Civil Justice & Claims Subcommittee

Monday, March 20, 2017
3:30 PM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Heather Fitzenhagen
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 3/17/2017 5:28:46PM)

Amended(1)

Civil Justice & Claims Subcommittee

Start Date and Time:	Monday, March 20, 2017 03:30 pm
End Date and Time:	Monday, March 20, 2017 06:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 1237 Condominiums by Diaz, J.
HB 1255 Florida Commission on Human Relations by Antone
HB 1417 Pub. Rec./Identifying Information of Human Trafficking Victims by Spano
HB 6501 Relief/J.D.S./Agency for Persons with Disabilities by Plakon, Antone
HB 6511 Relief/L.T./Department of Children and Families by Miller, M.
HB 6517 Relief/Reginald Jackson/City of Lakeland by Alexander
HB 6519 Relief/Amie Draiemann O'Brien, Hailey Morgan Stephenson, and Christian Darby Stephenson II/Department of Transportation by Cortes, B.
HB 6527 Relief/Charles Pandrea/North Broward Hospital District by Harrison
HB 6545 Relief/Jerry Cunningham/Broward County by Raburn
HB 6549 Relief/Altavious Carter/Palm Beach County School Board by Diaz, J.
HB 6553 Relief/Cristina Alvarez and George Patnode/Department of Health by Toledo
HB 6555 Relief/Thomas and Karen Brandi/Haines City by Grant, M.

Consideration of the following proposed committee substitute(s):

PCS for HB 163 -- Public Records
PCS for HB 1165 -- Victims of Human Trafficking
PCS for HB 1167 -- Trust Funds/Creation/Florida Compensation Trust Fund for Survivors of Human Trafficking/EOG
PCS for HB 1379 -- Department of Legal Affairs

NOTICE FINALIZED on 03/17/2017 5:28PM by Bowen.Erika

PCS for HB 163

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 163 Public Records
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 80, SB 246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		MacNamara	Bond

SUMMARY ANALYSIS

The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government, unless such record is specifically exempt. If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced. Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of attorney fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.

Once an enforcement action has been filed, an agency, or a contractor acting on behalf of an agency, can be held liable for attorney fees. If a court finds that an agency unlawfully refused access to a public record, the court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.

The bill provides that a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency only if it determines that:

- The agency unlawfully refused to permit the public record to be inspected or copied; and
- The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 days before filing the civil action, except as provided in the bill.

A court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the agency if the court determines that the request to inspect or copy the public record was made for an improper purpose. If the court determines the request was made for an improper purpose, it is allowed to award reasonable costs and attorney fees to the agency.

The bill may have a positive fiscal impact on state and local governments.

The bill provides for an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: The Public Records Act

The Florida Constitution provides that every individual has a right of access to public records that are made or received in connection with official public business unless such record is specifically exempt. This right applies to records of the legislative, executive, and judicial branches.[1]

The Public Records Act, codified in ch. 119, F.S., guarantees every person's right to inspect and copy any state or local government public record at a reasonable time, under reasonable conditions, and under the supervision of the public records custodian.[2] The Public Records Act also applies to a private contractor if that private business acts on behalf of a governmental entity. Section 119.011(12), F.S., defines "public record" as:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

An agency[3] may not impose greater conditions on responding to a public records request than those required by law. Nor may an agency require an individual to put his or her request in writing as a condition of production, or to disclose his or her name, address, or other contact information.[4] An agency must honor a request whether a person requests records by phone, in writing, or in person, if the request is sufficient to identify the records sought.[5]

Custodian of Public Records

Pursuant to s. 119.011(5), F.S., a custodian of public records is "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee." A custodian of public records is required to perform statutorily required duties such as maintaining records in fireproof vaults, repairing records and complying with retention schedules set by the Department of State. Section 119.07, F.S., also provides that a public records custodian has duties that include:

- Acknowledging public records requests and responding to those requests in good faith;
- Producing records after redacting exempt information or providing the statutory citation for an exemption if the entire document is exempt;
- Maintaining records that are the subject of public records litigation;
- Ensuring that public records are secure if they are provided electronically;
- Providing supervision if someone wishes to photograph records; and
- Providing certified copies of public records upon payment of a fee.[6]

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[1] Art. I, s. 24(a), Fla. Const.
[2] s. 119.07(1)(a), F.S.
[3] Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[4] Op. Att'y Gen. Informal Opinion, pg. 1 (Dec. 16, 2003).
[5] Op. Att'y Gen. Fla. 80-57, pg. 3 (1980).
[6] *See* ss. 119.07(1)(c-i) and 119.07(2-4), F.S.

Public records custodians are also responsible for supervising the production of records by agency personnel. Section 119.07(1)(a), F.S., provides that "[e]very person who has custody of a public record shall permit the record to be inspected and copied . . . at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records."

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency. Contractors can be individuals or business entities. Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws.[7]

Enforcement Actions and Attorney Fees

If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced.[8] Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.[9]

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.[10] Once an enforcement action has been filed, an agency can be held liable for attorney fees even after the agency has produced the requested records.[11]

If the court finds that the agency unlawfully refused access to a public record, the court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.[12] A court will not take into consideration whether a records custodian intended to violate public records laws or was simply inept, and it is immaterial if a records custodian did not willfully refuse to provide a public record.[13] In addition, to be entitled to attorney fees against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

If a contractor acting on behalf of the agency fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to records. If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that an agency would be liable if:

- The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
- At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.[14]

[7] *See* s. 119.011(2), F.S., and s. 119.0701, F.S.
[8] s. 119.11, F.S.
[9] s. 119.11(1), F.S.
[10] s. 119.12, F.S.
[11] *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff's Office,* 92 So. 3d 899, 902 (Fla. 4th DCA 2012).
[12] s. 119.12, F.S.
[13] *See generally*, *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996) and *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014) .
[14] s. 119.0701(4), F.S.

Effect of Bill

The bill directs courts to award attorney fees and enforcement costs in actions to enforce public records laws only in instances where:

- The agency unlawfully refuses to permit a public record to be inspected or copied; and
- The plaintiff provides written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the enforcement action.

A complainant is not required to provide written notice, as stated above, if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

When considering whether an agency unlawfully refused to comply with a public records request, the bill requires the court to evaluate the actions of the plaintiff and the agency. Additionally, the bill allows the court to award attorney fees and costs against the plaintiff if the court finds the action was filed for an improper purpose. The bill defines improper purpose as "a request to inspect or copy a public record or to participate in the civil action primarily to harass the agency, cause a violation of this chapter, or for a frivolous purpose."

Lastly, the bill provides that no private right of action is created authorizing the award of monetary damages for persons who bring actions under the provisions simply by the enactment of this bill. Rather, payments by the responsible agency are limited to the reasonable costs of enforcement directly attributable to a civil action brought to enforce the provisions of this chapter.

B. SECTION DIRECTORY:

Section 1 amends s. 119.12, F.S., relating to attorney fees.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill may have a positive fiscal impact on the state if there are fewer instances when a court assesses against an agency the reasonable costs of enforcement in a public records lawsuit.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The bill may have a positive fiscal impact on local governments if there are fewer instances when a court assesses against a local government the reasonable costs of enforcement in a public records lawsuit.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on individuals and entities who file public records lawsuits if there are fewer instances when a court awards to a prevailing complainant in a public records lawsuit the reasonable costs of enforcement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

n/a

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; revising the circumstances under which a court must assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S.; specifying circumstances under which a complainant is not required to provide certain written notice of a public records request; requiring a court to determine whether a complainant requested to inspect or copy a public record or participated in a civil action for an improper purpose; prohibiting the assessment and award of the reasonable costs of enforcement to a complainant who acted with an improper purpose; requiring the court to assess and award reasonable costs against the complainant if he or she is found to have acted with an improper purpose; defining the term "improper purpose"; providing for construction and applicability; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter ~~and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied~~, the court shall assess and award~~, against the agency responsible,~~ the reasonable costs of enforcement, including reasonable attorney ~~attorneys'~~ fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

(3) The court shall determine whether the complainant

requested to inspect or copy a public record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. For purposes of this subsection, the term "improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to harass the agency, cause a violation of this chapter, or for frivolous purpose.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

Section 2. This act applies only to public records requests made on or after the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

PCS for HB 1165

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1165 Victims of Human Trafficking
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: PCS 1167; HB 1417 **IDEN./SIM. BILLS:** SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		MacNamara	Bond

SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.

Current law creates a Statewide Council on Human Trafficking to assist in combating human trafficking; criminal penalties for traffickers; a limited civil cause of action for victims of human trafficking who were injured as a part of a pattern, enterprise, or conspiracy of human trafficking; and civil forfeiture to local law enforcement agencies of property used by human traffickers.

The bill creates a new cause of action for a victim of human trafficking. The bill also allows the Statewide Council on Human Trafficking to file the cause of action on behalf of victims of human trafficking. In addition to the damages available to the council or victims, the bill provides for a $100,000 civil penalty for the council or victim in addition to punitive damages. Additionally, a law enforcement agency is entitled to a $50,000 civil penalty in the event the agency rescued a victim or located the property where the trafficking occurred.

The bill also provides for civil judicial forfeiture proceedings that may be brought by the council against the real and personal property of a person who knowingly participated in human trafficking. Forfeiture may also be filed against property where the owner allowing human trafficking to happen by willful blindness.

The forfeiture proceedings under the bill take priority over a forfeiture made by a local law enforcement agency under the Florida Contraband Act. The bill details the procedures for these forfeiture proceedings. The bill also provides for the method of distribution where the victim or council prevail and for the method of release and assessment of costs and fees where the property owner prevails.

There is no statute of limitations for proceedings or actions brought pursuant to the bill.

A tied bill creates the Florida Compensation Trust Fund for Survivors of Human Trafficking. The trust fund will be funded from recoveries in civil actions and forfeitures.

The bill appropriates $153,000 in recurring funds and $29,000 in non-recurring funds and authorizes 3.0 FTE's payable in fiscal year 2017-18 from the Crimes Compensation Trust Fund. There may be a negative fiscal impact on local governments if they lose priority in forfeiture actions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is a form of modern-day slavery. Human trafficking is defined as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.[1]

Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[2] The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.[3] The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500 to 17,500.[4]

It is also estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.[5] The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them.[6] These children often become involved in prostitution as a way to support themselves financially.[7] The average age at which girls first become victims of prostitution is 12 to14 years old; for boys and transgender youth it is 11 to 13 years old.[8]

Currently, a person who knowingly, or in reckless disregard of the facts, engages in human trafficking may be subject to the criminal penalties as provided for under s. 787.06(3), F.S. This section also applies to persons who attempt to engage in human trafficking, recklessly disregard facts of human trafficking, or benefit financially from participating in a human trafficking venture.

Statewide Council on Human Trafficking

The state created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement agencies and social services responders to fight commercial sexual exploitation as a form of human trafficking and to support victims.[9] The council is

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[1] s. 787.06(2)(d), F.S.
[2] U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*. http://www.acf.hhs.gov/trafficking/about/index.html#
[3] *See* U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013. http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm
[4] Sonide Simon, *Human Trafficking and Florida Law Enforcement,* Florida Criminal Justice Executive Institute, pg. 2, March 2008, http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx
[5] *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html
[6] Tamar R. Birckhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).
[7] Human trafficking in Florida proliferates through illegal industries such as prostitution. Chapter 796, F.S., defines prostitution as "the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses."
[8] *See* footnote 5.
[9] *See* s. 16.617, F.S.

within the Department of Legal Affairs.[10] Each member serves a 4-year term. The duties of the council include:

- Developing recommendations for comprehensive programs and services for victims of human trafficking to include recommendations for certification criteria for safe houses and safe foster homes.
- Making recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Holding an annual statewide policy summit in conjunction with an institution of higher learning in this state.
- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, which can be used to determine how to maximize existing resources and address unmet needs and emerging trends.
- Develop policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in the state.

Additionally, the council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing its accomplishments during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.[11]

Civil Causes of Action

Under current law, victims of human trafficking currently have a civil cause of action under s. 772.104, F.S., related to civil remedies for criminal practices. Section 772.103, F.S., provides that it is unlawful for any person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- To employ, or associate with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the actions listed above.

Section 772.104(2), F.S., provides a cause of action, for victims of human trafficking, where the victim has been injured by reason of any violation of the activities listed above due to sex trafficking or human trafficking. The victim's cause of action allows for damages threefold the amount gained from the sex trafficking or human trafficking and is entitled to minimum damages in the amount of $200 and reasonable attorney's fees and court costs in the trial and appellate courts. The standard of proof for such actions is by clear and convincing evidence.

Actions brought pursuant to s. 772.104(2), F.S., by victims of human trafficking have a statute of limitations of 5 years following the conduct constituting the violation.

[10] s. 16.617(1), F.S.
[11] s. 16.617(5), F.S.

Civil Forfeiture

State and local law enforcement agencies may utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders and to authorize such law enforcement agencies to use the proceeds collected under the Florida Contraband Forfeiture Act as supplemental funding for authorized purposes.[12]

A forfeiture action is commenced by seizing the subject property. The only action expressly authorized by the Contraband Forfeiture Act to initiate forfeiture is the actual seizure of the subject property. All rights to, interests in, and title to contraband articles used in violation of the provision regarding the unlawful transport, concealment, or possession of contraband articles or the acquisition of real or personal property with contraband proceeds immediately vests in the seizing law enforcement agency upon seizure.[13]

However, the seizing agency may not use the seized property for any purpose until the rights to, interests in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts must also be made to maintain seized property in such a manner as to minimize loss of value.

Under s. 787.06(7), F.S., any real property or personal property that was used or was intended to be used in violation of the section is subject to seizure and forfeiture in accordance with the Florida Contraband Forfeiture Act. As such, persons subject to criminal penalties under the human trafficking statute may have the property used in the course of this trafficking forfeited to a law enforcement agency as provided in s. 932.704, F.S.

Effects of the Bill

The bill creates the Civil Action Against Human Trafficking Compensation Fund Act. The bill makes the following findings:

> The legislature finds that to achieve the state's goals relating to human trafficking set forth in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and for the civil seizure and forfeiture of the personal and real property used by those who engage in the human trafficking of persons for sex or labor and those who either knowingly or through willful blindness receive profit from or otherwise receive direct or indirect economic benefits from such trafficking.

Civil Cause of Action for Victim of Human Trafficking

The bill creates a cause of action for a victim of human trafficking to sue the trafficker who victimized him or her.

A victim may recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs in bringing the action. The bill provides for the measurement of economic damages. If the victim was forced into lawful labor, the victim is entitled to recover the fair market value of the labor or the amount realized by the trafficker, whichever is greater. A victim is also entitled to reimbursement for the time in captivity, payable at the same rate as one is paid by the state for wrongful incarceration (currently $50,000 a year).[14] A victim who elects

[12] s. 932.704(1), F.S.
[13] s. 932.704(8), F.S.
[14] ch. 961, F.S.

repatriation may recover those costs. Noneconomic damages are calculated the same as in a tort action.

The proof required is a preponderance of the evidence.

In addition to the damages stated above, if the victim prevails, the court must impose a $100,000 civil penalty against the trafficker. If a law enforcement agency rescued the victim or located the property upon which the trafficking was taking place, the court must impose an additional $50,000 penalty for the benefit of the law enforcement agency to be used in future efforts combating human trafficking. The mandatory penalties are not disclosed to the jury. The penalties are in addition to any punitive damages award.

Civil Cause of Action by the Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking may file a cause of action on behalf of a victim of human trafficking. The procedure and measures of recovery are the same as an individual lawsuit. Where the victim is known and can be found, the recovery is to pass through the Florida Compensation Trust Fund for Survivors of Human Trafficking, created by this bill, to the victim or the victim's estate. Where the victim is unknown, the proceeds may be kept by the fund to cover administrative costs or to benefit of other victims of human trafficking.

Civil Forfeiture

The bill allows the council to file a civil judicial forfeiture action seeking a judgment against an owner of real or personal property that was used in the trafficking of a victim for sex or labor. An action may be filed against an owner who knowingly participated in the trafficking, and an action may be brought against an owner who, through willful blindness, used or allowed their property to be used for human trafficking. The bill defines willful blindness as:

> "Willful blindness" occurs when a person has her or his suspicion aroused about a particular fact, and realizes its probability, but deliberately refrains from obtaining confirmation of it or acting on it because she or he wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The effect of this definition is that third parties may be subjected to civil forfeiture of their property for willful blindness of the human trafficking occurring on or with their property. Moreover, this willful blindness may be imputed to owners through their agents though through the concept of vicarious liability.

Forfeiture does not apply to innocent third parties with valid leases, recorded mortgages, or liens that were in existence prior to the date the civil action was filed. Forfeiture does not apply to a good faith purchaser of property for value.

The bill provides procedural framework for filing civil forfeiture actions and requires the council to make a reasonable effort to ascertain the owner of any property being seized. Filing requires a $1000 filing fee and the posting of a $1500 bond. The bond is payable to any claimant who prevails in the forfeiture action. Civil forfeiture proceedings under the bill take priority over claims by law enforcement agencies of the state, or other parties, under the Florida Contraband Forfeiture Act, when seeking the same property.

Where the council establishes by the preponderance of the evidence that the property was used for human trafficking, the court is required to order the property forfeited to the council. The final order of forfeiture by the court must perfect in the council right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders.

Following an order of forfeiture, the property or the proceeds from the sale of the property must be transferred to the victim up to the extent of his or her individual damages against the trafficker. Where multiple victims were subjected to human trafficking for which the property was used for, the proceeds or property is distributed on a pro rata share basis. Where there are excess proceeds after distribution to the victims, the council is to use those proceeds for one or more of the following purposes:

- Covering expenses of the council;
- For the benefit of other victims of human trafficking; or
- For the benefit of combating human trafficking.

The bill also provides for the release of property and specific assessments of costs if the property owner or other interested person (claimant) prevails at the conclusion of the forfeiture proceeding. A prevailing claimant is not assessed any towing, storage, administrative, or maintenance costs, by the seizing agency. Moreover, prevailing claimants are entitled to:

- The release of any seized property, if the council decides not to appeal.
- Reasonable loss of value of the property.
- Any loss of income directly attributable to the seizure of the property.
- Costs assessed by the court if the council decides to appeal.
- Reasonable attorney fees and costs if the court finds the council did not proceed in good faith.

