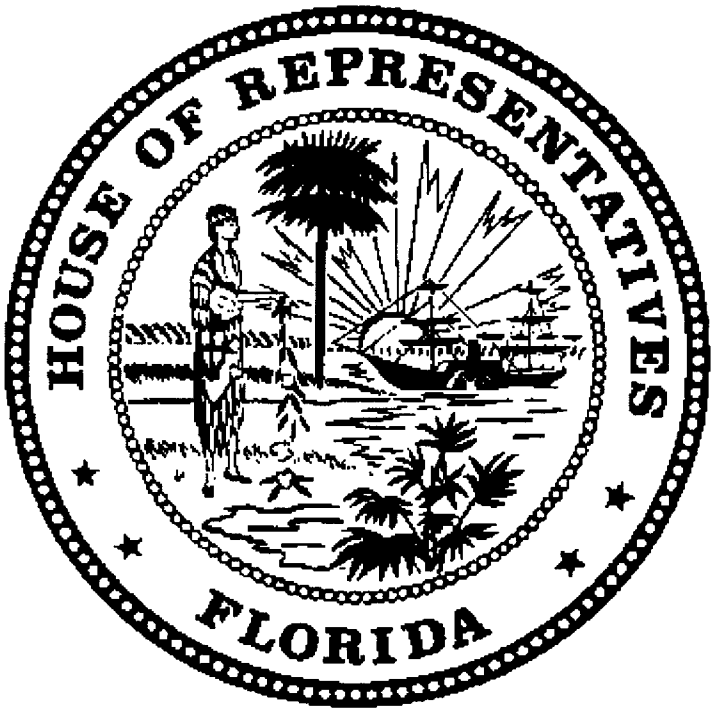

Judiciary Committee

Thursday, March 30, 2017
9:00 AM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Chris Sprowls
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time:	Thursday, March 30, 2017 09:00 am
End Date and Time:	Thursday, March 30, 2017 12:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 165 Sexually Transmissible Diseases by Criminal Justice Subcommittee, McGhee
CS/HJR 291 Exempting Law Enforcement Officers from Handgun Purchase Waiting Period by Criminal Justice Subcommittee, Hahnfeldt, Asencio
CS/HB 673 Exceptions to Requirements for the Purchase and Sale of Firearms by Criminal Justice Subcommittee, Hahnfeldt, Asencio
CS/CS/HB 6515 Relief/Wendy Smith and Dennis Darling, Sr./State of Florida by Appropriations Committee, Civil Justice & Claims Subcommittee, Jones
CS/HB 6529 Relief/Lillian Beauchamp/St. Lucie County School District by Civil Justice & Claims Subcommittee, Byrd
CS/HB 6545 Relief/Jerry Cunningham/Broward County by Civil Justice & Claims Subcommittee, Raburn
CS/HB 6549 Relief/Altavious Carter/Palm Beach County School Board by Civil Justice & Claims Subcommittee, Diaz, J.

Consideration of the following proposed committee substitute(s):

PCS for CS/HB 6531 -- Relief/Dustin Reinhardt/Palm Beach County School Board

NOTICE FINALIZED on 03/28/2017 4:07PM by Gilliam.Ann

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 165 Sexually Transmissible Diseases
SPONSOR(S): Criminal Justice Subcommittee, McGhee
TIED BILLS: **IDEN./SIM. BILLS:**

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	11 Y, 0 N	Smith	Gusky
3) Judiciary Committee		Hall WH	Camechis

SUMMARY ANALYSIS

Section 384.24, F.S., prohibits a person from having "sexual intercourse" if the person:

- Knows he or she is infected with one or more specified sexually transmissible diseases (STDs);
- Has been informed that the STD is transmissible to another person through sexual intercourse; and
- Has not first informed the other person of the presence of the STD and gained the person's consent to the sexual intercourse.

The specified STDs are: (1) chancroid; (2) gonorrhea; (3) granuloma inguinale; (4) lymphogranuloma venereum; (5) genital herpes simplex; (6) chlamydia; (7) nongonococcal urethritis (NGU); (8) pelvic inflammatory disease (PID)/acute salpingitis; (9) syphilis; and (10) human immunodeficiency virus (HIV) infection.

A violation of the prohibition is punishable as a first degree misdemeanor for any specified STD except HIV infection. If HIV infection is present, a first-time violation is punishable as a third degree felony and a second or subsequent violation is punishable as a second degree felony.

Currently, the term "sexual intercourse" is not statutorily defined, and, as a result, criminal defendants have challenged the term's meaning on appeal. The Third and Fifth District Courts of Appeals (DCAs) have held that the term includes sexual conduct between persons regardless of gender, while the Second DCA has held that the term only describes the placement of a male's sex organ inside a female's sex organ. In March 2017, the Florida Supreme Court released an opinion approving the decision by the Third DCA and disapproving the decision by the Second DCA.

The bill amends s. 384.24, F.S., to substitute the term "sexual conduct" for the term "sexual intercourse." The bill defines "sexual conduct" to mean conduct between persons, regardless of gender, which is capable of transmitting a STD, including but not limited to contact between a: (a) penis and a vulva or an anus; or (b) mouth and a penis, a vulva, or an anus. Accordingly, under the bill, the scope of prohibited conduct for persons with specified STDs is expanded beyond the interpretation set forth by the Second DCA. Additionally, the bill adds human papillomavirus and hepatitis to the list of specified STDs for which certain sexual conduct is prohibited.

The Criminal Justice Impact Conference met on March 2, 2017 and determined the bill would increase the prison population by an insignificant amount. "Insignificant" means the impact would be less than 10 prison beds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 384, F.S., is entitled the, "Control of Sexually Transmissible Disease Act" (hereinafter referred to as "the Act"). Section 384.22, F.S., specifies that the intent of the Act is to "provide a program that is sufficiently flexible to meet emerging needs, [that] deals efficiently and effectively with reducing the incidence of sexually transmissible diseases, and [that] provides patients with a secure knowledge that information they provide will remain private and confidential."

Under the Act, certain sexual behavior is prohibited for persons infected with specified sexually transmissible diseases (STDs). Specifically, s. 384.24, F.S., makes it unlawful for a person to have "sexual intercourse" if the person:

- Knows he or she is infected with one or more specified STDs;
- Has been informed that the STD is transmissible to another person through sexual intercourse; and
- Has not first informed the other person of the presence of the STD and gained the person's consent to the sexual intercourse.

The specified STDs are: (1) chancroid; (2) gonorrhea; (3) granuloma inguinale; (4) lymphogranuloma venereum; (5) genital herpes simplex; (6) chlamydia; (7) nongonococcal urethritis (NGU); (8) pelvic inflammatory disease (PID)/acute salpingitis; (9) syphilis; and (10) human immunodeficiency virus (HIV) infection.[1] This list of STDs has not been statutorily updated since 1988.[2] Since that time, human papillomavirus (HPV)[3] and hepatitis types A through E[4] have been identified as sexually transmissible diseases.[5]

A violation of the prohibition is punishable as a first degree misdemeanor[6] for any specified STD, except HIV infection.[7] If HIV infection is present, a first-time violation is punishable as a third degree felony[8] and a second or subsequent violation is punishable as a second degree felony.[9, 10]

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[1] s. 384.24(1) and (2), F.S.

[2] *See* Ch. 88-80, s. 27 (1988).

[3] CENTERS FOR DISEASE CONTROL AND PREVENTION, *Human Papillomavirus (HPV),* https://www.cdc.gov/hpv/parents/whatishpv.html (last visited January 29, 2017)(stating "HPV is transmitted through intimate skin-to-skin contact. You can get HPV by having vaginal, anal, or oral sex with someone who has the virus. It is most commonly spread during vaginal or anal sex.").

[4] NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES, *Hepatitis A through E (Viral Hepatitis),* https://www.niddk.nih.gov/health-information/liver-disease/viral-hepatitis (last visited January 29, 2017)(indicating that hepatitis A through E is transmissible through sexual conduct and other means).

[5] *See also* Rule 64D-3.028(23), F.A.C. (last amended November 24, 2008)(Florida Department of Health rule defining "Sexually Transmissible Disease" as "Acquired Immune Deficiency Syndrome (AIDS), Chancroid, Chlamydia trachomatis, Gonorrhea, Granuloma Inguinale, Hepatitis A through D, Herpes simplex virus (HSV), Human immunodeficiency virus Infection (HIV), Human papillomavirus (HPV), Lymphogranuloma Venereum (LGV), and Syphilis.").

[6] A first degree misdemeanor is punishable by up to one year imprisonment and a $1,000 fine. ss. 775.082 and 775.083, F.S.

[7] s. 384.34(1), F.S.

[8] 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.

[9] 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.

[10] Other Florida Statutes criminalize additional behavior that could result in the transmission of STDs. *See, e.g.,* s. 381.0041, F.S. (makes it a third degree felony for a person who knows he or she is infected with HIV and who has been informed that they may communicate the disease by donating blood, plasma, organs, skin, or other human tissue, to donate blood, plasma, organs, skin, or other human tissue); s. 775.0877, F.S. (makes it a third degree felony for a person, who has previously undergone HIV testing pursuant to a court order and to whom positive test results have been disclosed, to commit a subsequent enumerated offense involving the transmission of bodily fluids from one person to another); and s. 796.08, F.S. (makes it a third degree felony for a person with

Currently, the term "sexual intercourse" is not statutorily defined for purposes of the aforementioned offenses. As a result, criminal defendants charged with the offenses have argued on appeal that the term's meaning should be limited to heterosexual penetration of the female sex organ by the male sex organ. Two District Courts of Appeal (DCAs) have rejected this argument:

- The Third DCA has held that "sexual intercourse" describes "more than just penetration of the female sex organ by the male sex organ and includes ...fellatio and penile-anal penetration...." Further, the term embraces such conduct regardless of gender.[11]
- The Fifth DCA has held that, "sexual intercourse" includes "vaginal, anal, and oral intercourse between persons, regardless of their gender."[12]

In contrast, the Second DCA has held that, "sexual intercourse" is an act where a male's penis is placed inside a female's vagina and, therefore, s. 384.24(2), F.S., did not apply to the conduct in the case, i.e., oral sex and digital penetration between two women.[13]

On March 16, 2017, the Florida Supreme Court released an opinion approving the decision by the Third DCA and disapproving the decision by the Second DCA, holding "sexual intercourse" encompasses conduct beyond heterosexual penile-vaginal intercourse.[14]

Effect of Bill

The bill amends s. 384.24, F.S., to substitute the term "sexual conduct" for the term "sexual intercourse." The bill defines "sexual conduct" to mean conduct between persons, regardless of gender, which is capable of transmitting a STD, including but not limited to contact between a:

- Penis and a vulva[15] or an anus; or
- Mouth and a penis, a vulva, or an anus.

Accordingly, under the bill, the scope of prohibited sexual conduct for persons with specified STDs is expanded. The new definition for "sexual conduct" is consistent with the Florida Supreme Court's recent holding regarding the scope of sexual intercourse in s. 384.24, F.S.

The bill also updates the list of specified STDs to add human papillomavirus and hepatitis.

Finally, the bill reenacts s. 384.34(1) and (5), F.S., to incorporate amendments made by the bill to s. 384.24, F.S.

The bill takes effect on October 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amending s. 384.23, F.S., providing definitions.

Section 2. Amending s. 384.24, F.S., relating to unlawful acts.

Section 3. Reenacting s. 384.34(1) and (5), F.S., providing penalties.

HIV and a first degree misdemeanor for a person with other STDs to commit or procure prostitution if the person knew he or she had a positive test result and that it was possible to communicate the disease through sexual activity).

[11] *State v. Debaun,* 129 So. 3d 1089, 1090, 1095 (Fla. 3d DCA 2013).

[12] *State v. D.C.*, 114 So. 3d 440, 442 (Fla. 5th DCA 2013).

[13] *L.A.P. v. State*, 62 So. 3d 693, 694 (Fla. 2d DCA 2011).

[14] *Debaun v State*, 2017 Fla. LEXIS 583, 10 (Fla. 2017).

[15] "Vulva" is defined as "the external parts of the female sex organs considered as a whole. Included are the labia majora, the labia minora, the clitoris, the entrance to the vagina, the opening of the urethra, the vestibule, and the mons pubis (mons veneris)." ATTORNEY'S DICTIONARY OF MEDICINE (2016).

Section 4. Providing 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 met on March 2, 2017, and determined the bill would increase the prison population by an insignificant amount. "Insignificant" means the impact would be less than 10 prison beds.

   "Per DOC, in FY 15-16, there were 4 offenders sentenced under the unranked, 3rd degree felony, and 1 of these offenders was sentenced to prison. There was 1 offender sentenced under the unranked, 1st degree felony, and that offender was sentenced to prison. It is unknown how many additional offenders would be affected by this law."[16]

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 may increase the need for jail beds due to its expansion of prohibited sexual conduct and the list of STDs which are subject to first degree misdemeanor penalties.

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

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

[16] DEPARTMENT OF ECONOMIC AND DEMOGRAPHIC RESEARCH, *CS/HB 165 – Sexually Transmissible Diseases,* "Criminal Justice Impact Conference", March 2, 2017, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB165.pdf.

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:

- Broadened the definition of "sexual conduct" in s. 384.23, F.S., to include conduct between persons that is capable of transmitting a STD; and
- Expanded the list of STDs in s. 384.24, F.S., to include human papillomavirus and hepatitis.

