 which necessitates the relocation; or

82 3. More than 75 years have elapsed since the interment,
 83 entombment, or inurnment at the exempt cemetery and the operator
 84 of the exempt cemetery publishes a public notice, once a week
 85 for 4 consecutive weeks, in a newspaper of general circulation
 86 within the county in which the exempt cemetery is located.

87 a. The public notice must contain the name of the exempt
 88 cemetery; the name, address, and telephone number of the
 89 representative of the exempt cemetery with whom written
 90 objections may be filed; the reason and necessity for the
 91 relocation; the name of the deceased person interred, entombed,
 92 or inurned; the date of initial interment, entombment, or
 93 inurnment; the proposed site of relocation; and the proposed
 94 date of relocation. The proposed date of relocation may not be
 95 less than 30 days from the last date of publication.

96 b. If a written objection to the relocation:

97 (I) Is not received from a legally authorized person
 98 within 30 days after the last date of publication of the public
 99 notice, the exempt cemetery may proceed with the relocation.

100 (II) Is received from a legally authorized person, a

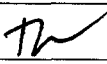
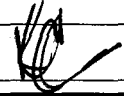
101 public hearing shall be held before the city council if the
 102 exempt cemetery is located in a municipality or before the
 103 applicable county commission if the exempt cemetery is not
 104 located within a municipality. Interested parties shall have the
 105 opportunity to be heard at the hearing in person or by counsel
 106 and to introduce testimony. The council or commission shall
 107 determine whether to grant or deny the request for the
 108 relocation. If granted, the exempt cemetery may proceed with the
 109 relocation.

110 ~~(4) For purposes of this section, the term "tomb" includes~~
 111 ~~any mausoleum, columbarium, or belowground crypt.~~

112 Section 2. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 111 Public Records/Identity of Witness to a Murder
SPONSOR(S): Criminal Justice Subcommittee, Stafford and McGhee and others
TIED BILLS: IDEN./SIM. BILLS: CS/CS/SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	White	White
2) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Moore	Harrington
3) Judiciary Committee		White 	Camechis 

SUMMARY ANALYSIS

Current law provides public record exemptions for information identifying certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, a victim of a human trafficking offense who is less than 18 years of age, and a victim of a sexual offense.

The bill creates a public record exemption for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder. The information is confidential and exempt for two years after the date on which the murder is observed by the witness. The bill authorizes a criminal justice agency to disclose the confidential and exempt information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also provides that the public record exemption continues to apply to personal identifying information of a witness to a murder when it is disclosed in discovery to a person who is arrested or when it is made part of a court file.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill takes effect on July 1, 2017.

The bill may have a minimal fiscal impact on the state and local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for personal identifying information of a witness to a murder; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Florida Constitution

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Legislature, however, may provide by general law for the exemption of records from the requirements of art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.¹

Florida Statutes

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."³ In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁴

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

Public Record Exemptions for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides public record exemptions for various types of criminal investigative information⁶ or criminal intelligence information⁷ that reveals the identifying

¹ FLA. CONST. art. I, s. 24(c).

² s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ *Id.*

⁵ s. 119.15(3), F.S.

⁶ Section 119.011(3)(b), F.S., defines the term "criminal investigative information" as "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

⁷ Section 119.011(3)(a), F.S., defines the term "criminal intelligence information" as "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

information of specified parties involved in the investigation of a crime. Information revealing the identity of:

- A confidential informant or a confidential source is exempt from disclosure.⁸
- A victim under the age of 18 of a human trafficking or child abuse offense is confidential and exempt from disclosure.⁹
- A victim of a sexual offense is confidential and exempt from disclosure.¹⁰

It should be noted that there is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed by the custodian of the record when determined appropriate by the custodian.¹¹ If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of the record to anyone other than the persons or entities specifically designated in statute.¹²

The identifying information of the above-described crime victims remains confidential and exempt from public disclosure even when such information is:

- Provided in discovery to a person who has been arrested.¹³ An exemption from public record requirements does not render a record privileged for purposes of criminal discovery.¹⁴
- Made part of a court record.¹⁵

Such victim information may only be disclosed by a law enforcement agency (LEA):

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast if the LEA determines that such release would assist in locating or identifying a person that the LEA believes to be missing or endangered. The information provided must be limited to that needed to identify or locate the victim and may not include the sexual nature of the offense committed against the person.
- To another governmental agency in the furtherance of its official duties and responsibilities.

Witness to a Crime

News articles during the past two years have reported on several unsolved homicides occurring in the Tampa area.¹⁶ The victim in one of the cases was Edward Harris, a 14-year-old boy who was murdered

⁸ s. 119.071(2)(f), F.S.

⁹ s. 119.071(2)(h)1.a., F.S.

¹⁰ s. 119.071(2)(h)1.b., F.S.

¹¹ See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹² See 85-62 Fla. Op. Att’y Gen. (1985).

¹³ s. 119.011(3)(c)5., F.S.

¹⁴ See s. 119.07(8), F.S. (providing that the section, which is in part entitled “exemptions” and which requires a records custodian to redact the portion of a record to which an exemption applies, does not “expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings.” (emphasis added)); *Ramses, Inc. v. Demings*, 29 So. 3d 418, 421-423 (Fla. 5th DCA 2010) (recognizing the distinction between public records laws and criminal discovery rights and holding that unredacted videos showing undercover officers’ faces were still subject to public record exemptions even though the unredacted videos were released to the defendants in discovery under Fla. R. Crim. P. 3.220); *B.B. v. Dep’t. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that a mother had a right to records “in her capacity as a party to the child dependency proceeding,” not as a “citizen” and that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”); and *Dep’t. of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) (“Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.”).

¹⁵ s. 119.0714(1)(h), F.S.

¹⁶ Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2015), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 16, 2017); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited Jan. 16, 2017); Dan Sullivan, *In Tampa, a father and a city still seek answers a year after boy’s slaying*, TAMPA BAY TIMES, (May

in a park during a drive-by-shooting.¹⁷ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests. Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police.¹⁸

Currently, there is no public record exemption for the personal identifying information of a witness to a crime.

Effect of the Bill

The bill creates s. 119.071(2)(m), F.S., to provide that criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S.,¹⁹ is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for two years after the date on which the murder is observed by the witness.

The bill authorizes a criminal justice agency²⁰ to disclose such information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also adds a cross-reference to the exemption for the personal identifying information of a witness to a murder in:

- Section 119.011(3)(c)5., F.S., to specify that such information remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.
- Section 119.0714(1)(h), F.S., to specify that such information remains confidential and exempt from public disclosure when made part of the court record.²¹

The bill provides a statement of public necessity as required by the Florida Constitution.²² It specifies that the Legislature finds that personal identifying information of a witness to a murder should be made confidential and exempt to encourage “[c]omplete cooperation and truthful testimony of witnesses” because “[t]he judicial system cannot function without the participation of witnesses.”

The bill takes effect on July 1, 2017.

31, 2016), <http://www.tampabay.com/news/publicsafety/tampa-father-still-seeking-answers-a-year-after-boys-slaying/2279651> (last visited Jan. 16, 2017).

¹⁷ Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited Jan. 16, 2017).

¹⁸ *Id.*

¹⁹ Section 782.04, F.S., relating to murder, makes the unlawful killing of a human being punishable as a capital felony or second or first degree felony, depending on the circumstances of the crime.

²⁰ Section 119.011(4), F.S., defines the term “criminal justice agency” as: “(a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or (d) The Department of Corrections.”

²¹ This exemption is not made subject to the Open Government Sunset Review Act, because the Act provides that it does not apply to an exemption that applies solely to the State Court System. s. 119.15(2)(b), F.S.

²² FLA. CONST. art. I, s. 24(c).

B. SECTION DIRECTORY:

Section 1. Amends s. 119.011, F.S., relating to definitions.

Section 2. Amend s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 3. Amends s. 119.0714, F.S., relating to court files, court records, and official records.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to 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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public record exemption for the personal identifying information of a witness to a murder, which does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Adds authority for a criminal justice agency to disclose the personal identifying information of a witness to a murder in order to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- Adds a cross-reference in s. 119.011(3)(c)5., F.S., to the public record exemption created by the bill to specify that the personal identifying information of the witness remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.011, F.S.; providing that the personal identifying
 4 information of a witness to a murder remains
 5 confidential and exempt for a specified period;
 6 amending s. 119.071, F.S.; providing an exemption from
 7 public records requirements for criminal intelligence
 8 or criminal investigative information that reveals the
 9 personal identifying information of a witness to a
 10 murder for a specified period; authorizing specified
 11 entities to receive the information; providing for
 12 future legislative review and repeal of the exemption;
 13 amending s. 119.0714, F.S.; providing that the public
 14 records exemption applies to personal identifying
 15 information of a witness to a murder that is made part
 16 of a court file; providing a statement of public
 17 necessity; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Paragraph (c) of subsection (3) of section
 22 119.011, Florida Statutes, is amended to read:
 23 119.011 Definitions.—As used in this chapter, the term:
 24 (3)
 25 (c) "Criminal intelligence information" and "criminal

26 | investigative information" shall not include:

27 | 1. The time, date, location, and nature of a reported
28 | crime.

29 | 2. The name, sex, age, and address of a person arrested or
30 | of the victim of a crime except as provided in s. 119.071(2)(h).

31 | 3. The time, date, and location of the incident and of the
32 | arrest.

33 | 4. The crime charged.

34 | 5. Documents given or required by law or agency rule to be
35 | given to the person arrested, except as provided in s.

36 | 119.071(2)(h) or (2)(m), and, except that the court in a
37 | criminal case may order that certain information required by law
38 | or agency rule to be given to the person arrested be maintained
39 | in a confidential manner and exempt from the provisions of s.
40 | 119.07(1) until released at trial if it is found that the
41 | release of such information would:

42 | a. Be defamatory to the good name of a victim or witness
43 | or would jeopardize the safety of such victim or witness; and

44 | b. Impair the ability of a state attorney to locate or
45 | prosecute a codefendant.

46 | 6. Informations and indictments except as provided in s.
47 | 905.26.

48 | Section 2. Paragraph (m) is added to subsection (2) of
49 | section 119.071, Florida Statutes, to read:

50 | 119.071 General exemptions from inspection or copying of

51 public records.—

52 (2) AGENCY INVESTIGATIONS.—

53 (m)1. Criminal intelligence information or criminal
 54 investigative information that reveals the personal identifying
 55 information of a witness to a murder, as described in s. 782.04,
 56 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 57 I of the State Constitution for 2 years after the date on which
 58 the murder is observed by the witness. A criminal justice agency
 59 may disclose such information:

60 a. In the furtherance of its official duties and
 61 responsibilities.

62 b. To assist in locating or identifying the witness if the
 63 agency believes the witness to be missing or endangered.

64 c. To another governmental agency for use in the
 65 performance of its official duties and responsibilities.

66 2. This paragraph is subject to the Open Government Sunset
 67 Review Act in accordance with s. 119.15 and shall stand repealed
 68 on October 2, 2022, unless reviewed and saved from repeal
 69 through reenactment by the Legislature.

70 Section 3. Paragraph (h) of subsection (1) of section
 71 119.0714, Florida Statutes, is amended to read:

72 119.0714 Court files; court records; official records.—

73 (1) COURT FILES.—Nothing in this chapter shall be
 74 construed to exempt from s. 119.07(1) a public record that was
 75 made a part of a court file and that is not specifically closed

76 by order of court, except:

77 (h) Criminal intelligence information or criminal
 78 investigative information that is confidential and exempt as
 79 provided in s. 119.071(2)(h) or (2)(m).

80 Section 4. The Legislature finds that it is a public
 81 necessity that personal identifying information of a witness to
 82 a murder, as described in s. 782.04, Florida Statutes, be made
 83 confidential and exempt from s. 119.07(1), Florida Statutes, and
 84 s. 24(a), Article I of the State Constitution for 2 years after
 85 the date on which the murder is observed by the witness. The
 86 judicial system cannot function without the participation of
 87 witnesses. Complete cooperation and truthful testimony of
 88 witnesses is essential to the determination of the facts of a
 89 case. The public disclosure of personal identifying information
 90 of a witness to a murder could have an undesirable chilling
 91 effect on witnesses stepping forward and providing their
 92 eyewitness accounts of murders. A witness to a murder may be
 93 unwilling to cooperate fully with law enforcement officers if
 94 the witness knows his or her personal identifying information
 95 can be made publicly available. A witness may be less likely to
 96 call a law enforcement officer and report a murder if his or her
 97 personal identifying information is made available in connection
 98 with the murder that is being reported or under investigation.
 99 The Legislature further finds that a witness could become the
 100 subject of intimidation tactics or threats by the perpetrator of

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101 the murder if the witness's personal identifying information is
102 publicly available. For these reasons, the Legislature finds
103 that it is a public necessity that the personal identifying
104 information of a witness to a murder, as described in s. 782.04,
105 Florida Statutes, be made confidential and exempt from public
106 records requirements.

107 Section 5. This act shall take effect July 1, 2017.



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	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Stafford offered the following:

Amendment (with title amendment)

Between lines 65 and 66, insert:

6 d. To the parties in a pending criminal prosecution as
 7 required by law.

9 -----
 10 **T I T L E A M E N D M E N T**

11 Remove line 11 and insert:

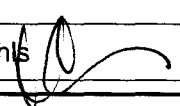
12 entities and parties to receive the information; providing for

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 151 Proceedings Involving Minors or Certain Other Persons

SPONSOR(S): Children, Families & Seniors Subcommittee and Civil Justice & Claims Subcommittee; Brodeur and Moskowitz and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	Stranburg	Bond
2) Children, Families & Seniors Subcommittee	14 Y, 0 N, As CS	Tuszynski	Brazzell
3) Judiciary Committee		Stranburg <i>ces</i>	Camechls 

SUMMARY ANALYSIS

Current law authorizes a trial court to enter any order necessary to protect a child victim or witness, a person who has an intellectual disability, or a sexual offense victim or witness of any age from severe emotional or mental harm due to the presence of the defendant. The court may also allow the use of service or therapy animals in proceedings involving a sexual offense to assist a child victim or witness or a sexual offense victim or witness. The support animals must be evaluated and registered according to national standards. Local courts allowing such animals typically develop detailed requirements for their use.

This bill:

- Expands the list of proceedings in which support animals may be used to include any proceeding involving child abuse, abandonment, or neglect;
- Expands the categories of allowable animals to include a "facility dog";
- Allows a court to set any conditions it finds just and appropriate when taking the testimony of a person who has an intellectual disability, including the use of a therapy animal or facility dog;
- Removes the requirement for evaluation and registration of an animal pursuant to national standards, and replaces it with a requirement that an animal be trained, evaluated, and certified according to industry standards; and
- Provides definitions for the terms "facility dog" and "therapy animal."

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 92.55, F.S., authorizes a court to enter any order necessary to protect victims and witnesses who are under the age of 18, victims or witnesses to a sexual offense, or any person who has an intellectual disability from severe emotional or mental harm while testifying in any court proceeding. An order may limit the number of victim or witness interviews, prohibit depositions, require submission of questions prior to examination, set the place and conditions for conducting proceedings, and allow or prohibit a person's attendance at a proceeding.¹ When deciding whether to enter such an order, the court must consider certain factors, such as the victim's or witness's age, the nature of the offense, and the degree of emotional trauma that will result as a consequence of the defendant's presence.²

In cases involving a sexual offense, the court may also allow the use of a service or therapy animal when taking the testimony of a child victim or witness or a sexual offense victim or witness of any age.³ When making this decision, the court must consider the age of the person testifying, the rights of the parties to the litigation, and any other relevant factor that would facilitate testimony.⁴

Section 92.55, F.S., does not define the terms "service animal" or "therapy animal."

- The term "service animal" is used by the Americans with Disabilities Act and has a specific meaning in federal law as a dog that is individually trained to do work or perform tasks for a person with disabilities, such as a guide dog for individuals with visual impairment or blindness or a seizure response dog for individuals with seizure disorders.⁵ The definition specifically excludes dogs whose sole function is to provide comfort or emotional support.⁶ "Service animal" is also defined in s. 413.08, F.S., expanding slightly on the federal definition. Section 92.55, F.S., does not cite to either definition. Service animals already have protected special access to courtrooms through the Americans with Disabilities Act.⁷
- The term "therapy animal" is generally used to describe an animal that is not a service animal and provides emotional comfort and support to humans. Therapy animals may be trained, evaluated, and certified to provide therapeutic contact to improve physical, social, emotional, and/or cognitive functioning.⁸

At least four circuit courts have implemented formal animal support programs. The Second Circuit began its animal support program in 2006,⁹ the Fifth¹⁰ and Ninth¹¹ Circuits did so in 2014, and the

¹ Section 92.55(4), F.S.

² Section 92.55(3), F.S.

³ Section 92.55(5), F.S.

⁴ *Id.*

⁵ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).

⁶ U.S. Department of Justice, Disability Rights Section, Service Animals, https://www.ada.gov/service_animals_2010.htm (last accessed March 2, 2017).

⁷ *Supra* note 5.

⁸ ADA Network Service Animals and Emotional Support Animals, <https://adata.org/publication/service-animals-booklet> (last accessed March 2, 2017).

⁹ Courthouse Therapy Dog History and Statistics, Florida's Second Judicial Circuit, <http://2ndcircuit.leoncountyfl.gov/petHistory.php> (last accessed March 2, 2017).

¹⁰ Circuit Court of the Fifth Judicial Circuit of the State of Florida, Administrative Order No. A-2014-3, *Administrative Order Establishing a Certified Therapy Dog Program for the Fifth Judicial Circuit*, January 16, 2014.

¹¹ Circuit Court of the Ninth Judicial Circuit, in and for Orange County, FL, Administrative Order No. 2014-26, *Administrative Order Establishing a Certified Therapy Dog Program (K-9th Circuit Program)*, Orange County, October 27, 2014.

Twentieth Circuit¹² started one in 2016. The Thirteenth Circuit has also allowed a facility dog in its courtrooms for children in dependency cases.¹³

Scientific research shows that animals significantly reduce physiological and behavioral distress in children, including a lowering of heart rate and blood pressure.¹⁴ The Second,¹⁵ Fifth,¹⁶ and Ninth¹⁷ Circuit courts all report that the use of animals during proceedings has generally had a positive effect and led the courts to be better equipped to make decisions.

While some Circuit courts have officially authorized the use of therapy dogs in their courtrooms, facility dogs are beginning to be used as well.¹⁸ "Facility dogs are expertly trained dogs who partner with a facilitator working in a health care, visitation or education setting . . . A well-mannered and highly trained facility dog encourages feelings of calm and security for clients in a visitation setting such as a courtroom."¹⁹

Without a national governing organization for these animals, guidelines have been set by national and international organizations within the therapy animal²⁰ and facility dog industry²¹ that are followed as industry standards. For example, one organization provides assistance and training for agencies that want to create facility dog programs specific to courtrooms.²² The organization requires a dog to be a graduate of an assistance dog school that is a member of a group which accredits and regularly assesses assistance dog organizations and programs to ensure high standards.²³

At least three of the circuit courts that currently provide therapy animal programs have approved providers listed on their webpages. The Second Circuit has approved the Tallahassee Memorial Healthcare Animal Therapy Program²⁴ and both the Fifth and Ninth Circuits have approved Companions for Courage.^{25,26}

Current law lists "proceedings involving a sexual offense" as the only proceedings in which the use of service or therapy animals are permitted. However, circuit courts are also using these animals in cases involving the abuse, abandonment, or neglect of children. These child abuse, abandonment, or neglect cases may be criminal in nature or be assigned to the dependency court. During these proceedings, children may be called to testify about traumatic abuse, neglect, or exploitation they have suffered.

¹² In the Twentieth Judicial Circuit in and for the State of Florida, Administrative Order No. 12.7, *Twentieth Judicial Circuit Certified Therapy Dog Program for Dependency Cases*, June 8, 2016.

¹³ Voices for Children, Meet Tibet, Florida's First Courthouse Dog, <http://vfcgal.org/tibet/> (last accessed March 2, 2017).

¹⁴ Nagengast, Sunny L., et al., "The effects of the presence of a companion animal on physiological arousal and behavioral distress in children during a physical examination" *Journal of Pediatric Nursing* 12, 323-330 (1997).

¹⁵ *Supra* note 9.

¹⁶ Fifth Judicial Circuit Therapy Dog Program, Fifth Judicial Circuit Court of Florida, <http://www.circuit5.org/c5/programs-services/therapy-dog-program/> (last accessed March 2, 2017).