Limitations Period

There is no statute of limitations for the cause of action created by this bill, nor is a statute of limitations on forfeiture.

Funding

Initial funding for the additional duties of the council is provided for in the bill, which appropriates $153,000 in recurring funds for 3 full-time employees plus $29,000 in non-recurring funds from the Crimes Compensation Trust Fund.

B. SECTION DIRECTORY:

Section 1 creates s. 787.061, F.S., relating to civil actions for human trafficking.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill appropriates $153,000 in recurring expenses and $29,000 in non-recurring expenses. These initial funds will come from the Crimes Compensation Trust Fund. The bill authorizes 3.0 FTE's.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill could have a positive fiscal impact on local government revenues. The bill provides for a civil penalty of $50,000 to be awarded in favor of a law enforcement agency that rescued a victim or located the property upon which the abuse or exploitation of a victim occurred.

The bill could also have a negative fiscal impact on local government revenues. The council and victims of human trafficking are authorized to seek civil forfeiture of the assets used by the human trafficker outside of Florida's Forfeiture and Contraband Act. As such, assets that would otherwise be forfeited to a law enforcement agency will now go to the victim or council instead.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on victims of human trafficking who may recover in a cause of action under this bill.

The bill may have a negative fiscal impact on the private sector to the extent a party loses property because such party participates in, or through willful blindness, allows their property to be used in human trafficking.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to victims of human trafficking; creating s. 787.061, F.S.; providing a short title; providing legislative findings and intent; providing definitions; providing a civil cause of action by victims of human trafficking or the Florida Compensation Trust Fund for Survivors of Human Trafficking against certain persons; providing for damages, attorney fees, and costs; providing for civil penalties; providing for civil forfeitures; providing procedures for forfeiture actions; providing that actions have no statute of limitations; providing for initial funding for implementation; providing an effective date.

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

Section 1. Effective upon this act becoming law, section 787.061, Florida Statutes, is created to read:

787.061 Civil actions for human trafficking; civil forfeiture.—

(1) SHORT TITLE.—This section may be known as the "Civil Action Against Human Trafficking Compensation Fund Act."

(2) FINDINGS.—The legislature finds that to achieve the state's goals relating to human trafficking set forth in s. 787.06(1)(d), it is necessary to provide a civil cause of action

for the recovery of compensatory and punitive damages and for the civil seizure and forfeiture of the personal and real property used by those who engage in the human trafficking of persons for sex or labor and those who either knowingly or through willful blindness receive profit from or otherwise receive direct or indirect economic benefits from such trafficking.

(3) DEFINITIONS—As used in this section, the term:

(a) "Claimant" means any party who has proprietary interest in property subject to forfeiture under this section and has standing to challenge such forfeiture.

(b) "Council" means the Statewide Council on Human Trafficking within the Department of Legal Affairs, as created by s. 16.617.

(c) "Facilitate" or "facilitator" means assisting or providing services to a human trafficker that assist or enable the trafficker to carry out human trafficking activity or one who provides such assistance or provides such services.

(d) "Forfeiture proceeding" means a hearing or trial in which the court or jury determines whether the subject property shall be forfeited.

(e) "Fund" refers to the Florida Compensation Trust Fund for Survivors of Human Trafficking created in s. 787.0611.

(f) "Human trafficking" has the same meaning as provided in section s. 787.06(2).

(g) "Trafficker" or "human trafficker" means any person who knowingly, or in willful blindness, engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

(h) "Willful blindness" occurs when a person has her or his suspicion aroused about a particular fact, and realizes its probability, but deliberately refrains from obtaining confirmation of it or acting on it because she or he wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

(4) CIVIL CAUSE OF ACTION.—

(a) A victim of human trafficking has a civil cause of action against the trafficker or facilitator of human trafficking who victimized her or him, and may recover damages for such victimization as provided in this section.

(b) The council, on behalf of a victim of human trafficking, has a civil cause of action against the trafficker or facilitator of human trafficking who victimized any person in the state, and may recover on behalf of the fund actual and punitive damages for such victimization. The council may sue generally on behalf of unknown and unnamed victims, and may sue on behalf of known and named victims, or both. Where the council

proves damages to a specific individual who was subject to trafficking, the fund shall hold monies for distribution to the victim or her or his guardian or estate, whichever the case may be. If the victim cannot be located then the recovered damages shall be retained by the fund. The council has an obligation to make a good faith attempt to locate the victim and, if the victim cannot be located after such an effort, to distribute the money in the same manner as if the victim had died intestate. Where multiple claims are entitled to payment from the same proceeds but those proceeds are inadequate to pay all claims in full, the fund shall equitably apportion the funds among the claimants.

(c) The action may be brought in any court of competent jurisdiction and the standard of proof shall be the preponderance of the evidence.

(d) A victim, or the council on behalf of a victim, who prevails in any such action shall be entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and the costs of the action. The measure of economic damages for lawful work forced from the victim of human trafficking shall be the greater of the fair market value of services provided or the amount realized by the trafficker. The measure of economic damages for every day of captivity shall be the same as that payable to a person entitled to damages under ch. 961. Economic

damages of a victim shall also include past and future medical expenses, repatriation expenses where a victim elects repatriation, and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the trafficking. Noneconomic damages shall be calculated as in a tort action.

(e) The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both this section and s. 772.104(2).

(f) In the event a victim or the council prevails in an action under this section, in addition to any other award imposed, the court shall award a civil penalty against the defendant in the amount of $100,000 and enter judgment thereon in favor of the prevailing victim or the council, whichever was the prevailing party. This penalty shall be in addition to, and not in lieu of, any punitive damage award. The civil penalty shall be assessed by the court and not disclosed to the jury.

(g) If a law enforcement agency rescued the victim or located the property upon which the abuse or exploitation of a victim or victims had occurred, the court shall impose a civil penalty against the defendant in the civil action and in favor of the law enforcement agency in the amount of $50,000 for the benefit of said law enforcement agency's future efforts to combat human trafficking.

(5) CIVIL FORFEITURE PROCEEDINGS.—

(a) The council may file a civil judicial forfeiture action in the circuit courts of the state seeking a judgment of forfeiture against an owner of real or personal property that was knowingly or through willful blindness used in the trafficking of the victim for sex or labor. The civil forfeiture shall be for the benefit of a victim or the council.

(b) Valid and lawful leases, recorded mortgages, or liens of innocent third parties that were in existence prior to the date of the filing of the civil action are not subject to forfeiture, nor is property owned by a good faith purchaser for value.

(c) Civil forfeiture actions brought under this section are exempt from the requirements of the Florida Contraband Forfeiture Act, ss. 932.701-932.7062, and shall be governed as provided in this section.

(d) If a law enforcement agency of the state or any other party, pursuant to the Florida Contraband Forfeiture Act or as otherwise provided for by law, seeks the forfeiture of the same property as the council, the council's claim shall take priority over the law enforcement agency.

(e) The council in a forfeiture proceeding brought under this section must proceed against property to be forfeited by filing a complaint in the circuit court in the jurisdiction where the seizure of the property or the offense occurred,

paying a filing fee of $1,000 and depositing a bond of $1,500 to the clerk of the court. Unless otherwise expressly agreed to in writing by the parties, the bond shall be payable to the claimant if the claimant prevails in the forfeiture proceeding and in any appeal.

(f) The complaint must be styled, "In RE: FORFEITURE OF " (followed by the name or description of the property). The complaint must contain a brief jurisdictional statement, a description of the subject matter of the proceeding, and a statement of the facts sufficient to state a cause of action that would support a final judgment of forfeiture. The complaint must be accompanied by a verified supporting affidavit.

(g) The court must require any claimant who desires to contest the forfeiture to file and serve upon the plaintiff any responsive pleadings and affirmative defenses within 20 days after receipt of the complaint.

(h) If the property is required by law to be titled or registered, or if the seized property is subject to a perfected security interest in accordance with chapter 679, the Uniform Commercial Code, the council shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The council shall also publish, in accordance with chapter 50, notice of the forfeiture complaint once each week for 2

consecutive weeks in a newspaper of general circulation, as defined in s. 165.031, in the county where the property is located.

(i) The complaint must describe the property to be forfeited. If the property to be forfeited has been seized by a law enforcement agency, the complaint must state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the complaint will be filed.

(j) The council must make a diligent search and inquiry as to the owner of the subject property, and if, after such diligent search and inquiry, the plaintiff is unable to ascertain any person entitled to notice, the actual notice requirements by mail shall not be applicable.

(k) Upon proof by the preponderance of the evidence that the property to be forfeited was used in the trafficking of a person for sex or labor, the court must order the property forfeited to the council. The final order of forfeiture by the court shall perfect in the council right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders, and, if applicable, shall relate back to the date of seizure or the filing of a lis pendens.

(l) Following an order of forfeiture to the council, subject only to the rights and interests of bona fide lienholders, the property or the proceeds from the sale of such

forfeited property shall be transferred to the victim of human trafficking who the property was used in the course of such trafficking up to the extent of his or her individual judgment against the trafficker. In the event multiple victims were subjected to human trafficking and for whom the property was used in the course of such trafficking, the transfer of property or proceeds from sale shall be made on a pro rata share basis. If there are excess or unclaimed proceeds, the council shall deposit the proceeds from sale of such property to fund for the purpose of covering the expenses of the fund, the benefit of other victims of human trafficking, and for the benefit of combating human trafficking.

(m) If a claimant prevails at the conclusion of a forfeiture proceeding involving property seized by law enforcement and the council decides not to appeal, any seized property must be released immediately to the person entitled to possession of the property as determined by the court. Under such circumstances, the seizing agency shall not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or forfeiture proceeding.

(n) If a claimant prevails at the conclusion of a forfeiture proceeding involving seized property, the trial court must require the seizing agency to pay to the claimant the reasonable loss of value of the seized property. If a claimant

prevails at trial or on appeal and the seizing agency retained the seized property during the trial or appellate process, the trial court shall also require the seizing agency to pay to the claimant any loss of income directly attributed to the continued seizure of income-producing property during the trial or appellate process. If the claimant prevails on appeal, the seizing agency shall immediately release the seized property to the person entitled to possession of the property as determined by the court, pay any cost as assessed by the court, and may not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture proceeding.

(o) If the claimant prevails, at the close of forfeiture proceedings and any appeal, the court shall award reasonable trial attorney fees and costs to the claimant if the court finds that the council has not proceeded in good faith. The court may order the council to pay the awarded attorney fees and costs from the fund. This subsection does not preclude any party from electing to seek attorney fees and costs under chapter 57 or other applicable law.

(7) STATUTE OF LIMITATIONS.—There shall be no statute of limitations for suits brought pursuant to this section. This subsection applies to any such action other than one which would have been time barred on or before the effective date of this act.

Section 2. For the 2017-2018 fiscal year, the sums of $153,000 in recurring funds and $29,000 in nonrecurring funds from the Crimes Compensation Trust Fund are appropriated to the Department of Legal Affairs, and 3 full-time equivalent positions are authorized, for the purpose of implementing this act.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 1165 (2017)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Spano offered the following:

Amendment

Remove line 86 and insert:

full, the council shall equitably apportion the funds among the

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Spano offered the following:

Amendment (with title amendment)

Between lines 250 and 251, insert:

Section 2. Paragraph (f) is added to subsection (4) of section 16.617, Florida Statutes, to read:

16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

(4) DUTIES.—The council shall:

(f) Perform the functions and duties as provided in ss. 787.061 and 787.0611, and administer the Florida Compensation Trust Fund for Survivors of Human Trafficking, created by s. 787.0611.

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

Remove line 12 and insert:

actions have no statute of limitations; amending s. 16.617, F.S.; adding functions and duties for the Statewide Council on Human Trafficking; providing for administration of the Florida Compensation Trust Fund for Survivors of Human Trafficking by the Statewide Council on Human Trafficking; providing for

PCS for HB 1167

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1167 Trust Funds/Creation/Florida Compensation Trust Fund for Survivors of Human Trafficking/EOG
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: PCS 1165 **IDEN./SIM. BILLS:** SB 970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		MacNamara	Bond NB

SUMMARY ANALYSIS

Section 19(f), Article III of the Florida Constitution governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The bill creates the Florida Compensation Trust Fund for Survivors of Human Trafficking. The purpose of the fund is to receive and administer funds from civil actions brought on behalf of the fund. The fund is to be administered by the Statewide Council on Human Trafficking.

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

The bill provides an effective date of July 1, 2017, if HB 1165 takes effect, and provides for a termination date of no later than July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trust Funds

The creation, recreation and termination of trust funds are governed by provisions in both the Florida Constitution and the Florida Statutes. Article III, s. 19(f), Fla. Const. governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The Florida Constitution also specifies that state trust funds shall terminate not more than 4 years after the effective date of the act authorizing the initial creation of the trust fund, unless the Legislature by law sets forth a shorter time period. Specified trust funds are exempted from this provision.

Statewide Council on Human Trafficking

The state has created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims.[1] The Council is within the Department of Legal Affairs.

The membership of the Council is provided for by statute, with each member serving 4-year terms. The duties of the Council include:

- Develop recommendations for comprehensive programs and services for victims of human trafficking to include recommendations for certification criteria for safe houses and safe foster homes.
- Make recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Annually hold a statewide policy summit in conjunction with an institution of higher learning in this state.
- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, which can be used to determine how to maximize existing resources and address unmet needs and emerging trends.
- Develop policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in our state.

Additionally, the Council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing the accomplishments of the council during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.

Effect of Bill

The bill creates the Florida Compensation Trust Fund for Survivors of Human Trafficking. The Statewide Council on Human Trafficking will administer the fund. The Council is tasked with fairly evaluating and paying compensation claims based upon a victim's circumstances and the availability of

[1] *See* s. 16.617, F.S.

current funds or funds to be received. The council must also establish rules, guidelines, and an implementation plan. Additionally, they must issue an annual report, no later than October 1 of each year to the President of the Senate and the Speaker of the House detailing the fund's compliance with its duties during the prior fiscal year.

The purpose of the fund is to receive and administer funds from civil actions brought on behalf of the fund under s. 787.061, including money from seizures of personal and real property, penalties imposed by the courts, or received from any other public or private sources or from the Legislature; to administer claims for compensation by survivors of human trafficking; and to create a public-private partnership by establishing a 501(c)(3) foundation for receipt of charitable contributions to carry out the foundation's purposes, including but not limited to:

- Educating the public about the recruitment, trafficking, and exploitation of persons through human trafficking.
- Assisting in the prevention of recruitment in Florida schools of minors for exploitation.
- Establishing a survivor's resource center for legal services, social services, safe harbors, safe houses, and language services that are available to survivors of trafficking.
- Advertising the National Human Trafficking Resource Center (NHTRC) hotline number and the Be Free text line in diverse venues.
- Assisting in the coordination between law enforcement and service providers.
- Assisting in vacating convictions of minors who were victims of trafficking.

Revenue for the fund will come in the form of damages awarded in civil actions brought on behalf of victims by the Statewide Council on Human Trafficking pursuant to s. 787.061(5), F.S., in the event the victim cannot be identified or located, and from the civil penalty imposed against human traffickers pursuant to the same section.

Revenue for the fund will also come from forfeited property, transferred to the fund, in proceedings under s. 787.061(6), F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 787.0611, F.S., relating to The Florida Compensation Trust Fund for Survivors of Human Trafficking.

Section 2 provides that the bill will take effect on the same day as HB 1165 or similar legislation, if such legislation is adopted in the same legislative session, and only if the bill is enacted by three-fifths vote of the membership of each house of the Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to trust funds; creating s. 787.0611, F.S.; creating within the Department of Legal Affairs the Florida Compensation Trust Fund for Survivors of Human Trafficking; providing for the purposes and sources of funds of the trust fund; providing for administration of the fund by the Statewide Council on Human Trafficking; requiring the fund to develop certain guidelines and plans; requiring an annual report; requiring that applications for compensation be made available in English and Spanish; providing for future review and termination or re-creation of the trust fund; providing a contingent effective date.

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

Section 1. Section 787.0611, Florida Statutes, is created to read:

787.0611 The Florida Compensation Trust Fund for Survivors of Human Trafficking.—

(1) There is created a trust fund within the Department of Legal Affairs to be known as the Florida Compensation Trust Fund for Survivors of Human Trafficking.

(2) The purpose of the fund is to receive and administer funds from civil actions brought on behalf of the fund under s.

787.061, including money from seizures of personal and real property, penalties imposed by the courts, or received from any other public or private sources or from the Legislature; to administer claims for compensation by survivors of human trafficking; and to create a public-private partnership by establishing a 501(c)(3) foundation for receipt of charitable contributions to carry out the foundation's purposes, including but not limited to:

(a) Educating the public about the recruitment, trafficking, and exploitation of persons through human trafficking.

(b) Assisting in the prevention of recruitment in Florida schools of minors for exploitation.

(c) Establishment of a survivors' resource center for legal services, social services, safe harbors, safe houses, and language services that are available to survivors of trafficking.

(d) Advertising the National Human Trafficking Resource Center (NHTRC) hotline number and the Be Free Text Line in diverse venues.

(e) Assisting in the coordination between law enforcement and service providers.

(f) Assisting in vacating the convictions of minors who were victims of trafficking.

(3) The fund shall be administered by the Statewide

Council on Human Trafficking, as created by s. 16.617, Florida Statutes, to fairly evaluate and pay compensation claims based upon a victim's circumstances and the availability of current funds or funds to be received.

(4) The council shall establish rules, guidelines, and an implementation plan and file a copy with the Department of Legal Affairs and subsequent changes or amendments thereto shall likewise be filed when adopted.

(5) The council shall issue an annual report no later than October 1 of each year to the President of the Senate and the Speaker of the House of Representatives detailing the fund's compliance with its duties during the prior fiscal year.

(6) The council shall make applications for compensation available in English and in Spanish.

(7) In accordance with s. 19(f)(2), Art. III of the State Constitution, the trust fund shall, unless terminated sooner, be terminated on July 1, 2021. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. This act shall take effect on the same date that HB 1165 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law, and only if this act is enacted by a three-fifths vote of the membership of each house of the Legislature.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1237 Condominiums
SPONSOR(S): Diaz, J.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Stranburg CCS	Bond MB
2) Rules & Policy Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A condominium is a form of real property ownership comprised of units that are individually owned and have an undivided share of access to common areas and a corresponding duty to pay assessments to fund the maintenance and repair of the common areas. Condominium associations are regulated by the Department of Business and Professional Regulation (DBPR).