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

A bill to be entitled

An act relating to sexually transmissible diseases; amending s. 384.23, F.S.; defining the term "sexual conduct"; amending s. 384.24, F.S.; expanding the scope of unlawful acts by a person infected with a sexually transmissible disease; expanding the list of sexually transmissible diseases; reenacting s. 384.34(1) and (5), F.S., relating to penalties pertaining to transmission of sexually transmissible diseases, to incorporate the amendments made by the act; providing an effective date.

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

Section 1. Section 384.23, Florida Statutes, is amended to read:

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

(1) "Department" means the Department of Health.

(2) "County health department" means agencies and entities as designated in chapter 154.

(3) "Sexual conduct" means conduct between persons, regardless of gender, which is capable of transmitting a sexually transmissible disease, including, but not limited to, contact between a:

(a) Penis and a vulva or an anus; or

(b) Mouth and a penis, a vulva, or an anus.

(4) ~~(3)~~ "Sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment. The department must, by rule, determine which diseases are to be designated as sexually transmissible diseases and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized medical authorities in that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

Section 2. Section 384.24, Florida Statutes, is amended to read:

384.24 Unlawful acts.—

(1) It is unlawful for a ~~any~~ person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, human papillomavirus, hepatitis, or syphilis, when the ~~such~~ person knows he or she is infected with one or more of these diseases and when the ~~such~~ person has been informed that he or she may communicate this disease to another person through

sexual conduct ~~intercourse~~, to engage in ~~have~~ sexual conduct ~~intercourse~~ with another ~~any other~~ person, unless the ~~such~~ other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual conduct ~~intercourse~~.

(2) It is unlawful for a ~~any~~ person who has human immunodeficiency virus infection, when the ~~such~~ person knows he or she is infected with this disease and when the ~~such~~ person has been informed that he or she may communicate this disease to another person through sexual conduct ~~intercourse~~, to engage in ~~have~~ sexual conduct ~~intercourse~~ with another ~~any other~~ person, unless the ~~such~~ other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual conduct ~~intercourse~~.

Section 3. For the purpose of incorporating the amendment made by this act to section 384.24, Florida Statutes, in references thereto, subsections (1) and (5) of section 384.34, Florida Statutes, are reenacted to read:

384.34 Penalties.—

(1) Any person who violates the provisions of s. 384.24(1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Any person who violates s. 384.24(2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who commits multiple

violations of s. 384.24(2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 291 Exempting Law Enforcement Officers from Handgun Purchase Waiting Period
SPONSOR(S): Criminal Justice Subcommittee; Hahnfeldt, Asencio and others
TIED BILLS: CS/HB 673 **IDEN./SIM. BILLS:** SJR 910

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Homburg	White
2) Judiciary Committee		Homburg	Camechis

SUMMARY ANALYSIS

Since 1990, article I, section 8(b) of the Florida Constitution, has required a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Additionally, since 1998, counties in this state have been authorized pursuant to article VIII, section (5)(b) of the Florida Constitution, to adopt waiting periods of three to five days for the purchase of a firearm by an individual other than a CWP holder.

According to an Attorney General Opinion, which construed the constitutional statewide three-day wait period, the exception for a holder of a CWP applies exclusively to individuals who hold such permit and does not apply to individuals who are exempt from the requirements of CWP licensure. Thus, even though active law enforcement officers in this state may carry concealed firearms without a CWP pursuant to state law, such officers must obtain a CWP if they wish to avoid the three-day waiting period to purchase a handgun.

HJR 291 proposes a constitutional amendment to article I, section 8(b) and article VIII, section (5)(b) of the Florida Constitution, to authorize certified law enforcement officers who are employed or appointed by a law enforcement agency in this state to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. Under the amendment, the requirements to constitute a "certified" officer must be prescribed by general law.

The joint resolution requires a nonrecurring expense for the publication of the proposed constitutional amendment in newspapers of general circulation in each county. This is estimated to require $61,601 payable from the General Revenue Fund in FY 2018-19 for this purpose. This joint resolution does not appear to have a fiscal impact on local governments.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 6, 2018. If adopted at the 2018 general election, the effective date of this resolution is January 8, 2019.

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 to appear on the next general election ballot. If on the ballot, the constitution requires 60 percent voter approval for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Waiting Periods for Handgun and Firearm Purchases

Statewide Waiting Period

In 1990, the electors approved an amendment to the Florida Constitution, which requires a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Specifically, article I, section 8(b) through (d) of the Florida Constitution, states:

> (b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.
>
> (c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.
>
> (d) This restriction shall not apply to a trade in of another handgun.

The Legislature implemented this constitutional provision by adopting s. 790.0655, F.S. This section of law defines "handgun" and "purchase" in the same manner as the Florida Constitution, and also states that the term "'retailer' means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13)."[1, 2] The section further provides that:

- There is a mandatory three-day waiting period, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun.[3]
- The section does not apply to the purchase of a handgun by a holder of a CWP as defined in s. 790.06, F.S.,[4] or to a trade-in of another handgun.[5]
- Records of handgun sales must be available for inspection by any law enforcement agency during normal business hours.[6]
- It is a third degree felony[7] for any retailer or employee or agent of a retailer to deliver a handgun before expiration of the 3-day waiting period and for a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.[8]

In 1991, an Attorney General Opinion stated that the exclusion from the three-day waiting day period for holders of a CWP did not apply to law enforcement officers even though such officers are statutorily-exempt from CWP licensure requirements. According to the AGO, s. 790.0655, F.S., reiterates the

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[1] s. 790.0655(1)(a), F.S.

[2] Section 212.03(13), F.S., specifies the identical definition of "retailer" specified in s. 790.0655(1)(a), F.S.

[3] s. 790.0655(1)(a), F.S.

[4] Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services to issue permits to carry concealed weapons or concealed firearms in this state to persons 21 years of age or older who meet specified criteria. Such permit holders may carry a concealed handgun, electronic weapon or device, tear gas gun, knife, or billie, subject to other restrictions provided by law. *Id.*

[5] s. 790.0655(2), F.S.

[6] s. 790.0655(1)(b), F.S.

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

[8] s. 790.0655(3), F.S.

constitutionally-prescribed exemptions for CWP holders and trade-ins, and, as such, "[w]here the Legislature creates specific exceptions to language in a statute, no other exceptions may be inferred."[9]

Local-Option Waiting Periods
In 1998, the electors approved an amendment to the Florida Constitution, which authorizes each county to require a criminal history records check and a 3- to 5-day waiting period, excluding weekends and holidays, for the sale of a firearm, unless the purchaser holds a CWP. Specifically, article VIII, section (5)(b) of the Florida Constitution, states:

> Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

Summary of Waiting Periods in Florida
While there is uniformly a three-day waiting period throughout the state for the purchase of a handgun from a "retailer," there may be additional waiting periods from three to five days on a county-by-county basis, which apply to the sale of a firearm on any property in the county to which the public has the right of access. For example, Miami-Dade Ordinance 21-20.18, specifies that a purchaser of a firearm[10] must wait five days after the purchase of a firearm on county property to which the public has the right of access[11] for delivery of the firearm and must have complied with specified criminal history check requirements. Broward County has a similar set of ordinances which require a five-day waiting period after the purchase of a firearm which is conducted on property that the public has a right to access,[12] as well as a background check requirement.[13]

Pursuant to the constitutional provisions, the state and local-option waiting periods do not apply to holders of a CWP.

Law Enforcement Officers - Authority to Carry without a CWP
As discussed below, active law enforcement officers are authorized to carry a firearm under specified circumstances without a CWP pursuant to a variety of provisions in state law.

With respect to individuals holding an active certification from the Criminal Justice Standards and Training Commission:

- As a law enforcement or correctional officer,[14] s. 790.052, F.S., provides that such individual has the right to carry, on or about his or her person, a concealed firearm, during off-duty hours, at the discretion of his or her superior officers, and may perform those law enforcement functions that he or she normally performs during duty hours, utilizing his or her weapon in a manner which is reasonably expected of on-duty officers in similar situations.

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[9] 91-65 Fla. Op. Att'y Gen. 1(1991).
[10] The term "firearm" is defined to mean, "any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; and firearm muffler or firearm silencer; any destructive device; or any machine gun. Such term does not include an antique firearm." Miami-Dade Ordinance 21-20.18(a)(3).
[11] The term "property to which the public has the right of access" is defined to mean, "any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearms exhibitions." Miami-Dade Ordinance 21-20.18(a)(4).
[12] Broward Ordinance §18-96
[13] Broward Ordinance §18-97(b).
[14] Such officers include the following types as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; and (b) a part-time or auxiliary law enforcement or correctional officer. s. 790.052(1), F.S.

- As a law enforcement officer, correctional officer, or correctional probation officer,[15] s. 790.06(5)(b), F.S., provides that such individual is exempt from the section's CWP requirements for carrying a concealed weapon or concealed firearm. It further specifies that if such individual wishes to receive a CWP that he or she is exempt from the background investigation and related fees, but must pay the CWP fees regularly required to be paid by nonexempt applicants, which are currently $70 for an initial permit.

Finally, s. 790.051, F.S., provides that a law enforcement officer is exempt from the licensing and penal provisions of ch. 790, F.S., when acting at any time within the scope or course of his or her official duties or in the line of or performance of duty.

Effect of the Joint Resolution

The joint resolution amends article I, section 8(b) and article VIII, section (5)(b) of the Florida Constitution, to authorize certified law enforcement officers who are employed or appointed by a law enforcement agency in this state to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. Under the amendment, the requirements to constitute a "certified" officer must be prescribed by general law.

The joint resolution does not provide an effective date.[16] Therefore, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate, which is January 8, 2019.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

Publication Requirement

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county.

The Division of Elections is required to advertise the full text of proposed constitutional amendments twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2016 general election was $117.56 per word.[17]

The joint resolution has 524 words; thus, requiring an estimated $61,601 for publication. These funds must be spent regardless of whether the amendment passes, and are payable from the General Revenue Fund in FY18-19.

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[15] Such officers include the following types as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; (b) correctional probation officer; and (c) a part-time or auxiliary law enforcement or correctional officer.

[16] While an amendment can specify its effective date, it is common practice in constitutional amendments to simply allow the default effective date to apply.

[17] E-mail correspondence from the Department of State dated January 26, 2017, on file with the Civil Justice & Claims Subcommittee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures: The joint resolution does not appear to have any impact on local government revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The joint resolution does not appear to have any impact on local government expenditures.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This section does not apply to a proposed constitutional amendment.

2. Other:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[18] Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[19] If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.[20]

B. RULE-MAKING AUTHORITY:

The joint resolution does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[18] art. XI, s. 1, Fla. Const.
[19] art. XI, s. 5(a), Fla. Const.
[20] art. XI, s. 5(e), Fla. Const.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 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 original bill applied to law enforcement officers generally; whereas, the CS applies to certified law enforcement officers who are employed or appointed by a law enforcement agency in this state.

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

House Joint Resolution

A joint resolution proposing amendments to Section 8 of Article I and Section 5 of Article VIII of the State Constitution to exempt certain law enforcement officers from the 3-day waiting period for handgun purchases under state law and a criminal history records check and 3 to 5-day waiting period for firearm purchases under a county ordinance.

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

That the following amendments to Section 8 of Article I and Section 5 of Article VIII of the State Constitution are 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 I

DECLARATION OF RIGHTS

SECTION 8. Right to bear arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days,

excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. As prescribed by general law, certified law enforcement officers who are employed or appointed by a law enforcement agency in this state and holders of a concealed weapon permit ~~as prescribed in Florida law~~ shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 5. Local option.—

(a) Local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county. The status of a county with respect thereto shall be changed only by vote of the electors in a special election called upon the petition of twenty-five per cent of the electors of the county, and not sooner than two years after an

earlier election on the same question. Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.

(b) Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. As prescribed by general law, certified law enforcement officers who are employed or appointed by a law enforcement agency in this state and holders of a concealed weapons permit ~~as prescribed by general law~~ shall not be subject to the provisions of this subsection when purchasing a firearm.

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

CONSTITUTIONAL AMENDMENTS

ARTICLE I, SECTION 8

ARTICLE VIII, SECTION 5

EXEMPTION FROM REQUIREMENTS FOR FIREARM PURCHASES FOR CERTAIN LAW ENFORCEMENT OFFICERS.—Proposing an amendment to the State Constitution to exempt certified law enforcement officers who are employed or appointed by a law enforcement agency in this state, as prescribed in Florida law, from the 3-day waiting

period for handgun purchases under state law and a criminal history records check and 3 to 5-day waiting period for firearm purchases under a county ordinance.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 673 Exceptions to Requirements for the Purchase and Sale of Firearms
SPONSOR(S): Criminal Justice Subcommittee; Hahnfeldt and Asencio
TIED BILLS: CS/HJR 291 **IDEN./SIM. BILLS:** SJR 910

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Homburg	White
2) Judiciary Committee		Homburg	Camechis

SUMMARY ANALYSIS

HJR 291, which is linked to this bill, proposes a constitutional amendment to article I, section 8(b) and article VIII, section (5)(b) of the Florida Constitution, to authorize certified law enforcement officers who are employed or appointed by a law enforcement agency in this state to be exempted, like holders of a concealed weapon permit (CWP), from the constitutionally-required three-day waiting period for a handgun purchase and from the constitutionally-authorized county three- to five-day waiting periods for a firearm purchase.

The bill implements HJR 291, by amending s. 790.0655(2), F.S., to specify that the three-day statewide waiting period does not apply when a handgun is being purchased by a full-time, part-time, or auxiliary law enforcement officer who is certified under chapter 943, F.S. Additionally, the bill creates s. 790.0656, F.S., which states that counties may not impose additional waiting periods or background checks on CWP holders or certified full-time, part-time, or auxiliary law enforcement officers.