¹⁷ K9th Circuit Program, Ninth Judicial Circuit Court of Florida, <http://ninthcircuit.org/about/programs/k9th-circuit-program> (last accessed March 2, 2017).

¹⁸ *Supra* note 13

¹⁹ Canine Companions, Facility Dogs, <http://www.cci.org/assistance-dogs/Our-Dogs/facility-dogs.html> (last accessed March 2, 2017).

²⁰ Therapy Dogs International, Testing Requirements, <http://www.tdi-dog.org/HowToJoin.aspx?Page=Testing+Requirements> (last accessed March 2, 2017).

²¹ Assistance Dogs International, Facility Dogs Training Standards, <http://www.assistedoginternational.org/standards/assistance-dogs/standards-for-dogs/training-standards-for-facility-dogs/> (last accessed March 2, 2017).

²² Courthouse Dogs Foundation, Expert education and guidance for legal professionals, <https://courhousedogs.org/getting-started/best-practices/> (last accessed March 2, 2017).

²³ *Id.*

²⁴ Florida Second Judicial Circuit, Courthouse Therapy Dogs, <http://2ndcircuit.leoncountyfl.gov/petTherapy.php> (last accessed March 2, 2017).

²⁵ Fifth Judicial Circuit Court of Florida, Fifth Judicial Circuit Therapy Dog Program, <http://www.circuit5.org/c5/programs-services/therapy-dog-program/> (last accessed March 2, 2017).

²⁶ Ninth Judicial Circuit Court of Florida, K9th Circuit Program, <http://www.ninthcircuit.org/about/programs/k9th-circuit-program> (last accessed March 2, 2017).

Effect of Proposed Changes

The bill amends s. 92.55, F.S., to:

- Expand the list of proceedings in which support animals may be used to include any proceeding involving child abuse, abandonment, or neglect;
- Remove the reference to "service animals," as these animals are already protected under federal law;
- Expand the categories of allowable animals to include a "facility dog";
- Allow a court to set any conditions it finds just and appropriate when taking the testimony of a person who has an intellectual disability, including the use of a therapy animal or facility dog;
- Remove the requirement for evaluation and registration of an animal pursuant to national standards, and replace it with a requirement that an animal be trained, evaluated, and certified according to industry standards;
- Define "facility dog" as a dog trained, evaluated, and certified as a facility dog pursuant to industry standards to provide unobtrusive emotional support in facility settings; and
- Define "therapy animal" as an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

B. SECTION DIRECTORY:

Section 1 amends s. 92.55, F.S., related to judicial proceedings.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds definitions for the terms "facility dog," "service animal," and "therapy animal," and makes grammatical corrections.

On February 9, 2017, the Children, Families, & Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes "service animal" from the statute as service animals have federally protected special access to courtrooms under the Americans with Disabilities Act.
- Changes the definition of "therapy animal" to require "training, evaluation, and certification by industry standards" to more closely align statute with current practice.

1 A bill to be entitled
 2 An act relating to proceedings involving minors or
 3 certain other persons; amending s. 92.55, F.S.;
 4 providing that judges may allow the use of certain
 5 therapy animals or facility dogs in proceedings
 6 involving abuse, abandonment, or neglect; allowing
 7 such animals to be used when taking the testimony of
 8 certain other persons; providing definitions;
 9 providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (5) of section 92.55, Florida
 14 Statutes, is amended to read:

15 92.55 Judicial or other proceedings involving victim or
 16 witness under the age of 18, a person who has an intellectual
 17 disability, or a sexual offense victim or witness; special
 18 protections; use of ~~registered service or~~ therapy animals or
 19 facility dogs.-

20 (5) The court may set any other conditions it finds just
 21 and appropriate when taking the testimony of a victim or witness
 22 under the age of 18, a person who has an intellectual
 23 disability, or a sexual offense victim or witness ~~child victim~~
 24 ~~or witness or a sexual offense victim or witness~~, including the
 25 use of a ~~service or~~ therapy animal or facility dog ~~that has been~~

26 ~~evaluated and registered according to national standards,~~ in any
 27 proceeding involving a sexual offense or child abuse,
 28 abandonment, or neglect.

29 (a) When deciding whether to permit a victim or witness
 30 under the age of 18, a person who has an intellectual
 31 disability, or a sexual offense victim or witness ~~child victim~~
 32 ~~or witness or sexual offense victim or witness~~ to testify with
 33 the assistance of a ~~registered service or~~ therapy animal or
 34 facility dog, the court shall consider the age of the child
 35 victim or witness, the age of the sexual offense victim or
 36 witness at the time the sexual offense occurred, the interests
 37 of the child victim or witness or sexual offense victim or
 38 witness, the rights of the parties to the litigation, and any
 39 other relevant factor that would facilitate the testimony by the
 40 victim or witness under the age of 18, person who has an
 41 intellectual disability, or sexual offense victim or witness
 42 ~~child victim or witness or sexual offense victim or witness.~~

43 (b) For purposes of this subsection the term:

44 1. "Facility dog" means a dog that has been trained,
 45 evaluated, and certified as a facility dog pursuant to industry
 46 standards and provides unobtrusive emotional support to children
 47 and adults in facility settings.

48 2. "Therapy animal" means an animal that has been trained,
 49 evaluated, and certified as a therapy animal pursuant to
 50 industry standards by an organization that certifies animals as

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
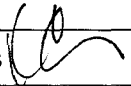
2017

51 | appropriate to provide animal therapy.

52 | Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 187 Selection and Duties of Property Appraisers
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Diaz, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	15 Y, 0 N, As CS	Miller	Miller
2) Judiciary Committee		Stranburg 	Camechis 
3) Government Accountability Committee			

SUMMARY ANALYSIS

The PCS for HJR 187 proposes to amend the State Constitution by limiting the authority to alter the manner of selecting the county property appraiser. As a result, the office of property appraiser would be filled only by vote of the county electors for a term of four years. The PCS also makes art. VIII, s. 1(d), of the Constitution the sole authority over the selection, duties, and alteration of the offices of the Five Constitutional Officers: property appraiser, tax collector, sheriff, supervisor of elections, and clerk of the circuit court.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. PCS for HJR 187 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The PCS impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the printing and publication costs for advertising a joint resolution and other necessary materials could be at least \$108,459.33, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language. This estimate is based on the cost to advertise constitutional amendments for the 2016 general election which was \$117.56 per word.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Article VIII of the State Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties¹ and has the authority to choose to create municipalities.²

Pursuant either to general³ or special law, a county government may be adopted by charter approved by the county voters. A county without a charter has such powers of self-government as provided by general⁴ or special law.⁵ A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.⁶ Article VIII, s. 6(e), of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization⁷ for specific home rule charters including those of Duval⁸ and Miami-Dade Counties.⁹ Currently, twenty Florida counties have adopted charters.¹⁰

The present Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the Five Constitutional Offices/Officers).¹¹ The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of four years. These officers have duties prescribed in general law.¹²

¹ Art. VIII, s. 1(a), Fla. Const.

² Art. VIII, s. 2(a), Fla. Const.

³ Section 125.60, F.S.

⁴ Ch. 125, Part I, F.S.

⁵ Art. VIII, s. 1(f), Fla. Const.

⁶ Art. VIII, s. 1(g), Fla. Const.

⁷ Article VIII, s. 6(e), Fla. Const., states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties “shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article.”

⁸ The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

⁹ In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

¹⁰ Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2017-2018, Appendix B, at 98-103.

¹¹ Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the Constitution requires counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.

¹² See ch. 30, F.S. (stating certain duties of the sheriff as a Constitutional officer); ch. 197, F.S. (stating certain duties of the tax collector as a Constitutional officer); ch. 193, Part I, F.S. (stating certain duties of the property appraiser as a Constitutional officer); ch. 102, F.S. (stating certain duties of the supervisor of elections as a Constitutional officer); and ch. 28, F.S. (stating certain duties of the clerk of the circuit court as a Constitutional officer).

The selection and appointment of county officers has always been a matter of uniform policy applicable throughout Florida. The office of sheriff and clerk of the court have been an integral part of county government in Florida since 1822.¹³ Beginning in 1845, the Governor appointed the sheriff and the clerk of the court in each county as a continuation of statutory authority.¹⁴ In contrast, by law the General Assembly annually appointed the county tax assessor.¹⁵ With the adoption of the Constitution of 1868, the Governor appointed not only the sheriff and the clerk of the court but also the county tax assessor and tax collector (both subject to the consent of the Senate), and the county treasurer, surveyor, superintendent of common schools, and the five county commissioners.¹⁶ However, since 1885 the sheriff, clerk of court, assessor of taxes, and tax collector generally have been elected by the county voters.¹⁷ Exceptions to this constitutional requirement were made by the statewide electorate in 1934¹⁸ and 1956.¹⁹ As discussed below, while the Constitution of 1968 authorized revision or abolition of the county constitutional offices under certain conditions, the majority of counties retain the elected constitutional officers with only a few acting to abolish these provisions.

The Five Constitutional Offices may be altered only through charter provision or by special act approved by the voters of the county.²⁰ All non-charter counties have the Five Constitutional Officers with statutorily prescribed duties. The charters of eight counties have changed the manner of selection of at least one of the Five Constitutional Officers or restructured or abolished at least one of the Five Constitutional Offices and transferred the powers to another county office.²¹

Brevard County

Brevard County “expressly preserved” the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.²² The county reiterated the ability to transfer or add to the powers of each of the county officers.²³ The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.²⁴ Each of the officers remains elected for four year terms.²⁵

¹³ Ch. 1, ss. 7, 10, Acts of the Legislative Council of the Territory of Florida (1822), at <http://edocs.dlis.state.fl.us/fldocs/leg/actterritory/> (last accessed March 9, 2017).

¹⁴ The Constitution of 1838 authorized the General Assembly to provide for the appointment, election, or removal of officers not otherwise expressly addressed in the Constitution. Art. VI, s. 19, Fla. Const. (1838). That Constitution also carried over all act of the Territorial Legislative Council not in conflict with the Constitution until otherwise changed by law. Art. XVII, s. 1, Fla. Const. (1838).

¹⁵ Ch. 10, s. 9, Laws of Fla. (1845). The General Assembly was the name for the Legislature under the 1838 Constitution. At this time the sheriff acted *ex officio* as the county tax collector. Ch. 10, s. 19, Laws of Fla. (1845).

¹⁶ Art. V, s. 19, Fla. Const. (1868).

¹⁷ Art. VIII, s. 6, Fla. Const. (1885, as amended); art. VIII, s. 1(d), Fla. Const. (1968).

¹⁸ General election of 1934, approving among other amendments SJR 113, creating art. VIII, s. 9, Fla. Const. (1885, as amended). This amendment authorized the Legislature to provide by law for the consolidation of government in Duval County but required the continuation of offices of sheriff and clerk of court.

¹⁹ General election of 1956, approving among other amendments SJR 1046, creating art. VIII, s. 11, Fla. Const. (1885, as amended). This amendment authorized the voters in Dade County to adopt a home rule charter, including the abolishment of any constitutional office provided the powers of that office were properly transferred and exercised.

²⁰ Art. VIII, s. 1(d), Fla. Const.

²¹ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

²² Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed March 9, 2017).

²³ Brevard County Florida, Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed March 9, 2017).

²⁴ Brevard County Florida, Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed March 9, 2017).

²⁵ Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1.1, *available at* https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed March 9, 2017).

Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.²⁶ However, the office of the tax collector was abolished and the duties were transferred to the Department of Finance and Administrative Services, headed by the Finance and Administrative Services Director appointed by the county administrator.²⁷ Though the clerk of the circuit court retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission were transferred to the county administrator and the clerk's fiscal duties were transferred to the Department of Finance and Administrative Service.²⁸

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.²⁹ Although the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county manager.³⁰

Duval County (Consolidated Government of the City of Jacksonville)

The Charter of the City of Jacksonville has not altered the constitutionally elected offices and duties of the sheriff or the clerk of the circuit court.³¹ The clerk retains the status of constitutional officer but the clerk's duties as clerk of the county commission were transferred to the Council Secretary and the constitutional duties as auditor were transferred to the Council Auditor.³² While the City Charter does not refer to the supervisor of elections, the property appraiser, or the tax collector as constitutional officers, each must be elected.³³ All Five Constitutional Officers are limited to two consecutive full terms in office, after which the incumbent officer must wait a term before again being eligible for the same office.³⁴

Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser, transferred these powers to the mayor, and granted the mayor the

²⁶ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, "Definitions", Oct. 24, 2016, *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed March 9, 2017).

²⁷ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter ss. 3.03 & 3.06, Oct. 24, 2016, *available at*, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed March 9, 2017).

²⁸ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, "Definitions" & ss. 3.03.G & 3.06.B, Oct. 24, 2016, *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed March 9, 2017).

²⁹ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.1, 2014 Edition, *available at*, <http://www.claycountygov.com/about-us> (last accessed March 9, 2017).

³⁰ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, ss. 3.1 & 2.3, 2014 Edition, *available at* <http://www.claycountygov.com/about-us> (last accessed March 9, 2017).

³¹ Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. *See* ch. 92-341, s. 1, Laws of Fla.; Charter and Laws of the City of Jacksonville, Florida Part A, ss. 8.01, & 12.06, *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed March 9, 2017); Art. VIII, s. 6(e), Fla. Const. (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934).

³² Charter and Laws of the City of Jacksonville, Florida, Part A, s. 12.06, *available at*, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE COUNTY FLORIDA, Code of Ordinances, Title II, ss. 11.103 & 13.103, *available at*, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed March 9, 2017).

³³ Charter and Laws of the City of Jacksonville, Florida, Part A, ss. 9.02, 10.02, & 11.02, , *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed March 9, 2017).

³⁴ Charter and Laws of the City of Jacksonville, Florida, Part A, ss. 8.04, 9.04, 10.04, 11.04, & 12.11, *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed March 9, 2017).

discretion to sub-delegate the powers.³⁵ The duties of the sheriff were transferred to the Police Department, the director of which is appointed by the mayor.³⁶ The duties of the tax collector were transferred to the Department of Finance, the director of which is jointly appointed by the mayor and the clerk of court.³⁷ The county property appraiser, although not retained as a constitutional office, remains an elected position.³⁸ The duties of the supervisor of elections were transferred to the Elections Department, the director of which is appointed by the mayor.³⁹ The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.⁴⁰ Although the clerk is still the clerk of the County Commission, the clerk's financial recorder and custodian duties were transferred to the Department of Financial Services and the clerk's auditing duties were transferred to the Commission Auditor.⁴¹

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, and property appraiser.⁴² Although the clerk of the circuit court also retains the status of constitutional officer,⁴³ the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.⁴⁴ The county charter provides for term limits: beginning with terms commencing after January 1, 2015, a constitutional officer may serve four consecutive full terms before having to sit out at least one election cycle for that position.⁴⁵

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections. The clerk of the circuit court retains the status

³⁵ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I, s. 9.01, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (accessed March 9, 2017). In the Charter, the supervisor of elections is referred to as the "supervisor of registration" and the property appraiser as the "county surveyor." See, id. at Part I, s. 9.01.C..

³⁶ Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. See Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTXIIMIDEPODE (last accessed March 9, 2017).

³⁷ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I, s. 5.03, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed March 12, 2017).

³⁸ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I, s. 5.04.A, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed March 12, 2017).

³⁹ Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (<http://miamidade.gov/wps/portal/Main/departments>). See also Miami-Dade County Florida, Code of Ordinances, s. 12-11(a).

⁴⁰ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (last accessed 2/25/2017).

⁴¹ MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (last accessed 2/25/2017); MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I, s. 9.10, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed March 12, 2017).

⁴² At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, *Charter*, s. 703, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed March 12, 2017).

⁴³ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I, s. 2-66, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed March 12, 2017).

⁴⁴ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I, s. 2-67, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed March 12, 2017).

⁴⁵ Orange County Florida, *Charter*, s. 703.D, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed March 12, 2017).

of an elected constitutional officer but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.⁴⁶

Volusia County

In 1970 the Legislature approved a charter government for Volusia County that was adopted by the county voters in a referendum.⁴⁷ The charter abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser,⁴⁸ transferring these powers to new charter offices. The duties of the sheriff were transferred to the Department of Public Safety,⁴⁹ later to be divided with the Department of Corrections.⁵⁰ The duties of the tax collector were transferred to the Department of Finance.⁵¹ The duties of the property appraiser were transferred to the Department of Appraisal.⁵² The duties of the supervisor of elections were transferred to the Department of Elections.⁵³ The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.⁵⁴ The tax collector is appointed by the county manager and confirmed by the county council.⁵⁵ The clerk of the circuit court remains a constitutionally elected officer⁵⁶ except that the clerk's constitutional duties as clerk of the county commission and auditor and custodian of county funds were transferred to and divided between the Department of Central Services and the Department of Finance.⁵⁷

Selection & Removal Procedures

In addition to whether the Five Constitutional Officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in art. VIII, s. 1(d), of the Constitution, these additional "selection and removal procedures" are not interpreted as affecting the selection of the Five Constitutional Officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the Five Constitutional Officers. The broad home rule

⁴⁶ OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.01, Aug. 11, 2015, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534 (last accessed March 12, 2017).

⁴⁷ Ch. 70-966, Laws of Fla. The charter was adopted in a referendum held on June 30, 1970.

⁴⁸ Ch. 70-966, s. 601.1, Laws of Fla.

⁴⁹ Ch. 70-966, s. 601.1(2), Laws of Fla.

⁵⁰ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(2), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017).

⁵¹ Ch. 70-966, s. 601.1(1)(a), Laws of Fla., now codified as VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(1), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017).

⁵² Ch. 70-966, s. 601.1(3), Laws of Fla. The department was later renamed the Department of property appraisal. VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(3), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017).

⁵³ Ch. 70-966, s. 601.1(4), Laws of Fla., now codified as VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(4), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017).

⁵⁴ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 602.1, https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017).

⁵⁵ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 2-111(a), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017); Organizational chart, <http://www.volusia.org/government/county-council/government-organizational-chart.stml> (last accessed March 12, 2017).

⁵⁶ Ch. 70-966, s. 503, Laws of Fla.

⁵⁷ Ch. 70-966, s. 601.1(1)(b), Laws of Fla.; VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1 (1)(b) & (5) https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed March 12, 2017).

power of counties allows them to act so long as the action taken is not “inconsistent with general law, or . . . special law.”⁵⁸ This suggests that counties can currently modify their selection or removal procedures within the existing art. VIII, s. 1(d) framework through charter amendment or special law.⁵⁹

Term Limits

Three charter counties have imposed term limits on one or more of the Five Constitutional Officers.⁶⁰ Although the imposition of term limits on the Five Constitutional Officers is neither constitutionally or statutorily prohibited nor expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of charter counties.⁶¹

Recall

Five counties have charters expressly providing for the recall of one or more of the Five Constitutional Officers.⁶² Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the Five Constitutional Officers.⁶³

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the Five Constitutional Officers.⁶⁴ Non-partisan election of the Five Constitutional Officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.⁶⁵

1885 Constitutional Provisions Incorporated by Reference

The Florida Constitution of 1968 expressly incorporated from the 1885 Constitution four sections providing for consolidated or home rule government in four counties.⁶⁶ Duval,⁶⁷ Monroe,⁶⁸ Dade (later renamed Miami-Dade),⁶⁹ and Hillsborough.⁷⁰ These incorporated provisions were to “remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall

⁵⁸ Art. VIII, s. 1(g), Fla. Const.

⁵⁹ Current statute and case law supports this principle. *See* s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13 (Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the Five Constitutional Officers).

⁶⁰ Duval, Orange, and Sarasota Counties.

⁶¹ *Telli v. Broward County*, *supra* at n. 59.

⁶² Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

⁶³ Section 100.361, F.S.

⁶⁴ Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties. The Legislature expressly provided for non-partisan elections under the charter for Volusia County. Ch. 70-967, Laws of Fla.

⁶⁵ *See* Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

⁶⁶ Art. VIII, s. 6(e), Fla. Const.

⁶⁷ Art. VIII, s. 9, Fla. Const. (1885).

⁶⁸ Art. VIII, s. 10, Fla. Const. (1885).

⁶⁹ Art. VIII, s. 11, Fla. Const. (1885). Included within the home rule powers authorized by the amendment to the 1885 Constitution was the authority to change the County’s name. Art. VIII, s. 11(1)(h), Fla. Const. (1885). In 1997, the County adopted ordinance 97-212, amending the charter and changing the official name to Miami-Dade County. Art. 10, s. 10.01, Miami-Dade County Home Rule Charter, at https://www.municode.com/library/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTICOAMCH_ART10NACO (accessed 1 March 12, 2017).