Significantly, the bill amends current law relating to condominiums to:

- Prohibit contracts between the association and any company related to an officer or director;
- Require retention of bids for materials, equipment or services in an association's official records;
- Allow a tenant the same right of inspection of an association's official records as a unit owner;
- Create misdemeanor criminal penalties for persistent denial of access to official records;
- Require an association of 500 or more units to create a website for access to association records;
- Require an association to provide a copy of the most recent financial report upon written request from a unit owner;
- Penalize an association that does not provide a financial report to an owner when requested by DBPR to do so;
- Create a term limit of 8 years applicable to board members who serve 2-year terms;
- Require a recalled board member to immediately abandon office and return association property and records;
- Require DBPR to certify arbitrators and set time requirements on conducting a hearing and rendering a decision;
- Create felony criminal penalties for fraudulent voting activities in association elections;
- Heighten the requirements for the suspension of a member's ability to vote in association elections;
- Authorize the Condominium Ombudsman to review of secret ballots cast at an association vote when looking for misconduct; and
- Require the association to report to DBPR the names of all financial institutions with which the association maintains accounts, which list may be obtained by any association member upon written request.

The bill, other than the criminal penalties, does not appear to have a fiscal impact on state or local governments. The Criminal Justice Estimating Conference has not met regarding this bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned and have an undivided share of access to common facilities.[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is similar to a constitution as it governs the relationship among the unit owners and the association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy and transfer of the units permitted by law with reference to real property.[3]

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.[4] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."[5] The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.[6]

Condominium associations are regulated by the Division of Florida Condominiums, Timeshares and Mobile Homes (division) of the Department of Business and Professional Regulation.

Conflicts of Interest

A contract for maintenance or management services between a party and the association must disclose any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.[7] Any contract that does not disclose such an interest is void and unenforceable.

Contracts for products and services may be signed between the association and an entity in which one or more of the association's directors are directors or officers.[8] The same disclosures are required in the association and board member's case as are required when a not-for-profit corporation signs a contract with an entity in which one or more of the not-for-profit's directors are a director or officer. The fact of the relationship must be disclosed to the board and must be approved by a majority of board members who have no interest in the transaction.[9]

The provisions relating to contracts for products and services do not apply to contracts with employees of the association and contracts for a(n):

- Attorney;
- Accountant;
- Community association manager;
- Timeshare management firm;

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[1] s. 718.103(11), F.S.
[2] s. 718.104(2), F.S.
[3] s. 718.104(5), F.S.
[4] s. 718.103(2), F.S.
[5] s. 718.103(4), F.S.
[6] s. 718.112, F.S.
[7] s. 718.3025, F.S.
[8] s. 718.3026(3), F.S.
[9] s. 617.0832, F.S.

- Engineering firm; and
- Landscape architect.[10]

Effect of the Bill- Conflicts of Interest

The bill creates s. 718.111(3)(b), F.S., providing that an attorney may not represent the board if the attorney also represents the management company of the association.

The bill amends s. 718.111(9), F.S., to prohibit a board member or management company from purchasing a unit at a foreclosure sale resulting from the association's foreclosure on its lien for unpaid assessments or taking title by deed in lieu of foreclosure.

The bill creates s. 718.112(2)(p), F.S., prohibiting an association from employing or contracting with any service provider that is owned or operated by a board member or any person that has a financial relationship with a board member.

The bill creates s. 718.3025(5), F.S., prohibiting a party contracting to provide maintenance or management services to an association, or a board member of such a party, from owning 50 percent or more of the units in the condominium or purchasing a property subject to a lien by the association.

The bill creates s. 718.3027, F.S., providing procedures for noticing potential conflicts of interest. The bill provides that an officer or director of an association, and their relatives, must disclose to the board any activity that may be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if, without prior notice:

- Any director, officer, or relative of a director or officer enters into a contract for goods or services with the association; or
- Any director, officer, or relative holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract with the association.

If a director, officer, or relative of a director or officer proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on the meeting agenda and all contracts and transactional documents for the proposed activity must attached to the meeting agenda. The board must provide all these documents to the unit owners as well. The interested director or officer may attend the meeting at which the contract is considered and may make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the room. Any director or officer who has an interest in the contract must recuse himself or herself from the vote.

If the board rejects the proposed contract, the director, officer, or relative must notify the board in writing of his or her intent not to pursue the contract further or the director or officer must withdraw from office. If the board finds that a director or officer has not notified it of a conflict of interest, the board must immediately remove the officer or director from office. Any contract entered into between any director, officer, or relative that is not properly noticed is considered null and void.

Official Records

Condominium associations are currently required to maintain official records, which include:

- A copy of the plans, permits, warranties, and other items provided by the developer;
- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;

[10] s. 718.3026(2)(a), F.S.

- A copy of any contracts to which the association is part or through which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed; and
- All other written records which are related to the operation of the association.[11]

Effect of the Bill- Official Records

The bill adds bids for materials, equipment, or services to the list of official records of the association.

Access to Records

A condominium association is required to maintain and provide access to the official records for inspection by any association member or the authorized representative of the member at reasonable times.[12] The right to inspect includes the right to make or obtain copies at the expense of the member.

Currently, state law does not require a condominium association to maintain a website, Some associations have websites for members to access information and documents regarding the association.

Effect of the Bill- Access to Records

The bill authorizes the renter of an association member's unit to inspect the official records of an association at all reasonable times. An authorized representative of the renter may also inspect the official records of an association.

The bill creates s. 718.111(12)(c)2, F.S., providing penalties for denying access to the official records of the association. A director or member of the board or the association who knowingly, willfully, and repeatedly prevents access to the official records of the association by a person authorized to access the records commits a misdemeanor of the second degree. A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine.[13] The bill defines the term "repeatedly violates" to mean more than two violations in a 12-month period.

The bill also provides criminal penalties for knowingly or intentionally defacing or destroying accounting records required to be kept in an association's official records. This penalty also applies to any person who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained. Any person who takes any of these actions commits a first-degree misdemeanor. A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. [14] The bill repeals the civil penalty that DBPR may assess pursuant to an administrative hearing regarding the defacing or destruction of accounting records of an association.

Any person who willfully or knowingly refuses to release association records with the intent to facilitate a crime or escape detection, arrest, trial, or punishment of a crime commits a third degree felony. A third degree felony is punishable by up to five years imprisonment and a $5,000 fine.[15]

The bill requires an association with 500 or more units that does not manage timeshare units to provide certain documents on the association's website. The website must be independently owned and operated by the association or operated by a third-party provider with whom the association has the right to operate a web page dedicated to the association's activities, notices, and records. The

[11] s. 718.111(12)(a), F.S.
[12] s. 718.111(12)(c), F.S.
[13] ss. 775.082 and 775.083, F.S.
[14] ss. 775.082 and 775.083, F.S.
[15] ss. 775.082, 775.083, and 775.084, F.S.

association must provide an owner, upon request, with a username and password to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

The following documents must be placed on the website:

- The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration;
- The recorded bylaws of the association and each amendment to the bylaws;
- The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted must be a certified copy;
- The rules of the association;
- Any management agreement, lease, or other contract to which the association is party or through which the association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- The certification of each director;
- All contracts or transactions between the association and any director, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested;
- Any contract or document regarding a conflict of interest or possible conflict of interest;
- The notice of any board meeting and the agenda for the meeting, posted at least 14 days before the meeting. The notice must be posted in palin view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page; and
- Any documents to be considered during a meeting or listed on the agenda for a meeting. These must be posted at least 7 days before the meeting where the document will be considered.

An association must ensure that information and records that members are not permitted to access are not placed on its website. If protected information is included in documents that are required to be placed on the website, the association must redact such information before placing the documents online.

Financial Reporting

In accordance with s. 718.111(13), F.S., within 90 days after the end of the fiscal year or calendar year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year, Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws, the association must hand deliver or mail each member a copy of the financial report or a notice that a copy of the financial report is available upon request without charge, upon receipt of a written request from the member.

Current law requires different levels of financial reporting by the association determined by the annual revenues of the association. Current law requires that an association:

- With total annual revenues under $150,000 must prepare a report of cash receipts and expenditures;[16]
- With total annual revenues of $150,000 or more, but less than $300,000, must prepare compiled financial statements;[17]

[16] s. 718.111(13)(b)1, F.S.
[17] s. 718.111(13)(a)1, F.S.

- With total annual revenues of $300,000 or more, but less than $500,000, must prepare reviewed financial statements;[18] and
- With total annual revenues of $500,000 or more must prepare audited financial statements.[19]

An association that operates fewer than 50 units, regardless of annual revenues, must prepare a report of cash receipts and expenditures.[20]

By approval of a majority of voting interests present at a properly called meeting of the association, an association may choose to prepare financial statements in accordance with the requirements of any bracket of lower annual revenue.[21] The meeting and vote must occur before the end of the fiscal year and is effective for the fiscal year in which the vote is taken and may be effective for the following fiscal year.[22] An association may not waive its financial reporting requirements for more than three consecutive years.[23]

Effect of Bill- Financial Reporting

The bill amends s. 718.111(13), F.S., to specify that that the association must provide the unit owner with the most recent financial report. The bill also provides that the association must provide a copy of the most recent financial report within 5 business days after the receipt of a written request for the report by a member.

The bill provides that a member may contact the division to report an association's failure to provide a copy of the financial report within the required time. Upon notification, the division is required to contact the association to request the association comply with the requirement to provide a copy of the most recent financial report to the member and the division within 5 business days. If the association fails to comply with the division's request, the association may not waive the financial reporting requirement as provided in s. 718.111(13)(d), F.S. A financial report received by the division must be maintained and a copy provided to an association member upon request.

The bill also creates s. 718.71, F.S., requiring an association to provide an annual report to DBPR containing the names of all the financial institutions with which the association maintains accounts. A copy of this report may be obtained by any association member upon written request.

Term Limits for Board Members

Current law generally requires a board member's term in office to expire at the annual meeting. A condominium association may provide for 2-year terms if allowed by the bylaws or articles of incorporation.[24] Coowners of a unit may not both serve as members of the board at the same time unless they own more than one unit or there are not enough candidates to fill the vacancies on the board at the time of the vacancy. There are no term limits for board members in current law.

Effect of the Bill- Term Limits for Board Members

The bill amends s. 718.112(2)(d)2., F.S., to provide that a board member may not serve more than 4 consecutive 2-year terms. A board member may have this term limit waived by the affirmative vote of two-thirds of the total voting interests of the association.

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[18] s. 718.111(13)(a)2, F.S.
[19] s. 718.111(13)(a)3, F.S.
[20] s. 718.111(13)(b)2, F.S.
[21] s. 718.111(13)(d), F.S.
[22] *Id.*
[23] *Id.*
[24] s. 718.112(2)(d)2, F.S.

Board Member Recall

Current law allows any member of an association board to be recalled and removed from office by a majority of all the voting interests.[25] If a recall is approved by a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within 5 business days. At that meeting the board must determine whether to certify the recall.[26] If the board does not certify the recall, the board must file a petition for arbitration with the division within 5 business days.[27] If the arbitrator certifies the recall, the recall will be effective on the mailing of the final order of arbitration to the association.[28] A board member that is recalled must turn over any and all property and records of the association in the member's possession within 5 business days after the recall.[29] If a board fails to duly notice a meeting to certify a recall or fails to file the required petition, the recall is deemed effective and the recalled member must turn over any and all property and records of the association immediately.[30]

Effect of the Bill- Board Member Recall

The bill amends s. 718.112(2)(j), F.S., relating to the recall process for board members. The bill deletes the certification process for the association board of directors. Upon vote of a general membership meeting or serving of a copy of an agreement in writing by a majority of all voting interests, a board member is recalled from the member's seat. The recalled board member must return all property and records of the association in the board member's possession within 10 business days after the vote or serving of the agreement.

The bill also deletes the arbitration provision in s. 718.112(2)(j)3, F.S., since a board of directors may no longer choose not to certify a recall vote or agreement. The bill also removes other references to the certification process from s. 718.112(2)(j), F.S., and corrects cross references changed by the removal of s. 718.112(2)(j)3, F.S.

Fraudulent Voting Activities

Fraud in the board election process has significantly impacted some associations. A grand jury report from Miami-Dade County cited to an association election fraught with fraudulent activity.[31] An election monitor for the association received three sealed envelopes with ballots: one from a unit owner so frustrated with the prior boards that she decided to run for a board seat, one from the board of directors, and one from the management company. The envelopes were stamped based on which source provided the envelope. As the election monitor opened the envelope, he discovered there were instances of double voting. The candidate asked owners whom she had collected ballots from to come and these owners subsequently identified their true ballots and ballots with forged signatures. The ballots with forged signatures were all notarized by one person on one date. This notary later admitted that the ballots were not signed in her presence. Additionally, the directors submitted ballots purportedly from absentee unit owners. These envelopes, purportedly from owners not living in the condominium, were not postmarked.

The grand jury report suggested in response to this story and other stories of fraud in board member elections that fraudulent activity in connection with the election of board members for the association should be subject to criminal liability.[32]

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[25] s. 718.112(2)(j), F.S.
[26] s. 718.112(2)(j)1, F.S.
[27] s. 718.112(2)(j)3, F.S.
[28] *Id.*
[29] ss. 718.112(2)(j)1, 2, and 3, F.S.
[30] s. 718.112(2)(j)4, F.S.
[31] Final Report of the Miami-Dade County Grand Jury, pp.21-23. A copy of the document is on file with the Civil Justice & Claims Subcommittee.
[32] *Id.* at 24.

Effect of the Bill- Fraudulent Voting Activities

The bill creates s. 718.129, F.S., creating criminal penalties for fraudulent voting activities related to association elections. Subsection (1) provides that a person who willfully, knowingly, and falsely swears or affirms, or procures another person to do so, in connection with or arising out of voting or casting a ballot in an association election commits a third degree felony.[33]

Subsection (2) provides that a person who willfully and knowingly perpetrates or attempts to perpetrate, or aids another in perpetrating or attempting to perpetrate, fraud in connection to a vote or ballot cast or attempted to be cast commits a third degree felony. A third degree felony is punishable by up to five years imprisonment and a $5000 fine.[34]

Subsection (3) provides that a person who willfully and fraudulently changes or attempts to change a vote or ballot cast, or attempted to be cast, commits a third degree felony.

Additionally, a person who willfully and knowingly aids or advises another in committing a violation, who willfully and knowingly agrees, conspires, combines or confederates to commit a violation, or who willfully and knowingly aids or advises a person who has committed a violation in avoiding or escaping detection, arrest, trial, or punishment is subject to the same penalties as if they had been the person committing the violation.

Arbitration and Mediation of Disputes

Current law provides an alternative dispute resolution program for disputes between condominium unit owners and condominium associations. The program is primarily funded through the annual fee paid by associations. The primary mechanism for dispute resolution is through nonbinding arbitration of disputes by arbitrators who are full-time employees of DBPR. There are also provisions for mediation.

Effect of the Bill- Arbitration and Mediation of Disputes

The bill amends s. 718.1255(4), F.S., to authorize DBPR to certify attorneys as arbitrators who DBPR may contract with for an arbitration hearing. Certification by the Department requires that an attorney:

- Be a member in good standing with the Florida Bar for at least 5 years; and
- Have mediated or arbitrated at least 10 disputes involving condominiums in Florida during the 3 years immediately preceding the date of application for certification; or
- Attain board certification in real estate law or condominium and planned development law from the Florida Bar.

Arbitrator certification is good for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The Department must contract with a certified arbitrator for an arbitration hearing unless there is no certified arbitrator available within 50 miles of the arbitration hearing.

The bill provides that the division must assign an arbitrator or contract with an arbitrator when it determines that a dispute exists and serve a copy of the petition on all respondents to the arbitration. The arbitrator must conduct a hearing within 30 days of being assigned or contracted unless the petition is withdrawn or a continuance is granted. The arbitrator must render a decision within 30 days after the hearing and present the decision to the parties in writing. If an arbitrator fails to render a written decision within 30 days after the hearing, the Department may cancel the arbitrator's certification.

[33] ss. 775.082, 775.083, and 775.084, F.S.
[34] *Id.*

Rights and Obligations of Owners and Occupants

Current law authorizes an association to impose regular and special assessments and levy fines against owners or members who violate the association's rule or other governing documents.[35] If a unit or member is more than 90 days delinquent in paying an imposed monetary obligation, an association may suspend that unit or member's voting rights.[36] The notice and hearing requirement in s. 718.303(3), F.S., does not apply to a suspension of voting rights imposed for delinquency of an imposed monetary obligation.[37]

Effect of the Bill- Rights and Obligations of Owners and Occupants

The bill amends s. 718.303(5), F.S., to provide that an association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association only if the obligation is 90 days delinquent and totals more than $1000. The association must provide proof of such obligation to the unit owner or member 30 days before the suspension takes effect.

The bill creates s. 718.303(8), F.S., providing that a receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association.

Condominium Association Ombudsman

The Office of the Condominium Ombudsman was established to be a neutral resource for unit owners, board members, condominium associations, and others. The ombudsman is authorized to prepare and issue reports and recommendation to the Governor, DBPR, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division.[38] In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.[39]

The ombudsman also acts as a liaison among the division, unit owners, boards of directors, board members, community association managers, and other affected parties and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities. The ombudsman is authorized to monitor and review procedures and disputes concerning condominium elections and meeting, including recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.

Effect of the Bill- Condominium Association Ombudsman

The bill amends s. 718.5012(5), F.S., to add a provision that the ombudsman has the authority to review secret ballots cast at a vote of an association when reviewing election misconduct.

Effect of the Bill- Miscellaneous

The bill corrects cross references that changed due to changes made in the bill.

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

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[35] s. 718.303, F.S.
[36] s. 718.303(5), F.S.
[37] *Id.*
[38] s. 718.5012(3), F.S.
[39] s. 718.5012(6), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., relating to condominium associations.

Section 2 amends s. 718.112, F.S., relating to bylaws.

Section 3 amends s. 718.1255, F.S., relating to alternative dispute resolution, voluntary mediation, mandatory nonbinding arbitration, and legislative findings.

Section 4 creates s. 718.129, F.S., relating to fraudulent voting activities related to association elections and penalties.