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

The bill provides that it takes effect on the date that the constitutional amendment by HJR 291 takes effect. If the constitutional amendment is approved by the voters, this bill's effective date would be January 8, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Waiting Periods for Handgun and Firearm Purchases

Statewide Waiting Period
In 1990, the electors approved an amendment to the Florida Constitution, which requires a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Specifically, article I, section 8(b) through (d) of the Florida Constitution, states:

> (b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.
>
> (c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.
>
> (d) This restriction shall not apply to a trade in of another handgun.

The Legislature implemented this constitutional provision by adopting s. 790.0655, F.S. This section of law defines "handgun" and "purchase" in the same manner as the Florida Constitution, and also states that the term "'retailer' means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13)."[1, 2] The section further provides that:

- There is a mandatory three-day waiting period, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun.[3]
- The section does not apply to the purchase of a handgun by a holder of a CWP as defined in s. 790.06, F.S.,[4] or to a trade-in of another handgun.[5]
- Records of handgun sales must be available for inspection by any law enforcement agency during normal business hours.[6]
- It is a third degree felony[7] for any retailer or employee or agent of a retailer to deliver a handgun before expiration of the 3-day waiting period and for a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.[8]

In 1991, an Attorney General Opinion stated that the exclusion from the three-day waiting day period for holders of a CWP did not apply to law enforcement officers even though such officers are statutorily-

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[1] s. 790.0655(1)(a), F.S.
[2] Section 212.03(13), F.S., specifies the identical definition of "retailer" specified in s. 790.0655(1)(a), F.S.
[3] s. 790.0655(1)(a), F.S.
[4] Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services to issue permits to carry concealed weapons or concealed firearms in this state to persons 21 years of age or older who meet specified criteria. Such permit holders may carry a concealed handgun, electronic weapon or device, tear gas gun, knife, or billie, subject to other restrictions provided by law. *Id.*
[5] s. 790.0655(2), F.S.
[6] s. 790.0655(1)(b), F.S.
[7] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss. 775.082 and 775.083, F.S.
[8] s. 790.0655(3), F.S.

exempt from CWP licensure requirements. According to the AGO, s. 790.0655, F.S., reiterates the constitutionally-prescribed exemptions for CWP holders and trade-ins, and, as such, "[w]here the Legislature creates specific exceptions to language in a statute, no other exceptions may be inferred."[9]

Local-Option Waiting Periods
In 1998, the electors approved an amendment to the Florida Constitution, which authorizes each county to require a criminal history records check and a 3- to 5-day waiting period, excluding weekends and holidays, for the sale of a firearm, unless the purchaser holds a CWP. Specifically, article VIII, section (5)(b) of the Florida Constitution, states:

> Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

Summary of Waiting Periods in Florida
While there is uniformly a three-day waiting period throughout the state for the purchase of a handgun from a "retailer," there may be additional waiting periods from three to five days on a county-by-county basis, which apply to the sale of a firearm on any property in the county to which the public has the right of access. For example, Miami-Dade Ordinance 21-20.18, specifies that a purchaser of a firearm[10] must wait five days after the purchase of a firearm on county property to which the public has the right of access[11] for delivery of the firearm and must have complied with specified criminal history check requirements. Broward County has a similar set of ordinances which require a five-day waiting period after the purchase of a firearm which is conducted on property that the public has a right to access,[12] as well as a background check requirement.[13]

Pursuant to the constitutional provisions, the state and local-option waiting periods do not apply to holders of a CWP.

Certification of Law Enforcement Officers
The Criminal Justice Standards and Training Commission is charged with certifying law enforcement officers in Florida.[14] To ensure that applicants are qualified, the Commission establishes minimum employment and training standards for the various positions within the criminal justice field it oversees, including law enforcement officers.[15, 16] An applicant must pass a Commission-approved basic recruit

[9] 91-65 Fla. Op. Att'y Gen. 1(1991).
[10] The term "firearm" is defined to mean, "any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; and firearm muffler or firearm silencer; any destructive device; or any machine gun. Such term does not include an antique firearm." Miami-Dade Ordinance 21-20.18(a)(3).
[11] The term "property to which the public has the right of access" is defined to mean, "any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearms exhibitions." Miami-Dade Ordinance 21-20.18(a)(4).
[12] Broward Ordinance §18-96
[13] Broward Ordinance §18-97(b).
[14] s. 943.12(3), F.S.
[15] s. 943.12(4), F.S.
[16] s. 943.12(5), F.S.

training program and receive an acceptable score on the officer certification exam before being certified.[17] Additionally, the applicant must:

- Be at least 19 years old
- Be a United States Citizen
- Have a high school diploma or equivalent as allowed by the commission
- Not have a felony conviction or a misdemeanor conviction for perjury or false statements.
- Not have received a dishonorable discharge from the United States Military
- Have their fingerprints submitted to the Florida Department of Law Enforcement for a background check
- Pass a physical examination
- Be of good moral character as decided by the commission[18]

In order to stay active, the law enforcement officer must complete a Commission-approved continuing education program[19] of 40 hours of training every four years.[20]

Law Enforcement Officers - Authority to Carry without a CWP

As discussed below, active law enforcement officers are authorized to carry a firearm under specified circumstances without a CWP pursuant to a variety of provisions in state law.

With respect to individuals holding an active certification from the Criminal Justice Standards and Training Commission:

- As a law enforcement or correctional officer,[21] s. 790.052, F.S., provides that such individual has the right to carry, on or about his or her person, a concealed firearm, during off-duty hours, at the discretion of his or her superior officers, and may perform those law enforcement functions that he or she normally performs during duty hours, utilizing his or her weapon in a manner which is reasonably expected of on-duty officers in similar situations.
- As a law enforcement officer, correctional officer, or correctional probation officer,[22] s. 790.06(5)(b), F.S., provides that such individual is exempt from the section's CWP requirements for carrying a concealed weapon or concealed firearm. It further specifies that if such individual wishes to receive a CWP that he or she is exempt from the background investigation and related fees, but must pay the CWP fees regularly required to be paid by nonexempt applicants, which are currently $70 for an initial permit.

Finally, s. 790.051, F.S., provides that a law enforcement officer is exempt from the licensing and penal provisions of ch. 790, F.S., when acting at any time within the scope or course of his or her official duties or in the line of or performance of duty.

Effect of Bill

The bill implements HJR 291, which amends article I, section 8(b) and article VIII, section (5)(b) of the Florida Constitution, to authorize certified and employed or appointed law enforcement officers to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. To implement this authority, this bill amends s. 790.0655(2), F.S., to specify that the three-day statewide waiting period does not apply when a handgun is being purchased by a full-time,[23] part-

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[17] Persons who have previously served as law enforcement officers in other jurisdictions may be exempt from this requirement, provided that they have worked for another state or federal law enforcement agency for over one year, and have worked as a law enforcement officer within the past eight years.

[18] s. 943.13, F.S.

[19] s. 943.1395(4), F.S.

[20] s. 943.135(1), F.S.

[21] Such officers include the following types as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; and (b) a part-time or auxiliary law enforcement or correctional officer. s. 790.052(1), F.S.

[22] Such officers include the following types as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; (b) correctional probation officer; and (c) a part-time or auxiliary law enforcement or correctional officer.

[23] "Law enforcement officer" is defined to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

time,[24] or auxiliary[25] law enforcement officer who is certified under chapter 943, F.S. Additionally, the bill creates s. 790.0656, F.S., which states that counties may not impose additional waiting periods or background checks on CWP holders or certified full-time, part-time, or auxiliary law enforcement officers.

The bill provides that it takes effect on the date that the constitutional amendment by HJR 291 takes effect. If the constitutional amendment is approved by the voters, the bill's effective date would be January 8, 2019.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.0655, F.S., relating to purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.

Section 2. Creates s. 790.0656, F.S., relating to sale of firearms; county requirements; exceptions.

Section 3. Provides a contingent effective date.

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.

This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency." s. 943.10(1), F.S.

[24] "Part-time law enforcement officer" is defined to mean "any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state." s. 943.10(6), F.S.

[25] "Auxiliary law enforcement officer" is defined to mean "any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions." s. 943.10(8), F.S.

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 a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 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 original bill applied to qualified law enforcement officers and qualified retired law enforcement officers; whereas, the CS applies to full-time, part-time, or auxiliary law enforcement officer, as defined in s. 943.10, F.S., who is certified under ch. 943, F.S.

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

A bill to be entitled

An act relating to exceptions to requirements for the purchase and sale of firearms; amending s. 790.0655, F.S.; exempting certain law enforcement officers from the 3-day waiting period when purchasing a handgun; creating s. 790.0656, F.S.; exempting concealed weapon licensees and certain law enforcement officers from specified county criminal history records checks and waiting period requirements when purchasing a firearm; providing a contingent effective date.

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

Section 1. Subsection (2) of section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.—

(2) The 3-day waiting period does ~~shall~~ not apply in the following circumstances:

(a) When a handgun is being purchased by a holder of a license to carry a concealed weapon or concealed firearm under ~~weapons permit as defined in~~ s. 790.06 or by a full-time, part-time, or auxiliary law enforcement officer, as defined in s. 943.10, who is certified under chapter 943.

(b) To a trade-in of another handgun.

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

Section 2. Section 790.0656, Florida Statutes, is created to read:

790.0656 Sale of firearms; county requirements; exceptions.—Criminal history records checks and waiting period requirements adopted by a county pursuant to s. 5(b), Art. VIII of the State Constitution in connection with the sale of a firearm occurring within the county do not apply if the firearm is being purchased by a holder of a license to carry a concealed weapon or concealed firearm under in s. 790.06 or by a full-time, part-time, or auxiliary law enforcement officer, as defined in s. 943.10, who is certified under chapter 943.

Section 3. This act shall take effect on the effective date of the amendment to the State Constitution proposed in HJR 291 or a similar joint resolution, if approved by a vote of the electors in the general election held in November 2018 or at an earlier special election specifically authorized by law for such purpose.

STORAGE NAME: h6515.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 6515 - Representative Jones
Relief of Wendy Smith and Dennis Darling, Sr. by the State of Florida

THIS IS AN UNCONTESTED CLAIM FOR $1,800,000 PREDICATED ON A SETTLEMENT AGREEMENT ENTERED BETWEEN DENNIS DARLING SR., AND WENDY SMITH, PARENTS OF, DEVAUGHN DARLING, AND THE FLORIDA STATE UNIVERSITY, BASED ON DAMAGES SUSTAINED DUE TO THE ACTIONS OF COACHES AND TRAINERS DURING PRESEASON CONDITIONING DRILLS THAT RESULTED IN DEVAUGHN DARLING'S DEATH. THE UNIVERSITY HAS ALREADY PAID $200,000 PURSUANT TO SECTION 768.28, F.S..

FINDING OF FACT:

On February 26, 2001, Devaughn Darling, a Florida State University (FSU) football player who had been diagnosed with sickle cell trait died during preseason conditioning drills. Darling, along with other members of the football team, had recently finished a rigorous 90 minute cardiovascular and agility drills involving three different 20 to 25 minute stations. Drills were performed by "lines" of five to six players each, with brief breaks between drills. Players were monitored by coaches and training staff during each drill. The final drill, known as "mat drills," required players to dive to the mats, roll left and right based on the coach's directions, followed by quick movement, left and right slides, and brief sprints. By the end of the drills,

players were extremely tired with vomiting during drills a common occurrence. Players were instructed on how to properly hydrate and were told to be well hydrated the night before drills. Although limited access to water was available during the drills, the brevity of the breaks combined with an atmosphere that discouraged any sign of weakness caused players to avoid water during the drills.

At some time between 7:05 a.m. and 7:10 a.m., Randy Oravetz, head trainer, observed Darling, the last person to complete the mat drills, running from the mats to an adjacent wall where he fell to his knees and rested his head against the wall. Oravetz and another trainer or player helped Darling back on to the mat. Darling's breathing was erratic, but he was conscious and coherent. Oravetz moved Darling to the training room to stabilize Darling's breathing and get him cooled off. He also moved Darling because the rest of the team needed the mat for another drill. The move to the training room took approximately 40 seconds to 1 minute. Once in the training room, Darling was placed on a training table, given sips of water, ice packs, and oxygen. At that time, Darling had a pulse, was breathing, and was coherent. However, after a minute or two, at approximately 7:13 a.m., Darling's eyes rolled back into his head, Oravetz immediately ordered his graduate assistant to call 911 and began CPR.

When the first FSU police officers arrived at approximately 7:18 a.m., Darling did not have a pulse and FSU training staff were preforming CPR. At approximately 7:35 a.m., an FSU police officer arrived with an advanced external defibrillator (AED) that was immediately connected to Darling. After automatically evaluating his vital signs, the AED advised not to shock and recommended continued CPR. The AED again evaluated his vital signs at 7:38 a.m. and, again, advised not to shock and recommended continued CPR. At that time, emergency medical services arrived, continued emergency treatment, and transported Darling to Tallahassee Memorial Hospital where he was pronounced dead around 8:50 a.m.

An autopsy was conducted on Darling by the Medical Examiner in Tallahassee; it was reviewed by a cardiovascular pathologist at the Armed Forces Institute of Pathology. The pathology reports diagnosed Darlings death as sudden unexpected death and found no morphologic cause of death. The reports noted diffuse red cell sickling and commented that, "Although rare, sudden unexpected death has been associated with healthy athletic males with sickle cell trait. Sickle cell trait appears to lower the threshold for ventricular arrhythmias in patients exposed to exertional heat injury."