⁷⁰ Art VIII, s. 24, Fla. Const. (1885). In 1983, Hillsborough County enacted a new charter pursuant to art. VIII, s. 1, Fla. Const. (1968), rather than art. VIII, s. 24 (1885 Constitution), incorporated by reference through art. VIII s. 6(e), Fla. Const. *See* Hillsborough County Florida, Charter, art. 1, s. 1.01, November 2012, *available at* https://www.municode.com/library/fl/hillsborough-county/codes/code_of_ordinances_part_a?nodeId=CHHICO_APXALESTPROR_NO83-9 (accessed March 12, 2017).

expressly adopt a charter or home rule plan pursuant to this article.”⁷¹ Whether amending art. VIII, s. 1(d) alone would be sufficient to make its provisions applicable to these four counties is unclear. Accordingly, the joint resolution specifies that notwithstanding art. VIII, s. 6(e), of the present Constitution, the manner of selection, length of terms, or abolition of office and transfer of powers of the property appraiser for all counties shall be controlled exclusively by art. VIII, s. 1.

Effect of the Joint Resolution

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of the property appraiser will have no impact on non-charter counties⁷² or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority.⁷³ Counties whose charters revised or abolished one or more constitutional offices also would be unaffected provided their charters did not revise the duties of the property appraiser or abolish the office and continue to require the property appraiser be elected to a term of four years.⁷⁴ Counties whose charters revised the duties, abolished the office, or do not provide for an elected property appraiser would be required to conform the charter and county ordinances to the new constitutional provision.⁷⁵ Finally, the proposed amendment makes the provisions of art. VIII, s. 1(d), of the Constitution the exclusive provision for the selection, length of terms, abolition of office, and transfer of duties of the property appraiser in each county.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. If approved by the voters, the amendment will take effect on January 8, 2019.⁷⁶

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend art. VIII, s. 1(d) of the State Constitution, to limit the authority for counties to alter the manner of selecting the property appraiser, to alter the duties of the office, or to abolish the office and transfer all duties prescribed by general law to another office. If approved by the voters, the amendment will take effect on January 8, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

⁷¹ There is a strong presumption that where constitutional language is readopted, the legislature is aware of existing judicial interpretations and accordingly readopts the prior judicial construction unless the constitutional language is changed to abrogate it. *Fla. House of Representatives v. League of Women Voters of Fla.*, 118 So. 3d 198, 205 (Fla. 2013); *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005); *Advisory Opinion to Governor*, 96 So. 2d 541, 546 (Fla. 1957); *State ex rel. West v. Butler*, 69 So. 771, 780-82 (Fla. 1915).

⁷² Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

⁷³ Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

⁷⁴ Broward, Clay, Orange, and Osceola.

⁷⁵ Brevard, Duval, Miami-Dade, and Volusia.

⁷⁶ Unless otherwise provided, an amendment approved by at least sixty percent of the electors voting on the measure takes effect on the first Tuesday after the first Monday in January following the election. Art. XI, s. 5(e), Fla. Const.

2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately before the week the election is held. The Department of State, Division of Elections stated the average cost per word to advertise an amendment to the State Constitution was \$117.56 for 2016. The department has estimated the publication costs for advertising the joint resolution will be at least \$108,459.33, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.⁷⁷

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The joint resolution will have no impact on non-charter counties or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority. A county whose charter provides for selecting the property appraiser other than by election to a term of four years would incur an indeterminate negative fiscal impact to the extent of having to revise its charter and ordinances to conform to the revised constitutional requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See, Fiscal Impact on State Government and Local Governments, above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution will not create a general law requiring a county or municipality to spend funds or take an action requiring expenditures, reducing the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reducing the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Adoption of Proposed Amendment

Article XI, s. 1 of the State Constitution, provides for proposed changes to the Constitution by the Legislature:

SECTION 1: Proposal by legislature. – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

⁷⁷ 2017 Agency Legislative Bill Analysis, Department of State, HB 1 (February 15, 2017), available to Legislators and staff at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=9871> (last accessed March 12, 2017), and a copy of which is maintained on file by the Local, Federal & Veterans Affairs Subcommittee.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.⁷⁸ The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.⁷⁹

Sixty percent voter approval is required for a proposed constitutional amendment to pass. A proposed amendment or revision approved by the requisite vote of the electors is effective as an amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.⁸⁰

Term Limits on Constitutional Officers

Imposing term limits on some or all of the Five Constitutional Officers could be seen as impacting the manner in which these officers are selected, a charter authority that will be removed if the amendment proposed in the joint resolution is approved by the voters. The current interpretation of art. VIII, s. 1(d) by the Florida Supreme Court is that charter counties have the ability to impose term limits on elected county officers.⁸¹ However, while this interpretation references the present authority of charter counties to revise the manner of selecting the Five Constitutional Officers, the Court clearly based its decision on the "broad home rule authority granted charter counties under the Florida Constitution"⁸² and the fact that the Constitution does not expressly prohibit the imposition of term limits by charter counties on the Five Constitutional Officers.⁸³ Therefore, removing the authority of a charter county to change the manner of election or to abolish and reconstitute the powers of the Five Constitutional Officers under county offices will not impact the ability of charter counties to impose term limits on elected county officers.

Non-Partisan Elections of Constitutional Officers

Amending art. VIII, s. 1(d) to restrict the ability of counties in their charters to choose the Five Constitutional Officers "in another manner therein specified" could be interpreted to limit the ability of charter counties to require that the Constitutional Officers be selected in non-partisan elections. However, because the Constitution prohibits neither the Legislature, through general law, nor charter counties from requiring non-partisan elections for county officers,⁸⁴ imposing non-partisan election requirements may well be interpreted as outside of the scope of art. VIII, s. 1(d), just as term limits were so found by the Florida Supreme Court of Florida.⁸⁵

Recall of Constitutional Officers

Recall of county officers by charter counties is statutorily authorized.⁸⁶ The amendment proposed by this joint resolution would have no impact on the ability of charter counties to recall the Five Constitutional Officers.

B. RULE-MAKING AUTHORITY:

The resolution neither authorizes nor requires implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁷⁸ Art. XI, s. 5(a), Fla. Const.

⁷⁹ Art. XI, s. 5(d), Fla. Const.

⁸⁰ Art. XI, s. 5(e), Fla. Const.

⁸¹ *Telli v. Broward County*, supra at n. 60, adopting with approval the rationale of the dissent in *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (2002) (Anstead, J., dissenting).

⁸² *Telli v. Broward County*, supra at n. 60, 512.

⁸³ *Id.* See also *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42-43 (Fla. 1974).

⁸⁴ See n. 58, supra.

⁸⁵ See *Telli v. Broward County*, supra at n. 60.

⁸⁶ Section 100.361, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a Proposed Committee Substitute for HJR 187 and reported the Joint Resolution favorably as a committee substitute.

House Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to remove authority for a county charter or special law to provide for choosing a property appraiser in a manner other than by election or to transfer the duties of the property appraiser or abolish the office of the property appraiser.

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

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

26 (c) GOVERNMENT. Pursuant to general or special law, a
 27 county government may be established by charter which shall be
 28 adopted, amended or repealed only upon vote of the electors of
 29 the county in a special election called for that purpose.

30 (d) COUNTY OFFICERS. There shall be elected by the
 31 electors of each county, for terms of four years, a sheriff, a
 32 tax collector, a property appraiser, a supervisor of elections,
 33 and a clerk of the circuit court; except, when provided by
 34 county charter or special law approved by vote of the electors
 35 of the county, a sheriff, a tax collector, a supervisor of
 36 elections, and a clerk of the circuit court ~~any county officer~~
 37 may be chosen in another manner therein specified, or ~~any county~~
 38 ~~office~~ may be abolished when all the duties of the office
 39 prescribed by general law are transferred to another office.
 40 When not otherwise provided by county charter or special law
 41 approved by vote of the electors, the clerk of the circuit court
 42 shall be ex officio clerk of the board of county commissioners,
 43 auditor, recorder, and custodian of all county funds.
 44 Notwithstanding subsection 6(e) of this article, this subsection
 45 provides the exclusive manner for the selection, length of term,
 46 abolition of office, and transfer of duties of the property
 47 appraiser of each county.

48 (e) COMMISSIONERS. Except when otherwise provided by
 49 county charter, the governing body of each county shall be a
 50 board of county commissioners composed of five or seven members

51 | serving staggered terms of four years. After each decennial
 52 | census the board of county commissioners shall divide the county
 53 | into districts of contiguous territory as nearly equal in
 54 | population as practicable. One commissioner residing in each
 55 | district shall be elected as provided by law.

56 | (f) NON-CHARTER GOVERNMENT. Counties not operating under
 57 | county charters shall have such power of self-government as is
 58 | provided by general or special law. The board of county
 59 | commissioners of a county not operating under a charter may
 60 | enact, in a manner prescribed by general law, county ordinances
 61 | not inconsistent with general or special law, but an ordinance
 62 | in conflict with a municipal ordinance shall not be effective
 63 | within the municipality to the extent of such conflict.

64 | (g) CHARTER GOVERNMENT. Counties operating under county
 65 | charters shall have all powers of local self-government not
 66 | inconsistent with general law, or with special law approved by
 67 | vote of the electors. The governing body of a county operating
 68 | under a charter may enact county ordinances not inconsistent
 69 | with general law. The charter shall provide which shall prevail
 70 | in the event of conflict between county and municipal
 71 | ordinances.

72 | (h) TAXES; LIMITATION. Property situate within
 73 | municipalities shall not be subject to taxation for services
 74 | rendered by the county exclusively for the benefit of the
 75 | property or residents in unincorporated areas.

76 (i) COUNTY ORDINANCES. Each county ordinance shall be
 77 filed with the custodian of state records and shall become
 78 effective at such time thereafter as is provided by general law.

79 (j) VIOLATION OF ORDINANCES. Persons violating county
 80 ordinances shall be prosecuted and punished as provided by law.

81 (k) COUNTY SEAT. In every county there shall be a county
 82 seat at which shall be located the principal offices and
 83 permanent records of all county officers. The county seat may
 84 not be moved except as provided by general law. Branch offices
 85 for the conduct of county business may be established elsewhere
 86 in the county by resolution of the governing body of the county
 87 in the manner prescribed by law. No instrument shall be deemed
 88 recorded until filed at the county seat, or a branch office
 89 designated by the governing body of the county for the recording
 90 of instruments, according to law.

91 BE IT FURTHER RESOLVED that the following statement be
 92 placed on the ballot:

93 CONSTITUTIONAL AMENDMENT
 94 ARTICLE VIII, SECTION 1

95 SELECTION AND DUTIES OF PROPERTY APPRAISERS.—Proposing an
 96 amendment to the State Constitution to remove authority for a
 97 county charter or special law to provide for choosing a property
 98 appraiser in a manner other than by election or to transfer the
 99 duties of the property appraiser or abolish the office of the

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100 | property appraiser. The amendment is applicable to all counties
101 | and takes effect January 8, 2019, if approved.



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	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Diaz, M. offered the following:

Amendment (with ballot and title amendments)

5 Remove everything after the resolving clause and insert:
 6 That the following amendment to Section 1 of Article VIII of the
 7 State Constitution is agreed to and shall be submitted to the
 8 electors of this state for approval or rejection at the next
 9 general election or at an earlier special election specifically
 10 authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.-

14 (a) POLITICAL SUBDIVISIONS. The state shall be divided by
 15 law into political subdivisions called counties. Counties may be



Amendment No.

16 created, abolished or changed by law, with provision for payment
17 or apportionment of the public debt.

18 (b) COUNTY FUNDS. The care, custody and method of
19 disbursing county funds shall be provided by general law.

20 (c) GOVERNMENT. Pursuant to general or special law, a
21 county government may be established by charter which shall be
22 adopted, amended or repealed only upon vote of the electors of
23 the county in a special election called for that purpose.

24 (d) COUNTY OFFICERS. There shall be elected by the
25 electors of each county, for terms of four years, a sheriff, a
26 tax collector, a property appraiser, a supervisor of elections,
27 and a clerk of the circuit court; except, when provided by
28 county charter or special law approved by vote of the electors
29 of the county, a sheriff, a tax collector, a supervisor of
30 elections, a property appraiser in any county other than Miami-
31 Dade County, and a clerk of the circuit court ~~any county officer~~
32 may be chosen in another manner therein specified, or such
33 offices, other than a property appraiser in Miami-Dade County,
34 ~~any county office~~ may be abolished when all the duties of the
35 office prescribed by general law are transferred to another
36 office. When not otherwise provided by county charter or special
37 law approved by vote of the electors, the clerk of the circuit
38 court shall be ex officio clerk of the board of county
39 commissioners, auditor, recorder, and custodian of all county
40 funds. Notwithstanding subsection 6(e) of this article, this

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Amendment No.

41 subsection provides the exclusive manner for the selection of
42 the property appraiser of Miami-Dade County. This subsection
43 does not limit legislative authority to create, abolish, or
44 change counties by law pursuant to section 1 of this article.

45 (e) COMMISSIONERS. Except when otherwise provided by
46 county charter, the governing body of each county shall be a
47 board of county commissioners composed of five or seven members
48 serving staggered terms of four years. After each decennial
49 census the board of county commissioners shall divide the county
50 into districts of contiguous territory as nearly equal in
51 population as practicable. One commissioner residing in each
52 district shall be elected as provided by law.

53 (f) NON-CHARTER GOVERNMENT. Counties not operating under
54 county charters shall have such power of self-government as is
55 provided by general or special law. The board of county
56 commissioners of a county not operating under a charter may
57 enact, in a manner prescribed by general law, county ordinances
58 not inconsistent with general or special law, but an ordinance
59 in conflict with a municipal ordinance shall not be effective
60 within the municipality to the extent of such conflict.

61 (g) CHARTER GOVERNMENT. Counties operating under county
62 charters shall have all powers of local self-government not
63 inconsistent with general law, or with special law approved by
64 vote of the electors. The governing body of a county operating
65 under a charter may enact county ordinances not inconsistent



Amendment No.

66 with general law. The charter shall provide which shall prevail
67 in the event of conflict between county and municipal
68 ordinances.

69 (h) TAXES; LIMITATION. Property situate within
70 municipalities shall not be subject to taxation for services
71 rendered by the county exclusively for the benefit of the
72 property or residents in unincorporated areas.

73 (i) COUNTY ORDINANCES. Each county ordinance shall be
74 filed with the custodian of state records and shall become
75 effective at such time thereafter as is provided by general law.

76 (j) VIOLATION OF ORDINANCES. Persons violating county
77 ordinances shall be prosecuted and punished as provided by law.

78 (k) COUNTY SEAT. In every county there shall be a county
79 seat at which shall be located the principal offices and
80 permanent records of all county officers. The county seat may
81 not be moved except as provided by general law. Branch offices
82 for the conduct of county business may be established elsewhere
83 in the county by resolution of the governing body of the county
84 in the manner prescribed by law. No instrument shall be deemed
85 recorded until filed at the county seat, or a branch office
86 designated by the governing body of the county for the recording
87 of instruments, according to law.

88
89
90

B A L L O T A M E N D M E N T



Amendment No.

91 Remove lines 91-101 and insert:

92 BE IT FURTHER RESOLVED that the following statement be placed on
93 the ballot:

94 CONSTITUTIONAL AMENDMENT

95 ARTICLE VIII, SECTION 1

96 SELECTION OF THE PROPERTY APPRAISER IN MIAMI-DADE COUNTY.-

97 Proposing an amendment to the State Constitution to remove
98 authority for a county charter to provide for choosing the
99 property appraiser of Miami-Dade County in a manner other than
100 by election or to abolish the office of property appraiser if
101 all duties of the office prescribed by general law are
102 transferred to another office. The amendment takes effect
103 January 8, 2019, if approved.

104

105

106

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

107 Remove line 5 and insert:

108 provide for choosing the property appraiser of Miami-Dade County
109 in a manner

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 305 Law Enforcement Body Cameras
SPONSOR(S): Harrison and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 624

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, 11 Y, 1 N, Merlin, White. Row 2: 2) Judiciary Committee, Merlin, Camechi.

SUMMARY ANALYSIS

A body camera is a portable electronic recording device that is worn on a law enforcement officer's (LEO's) person that records audio and video data of the LEO's law-enforcement-related encounters and activities.

Current law in Florida requires law enforcement agencies (LEAs) that permit LEOs to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. These policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
• Any limitations on LEO authority to wear body cameras;
• Any limitations on law-enforcement-related encounters in which LEOs are permitted to wear body cameras; and
• General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

Florida's body camera laws do not address whether a LEO may or may not review body camera footage prior to writing a report or making a statement about an incident.

The bill amends s. 943.1718(2), F.S., to require a LEA that permits the use of body cameras to have general guidelines authorizing a LEO, who uses a body camera during an incident, to review relevant video footage of an incident from the camera before writing a report or providing a statement about the incident.

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

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Body Cameras

In Florida, a body camera is a portable electronic recording device that is worn on a law enforcement officer's ("LEO's") person which records audio and video data of the officer's law-enforcement-related encounters and activities.¹ Data from the 2015 Criminal Justice Agency Profile ("CJAP") shows that out of the 399 law enforcement agencies ("LEAs") in this state, 91 have reported using body cameras.² Similarly, preliminary data from the 2016 CJAP survey shows that out of the 399 LEAs in this state, 107 have reported using them.³

Currently, s. 943.1718(2), F.S., requires LEAs that permit LEOs to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data, and provides that these policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on LEO authority to wear body cameras;
- Any limitations on law-enforcement-related encounters in which LEOs are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

Florida's body camera laws do not address whether a LEO may or may not review body camera footage prior to writing a report or making a statement about an incident.

Internal Affairs Investigations

As in most states, the subject of an internal affairs ("IA") investigation in Florida is afforded certain protections as set forth in the Law Enforcement Officer's Bill of Rights ("BOR").⁴ Generally, the purpose of an IA investigation is to investigate allegations of professional misconduct that could lead to discipline, not criminal charges. The subject of an IA investigation in Florida is permitted to view the "complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation."⁵

In many states, if IA investigators fail to comply with the BOR, the officer who is being investigated may challenge any recommended discipline or termination, and the investigation may be dismissed.⁶ In

¹ s. 943.1718, F.S. A similar definition is found in Florida's Public Records Act, s. 119.071(2)(l)(1)(a), F.S. (defining a "body camera" as "a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.").

² CJAP data is compiled by the Criminal Justice Standards and Training Commission and published by the Florida Department of Law Enforcement ("FDLE"). See Criminal Justice Agency Profile Survey Results *available at* <http://www.fdle.state.fl.us/cms/CJSTC/Publications/CJAP/CJAP.aspx> (last viewed Jan. 30, 2017). The CJAP results are based on self-reporting. There are 399 law enforcement agencies in Florida. This number includes local police departments, sheriff's offices, school and port police departments, and state agencies. Based on preliminary 2016 CJAP data, state agencies have not been using body cameras. Email from Ronald Draa, Director of External Affairs, the Florida Department of Law Enforcement, Body Cam Data (Jan. 30, 2017) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

³ *Id.*

⁴ ss. 112.532-34, F.S.

⁵ s. 112.532(1)(d), F.S.

⁶ Walter Olson *Police Misconduct and 'Law Enforcement Officers' Bill of Rights' Laws*, CATO Institute, April 24, 2015, *available at* <https://www.cato.org/blog/police-misconduct-law-enforcement-officers-bill-rights> (last viewed Feb. 15, 2017); see also Mike Riggs, *Why Firing a Bad Cop is Damn Near Impossible*, GET REASON MAGAZINE, Oct. 19, 2012, *available at* <http://reason.com/archives/2012/10/19/how-special-rights-for-law-enforcement-m> (last viewed February 15, 2017).