Section 5 amends s. 718.3025, F.S., relating to agreements for operation, maintenance, or management of condominiums.

Section 6 creates s. 718.3027, F.S., relating to conflicts of interest.

Section 7 amends s. 718.303, F.S., relating to obligations of owners and occupants and remedies.

Section 8 amends s. 718.5012, F.S., relating to the Ombudsman and his powers and duties.

Section 9 creates s. 718.71, F.S., relating to financial reporting.

Section 10 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The Criminal Justice Estimating Conference has not determined the fiscal impact of the criminal provisions in this bill.

   There does not appear to be any fiscal impact on the Department of Business and Professional Regulation.[40]

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.

[40] DBPR analysis dated March 17, 2017.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires that a condominium association of greater than 500 units must create a website. The cost is unknown. The remainder of the bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not make similar amendments to the provisions affecting cooperative associations.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to condominiums; amending s. 718.111, F.S.; prohibiting an attorney from representing a board under certain conditions; prohibiting certain actions by a board member or management company; providing recordkeeping requirements; providing that the official records of the association are open to inspection by unit renters; providing criminal penalties; providing a definition; providing requirements relating to the posting of specified documents on an association's website; providing a remedy for an association's failure to provide a unit owner with a copy of the most recent financial report; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to maintain and provide copies of financial reports; amending s. 718.112, F.S.; providing board member term limits; providing an exception; deleting certification requirements relating to the recall of board members; revising the amount of time in which a recalled board member must turn over records and property of the association to the board; prohibiting an association from employing or contracting with a service provider that is owned or operated by certain persons; amending s. 718.1255, F.S.; authorizing, rather than requiring, the division

to employ full-time attorneys to conduct certain arbitration hearings; providing requirements for the certification of arbitrators; prohibiting the department from entering into a legal services contact for certain arbitration hearings; requiring the division to assign or enter into contracts with arbitrators; requiring arbitrators to conduct hearings within a specified period; providing an exception; providing arbitration proceeding requirements; creating s. 718.129, F.S.; providing certain activities that constitute fraudulent voting activities related to association elections; providing criminal penalties; amending s. 718.3025, F.S.; prohibiting specified parties from certain activities; creating s. 718.3027, F.S.; providing requirements relating to director and officer conflicts of interest; amending s. 718.303, F.S.; providing requirements relating to the suspension of voting rights of unit owners and members; prohibiting a receiver from exercising the voting rights of a unit owner whose unit is placed in receivership; amending s. 718.5012, F.S.; providing the ombudsman with an additional power; creating s. 718.71, F.S.; providing financial reporting requirements of an association; providing an effective date.

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

Section 1. Subsections (3) and (9), paragraphs (a) and (c) of subsection (12), and subsection (13) of section 718.111, Florida Statutes, are amended, and paragraph (g) is added to subsection (12) of that section, to read:

718.111 The association.—

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and

on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(b) An attorney may not represent a board if the attorney represents the management company of the association.

(9) PURCHASE OF UNITS.—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, a board member or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by

electronic transmission is not provided in accordance with subparagraph (c)5.e. ~~(c)5.~~ However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

17. Bids for materials, equipment, or services.

(c)1. The official records of the association are open to

inspection by any association member, ~~or~~ the authorized representative of such member, or the renter of such member's unit at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member, authorized representative of such member, or the renter of such member's unit. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any director or member of the board or association who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082, or s. 775.083. For purposes of this subparagraph, the term "repeatedly violates" means more than two

violations within a 12-month period.

3. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082, or s. 775.083.

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishment for a crime commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~is personally subject to a civil penalty pursuant to s. 718.501(1)(d)~~.

5. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those

requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a.~~1.~~ Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b.~~2.~~ Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c.~~3.~~ Personnel records of association or management company employees, including, but not limited to, disciplinary,

payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d.~~4.~~ Medical records of unit owners.

e.~~5.~~ Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily

provided by an owner and not requested by the association.

f.~~6.~~ Electronic security measures that are used by the association to safeguard data, including passwords.

g.~~7.~~ The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(g)1. An association with 500 or more units that does not manage timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

b. The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners, employees of the association, and the department.

c. Upon a unit owner's request, the association must

provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a certified copy.

d. The rules of the association.

e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).

k. The notice of any board meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any documents to be considered during the meeting or listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered, including the following documents:

(I) The proposed annual budget required by s. 718.112(2)(f), which must be provided at least 14 days before the meeting.

(II) The proposed financial report required by subsection (13).

3. The association shall ensure that the information and records described in paragraph (c), which are not permitted to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after ~~upon~~ receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting

requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and

expenditures.

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in

the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

(e) If an association has not mailed or hand delivered to the unit owner a copy of the most recent financial report within 5 business days after receipt of a written request from the unit owner, the unit owner may give notice to the division of the association's failure to comply. Upon notification, the division shall give notice to the association that the association must mail or hand deliver the copy of the most recent financial report to the unit owner and the division within 5 business days after such notice. Any association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d). A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

Section 2. Paragraphs (d) and (j) of subsection (2) of

section 718.112, Florida Statutes, are amended, and paragraph (p) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) Unit owner meetings.—

1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of

all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. ~~If the bylaws or articles of incorporation permit terms of no more than 2 years, the association~~ Board members may serve 2-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors

at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days

before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner.

However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other

eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly

cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be

resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section

shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(j) Recall of board members.—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as

required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. ~~At the meeting, the board shall either certify the recall, in which case~~ Such member or members shall be recalled effective immediately and shall turn over to the board within 10 ~~5~~ full business days after the vote any and all records and property of the association in their possession~~, or shall proceed as set forth in subparagraph 3~~.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. ~~At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective~~

~~immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph 3.~~

~~3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, The board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.~~

3.~~4.~~ If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall

be deemed effective and the board members so recalled shall ~~immediately~~ turn over to the board within 10 full business days after the vote any and all records and property of the association.

4.~~5.~~ If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5.~~6.~~ If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the

recall election.

6.~~7.~~ A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall ~~is deemed certified~~. The association and the unit owner representative shall be named as the respondents.

7.~~8.~~ The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 4.~~5.~~, or subparagraph 6.~~7. and regardless of whether the recall was certified,~~ when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(p) Service providers; conflicts of interest.—An association may not employ or contract with any service provider that is owned or operated by a board member or any person who has a financial relationship with a board member.

Section 3. Subsection (4) of section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and

Mobile Homes of the Department of Business and Professional Regulation may ~~shall~~ employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter ~~section~~. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contact for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to

govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of $50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with

these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition ~~shall be served by the division~~ upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the

division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorneys' fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that

an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the

mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the

party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney's fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney's fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

Section 4. Section 718.129, Florida Statutes, is created to read:

718.129 Fraudulent voting activities related to association elections; penalties.—The following acts constitute fraudulent voting activities related to association elections:

(1) A person who willfully, knowingly, and falsely swears or affirms to an oath or affirmation, or procures another person to willfully, knowingly, and falsely swear or affirm to an oath or affirmation, in connection with or arising out of voting or

casting a ballot in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully and knowingly perpetrates or attempts to perpetrate, or willfully and knowingly aids another person in perpetrating or attempting to perpetrate, fraud in connection with or arising out of a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election to prevent such elector from voting or casting a ballot as he or she intended in such election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) A person who willfully and knowingly aids or advises another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(b) A person who willfully and knowingly agrees, conspires, combines, or confederates with another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(c) A person who willfully and knowingly aids or advises a

person who has committed a violation of this section in avoiding or escaping detection, arrest, trial, or punishment shall be punished as if he or she had committed the violation. This paragraph does not prohibit a member of The Florida Bar from giving legal advice to a client.

Section 5. Subsection (5) is added to section 718.3025, Florida Statutes, to read:

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—

(5) A party contracting to provide maintenance or management services, or a board member of such party, may not:

(a) Own 50 percent or more of the units in the condominium.

(b) Purchase a property subject to a lien by the association.

Section 6. Section 718.3027, Florida Statutes, is created to read:

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (4):

(a) Any director, officer, or relative of any director or officer enters into a contract for goods or services with the association.

(b) Any director, officer, or relative of any director or officer holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If any director, officer, or relative of any director or officer proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director, officer, or relative shall notify the board in writing of his or her intention not to pursue the proposed activity, or the director or officer shall withdraw from office. If the board finds that any officer or director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to general law.

(3) Any director, officer, or relative of any director or officer who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in

subsection (1), may attend the meeting at which the activity is considered by the board, and is authorized to make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the meeting during the discussion of, and the vote on, the activity. Any director or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(4) The board must provide notice to unit owners of a possible conflict of interest, as described in subsection (1), in accordance with the procedures in s. 718.112(2)(c). All contracts and transactional documents related to the possible conflict of interest must be attached to, and made available with, the meeting agenda.

(5) Any contract entered into between any director, officer, or relative of any director or officer and the association that is not properly noticed before consideration in accordance with the procedures in s. 718.112(2)(c) is null and void.

Section 7. Subsection (5) of section 718.303, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than

$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(8) A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association pursuant to this chapter.

Section 8. Subsection (5) of section 718.5012, Florida Statutes, is amended to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred and reviewing secret ballots cast at a vote of the association.

Section 9. Section 718.71, Florida Statutes, is created to read:

718.71 Financial reporting.—An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained upon written request of any association member.

Section 10. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1237 (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: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Remove line 95 and insert:

to take title by deed in lieu of foreclosure. However, except in a timeshare condominium, a board

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1237 (2017)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Remove line 544 and insert:

or a timeshare condominium.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1237 (2017)

Amendment No. 3

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Remove line 816 and insert:

association, that is not a timeshare condominium association, may not employ or contract with any service provider

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1237 (2017)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Remove line 1061 and insert:

management services to a condominium, that is not a timeshare condominium, or a board member of such party, may not:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1237 (2017)

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Remove line 1116 and insert:

association, that is not a timeshare condominium association, that is not properly noticed before consideration in

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1255 Florida Commission on Human Relations
SPONSOR(S): Antone
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Stranburg CG	Bond NB
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Commission on Human Relations (Commission) administers the state's civil rights laws and serves as a resource for businesses, individuals, and groups to prevent costly and damaging discriminatory activities. Discrimination complaints dealing with employment, housing, certain public accommodations, and state employee whistle-blower retaliation are handled by the Commission.

The bill:

- Changes quorum requirements for the Commission to be based on the number of currently appointed commissioners;
- Authorizes the Commission to recommend up to 10 nominees for the Florida Civil Rights Hall of Fame;
- Specifies the applicable statute of limitations for bringing a cause of action pursuant to the Florida Civil Rights Act;
- Deletes the requirement of registration for facilities and communities claiming the housing for older persons exemption and eliminating related forms, fees, and fines;
- Deletes the investigation requirement on the Commission after receiving a complaint of discrimination by certain public accommodations; and
- Aligns time periods in state employee whistle-blower cases with time periods in other cases investigated by the Commission.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Commission on Human Relations

Chapter 760, F.S., provides a forum for all individuals in Florida to be protected against discrimination in areas of employment, housing, certain public accommodations and other opportunities based on race, color, religion, sex, national origin, age, handicap, marital, or familial status. Part I of Chapter 760, F.S., creates the Florida Civil Rights Act of 1992; Part II creates the Florida Fair Housing Act.

The Florida Commission on Human Relations (Commission) is authorized to carry out the purposes of chapter 760, F.S.[1] The Commission is housed in the Department of Management Services.[2] The Commission is not subject to any control or supervision by or direction from the department.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate. The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida. At least one member of the Commission, as required by law, must be 60 years of age or older, The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings on and act upon complaints alleging any discriminatory practice.[3]

Quorum for Commission Meetings

The Commission is comprised of 12 members.[4] Currently, the Commission has 8 commissioners serving on its board.[5] Of these 8 commissioners, only 2 are in terms that have not yet expired; the other 6 commissioners are continuing to serve until they are either reappointed or until their seats are filled by another appointment.

Current law provides that seven members constitute a quorum for the Commission to conduct business.[6] Due to the low number of commissioners currently serving, the Commission has difficulty in meeting the seven member quorum requirement and continually cancels and reschedules meetings. If 2 members were to resign, the Commission could no longer conduct official business at all. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.[7]

Effect of the Bill- Quorum for Commission Meetings

The bills amends s. 760.03, F.S., to provide that a quorum for a Commission meeting consists of a majority of the currently appointed members. At the current time, this would allow the Commission to conduct business with 5 members present, rather than 7 members. The bill also provides panels created by the Commission would be able to establish a quorum to conduct business with three members of the panel.

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[1] s. 760.03, F.S.
[2] s. 760.04, F.S.
[3] s. 760.06, F.S.
[4] s. 760.03(1), F.S.
[5] *Meet the Commissioners*, Florida Commission on Human Relations, http://fchr.state.fl.us/about_us/meet_the_commissioners (last accessed March 15, 2017).
[6] s. 760.03(5), F.S.
[7] Among others, ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within DBPR), 456.011(3) (Boards and Commissions within DOH), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

Florida Civil Rights Hall of Fame

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.[8] The purpose of the program is to recognize those persons, living or deceased, who have made significant contributions to the state as leaders in the struggle for equality and justice for all persons.[9] The Commission oversees and administers the hall of fame. The Commission must accept nominations every year and submit 10 nominees to the Governor, who selects up to three members for induction into the Florida Civil Rights Hall of Fame.[10] An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.[11]

With its limited resources, the Commission has struggled to get the minimum number of 10 nominations each year. Since its inception, the Commission has received:

- 2012- 21 nominations
- 2013- 20 nominations
- 2014- 6 nominations
- 2015- 9 nominations
- 2016- 9 nominations
- 2017- 12 nominations

Effect of the Bill- Florida Civil Rights Hall of Fame

The bill amends s. 760.065(3)(a), F.S., to provide that the Commission must recommend up to 10 nominees each year for the governor's consideration. This change gives the Commission discretion in the recommendation process similar to that of the Governor during the selection of new Hall of Fame members. This change also prevents the Commission from violating the law when it submits less than 10 recommendations due to a lack of nominees.

Florida Civil Rights Act

A person aggrieved by a violation of ss. 760.01-760.10, F.S., may file a complaint with the Commission pursuant to the Florida Civil Rights Act.[12] The complaint must be filed within 365 days and name the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation and describe the violation.[13] The Commission must determine within 180 days whether or not reasonable cause exists to believe that a discriminatory practice occurred.[14] If the Commission makes a "reasonable cause" determination, the claimant may bring a civil action or request an administrative hearing.[15] A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.[16] If the Commission does not find reasonable cause, the claimant may still request an administrative hearing, but is precluded from

[8] s. 760.065, F.S.
[9] *Id.*
[10] s. 760.065(3)(a), F.S.
[11] s. 760.065(3)(b), F.S.
[12] s. 760.11(1), F.S.
[13] *Id.*
[14] s. 760.11(3), F.S.
[15] s. 760.11(4), F.S.
[16] s. 760.11(5), F.S.

commencing a civil action.[17] If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission had made a reasonable cause determination.[18]

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between these parts of the Florida Civil Rights Act.[19] The court opined that the "[a]ct...does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms."[20] The court held that the one-year statute of limitations for filing civil actions in s. 760.11(5), F.S., does not apply if the Commission fails to make a determination within 180 days. The court held that the four-year statute of limitations for causes of action based on statutory liability[21] applies when the Commission fails to make a determination.[22]

Effect of the Bill- Florida Civil Rights Act

The bill amends s. 760.11(8), F.S., to provide that a cause of action filed pursuant to this subsection is subject to a four-year statute of limitations, consistent with the ruling in *Joshua v. City of Gainesville*.[23] This statute of limitations begins to run on the date of the alleged discriminatory act.

Florida Fair Housing Act

Part II of chapter 760, F.S., constitutes the Florida Fair Housing Act.[24] It is the state's policy to provide for fair housing throughout the state.[25] The Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the Commission.[26] The complainant must file the complaint within 1 year after the alleged discriminatory practice has occurred.[27] The Commission has 100 days after receipt of the complaint to complete its investigation and issue a determination.[28] The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.[29]

The provisions of Part II apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply.[30] For example, a single-family house sold or rented by its owner is exempted, as well as rooms or units in dwellings that provide housing for four or less families.[31] Certain housing for older persons is also exempt from charges of discrimination based on familial status.[32]

Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or, if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older. The housing facility or community must also adhere to senior housing policies and procedures and comply with rules developed by the U.S.

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[17] s. 760.11(7), F.S.
[18] s. 760.11(8), F.S.
[19] 768 So.2d 432 (Fla. 2000).
[20] *Id.* at 434-435.
[21] s. 95.11(3)(f), F.S.
[22] 768 So.2d at 439.
[23] 768 So.2d 432 (Fla. 2000).
[24] ss. 760.20-760.37, F.S.
[25] s. 760.21, F.S.
[26] s, 760.34(1), F.S.
[27] s. 760.34(2), F.S.
[28] s. 760.34(1), F.S.
[29] *Id.*
[30] s. 760.29, F.S.
[31] ss. 760.29(1)(a)1 and 2, F.S.
[32] s. 760.29(4), F.S.

Department of Housing and Urban Development pursuant to 24 C.F.R. 100. These facilities and communities must register with the Commission and renew such registration every two years, with a $20 fee for registration and renewal.[33] The Commission may impose an administrative fine of up to $500 for submission of false information,[34] but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015. The Commission reports that the "registration program does not enhance or benefit the Commission in implementing its statutory requirements or carrying out its mission-critical responsibilities."[35] The registry is not determinative as to whether the community actually qualifies from the housing for older persons exemption under the Florida Fair Housing Act. A facility or community that registers would still be subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

Effect of the Bill- Florida Fair Housing Act

The bill deletes s. 760.29(4)(c), F.S., thereby repealing the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion also includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

The bill also amends s. 760.31(5), F.S., relating to the powers and duties of the Commission. The bill deletes language requiring the Commission to create forms and procedures and setting the fee for the registration of facilities and communities claiming the housing for older persons exemption. The language is no longer needed as the registration requirement is being deleted.