Although other players indicated that during drills Darling complained of chest pains and fatigue and was having problems standing and seeing, none of the players indicated

Darling informed the coaches or trainers about any of these issues. Additionally, some players indicated that Darling's complaints were consistent with those of other players during the course of mat drills. According to coaches and trainers, Darling did not report any physical problems before his collapse and none indicated that the level of fatigue and exhaustion Darling exhibited were inconsistent with other players and were out of the ordinary.

For reasons that are unclear, Darling was taking pseudoephedrine and acetaminophen, neither of which were reported to trainers or coaches. He was also taking Vioxx for a prior sprained ankle.

In July of 2000, as part of a required medical screening for student athletes at FSU, Darling tested positive for sickle cell trait. Head trainer Randy Oravetz and assistant trainer Marshall Walls, knew of Darlings diagnosis as a carrier of sickle cell trait. It was FSU's policy to have athletes diagnosed with sickle cell trait meet with the team physician to discuss precautions and warning signs associated with that condition. At the time of Darlings death, there were seven FSU football players with sickle cell trait and the NCAA guidelines at the time noted that no medical body suggested any restrictions on athletes with sickle cell trait and indicated that no restrictions or limitations should be placed on athletes with sickle cell traits. The NCAA guidelines recommended that all athletes should be counseled to avoid dehydration and to acclimatize and condition gradually.

LITIGATION HISTORY:

In August 2001, the Claimants, Dennis Darling, Sr., and Wendy Smith, Devaughn Darling's parents, notified FSU of their intent to sue, and in late 2001 they filed suit against FSU for negligence. The parties went to agreed-upon mediation in November 2003, which ultimately led to a court-approved, stipulated $2 million settlement agreement entered on June 28, 2004. Under the terms of the settlement, the parents received $200,000 with the remaining $1.8 million to be collected upon passage of a claim bill.

CLAIMANT'S POSTION:

The Claimants allege the following: FSU owed a duty to its football players, including Devaughn Darling, to develop, plan and execute a conditioning program that was reasonably safe and would not endanger the lives of its players. FSU breached this duty by:

a. Failing to provide the players, specifically Devaughn Darling, with proper access to water and other fluids during mat drills.
b. Demanding that players continue with the drills while exhibiting physical distress.
c. Failing to provide sufficient rest periods during these exercises.
d. Failing to provide adequate medical and emergency

personnel and medical equipment during mat drills.
e. Failing to provide adequate supervisors during mat drills who should recognize when a player is in physical distress.
f. Negligently organizing and executing the mat drills.
g. Failing to timely call for emergency assistance.
h. Failing to maintain an adequate emergency plan pursuant to NCAA guidelines.
i. Failing to provide proper access to water and other fluids for players who have sickle cell trait, pursuant to NCAA guidelines.

As a result of FSU's negligent conduct, Darling was placed under unreasonable physical distress and died.

RESPONDENT'S POSTIION:

FSU denies any negligent conduct, but supports passage of a claim bill.

CONCLUSION OF LAW:

To establish a claim of negligence, the Claimants must prove four elements by a preponderance of the evidence: (1) the existence of a duty on the part of the FSU to avoid injuring Darling; (2) a breach of that duty by the FSU; (3) proximate cause; and (4) injury or damage to Darling arising from the FSU's breach of the duty. Based on the statements, depositions, testimony, and other evidence, the Claimants have proven their claim of negligence by a preponderance of the evidence. Each element will be addressed in turn.

Duty

In Florida, "a legal duty will arise whenever a human endeavor creates a generalized and foreseeable risk of harming others."[1] It is clear that the operation of a collegiate football program entails activities that pose a foreseeable risk of harm to football players. As a result, football program coaches and staff are required to exercise prudent foresight to lessen the risk of injury or take sufficient precautions to protect players from the harm that the risk poses.[2] Accordingly, FSU had a duty to its football players, including Darling, to develop and execute a conditioning program that was reasonably safe with sufficient precautions taken to protect the players from the harm associated with the conditioning program.

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[1] *Owens v. Publix Supermarkets, Inc.*, 802 So. 2d 315, 330 (Fla. 2001) (quoting *McCain v. Florida Power Corp.*, 593 So.2d 500, 503 (Fla.1992)).

[2] See, e.g., *Leahy v. Sch. Bd. of Hernando County*, 450 So.2d 883, 885 (Fla. 1st DCA 1984) (school board owed duty to properly supervise spring football practice as approved school activity in which school employees had authority to control behavior of students); *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360, 1367 (3d Cir. 1993) (college had special relationship with lacrosse player sufficient to impose a duty of reasonable care on the college); *Beckett v. Clinton Prairie Sch. Corp.*, 504 N.E.2d 552, 553 (Ind.1987) (high school personnel have duty to exercise ordinary and reasonable care for safety of student athletes under their authority).

Breach

Breach of a duty occurs when an individual fails to exercise ordinary and reasonable care, according to the circumstances, in carrying out his or her duty to the injured party.[3] The Claimants allege FSU breached its duty nine ways, each will be discussed in turn.

(a) Failing to provide the players, specifically Devaughn Darling, with proper access to water and other fluids during mat drills. Statements and depositions by players and staff regarding the availability of water was divided. Trainers indicated that water was available to players at water fountains, water stations, or by water bottles carried by trainers, but there were only brief breaks of between 30 seconds and 1 minute during and between stations where players had time to get water. An assistant trainer indicated, it was "frowned upon" if a player was being lazy and trying to get water as an excuse to avoid completing a drill. In addition to coaches and trainers, Bob Thomas, a reporter with the Florida Times Union who was present at the drills, indicated to police that water was available to players. One player, on the other hand, indicated that no water was provided. Other players, however, stated that although there were water fountains nearby, they were discouraged from getting water during drills. No player indicated that any water, other than from water fountains, was nearby. If they tried to get water from the fountains during a break between stations, the coaches would push them along. As stated by Darling's twin brother, also an FSU football player, it was an unwritten rule that players were not allowed to get water. Instead, players were instructed to stay hydrated the night before drills; but as stated by at least one player, drinking too much water just before or during drills could lead to vomiting. Despite the contradictory statements and testimony between the staff and players, the Claimants have established that only minimal access water was "available." The coaching staff created an environment that in effect prevented players from getting water except in rare and limited situations. In light of the strenuous nature of the drills, FSU's failure to make water readily available and to encourage proper hydration during the drills was unreasonable.

(b) Demanding that players continue with the drills while exhibiting physical distress. Conditioning drills are designed to push players and acclimatize them to the physical and mental challenges faced during a real game. Frequently, this requires coaches to push players beyond their normal comfort level, to push through pain and fatigue, to finish drills. The drive to complete the drill must, however, be balanced against the well-being of the players. While the line between pushing to achieve a legitimate goal and pushing to a point where a player's well-being is in jeopardy is not always clear, the evidence

[3] *See Brightwell v. Beem*, 90 So. 2d 320, 322 (Fla. 1956).

establishes that FSU crossed the line and unreasonably jeopardized the safety of its players.

As one FSU player put it, the motto during the drills was "finish the drill." There was pressure from coaches and players to finish each drill no matter how a player felt. Another player stated that the point of the drills was to push players past their breaking point and that this was especially true of younger players, such as Darling. Part of this regime was that players would have to regularly repeat drills if they were not completed to a coach's satisfaction. This meant that a player who was already fatigued and unable to satisfactorily complete a drill would be required to repeat the drill. Although Head Trainer Randy Oravetz testified that a player's performance during conditioning drills did not impact their future playing time, Oravetz assistant, Walls, as well as a number of players, were unanimous that players were graded on their performance during drills and that failure to perform well would impact their playing time. Consequently, any sign of weakness, such as briefly stepping out of line because a player felt dizzy, could negatively impact that player's prospects for playing time.

The result of the pressure created by coaches to "finish the drill," to push past the breaking point, and to perform well enough to get playing time, led coaches to unreasonably disregard the players' safety and well-being by pushing players to continue drills while they exhibited signs of physical distress.

(c) Failing to provide sufficient rest periods during these exercises. Any rest periods the players may have had would have come between stations or while at a station in between groups completing drills at that station. The testimony regarding the length of breaks players got during these periods is inconsistent. Randy Oravetz stated that players had about four minutes of rest between each station. However, players indicated that there were no breaks between stations as players were supposed to be running or jogging between stations. Others indicated that although they would get short breaks while other groups completed drills, the length of the break would depend on whether the group the player was in got sent back to redo the drill. Bob Thomas with the Florida Times Union indicated that players would get short breaks of between 60 and 90 seconds between each drill. Although the divergence in this these statements alone make it difficult to determine the true amount of rest available to players, these statements, combined with the other statements made by trainers and players in sections (a) and (b) above regarding the access to waters and the atmosphere and pace of the drills lead to the reasonable inference that FSU failed to provide sufficient rest periods during the drills.

(d) Failing to provide adequate medical and emergency personnel and medical equipment during mat drills. Statements

and depositions by trainers and players establish that players were constantly monitored during conditioning drills by at least one coach and one trainer. Every trainer was CPR certified and knew first-responder procedures. There is no evidence that medical personnel or medical equipment, such as an AED, were provided during drills. However, the Claimants have not established that this lack of medical personnel or medical equipment is an example of FSU's failure to exercise ordinary and reasonable care under the circumstances. Based on their experiences running conditioning drills and their knowledge of the risks associated with those drills, the coaches and trainers had no reason to believe additional medical or emergency personnel or equipment were necessary. While the conditioning drills were designed to push players to the edge of their physical ability, regularly caused players to vomit, and occasionally led to players passing out, feeling dizzy, and having chest pains, the Claimants have not shown that FSU coaches and trainers should have reasonably expected a player to suffer an emergency that would require immediate medical attention beyond their capabilities or cardiac arrest, which would necessitate immediate access to an AED.

Even assuming, arguendo, FSU unreasonably failed to provide medical personnel or medical equipment, such a failure was not the proximate cause of Darling's death. (*See* Causation discussion below).

(e) Failing to provide adequate supervisors during mat drills who should recognize when a player is in physical distress. Statements and depositions by trainers and players indicate that players were constantly monitored during conditioning drills and at each of the three stations there was at least one coach and one trainer. Head Trainer, Randy Oravetz, testified that he has never had a problem with intervening during mat drills to remove players from the drill when they show signs of physical distress, such as vomiting, passing out, chest pain, and dizziness. If a player was removed, he would be immediately evaluated by training staff. Assistant Trainer, Marshall Walls, likewise testified that it was the trainer's decision to remove a player from drills and that trainers would not push a player to continue a drill but would leave it up to the player to make the decision to continue. In fact, a week before Darling's death, during a running station, Darling had difficulty completing the drill and went down on one knee. Walls attended to Darling, and Darling indicated he was having a little trouble breathing. Although Darling wanted to get back up and finish the drill, Walls had him wait and catch his breath before returning and finishing the drill. Later that morning, Walls asked Darling what happened, Darling responded that he was just fatigued. Walls then asked if there was anything they needed to do, Darling replied, "no, I'll be fine." At least one player indicated that although coaches would question a player's work ethic if he went to the training staff, players could, and did, go to trainers

during drills or when ill and the trainer would tell coaches which drills and activities the player could participate in. In addition to trainers and players, Bob Thomas, the Florida Times Union Reporter present during drills, also indicated that over his two days of watching drills, he saw trainers immediately attend to any injury and fatigue issues.

In sum, the statements and testimony indicate that FSU provided adequate supervision during mat drills and that the trainers and staff who were supervising the drills recognized and intervened when necessary for a player in distress.

(f) Negligently organizing and executing the mat drills. Beyond the evidence provided by the Claimants to establish the eight other specific ways FSU breached its duty, the Claimants failed to provide any specific evidence to establish this non-specific allegation.

(g) Failing to timely call for emergency assistance. Head Trainer Randy Oravetz testified that between 7:05 a.m. and 7:10 a.m., he observed Darling running from the mats to an adjacent wall where he fell to his knees and rested his head against the wall. Oravetz and another trainer or player helped Darling back on to the mat. Darling's breathing was erratic, but he was conscious and coherent. Oravetz moved Darling to the training room, which took approximately 40 seconds to 1 minute. When they got the training room, Darling had a pulse, was breathing, and was coherent. After a minute or two, at 7:13 a.m., Darling's eyes rolled back into his head and Oravetz immediately ordered his assistant to call 911 and began CPR. The first FSU police officers arrived at approximately 7:18 a.m., and at approximately 7:35 a.m., an FSU police officer arrived with an advanced external defibrillator (AED) that was immediately connected to Darling. The AED twice advised not to shock and to continue CPR. At approximately 7:38 a.m., emergency medical services arrived, continued emergency treatment, and transported Darling to Tallahassee Memorial Hospital, where he was pronounced dead around 8:50 a.m.

FSU's emergency management plan includes "respiratory arrest or any irregularity in breathing" among the conditions for which 911 must be called. Given the strenuous nature of the drills, it was not uncommon for players to be near the point of exhaustion, breathing rapidly, and struggling at the end of drills similar to Darling. Additionally, although Darling's teammates almost unanimously state that Darling told them he could not see, was tired, and was having chest pains, there is no evidence indicating that Darling or the other players ever conveyed this information to the coaches or the trainers. Consequently, based on Oravetz's experience with players in similar states of exhaustion and his lack of knowledge of Darling's specific problems, he made a reasonable decision not to initiate a 911 call immediately when he noticed Darling's

breathing issues. Even if Oravetz's decision not to call 911 immediately was unreasonable and therefore a breach of the duty of care, such a delay was not the proximate cause of Darling's death. (*See* Causation discussion below).