Florida, an investigator has an opportunity to cure any noncompliance with the BOR. If the investigator fails to cure the violation or continues the violation after notice, the investigator may be referred to a review panel, removed from the investigation, and subjected to disciplinary action.⁷

Reviewing Body Camera Footage before Making Statements and Writing Reports

In a 2014 report from the International Association of Chiefs of Police (“IACP”) National Law Enforcement Policy Center,⁸ it was noted that body cameras may be used by LEAs for documenting evidence; evaluating a LEO’s conduct and effectiveness; offering training, guidance, or discipline; preventing and resolving complaints brought by members of the public; strengthening the transparency, performance, and accountability of law enforcement; ensuring that events are presented accurately; and assisting in civil, criminal, and administrative proceedings.⁹

A 2014 Report from the Police Executive Research Forum (“PERF”) discussed the potential in allowing LEOs to review body camera footage before making a statement or writing a report about an incident in which they were involved.¹⁰ The issues discussed by PERF and the recommendations by IACP were addressed in a December 12, 2016, presentation by the Lexipol training organization,¹¹ which included the following points and counterpoints:

Point	Counterpoint
<ul style="list-style-type: none"> • Video is not always an accurate representation of events.¹² <ul style="list-style-type: none"> ○ Video does not: reproduce the LEO’s subjective fear, capture tactile clues, track with the eyes, accurately reproduce what the human eye sees, capture 3D or represent accurate distances, or always accurately represent motion and force.¹³ <hr/> <ul style="list-style-type: none"> • Watching the video before writing a report makes the LEO’s account of the incident vulnerable to scrutiny.¹⁴ <ul style="list-style-type: none"> ○ Some believe that a LEO may change, or may feel pressure to change, his or her account to match something the LEO does not remember happening. Once viewed, the LEO cannot “un-view” it.¹⁵ 	<ul style="list-style-type: none"> • Video may assist the LEO in obtaining the truth of what occurred and aid in his or her memory recall.²⁰ <ul style="list-style-type: none"> ○ Video corrects a distorted sensory perception, is often better than human recollection, and helps uncover the truth of what happened.²¹ <hr/> <ul style="list-style-type: none"> • Watching the video before making a statement will result in a statement that is more difficult to pick apart in court.²² <ul style="list-style-type: none"> ○ Watching the video results in one statement that addresses all issues and does not provide the LEO with new information.²³

⁷ s. 112.534, F.S.

⁸ *Body-Worn Cameras, Concepts and Issues Paper*, IACP NATIONAL LAW ENFORCEMENT POLICY CENTER, April 2014 available at <http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/BodyWornCamerasPaper.pdf> (“IACP Report”) (last viewed Feb. 6, 2017).

⁹ *Id.*

¹⁰ See Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, COMMUNITY ORIENTED POLICING SERVICES (2014) (“PERF Report”) at 29.

¹¹ Ken Wallentine, Laura Scarry, and Grant Fredericks, *Point/Counterpoint: The Debate Over Officer Viewing of BWC Video*, Lexipol Powerpoint Presentation from Webinar (“Lexipol Presentation”) (Dec. 12, 2016).

¹² Lexipol Presentation at 5.

¹³ *Id.* at 6.

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 20.

<ul style="list-style-type: none"> • Allowing a LEO to watch the video may contribute negatively to police/community relations and to the department’s reputation for transparency and legitimacy.¹⁶ <ul style="list-style-type: none"> ○ The public knows non-police witnesses are not afforded the same opportunity.¹⁷ <hr/> <ul style="list-style-type: none"> • Allowing LEOs to view the video before writing a report contradicts the approach used in other investigations and raises the issue of why all suspects are not allowed to view video evidence that relates to their cases.¹⁸ <ul style="list-style-type: none"> ○ Creates a double standard as police departments typically do not allow other non-police witnesses to view video.¹⁹ 	<ul style="list-style-type: none"> • Community/police relations rest on far more than video footage related to any single incident.²⁴ <hr/> <ul style="list-style-type: none"> • While LEO-involved shooting incidents are investigations, they are unique situations. Such investigations are not automatically criminal investigations.²⁵ <ul style="list-style-type: none"> ○ The LEO was there. The video does not show the LEO anything he or she has not previously seen. LEOs are encouraged to review video for all other events. The goal of the investigation is not to determine a culpable mental state; rather, the goal is to determine whether the LEO acted in an objectively reasonable manner.²⁶
--	---

Other State Laws relating to the Viewing of Body Camera Footage by LEOs

According to the National Conference on State Legislatures (“NCSL”), 30 states and the District of Columbia have created laws for body cameras,²⁷ several of which include provisions for writing reports or making statements:

- In Texas, a LEA that uses body cameras must adopt policies entitling a LEO to access any recording of an incident involving the officer before the LEO is required to make a statement about the incident.²⁸
- In Connecticut, a LEO may review a recording from his or her body camera to assist the LEO with the preparation of a report or otherwise in the performance of his or her duties.²⁹ Further, if a LEO is giving a formal statement about the use of force or if a LEO is the subject of a disciplinary investigation in which a recording from a body camera is being considered as part of a review of an incident, the LEO shall: (1) have the right to review such recording in the

²⁰ *Id.* at 17.

²¹ *Id.* at 18.

²² *Id.* at 21.

²³ *Id.* at 22.

¹⁶ *Id.* at 23.

¹⁷ *Id.* at 24.

¹⁸ *Id.* at 31.

¹⁹ *Id.* at 32.

²⁴ *Id.* at 25.

²⁵ *Id.* at 33.

²⁶ *Id.* at 34.

²⁷ See National Conference of State Legislatures (“NCSL”), *Requirements to Wear Body Cameras, Body Camera Research*, Aug. 30, 2016 (“NCSL data”) (*available at* <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>) (last visited Feb. 6, 2017).

²⁸ Tex. Occ. Code § 1701.655(b)(5).

²⁹ Conn. Gen. Stat. Ann. § 29-6d(e).

presence of the LEO's attorney or labor representative; and (2) have the right to review recordings from other equipment capturing the LEO's image or voice during the incident.³⁰

- In the District of Columbia, a LEO may review their body camera recording to assist in initial report writing, except in cases involving a police shooting.³¹
- In Illinois, the recording LEO and his or her supervisor may access and review recordings before completing incident reports or other documentation if the LEO or his or her supervisor discloses that fact in the report or documentation.³²
- In Minnesota, most body camera video is exempt from release or considered "nonpublic," subject to limited exceptions.³³ With respect to report writing by LEOs, Minnesota law provides that, "the responsible authority for a law enforcement agency must establish written procedures to ensure that law enforcement personnel have access to the portable recording system data that are not public only if authorized in writing by the chief of police, sheriff, or head of the law enforcement agency, or their designee, to obtain access to the data for a legitimate, specified law enforcement purpose."³⁴

Effect of the Bill

The bill amends s. 943.1718(2), F.S., to require a LEA that permits the use of body cameras to have general guidelines authorizing a LEO, who uses a body camera during an incident, to review relevant video footage of an incident from the camera before writing a report or providing a statement about the incident.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.1718, F.S., relating to body cameras; policies and procedures.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have an impact on state revenues.
2. Expenditures: This bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not appear to have an impact on local government revenues.
2. Expenditures: This bill does not appear to have an impact on local government expenditures.

³⁰ Conn. Gen. Stat. Ann. § 29-6d(f).

³¹ D.C. Mun. Regs. 24-39, § 3900.9.

³² 50 Ill. Comp. Stat. Ann. 706/10-20(a)(6).

³³ Minn. Stat. § 13.825(2), (3), and (4).

³⁴ Minn. Stat. § 13.825(7)(b).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

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: This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to law enforcement body cameras;
 3 amending s. 943.1718, F.S.; requiring law enforcement
 4 agencies to develop guidelines authorizing an
 5 officer's review of camera footage of an incident
 6 before writing a report or providing a statement;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (d) of subsection (2) of section
 12 943.1718, Florida Statutes, is redesignated as paragraph (e),
 13 and a new paragraph (d) is added to that subsection, to read:

14 943.1718 Body cameras; policies and procedures.—

15 (2) A law enforcement agency that permits its law
 16 enforcement officers to wear body cameras shall establish
 17 policies and procedures addressing the proper use, maintenance,
 18 and storage of body cameras and the data recorded by body
 19 cameras. The policies and procedures must include:

20 (d) General guidelines authorizing a law enforcement
 21 officer using a body camera during an incident to review the
 22 relevant video footage of the incident from the camera before
 23 writing a report on or providing a statement about the incident.

24 Section 2. This act shall take effect July 1, 2017.



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 _____

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Harrison offered the following:

Amendment (with title amendment)

Remove lines 20-23 and insert:

6 (d) A provision permitting a law enforcement officer using
7 a body camera to review the recorded footage from the body
8 camera, upon his or her own initiative or request, before
9 writing a report or providing a statement regarding any event
10 arising within the scope of his or her official duties. Any such
11 provision may not apply to an officer's inherent duty to
12 immediately disclose information necessary to secure an active
13 crime scene or to identify suspects or witnesses.

14 -----
15
16 **T I T L E A M E N D M E N T**


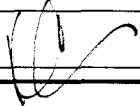


Amendment No.

17 Between lines 6 and 7, insert:
18 providing an exception;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 377 Limitations on Actions other than for the Recovery of Real Property
SPONSOR(S): Civil Justice & Claims Subcommittee, Leek and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 204

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	Stranburg	Bond
2) Agriculture & Property Rights Subcommittee	14 Y, 0 N	Thompson	Smith
3) Judiciary Committee		Stranburg 	Camechis 

SUMMARY ANALYSIS

A statute of limitations and a statute of repose both limit the time period with which a person may file a lawsuit. A statute of limitations generally begins when the cause of action accrues and bars the lawsuit from being filed after a set period of time. A statute of repose begins at the occurrence of a specified event and extinguishes the right to file a lawsuit altogether. Where both apply, the action is barred when the first limitations period has run.

Under current law, a cause of action founded on the design or construction of a building is subject to a 4 year statute of limitations and a 10 year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus may limit a cause of action for a latent defect even if the injured party has no knowledge of the latent defect.

A recent court decision found that a construction contract is complete when the final payment is made. For the purposes of both the statute of limitations and the statute of repose, this bill provides that a construction contract is considered complete on the latter of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

The bill applies to causes of action that accrue on or after July 1, 2017.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. Laws creating statutes of limitations specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.¹

Moreover, unlike a statute of limitations, a statute of repose abolishes, or completely eliminates, the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.² Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.³

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, in actions involving a latent defect, the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.⁴ Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge.⁵

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest.⁶ Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

¹ *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992).

² *Beach v. Great Western Bank*, 692 So.2d 146 (Fla. 1997)

³ See, e.g., *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

⁴ s. 95.11(3)(c), F.S.

⁵ *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

⁶ s. 95.11(3)(c), F.S.

Recent Case Law

In 2013, the Fifth District Court of Appeal was presented with the issue of what constituted "the date of 'completion...of the contract' "⁷ for the purpose of determining the beginning of the statute of repose pursuant to s. 95.11(3)(c), F.S. The court held that the contract is complete for the purposes of s. 95.11(3)(c), F.S., on the date final payment is made.⁸ It reasoned that

[c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.⁹

Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to set the date of the completion of the contract. It provides that the completion of the contract for purposes of the statute of repose and the statute of limitations for design, planning, or construction defects is the latter of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

The bill provides that the amendment to s. 95.11(3)(c), F.S., applies to causes of action that accrue on or after July 1, 2017.

The bill also reenacts s. 627.441(2), F.S., for the purposes of incorporating the amendment to s. 95.11(3)(c), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations on actions other than for the recovery of real property.

Section 2 provides for applicability.

Section 3 reenacts s. 627.441(2), F.S., relating to commercial general liability policies; coverage to contractors for completed operations.

Section 4 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

⁷ *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So. 3d 706,707 (Fla. 5th DCA 2015).

⁸ *Id.* at 708.

⁹ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 16, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specifies completion of the contract for purposes of the statutes of limitations and repose is the latter of the date of completion of services contracted for or the date final payment for services becomes due. The amendment also provides that the change applies to causes of action that accrue on or after July 1, 2017.

1 A bill to be entitled
 2 An act relating to limitations on actions other than
 3 for the recovery of real property; amending s. 95.11,
 4 F.S.; specifying the date of completion for specified
 5 contracts; providing for applicability; reenacting s.
 6 627.441(2), F.S., relating to commercial general
 7 liability policy coverage to contractors for completed
 8 operations, to incorporate the amendment made by the
 9 act to s. 95.11, F.S., in a reference thereto;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (c) of subsection (3) of section
 15 95.11, Florida Statutes, is amended to read:

16 95.11 Limitations other than for the recovery of real
 17 property.—Actions other than for recovery of real property shall
 18 be commenced as follows:

19 (3) WITHIN FOUR YEARS.—

20 (c) An action founded on the design, planning, or
 21 construction of an improvement to real property, with the time
 22 running from the date of actual possession by the owner, the
 23 date of the issuance of a certificate of occupancy, the date of
 24 abandonment of construction if not completed, or the date of
 25 completion or termination of the contract between the

26 professional engineer, registered architect, or licensed
 27 contractor and his or her employer, whichever date is latest;
 28 except that, when the action involves a latent defect, the time
 29 runs from the time the defect is discovered or should have been
 30 discovered with the exercise of due diligence. In any event, the
 31 action must be commenced within 10 years after the date of
 32 actual possession by the owner, the date of the issuance of a
 33 certificate of occupancy, the date of abandonment of
 34 construction if not completed, or the date of completion or
 35 termination of the contract between the professional engineer,
 36 registered architect, or licensed contractor and his or her
 37 employer, whichever date is latest. Completion of the contract
 38 means the latter of the date of final performance of all the
 39 contracted services or the date that final payment for such
 40 services becomes due without regard to the date final payment is
 41 made.

42 Section 2. This act applies to causes of action that
 43 accrue on or after July 1, 2017.

44 Section 3. For the purpose of incorporating the amendment
 45 made by this act to section 95.11, Florida Statutes, in a
 46 reference thereto, subsection (2) of section 627.441, Florida
 47 Statutes, is reenacted to read:

48 627.441 Commercial general liability policies; coverage to
 49 contractors for completed operations.-

50 (2) A liability insurer must offer coverage at an

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51 appropriate additional premium for liability arising out of
52 current or completed operations under an owner-controlled
53 insurance program for any period beyond the period for which the
54 program provides liability coverage, as specified in s.
55 255.0517(2)(b). The period of such coverage must be sufficient
56 to protect against liability arising out of an action brought
57 within the time limits provided in s. 95.11(3)(c).

58 Section 4. This act shall take effect July 1, 2017.



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		

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Leek offered the following:

3

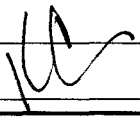
4 **Amendment**

5 Remove line 38 and insert:

6 means the later of the date of final performance of all the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 505 Florida Comprehensive Drug Abuse Prevention and Control Act
SPONSOR(S): Criminal Justice Subcommittee and Trumbull
TIED BILLS: IDEN./SIM. **BILLS:** SB 1002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Fields	White
2) Justice Appropriations Subcommittee	13 Y, 0 N	Smith	Gusky
3) Judiciary Committee		Fields LF	Camechis 

SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act ("the Act"). The Act includes provisions identifying the substances that are controlled in this State; specifying criminal penalties for unlawful conduct relating to the possession, sale, purchase, manufacture, and delivery of controlled substances; authorizing the Attorney General to identify new controlled substances by rule in order to keep pace with designer drugs created by criminals; and providing regulations for the lawful distribution, labeling, and packaging of controlled substances.

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules I through V. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse" of the substances listed therein and whether there is a currently accepted medical use for the substance.

Currently, ioflupane I 123 is a schedule II controlled substance in Florida because of its derivation from cocaine via ecgonine, both of which are schedule II substances. Prior to September 2015, ioflupane I 123 was also a schedule II controlled substance under the federal Controlled Substances Act. However, effective September 11, 2015, the U.S. Drug Enforcement Administration removed ioflupane I 123 from that schedule because the drug is not subject to abuse and currently has a medically acceptable use in DaTscan. DaTscan is a drug product used to visualize striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.

The bill amends s. 893.03, F.S., to remove ioflupane I 123 from the list of substances that are classified under schedule II in Florida's controlled substance schedules.

Additionally, in order to ensure that all of Florida's statutes are automatically updated whenever the Act is amended, the bill creates s. 893.015, F.S., to specify that cross-references throughout the Florida Statutes to the Act, or any portion thereof, include all subsequent amendments to the Act.

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

The bill is effective July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulating Controlled Substances

The Florida Comprehensive Drug Abuse Prevention and Control Act

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The Act includes provisions identifying the substances that are controlled in this State; authorizing the Attorney General to identify new controlled substances by rule in order to keep pace with designer drugs created by criminals; and providing regulations for the lawful distribution, labeling, and packaging of controlled substances.

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"¹ of the substances listed therein and whether there is a currently accepted medical use for the substance.² The Controlled Substance Schedules are as follows:

- Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes substances such as cannabis and heroin.³
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes substances such as raw opium, cocaine, and codeine.⁴
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes substances such as stimulants and anabolic steroids.⁵
- Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes substances such as benzodiazepines and barbiturates.⁶
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes substances such as mixtures that contain small quantities of opiates and codeine.⁷

The majority of provisions criminalizing behavior related to controlled substances are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁸ Other factors, such as the quantity of controlled substances involved in a crime or the location where the violation occurs can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

¹ Section 893.035(3)(a), F.S., defines "potential for abuse" to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or the safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice.

² See s. 893.03, F.S.

³ s. 893.03(1), F.S.

⁴ s. 893.03(2), F.S.

⁵ s. 893.03(3), F.S.

⁶ s. 893.03(4), F.S.

⁷ s. 893.03(5), F.S.

⁸ See, e.g., s. 893.13(1)(a) and (c), F.S.

Ioflupane I 123

Federal Law

Federal Law, pursuant to the Controlled Substances Act,⁹ also classifies certain substances into schedules based on potential for abuse and whether there is a currently accepted medical use for it. Until 2015, federal law recognized ioflupane I 123 as a schedule II controlled substance because of its derivation from cocaine via ecgonine, both of which are schedule II substances.¹⁰ Ioflupane I 123 is the active pharmaceutical ingredient in the drug product DaTscan.¹¹ The U.S. Food and Drug Administration (FDA) approved the New Drug Application for DaTscan, for the indication of visualizing striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.¹²

In 2010, the U.S. Department of Health and Human Services (HHS) recommended to the U.S. Drug Enforcement Administration (DEA) that ioflupane I 123 be removed from the list of schedule II substances.¹³ In response, the DEA completed a review of FDA-approved diagnostic products containing ioflupane I 123, which at the time was only DaTscan.¹⁴ The DEA agreed to remove ioflupane I 123 from the federal Controlled Substances Act based on the following:

- There is no data demonstrating that individuals are administering quantities of DaTscan sufficient to create a hazard to their health or to the safety of other individuals or to the community. Approximately 6,000 vials of DaTscan would be required to produce a subjective "high" in humans from exposure to ioflupane I 123. The volume of 6,000 vials is about 15 liters of fluid, an amount that would be lethal if administered intravenously.
- Over 168,000 doses of DaTscan were administered to patients worldwide and there was no clinical evidence of pharmacological effects.
- Meaningful extraction of ioflupane I 123 from DaTscan would be impossible due to its limited production and availability and because extraction is technically complex and would require advanced equipment not available to the general public.
- There have been no reports of abuse of ioflupane I 123 or seizures as a result of ioflupane I 123.
- Because of the limited amounts of manufactured DaTscan, the low concentration of ioflupane I 123 per vial, and the existence of stringent regulatory controls on the manufacturing and handling of DaTscan, abuse of DaTscan is not possible as a practical matter.
- There was no psychic or physiological dependence potential of FDA-approved diagnostic products containing ioflupane I 123.
- Ioflupane I 123 is not an immediate precursor of a substance already controlled under the Controlled Substances Act.¹⁵

Accordingly, ioflupane I 123 was removed from the schedule of the federal Controlled Substances Act on September 11, 2015.¹⁶

Florida Law

Ioflupane I 123 is a schedule II substance under s. 893.03(2)(a)(4), F.S.

⁹ 21 U.S.C. § 812.

¹⁰ Department of Justice, *Schedules of Controlled Substances: Removal of Ioflupane I 123 from Schedule II of the Controlled Substances Act*, https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0603.htm (last visited Feb. 6, 2017).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Department of Justice, *Schedules of Controlled Substances: Removal of Ioflupane I 123 from Schedule II of the Controlled Substances Act*, https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0911.htm (last visited Feb. 7, 2017).

Cross-References to the Florida Comprehensive Drug Abuse Prevention and Control Act

There are two types of statutory cross-references, general and specific. A general reference is a cross-reference to a general body of law, e.g., a reference in a statute to the "Florida Comprehensive Drug Abuse Prevention and Control Act" would be considered a general reference. A specific reference is a cross-reference to a specific section of law, e.g., a reference to s. 893.03, F.S., would be considered a specific reference.