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership.[36] This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages from non-members for business purposes.[37] The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement denying use and access to the club for a discriminatory purpose.[38]

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.[39] Upon receipt, the Commission of the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant of its intention to resolve the complaint.[40] If the Commission of the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.[41]

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[33] s. 760.29(4)(c), F.S.
[34] *Id.*
[35] *SB 1716/HB 1255- Florida Civil Rights and Discrimination Cases- Chapter 760 Changes*, p. 6, Florida Commission on Human Relations. A copy of the document is on file with the Civil Justice & Claims Subcommittee.
[36] s. 760.60(1), F.S.
[37] *Id.*
[38] *Id.*
[39] s. 760.60(2), F.S.
[40] *Id.*
[41] *Id.*

If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against the club, its officers, or its members to enforce this section.[42] If the court finds a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.[43]

Effect of the Bill- Discriminatory Practices in Certain Clubs

The bill amends s. 760.60, F.S., to delete the requirement that the Commission or Attorney General investigate the public accommodation discrimination complaint. This allows the Commission or Attorney General to immediately enter into conference, conciliation, and persuasion after giving notice to the club of the discrimination complaint. The bill also extends the time for the Commission or Attorney General to resolve the dispute by conference, conciliation, and persuasion to 45 days, bringing the time period in line with the time allowance in other mediation activities that the Commission undertakes.

State Employee Whistle-Blower Retaliation

The Commission is authorized to investigate any allegation of an adverse personnel action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing state government gross mismanagement, fraud, wrongful act, or other violations. If a person is retaliated against, he or she can file a written complaint with either the Commission or the Office of the Chief Inspector General (CIG) in the Executive Office of the Governor within 60 days after the prohibited personnel action.[44]

Within 3 days, the Commission or the CIG must acknowledge receiving the complaint and provide copies of the complaint to the parties.[45] The Commission must complete the fact finding process within 90 days after receiving the complaint and provide the agency head and the complainant a report that may include recommendations or a proposed resolution.[46]

If the Commission is unable to conciliate a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and the reasons for terminating the investigation.[47]

If an agency does not implement the recommended action of the Commission in 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.[48]

A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.[49] This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.[50]

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[42] s. 760.60(3), F.S.
[43] *Id.*
[44] s. 112.31895(1)(a), F.S.
[45] s. 112.31895(1)(b), F.S.
[46] s. 112.31895(2)(a), F.S.
[47] s. 112.31895(3)(d), F.S.
[48] s. 112.31895(3)(e)3, F.S.
[49] s. 112.31895(4)(a), F.S.
[50] *Id.*

Effect of the Bill- State Employee Whistle-Blower Retaliation

The bill amends s. 112.31895, F.S., to amend a number of the time periods related to investigations by the Commission. The bill provides that a complainant must file a complaint no later than 365 days after the prohibited personnel action. The bill provides that the Commission or CIG must respond within 5 working days after receiving a complaint, instead of three working days. The bill deletes language requiring the Commission to further notify the complainant that the complaint has been received within 15 days of receiving the complaint. The bill amends the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint.

The bill standardizes the times before the Commission must terminate an investigation pursuant to s. 112.31895(3)(d) and (e), F.S., to 35 days. The bill also shortens the time to appeal a decision to termination an investigation to the Public Employees Relations Commission to 21 days.

These changes bring most of the timeframes in line with complaints filed with the Commission pursuant to s. 760.11, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 760.03, F.S., relating to the Commission on Human Relations and staffing.

Section 2 amends s. 760.065, F.S., relating to the Florida Civil Rights Hall of Fame.

Section 3 amends s. 760.11, F.S., relating to administrative and civil remedies.

Section 4 amends s. 760.29, F.S., relating to exemptions.

Section 5 amends s. 760.31, F.S., relating to powers and duties of the commission.

Section 6 amends s. 760.60, F.S., relating to prohibited discriminatory practices of certain clubs and remedies.

Section 7 amends s. 112.31895, F.S., relating to investigative procedures in response to prohibited personnel actions.

Section 8 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There would appear to be an indeterminate negative fiscal impact on Florida Commission on Human Relations by eliminating the registration and renewal fees for facilities claiming housing for older persons exemptions and the administrative fine for submitting false information to the Commission in these exemptions. However, the Commission has indicated that it stopped collecting these fees and fines in 2015. Due to this, the impact would likely be minimal.

2. Expenditures:

   There does not appear to be any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There does not appear to be any impact on local government revenues.

2. Expenditures:

There does not appear to be any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would appear to be an indeterminate positive impact on facilities claiming housing for older persons exemptions since they no longer are subject to a fee to register. However, as this fee has not been collected since 2015, there is likely little impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates rulemaking authority relating to forms and fees for facilities and communities to register as housing for older persons.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to the Florida Commission on Human Relations; amending s. 760.03, F.S.; providing quorum requirements for the Commission on Human Relations and its panels; amending s. 760.065, F.S.; revising the number of persons the commission may recommend for the Florida Civil Rights Hall of Fame; amending s. 760.11, F.S.; providing a limitation on the time a civil action may be filed after an alleged violation of the Florida Civil Rights Act; amending s. 760.29, F.S.; deleting a requirement that a facility or community that provides housing for older persons register with and submit a letter to the commission; amending s. 760.31, F.S.; conforming a provision; amending s. 760.60, F.S.; deleting the requirement for the commission or Attorney General to investigate a complaint of discrimination in evaluating an application for club membership; revising the length of time the commission or Attorney General has to resolve such a complaint; amending s. 112.31895, F.S.; revising the timeline relating to a complaint alleging a prohibited personnel action; deleting a requirement that the commission notify a complainant upon receipt of the complaint; providing an effective date.

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

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

Section 1. Subsection (5) of section 760.03, Florida Statutes, is amended to read:

760.03 Commission on Human Relations; staff.—

(5) A quorum is necessary for the conduct of official business. Unless otherwise provided by law, a quorum consists of a majority of the currently appointed commissioners. ~~Seven members shall constitute a quorum for the conduct of business; however,~~ The commission may establish panels of not less than three of its members to exercise its powers under the Florida Civil Rights Act of 1992, subject to such procedures and limitations as the commission may provide by rule. Notwithstanding this subsection, three appointed members serving on panels shall constitute a quorum for the conduct of official business of the panel.

Section 2. Paragraph (a) of subsection (3) of section 760.065, Florida Statutes, is amended to read:

760.065 Florida Civil Rights Hall of Fame.—

(3)(a) The commission shall annually accept nominations for persons to be recommended as members of the Florida Civil Rights Hall of Fame. The commission shall recommend up to 10 persons from which the Governor shall select up to 3 hall-of-fame members.

Section 3. Subsection (8) of section 760.11, Florida

Statutes, is amended to read:

760.11 Administrative and civil remedies; construction.—

(8) If ~~In the event that~~ the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause, except that any civil action filed under this section shall commence no later than 4 years following the date the alleged discriminatory act occurred.

Section 4. Subsection (4) of section 760.29, Florida Statutes, is amended to read:

760.29 Exemptions.—

(4)(a) Any provision of ss. 760.20-760.37 regarding familial status does not apply with respect to housing for older persons.

(b) As used in this subsection, the term "housing for older persons" means housing:

1. Provided under any state or federal program that the commission determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;

2. Intended for, and solely occupied by, persons 62 years of age or older; or

3. Intended and operated for occupancy by persons 55 years

of age or older that meets the following requirements:

a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-subparagraphs a. and c. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing

and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of sub-subparagraph b. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

(c) Housing shall not fail to be considered housing for older persons if:

1. A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or

2. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

(d) A person shall not be personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show good faith reliance on the application of the exemption only by showing that:

1. The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such

exemption; and

2. The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

~~(c) A facility or community claiming an exemption under this subsection shall register with the commission and submit a letter to the commission stating that the facility or community complies with the requirements of subparagraph (b)1., subparagraph (b)2., or subparagraph (b)3. The letter shall be submitted on the letterhead of the facility or community and shall be signed by the president of the facility or community. This registration and documentation shall be renewed biennially from the date of original filing. The information in the registry shall be made available to the public, and the commission shall include this information on an Internet website. The commission may establish a reasonable registration fee, not to exceed $20, that shall be deposited into the commission's trust fund to defray the administrative costs associated with maintaining the registry. The commission may impose an administrative fine, not to exceed $500, on a facility or community that knowingly submits false information in the documentation required by this paragraph. Such fines shall be deposited in the commission's trust fund. The registration and documentation required by this paragraph shall not substitute for proof of compliance with the requirements of this~~

~~subsection. Failure to comply with the requirements of this paragraph shall not disqualify a facility or community that otherwise qualifies for the exemption provided in this subsection.~~

A county or municipal ordinance regarding housing for older persons may not contravene the provisions of this subsection.

Section 5. Subsection (5) of section 760.31, Florida Statutes, is amended to read:

760.31 Powers and duties of commission.—The commission shall:

(5) Adopt rules necessary to implement ss. 760.20-760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission rules shall clarify terms used with regard to handicapped accessibility, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons. ~~Commission rules shall specify the fee and the forms and procedures to be used for the registration required by s. 760.29(4)(c).~~

Section 6. Subsections (2) and (3) of section 760.60, Florida Statutes, are amended to read:

760.60 Discriminatory practices of certain clubs prohibited; remedies.—

(2) A person who has been discriminated against in

violation of this act may file a complaint with the Commission on Human Relations or with the Attorney General's Office of Civil Rights. A complaint must be in writing and must contain such information and be in such form as the commission requires. Upon receipt of a complaint, the commission or the Attorney General shall provide a copy to the person who represents the club. Within 30 days after receiving a complaint, the commission or the Attorney General shall ~~investigate the alleged discrimination and~~ give notice in writing to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General decides to resolve the complaint, it shall attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.

(3) If the commission or the Attorney General fails, within 30 days after receiving a complaint filed pursuant to subsection (2), to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club, or if the commission or the Attorney General fails to resolve the complaint within 45 ~~30~~ days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against the club, its officers, or its members to enforce this section. If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its

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members from engaging in such practice or may order other appropriate action.

Section 7. Subsections (1) and (2), paragraphs (d) and (e) of subsection (3), and paragraph (a) of subsection (4) of section 112.31895, Florida Statutes, are amended to read:

112.31895 Investigative procedures in response to prohibited personnel actions.—

(1)(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 365 ~~60~~ days after the prohibited personnel action.

(b) Within five ~~three~~ working days after receiving a complaint under this section, the office or officer receiving the complaint shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of information under s. 112.3187 to each of the other parties named in paragraph (a), which parties shall each acknowledge receipt of such copies to the complainant.

(2) FACT FINDING.—The Florida Commission on Human

Relations shall:

(a) Receive any allegation of a personnel action prohibited by s. 112.3187, including a proposed or potential action, and conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. 112.3187 has occurred, is occurring, or is to be taken.

~~(b) Notify the complainant, within 15 days after receiving a complaint, that the complaint has been received by the department.~~

(b)~~(c)~~ Within 180 ~~90~~ days after receiving the complaint, provide the agency head and the complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

(d) If the Florida Commission on Human Relations is unable to conciliate a complaint within 35 ~~60~~ days after receipt of the fact-finding report, the Florida Commission on Human Relations shall terminate the investigation. Upon termination of any investigation, the Florida Commission on Human Relations shall notify the complainant and the agency head of the termination of the investigation, providing a summary of relevant facts found

during the investigation and the reasons for terminating the investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding but is not admissible without the consent of the complainant.

(e)1. The Florida Commission on Human Relations may request an agency or circuit court to order a stay, on such terms as the court requires, of any personnel action for 45 days if the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited personnel action has occurred, is occurring, or is to be taken. The Florida Commission on Human Relations may request that such stay be extended for appropriate periods of time.

2. If, in connection with any investigation, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken which requires corrective action, the Florida Commission on Human Relations shall report the determination together with any findings or recommendations to the agency head and may report that determination and those findings and recommendations to the Governor and the Chief Financial Officer. The Florida Commission on Human Relations may include in the report recommendations for corrective action to be taken.

3. If, after 35 ~~20~~ days, the agency does not implement the

recommended action, the Florida Commission on Human Relations shall terminate the investigation and notify the complainant of the right to appeal under subsection (4), or may petition the agency for corrective action under this subsection.

4. If the Florida Commission on Human Relations finds, in consultation with the individual subject to the prohibited action, that the agency has implemented the corrective action, the commission shall file such finding with the agency head, together with any written comments that the individual provides, and terminate the investigation.

(4) RIGHT TO APPEAL.—

(a) Not more than 21 ~~60~~ days after receipt of a notice of termination of the investigation from the Florida Commission on Human Relations, the complainant may file, with the Public Employees Relations Commission, a complaint against the employer-agency regarding the alleged prohibited personnel action. The Public Employees Relations Commission shall have jurisdiction over such complaints under ss. 112.3187 and 447.503(4) and (5).

Section 8. This act shall take effect July 1, 2017.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1255 (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: Civil Justice & Claims Subcommittee

Representative Antone offered the following:

Amendment

Remove line 216 and insert:

later than 60 days after the prohibited personnel action.

PCS for HB 1379

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1379 Department of Legal Affairs
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		MacNamara	Bond

SUMMARY ANALYSIS

The Department of Legal Affairs is responsible for providing all legal services as required by the executive branch. The Attorney General is the head of the department. Current law creates various councils, programs, and trust funds that are subject to the control of the department.

The bill makes the following changes with respect to the Department of Legal Affairs and the Attorney General:

- Authorizes the Statewide Council on Human Trafficking to apply for and accept funds, grants, gifts, and services from state and federal agencies to defray costs associated with the annual statewide summit;
- Grants the Attorney General the power to request one or more patrol officers for the Office of the Attorney General;
- Revises applicable dates for violations under Florida's Deceptive and Unfair Trade Practices Act;
- Revises definitions under the Florida Money Laundering Act to include virtual currency thereby expanding the offense of money laundering to include laundering of virtual currency;
- Provides that the Attorney General has standing and is responsible for receiving notices for charitable trust actions under Florida's Probate Code rather than local state attorneys; and
- Pays up to $50,000 to the surviving family members of an emergency responder who is killed in the line of duty as a result of a crime, payable from the Crimes Compensation Trust Fund.

The bill does not appear to have a fiscal impact on local governments. The bill has an unknown minimal negative fiscal impact on the Department of Legal Affairs in general, and on the Crimes Compensation Trust Fund regarding emergency responders.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Legal Affairs is responsible for providing all legal services as required by the executive branch. The Attorney General, a constitutional officer and member of the Cabinet, is the head of the department. Current law creates various councils, programs, and trust funds that are subject to the control of the department. Moreover, the Department is tasked with oversight duties for certain industries of the state as part of its duty to provide legal services on behalf of the state.

Current Law and Effect of Bill

Statewide Council on Human Trafficking

The state created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking, and to support the victims of human trafficking.[1] The council is housed within the Department of Legal Affairs.[2]

The membership of the council is provided for by statute, with each member serving 4-year terms. The duties of the council include:

- Develop recommendations for comprehensive programs and services for victims of human trafficking to include recommendations for certification criteria for safe houses and safe foster homes.
- Make recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Annually hold a statewide policy summit in conjunction with an institution of higher learning in this state.
- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, which can be used to determine how to maximize existing resources and address unmet needs and emerging trends.
- Develop policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in our state.

Additionally, the council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing the accomplishments of the council during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.

The bill authorizes the council to apply for and accept funds, grants, gifts, and services from the state, the federal government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual statewide policy summit.

[1] s. 16.617, F.S.
[2] s. 16.617(1), F.S.

Assigning Highway Patrol Officers to the Office of the Attorney General

The Department of Highway Safety and Motor Vehicles (DHSMV) is headed by the Governor and members of the Cabinet. Divisions include the Division of the Florida Highway Patrol and the Division of Motorist Services. Under s. 321.04(3), F.S., the DHSMV is required to assign one patrol officer to the office of the Governor at the discretion of the Lieutenant Governor. The patrol officer is selected by the Governor and current law provides a minimum rank and salary requirements for the selected officer.[3]

Moreover, for the 2015-16 and 2016-17 fiscal years, the DHSMV is allowed to assign a patrol officer to the Lieutenant Governor, at his or her discretion, and to a Cabinet member if the Department deems such assignment appropriate or in response to a threat, if requested in writing by such Cabinet member.[4]

The bill provides that upon the request of the Attorney General, the DHSMV is required to assign one or more patrol officers to the Office of the Attorney General for security services.

Florida Deceptive and Unfair Trade Practices

The Florida Deceptive and Unfair Trade Practices Act[5] broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce. The Act is a separate cause of action intended to be an additional remedy, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act is designed to protect consumers from deceptive acts that mislead consumers, and is intended to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

While much of the Florida Deceptive and Unfair Trade Practices Act is enforceable by private civil action, the Department of Legal Affairs has broad enforcement authority under the act.[6]

The act applies to any act or practice occurring in the conduct of any trade or commerce, even as between purely commercial interests. It applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves only a single party, a single transaction, or a single contract. With respect to unlawful acts and practices under s. 501.204(2), F.S., the Act provides that:

> It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015.

The bill removes the year 2015 from the above provisions in the Act and replaces it with the year 2017.

Florida Money Laundering Act

The Office of Statewide Prosecution is a part of the Department of Legal Affairs. It has the authority to investigate and prosecute enumerated offenses that occur in 2 or more judicial circuits. One enumerated offense is money laundering.[7] A crime facilitated or connected to the use of the internet is considered to be occurring in every judicial circuit in the state.[8]

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[3] s. 321.04(3), F.S.
[4] s. 321.04(4), F.S.
[5] ss. 501.201-213, F.S.
[6] ss. 501.203(2), 501.205, 501.206, 501.207, and 501.208, F.S.
[7] s. 16.56(1)(a)13, F.S.
[8] s. 16.56(1)(b), F.S.

Section 896.101, F.S., provides for the requirements and enforcement of the Florida Money Laundering Act. Florida law defines money laundering as a financial transaction or series of transactions used to conceal, disguise, hide, or process money and other proceeds generated through criminal activity. The proceeds may be gained through any felony prohibited by state or federal laws.

Many types of financial transactions can qualify as money laundering under Florida money laundering laws. Activities such as purchases, sales, monetary gifts, loans, bank deposits, wire transfers, currency exchanges, and investments might all qualify as financial transactions for the purpose of money laundering. Transfers of title to real property, cars, and other types of vehicles can also qualify as money laundering if used to hide the proceeds from unlawful activities.