(h) Failing to maintain an adequate emergency plan pursuant to NCAA guidelines. The evidence clearly established that FSU maintained an emergency plan that included procedures for the emergency care of an athlete in respiratory or cardiac arrest. The Claimants did not present any evidence, either through expert testimony or any other type of evidence, to prove that the emergency plan was not adequate pursuant to NCAA guidelines.

(i) Failing to provide proper access to water and other fluids for players who have sickle cell trait, pursuant to NCAA guidelines. Contrary to the Claimants allegation, the NCAA guidelines in place during 2001 did not provide specific hydration guidelines for players with sickle cell trait. Instead, the guidelines recommended that *all* athletes should be counseled to avoid dehydration. However, as explained in (a) above, the Claimants have established that FSU failed to provide proper access to water to all the players during drills, including those players with sickle cell trait.

Causation

Proximate cause is concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."[4] A finding of proximate cause consists of four components: was the injury a reasonably foreseeable consequence of the defendant's negligence; was the injury a natural and probable consequence of the defendant's negligence; was the defendant's negligence a substantial factor in producing the injury, and; was there a natural, direct, and continuous sequence between the negligent act and the injury that it can reasonably be said that *but for* the act the injury would not have occurred.[5]

The evidence shows that FSU breached its duty of care by failing to provide players with proper access to water, by failing to provide sufficient rest periods, and by creating an environment in which players felt compelled to complete drills regardless of the physical state. The evidence also proves that these actions foreseeably and substantially caused Darling's death. Although the death of a player may not have been a foreseeable consequence of FSU's conduct, FSU will still be liable "if it could have foreseen that *some* injury would likely result in *some* manner, similar to that which actually happened,

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[4] *Goldberg v. Florida Power & Light Co.*, 899 So. 2d 1105, 1116 (Fla. 2005) (quoting *McCain v. Florida Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992)).

[5] *Pope v. Pinkerton-Hays Lumber Co.*, 120 So. 2d 227, 229-230 (Fla. 1st DCA 1960)(emphasis in original).

as a consequence of its negligent acts."[6]

While no single failure by FSU may have caused Darling's death, it was the combined impact of FSU's negligent acts that led to his death. It is foreseeable that given FSU's conduct, an athlete would likely get injured during conditioning drills in a manner similar to that which ultimately resulted in Darling's death. The conditioning drills were by all accounts extremely strenuous and designed to push players to their physical limit. These drills frequently caused players to vomit and the statements by both players and trainers provide examples where players were removed from drills after complaining of dizziness and, in some cases, after passing out. FSU appears to have disregarded NCAA guidelines that clearly recommend avoiding dehydration, acclimatizing players to heat and humidity, and careful conditioning players. Given FSU's knowledge and experience with the drills and its failure to follow NCAA guidelines, it was reasonably foreseeable that given FSU's conduct an athlete would likely get injured during conditioning drills in a manner similar to that which ultimately resulted in Darling's death.

FSU's conduct also substantially caused Darling's death. Darling's autopsy indicated that Darling had extensive sickling in multiple organs. The autopsy noted that "Although rare, sudden unexpected death has been associated with healthy athletic males with sickle cell trait. Sickle cell trait appears to lower the threshold for ventricular arrhythmias in patients exposed to exertional heat injury." Dr. Nori Trehan, hired by the Claimants, concluded that Darling "died from a sickle cell 'crises' which could have been avoided in the first place by recognizing it, limiting his activities and making fluids readily available . . . ." In the absence of evidence to the contrary, Dr. Trehan's testimony establishes that FSU's failure to provide players with proper access to water and sufficient rest and by creating an environment in which players felt compelled to complete drills regardless of the physical state, substantially caused Darling's death.

To the extent FSU may have breached its duty of care by failing to provide adequate medical personnel and equipment and failing to timely call for emergency assistance, the Claimants have not established that but for these failures, Darlings death would not have occurred. While it is not difficult to imagine that earlier medical intervention either by additional medical personnel or an AED may have decreased the likelihood of Darling's death, the evidence simply does not meet the legal threshold to bear this out. The AED record indicates that when it was used, it did not activate and instead recommended continued CPR. Additionally, both professionals hired by the

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[6] *Braden v. Florida Power & Light Co.*, 413 So. 2d 1291, 1292 (Fla. 5th DCA 1982) (*citing Crislip v. Holland*, 401 So.2d 1115, 1117 (Fla. 4th DCA 1981)).

Claimants, Dr. Nori Trehan and Richard Borkwoski, indicated that the earlier use of an AED *might* have increased Darlings chances of survival. Neither professional opined as to the impact additional medical personnel or an earlier call of emergency assistance would have had on Darling's chances of survival.

Damages
Given the fact of Darling's death, the issue of damages is uncontested. Had the Claimants' case proceeded to trial and the jury found negligence, given Darling's age at the time of his death, a jury's damages award for loss of support and services, pain and suffering, and medical and funeral bills likely would have exceeded $2 million. Accordingly, the settlement amount of $2 million appears reasonable.

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 are $40,785.27.

LEGISLATIVE HISTORY:

In the 2016 Legislative Session, this claim was introduced as Senate Bill 16 by Senator Joyner and House Bill 3513 by Representative Jones, M. The Senate Bill was heard in two committees (Judiciary & Appropriations Subcommittee on Education) but died in Appropriations. The House bill died in the Civil Justice Subcommittee.

In the 2015 Legislative Session, this claim was introduced as Senate Bill 38 by Senator Joyner and House Bill 3517 by Representative Jones, S. The Senate bill was heard in Judiciary but died in Appropriations Subcommittee on Education. The House bill died in the Civil Justice Subcommittee.

In the 2014 Legislative Session, this claim was introduced as Senate Bill 24 by Senator Joyner and House Bill 3523 by Representative Jones, S. Neither bill was heard in either chamber.

In the 2013 Legislative Session, this claim was introduced as Senate Bill 14 by Senator Joyner and House Bill 597 by Representative Jones, S. Neither bill was heard in either chamber.

In the 2012 Legislative Session, this claim was introduced as Senate Bill 14 by Senator Joyner and House Bill 197 by Representative Stafford. Neither bill was heard in either chamber.

In the 2011 Legislative Session, this claim was introduced as Senate Bill 14 by Senator Joyner and House Bill 1441 by Representative Watson. Neither bill was heard in either chamber.

In the 2010 Legislative Session, this claim was introduced as Senate Bill 42 by Senator Joyner and House Bill 803 by Representative Chestnut. Neither bill was heard in either chamber.

In the 2009 Legislative Session, this claim was introduced as Senate Bill 26 by Senator Lawson and House Bill 1365 by Representative Brise. Neither bill was heard in either chamber.

In the 2008 Legislative Session, this claim was introduced as Senate Bill 32 by Senator Lawson and House Bill 303 by Representative Richardson. Neither bill was heard in either chamber.

In the 2007 Legislative Session, this claim was introduced as Senate Bill 26 by Senator Lawson. There was no House bill filed and the Senate bill was withdrawn prior to introduction.

In the 2006 Legislative Session, this claim was introduced as Senate Bill 32 by Senator Lawson and House Bill 289 by Representative Richardson. Neither bill was heard in either chamber.

In the 2005 Legislative Session, this claim was introduced for the first time as Senate Bill 16 by Senator Lawson and House Bill 283 by Representative Richardson. Neither bill was heard in either chamber.

RECOMMENDATIONS: I recommend that House Bill 6515 be reported FAVORABLY.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Jones, House Sponsor
Senator Braynon, Senate Sponsor
Barbara Crosier, Senate Special Master

A bill to be entitled

An act for the relief of Wendy Smith and Dennis Darling, Sr., parents of Devaughn Darling, deceased; providing an appropriation to compensate the parents for the loss of their son, Devaughn Darling, whose death occurred while he was engaged in football preseason training on the Florida State University campus; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on February 21, 2001, Devaughn Darling, the son of Wendy Smith and Dennis Darling, Sr., collapsed and died while participating in preseason training in preparation for the upcoming football season at Florida State University, and

WHEREAS, after litigation had ensued and during mediation, the parents of Devaughn Darling and Florida State University agreed to compromise and settle all of the disputed claims rather than continue with litigation and its attendant uncertainties, and

WHEREAS, the parties resolved, compromised, and settled all claims by a stipulated settlement agreement providing for the entry of a consent final judgment against Florida State University in the amount of $2 million, of which the Division of Risk Management of the Department of Financial Services has paid the statutory limit of $200,000 pursuant to s. 768.28, Florida

Statutes, and

WHEREAS, as provided by the settlement agreement, Florida State University has agreed to support the passage of this claim bill for the remaining unpaid portion of the consent judgment, $1.8 million, NOW, THEREFORE,

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

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

Section 2. Florida State University is authorized and directed to appropriate from funds of the university not otherwise appropriated and to draw a warrant in the amount of $1.8 million, to be paid to Wendy Smith and Dennis Darling, Sr., parents of decedent Devaughn Darling, as relief for their losses.

Section 3. The amount paid by the Division of Risk Management of the Department of Financial Services pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Devaughn Darling. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $360,000, the total amount paid for lobbying fees may not exceed $90,000,

and the total amount paid for costs and other similar expenses relating to this claim may not exceed $40,785.27.

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

The Florida House of Representatives

Senate Bill 48 - Relief of Dennis Darling Sr.
and Wendy Smith by the State of Florida

AFFIDAVIT OF COUNSEL

BEFORE ME, the undersigned authority, personally appeared Chanthina Bryant Abney, General Counsel of the Law Offices of Gary, Williams, Parenti, Watson & Gary, P.L.L.C., ("GWP") and upon oath, deposes on personal knowledge and says:

1. My name is Chanthina Bryant Abney and I am over the age of eighteen and competent to testify on the matters set forth herein.
2. Willie Gary and the Law Offices of Gary, Williams, Parenti, Watson & Gary, P.L.L.C. represented the claimants, Dennis Darling Sr. and Wendy Smith, in the underlying matter against Florida State University ("FSU"). This matter involved the death of their son Devaughn Darling, while participating in preseason football drills in 2001.
3. The parties subsequently agreed to settle the matter in the amount of two million dollars and entered into a settlement agreement in 2004. The settlement agreement provided for an immediate payment of two hundred thousand dollars ($200,000) to be paid out of Risk Management Funds with the balance to be paid by the State of Florida from an unopposed Claim Bill for $1.8 million dollars.
4. Senate Bill 48 sponsored by Senator Oscar Braynon, is now pending before the State Legislature. Section 4 of that bill provides for a cap on attorney's fees and costs in an amount not to exceed 25% of the amount awarded under this cap.
5. The Law Offices of Gary, Williams, Parenti, Watson & Gary, P.L.L.C. hereby acknowledges and agrees that any attorney's fees and costs paid in this matter shall not exceed the 25% limit as provided in this act.
6. Becker & Poliakoff, P.A., has been retained as counsel to represent the above referenced Claimants before the Florida Legislature in resolving this matter.
7. Becker & Poliakoff, P.A. hereby acknowledges and agrees that lobbyist's fees and costs paid in this matter will be 5%, which is included in the 25% cap, of the amount awarded ($1.8 million dollars)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following, this 1st day of March, 2017.

Chanthina Bryant Abhey, Esq.
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Yolanda Cash-Jackson, Esq.
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Yjackson@bplegal.com

FURTHER AFFIANTS SAYETH NAUGHT.

Gary, Williams, Parenti, Watson & Gary, P.L.L.C.

Chanthina Bryant Abney
General Counsel

STATE OF FLORIDA
COUNTY OF Martin

SWORN to (or affirmed) and subscribed before me this 1st day of March by Chanthina Bryant Abney, to me well known to be the person described in or who produced State-Issued ID: FDL personally known as identification and who executed the foregoing instrument acknowledging before me that he believes the same to be true and correct.

WITNESS my hand and official seal 1ST day of March, 2017.

Signature of Notary Public

DIANE P. KWANT
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # FF113980
EXPIRES 4/17/2018
BONDED THRU 1-888-NOTARY1

DIANE P. KWANT
Printed name of Notary Public
My Commission Expires:

BECKER & POLIAKOFF, P.A.

Yolanda Cash Jackson, Esq.

STATE OF FLORIDA
COUNTY OF Broward

SWORN to (or affirmed) and subscribed before me this 1st day of March by Yolanda Cash Jackson to me well known to be the person described in or who produced State-Issued ID: FDL personally known as identification and who executed the foregoing instrument acknowledging before me that he believes the same to be true and correct.

WITNESS my hand and official seal 1ST day of March, 2017.

Signature of Notary Public

ALICIA GRAHAM
Notary Public - State of Florida
Commission # GG 013784
My Comm. Expires Nov 12, 2020
Bonded through National Notary Assn

Alicia Graham
Printed name of Notary Public
My Commission Expires:

The Florida House of Representatives

Senate Bill 48 - Relief of Dennis Darling Sr.
and Wendy Smith by the State of Florida

AFFIDAVIT OF COUNSEL

BEFORE ME, the undersigned authority, personally appeared Chanthina Bryant Abney, General Counsel of the Law Offices of Gary, Williams, Parenti, Watson & Gary, P.L.L.C., ("GWP") and upon oath, deposes on personal knowledge and says:

1. My name is Chanthina Bryant Abney and I am over the age of eighteen and competent to testify on the matters set forth herein.
2. Attorney Willie Gary and Gary, Williams, Parenti, Watson & Gary, P.L.L.C. represented the claimants, Dennis Darling Sr. and Wendy Smith, in the underlying matter against Florida State University ("FSU"). This matter involved the death of their son Devaughn Darling, while participating in pre-season football drills in 2001.
3. The parties subsequently agreed to settle the matter in the amount of two million dollars and entered into a settlement agreement in 2004. The settlement agreement provided for an immediate payment of two hundred thousand dollars ($200,000.00) to be paid out of Risk Management Funds with the balance to be paid by the State of Florida from an unopposed Claim Bill for $1.8 million dollars.
4. Of the $200,000.00 payment, Gary, Williams, Parenti, Watson & Gary, P.L.L.C. received $50,000.00 in Attorney's Fees and $37,815.17 for costs advanced as of November 2004. Internal costs included in the reimbursement amount totaled $3,318.39 which comprise copying, postage, long distance, fax and probate fees. A copy of the Closing Statement has been provided under separate cover.
5. As of March 1, 2017, the balance outstanding in accrued advanced costs is $40,785.27. Of this amount, $3,398.27 represent internal costs (copying, postage, long distance and facsimile charges). A copy of the Additional Costs Accrued Statement has been provided under separate cover.