Under case law, a general reference in statute incorporates the referenced law and any subsequent amendments of that law.¹⁷ A specific reference in statute, however, incorporates the referenced statute as it existed at the time the cross-reference was adopted. Such specific reference is unaffected by subsequent amendments to the incorporated statute,¹⁸ unless the specific reference is reenacted by the legislation that amends the incorporated statute.

To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments. Such chapters of law include ch. 435, F.S., entitled "Employment Screening," and ch. 938, F.S., entitled "Court Costs."¹⁹

Currently, there are hundreds of specific references to sections contained in ch. 893, F.S. There is no statutory authority allowing such specific references to automatically incorporate subsequent amendments.

Effect of the Bill

The bill amends s. 893.03, F.S., to remove ioflupane I 123 from the list of substances classified under Schedule II.

The bill also creates s. 893.015, F.S., to specify that the purpose of ch. 893, F.S., is to comprehensively address drug abuse prevention and control in this state, and, as such, unless expressly provided otherwise, a specific reference to ch. 893, F.S., or any section thereof incorporates all subsequent amendments to ch. 893, F.S., or any section thereof.

The bill takes effect July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Creates s. 893.015, F.S., relating to statutory references.

Section 2. Amends s. 893.03, F.S., relating to standards and schedules.

Section 3. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have an impact on state revenues.
2. Expenditures: The bill does not appear to have an impact on state expenditures.

The Criminal Justice Estimating Conference conferred on March 2, 2017 and determined the bill would have no impact on the state prison population.

¹⁷ See *Williams v. State ex rel. Newberger*, 100 Fla. 1567, 125 So. 358 (1930), rev'd on other grounds on rehearing, 100 Fla. 1570, 131 So. 864 (1930); *State ex rel. Springer v. Smith*, 189 So. 2d 846 (Fla. 4th D.C.A. 1966); *Reino v. State*, 352 So. 2d 853 (Fla. 1977).

¹⁸ See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 112 Fla. 762, 151 So. 333 (1933); *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918); and *State ex rel. Springer v. Smith*, *ibid.*

¹⁹ See ss. 435.01 and 983.31, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have an impact on local government revenues.
2. Expenditures: The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2017, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment creates s. 893.015, F.S., to provide that specific references to ch. 893, F.S., or any section thereof, incorporate all subsequent amendments to ch. 893, F.S., or any section thereof. This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to the Florida Comprehensive Drug
 3 Abuse Prevention and Control Act; amending s. 893.03,
 4 F.S.; specifying that ioflupane I 123 is not included
 5 in Schedule II; creating s. 893.015, F.S.; specifying
 6 the chapter's purpose; providing that a reference to
 7 ch. 893, F.S., or to any section or portion thereof,
 8 includes all subsequent amendments; providing an
 9 effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (a) of subsection (2) of section
 14 893.03, Florida Statutes, is amended to read:

15 893.03 Standards and schedules.—The substances enumerated
 16 in this section are controlled by this chapter. The controlled
 17 substances listed or to be listed in Schedules I, II, III, IV,
 18 and V are included by whatever official, common, usual,
 19 chemical, trade name, or class designated. The provisions of
 20 this section shall not be construed to include within any of the
 21 schedules contained in this section any excluded drugs listed
 22 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 23 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 24 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempt
 25 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt

26 Anabolic Steroid Products."

27 (2) SCHEDULE II.—A substance in Schedule II has a high
 28 potential for abuse and has a currently accepted but severely
 29 restricted medical use in treatment in the United States, and
 30 abuse of the substance may lead to severe psychological or
 31 physical dependence. The following substances are controlled in
 32 Schedule II:

33 (a) Unless specifically excepted or unless listed in
 34 another schedule, any of the following substances, whether
 35 produced directly or indirectly by extraction from substances of
 36 vegetable origin or independently by means of chemical
 37 synthesis:

38 1. Opium and any salt, compound, derivative, or
 39 preparation of opium, except nalmefene or isoquinoline alkaloids
 40 of opium, including, but not limited to the following:

- 41 a. Raw opium.
- 42 b. Opium extracts.
- 43 c. Opium fluid extracts.
- 44 d. Powdered opium.
- 45 e. Granulated opium.
- 46 f. Tincture of opium.
- 47 g. Codeine.
- 48 h. Ethylmorphine.
- 49 i. Etorphine hydrochloride.
- 50 j. Hydrocodone.

- 51 k. Hydromorphone.
- 52 1. Levo-alphaacetylmethadol (also known as levo-alpha-
- 53 acetylmethadol, levomethadyl acetate, or LAAM).
- 54 m. Metopon (methyldihydromorphinone).
- 55 n. Morphine.
- 56 o. Oxycodone.
- 57 p. Oxymorphone.
- 58 q. Thebaine.
- 59 2. Any salt, compound, derivative, or preparation of a
- 60 substance which is chemically equivalent to or identical with
- 61 any of the substances referred to in subparagraph 1., except
- 62 that these substances shall not include the isoquinoline
- 63 alkaloids of opium.
- 64 3. Any part of the plant of the species Papaver
- 65 somniferum, L.
- 66 4. Cocaine or ecgonine, including any of their
- 67 stereoisomers, and any salt, compound, derivative, or
- 68 preparation of cocaine or ecgonine, except that these substances
- 69 shall not include ioflupane I 123.
- 70 Section 2. Section 893.015, Florida Statutes, is created
- 71 to read:
- 72 893.015 Statutory References.—The purpose of this chapter
- 73 is to comprehensively address drug abuse prevention and control
- 74 in this state. To this end, unless expressly provided otherwise,
- 75 a reference in any section of the Florida Statutes to chapter

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76 893 or to any section or portion of a section of chapter 893
77 includes all subsequent amendments to chapter 893 or to the
78 referenced section or portion of a section.

79 Section 3. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 965 Sales and Use Tax on Investigation and Detective Services
SPONSOR(S): Donalds
TIED BILLS: IDEN./SIM. **BILLS:** SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee		Camechis	Camechis
2) Ways & Means Committee			

SUMMARY ANALYSIS

Florida law requires each applicant for a concealed weapons permit to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services, or an approved tax collector.

According to the Florida Department of Revenue (DOR), fingerprinting services are subject to sales tax and the applicable discretionary sales surtax. However, if fingerprinting is performed by a law enforcement officer in the performance of his or her duties, the fee is exempt under current law. In addition, according to DOR practice, if fingerprinting is performed by staff of a Tax Collector's office or the Department of Agriculture and Consumer Services, the fee is not a part of the sales price because it is a required governmental fee.

The bill amends ss. 212.05, 790.06, and 790.062, F.S., to specify that fingerprint services required by law for a license to carry a concealed weapon or firearm are not subject to the sales tax.

According to the Revenue Estimating Conference, the identical Senate bill will not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Statutes

Section 212.05(1)(i)1., F.S., imposes the 6 percent sales tax on detective, burglar protection, and other protection services (NAICS National Numbers 561611, 561612, 561613, and 561621). However, any law enforcement officer who is performing approved duties as determined by his or her local law enforcement agency in his or her capacity as a law enforcement officer is subject to the direct and immediate command of his or her law enforcement agency, and in the law enforcement officer's uniform as authorized by his or her law enforcement agency, is performing law enforcement and public safety services and is not performing detective, burglar protection, or other protective services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source. The term "law enforcement officer" includes full-time or part-time law enforcement officers, and any auxiliary law enforcement officer, when such auxiliary law enforcement officer is working under the direct supervision of a full-time or part-time law enforcement officer.

Section 790.06(5)(c), F.S., requires each applicant for a concealed weapons permit to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services (DACs), or an approved tax collector together with any personal identifying information required by federal law to process fingerprints.

Section 790.062(2), F.S., provides that, if an applicant for a concealed weapons permit is a member or honorably discharged veteran of United States Armed Forces, requires DACs must accept fingerprints administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise provided for in s. 790.06(5)(c).

Florida Department of Revenue

According to the Florida Department of Revenue (DOR), examples of services that are subject to sales tax and the applicable discretionary sales surtax include fingerprinting services.

In 1994, DOR received a taxpayer's request for guidance on whether criminal history background check services provided by the Florida Department of Law Enforcement and required by state law are subject to a sales tax. The agency answered in the negative, basing its decision on the fact that the background check, and thus the associated fee or charge, was mandated by the state.¹

Revenue Estimating Conference

On February 15, 2017, the Revenue Estimating Conference (REC) analyzed SB 524, which is identical to this bill. The REC analysis states as follows:

The bill language matches the current administration by [DOR] with regards to the fingerprinting services and sales tax application off (sic) charges for fingerprinting for concealed weapons permits. Where the fingerprinting is performed by a law enforcement officer in the performance of his or her duties, the fee is exempt under current law. Where the

¹ Dept. of Revenue, *Technical Assistance Advisement 94(A)-035, Whether FDLE Criminal History Check Fee of \$8 is Subject to Sales Tax* (June 17, 1994).

fingerprinting is performed by staff in the Tax Collector's office or by staff of the Department of Agriculture and Consumer Services, the fee is not a part of the sales price as it is a required governmental fee.

Effect of Proposed Changes

The bill amends ss. 212.05, 790.06, and 790.062, F.S., to specify that fingerprint services required by law for a license to carry a concealed weapon or firearm are not subject to the sales tax.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.05, F.S., regarding sales, storage, and use tax.

Section 2. Amends s. 790.06, F.S., regarding licenses to carry concealed weapons or firearms.

Section 3. Amends s. 790.062, F.S., regarding members and veterans of the U.S. Armed Forces.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None. On February 15, 2017, the Revenue Estimating Conference (REC) analyzed SB 524, which is identical to this bill. The REC determined that the identical Senate bill will not have a fiscal impact on state revenues.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None. On February 15, 2017, the REC analyzed SB 524, which is identical to this bill. The REC determined that the identical Senate bill will not have a fiscal impact on local government revenues.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision of Art. VII, section 18 of the Florida Constitution may apply because this bill creates a sales tax exemption for fingerprinting services. However, because revenues of local governments will not be reduced, the bill is exempt.

2. Other: None.

B. RULE-MAKING AUTHORITY: None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to the sales and use tax on
 3 investigation and detective services; amending ss.
 4 212.05, 790.06, and 790.062, F.S.; providing that
 5 fingerprint services required for a license to carry a
 6 concealed weapon or firearm are not subject to the
 7 tax; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (i) of subsection (1) of section
 12 212.05, Florida Statutes, is amended to read:

13 212.05 Sales, storage, use tax.—It is hereby declared to
 14 be the legislative intent that every person is exercising a
 15 taxable privilege who engages in the business of selling
 16 tangible personal property at retail in this state, including
 17 the business of making mail order sales, or who rents or
 18 furnishes any of the things or services taxable under this
 19 chapter, or who stores for use or consumption in this state any
 20 item or article of tangible personal property as defined herein
 21 and who leases or rents such property within the state.

22 (1) For the exercise of such privilege, a tax is levied on
 23 each taxable transaction or incident, which tax is due and
 24 payable as follows:

25 (i)1. At the rate of 6 percent on charges for all:

26 a. Detective, burglar protection, and other protection
 27 services (NAICS National Numbers 561611, 561612, 561613, and
 28 561621). Fingerprint services required under s. 790.06 or s.
 29 790.062 are not subject to the tax. Any law enforcement officer,
 30 as defined in s. 943.10, who is performing approved duties as
 31 determined by his or her local law enforcement agency in his or
 32 her capacity as a law enforcement officer, and who is subject to
 33 the direct and immediate command of his or her law enforcement
 34 agency, and in the law enforcement officer's uniform as
 35 authorized by his or her law enforcement agency, is performing
 36 law enforcement and public safety services and is not performing
 37 detective, burglar protection, or other protective services, if
 38 the law enforcement officer is performing his or her approved
 39 duties in a geographical area in which the law enforcement
 40 officer has arrest jurisdiction. Such law enforcement and public
 41 safety services are not subject to tax irrespective of whether
 42 the duty is characterized as "extra duty," "off-duty," or
 43 "secondary employment," and irrespective of whether the officer
 44 is paid directly or through the officer's agency by an outside
 45 source. The term "law enforcement officer" includes full-time or
 46 part-time law enforcement officers, and any auxiliary law
 47 enforcement officer, when such auxiliary law enforcement officer
 48 is working under the direct supervision of a full-time or part-
 49 time law enforcement officer.

50 b. Nonresidential cleaning, excluding cleaning of the

51 interiors of transportation equipment, and nonresidential
 52 building pest control services (NAICS National Numbers 561710
 53 and 561720).

54 2. As used in this paragraph, "NAICS" means those
 55 classifications contained in the North American Industry
 56 Classification System, as published in 2007 by the Office of
 57 Management and Budget, Executive Office of the President.

58 3. Charges for detective, burglar protection, and other
 59 protection security services performed in this state but used
 60 outside this state are exempt from taxation. Charges for
 61 detective, burglar protection, and other protection security
 62 services performed outside this state and used in this state are
 63 subject to tax.

64 4. If a transaction involves both the sale or use of a
 65 service taxable under this paragraph and the sale or use of a
 66 service or any other item not taxable under this chapter, the
 67 consideration paid must be separately identified and stated with
 68 respect to the taxable and exempt portions of the transaction or
 69 the entire transaction shall be presumed taxable. The burden
 70 shall be on the seller of the service or the purchaser of the
 71 service, whichever applicable, to overcome this presumption by
 72 providing documentary evidence as to which portion of the
 73 transaction is exempt from tax. The department is authorized to
 74 adjust the amount of consideration identified as the taxable and
 75 exempt portions of the transaction; however, a determination

76 that the taxable and exempt portions are inaccurately stated and
 77 that the adjustment is applicable must be supported by
 78 substantial competent evidence.

79 5. Each seller of services subject to sales tax pursuant
 80 to this paragraph shall maintain a monthly log showing each
 81 transaction for which sales tax was not collected because the
 82 services meet the requirements of subparagraph 3. for out-of-
 83 state use. The log must identify the purchaser's name, location
 84 and mailing address, and federal employer identification number,
 85 if a business, or the social security number, if an individual,
 86 the service sold, the price of the service, the date of sale,
 87 the reason for the exemption, and the sales invoice number. The
 88 monthly log shall be maintained pursuant to the same
 89 requirements and subject to the same penalties imposed for the
 90 keeping of similar records pursuant to this chapter.

91 Section 2. Paragraph (c) of subsection (5) of section
 92 790.06, Florida Statutes, is amended to read:

93 790.06 License to carry concealed weapon or firearm.—

94 (5) The applicant shall submit to the Department of
 95 Agriculture and Consumer Services or an approved tax collector
 96 pursuant to s. 790.0625:

97 (c) A full set of fingerprints of the applicant
 98 administered by a law enforcement agency or the Division of
 99 Licensing of the Department of Agriculture and Consumer Services
 100 or an approved tax collector pursuant to s. 790.0625 together

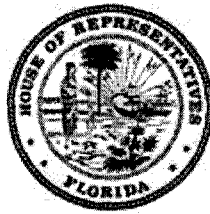
101 with any personal identifying information required by federal
 102 law to process fingerprints. Charges for fingerprint services
 103 under this paragraph are not subject to the sales tax on
 104 fingerprint services imposed in s. 212.05(1)(i).

105 Section 3. Subsection (2) of section 790.062, Florida
 106 Statutes, is amended to read:

107 790.062 Members and veterans of United States Armed
 108 Forces; exceptions from licensure provisions.—

109 (2) The Department of Agriculture and Consumer Services
 110 shall accept fingerprints of an applicant under this section
 111 administered by any law enforcement agency, military provost, or
 112 other military unit charged with law enforcement duties or as
 113 otherwise provided for in s. 790.06(5)(c). Charges for
 114 fingerprint services under this subsection are not subject to
 115 the sales tax on fingerprint services imposed in s.
 116 212.05(1)(i).

117 Section 4. This act shall take effect July 1, 2017.



STORAGE NAME: h6503.CJC
DATE: 3/6/2017

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 6503; Relief/Sean McNamee, Todd & Jody McNamee/School Board of Hillsborough County
Sponsor: Shaw
Companion Bill: SB 40 by Galvano
Special Master: Parker Aziz

Basic Information:

Claimants:	Sean McNamee, and his parents, Todd McNamee and Jody McNamee
Respondent:	School Board of Hillsborough County
Amount Requested:	\$1,700,000
Type of Claim:	Local equitable claim; result of a settlement agreement
Respondent's Position:	The School Board of Hillsborough County supports passage of the claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. There are no outstanding costs remaining.
Prior Legislative History:	This is the first time this claim has been introduced to the Legislature.

Procedural Summary: On September 12, 2014, Sean McNamee, along with his parents Todd and Jody McNamee ("Claimants"), filed a lawsuit against the School Board of Hillsborough County ("School Board") in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County. A year later, on September 14, 2015, the parties attended a court-ordered mediation and agreed to settle the lawsuit for \$2,000,000. Pursuant to the settlement, the School Board has paid the sovereign immunity limit of \$300,000.

SPECIAL MASTER'S SUMMARY REPORT--

Page 2

Facts of Case: On the afternoon of October 9, 2013, a sixteen year old Sean McNamee was participating in the Wharton High School football team practice when he struck his head on a machine used to paint the field. The machine had been inadvertently left on the practice field by head coach David Mitchell. The football players, in accordance with Coach Mitchell's instructions, were wearing no pads and no helmets and performing passing drills. At approximately 3:45 PM, Sean, while attempting to catch a pass, collided with another player and fell on the machine used to paint the field. Sean's fellow players stopped the drill and alerted the coaching staff of Sean's fall. The coaching staff instructed Sean to go to the locker room to be seen by the athletic trainer, Timothy Koecher.

Security cameras at the school show Sean walking to the locker room alone. A few minutes later, Trainer Koecher leads Sean into the training room next to the locker room. Trainer Koecher is seen on camera entering and exiting the training room and building three times in a span of approximately 30 minutes, often leaving Sean alone with his head injury. When Trainer Koecher was with Sean, he evaluated Sean's head and instructed Sean to place ice on the injury site. In the student injury report filled out by Trainer Koecher, he notes a bruise on Sean's head, mentions applying ice and contacting Sean's mother, Jody. Trainer Koecher failed to notice any symptoms that Sean was concussed or call for emergency care. It would later be discovered that Sean's skull was fractured.

Sean, suffering from agonizing pain, left the training room and building unattended at 4:20 PM and drove off in his car. Roughly thirty minutes later, Coach Mitchell and Trainer Koecher return to the training room looking for Sean and discovered that Sean had left. After arriving home, Sean's speech became incoherent and his father, Todd, drove him to the emergency room at Florida Hospital Tampa. The doctors discovered Sean's skull was fractured with internal bleeding and swelling in the brain. To reduce the pressure on his brain, a craniotomy was performed in which a portion of Sean's skull was removed to reduce the swelling. Nine days later, Sean emerged from a medically induced coma. In December of 2013, a cranioplasty was performed to put Sean's skull fragment back, secured with a titanium plate.

Following extensive therapy, Sean was able to return to school but his injury would continue to plague him. Dr. Veronica Clement, a neuropsychologist, evaluated Sean in January of 2014 and found significant impairment in Sean's cognitive functioning. Starting in 2015, Sean began to experience seizures that often require hospitalization and plague him still today. Sean has made great strides in recovering from his injury, including graduating from high school, but from testimony given at the special master hearing by Sean's parents, Sean's seizures and memory loss will likely deny him the ability to live an independent life.

Given Sean's extensive medical procedures, he has incurred significant medical costs and still has outstanding medical liens of \$230,941.16. Per the terms of the settlement agreement, the School Board has aided Sean and his parents in securing an insurance policy to help pay the outstanding liens. Additionally, Sean's parents have set up an irrevocable trust to provide for Sean's needs, in which the remaining claim bill award will fund.

Recommendation: I respectfully recommend that HB 6503 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: March 6, 2017

SPECIAL MASTER'S SUMMARY REPORT--
Page 3

cc: Representative Shaw, House Sponsor
Senator Galvano, Senate Sponsor
Daniel Looke, Senate Special Master

1 A bill to be entitled
 2 An act for the relief of Sean McNamee and his parents,
 3 Todd McNamee and Jody McNamee, by the School Board of
 4 Hillsborough County; providing for an appropriation to
 5 compensate them for injuries and damages sustained by
 6 Sean McNamee as a result of the negligence of
 7 employees of the School Board of Hillsborough County;
 8 providing a limitation on the payment of compensation,
 9 fees, and costs; providing an effective date.