Under the Act, "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.[9]

The bill adds to the definition of monetary instruments to include virtual currency. The bill further provides a definition of virtual currency as "a medium of exchange in electronic or digital format that is not a coin or currency of the United States or other country." The effect of these changes is that money laundering using virtual currency is illegal.

Notice for Charitable Trusts

Under s. 736.0110(3), F.S., the Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the State of Florida. Section 736.0103(16), F.S., defines a "qualified beneficiary" as a living beneficiary who, on the date of the beneficiary's qualification is determined:

> (a) Is a distributee or permissible distributee of trust income or principal;
> (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributes described in paragraph (a) terminated on that date without causing the trust to terminate; or
> (c) Would be a distribute or permissible distribute of trust income or principal if the trust terminated in accordance with its terms on that date.

A "charitable trust" for purposes of s. 736.0110, F.S., means a trust, or portion of a trust, created for a charitable purpose as described in s. 736.0405(1), F.S.. Charitable purposes include, but are not limited to, "the relief of poverty; the advancement of arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes."[10] Part XII of ch. 736, F.S., governs all charitable trusts. Specifically, and in relevant part:

- s. 736.1205, F.S., requires that the trustee of a charitable trust notify the state attorney for the judicial circuit of the principal place of administration of the trust if the power to make distributions are more restrictive than s. 736.1204(2), F.S., or if the trustee's powers are inconsistent with s. 736.1204(3), F.S.
- s. 736.1206(2), F.S., provides that the trustee of a charitable trust may amend the governing instrument with consent of the state attorney to comply with the requirements of a private foundation trust as provided in s. 736.1204(2), F.S.
- s. 736.1207, F.S., specifies that Part XII of the Code does not affect the power of a court to relieve a trustee from restrictions on that trustee's powers and duties for cause shown and upon complaint of the state attorney, among others.

[9] s. 896.101(2)(e), F.S.
[10] s. 736.0405(1), F.S.

- s. 736.1208(4)(b), F.S., requires that a trustee who has released a power to select charitable donees accomplished by reducing the class of permissible charitable organizations must deliver a copy of the release to the state attorney.
- s. 736.1209, F.S., allows the trustee to file an election with the state attorney to bring the trust under s. 736.1208(5), F.S., relating to public charitable organization(s) as the exclusive beneficiary of a trust.

As such, there is some disconnect between s. 736.0110(3), F.S., and Part XII of the Code; they can be read to require that notice be given to the Attorney General for certain charitable trusts and to the state attorney of the proper judicial circuit for the same or other trusts.

The bill grants these powers and responsibilities solely to the Attorney General. The bill also amends s. 736.0110(3), F.S., to provide the Attorney General with standing to assert the rights of a qualified beneficiary in any judicial proceeding and amends the provisions in Part XII of the Code concerning the state attorney's office.

The changes provide that the Attorney General, rather than the state attorney, would receive notifications, releases, and elections for charitable trusts under ss. 736.1205, 736.1207, 736.1208, and 736.1209, F.S., and the Attorney General, rather than the state attorney, would consent to a charitable trust amendment effectuated under s. 736.1206, F.S.

Lastly, the bill defines how the Attorney General is to be given notifications, releases, and elections in s. 736.1201(2), F.S., and removes the state attorney from the definitions section of Part XII of the Code.

Emergency Responder Death Benefits

Sections 960.01-960.28, F.S., relate to the Florida Crimes Compensation Act. The act is administered by the Department of Legal Affairs.[11]

The act was created recognizing that many innocent people suffer personal injury or death as a direct result of adult and juvenile criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit adult and juvenile crimes. As a result, their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance.[12] Consequently, it is the intent of the Act that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of adult and juvenile crime.

A Crimes Compensation Trust Fund is established at s. 960.21, F.S. The purpose of the fund is to provide for the payment of all necessary and proper expenses incurred by the operation of the department and the payment of claims. The moneys placed in the fund consist of all moneys appropriated by the Legislature for the purpose of compensating the victims of crime and other claimants under the Act, and of moneys recovered on behalf of the department by subrogation or other action, recovered through restitution, received from the Federal Government, received from additional court costs, received from fines, or received from any other public or private source.[13]

The bill creates s. 960.194, F.S., to provide a death benefit for the surviving family members of an emergency responder killed in the line of duty because of the commission of a crime by another, payable from the Crimes Compensation Trust Fund. An emergency responder is a law enforcement officer, firefighter, emergency medical technician, or paramedic.

[11] s. 960.045, F.S.
[12] s. 960.02, F.S.
[13] s. 960.21(1)-(2), F.S.

The department may award up to a maximum of $50,000 to the surviving family members of the emergency responder. The $50,000 award is for each instance and must be apportioned between multiple claimants at the discretion of the department.

The benefits provided for in the bill may be reduced to the extent the emergency responder contributed to his or her death, and may be reduced to the extent the claimant has already received an award under the Act for the same incident. Where an award is made under this section, a duplicative award from the fund is barred.

Current law regarding payments from the Crimes Compensation Trust Fund provides that the award is subject to subrogation. Subrogation is the concept that the payor of some form of award is entitled to reimbursement should the payee recover from the at-fault party. The bill amends the subrogation provision contained in s. 960.16, F.S., to waive the state's subrogation right related to a payment made by this section to an emergency responder.

B. SECTION DIRECTORY:

Section 1 amends s. 16.617, F.S., relating to the Statewide Council on Human Trafficking.

Section 2 amends s. 321.04, F.S., relating to personnel of highway patrol.

Section 3 amends s. 501.203, F.S., relating to unfair trade practices definitions.

Section 4 amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 5 amends s. 736.0110, F.S., relating to others treated as qualified beneficiaries.

Section 6 amends s. 736.1201, F.S., relating to definitions.

Section 7 amends s. 736.1205, F.S., relating to notice that this part does not apply.

Section 8 amends s. 736.1206, F.S., relating to power to amend trust instruments.

Section 9 amends s. 736.1207, F.S., relating to power of courts to permit deviation.

Section 10 amends s. 736.1208, F.S., relating to release.

Section 11 amends s. 736.1209, F.S., relating to elections under this part.

Section 12 amends s. 896.101, F.S., relating to the Florida Money Laundering Act.

Section 13 amends s. 960.03, F.S., relating to definitions.

Section 14 amends s. 960.16, F.S., relating to subrogation.

Section 15 creates s. 960.194, F.S., relating to emergency responder death benefits.

Section 16 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The portions of the bill regarding charitable trusts may cause a slight increase in costs to the Department of Legal Affairs with a corresponding decrease in costs for the state attorney's offices.

The portions of the bill paying benefits to certain emergency responders will have a negative fiscal impact on the Crimes Compensation Trust Fund. The expected number of emergency responders killed due to a criminal act is unknown.

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:

In general, the bill does not appear to have any direct economic impact on the private sector. The portion of the bill regarding death benefits for certain emergency responders will have a positive fiscal impact on affected families.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to the Department of Legal Affairs; amending s. 16.617, F.S.; authorizing the Statewide Council on Human Trafficking to apply for and receive funding from additional sources to defray costs associated with the annual policy summit; amending s. 321.04, F.S.; requiring the Department of Highway Safety and Motor Vehicles to assign highway patrol officers to the Office of the Attorney General as requested; amending ss. 501.203 and 501.204, F.S.; updating references for purposes of the Florida Deceptive and Unfair Trade Practices Act; amending s. 736.0110, F.S.; providing that the Attorney General has standing to assert certain rights in certain proceedings; amending s. 736.1201, F.S.; defining the term "delivery of notice"; conforming a provision to changes made by the act; amending s. 736.1205, F.S.; requiring an authorized trustee to provide certain notice to the Attorney General rather than the state attorney; amending ss. 736.1206, 736.1207, 736.1208, and 736.1209, F.S.; conforming provisions; amending s. 896.101, F.S.; creating a definition of virtual currency; expanding the Florida Money Laundering Act to prohibit the laundering of virtual currency; amending s. 960.03, F.S.; revising definitions for

purposes of crime victim assistance; amending s. 960.16, F.S.; providing that awards of emergency responder death benefits under a specified provision are not subject to subrogation; creating s. 960.194, F.S.; providing definitions; providing for awards to the surviving family members of first responders who, as a result of a crime, are killed answering a call for service in the line of duty; specifying considerations in the determination of the amount of such an award; providing for apportionment of awards in certain circumstances; authorizing rulemaking for specified purposes; providing for denial of benefits under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (3) of section 16.617, Florida Statutes, to read:

16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

(3) ORGANIZATION AND SUPPORT.—

(d) The council may apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual statewide policy summit.

Section 2. Subsection (4) of section 321.04, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

321.04 Personnel of the highway patrol; rank classifications; probationary status of new patrol officers; subsistence; special assignments.—

(4) Upon request of the Attorney General, the Department of Highway Safety and Motor Vehicles shall assign one or more patrol officers to the Office of the Attorney General for security services.

Section 3. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

501.203 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2017 ~~2015~~:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

Section 4. Section 501.204, Florida Statutes, is amended to read:

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017 ~~2015~~.

Section 5. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

Section 6. Subsections (2), (3), and (4) of section 736.1201, Florida Statutes, are renumbered as subsections (3), (4), and (5), respectively, present subsection (5) of that section is amended, and a new subsection (2) is added to that section, to read:

736.1201 Definitions.—As used in this part:

(2) "Delivery of notice" means delivery of a written notice required under this part using any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt.

~~(5) "State attorney" means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.~~

Section 7. Section 736.1205, Florida Statutes, is amended to read:

736.1205 Notice that this part does not apply.—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more restrictive than s. 736.1204(2), or if the trust contains other powers, inconsistent with the provisions of s. 736.1204(3) that specifically direct acts by the trustee, the trustee shall notify the ~~state~~ Attorney General by delivery of notice when the trust becomes subject to this part. Section 736.1204 does not apply to any trust for which notice has been given pursuant to this section unless the trust is amended to comply with the terms of this part.

Section 8. Subsection (2) of section 736.1206, Florida Statutes, is amended to read:

736.1206 Power to amend trust instrument.—

(2) In the case of a charitable trust that is not subject

to ~~the provisions of~~ subsection (1), the trustee may amend the governing instrument to comply with ~~the provisions of~~ s. 736.1204(2) after delivery of notice to, and with the consent of, the ~~state~~ Attorney General.

Section 9. Section 736.1207, Florida Statutes, is amended to read:

736.1207 Power of court to permit deviation.—This part does not affect the power of a court to relieve a trustee from any restrictions on the powers and duties that are placed on the trustee by the governing instrument or applicable law for cause shown and on complaint of the trustee, the Attorney General ~~state attorney~~, or an affected beneficiary and notice to the affected parties.

Section 10. Paragraph (b) of subsection (4) of section 736.1208, Florida Statutes, is amended to read:

736.1208 Release; property and persons affected; manner of effecting.—

(4) Delivery of a release shall be accomplished as follows:

(b) If the release is accomplished by reducing the class of permissible charitable organizations, by delivery of notice ~~a copy~~ of the release to the ~~state~~ Attorney General, including a copy of the release.

Section 11. Section 736.1209, Florida Statutes, is amended to read:

736.1209 Election to come under this part.—With the consent of that organization or organizations, a trustee of a trust for the benefit of a public charitable organization or organizations may come under s. 736.1208(5) by delivery of notice to ~~filing with~~ the ~~state~~ Attorney General of the ~~an~~ election, accompanied by the proof of required consent. Thereafter the trust shall be subject to s. 736.1208(5).

Section 12. Subsection (2) of section 896.101, Florida Statutes, is amended and reordered, to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

(2) As used in this section, the term:

(a) ~~(b)~~ "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(b) ~~(f)~~ "Financial institution" means a financial institution as defined in 31 U.S.C. s. 5312 which institution is located in this state.

(c) ~~(d)~~ "Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree.

(d) ~~(h)~~ "Knowing" means that a person knew; or, with respect to any transaction or transportation involving more than $10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

(e) ~~(a)~~ "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (h) ~~(g)~~.

(f) ~~(e)~~ "Monetary instruments" means coin or currency of the United States or of any other country, virtual currency, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(g) ~~(i)~~ "Petitioner" means any local, county, state, or federal law enforcement agency; the Attorney General; any state attorney; or the statewide prosecutor.

(h) ~~(g)~~ "Specified unlawful activity" means any

"racketeering activity" as defined in s. 895.02.

(i) ~~(e)~~ "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(j) "Virtual currency" means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.

Section 13. Paragraph (f) is added to subsection (3) of section 960.03, Florida Statutes, paragraphs (c) and (d) of subsection (14) of that section are amended, and paragraph (e) is added to that subsection, to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(f) A felony or misdemeanor that results in the death of an emergency responder, as defined in and solely for the purposes of s. 960.194, while answering a call for service in the line of duty, notwithstanding paragraph (c).

(14) "Victim" means:

(c) A person younger than 18 years of age who was the

victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured; ~~or~~

(d) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death; or

(e) An emergency responder, as defined in and solely for the purposes of s. 960.194, who is killed answering a call for service in the line of duty.

Section 14. Section 960.16, Florida Statutes, is amended to read:

960.16 Subrogation.—Except for an award under s. 960.194, payment of an award pursuant to this chapter shall subrogate the state, to the extent of such payment, to any right of action accruing to the claimant or to the victim or intervenor to recover losses directly or indirectly resulting from the crime with respect to which the award is made. Causes of action which shall be subrogated under this section include, but are not limited to, any claim for compensation under any insurance provision, including an uninsured motorist provision, when such claim seeks to recover losses directly or indirectly resulting from the crime with respect to which the award is made.

Section 15. Section 960.194, Florida Statutes, is created to read:

960.194 Emergency responder death benefits.—

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

(a) "Call for service" means actively performing official duties, including the identification, prevention, or enforcement of the penal, traffic, or highway laws of this state, traveling to the scene of an emergency situation, and performing those functions for which the emergency responder has been trained and certified to perform.

(b) "Emergency responder" means a law enforcement officer, a firefighter, an emergency medical technician, or paramedic.

(c) "Emergency medical technician" has the same meaning as provided in s. 401.23.

(d) "Firefighter" has the same meaning as provided in s. 633.102.

(e) "Law enforcement officer" has the same meaning as provided in s. 943.10.

(f) "Paramedic" has the same meaning as provided in s. 401.23.

(g) "Surviving family members of an emergency responder" means the surviving spouse, children, parents or guardian, or siblings of a deceased emergency responder.

(2) Notwithstanding s. 960.065(1) and s. 960.13, the department may award for any one claim up to a maximum of $50,000, to the surviving family members of an emergency responder who, as a result of a crime, is killed answering a

call for service in the line of duty.

(3) In determining the amount of an award, the department shall determine whether, because of his or her conduct, the emergency responder contributed to his or her death, and the department shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. However, the department may disregard the contribution of the emergency responder to his or her own death when the record shows that such contribution was attributed to efforts by the emergency responder acting as an intervenor as defined in s. 960.03.

(4) If there are two or more persons entitled to an award pursuant to this section for the same incident, the award shall be apportioned among the claimants at the discretion and direction of the department.

(5) The department may adopt rules that establish award limits below the amount set forth in subsection (2) and establish criteria governing awards pursuant to this section.

(6) An award pursuant to this section shall be reduced or denied if the department has previously approved or paid out a claim under s. 960.13 to the same claimant regarding the same incident. An award for victim compensation under s. 960.13 shall be denied if the department has previously approved or paid out an emergency responder death benefits claim under this section.

Section 16. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 Pub. Rec./Identifying Information of Human Trafficking Victims
SPONSOR(S): Spano
TIED BILLS: HB 1165 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MM MacNamara	Bond VB
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Victims of human trafficking are able to bring a cause of action against the human trafficker; however, given the nature of human trafficking, victims may be cautious of bringing such actions so as to keep their victimization private.

The bill, which is linked to the passage of HB 1165, creates a public records exemption related to human trafficking. Upon the request of a victim, hearings conducted during civil actions brought pursuant to HB 1165 may be closed and any information identifying victims of human trafficking must be redacted or sealed in the court file and online docket.

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

The bill may have a minimal fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background and Current Law

Public Records

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption; and
- Is no broader than necessary to meet the public purpose.[2]

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in chapter 119, F.S. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act[3] does not apply to exemptions regarding the State Courts System.[4] However, the act is informative as to the general legislative intent regarding public records. The act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption." The Act also provides general framework for public records exemptions and requires the necessity of the exemption to meet one of the following purposes:[5]

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

Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."[6] Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.[7]

Victims of human trafficking often face difficulties hiding their identities from their former captors and often fear retaliation or the risk of being enslaved again. Moreover, victims of human trafficking often wish to keep the nature of their victimization private given the social stigmas associated with such

[1] Art. I, s. 24(a), Fla. Const.
[2] Art. I, s. 24(c), Fla. Const.
[3] s. 119.15, F.S.
[4] s. 119.15(2)(b), F.S.
[5] s. 119.15(6)(b), F.S.
[6] s. 787.06(2)(d), F.S.
[7] s. 787.06(1)(a), F.S.

victimization in society. This generally comes in the form of defamation or damage to their name after being associated with human trafficking, despite their status as a victim.[8]

The state has created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement and social services. The Council seeks to fight commercial sexual exploitation as a form of human trafficking and to support victims.[9] Current law allows victims of human trafficking to file a civil action against the captor under s. 772.104, F.S. In such actions, victims may be award damages in an amount threefold of the amount gained from the sex trafficking and are entitled to minimum damages in the amount $200 and reasonable attorney fees and court costs.

Moreover, s. 119.071(2), F.S., provides public records exemptions for various types of criminal investigative or intelligence information that reveals the identifying information of specified parties involved in the investigation of a crime. This exemption applies to a victim under the age of 18 of a human trafficking or child abuse offense.[10]

HB 1165, a companion bill, creates a civil cause of action for a victim of human trafficking and creates a civil forfeiture action related to civil trafficking.

Effect of Bill

The bill creates a public records exemption to provide for closed hearings for civil actions brought pursuant to the statute created in HB 1165. The exemption also provides that any information identifying such victims of human trafficking in a civil actions brought pursuant to HB 1165 is confidential and exempt. The information must be redacted or sealed in the court file and online docket for such action.

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

B. SECTION DIRECTORY:

Section 1 amends s. 787.061, F.S., relating to human trafficking civil actions.