6. Senate Bill 48 sponsored by Senator Oscar Braynon, is now pending before the State Legislature. Section 4 of that bill provides for a cap on attorney's fees in an amount not to exceed 25% of the amount awarded under this cap.
7. Gary, Williams, Parenti, Watson & Gary, P.L.L.C. hereby acknowledge and agree that any attorney's fees in this matter shall not exceed the 25% limit as provided in this act.
8. Becker & Poliakoff, P.A., has been retained as counsel to represent the above referenced Claimants before the Florida Legislature in resolving this matter.
9. As it relates solely to Section 3 of the Senate Bill 48, Becker and Poliakoff, P.A., by signature below, hereby acknowledge and agree that the total lobbyist's fees awarded in this matter shall not exceed 25%.
10. Becker & Poliakoff, P.A. hereby acknowledges and agrees that lobbyist's fees in this matter will be 5%, which is included in the 25% cap, of the amount awarded ($1.8 million dollars).
11. Becker & Poliakoff, P.A. and Gary, Williams, Parenti, Watson & Gary, P.L.L.C. jointly agree to the statutory cap payment of 25% in attorney's fees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following, this 31st day of March, 2017.

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FURTHER AFFIANTS SAYETH NAUGHT.

Gary, Williams, Parenti, Watson & Gary, P.L.L.C.

Chanthina Bryant Abney
General Counsel

STATE OF FLORIDA
COUNTY OF Martin

SWORN to (or affirmed) and subscribed before me this 3rd day of March by Chanthina Bryant Abney, to me well known to be the person described in or who produced State-Issued ID: FDL_____ as identification and who executed the foregoing instrument acknowledging before me that he believes the same to be true and correct.

WITNESS my hand and official seal 3rd day of March, 2017.

TRACY M JAKUM
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF072107
Expires 11/20/2017

Signature of Notary Public

Tracy M Jakum
Printed name of Notary Public
My Commission Expires:

BECKER & POLIAKOFF, P.A.

Yolanda Cash Jackson, Esq.

STATE OF FLORIDA
COUNTY OF _____

SWORN to (or affirmed) and subscribed before me this ___ day of March by _____, to me well known to be the person described in or who produced State-Issued ID: FDL_____ as identification and who executed the foregoing instrument acknowledging before me that he believes the same to be true and correct.

WITNESS my hand and official seal ____ day of March, 2017.

Signature of Notary Public

Printed name of Notary Public
My Commission Expires:

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 Okechobbee 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.

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opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318."

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

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[2] *Mosby v. Harrell*, 909 So. 2d 323, 327 (Fla. 1st DCA 2005).
[3] *Dep't of Envtl. 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.

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

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

with a district-installed surveillance camera which captured the events of that afternoon, and

WHEREAS, as Mr. Hazen approached the intersection of Okeechobee Road and Midway Road and activated his left turn signal, the weather was clear and there were no visual obstructions in the roadway, and

WHEREAS, Mr. Hazen turned onto Midway Road without stopping at the intersection, travelling directly into the path of an oncoming, fully-loaded tractor trailer, and

WHEREAS, Mr. Hazen operated the school bus in a negligent manner and the district, through the negligent action of its employee, Mr. Hazen, breached a duty of care to Aaron Beauchamp, and

WHEREAS, the tractor trailer violently slammed into the rear passenger side of the school bus, propelling it into the air and spinning it around, and

WHEREAS, the impact of the crash inflicted numerous catastrophic injuries upon the students, and first responders to the accident had to follow procedures for a mass casualty event, and

WHEREAS, Aaron Beauchamp was sitting in the back of the school bus on the driver's side and, despite the fact that he was wearing his seatbelt, was ejected from his seat into the interior of the bus, and

WHEREAS, Aaron Beauchamp suffered massive injuries to his

spine and brain and died at the scene of the crash, and

WHEREAS, Aaron Beauchamp is survived by his mother, Lillian Beauchamp, a school principal and long-time district employee, his father, Simon Beauchamp, and an older brother, Benjamin Beauchamp, and

WHEREAS, Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, filed a wrongful death lawsuit against the district in the case of *Lillian Beauchamp, as Personal Representative of the Estate of Aaron Beauchamp, a deceased Child v. The St. Lucie County School District*, which was assigned case number 2013CA000569, and

WHEREAS, on September 8, 2015, a jury returned a unanimous verdict awarding $10 million to Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, finding that the district was 87 percent at fault for the accident, and

WHEREAS, on November 2, 2015, the judge in the case entered a final judgment against the district for $8.7 million, which the district did not appeal, and

WHEREAS, in accordance with s. 768.28, Florida Statutes, the district paid the statutory limit of $300,000 to other children who were injured in the same incident that resulted in the wrongful death of Aaron Beauchamp, and

WHEREAS, the full amount of the judgment against the district for the wrongful death of Aaron Beauchamp remains

unpaid, and

WHEREAS, the district and Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, have not reached a settlement regarding this claim, and the district contests the bill, NOW, THEREFORE,

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

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

Section 2. The St. Lucie County School District is authorized and directed to appropriate from its funds not otherwise encumbered and to draw a warrant in the amount of $8.7 million payable to Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, as compensation for damages sustained in connection with his wrongful death.

Section 3. The amount awarded under this act is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the wrongful death of Aaron Beauchamp. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $1,740,000, the total amount paid for lobbying fees may not exceed $435,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $4,246.02.

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:

[X] is personally known to me; or
[ ] has produced _____ as identification; and who:
[X] 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.

Cheryl R. Daniels
Notary Public – State of Florida

My Commission Expires: 7/17/2019

CHERYL R. DANIELS
MY COMMISSION # FF 900239
EXPIRES: July 17, 2019
Bonded Thru Notary Public Underwriters

Cheryl R. Daniels
Print Name

AND

Patrick E. Bell
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:

[X] 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.

Diane W. Gregg
Notary Public – State of Florida

My Commission Expires: June 29, 2018

DIANE W. GREGG
MY COMMISSION EXPIRES
June 29, 2018
#FF 128817
Bonded thru Troy Fain - Insurance
NOTARY PUBLIC STATE OF FLORIDA

Diane W. Gregg
Print Name

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 6529 (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	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Byrd offered the following:

Amendment (with title amendment)

Remove lines 88-98 and insert:

otherwise encumbered and, on or before November 1, 2017, to draw a warrant in the amount of $1.5 million payable to Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, as compensation for damages sustained in connection with his wrongful death.

Section 3. The amount awarded under this act is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the wrongful death of Aaron Beauchamp. Of the amount awarded under this act, the total amount paid for

attorney fees may not exceed $300,000, the total amount paid for lobbying fees may not exceed $75,000, and the total amount

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

Remove lines 74-80 and insert:

WHEREAS, the district and Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, have reached a settlement agreement in the amount $1.5 million, NOW, THEREFORE,

PCS for HB 6531

STORAGE NAME: h6531.CJC
DATE: 3/6/2017

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 6531; Relief/Dustin Reinhardt/Palm Beach County School Board
Sponsor: Drake
Companion Bill: SB 304 by Thurston
Special Master: Parker Aziz

Basic Information:

Claimants:	Dustin Reinhardt
Respondent:	Palm Beach County School Board
Amount Requested:	$4,700,000; with $1,700,000 paid upon passage and $3,000,000 to purchase annuities.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	Claimant has received $1,373,000 in collateral sources as the result of settlements with the school teacher, the tire owner, and Claimant's own uninsured motorist policy.
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 instant claim has been presented to the Legislature.

Procedural Summary: On February 25, 2015, a complaint was filed by Scott Reinhardt, individually and as legal guardian of Dustin Reinhardt, in the Circuit Court of the Fifteenth Judicial Circuit in Palm Beach County, alleging negligence on behalf of the School Board of Palm Beach County ("School Board"). The case was settled in January 2017 for $5,000,000. The terms of the settlement agreement provide, following the School Board's disbursement of $300,000, $1,700,000 be paid upon enactment of a claim bill, and the School Board will purchase $3,000,000 worth of

annuities that will start payment on September 2023. The School Board approved the settlement on January 18, 2017 and the statutory cap of $300,000 has been paid.

Facts of Case: In September 2013, a sixteen-year old Dustin Reinhardt was starting his junior year at Seminole Ridge High School in Loxahatchee, Florida. As part of his curriculum, Dustin was taking an auto-shop class. On Wednesday, September 4, 2013, Dustin and a friend were inflating air into a large tractor truck tire. This tire was larger than the normal tires that outfit most cars and instead was from the friend's swamp buggy. Dustin had the tire lying flat on the ground and was attempting to fill the rubber inner tube with air from the air hose that was attached to the ceiling. Mr. Raymond Craig, the auto-shop teacher, walked by and instructed Dustin to stand the tire up right and not to stand directly over the tire. Mr. Craig walked away as Dustin continued to inflate the tire.

What happened next is not entirely clear. The tire exploded and the tire's steel rim struck Dustin in his face and head. Dustin was taken by helicopter to St. Mary's Medical Center in West Palm Beach, where he underwent multiple surgeries including skull and facial reconstruction. The steel rim had fractured his skull and crushed several parts of his face. He lost his right eye. A bone from a cadaver was used to reconstruct his forehead. Dustin was placed in a medically induced coma and would spend the next four weeks in the Intensive Care Unit. Dustin was later transferred to a rehab facility at St. Mary's Medical Center and on October 24, 2013, Dustin was discharged home.

Six months later, there was another incident at the Seminole Ridge High School's auto-shop class. In April 2014, a student suffered broken bones and a punctured lung after being hit by a car another student was driving. The School Board ultimately fired Mr. Craig. It was discovered that Mr. Craig had failed to properly supervise the students and follow any approved curriculum. Since these incidents, the School Board has overhauled the auto-shop class by requiring extensive training of both instructors and students, completed a national accreditation for the auto-shop program, and prohibits outside parts from being brought to the shop without thorough inspection. The School Board does not possess tire cages that commercial auto-shops have as a safety precaution for exploding tires. However, the School Board has reported it no longer allows such large tires, similar to the one Dustin was working on, to be worked on in the class and has tire changing equipment designed for and used for ordinary car and truck tires.

Not long after being discharged home, Dustin's father, Scott, came to the realization that Dustin needed full time care and supervision. Dustin had difficulty controlling his anger and could not control his eating. In March of 2013, Dustin was placed at the Florida Institute for Neurologic Rehabilitation to receive supervision and therapy. In December 2016, Dustin moved to NeuroInternational, a comprehensive vocational rehab and support facility located in Sarasota.

Dustin's injuries are severe and life altering. He suffered a traumatic brain injury and the loss of his right eye. He suffered extensive facial fractures, hematoma, and contusions. He underwent a bi-frontal craniotomy. Dr. Lichtblau, a board certified doctor in physical medicine and rehabilitation, evaluated Dustin and believes Dustin will never be able to be gainfully employed. From the evidence presented, it is clear Dustin will need care and supervision for the rest of his life.

His brain injury has impacted his memory and decision making. This has only been highlighted in the years following the accident. While at the Florida Institute for Neurologic Rehabilitation, Dustin spilled gasoline on himself while working on the facility's grounds. Another patient, whom Dustin viewed as a friend, walked up to Dustin and lit Dustin's shirt on fire. Dustin suffered second and third degree burns. Dustin is now 20 years-old but only has the mental capacity of a 12 year-old. Scott Reinhardt, Dustin's father, serves as Dustin's legal guardian.

Dustin accrued significant medical bills but fortunately, the School Board has a catastrophic insurance policy through Mutual of Omaha which has covered all of Dustin's medical expenses and the cost of his rehab facility. However, the insurance policy only provides for ten years of payments

and will cease in September of 2023. In addition to the $1,700,000 paid upon enactment of the claim bill, the settlement agreement between Dustin and the School Board provides for the purchase of three separate one million dollar annuities, which will start payment on September 2023.

Recommendation: I respectfully recommend that House Bill 6531 be reported **FAVORABLY**.