10
 11 WHEREAS, on October 9, 2013, Sean McNamee, a minor student
 12 and member of the football team at Wharton High School,
 13 participated in a warm-up session as part of organized team
 14 activities at the start of football practice, and

15 WHEREAS, during a passing drill, Sean McNamee lost his
 16 balance when he came into contact with another player, and while
 17 falling to the ground, struck his head on a paint machine used
 18 to line the practice field which had been improperly left in the
 19 practice area, and

20 WHEREAS, Sean McNamee appeared confused, disoriented, and
 21 not "symptom free" while in the training and locker rooms for
 22 evaluation and treatment by the school's athletic trainer, and

23 WHEREAS, the coaching and training staff did not properly
 24 evaluate or assess Sean McNamee for a concussion or head injury,
 25 left him unattended, did not call 911 or summon a physician or

26 ambulance, and did not immediately notify Sean's parents of the
 27 possibility that their son had sustained a brain injury, and

28 WHEREAS, the coaching and training staff responsible for
 29 the supervision and welfare of participating student athletes
 30 should have known of the severity of the injury experienced by
 31 Sean McNamee and were responsible for ensuring he received
 32 appropriate and timely evaluation and attention, and

33 WHEREAS, after being left alone for an extended time, Sean
 34 McNamee drove himself home, endangering himself and others, and
 35 there his sister found him incoherent and acting strangely, and
 36 she notified their father, Todd McNamee, who rushed him to the
 37 emergency department at Florida Hospital Tampa, and

38 WHEREAS, physicians at Florida Hospital Tampa diagnosed
 39 Sean McNamee with a traumatic brain injury from a depressed
 40 temporal bone fracture with epidural and subdural hemorrhage
 41 which required multiple brain surgeries, including emergency
 42 decompression craniotomy, a 9-day induced coma, and
 43 reconstruction with a titanium plate permanently inserted into
 44 his fractured skull, and

45 WHEREAS, as a result of the traumatic brain injury and
 46 delayed treatment, Sean McNamee suffers from permanent and
 47 significant changes in his cognitive functions and from an
 48 epileptic seizure disorder with breakthrough episodes, and

49 WHEREAS, Sean McNamee and his parents Todd McNamee and Jody
 50 McNamee brought suit against the School Board of Hillsborough

51 County in the Circuit Court of the Thirteenth Judicial Circuit
 52 in and for Hillsborough County, Case No 14-CA-009239, and the
 53 parties entered into a court-ordered mediation on September 14,
 54 2015, and

55 WHEREAS, the School Board of Hillsborough County approved a
 56 settlement in the amount of \$2 million, paid the statutory limit
 57 of \$300,000 under s. 768.28, Florida Statutes, and further
 58 agreed to support the passage of this claim bill in the amount
 59 of \$1.7 million for the unpaid portion of the settlement, NOW,
 60 THEREFORE,

61

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

63

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

66 Section 2. The School Board of Hillsborough County is
 67 authorized and directed to appropriate from funds not otherwise
 68 encumbered and to draw a warrant in the sum of \$1.7 million
 69 payable to the Sean R. McNamee Irrevocable Trust as compensation
 70 for injuries and damages sustained as a result of the negligence
 71 of employees of the School Board of Hillsborough County.

72 Section 3. The amount paid by the School Board of
 73 Hillsborough County under s. 768.28, Florida Statutes, and the
 74 amount awarded under this act are intended to provide the sole
 75 compensation for all present and future claims arising out of

76 the factual situation described in this act which resulted in
 77 injuries to Sean McNamee and damages to Todd McNamee and Jody
 78 McNamee. Of the amount awarded under this act, the total amount
 79 paid for attorney fees may not exceed \$340,000, the total amount
 80 paid for lobbying fees may not exceed \$85,000, and no amount may
 81 be paid for costs and other similar expenses relating to this
 82 claim.

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

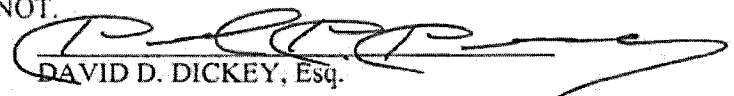
In Re: Senate Bill 40 (Relief of Sean McNamee by the School Board of Hillsborough County)

Claimants' Supplemental Attorney/Lobbyist Fees and Costs Affidavit

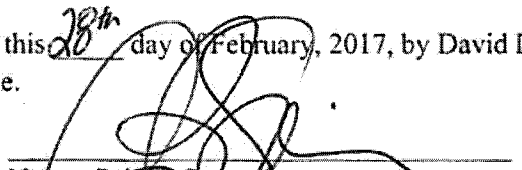
Affiants, David D. Dickey, Esq. and Matthew Blair, after appearing personally before the undersigned authority and being duly sworn, deposes and states that:

1. I am over eighteen years of age. The statements made in this affidavit are based upon my personal knowledge.
2. David Dickey is an attorney licensed to practice law in the State of Florida since 1992 and along with Steven Yerrid, Esq. and other members of The Yerrid Law Firm, represent Claimants Sean McNamee and his parents Todd McNamee and Jody McNamee, for legal services resulting from a head injury that occurred on October 9, 2013 at Wharton High School in Hillsborough County, Florida, including this claim bill.
3. Matthew Blair is a registered lobbyist and along with other members of the Corcoran & Johnson firm represent Claimants for lobbying services associated with this bill.
4. The claimants, attorneys and lobbyist have contractually agree to cap the total amount of all attorney's fees and lobbyist's fees at 25% of the total claim award in accordance with Florida Statute § 768.28(8) with the total attorney's fees being 20% and the Lobbyist fee being 5% of any amount awarded by the Legislature.
5. The Yerrid Law Firm incurred costs in the amount of \$9,056.52, of which \$405.16 was for copying, legal research fees, courier charges, and other miscellaneous in-house charges, associated with the legal services for claimants' representation, that was reimbursed from the statutory cap payment previously recovered.
6. There are no additional outstanding costs that will be paid by claimants from any amount awarded by the Legislature. The attorneys and lobbyist have agreed to waive any additional costs.

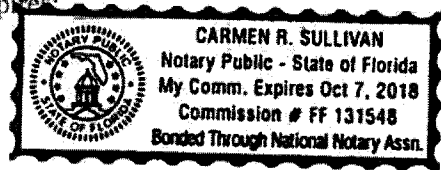
FURTHER AFFIANT SAYETH NOT.

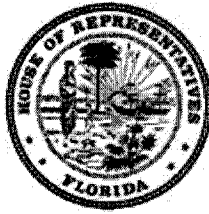

DAVID D. DICKEY, Esq.

SWORN TO and SUBSCRIBED before me this 28th day of February, 2017, by David D. Dickey, Esq., who is personally known to me.



Notary Public, State of _____
Name: _____
Commission Number: _____
Commission Expires: _____





STORAGE NAME: h6509.CJC

DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6509 - Representative Cortes
Relief/Robert Allan Smith/Orange County

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$2,813,536.09 AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ROBERT ALLAN SMITH WHEN HIS MOTORCYCLE WAS STRUCK BY AN ORANGE COUNTY WORK VAN ON SEPTEMBER 7, 2006.

FINDING OF FACT:

This matter arises out of a motor vehicle crash that occurred on September 7, 2006, in Orlando, Florida at the intersection of DePauw Avenue and Orlando Street. DePauw Avenue runs north and south while Orlando Street runs east and west. The intersection is a four way intersection with Orlando Street having stop signs and DePauw Avenue having the right of way and no stop sign. The intersection is located in a residential neighborhood with a speed limit of 25 mph. On September 7, 2006, DePauw Avenue had a couple of vehicles parked on the street. It was a dry, clear day.

The Accident

Robert Allan Smith lived on DePauw Avenue in 2006 and was working on repairing his Honda VF 750 C Magna motorcycle. The night before, Mr. Smith had finished work at Seminole Harley Davidson and drove his motorcycle home when his motorcycle idled out. Having the day off, Mr. Smith had spent

most of the morning working on his motorcycle. He had assembled and disassembled several parts and had driven the motorcycle around the block two separate times. According to Mr. Smith, the motorcycle would falter when changing gears and not accelerate. It was on his third test drive on around the block when the accident occurred.

Around 1:45 PM, Lynn Godden was driving an Orange County work van westbound down Orlando Street. Mr. Godden was an Orange County employee who repaired air conditioners in County buildings. Mr. Godden approached the intersection of Orlando Street and DePauw Avenue and stopped at the stop sign controlling Orlando Street. He looked to his left down DePauw Avenue and witnessed Mr. Smith. According to Mr. Godden, he saw Mr. Smith on a motorcycle but believed Mr. Smith was heading in the opposite direction, or south down DePauw Avenue. According to Mr. Smith, he made eye contact with Mr. Godden and reports that Mr. Godden had a phone in his left hand. Either way, Mr. Godden looked both ways down DePauw Avenue and crept forward a few feet into the intersection as vehicles parked on DePauw Avenue and trees blocked his view. Believing the intersection was clear, Mr. Godden continued driving west on Orlando Street.

At the same time, Mr. Smith entered the intersection on his motorcycle. Seeing the Orange County van, Mr. Smith attempted to steer his motorcycle to the left to avoid the van. Despite his maneuvering, the front of the Orange County van struck Mr. Smith. After impact, the motorcycle continued 22 feet to the corner of DePauw Avenue and hit the curb, sending Mr. Smith flying in the air another 23 feet.

Mr. Godden stopped after clearing the intersection and ran to Mr. Smith's aid. Nelson Dean, a carpenter working at a nearby house, ran to the scene and called 911. Mr. Smith, who never lost consciousness, asked Mr. Godden for his cell phone and called his wife. The ambulance arrived and took Mr. Smith to the hospital. In the ambulance logs, it is reported that Mr. Smith was traveling at 50 mph. Mr. Smith denies ever stating he was traveling at that speed and Eric Miller, the paramedic attending Mr. Smith, could not remember who stated the speed. Mr. Smith believes he was traveling at 20-25 mph and due to his motorcycle's deficiencies, he does not believe there was any way he could have been traveling faster. Mr. Dean, who witnessed both Mr. Smith on his motorcycle and Mr. Godden stopped at the stop sign, stated Mr. Smith was traveling at 35-40 mph.

Mr. Godden was issued a citation for failing to yield to a stop sign¹ but later had the citation dismissed. He was not

¹ s. 316.123(2)(a), F.S. ("After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway. . . .").

reprimanded by Orange County. In the records submitted to this Special Master, Mr. Godden had received six traffic citations in the past twenty years, including four citations for failing to obey a stop sign. He retired from Orange County in 2008.

The Injuries

The front of the Orange County van hit Mr. Smith on his right side and his right leg was amputated above the knee at the scene of the collision. He also fractured his left fibula and foot along with fracturing his pelvis. He incurred over \$551,527.37 in medical bills, along with the cost of purchasing and maintaining his prosthetic leg. Having no health insurance, Mr. Smith's medical bills have been paid by Medicaid or the Department of Veteran Affairs. There are outstanding liens against any award Mr. Smith receives.

Mr. Smith continues to suffer the effects of his injuries with recurring infections in his leg. He has gone on to complete his college degree but has not been able to find employment. In the years following the accident, he has moved to Lakeland and receives social security disability along with Department of Veteran Affairs' benefits from his past service in the Army.

LITIGATION HISTORY:

On February 14, 2007, Mr. Smith filed suit against Orange County in the Circuit Court of the Ninth Judicial Circuit alleging negligence on behalf of Mr. Godden and Orange County. Prior to going to trial, Mr. Smith and his wife, Jeanette Smith, divorced and she settled her claim against Orange County for \$85,000. A jury trial was held in November 2011 but resulted in a mistrial. The full case was presented to the jury and after six hours of deliberation on a Friday, the judge decided to send the jury home for the weekend and resume deliberations on Monday. One of the six jurors reported that she would not return Monday. After initially agreeing to go forward with a five person jury, Mr. Smith moved for a mistrial.

A year later, in November 2012, the case was tried again and resulted in a jury verdict of \$4,814,785.37. The jury found Orange County to be 67% at fault and Mr. Smith to be 33% at fault. The jury's calculations of damages were as follows:

Past Lost Earnings	\$137,280 ²
Past Medical Expenses	\$ 551,527.37
Future Medical Expenses	\$2,376,000
Past Pain & Suffering	\$228,258
Future Pain & Suffering	\$1,521,720
Total Damages	\$4,814,785.37

² Jeanette Smith, Mr. Smith's ex-wife, has a claim to 50% of Mr. Smith's award of past lost earnings. After reducing the jury verdict by Mr. Smith's apportionment of fault and dividing in half, her claim to past lost earnings comes to \$40,821.

The trial court reduced the damages for Mr. Smith's apportionment of fault and for Mr. Smith's collateral sources benefits of medical expenses paid by both the Department of Veteran Affairs and Medicaid. A final judgment was entered in the amount of \$2,913,536.09. Orange County did not appeal and rendered the statutory cap payment of \$100,000.

CLAIMANTS ARGUMENTS:

Mr. Smith argues that Orange County is liable for the negligence of its employee, Mr. Godden, when he failed to stop at the stop sign and ensure the intersection was clear. Mr. Smith argues the jury verdict should be given full effect through passage of this claim bill.

RESPONDENT'S ARGUMENTS:

Orange County opposes the claim bill. Orange County argues the comparative negligence of Mr. Smith, who it asserts was driving recklessly in excess of the speed limits, should reduce if not void any jury verdict. Additionally, Orange County objects to the calculation of future medical damages.

CONCLUSION OF LAW:

Whether or not there is a settlement agreement or a jury verdict, as there is here, every claim bill must be based on facts sufficient to meet the preponderance of the evidence standard. In order to prove a claim of negligence, Mr. Smith must show a duty of care was owed by Orange County to Mr. Smith and that duty was breached resulting in damages.³

Duty

Section 316.123(2)(a), F.S., provides a driver approaching an intersection with a stop sign must stop and "yield the right of way to any vehicle" which is approaching on the road. It is clear Mr. Godden owed a duty to Mr. Smith, who had the right of way as DePauw Avenue possessed no stop sign. Mr. Godden owed a duty to Mr. Smith to stop and yield the intersection to Mr. Smith.

Breach

Mr. Godden breached his duty of care to Mr. Smith when he proceeded through the intersection. Additionally, Orange County does not deny that Mr. Godden was acting within the scope of his employment and thus Orange County is liable for Mr. Godden's actions under the legal theory of respondeat superior.⁴ Mr. Godden's breach, driving through the intersection, was the proximate cause of Mr. Smith's injuries.

Comparative Negligence

In Florida, the doctrine of comparative fault provides for the apportionment of the loss among those whose fault contributed to the occurrence.⁵ A plaintiff's negligence diminishes the proportionality of the amount awarded but does not bar

³ *Mosby v. Harrell*, 909 So. 2d 323, 327 (Fla. 1st DCA 2005).

⁴ *Stinson v. Prevatt*, 94 So. 656, 657 (1922).

⁵ *Hoffman v. Jones*, 280 So. 2d 431, 436 (Fla. 1973).

recovery.⁶ Here, a jury considered Mr. Smith's actions and apportioned comparative fault at 33%. Orange County believes his fault was much greater.

It is understandable for both the jury and for Orange County to find Mr. Smith somewhat liable for the accident. As Orange County presented to the jury and to the Special Masters, the medical records from Orlando Regional Medical Center reveal Mr. Smith reported drinking a beer on the day of the accident. Additionally, Orange County cites to Mr. Smith's two prior DUIs⁷ as evidence Mr. Smith may have been drinking and driving. Mr. Smith has repeatedly denied drinking on the day of the accident and does not know how the notation appeared in the hospital records. The two paramedics who stabilized and transported Mr. Smith did not report any smell of alcohol. There was no blood alcohol analysis performed at the hospital.

The biggest contention of Orange County concerning Mr. Smith's comparative negligence is the belief that he was driving too fast. The speed limit on DePauw Avenue is 25 mph and Mr. Smith states he was driving at 20-25 mph. Mr. Smith lived on DePauw Avenue and was familiar with both the normal speed of traffic and the many cars typically parked on the street. However, eyewitness Nelson Dean reported that Mr. Smith was traveling at 35 to 40 mph. Additionally, paramedic Eric Miller's medical reports state that Mr. Smith told the first responders he was going around 50 mph.

Both parties presented expert witnesses as to Mr. Smith's speed. Mr. Orion Keifer, a mechanical engineer, testified for Mr. Smith and stated Mr. Smith was traveling at 25 mph or less based off of where Mr. Smith landed. The distance from impact to the sidewalk where Mr. Smith landed was 49.5 feet. For a man of Mr. Smith's size (6' 4" and 285 lbs), Mr. Keifer testified Mr. Smith had to have been traveling at 25 mph or slower to only be thrown 49 feet. Dr. Keifer testified that if Mr. Smith was traveling 50 mph, he would have been thrown 160-180 feet from impact instead of the 49.5 feet. Furthermore, Mr. Keifer testified he believes Mr. Smith was traveling slower than 25 mph because Mr. Smith remained on the bike at impact and skidded to the curb, making two large chips in the curb, before being thrown off the bike and landing in his final resting place. Thus, a shorter distance being airborne suggests Mr. Smith was traveling at a slower speed.

Orange County's expert, Dr. James Ipser, an astrophysicist, testified that Mr. Smith was airborne upon impact with the van. Dr. Ipser claimed the reason Mr. Smith did not travel as far as

⁶ s. 768.81(2), F.S.

⁷ Mr. Smith was arrested and convicted of driving under the influence in June 2000 and August 2001. Additionally, Mr. Smith had received his re-instated license a week before the accident. While he did not have a motorcycle endorsement, he stated he took the written test and was allowed to ride without passengers until he passed the driving test.

someone going 50 mph was because he hit guide wires on an adjacent telephone pole. Dr. Ipser also testified that if Mr. Smith had been traveling at 25 mph, he would have had ample opportunity to stop and avoid the van. Ultimately, Orange County believes Mr. Smith was driving reckless and should be found to be 75% at fault for the accident, not the jury's apportionment of 33%.

It is clear that the jury considered and weighed all of the testimony and actions of Mr. Smith when finding him to be 33% at fault. No testimony, reports, or arguments presented to the instant Special Master has shown any reason to further disturb the jury's apportionment. I find Mr. Smith was comparatively negligent and that apportionment of fault is 33% is appropriate.

Damages

Mr. Smith's damages are severe and life altering. He had his right leg amputated above the knee. His left leg was fractured and his pelvis was broken. It is clear the loss of his right leg continues to plague Mr. Smith to this day. At trial, different estimates were presented by both parties as to the cost of purchasing and maintaining a prosthetic leg. Mr. Smith's expert estimated an average annual cost to be near \$55,164 while Orange County's expert estimated it to be around \$44,400 annually.

In the years following the trial, Mr. Smith has had his prosthetic replaced and continues to suffer from complications from the amputation. In December 2016, he was hospitalized for an infection in his right leg. He has gained considerable weight and is now diabetic.

Orange County argues any medical costs have been shouldered by the Department of Veteran Affairs and Medicaid.⁸ Additionally, Orange County argues Mr. Smith only needs a new prosthetic every ten years instead of every five, cutting the annual costs of purchasing and maintaining a prosthetic from \$44,400 a year to around \$22,200.

Considering all of Orange County's arguments as to why damages are excessive, this instant Special Master concludes the jury's award and resulting final judgment is an appropriate amount to compensate Mr. Smith for what he has lost.

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the

⁸ The Department of Veteran Affairs has a lien in the amount of \$181,560.04 and Medicaid has a lien in the amount of \$42,147.35. Both liens would be satisfied from any award passed by the Legislature.

SPECIAL MASTER'S FINAL REPORT--

Page 7

attorney's 25% fee. Outstanding costs total \$ \$76,312.81.

RESPONDENT'S
ABILITY TO PAY:

Orange County has a self-insured retention fund in the amount of \$1,000,000 with an excess insurance policy for \$10 million. If the claim bill were to pass, \$670,510.74 would be paid from the self-insured retention fund and the remaining amount from the excess policy.

LEGISLATIVE HISTORY:

This is the first time this instant claim has been filed in either chamber.

RECOMMENDATIONS:

I respectfully recommend that HB 6509 be reported **FAVORABLY**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Parker Aziz', with a large loop at the beginning and a horizontal stroke at the end.