Section 2 provides a public necessity statement.

Section 3 provides an effective date to be the same as that of HB 1165, if such legislation is passed during the same session and becomes law.

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 government revenues.

2. Expenditures:

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

[8] *See* United Nations Office on Drug and Crime Report, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008). http://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf (accessed on March 17, 2017).
[9] *See* s. 16.617, F.S.
[10] s. 119.071(2)(h)1.a., F.S.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

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

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The portion of the bill providing for future repeal of the exemption is not required by the Open Government Sunset Review Act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to public records; amending s. 787.061, F.S.; providing for closed hearings in certain civil actions by victims of human trafficking in certain circumstances; providing for redaction and sealing of information identifying victims of human trafficking; providing an exemption from public records requirements for such sealed and redacted information; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (7) is added to section 787.061, Florida Statutes, as created by House Bill 1165, to read:

(7) CLOSED HEARINGS.—At the victim's request, court hearings conducted pursuant to this section shall be closed to the public and any information identifying victims of human trafficking redacted or sealed in the court file and online docket for such action. Such redacted information and sealed files are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance

with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that any information identifying victims of human trafficking redacted or sealed in the court files and online dockets of civil actions by victims of human trafficking under s. 787.061, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Providing an exemption for such information will protect the identity of a victim of human trafficking from her or his captor and will allow the victim to move back into daily life without fear of retaliation or risk of being enslaved again. The identity of these victims and details of their victimization is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name and reputation of the victims. For these reasons, the Legislature finds that it is a public necessity that any information identifying victims of human trafficking redacted or sealed in the court files and online dockets of civil actions by victims of human trafficking under s. 787.061, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the

State Constitution upon request of the plaintiff in such an action.

Section 3. This act shall take effect on the same date that s. 787.061, Florida Statutes, as created by HB 1165 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Spano offered the following:

Amendment

Remove lines 24-34 and insert:

24(a), Art. I of the State Constitution.

Section 2. The Legislature finds that hearings conducted pursuant to s. 787.061, Florida Statutes, for victims of human trafficking should be closed and be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution at the victim's request. Providing an exemption for such hearings will allow victims of human trafficking to seek relief in the courts of the state without exposing their victimization to the public and protecting their identity as they continue to recover from their time as a victim

of human trafficking. For these reasons the Legislature finds that it is a public necessity that hearings conducted pursuant to s. 787.061, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution upon the victim's request in such hearings. The Legislature further finds that any information identifying victims of human trafficking redacted or sealed in the court files and online dockets of civil actions by victims of human trafficking under s. 787.061, Florida Statutes, should be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution at the victim's request. Providing an

STORAGE NAME: h6501.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 6501 - Representative Plakon and others
Relief/J.D.S./Agency for Persons with Disabilities

THIS IS AN EQUITABLE CLAIM BASED ON A SETTLEMENT AGREEMENT, WHEREIN THE AGENCY FOR PERSONS WITH DISABILITIES, AS SUCCESSOR AGENCY OF THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES, HAS AGREED TO PAY $1,150,000 FOR THE RELIEF OF J.D.S., AN INCAPACITATED PERSON, FOR DAMAGES SHE RECEIVED AS A RESULT OF HER RAPE AND IMPREGNATION BY PHILLIP STRONG WHILE SHE WAS LIVING IN THE STRONG GROUP HOME. THE AGENCY HAS PAID $200,000 PURSUANT TO THE STATUTORY CAP LEAVING $950,000 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT: In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. Since the age of 4, J.D.S. resided at the Strong Group Home as a developmentally-disabled ward of the State of Florida.[1] DCF licensed the Strong Group Home and conducted monthly assessments of the residents and the home. Hester Strong was the administrator of the Strong Group Home while her husband,

[1] When J.D.S. was 4 she was placed in the Lamey Group Home which was subsequently purchased and renamed by the Strongs in September 1987 when J.D.S. was 7 years old.

Phillip Strong, would assist her in the operation of the group home, which at any given time had between four to six developmentally disabled individuals living there. As of December 2002, Hester Strong was 74 years old and Phillip Strong was 78 years old.

In December 2002, Phillip Strong raped J.D.S., resulting in J.D.S.'s impregnation. On April 24, 2003, J.D.S.'s physician discovered her pregnancy, and soon thereafter DCF revoked the Strong Group Home's license. J.D.S. was moved to another group home, and DCF's Adult Protective Services Investigator commenced an investigation into the circumstances of the rape. On August 30, 2003, J.D.S. gave birth to a baby girl, known as G.V.S., who was immediately taken from J.D.S. and placed for adoption.

After several months of investigation by its Adult Protective Services Investigator Gerald Robinson, DCF determined that Phillip Strong was responsible for the rape and impregnation of J.D.S.. Additionally, on September 9, 2003, FDLE serologist Timothy Petree confirmed that Phillip Strong was the biological father of J.D.S.'s daughter with DNA evidence. It was further determined that during the time of her residency at the Strong Group Home, J.D.S. was mentally incompetent and unable to provide or deny meaningful and knowing consent to sexual intercourse with Phillip Strong.

Dr. Deborah Day, a behavioral psychologist, reviewed J.D.S.'s case file and determined that J.D.S. exhibited telltale signs of abuse. Dr. Day pointed to DCF records that showed behavioral changes in J.D.S. beginning in 2001; J.D.S.'s behavioral changes included increased aggression and regular incontinence. Dr. Day further opined that psychologically J.D.S. was permanently injured by the rape and impregnation and that she will suffer with more difficulty trusting, more difficulty being around people, more difficulty making transitions to new activities, and will probably be more sensitive to males who are providing services to her. Further, Dr. Day stated that J.D.S. needs physical, occupational, speech, and behavioral therapy.

The Petitioners hired F.A. Raffa, Ph.D. to provide an assessment of the cost of J.D.S.'s future life care needs. At the time of the assessment J.D.S. was 30 years old with a statistical average remaining life expectancy of 47.44 years. Dr. Raffa concluded that if J.D.S. continues to reside in a group home, as she currently does, the present value of her life care needs as of June 2011, would be $11,301,146. Dr. Raffa further concluded that if J.D.S. goes to live in an independent residence, an option suggested by Larry Forman, an expert in habilitation and rehabilitation for the mentally disabled, the present value of J.D.S.'s life care plan as of June 2011, would

be $13,266,398.[2]

The remaining $950,000 that would be paid if this claim bill is passed would be paid out of the General Revenue Fund.

LITIGATION HISTORY

On February 3, 2006, Patti Jarrell, J.D.S.'s Guardian, filed a complaint on behalf of J.D.S. against the Department of Children and Families (DCF) in the 9th Judicial Circuit, in and for Orange County, Florida, alleging that the department negligently supervised the Strong Group Home and that the Strong Group Home was negligently operated, thereby allowing Phillip Strong to rape J.D.S., which resulted in her impregnation. The Complaint was subsequently dismissed on September 6, 2006, by the Honorable John H. Adams, Sr. on the grounds that DCF was not a proper defendant in the action. After DCF was dismissed as a defendant, the Petitioner submitted an Amended Complaint substituting the Agency for Persons with Disability (APD) as a party defendant in lieu of DCF.

The case was extensively litigated for several years and all of the issues relating to DCF and APD's liability was vetted by the Orange County Circuit Court judges. J.D.S.'s claims against APD, the Strong Group Home, and other parties, namely Hester and Phillip Strong individually, were based upon negligence, violations of chapter 393, Florida Statutes, and violations of the Bill of Rights of Persons with Developmental Disabilities, s. 393.13, Florida Statutes. J.D.S. alleged that the Agency had a nondelegable duty to protect J.D.S. from foreseeable harm, including sexual abuse. J.D.S. also alleged that the Agency was liable for direct negligence relating to its oversight of the Strong Group Home and that it was vicariously liable for the negligence of the Strong Group Home under the doctrine of respondeat superior.

Before the jury trial began on February 6, 2012, the parties agreed to settle the case for the sum of $1.15 million. Under the terms of the settlement agreement, APD agreed to pay $200,000 to J.D.S. and to pay the amount approved in any claim bill not to exceed $950,000.

Pursuant to the settlement agreement, APD paid $200,000 through Risk Management on behalf of APD and Hester Strong, individually and as operator of The Strong Group Home. $100,000 was made payable to the "J.S. Pooled Special Needs Trust" and $100,000 was made payable to "Morgan & Morgan P.A. Trust Account."

Phillip Strong was arrested and charged with one count of sexual battery on a mentally disabled person. However, he was

[2] The Respondent posited that Dr. Raffa's life care plans included certain treatments and types of care that J.D.S. would have required prior to her rape and impregnation.

found to be mentally incompetent to stand trial, and he was not prosecuted for the rape and impregnation of J.D.S.

CONCLUSION OF LAW: I find the damages claimed in this case to be appropriate and based on competent substantial evidence. Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement of $1,150,000 in this case is reasonable and equitable in light of the damages to J.D.S. including the between $11,301,146 and $13,266,398 that will be required for her future life care needs and recommend that the settlement be given effect by the Legislature.

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.

LEGISLATIVE HISTORY This is the fourth year this instant claim has been filed in the Legislature. In 2016, this bill was introduced as House Bill 3521 by Representative Plakon and Senate Bill 38 by Senator Soto. The House bill died in the Civil Justice Subcommittee but the Senate Bill was heard in two committees but died in Senate Appropriations.

In 2015, this bill was introduced as House Bill 3503 by Representative Plakon and Senate Bill 24 by Senator Soto. House Bill 3503 died in the Civil Justice Subcommittee but the Senate Bill 24 was heard in two Senate committees but died in Senate Appropriations Committee.

This bill was introduced in 2014 as Senate Bill 6 by Senator Soto and as House Bill 3511 by Representative Pafford. Neither bill was heard by any Committee, and the bills died in the Judiciary Committee and Civil Justice Subcommittee, respectively.

RECOMMENDATIONS: I respectfully recommend that House Bill 6501 be reported **FAVORABLY**

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Plakon, House Sponsor
Senator Simmons, Senate Sponsor
Barbara Crosier, Senate Special Master

A bill to be entitled

An act for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of the negligence of the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, in December 2002, J.D.S., a 22-year-old developmentally disabled woman with autism, cerebral palsy, and mental retardation, was living at the Strong Group Home, which was owned and operated by Hester Strong and licensed and supervised by the Department of Children and Family Services, and

WHEREAS, in December 2002, J.D.S. was raped and impregnated by Philip Strong, husband of the owner and operator of the Strong Group Home, and

WHEREAS, on April 24, 2003, J.D.S.'s pregnancy was discovered by her physician, and on August 30, 2003, J.D.S. gave birth to a baby girl, known as G.V.S., who was immediately taken from J.D.S. and placed for adoption, and

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

WHEREAS, as a result of her rape and impregnation, J.D.S. sustained mental anguish and a further diminution in the quality of her life, and

WHEREAS, J.D.S. filed a claim in Orange County Circuit Court alleging that the department negligently supervised the Strong Group Home and that the Strong Group Home was negligently operated, thereby allowing Philip Strong to rape J.D.S., which resulted in her impregnation, and

WHEREAS, J.D.S.'s claims against the department, the Strong Group Home, and other parties were based upon negligence, violations of chapter 393, Florida Statutes, and violations of the Bill of Rights of Persons with Developmental Disabilities, as set forth in s. 393.13, Florida Statutes, and

WHEREAS, as a client of the department, as the term "client" is defined in s. 393.063, Florida Statutes, J.D.S. had a right under s. 393.13, Florida Statutes, to "dignity, privacy, and humane care, including the right to be free from abuse, including sexual abuse, neglect, and exploitation," and

WHEREAS, J.D.S. alleged that the department had a nondelegable duty to protect her from foreseeable harm, including sexual abuse, and

WHEREAS, J.D.S. alleged that the department was liable for direct negligence relating to its oversight of the Strong Group Home and that it was vicariously liable for the negligence of the Strong Group Home under the doctrine of respondeat superior

established under s. 768.28(9)(a), Florida Statutes, and

WHEREAS, before the jury trial was scheduled to commence on February 6, 2012, the parties agreed to settle the case titled *Patti R. Jarrell, as plenary guardian of J.D.S., an incapacitated person, Plaintiff, v. State of Florida, Agency for Persons With Disabilities, as successor agency of the Department of Children and Family Services*, for the sum of $1.15 million, and

WHEREAS, under the terms of the settlement agreement consented to by the parties, the Agency for Persons with Disabilities agreed to pay $200,000 to J.D.S., with the remaining $950,000 to be paid pursuant to a stipulated claim bill, and

WHEREAS, the agency has agreed to request an appropriation from the Legislature in the amount of $950,000, and

WHEREAS, the $950,000 stipulated settlement is sought through the submission of a 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 sum of $950,000 is appropriated from the General Revenue Fund to the Agency for Persons with Disabilities

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

for the relief of J.D.S. as compensation for the injuries and damages she sustained.

Section 3. The Chief Financial Officer shall draw a warrant upon funds of the Agency for Persons with Disabilities in the sum of $950,000 and shall pay such amount out of funds in the State Treasury to the AGED Pooled Special Needs Trust, which shall be managed and administered on behalf of J.D.S. by AGED, Inc., a nonprofit trust company.

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

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

IN RE:

SENATE BILL 28 – RELIEF OF J.D.S. BY THE AGENCY FOR PERSONS WITH DISABILITIES

SECOND AMENDED AFFIDAVIT OF ALEXANDER M. CLEM AND ALBERT BALIDO

STATE OF FLORIDA

COUNTY OF ORANGE

BEFORE ME, the undersigned authority, this day personally appeared Alexander M. Clem, Esq., attorney with Morgan & Morgan, P.A. and legal counsel for J.D.S. ("Claimant"), who, after being duly sworn, deposes and says:

1. Claimant has agreed to pay attorney's fees for legal services at the rate of 25% of the $950,000.00 for a total of $237,500.00. This amount shall be inclusive of lobbying fees payable to Albert Balido/Anfield Consulting and litigation costs.

2. Claimant has agreed to pay lobbyist fees for lobbying services at 5% (i.e., $47,500.00).

3. Attorney's fees as specified in paragraph 1 above herein include the lobbyist's, Albert Balido, fees specified in paragraph 2 above.

I, Albert Balido, agree with the foregoing statement regarding lobbyist's fees.

Dated: 3/9/17 Signature: _____
Albert Balido, lobbyist

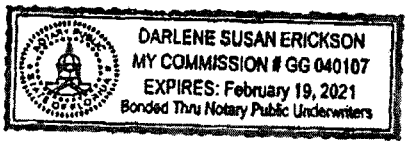
FURTHER AFFIANT SAYETH NOT.

_____
Alexander M. Clem

SWORN TO and subscribed before me this 9th day of March, 2017.

Notary Public, State of Florida at Large

MY COMMISSION EXPIRES:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6501 (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: Civil Justice & Claims Subcommittee

Representative Plakon offered the following:

Amendment

Remove lines 89-92 and insert:

the injuries and damages to J.D.S. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $237,000, the total amount paid for lobbying fees may not exceed $47,500, and no amount of the act may be paid for costs and other similar expenses relating to this claim.

STORAGE NAME: h6511.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 6511 - Representative Miller
Relief/L.T./Department of Children and Families

THIS IS AN UNCONTESTED CLAIM FOR $800,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR DAMAGES SUFFERED BY L.T. WHILE IN FOSTER CARE SUPERVISION. THE DEPARTMENT HAS ALREADY PAID $200,000.

FINDING OF FACT:

In August of 1995, L.T. was removed from her family by the Department of Children and Families ("DCF"), and placed with her maternal great uncle, Eddie Thomas, and his wife Vickie Thomas. DCF conducted a background check on Eddie Thomas revealing prior convictions for possession of narcotics equipment and larceny. Initial background checks did not reveal any prior history of violence, sex offenses or child abuse. DCF conducted a home study and determined that the Thomas's were capable of providing a safe home environment for L.T.

In September 1996, DCF was notified that on September 9, 1996, the State Attorney's Office filed an information charging Eddie Thomas with "lewd, lascivious, or indecent assault on a child under 16 years of age". After multiple "hung" juries, Eddie Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16.

Eddie Thomas was placed on five years' probation, required to attend sexual abuse counseling, and required to register as a sex offender. On May 9, 1997, only one month after Eddie Thomas entered his plea deal, DCF recommended, and the judge approved, an order allowing Eddie Thomas to return home and have unsupervised contact with the children. Despite knowing that L.T. would remain in the custody of a registered sex offender, DCF recommended to the court the permanent, long-term placement of L.T. in the Thomas home and further recommended that the children be removed from protective services, with no further supervision by the department. On March 3, 2000, the court approved L.T.'s long term placement with Mr. and Mrs. Thomas, and removed the children from continued protective services.

On March 24, 2003, an abuse hotline call to DCF reported that L.T. was being abused by Eddie Thomas and that both Mr. and Mrs. Thomas were using drugs in the children's presence. DCF conducted an investigation by interviewing the children in front of Mrs. Thomas, one of the alleged perpetrators of abuse. DCF further conducted background checks and drug screens which returned negative results concluding that L.T. was not at risk of abuse and closed the case.

On February 24, 2005, L.T. ran away from the Thomas home and was subsequently picked up by a Gadsden County Sherriff's deputy. She reported to the deputy that she had been exposed to extensive drug use in the Thomas home and had been physically, sexually, and emotionally abused by Mr. and Mrs. Thomas. The DCF child protection team concluded that "there are verified findings of sexual molestation of L.T. by her uncle, Eddie Thomas". L.T. was subsequently removed from the home and placed in the home of Vicki McSwain.

L.T. has been the subject of multiple Baker Act proceedings and suicide attempts, and has been in and out of inpatient and outpatient psychiatric facilities. L.T. has been diagnosed with depression, post-traumatic stress disorder and anxiety disorder as a direct and proximate result of the abuse she sustained while under DCF's supervision while being cared for by Mr. and Mrs. Thomas. L.T. will continue to require therapeutic treatment throughout the rest of her life.

As of today, L.T. still suffers from depression and receives treatment from a therapist. Her diagnosis includes Post Traumatic Stress Disorder. L.T. is now married and has two children. She is pursuing a degree from Florida State College at Jacksonville and wishes to pursue a career as a child therapist focusing on aiding child abuse victims.