Parker Aziz, Special Master Date: March 6, 2017

cc: Representative Drake, House Sponsor
Senator Thurston, Senate Sponsor
Cindy Brown, Senate Special Master

A bill to be entitled

An act for the relief of Dustin Reinhardt by the Palm Beach County School Board; providing for an appropriation and annuity to compensate him for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing that certain payments and the amount awarded under the act satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, in September 2013, Dustin Reinhardt was a student at Seminole Ridge Community High School in Loxahatchee in Palm Beach County, and was involved in the Army Junior Reserve Officer Training Corps for which he received honors for his participation, and

WHEREAS, on September 4, 2013, while in auto shop class at Seminole Ridge Community High School, Dustin Reinhardt was inflating a large truck tire, which proceeded to explode, striking him in his head, and

WHEREAS, immediately following the explosion, Dustin Reinhardt was airlifted to St. Mary's Medical Center in West Palm Beach where he underwent multiple surgeries, including skull and facial reconstruction procedures, was placed in a

chemically induced coma, and spent more than 4 weeks in the intensive care unit, and

WHEREAS, Dustin Reinhardt has continued to be impacted by the injuries he incurred from the explosion, including the loss of vision in his right eye, short-term memory loss, and a recent diagnosis of severe traumatic brain injury, and

WHEREAS, the traumatic brain injury will impair Dustin Reinhardt's executive function and has resulted in symptoms such as the exhibition of socially inappropriate behavior, difficulty in planning and taking initiative, difficulty with verbal fluency, an inability to multitask, and difficulty in processing, storing, and retrieving information, and

WHEREAS, because of the explosion, Dustin Reinhardt continues to live in supervised care at the Neuro International and is unlikely to ever live an independent life, and

WHEREAS, the injuries that Dustin Reinhardt sustained were foreseeable and preventable and the school had a duty to prevent his injuries, and

WHEREAS, the parties have agreed to a settlement in the sum of $5 million, and the Palm Beach County School Board has paid $300,000 of the settlement pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving a remaining balance of $4.7 million, NOW, THEREFORE,

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

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

Section 2. The Palm Beach County School Board is authorized and directed to:

(1) Appropriate from funds of the school board not otherwise encumbered and, no later than 30 days after the effective date of this act, draw a warrant in the sum of $1.7 million payable to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, as compensation for injuries and damages sustained.

(2) Purchase an annuity for the sum of $3 million for Dustin Reinhardt's benefit. The annuity must provide annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, for 3 years, with the first disbursement occurring on or before September 1, 2023, and the following disbursements occurring the following 2 years thereafter. Each annual disbursement must be at least $1 million.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Dustin Reinhardt. Of the amount awarded

under this act, the total amount paid for attorney fees may not exceed $940,000, the total amount paid for lobbying fees may not exceed $235,000, and no amount may be paid for costs and other similar expenses relating to this claim. Attorney or lobbyist fees may not be assessed against the value of the annuity.

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

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. CIVIL ACTION.

CASE NO. 2015CA002262XXXXMBAO

SCOTT REINHARDT, individually and as legal guardian of DUSTIN REINHARDT,

Plaintiffs,

v.

THE SCHOOL DISTRICT OF PALM BEACH COUNTY

Defendant.

_____/

AFFIDAVIT

STATE OF FLORIDA

: SS.:

BEFORE ME, the undersigned authority, personally appeared JONATHAN COX and PATRICK BELL, who being first duly sworn, state under oath:

1. JONATHAN COX of Keller, Keller & Caracuzzo is the lead attorney in the above referenced matter.
2. PATRICK BELL of Capitol Solutions LLC was retained as the lobbyist in the above referenced matter.
3. The undersigned, JONATHAN COX, attests that pursuant to the contract entered into with the claimant, legal fees will be 20% of the gross amount that may be awarded by the Legislature.
4. The undersigned, JONATHAN COX and PATRICK BELL, attest that pursuant to the contract entered into by them, PATRICK BELL's fee will be 5% of the gross amount that may be awarded by the Legislature.
5. The undersigned, JONATHAN COX, attests that his fee, including the firm's fee, and the lobbyist's fee will not exceed the cap on attorneys' fees set forth in Florida Statutes 768.28(8): "No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement".

6. There are no legal costs pending. No legal costs were paid from the statutory cap payment.

FURTHER THE AFFIANTS SAYETH NAUGHT.

JONATHAN M COX

SUBSCRIBED AND SWORN to before me this 27th day of February, 2017.

CHRISTINA ZANZIG
MY COMMISSION # FF 089892
EXPIRES: May 13, 2018
Bonded Thru Budget Notary Services

Notary Public, State of Florida

My Commission Expires:

PATRICK BELL

SUBSCRIBED AND SWORN to before me this 28 day of February 2017.

Notary Public, State of Florida

My Commission Expires:

DIANE W. GREGG
MY COMMISSION EXPIRES
June 29, 2018
#FF 128817
Bonded thru
Troy Fain - Insurance
NOTARY PUBLIC, STATE OF FLORIDA

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Drake offered the following:

Amendment

Remove lines 62-69 and insert:

(2) Purchase, for Dustin Reinhardt's benefit, three separate $1 million annuities, over a successive three year period of time. The first annuity shall be purchased in the year the claim bill is enacted with the other two annuities purchased in successive years thereafter. The first annuity shall make annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, beginning on or about September 2023. The second and third annuities shall make annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust

created for the exclusive use and benefit of Dustin Reinhardt, pursuant to their terms.

STORAGE NAME: h6545.CJC
DATE: 3/16/2017

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 6545; Relief/Jerry Cunningham/Broward County
Sponsor: Raburn
Companion Bill: SB 314 by Farmer
Special Master: Parker Aziz

Basic Information:

Claimants:	Jerry Cunningham
Respondent:	Broward County
Amount Requested:	$550,000
Type of Claim:	Local equitable claim; result of a settlement agreement
Respondent's Position:	Broward County does not oppose 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 December 3, 2013, Gerard and Lilliam Cunningham, individually and as parents of Jerry Cunningham, ("Claimant") filed a complaint in the Circuit Court of the 17th Judicial Circuit in Broward County alleging negligence against Broward County ("County"). On August 15, 2016, the parties entered into a settlement agreement in the amount of $850,000. The County has paid the $300,000 statutory cap payment.

Facts of Case: On May 10, 2013, a fourteen year-old Jerry Cunningham was walking with his mother, Lilliam, to a Broward County Transit bus stop. Jerry attended a charter school and rode the Broward County Transit bus instead of a regular school bus due to his proximity to the school. Jerry and his mother were walking to the bus stop on Sample Road in the City of Pompano Beach when Lilliam's shoe fell off. Nervous about missing the bus, Lilliam instructed Jerry to go on ahead to the

bus stop. Dutifully, Jerry ran towards the bus stop.

Reinaldo Soto, a Broward County Transit bus driver, was driving the bus Jerry intended to ride. Soto pulled up to the Sample Road bus stop at the intersection of NE 12th Avenue. From the surveillance video of the bus, multiple passengers can be heard instructing Soto that "a runner is coming" or "we have a runner." Soto acknowledges the passengers comments by raising his left hand but never turns around to check for a runner. Soto opens the bus doors and two women, who were waiting at the bus stop, board the bus. As they begin to board, Jerry approaches the bus. The two women enter the bus but do not move to the aisle to find a seat. They can be seen standing in front of the "standee line" and blocking Soto's view of the door.

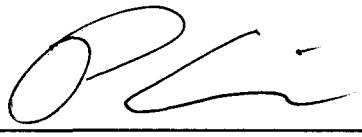
Jerry is standing right behind the women attempting to board the bus when Soto begins to accelerate the bus and contemporaneously shuts the door. Jerry reaches out with his right arm as to block the doors from closing. Soto closes the door and Jerry's arm is apparently trapped between the two doors. Brian Clark, sitting in the first seat on the passenger side of the bus and directly in front of the doors, stated Jerry's arm was caught between the doors. As the bus moves and continues on its route, Jerry attempts to run alongside the bus and banging on the glass doors with his free left hand. The begins to increase in speed as it goes through the intersection of NE 12th Avenue and Jerry is still running along side the bus. As the bus approached 18 mph, Jerry's arm becomes dislodged and he falls straight down on the road. After the several passengers scream and yell in reaction to seeing Jerry hitting the road, Soto brings the bus to a stop. It is unclear if Jerry was ran over by any of the bus's tires or if the force of falling on the roadway's pavement caused his injuries.

Jerry was transported to Broward Health North and was subsequently airlifted to the pediatric intensive care unit at Broward Health Medical Center. As a result of the accident, Jerry suffered a traumatic brain injury, multiple skull fractures, facial fractures, rib fractures, a right clavicle fracture, a right scapular fracture, a right pulmonary contusion, and was placed in a medically induced coma. On June 2013, Jerry was transferred to Jackson Memorial Hospital's family centered pediatric rehabilitation program in order to receive intensive occupational, physical, speech, and neuropsychological therapy. Dr. Suzan Tanner, a neuropsychologist who treated Jerry at Jackson Memorial Hospital, diagnosed Jerry with a cognitive disorder and that his cognitive functioning had significantly declined following his traumatic brain injury. Dr. Cynthia Stephens, a financial economist, estimates that Jerry has suffered economic losses due to loss of future earning potential in the amount of $1,057,400 to $1,734,800. Jerry spent a year in Broward County's hospital home bound program before returning to school. He is senior at Deerfield Beach High School and plans to attend Broward College.

Two months before the accident, the County issued memorandum to all bus operators to clarify that state law requires bus operators to not move the bus with passengers in front of the standee line. Soto possessed a Commercial Driver's License (CDL) and the Florida CDL Driver Manual provides no rider may stand forward of the rear of the driver's seat. Buses designed to allow standing must a have two-inch line on the floor. This line is called the standee line and all standing riders must stay behind it. The Broward County Transit's own operator's manual instructs drivers to afford all passengers at a bus stop the opportunity to board the bus. Brooks Rugemer, a Commercial Transprotation Specialist, found that Soto willfully failed to follow the policies and fell below the standard of care for a CDL licensed bus operator. Rugemer found Soto's reckless actions caused Jerry's injuries.

Soto was initially suspended for 15 days following the accident and demoted. Following his appeal of his demotion, he was reinstated and allowed to drive buses again. In the ten years before the accident, Soto was found at fault for nine accidents while operating a Broward County Transit bus.

Recommendation: I respectfully recommend that House Bill 6545 be reported **FAVORABLY**.



Parker Aziz, Special Master Date: March 16, 2016

cc: Representative Raburn, House Sponsor
Senator Farmer, Senate Sponsor
Adam Stallard, Senate Special Master

A bill to be entitled

An act for the relief of Jerry Cunningham by Broward County; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of Broward County; providing that the appropriation settles all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on May 10, 2013, Jerry Cunningham and his mother walked from their home to a bus stop for Broward County Transit on Sample Road in Pompano Beach, where Jerry was to board the bus to take him to school, and

WHEREAS, Jerry Cunningham presented himself at the threshold of the bus and was attempting to board the bus with its door still open when the bus driver proceeded to close the door on Jerry's arm, and

WHEREAS, the bus driver began to leave the bus stop even though passengers allegedly alerted the driver to Jerry Cunningham's presence and even though two other passengers who had just boarded had not yet crossed the standee line to find a seat, which was in direct violation of state requirements and a policy issued in a Broward County Transit memorandum in March 2013, and

WHEREAS, as the bus continued to pull away, Jerry Cunningham attempted to run alongside the bus with his arm caught in the doors until he eventually fell to the pavement, unable to keep up with the bus's speed, and

WHEREAS, after the accident, Jerry Cunningham was immediately transported to Broward Health North and was subsequently airlifted to the pediatric intensive care unit at Broward Health Medical Center, and

WHEREAS, on June 13, 2013, Jerry Cunningham was transferred to Jackson Memorial Hospital's family-centered pediatric rehabilitation program in order to receive intensive occupational, physical, speech, and neuropsychological therapy, and

WHEREAS, as a result of the accident, Jerry Cunningham suffered traumatic brain injury, multiple skull fractures, multiple facial fractures, multiple rib fractures, a right clavicle fracture, a right scapular fracture, a right pulmonary contusion, and a left medial malleolus fracture and was placed in a medically induced coma for approximately 1 month, and

WHEREAS, Jerry Cunningham continues to be impacted by the accident through his diagnoses of neurocognitive disorder, adjustment disorder with depression, central auditory processing disorder, neuropsychological impairment in processing speed and memory, motor dexterity impairment, and various physical limitations, and

WHEREAS, the bus driver owed a duty of care to Jerry Cunningham, and Broward County is vicariously liable for the negligence of the bus driver, who was acting within the normal scope of his employment, and

WHEREAS, Jerry Cunningham and his parents, Lilliam and Gerrard Cunningham, have agreed to a settlement with Broward County in the sum of $850,000, and Broward County has agreed to pay $300,000 of the settlement pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving a remaining balance of $550,000, NOW, THEREFORE,

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

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

Section 2. Broward County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $550,000, to be placed in the special needs trust created for the exclusive use and benefit of Jerry Cunningham as compensation for injuries and damages sustained.

Section 3. The amount paid by Broward County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to

Jerry Cunningham. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $104,500, the total amount paid for lobbying fees may not exceed $33,000, and no amount may be paid for costs and other similar expenses relating to this claim.

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

AFFIDAVIT OF GLEN B. LEVINE

STATE OF FLORIDA)

COUNTY OF BROWARD)

ON THIS DAY, before me, the undersigned authority, personally appeared, GLEN B. LEVINE, who, after being duly sworn, deposes and says:

1. My name is Glen B. Levine, I am an attorney with Anidjar and Levine, P.A. and I represent Jerry Cunningham

2. I am over 18 years of age and competent to make this affidavit.

3. Anidjar & Levine, P.A., has retained Corcoran & Johnston as consultants/lobbyists in regard to the consideration Senate Bill 314 for the relief of Jerry Cunningham by Broward County.

4. The attorney's fees and lobbyist fees related to this bill along with any additional costs related to this bill will be limited to 25% of any recovery obtained through the passage of Senate Bill 314 for the relief of Jerry Cunningham by Broward County.

5. Anidjar & Levine, P.A. will receive 19% of the 25% fee recovered from any additional recovery obtained through the passage of Senate Bill 314 for the relief of Jerry Cunningham by Broward County and Corcoran & Johnston will receive the remaining 6%.