PARKER AZIZ

House Special Master

cc: Representative Cortes, B., House Sponsor
Senator Torres, Senate Sponsor
Ashley Istler, Senate Special Master

1 A bill to be entitled
 2 An act for the relief of Robert Allan Smith by Orange
 3 County; providing for an appropriation to compensate
 4 him for injuries sustained as a result of the
 5 negligence of an employee of Orange County; providing
 6 for repayment of Medicaid liens; providing a
 7 limitation on the payment of fees and costs; providing
 8 an effective date.

9
 10 WHEREAS, Robert Allan Smith was involved in a motor vehicle
 11 accident on DePauw Avenue and Orlando Street in Orlando, Orange
 12 County, on September 7, 2006, and

13 WHEREAS, Mr. Smith was operating his motorcycle within the
 14 25 mph speed limit, with headlights on, at approximately 1:43
 15 p.m., in clear, dry weather, headed north on DePauw Avenue, the
 16 quiet residential street he lived on and within 300 feet of his
 17 home, and

18 WHEREAS, Mr. Smith approached the intersection of Orlando
 19 Street, which is governed by a stop sign, and a work van headed
 20 west on Orlando Avenue, owned by Orange County and driven by
 21 Orange County employee Lynn Lawrence Godden, negligently pulled
 22 from said stop sign directly into Mr. Smith's path and caused a
 23 collision with Mr. Smith, and

24 WHEREAS, Mr. Smith saw the driver of the van visibly slow
 25 down upon approaching the stop sign and look at Mr. Smith as he

26 | approached on his motorcycle, but the driver of the van drove
 27 | through the stop sign into Mr. Smith's path, and Mr. Smith had
 28 | too little time and distance to prevent a collision, and

29 | WHEREAS, the front of the Orange County van struck the
 30 | right side of Mr. Smith, causing severe and life-threatening
 31 | injuries, including traumatic amputation of his right leg above
 32 | the knee, a badly fractured lower left leg with internal
 33 | fixation, and a broken pelvis and sacrum with internal fixation,
 34 | and Mr. Smith required a laparotomy to repair damage to his
 35 | rectum and internal organs, and

36 | WHEREAS, the Orange County employee testified he stopped at
 37 | the stop sign and saw, to his left, the motorcycle pull out of a
 38 | driveway but erroneously thought it was heading in the other
 39 | direction away from him, though there was no evidence to support
 40 | this claim, so he then looked to his right and entered the
 41 | intersection without looking back to his left, and

42 | WHEREAS, the Orange County employee violated Mr. Smith's
 43 | right-of-way and was issued a citation by the Orlando Police
 44 | Department for failure to yield from a stop sign, and

45 | WHEREAS, before the civil jury trial, Robert Allan Smith's
 46 | past hospitalization, medical, and rehabilitation expenses
 47 | exceeded \$550,000 and his past lost earnings were in excess of
 48 | \$137,000, and

49 WHEREAS, the jury determined that Mr. Smith's future
 50 medical expenses will total \$2,376,000 over 40 years, and past
 51 medical expenses and lost wages totaled \$688,807.37, and

52 WHEREAS, Robert Allan Smith was awarded \$1,749,978 in
 53 damages for past and future pain and suffering, for a total
 54 verdict award of \$4,814,785.37, and

55 WHEREAS, after reduction for comparative negligence and
 56 setoffs to allow for bill reductions by Medicaid and the
 57 Veteran's Administration, a judgment was entered in Orange
 58 County on November 27, 2012, against Orange County and in favor
 59 of Robert Allan Smith in the amount of \$2,913,536.09, plus
 60 taxable costs, and

61 WHEREAS, after entry of the judgment, Orange County has
 62 made partial payment to Robert Allan Smith in the amount of
 63 \$100,000, but the remainder of the judgment remains wholly
 64 unsatisfied, pending passage of this act into law, NOW,
 65 THEREFORE,

66

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

68

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

71 Section 2. Orange County is authorized and directed to
 72 appropriate from funds of the county not otherwise appropriated
 73 and to draw a warrant in the sum of \$2,813,536.09 payable to

74 Robert Allan Smith as compensation for injuries and damages
 75 sustained as a result of the negligence of an employee of Orange
 76 County.

77 Section 3. The governmental entity responsible for payment
 78 of the warrant shall pay to the Agency for Health Care
 79 Administration the amount due under s. 409.910, Florida
 80 Statutes, before disbursing any funds to the claimant. The
 81 amount due to the agency shall be equal to all unreimbursed
 82 medical payments paid by Medicaid up to the date upon which this
 83 act becomes a law.

84 Section 4. The amount paid pursuant to s. 768.28, Florida
 85 Statutes, and the amount awarded under this act are intended to
 86 provide the sole compensation for all present and future claims
 87 arising out of the factual situation described in the preamble
 88 to this act which resulted in the injuries and damages sustained
 89 by Robert Allan Smith. Of the amount awarded under this act, the
 90 total amount paid for attorney fees may not exceed \$562,707.218,
 91 the total amount paid for lobbying fees may not exceed
 92 \$140,676.80, and the total amount paid for costs and other
 93 similar expenses relating to this claim may not exceed
 94 \$70,351.88.

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

**IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

CASE NO: 07-CA-1925

ROBERT ALAN SMITH,

Plaintiff,

vs.

**ORANGE COUNTY BOARD OF
COUNTY COMMISSIONERS,**

Defendant.

AFFIDAVIT OF DAVID B. MOFFETT AND ALBERT BALIDO

STATE OF FLORIDA

COUNTY OF ORANGE


BEFORE ME, the undersigned authority, personally appeared **DAVID B. MOFFETT, Esq.**, attorney with Morgan and Morgan, P.A., who, after being duly sworn, deposes and says:

1. The attorney's fees that Mr. Smith has agreed to pay Morgan and Morgan, P.A. for legal services is a flat twenty-five percent (25%) of any amount that may be awarded by the Legislature pursuant to Mr. Smith's claim bill petition.
2. Morgan and Morgan, P.A. agreed to pay its lobbyist, Mr. Albert Balido with Anfield Consulting in Tallahassee, Fl., five percent (5%) of any amount that may be awarded by the Legislature pursuant to Mr. Smith's claim bill petition.
3. The attorney's fees specified in paragraph 1 above include the lobbyist fees specified in paragraph 2 above, thus reducing Morgan and Morgan's fee to an effective fee of

twenty percent (20%) of any amount that may be awarded by the Legislature pursuant to Mr. Smith's claim bill petition.

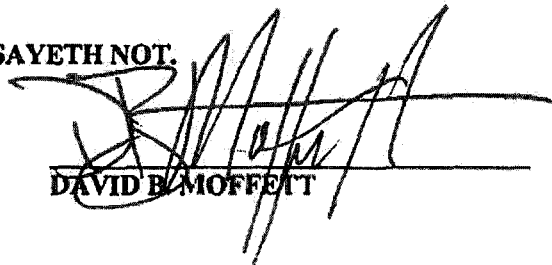
4. The total dollar amount of outstanding law firm costs that will be paid from any amount that may be awarded by the legislature is \$70,351.88 (seventy thousand, three hundred fifty ~~ONE~~ dollars and ~~eight~~ cents), to include Valenzuela and Stern (per lien letter \$2,697.44); Nation Law Firm (\$10,493.68); and Morgan and Morgan (\$57,164.01).
5. The dollar amount of costs that were paid from the statutory cap payment is zero dollars (\$0). All of the statutory cap payment (\$100,000) is held in trust pending resolution of the claims bill petition.
6. Of the \$70,351.88 total amount of law firm costs, \$1,483.10 is for internal costs (expenses associated with the firms' overhead such as copying (of the V & S firm costs, Morgan and Morgan does not have a breakdown of internal versus external), and \$68,868.78 is associated with the firms' external costs (such as expert witness fees).

I, Albert Balido, agree with the forgoing statement of lobbyists fees.

 2/28/17

Albert Balido (dated)

FURTHER, AFFIANT SAYETH NOT.

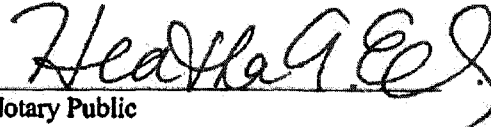


DAVID B. MOFFETT

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was subscribed and sworn to before me this 1st March day of , 2017

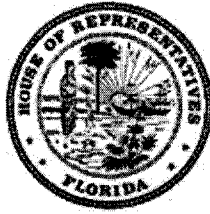
by **DAVID B. MOFFETT**, who is personally known to me and who did take an oath.



Notary Public

My commission expires:





STORAGE NAME: h6521.CJC
DATE: 3/6/2017

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 6521; Relief/Mary Mifflin-Gee/City of Miami
Sponsor: Jenne
Companion Bill: SB 46 by Montford
Special Master: Parker Aziz

Basic Information:

Claimants: Marilyn Jelks, as the legal guardian of Mary Mifflin-Gee

Respondent: City of Miami

Amount Requested: \$2,300,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: The City of Miami does not oppose a claim bill and will be reimbursed \$2,000,000 by its insurer.

Collateral Sources: None.

Attorney's/Lobbying Fees: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has not retained a lobbyist. Outstanding costs total \$17,110.39.

Prior Legislative History: This is the first time House Bill 6521 by Representative Jenne and Senate Bill 46 by Senator Montford has been introduced to the Legislature.

Procedural Summary: In 2013, Marilyn Jelks, as guardian of Mary Mifflin-Gee, filed a lawsuit against the City of Miami in the Circuit Court of the Eleventh Judicial Circuit in Miami-Dade County. Following a mediation in February of 2015, the parties agreed to a settlement of \$2,500,000 in which the City will pay out of its self-retention fund \$500,000 and Lloyds of London, the City of Miami's insurance company, will reimburse the City for all amounts over the self-insured retention.

Facts of Case: On October 25, 2012, around 11:00 a.m., an attendant at a laundromat called 911 after discovering a 63 year-old Mary Mifflin-Gee ("Claimant") slouched over in her car unconscious. At 11:15 a.m., three paramedics with the City of Miami arrive and begin to remove Claimant from her car. The paramedics retrieved a stretcher from the ambulance, lowered it to the ground, and placed Claimant upon the stretcher. The paramedics raised the sidebar of the stretcher but neither

SPECIAL MASTER'S SUMMARY REPORT--

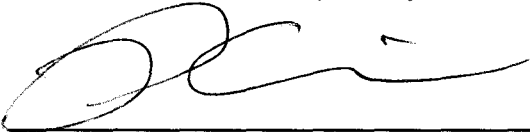
Page 2

of the three paramedics secured Claimant to the gurney with the seatbelt. While transporting the Claimant on the stretcher to the ambulance, the stretcher hit a divot in the parking lot and tipped over. Claimant, still unconscious, fell off the stretcher and landed on the pavement head first. She was placed back on the stretcher, secured, and transported to Jackson Memorial Hospital.

At the hospital, it was discovered the Claimant had suffered a severe traumatic brain injury and underwent a left craniectomy and cranioplasty. She is trach dependent and determined to be in a near total vegetative state. She is currently at Jackson Memorial Long Term Care Center and suffers from several complications brought along with her vegetative state such as acute renal failure, urinary tract infections, rectal bleeding and deep vein thrombosis. Her family resides in Georgia and wishes to transport her but Claimant's dependency on the trach has complicated any such plans.

In March of 2013, Claimant's sister Marilyn Jelks was appointed as Claimant's guardian. Claimant is not married, has no children and was retired at the time of her injury. Her past medical expenses paid for by Medicaid of \$374,388.50, were reduced and satisfied the Medicaid lien for \$128,164.37. Given her current condition, she will need constant medical care for the rest of her foreseeable life.

Recommendation: I respectfully recommend that HB 6521 be reported **FAVORABLY**.



Parker Aziz, Special Master

Date: March 6, 2017

cc: Representative Jenne, House Sponsor
Senator Montford, Senate Sponsor
Tari Rossitto-Vanwinkle, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Mary Mifflin-Gee by the City
3 of Miami; providing for an appropriation to compensate
4 her for injuries and damages sustained as a result of
5 the negligence of employees of the City of Miami
6 Department of Fire-Rescue; providing a limitation on
7 the payment of compensation, fees, and costs;
8 providing an effective date.

9
10 WHEREAS, on October 25, 2012, Mary Mifflin-Gee was in her
11 vehicle located in a parking lot at 1498 NW 54th Street in Miami
12 when, according to eyewitness statements, she exhibited seizure-
13 like symptoms and foamed from the mouth, and

14 WHEREAS, a call was placed to 911, and paramedics Eric
15 Hough, Marc Alexandre, and Steven Mason of the City of Miami
16 Department of Fire-Rescue responded to treat Mary Mifflin-Gee,
17 and

18 WHEREAS, the fire rescue personnel removed Mary Mifflin-Gee
19 from her vehicle, and, even though it is a basic Emergency
20 Medical Technician (EMT) requirement to secure an unconscious
21 patient to the gurney with the seatbelt, the fire rescue
22 personnel placed Mary Mifflin-Gee on a gurney without securing
23 her with the seatbelt and attempted to transfer her into the
24 ambulance, and

25 WHEREAS, because of the fire personnel's failure to follow

26 | the basic EMT requirement, Mary Mifflin-Gee fell off the gurney
 27 | and struck her head and, as a result, suffered a severe
 28 | traumatic brain injury, and

29 | WHEREAS, Mary Mifflin-Gee was transported to Jackson
 30 | Memorial Hospital, where she underwent a left craniectomy and
 31 | cranioplasty as well as a posttraumatic hydrocephalus
 32 | ventriculoperitoneal shunt placement for her head injury, and

33 | WHEREAS, Mary Mifflin-Gee became tracheostomy dependent and
 34 | suffered numerous complications, such as dysphagia,
 35 | hypertension, anemia of chronic disease, acute renal failure,
 36 | respiratory distress, urinary tract infections, rectal bleeding,
 37 | and deep vein thrombosis, and

38 | WHEREAS, Mary Mifflin-Gee was transferred to Jackson
 39 | Memorial Long-Term Care Center, where she now depends on nursing
 40 | staff for all daily activities and all levels of care and
 41 | remains in a persistent vegetative state, and

42 | WHEREAS, Mary Mifflin-Gee was treated by Dr. Craig
 43 | Lichtblau, a specialist certified by the American Board of
 44 | Physical Medicine and Rehabilitation, who determined that she is
 45 | 93 percent impaired as a result of the accident in question and
 46 | that her future medical care will cost several million dollars,
 47 | and

48 | WHEREAS, additionally, Mary Mifflin-Gee's past medical
 49 | expenses amount to \$1,168,857.93, and

50 | WHEREAS, before the accident, Mary Mifflin-Gee lived alone,

51 | had no significant health issues, and was completely
 52 | independent, and

53 | WHEREAS, Marilyn Jelks, as legal guardian of the person and
 54 | property of Mary Mifflin-Gee, filed a claim and lawsuit against
 55 | the City of Miami in the Circuit Court of the 11th Judicial
 56 | Circuit of Florida, Case No. 13-026644 CA 01, for compensation
 57 | for the injuries, alleging negligence in the care and treatment
 58 | by the EMT workers who attended to Mary Mifflin-Gee, and

59 | WHEREAS, mediation was conducted on February 6, 2015, and
 60 | the case was settled for \$2.5 million, and

61 | WHEREAS, the insurance company of the City of Miami,
 62 | Lloyd's of London, which has a policy that provides for a
 63 | \$500,000 self-insured retention before the company is
 64 | responsible for any excess amount, has agreed to pay \$2 million,
 65 | and

66 | WHEREAS, the City of Miami has agreed to pay \$200,000 in
 67 | satisfaction of the sovereign immunity limits under s. 768.28,
 68 | Florida Statutes, NOW, THEREFORE,

69 |
 70 | Be It Enacted by the Legislature of the State of Florida:

71 |
 72 | Section 1. The facts stated in the preamble to this act
 73 | are found and declared to be true.

74 | Section 2. The City of Miami is authorized and directed to
 75 | appropriate from funds not otherwise encumbered and to draw a

CS/HB 6521

2017

76 warrant in the sum of \$2,300,000 payable to Marilyn Jelks, as
 77 legal guardian of Mary Mifflin-Gee. This sum shall be placed in
 78 the Special Needs Trust created for the exclusive use and
 79 benefit of Mary Mifflin-Gee, to compensate her for injuries and
 80 damages sustained as a result of the negligence of employees of
 81 the City of Miami.

82 Section 3. The amount paid by the City of Miami pursuant
 83 to s. 768.28, Florida Statutes, and the amount awarded under
 84 this act are intended to provide the sole compensation for all
 85 present and future claims arising out of the factual situation
 86 described in this act which resulted in injuries and damages to
 87 Mary Mifflin-Gee. Of the amount awarded under this act, the
 88 total amount paid for attorney fees may not exceed \$575,000, no
 89 amount may be paid for lobbying fees, and the total amount paid
 90 for costs and other similar expenses relating to this claim may
 91 not exceed \$17,110.39.

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

AFFIDAVIT OF JASON D. WEISSER

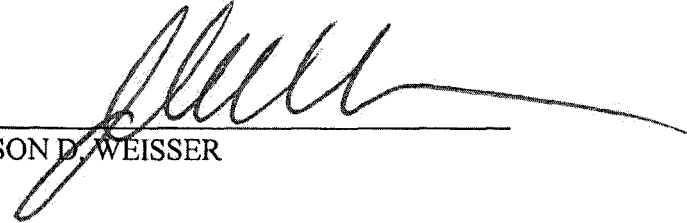
STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME this day personally appeared JASON D. WEISSER, after first being duly sworn deposes and says:

1. My name is Jason D. Weisser and I am over the age of twenty-one (21), competent to make this Affidavit with personal knowledge of the facts and the opinions contained herein.
2. I am a partner in the Law Firm of Schuler, Halvorson, Weisser, Zoeller & Overbeck, P.A. and have been in practice for twenty years. My business address is 1615 Forum Place, Suite 4D, West Palm Beach, FL 33401.
3. I have been retained to represent Claimant, Marilyn Jelks as guardian over person and property of Mary Mifflin-Gee, Incapacitated.
4. I have admissions to The Florida Bar; the U.S. District Court for the Southern, Northern and Middle Districts; as well as the Eleventh Circuit Court of Appeals and the United States Supreme Courts.
5. I am Board Certified in Civil Trial Law and a member of the American Board of Trial Lawyers.
6. That pursuant to Florida Statute 768.28, the attorney's fees in this case are capped at 25% of any recovery and this has been agreed to by my firm and the client, pending legislative approval.
7. Based on a \$2,300,000.00 settlement, Claimant's counsels attorneys' fees are \$575,000.00.
8. There is no lobbyist retained. No lobbyist fees have been previously paid or are owing.
9. The total amount of costs in this matter to date are \$17,110.39 which have not been paid and are still outstanding.
10. The statutory cap has not been paid to date, thus no costs have been reimbursed from the cap proceeds.

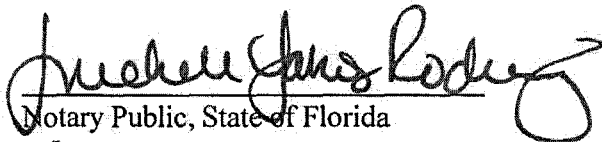
11. The firm internal costs are \$2,804.51 and the external costs are \$14,305.88.

FURTHER AFFIANT SAYETH NAUGHT.

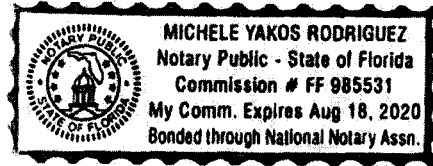


JASON D. WEISSER

SWORN AND SUBSCRIBED before me
this 2nd day of March, 2017.



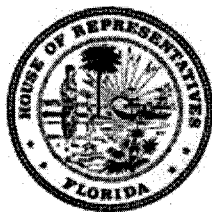
Notary Public, State of Florida
at Large



My Commission Expires:

Name of Notary Public, Print, Typed or Stamped.

Personally known, or Produced Identification Type of identification produced



STORAGE NAME: h6529.CJC

DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6529 - Representative Byrd
Relief/Lillian Beauchamp/St. Lucie County School Board

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR DAMAGES SUFFERED BY LILIAN BEAUCHAMP AS PERSONAL REPRESENTATIVE OF THE ESTATE OF AARON BEAUCHAMP BECAUSE AARON WAS KILLED WHEN HIS SCHOOL BUS WAS STRUCK BY A TRACTOR TRAILER ON MARCH 26, 2012.

FINDING OF FACT:

The Accident

On March 26, 2012, Aaron Beauchamp was a nine year old boy riding on a St. Lucie County school bus. The bus was heading west on Okeechobee Road in Port St. Lucie carrying thirty elementary age students. The driver of the bus, Albert Hazen, had picked up the students from Francis K. Sweet Elementary in Ft. Pierce and was nearing his first stop on the afternoon route. While Mr. Hazen did not normally drive this route for the school, he was familiar with the area. At around 3:45 p.m., he approached Midway Road and was traveling to the St. Lucie County Fairgrounds to make his first drop off of the day. Mr. Hazen steered the bus into the left turn lane and approached the intersection.

There is no traffic signal or stop sign at the intersection of

Okechobee Road and Midway Road. It was a clear day with no visual obstructions.

At the same time, heading east on Okechobee Road, Charles Cooper was driving a tractor trailer transporting pallets of sod. The truck's approximate weight that day was 78,600 pounds. The truck was driving approximately 60 miles per hour in a 55 mph speed limit. The tractor trailer driven by Mr. Cooper was visible to Mr. Hazen's bus, and vice versa.

As Mr. Hazen arrived at the intersection at Midway Road, he turned directly into the path of the tractor trailer driven by Mr. Cooper. Realizing his mistake, Mr. Hazen accelerated the bus through the intersection. However, the bus was unable to clear the intersection before the tractor trailer arrived. Mr. Cooper attempted to dodge the bus by steering his tractor trailer towards the right, even swerving off Okechobee Road. The front of the tractor trailer struck the right side of the school bus at the rear wheel and continued to travel forward and into the right side of the bus. The force of the impact caused the bus to partially rise off the ground and rotate clockwise slightly less than 180 degrees. The tractor trailer continued to travel forward and its trailer overturned, flipping the body of the truck until it landed in a ditch.

Injuries

Aaron Beauchamp was wearing his seatbelt and sitting in the second to last row on the driver side of the bus. The impact of the tractor trailer into the bus caused several of the bench seats on the bus to shift and break. The bus's sudden rotation caused some passengers to be ejected from their seats. Though he was wearing his seatbelt, Aaron's seat broke and he was violently thrown out of his seat. Aaron hit his head on the ceiling of the bus. Aaron Beauchamp's injuries proved to be fatal and he was pronounced dead at the scene.

Other drivers stopped and aided the children out of the bus. Of the 31 people on the bus, including the driver, 21 suffered injuries from the crash. Aaron was the only person to die from the crash. The medical examiner reported Aaron fractured his skull, broke his neck at the C7-T1 vertebrae (nearly severed the spinal cord), and suffered several internal injuries including a near rupture of his small intestine. The other children suffered injuries ranging from pelvic fractures to chest contusions.

Following a Florida Highway Patrol investigation, it was determined that neither the school bus driver nor the tractor trailer driver had alcohol or drugs in their system. No criminal charges were filed against Mr. Hazen, the school bus driver. He did receive a ticket for violating s. 316.122, F.S.,¹ for failing to

¹ Section 316.122, F.S., provides " The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the

yield the right-of-way to the tractor trailer approaching from the opposite direction. Mr. Hazen was fined \$1,166 and was fired by the St. Lucie County School District. Additionally, Mr. Cooper, the driver of the tractor trailer, was cited for violating s. 316.302, F.S., for not having adequate brakes. The investigation discovered the tractor trailer's automatic airbrake adjustment system did not compensate for wear as required by Federal Motor Vehicle Safety Standards.

LITIGATION HISTORY:

In February of 2013, Lilian Beauchamp, Aaron's mother and personal representative of Aaron's estate ("Claimant"), brought a lawsuit for wrongful death against the St. Lucie County School District ("School District") in the Circuit Court of the 19th Judicial Circuit in St. Lucie County. The School District and the insurer of the tractor trailer held a global mediation to settle all the claims arising from the crash. The School District had a self-insured consortium for the \$300,000 statutory cap and maintained an insurance policy for the excess coverage of \$1,000,000. Additionally, the tractor trailer's insurance carried a policy of \$2,000,000. The Claimant settled with the trucking company's insurance in the amount of \$575,000. The School District offered Claimant \$374,300 in an effort to resolve Claimant's claim but Claimant rejected the offer. The School District exhausted their insurance limits when it resolved the other 16 claims brought at mediation.

In March of 2014, Claimant amended their complaint against the School District to include the IC Buses Corporation, the manufacturer of the school bus. Prior to trial, Claimant reached a settlement with the school bus manufacturer for an undisclosed amount.

The claim against the School District proceeded to trial on September 1, 2015. At trial, the School District admitted Mr. Hazen failed to see the approaching truck but argued it was an avoidable accident because of the comparative negligence of the tractor trailer and bus manufacturer. The jury awarded a verdict of \$10,000,000 and found the School District was 87% at fault and the tractor trailer was 13% at fault. On November 2, 2015, a final judgment was entered against the School District for \$8,700,000. Since the \$300,000 statutory caps were exhausted paying the other claims, Claimant has not received any payment from the School District.

CLAIMANT'S ARGUMENTS:

The School District is liable for the death of Aaron Beauchamp under the legal theory of respondent superior and the negligent driving of Albert Hazen causing the collision between the school bus and the tractor trailer.

RESPONDENT'S ARGUMENTS:

The School District's liability is out flanked by the comparative negligence of the driver of the tractor trailer and the school bus manufacturer for deficient seats. Additionally, the School District has exhausted insurance funds on other claims and any award granted will be paid from the general operating funds and have a devastating effect on the School District's operating ability.

CONCLUSION OF LAW:

Whether or not there is a jury verdict or a settlement agreement, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. In order to state a claim of negligence against a sovereign under Florida law, a claimant must allege a duty of care owed by the sovereign to the claimant, breach of that duty of care, and resulting damages.²

Duty

A threshold issue in negligence is whether there was a duty owed to claimant.³ "As a general rule, if a public school entity provides transportation for its pupils, it owes a duty of care with regard to that transportation."⁴ Here, the School District owed a duty of care to nine year old Aaron Beauchamp as he was a student of the School District and the School District undertook the responsibility of transporting its students.

Liability

Under the legal theory of respondent superior, an employer is liable for the negligence of their employees for wrongful acts committed within the course and scope of their employment.⁵ Here, Albert Hazen, as an employee of the School District, was negligent in driving the school bus. As a school bus driver for the School District, Hazen was within the scope of his employment when he was transporting the students. Hazen was negligent in not seeing the tractor trailer heading east on Okechobee Road. The conditions that day were clear and dry. There was nothing obstructing Hazen's vision from seeing the tractor trailer. Hazen's failure to yield till the tractor trailer passed and instead turn in front of the tractor trailer caused the crash.

Comparative Negligence

At trial, the School District presented evidence that while Hazen's turn was negligent, the accident was avoidable because of the comparative negligence by the driver of the tractor trailer and the manufacturer of the school bus seats. Dr. Rolin Barret, an accident reconstructionist and mechanical engineer, testified for the School District with the following five

² *Mosby v. Harrell*, 909 So. 2d 323, 327 (Fla. 1st DCA 2005).

³ *Dep't of Env'tl. Prot. v. Hardy*, 907 So. 2d 655, 660 (Fla. 5th DCA 2005).

⁴ *Harrison v. Escambia Cty. Sch. Bd.*, 434 So. 2d 316, 319 (Fla. 1983).

⁵ *Cintron v. St. Joseph's Hosp., Inc.*, 112 So. 3d 685, 686 (Fla 2d DCA 2013).

opinions:

1. If the school bus did not turn left, the accident would not have happened.
2. If the tractor trailer truck had not been speeding, the accident would not have happened.
3. If the brakes had been up to minimum standards, then the accident would not have happened.
4. If the tractor trailer driver had slowed down or applied brakes sooner, then the accident would not have happened.
5. The tractor trailer truck driver turned right to avoid the collision when he should have turned left and the accident would not have happened.

The findings of Dr. Barret are informative and provide context to the accident. The jury at trial found the tractor trailer driver to be 13% at fault. Weighing the actions of both drivers in this incident, I find the superseding cause of the accident was the school bus turning into oncoming traffic. As for the allegation that the tractor trailer's speeding (traveling at 60 mph in a 55 mph zone) caused the accident, the Florida Highway Patrol Investigative Report conducted on this crash found that speed was not a factor in the crash. Dr. Barret's conclusion that the driver of the tractor trailer should have steered in the direction of the turning school bus instead of instinctively steering away from the bus cannot be found to be a credible act for any experienced driver. Finally, certainly the tractor trailer's brakes not meeting federal standards played a role in the crash and the jury's apportionment of fault is an adequate apportionment of fault.

The School District also argues that the school bus manufacturer is comparatively negligent in both the manufacturing and design of the seat on the bus. Aaron Beauchamp's seat broke in the accident which rendered his seat belt useless, ejected him into the air, and caused his head to strike the ceiling of the bus. Dr. Kenneth Saczalski, a consulting engineer hired by the School District, testified at trial that the latch holding the seat down did not have enough strength to withstand such an accident and was defective. The base of the seat was fastened to a metal tubular frame by clamps. The clamps failed and broke, allowing the seat to separate from the frame. Dr. John Lenox, a mechanical engineer and a medical doctor hired by the School District, testified at trial that had Aaron Beauchamp's seat not failed, Aaron would probably have survived the crash. Aaron was the only one of the nearly thirty children to die from the crash. His seat was on the opposite side of the impact. However, at trial, Dr. Lenox admitted that it is possible Aaron would still have died from the collision even if his seat had not broken. The medical examiner reported that Aaron suffered a fatal skull fracture but he also nearly severed his spinal cord and ruptured his small intestine. Many of the other children suffered severe

injuries but survived the crash and from the video from inside the school bus, several of the other seats broke and were dislocated from the crash. Ultimately, if Aaron's seat had not broken, he may have survived.

Claimant appears to agree that there was comparative negligence by the tractor trailer and by the bus manufacturer as shown by the fact that Claimant brought lawsuits against both entities. Claimant settled with the tractor trailer trucking company for \$575,000 and entered into a confidential settlement with the bus seat manufacturer. However, the jury was not informed of these settlements or these claims at trial. Given the testimony and evidence presented, the jury found the School District 87% at fault, the tractor trailer trucking company 13% at fault, and found no liability against the school bus manufacturer. The challenge is, being presented with the fault of all parties and corresponding settlement agreements, what proportion of fault for all three entities? I find the 13% fault attributed to the trucking company by the jury is just and supported by the evidence. However, the jury's refusal to attribute liability to the school bus manufacturer is confounding. I find there was negligence on behalf of the school bus manufacturer for the defective seats. Unfortunately, there is no evidence presented that would establish what amount of damages for Aaron's injuries had his seat not broken. He would still have suffered injuries that would require medical care. I find the school bus manufacturer to be 10% at fault for the injuries in this instant claim. Going off the jury's award of \$10 million, the amount awarded in the claim bill should be reduced by \$1,000,000.

Damages

There is no question that the damages in this claim are tragic. Lilian and Simon Beauchamp, in losing their youngest son, have suffered an immense amount of pain. From the testimony presented at the special master hearing, Simon lives in a constant state of grief over the loss of his son and refers to Aaron in the present tense. Lilian, a principal of a middle school in the School District, is reminded daily of the tragic accident every time she sees a school bus. The jury's finding of \$10,000,000 for their pain and suffering is appropriate. The Beauchamp's have focused their grief by honoring Aaron by creating the Aaron Project that provides collegiate scholarships for local students from St. Lucie County.

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$4,246.02.

SPECIAL MASTER'S FINAL REPORT--

Page 7

COLLATERAL SOURCES:

Claimant received \$575,000 from Cypress Trucking Company. Additionally, Claimant also entered into a confidential settlement with the school bus manufacturer.

Despite Claimant's requests, the school bus manufacturer would not waive confidentiality.

PRIOR LEGISLATIVE HISTORY:

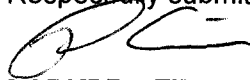
This is the first session this instant claim has been presented to the Legislature.

RECOMMENDATIONS:

Given the comparative negligence of the school bus manufacturer, the \$8,700,000 amount in the bill should be amended and reduced by \$1,000,000.

Accordingly, I respectfully recommend that House Bill 6529 bill be reported **FAVORABLY**.

Respectfully submitted,



PARKER AZIZ.

House Special Master

cc: Representative Byrd, House Sponsor
Senator Artilles, Senate Sponsor
Lauren Jones, Senate Special Master

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A bill to be entitled
An act for the relief of Lillian Beauchamp, as the
personal representative of the estate of Aaron
Beauchamp, by the St. Lucie County School District;
providing for an appropriation to compensate the
estate of Aaron Beauchamp for his wrongful death as a
result of the negligence of the St. Lucie County
School District; providing a limitation on the payment
of compensation, fees, and costs; providing an
effective date.

WHEREAS, on the afternoon of March 26, 2012, 9-year-old
Aaron Beauchamp boarded a school bus driven by St. Lucie County
School District employee, Albert Hazen, and

WHEREAS, shortly before Mr. Hazen reported to work that
afternoon, the district assigned him an additional bus route
that was unfamiliar to him, and

WHEREAS, at approximately 3:45 p.m., Mr. Hazen was driving
the school bus along the unfamiliar route, headed west on
Okeechobee Road with approximately 30 elementary school students
on board, and

WHEREAS, Mr. Hazen's first stop that afternoon was at the
St. Lucie County Fairgrounds, which he planned to reach by
making a left turn from Okeechobee Road onto Midway Road, and

WHEREAS, the school bus driven by Mr. Hazen was equipped

26 | with a district-installed surveillance camera which captured the
 27 | events of that afternoon, and

28 | WHEREAS, as Mr. Hazen approached the intersection of
 29 | Okeechobee Road and Midway Road and activated his left turn
 30 | signal, the weather was clear and there were no visual
 31 | obstructions in the roadway, and

32 | WHEREAS, Mr. Hazen turned onto Midway Road without stopping
 33 | at the intersection, travelling directly into the path of an
 34 | oncoming, fully-loaded tractor trailer, and

35 | WHEREAS, Mr. Hazen operated the school bus in a negligent
 36 | manner and the district, through the negligent action of its
 37 | employee, Mr. Hazen, breached a duty of care to Aaron Beauchamp,
 38 | and

39 | WHEREAS, the tractor trailer violently slammed into the
 40 | rear passenger side of the school bus, propelling it into the
 41 | air and spinning it around, and

42 | WHEREAS, the impact of the crash inflicted numerous
 43 | catastrophic injuries upon the students, and first responders to
 44 | the accident had to follow procedures for a mass casualty event,
 45 | and

46 | WHEREAS, Aaron Beauchamp was sitting in the back of the
 47 | school bus on the driver's side and, despite the fact that he
 48 | was wearing his seatbelt, was ejected from his seat into the
 49 | interior of the bus, and

50 | WHEREAS, Aaron Beauchamp suffered massive injuries to his

51 spine and brain and died at the scene of the crash, and
 52 WHEREAS, Aaron Beauchamp is survived by his mother, Lillian
 53 Beauchamp, a school principal and long-time district employee,
 54 his father, Simon Beauchamp, and an older brother, Benjamin
 55 Beauchamp, and

56 WHEREAS, Lillian Beauchamp, as the personal representative
 57 of the estate of Aaron Beauchamp, filed a wrongful death lawsuit
 58 against the district in the case of *Lillian Beauchamp, as*
 59 *Personal Representative of the Estate of Aaron Beauchamp, a*
 60 *deceased Child v. The St. Lucie County School District*, which
 61 was assigned case number 2013CA000569, and

62 WHEREAS, on September 8, 2015, a jury returned a unanimous
 63 verdict awarding \$10 million to Lillian Beauchamp, as the
 64 personal representative of the estate of Aaron Beauchamp,
 65 finding that the district was 87 percent at fault for the
 66 accident, and

67 WHEREAS, on November 2, 2015, the judge in the case entered
 68 a final judgment against the district for \$8.7 million, which
 69 the district did not appeal, and

70 WHEREAS, in accordance with s. 768.28, Florida Statutes,
 71 the district paid the statutory limit of \$300,000 to other
 72 children who were injured in the same incident that resulted in
 73 the wrongful death of Aaron Beauchamp, and

74 WHEREAS, the full amount of the judgment against the
 75 district for the wrongful death of Aaron Beauchamp remains

76 unpaid, and

77 WHEREAS, the district and Lillian Beauchamp, as the
 78 personal representative of the estate of Aaron Beauchamp, have
 79 not reached a settlement regarding this claim, and the district
 80 contests the bill, NOW, THEREFORE,

81

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

83

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

86 Section 2. The St. Lucie County School District is
 87 authorized and directed to appropriate from its funds not
 88 otherwise encumbered and to draw a warrant in the amount of \$8.7
 89 million payable to Lillian Beauchamp, as the personal
 90 representative of the estate of Aaron Beauchamp, as compensation
 91 for damages sustained in connection with his wrongful death.

92 Section 3. The amount awarded under this act is intended
 93 to provide the sole compensation for all present and future
 94 claims arising out of the factual situation described in this
 95 act which resulted in the wrongful death of Aaron Beauchamp. Of
 96 the amount awarded under this act, the total amount paid for
 97 attorney fees may not exceed \$1,740,000, the total amount paid
 98 for lobbying fees may not exceed \$435,000, and the total amount
 99 paid for costs and other similar expenses relating to this claim
 100 may not exceed \$4,246.02.

CS/HB 6529

2017

101

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

IN RE:

SENATE BILL 14

Relief of LILLIAN BEAUCHAMP by the ST. LUCIE COUNTY SCHOOL DISTRICT

AFFIDAVIT OF ATTORNEY'S FEES AND LOBBYIST'S FEES

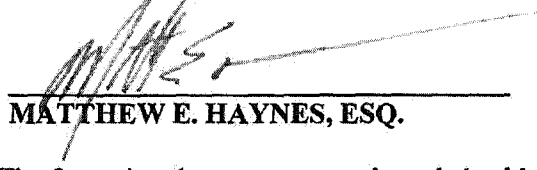
STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, this day personally appeared Matthew E. Haynes, Esq. and Patrick E. Bell, Lobbyist, who after being first duly sworn under oath, depose and state:

1. The Claimant has agreed to pay twenty-five percent (25%) of the amount awarded by the Legislature for legal services.
2. The Claimant has agreed to pay five percent (5%) of the amount awarded by the Legislature for lobbying services.
3. Notwithstanding the following, Claimant, Claimant's attorneys, and Claimant's lobbyists acknowledge that the mount of the attorney's fees, lobbying fees, and costs associates with the claim will not exceed twenty-five percent (25%) of the amount awarded by the Legislature.
4. The twenty-five percent (25%) for legal services provided by the Claimant's attorneys include lobbying fees and costs, if any.
5. The dollar amount of any outstanding costs that will be paid from any amount awarded by the Legislature is \$4,246.02. This amount includes only external costs and that the internal costs have been waived.

6. The amount of costs paid from the statutory cap payment is \$0.00. No payments have been made to the Claimants from the statutory cap.

FURTHER AFFIANT SAYETH NAUGHT.



MATTHEW E. HAYNES, ESQ.

The foregoing document was acknowledged before me, an officer duly authorized in the State and County to take acknowledgments, this 27th day of February, 2017, of Matthew E. Haynes, Esq., who:

- is personally known to me; or
 has produced _____ as identification; and who:
 did or
 did not, take an oath,

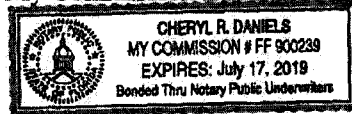
And who executed the within document, and who acknowledged the within document to be freely and voluntarily executed for the purposes therein recited.



Notary Public - State of Florida

Cheryl R. Daniels
Print Name

My Commission Expires: 7/17/2019



AND

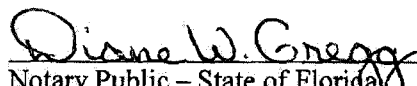


PATRICK E. BELL, LOBBYIST

The foregoing document was acknowledged before me, an officer duly authorized in the State and County to take acknowledgments, this 27th day of February, 2017, of Patrick E. Bell, Lobbyist, who:

- is personally known to me; or
 has produced _____ as identification; and who:
 did or
 did not, take an oath,

And who executed the within document, and who acknowledged the within document to be freely and voluntarily executed for the purposes therein recited.



Notary Public - State of Florida

Diane W. Gregg
Print Name

My Commission Expires: June 29, 2018