6. Jerry Cunningham will receive 75% of any additional recovery obtained through the passage of Senate Bill 314 for the relief of Jerry Cunningham by Broward County.

7. There are no additional costs that are expected to be reimbursed from any recovery obtained through the passage of Senate Bill 314 for the relief of Jerry Cunningham by Broward County. Should additional costs be incurred by Anidjar & Levine, P.A. or Corcoran & Johnston, they will be deducted from the 25% identified in paragraph 4 of this affidavit.

8. A total of $46,334.79 was paid from the statutory cap payment for costs reimbursement which consists of $875.84 in internal costs (expenses associated with the firms overhead, copying, etc.). The remaining $45,458.95 in costs were associated with expert witness fees, filing fees, deposition transcripts and other litigation related costs.

GLEN B. LEVINE

SWORN TO AND SUBSCRIBED before me this 28 day of February 2017.

Notary Public

My commission expires:

STORAGE NAME: h6549.CJC
DATE: 3/16/2017

March 16, 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 6549 - Representative Diaz
Relief/Altavious Carter/Palm Beach County School Board

THIS IS A CONTESTED CLAIM FOR $944,034.40 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDING OF FACT:

On December 15, 2005, at approximately 4:12 p.m., Vincent H. Merriweather was driving Altavious Carter, 15 years old at the time, from basketball practice to Mr. Carter's home when Mr. Merriweather's van stopped at a red light at the intersection of Forest Hill Boulevard and Olympia Boulevard in West Palm Beach, Florida. A Palm Beach County School District bus rear-ended Mr. Merriweather's Chevrolet conversion van at an impact speed of almost 50 miles per hour. The van traveled 300 feet from impact to the point of rest. No evidence has been presented that the driver of the bus applied his brakes prior to striking the van. The bus driver, Dennis Grantham, was given a ticket for careless driving in connection with the accident. He also received a "written reprimand" from the Palm Beach County School Board ("School Board"), and was suspended from further driving School Board vehicles.

Both Mr. Carter and Mr. Merriweather were wearing their seat belts at the time of the accident. The force of the accident broke both Mr. Carter and Mr. Merriweather's seats. Mr. Carter was thrown into the back of the van. Mr. Carter was able to stagger out of the van, and upon suspicion of a spinal injury, was instructed to lie down and wait for the ambulance. Mr. Merriweather was airlifted to Delray Medical Center.

Mr. Carter was transported by ambulance to Wellington Regional Medical Center and subsequently to St. Mary's Medical Center, where he was treated for his injuries. Due to the accident, Mr. Carter's neck was broken at the C6 level, and he suffered a C6-7 interior subluxation and reversal of normal cervical lordosis, with spinal cord flattening. Mr. Carter received a discectomy and fusion at C6-7, along with placement of a bone graft and cage, plates, and screws to fuse the spine at C6-7. Mr. Carter remained in the hospital for four days following the accident.

Upon discharge, he was required to wear a neck brace for several months, undergo physical therapy, and was unable to play his freshman season of basketball. After rehabilitation, Mr. Carter was able to return to physical activity. He went on to a successful high school and collegiate basketball career. Mr. Carter continues to suffer some pain in his neck, including aching and stiffness. This pain makes sleeping difficult at times for Mr. Carter. Mr. Carter is at risk of developing adjacent segment disease as a result of his spinal fusion. If Mr. Carter develops this disease, he will require future surgery to remedy the disease.

LITIGATION HISTORY:

On July 25, 2007, Tonya McRae, as mother and natural guardian of Altavious Carter, filed suit against the Palm Beach County School Board, Case No. 502007 CA 009298, in the 15th Judicial Circuit, in and for Palm Beach County, Florida, alleging negligence. Mr. Carter received a jury verdict against the Palm Beach County School Board, and the court entered a judgment in the amount of $1,094,034.30. The jury verdict is broken down as follows:

Past Medical Expenses	$96,476.64
Future Medical Expenses	$175,892.00
Past Pain and Suffering	$478,333.33
Future Pain and Suffering	$343,333.33
Total	$1,094,034.30

Pursuant to the judgment, Palm Beach County School Board paid the sovereign immunity limit of $100,000. The remainder of the judgment, $994,034, is sought through this contested

claims bill.

The School Board settled Mr. Merriweather's claim arising from the same accident for $4,000,000. The School Board paid the sovereign immunity limit of $100,000 and the additional $3,900,000 was approved through a claim bill in the 2009 Legislative Session.

CLAIMANT'S POSITION: The jury verdict should be given full effect through passage of the instant claim bill.

RESPONDENT'S POSITION: The School Board opposes the extent of the damages, specifically the future medical expenses and future pain and suffering awarded by the jury.

CONCLUSION OF LAW: The bus driver had a duty to exercise reasonable care in the operation of the school bus. This duty was breached when the bus driver negligently crashed into the van.[1] Here, the bus driver was cited as the responsible party in the accident. This is not disputed by the Respondent. The bus driver's negligence was the proximate cause of the injuries that Mr. Carter sustained in the accident. The school bus driver was an employee of the School district and was acting within the course and scope of his employment at the time of the accident. As such, the driver's negligence is attributable to the School Board.

In disputing the extent of the future pain and suffering damages, the School Board provides that as of July 27, 2006, Mr. Carter was cleared by Dr. Baynum to resume all activities without restriction. However, the trial was conducted after Mr. Carter had returned to playing basketball. At trial, the School Board showed a highlight video of Mr. Carter's physical abilities on the basketball court. The jury was able to take into account Mr. Carter's recovery in returning the verdict. In disputing future medical expenses, the School Board provided that according to a physiatrist, Dr. Rubenstein, whom the School Board retained, the future care needed for Mr. Carter was approximately $25,000, exclusive of the costs of surgery to repair adjacent segment disease. This evidence was available to the jury in rendering their decision. After an extensive trial, with evidence and testimony presented by both sides, the jury weighed the appropriate evidence and testimony and returned a judgment in favor of Mr. Carter. The jury award should not be disturbed in this matter. The damages the jury determined are not grossly disproportionate to the injury and harm caused by Mr. Grantham to Mr. Carter.

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[1] *See Eppler v. Tarmac America, Inc.*, 752 So. 2d 592 (Fla. 2000) (the rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

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 $4,734.26.

PRIOR LEGISLATIVE HISTORY:

This is the seventh session this claim has been presented to the Legislature. In the 2016 Legislative Session, the claim was introduced as Senate Bill 50 by Senator Flores and House Bill 3537 by Representative Diaz, J. The Senate Bill was heard in two committees (Judiciary & Appropriations Subcommittee on Education) before dying in Senate Appropriations Committee. The House Bill died in Civil Justice Subcommittee.

In the 2015 Legislative Session, the claim was introduced as Senate Bill 72 by Senator Flores and House Bill 3553 by Representative La Rosa. The Senate Bill was heard in two committees (Judiciary & Appropriations Subcommittee on Education) before dying in Senate Appropriations Committee. The House Bill died in Civil Justice Subcommittee.

In the 2014 Legislative Session, the claim was introduced as Senate Bill 38 by Senator Flores. It was not heard in any committee of reference and a House Bill was not filed.

In the 2013 Legislative Session, the claim was introduced as Senate Bill 30 by Senator Flores and House Bill 1385 by Representative Diaz, J. Neither bill was heard in any committee of reference.

In the 2012 Legislative Session, the claim was introduced as Senate Bill 26 by Senator Bogdanoff and House Bill 911 by Representative Clemens. Neither bill was heard in any committee of reference.

In the 2011 Legislative Session, the claim was introduced as Senate Bill 340 by Senator Bogdanoff and House Bill 591 by Representative Clemens. Neither bill was heard in any committee of reference.

RECOMMENDATIONS:

I respectfully recommend that House Bill 6549 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Diaz, J., House Sponsor
Senator Flores, Senate Sponsor
Jason Hand, Senate Special Master

A bill to be entitled

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

WHEREAS, on December 15, 2005, 14-year-old Altavious Carter, a freshman at Summit Christian School in Palm Beach County, was a passenger in a vehicle driven by Vincent H. Merriweather, and

WHEREAS, while Mr. Merriweather was stopped at a red light at the intersection of Forest Hill Boulevard and Olympia Boulevard in Palm Beach County, his vehicle, a van, was struck by a school bus driven by an employee of the Palm Beach County School District, and

WHEREAS, the bus driver, Dennis Gratham, was cited for careless driving and the speed of the bus at the time of impact was 48.5 miles per hour, and

WHEREAS, the seat in which Mr. Carter was sitting was broken as a result of the crash, and Mr. Carter, who was wearing a seatbelt, was thrown into the back of the van, his neck was broken at the C6 level, and he suffered a C6-7 interior

subluxation and reversal of normal cervical lordosis, with spinal cord flattening, and

WHEREAS, Mr. Carter was taken by ambulance to Wellington Regional Medical Center and subsequently to St. Mary's Medical Center, where he was diagnosed and treated for the injuries he sustained, and

WHEREAS, Mr. Carter received a discectomy and fusion at C6-7, along with placement of a bone graft and cage, plates, and screws to fuse the spine at C6-7, and

WHEREAS, following rehabilitation, an MRI taken in June 2009 indicated a small herniation at the C7-T1 level, representing the start of degenerative disc disease, and

WHEREAS, on February 25, 2010, Mr. Carter received a jury verdict against the Palm Beach County School Board, and the court entered a judgment in the amount of $1,094,034.30, and

WHEREAS, on August 4, 2010, an additional final cost judgment in the amount of $46,830.11 was entered in favor of Mr. Carter against the Palm Beach County School Board in the same matter, and

WHEREAS, the Palm Beach County School Board on April 14, 2010, paid the sum of $100,000, the statutory limit at that time under s. 768.28, Florida Statutes, leaving an unpaid balance of $1,040,864.41 in this matter, and

WHEREAS, the remainder of the judgments in this matter are sought through the submission of this claim bill to the

Legislature, NOW, THEREFORE,

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

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

Section 2. The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw a warrant in the sum of $1,040,864.41, payable to Altavious Carter as compensation for injuries and damages sustained.

Section 3. The amount paid by the Palm Beach County School Board under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries to Mr. Carter. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $208,172.88, the total amount paid for lobbying fees may not exceed $52,043.22, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $4,734.26.

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

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO.: 11-4090CB

IN RE: SENATE BILL 24
Relief of
ALTAVIOUS CARTER.
_____/

AFFIDAVIT OF BRIAN R. DENNEY

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

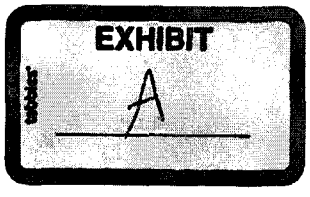
BEFORE ME, the undersigned authority, personally appeared, Brian R. Denney who being first duly sworn, deposes and says:

1. I am legal counsel for the Claimant, ALTAVIOUS CARTER, am over the age of 18 and am otherwise competent to testify. I hereby swear under oath that the cost statement attached hereto as Exhibit "A" show all expenses and costs associated with this case.

2. All lobbying fees regarding the above-captioned matter are incorporated into the 25% attorney's fee agreed to by Mr. Carter.

3. The dollar amount of costs that were paid by the prior statutory cap payment was $73, 725.95.

4. I confirmed with my law firm's accounting department that the remaining costs in this case are $4,734.26 as of 2/27/17. $4,734.26 would be paid in costs out of the amount that may be awarded by the legislature. Of that amount, $3,931.63 are "hard" costs and $802.63 are "soft" costs. All of the costs were incurred while moving this case towards a conclusion on behalf of Mr. Altavious Carter.



Carter vs. The School Board of Palm Beach County, Florida
Affidavit
Case No.: 50 2007 CA 009298 XXXX MB AO

5. The lobbying fee is 5% of the total amount awarded by the legislature and will be paid out of the attorney's fee.

FURTHER AFFIANT SAYETH NOT.

Brian R. Denney

The foregoing instrument was acknowledged before me this 28th day of February 20 17, by Brian R. Denney who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

AMANDA FREED
Commission # FF 103789
Expires July 19, 2018
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Signature

Amanda Freed
Notary name - print

NOTARY PUBLIC, State of Florida
FF-103789
(Serial number, if any)

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO.: 11-4090CB

IN RE: SENATE BILL 24
Relief of
ALTAVIOUS CARTER.
_____/

AFFIDAVIT OF J. ALEX VILLALOBOS

STATE OF FLORIDA)
) ss
COUNTY OF Palm Beach)

BEFORE ME, the undersigned authority, personally appeared, J. Alex Villalobos who being first duly sworn, deposes and says:

1. I, J. ALEX VILLALOBOS, am over the age of 18 and am otherwise competent to testify.

2. I, J. ALEX VILLALOBOS, as lobbyist for Claimant, ALTAVIOUS CARTER, hereby swear under oath that all lobbying fees regarding the above-captioned matter are incorporated into the 25% attorney's fee. My lobbying fee is 5% of the amount of the claims bill awarded by the legislature.

Carter vs. The School Board of Palm Beach County, Florida
Affidavit
Case No.: 50 2007 CA 009298 XXXX MB AO

FURTHER AFFIANT SAYETH NOT.

J. Alex Villalobos

The foregoing instrument was acknowledged before me this ___ day of February, 2017, by J. Alex Villalobos who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

CHRISTOPHER DECKERT
Notary Public - State of Florida
Commission # FF 937729
My Comm. Expires Nov 19, 2019
Bonded through National Notary Assn.

Notary Signature

Christopher Deckert
Notary name - print

NOTARY PUBLIC, State of Florida

FF # 937729
(Serial number, if any)