LITIGATION HISTORY:

A lawsuit was brought on L.T.'s behalf by her guardian, Vicki McSwain, in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights

violations pursuant to 42 U.S.C. s. 1983. The civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County. The parties attended a court-ordered mediation and on June 21, 2010, the parties agreed to a mediated settlement under which L.T. would receive $1,000,000, of which $200,000 has been paid, and the balance of which would be submitted through a claim bill that the Department of Children and Families would agree to support. The remaining $800,000 would be paid from General Revenue funds and placed into a special needs trust.

CLAIMANT'S POSITION: Claimant asserts that the Department of Children and Families was negligent when it allowed L.T. to stay in the same home as Eddie Thomas, a registered sex offender.

RESPONDENT'S POSITION: The Department of Children and Families will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose obstruct or delay the passage of said claims bill in the amount of $800,000.

CONCLUSION OF LAW: I find that the Department breached its duty of care owed to L.T. DCF has a non-delegable duty to ensure the safety of its dependent children. DCF failed to exercise reasonable care, thereby breaching this duty, when DCF knowingly left L.T. in the home of a registered sex offender. It was foreseeable by the DCF that by leaving L.T. in the home that it was more than likely that she would be sexually abused. DCF's own experts concurred that "under no set of circumstances should DCF have left a child in the custody of Mr. Thomas". The culmination of DCF's actions, continuing to allow L.T. to be placed in the home and under the care of a registered sex offender, breached DCF's duty of care.

The breach of DCF's duty led to L.T. being raped in the Foster Home resulting in substantial emotional injury to L.T. The settled upon amount for damages is reasonable under the circumstances. It is likely a jury would have awarded a greater amount.

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 10% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $2,000.

LEGISLATIVE HISTORY: House Bill 3531 by Representative Miller and Senate Bill 26 by Senator Negron were filed during the 2016 Legislative Session. The Senate Bill was heard in two committees but died in Senate Appropriations. The House Bill died in the Civil Justice Subcommittee.

House Bill 3551 by Representative Miller and Senate Bill 40 by

Senator Ring were field during the 2015 Legislative Session. The Senate Bill was heard in two committees but died in Senate Appropriations Committee. The House Bill died in the House Civil Justice Subcommittee.

HB 3525 by Representative Pafford and SB 46 by Senator Ring were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

HB 541 by Representative Caldwell and SB 24 by Senator Ring were filed during the 2013 Legislative Session. Neither bill was ever heard in any committee.

HB 1161 by Representative Nehr and SB 18 by Senator Ring was filed during the 2012 Legislative Session. Neither bill was ever heard in any committee.

SB 28 by Senator Ring was filed during the 2011 Legislative Session. The bill was never heard in any committee.

RECOMMENDATIONS: I respectfully recommend that HB 6511 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Miller, M., House Sponsor
Senator Benacquisto, Senate Sponsor
Mary Kraemer, Senate Special Master

A bill to be entitled

An act for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing legislative intent regarding certain Medicaid liens; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on August 15, 1995, the Department of Children and Families removed 14-month-old L.T. and her infant brother from their mother's custody because they were not receiving adequate care, and

WHEREAS, the Department of Children and Families temporarily placed the children into the home of the children's great aunt and uncle, Vicki and Eddie Thomas, and

WHEREAS, a background check that was conducted shortly after L.T. and her brother were placed in the Thomases' home indicated that Mr. Thomas had once been convicted of a misdemeanor and possession of narcotics equipment, and

WHEREAS, the background check also revealed that Ms. Thomas had been charged with, but apparently not convicted of, larceny, and

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

WHEREAS, the background check did not reveal any prior history of violence, sex offenses, or child abuse, and

WHEREAS, after conducting a home study, interviews, and an investigation, the Department of Children and Families concluded that the Thomases were capable of providing a safe home for L.T. and her brother and approved the placement, and

WHEREAS, on August 21, 1996, approximately 1 year after L.T. and her brother had been placed in the Thomases' home, Mr. Thomas was charged with committing a lewd and lascivious act on a child under the age of 16, and

WHEREAS, the alleged victim was the 13-year-old daughter of a woman with whom Mr. Thomas was having an extramarital affair, and the state later amended the charge to add a count for sexual battery on a child by a familial or custodial authority, and

WHEREAS, after two hung jury trials in January and March of 1997, Mr. Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16, and

WHEREAS, Mr. Thomas was sentenced to 5 years' probation and required to attend sex offender classes and register as a sex offender, and

WHEREAS, on May 9, 1997, 1 month after Mr. Thomas entered his plea and was convicted of a child sex crime, the Department of Children and Families recommended, and the judge approved, an order allowing Mr. Thomas to return home and have unsupervised

contact with the children, and

WHEREAS, although the policies of the Department of Children and Families barred Mr. Thomas from being able to adopt a child because of his conviction for a sex act with a child and his sex offender status, the policies did not prohibit the continued placement of L.T. and her brother in the Thomases' home, and so the children remained with the Thomases, and

WHEREAS, the Department of Children and Families subsequently recommended to the court the permanent, long-term placement of L.T. and her brother in the Thomases' home and further recommended that the children be removed from protective services, with no further supervision by the department, and

WHEREAS, on March 3, 2000, following the recommendation of the Department of Children and Families, the court approved L.T. and her brother's long-term placement with the Thomases and removed the children from continued protective services, and

WHEREAS, on March 24, 2003, an abuse hotline call to the Department of Children and Families reported that L.T. was being abused by Mr. Thomas and that both Mr. and Ms. Thomas were using drugs in the children's presence, and

WHEREAS, the next day, a child protective investigator for the Department of Children and Families interviewed L.T. and her brother while in the presence of Ms. Thomas, and neither child was asked to be interviewed outside Ms. Thomas's presence, and

WHEREAS, L.T. and her brother denied the abuse allegations

while Ms. Thomas watched and listened to them, and

WHEREAS, results from new background checks and drug screens were negative, and the Department of Children and Families concluded that L.T. and her brother were not at risk of abuse and closed the case, and

WHEREAS, on February 24, 2005, L.T. ran away from the Thomases' home and was found by law enforcement officers, and

WHEREAS, L.T. ran away from home because she had been repeatedly sexually and physically abused by Mr. Thomas and physically, verbally, and emotionally abused for years by Ms. Thomas, and

WHEREAS, L.T. and her brother were finally removed from the Thomases' home in 2005, and

WHEREAS, during her adolescent and teenaged years, L.T. was the subject of repeated Baker Act proceedings and suicide attempts and was in and out of inpatient and outpatient psychiatric facilities, and

WHEREAS, L.T. has been seen and treated by physicians and mental health care professionals who have diagnosed her with depression, posttraumatic stress disorder, anxiety disorder, and other disorders attributed to her trauma, and

WHEREAS, although L.T. struggles with the symptoms of depression, posttraumatic stress disorder, and anxiety disorder, she is now 22 years of age, is married to a Naval Petty Officer who is stationed at Naval Air Station Jacksonville, is the

mother of 2 very young daughters, and attends Florida State College at Jacksonville as she works toward her goal of becoming a mental health care professional specializing in treating children who have been abused, neglected, or traumatized, and

WHEREAS, a lawsuit was brought on L.T.'s behalf in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights violations pursuant to 42 U.S.C. s. 1983, and

WHEREAS, the civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County, and

WHEREAS, the parties attended a court-ordered mediation and on June 21, 2010, agreed to a mediated settlement under which L.T. will receive $1 million, of which $200,000 has been paid, and the claim for the remaining $800,000 is being submitted through this bill, which the Department of Children and Families agrees to support, 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. There is appropriated from the General Revenue Fund to the Department of Children and Families the sum of

$800,000 for the relief of L.T. for the injuries and damages she sustained. After payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim; outstanding medical liens other than Medicaid liens; and other immediate needs, the remaining funds shall be placed into a trust created for the exclusive use and benefit of L.T. The trust shall be administered by an institutional trustee of L.T.'s choosing and shall terminate upon L.T.'s 25th birthday, at which time the remaining principal and interest shall revert to L.T. or, if she predeceases the termination of the trust, to her heirs, beneficiaries, or estate.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of L.T. in the sum of $800,000 upon funds in the State Treasury to the credit of the Department of Children and Families, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury not otherwise appropriated.

Section 4. It is the intent of the Legislature that any and all Medicaid liens arising from the treatment and care of the injuries and damages to L.T. described in this act shall be waived or paid by the state.

Section 5. The amount awarded pursuant to the waiver of sovereign immunity 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 the preamble to this act which resulted in the injuries and damages to L.T. The total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 6. This act shall take effect upon becoming a law.

HB 6511
Relating to Relief/L.T./Department of Children and Families

AFFIDAVIT OF MATHEW FORREST

STATE OF FLORIDA)
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, MATHEW FORREST, who being first duly sworn, deposes and says:

1. My name is Mathew Forrest. I am over the age of twenty-one years and am of sound mine.

2. Ballard Partners and I are registered as lobbyists on behalf of the claimant.

3. My firm is under contract to receive a 3 1/3% fee from the recovery of the claim bill in this matter.

4. Our contingency fee is 3 1/3% of the total recovery of the claim bill.

5. Our cost for expenses are $495.00 to be recovered from the claim bill.

6. All expenses are external costs.

I declare that I have read the foregoing affidavit and that the facts stated in it are believed to be true.

FURTHER AFFIANT SAYETH NOT.

Mathew Forrest

The foregoing instrument was acknowledged before me this 15th day of March, 2017, by Mathew Forrest, **who is personally known to me** or who has produced N/A as identification and who did/did not take an oath.

Notary Signature,

Notary Public, State of Florida (Seal)

SHANNA KAYE CRAWLEY
Commission # FF 161
Expires January 4, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

AFFIDAVIT OF MATTHEW BLAIR

STATE OF FLORIDA)

COUNTY OF PASCO)

ON THIS DAY, before me, the undersigned authority, personally appeared, MATTHEW BLAIR, who, after being duly sworn, deposes and says:

1. My name is Matthew Blair, I am an employee of Corcoran & Johnston a government relations firm retained by L.T.

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

3. Corcoran & Johnston has been retained as consultants/lobbyists in regard to the consideration Senate Bill 38 and HB 6511 for the relief of L.T. by the Florida Department of Children and Families.

4. Corcoran & Johnston will receive 3 1/3% in fees on this claims bill.

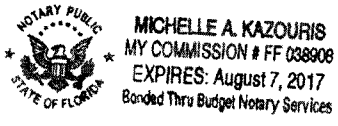
5. There are no additional costs of Corcoran & Johnston that are expected to be reimbursed from any recovery obtained through the passage of Senate Bill 38 and HB 6511 for the relief of L.T. by the Florida Department of Children and Families.

Further Affiant Sayeth Naught.

MATTHEW BLAIR
Corcoran & Johnston

STATE OF FLORIDA
COUNTY OF Pasco

The foregoing Affidavit was acknowledged before me this 15th day of March, 2017, by Matthew Blair, who is personally known to me.



Signature of Notary Public

Michelle A. KAZOURIS

Printed Name of Notary Public

HB 6511
IN RELIEF OF L.T. BY STATE OF FLORIDA/

AMENDED AFFIDAVIT AND VERIFIED STATEMENT OF LANCE BLOCK

STATE OF FLORIDA)

COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, LANCE BLOCK, who being first duly sworn, deposes and says:

1. My name is Lance Block.

2. I am a member of the Florida Bar and am registered as a lobbyist on behalf of L.T., the claimant in this matter. Additionally, I represented L.T. as an attorney in the underlying case. I waived my rights to an attorney fee from the sovereign immunity payment to benefit L.T.

3. Attorney fees are 25 percent pursuant to Fla. Stat. 768.28(8). See affidavit of attorneys Haas and Filson. My firm is under contract to receive a 10 percent fee of the total claim bill award for legal and lobbying services to be paid from the 25 percent attorney fee pursuant to Fla. Stat. 768.28(8). Attorneys Haas and Filson shall be paid the remaining 15 percent fee from the attorney fee award.

4. Of the 10 percent to be paid to my firm, Corcoran & Johnson firm shall receive a 3 1/3 percent lobbying fee, Ballard Partners shall receive 3 1/3 percent, and my firm shall receive 3 1/3 percent.

5. Therefore, the total of all attorney and lobbying fees shall be limited to 25 percent of the total claim bill recovery.

6. Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Lance Block

Date 3/15/17

Affiant has verified this affidavit without notarization as authorized by § 92.525, Fla. Stat. (1986). *See State v. Shearer, 628 So.2d 1102 (Fla. 1993); Dodrill v. Infe, Inc.*, 837 So.2d 1187 (Fla. 4th DCA 2003); *Goines v. State*, 691 So.2d 593 (Fla. 1st DCA 1997).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6511 (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: Civil Justice & Claims Subcommittee

Representative Miller, M. offered the following:

Amendment

Remove lines 152-155 and insert:

which resulted in the injuries and damages to L.T. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $120,000, the total amount paid for lobbyist fees may not exceed $80,000, and no amount may be paid for costs and other similar expenses relating to this claim.

STORAGE NAME: h6517.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 6517 - Representative Alexander
Relief/Reginald Jackson/City of Lakeland

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $312,500 AGAINST THE CITY OF LAKELAND FOR INJURIES AND DAMAGES SUFFERED BY REGINALD JACKSON WHEN HE WAS SHOT BY A CITY OF LAKELAND POLICE OFFICER ON OCTOBER 18, 2001.

FINDING OF FACT:

In the late night of October 18, 2001, Reginald "Reggie" Jackson was driving down West Memorial Boulevard in Lakeland when Lakeland Police Officer Michael Cochran pulled him over because his tag was invalid. His tag came back invalid because Officer Cochran made a mistake when he input the tag number into his computer. By substituting a "V" for an "N," Officer Cochran ran a tag that, apparently, didn't exist. After pulling Mr. Jackson over, Officer Cochran reran the tag at Mr. Jackson's request and found that it was in fact valid. Nevertheless, he gave Mr. Jackson a ticket for not having a proper child restraint device for his girlfriend's 18-month-old son, who was sitting next to him on the front bench seat. Officer Cochran instructed Mr. Jackson to properly restrain the child before traveling any further, even though it was midnight and Mr. Jackson told him that he only had a few more blocks to travel.

From here, the testimony of the various witnesses diverges. Mr. Jackson claims that he tried to use the payphone in the parking lot of the Church's Chicken where Officer Cochran originally pulled him over, but that phone was not working. He saw another payphone less than a block away and drove over to use it. As he was attempting to use the payphone, Officer Cochran pulled up behind his car and startled him when told him he was under arrest. Mr. Jackson, startled by the Officer, ran to his car, started it up, and put it in reverse. Seeing that he couldn't back up because of Officer Cochran's patrol car, he put his car in drive and pumped his brakes twice, which made the car bounce or lurch forward twice. When he pumped the brakes the second time, Officer Cochran fired his weapon through the windshield, hitting Mr. Jackson in his neck, rendering him unconscious.

Officer Cochran describes the first meeting of the two gentlemen as somewhat tense. Mr. Jackson, understandably upset that Officer Cochran pulled him over for what turned out to be a mistake, felt that he had been racially profiled, and responded by challenging Officer Cochran. The first challenge—that his tag was actually valid—turned in his favor, while the second challenge—that Officer Cochran couldn't give him a ticket for the failure to properly restrain the child—did not. After initially refusing to sign the ticket, Mr. Jackson acquiesced. Officer Cochran left the scene and traveled a short distance down the road where he parked his patrol car where Mr. Jackson cannot see it and waited to see if Mr. Jackson would disobey his order.

From Officer Cochran's perspective, Mr. Jackson directly disobeyed his order and set out to drive the rest of the way home without properly restraining the young child. When Mr. Jackson saw Officer Cochran's vehicle in a nearby alleyway, he quickly darted into the parking lot at The Blue Bar. Impliedly, Officer Cochran felt that Mr. Jackson's protest that he was just driving over to use the phone was a ruse to cover up the fact that he had intended to drive home in direct contradiction to his order. No one but Mr. Jackson will ever know if that was true or not.

The separate eyewitness accounts of the few seconds between when Officer Cochran pulled up to arrest Mr. Jackson and when Officer Cochran shot Mr. Jackson coalesce to form a cohesive story with only a few divergences. Officer Cochran pulled his patrol car up behind Mr. Jackson's car so as to block a rearward escape. Mr. Jackson was at the payphone when Officer Cochran shouted at him, "you're under arrest!" Some say that Mr. Jackson immediately ran around the payphone and back to his car, while others claim that he turned and started walking toward Officer Cochran, who then drew his firearm. Officer Cochran doesn't remember exactly when he drew his firearm, but claims it was shortly after Mr. Jackson turned and

fled. Officer Cochran states that he drew his firearm when he saw that Mr. Jackson was headed back to his car because he hadn't searched the car and didn't know if he was going for a weapon or not. Mr. Jackson got in his car and put it in reverse. Officer Cochran was now positioned at the driver-side fender/tire where he was right up against the car with his hand on the hood shouting at Mr. Jackson to stop or he would shoot him. After coasting in reverse for a short period with Officer Cochran running with the car, Mr. Jackson put the car in drive and turned the wheels toward Officer Cochran to try to get back onto West Memorial Boulevard. At this point, the car lurched forward twice as Mr. Jackson pumped the brakes. Officer Cochran believed that he was in danger when he felt the car accelerate. Officer Shrader, who pulled up right as the episode was unfolding, observed the events from his patrol car on West Memorial Boulevard. He saw that Officer Cochran was in danger because as the car turned and was pushing him closer to a storm drain, which made the drop off from the sidewalk to the street a more precarious physical presence. He had decided to ram Mr. Jackson's car back into the parking lot and away from Officer Cochran when the car lurched for the second time. Officer Cochran reacted by shooting through the windshield and hitting Mr. Jackson on the left side of his neck. The shot lodged in the skin at the exit wound on his right shoulder and rendered him unconscious.

Mr. Jackson's car then idled across West Memorial Boulevard, coming to rest in the parking lot of a seafood market across the street. Officer Shrader followed the car over to the parking lot and directed Officer Cochran to get the child out of the car while he secured Mr. Jackson and called for emergency medical services.

Mr. Jackson was treated at Lakeland Regional Medical Center and taken to the Polk County Jail. He was charged with attempted murder of a police officer but the charges were later dropped.

LITIGATION HISTORY:

On November 12, 2008, Mr. Jackson filed a lawsuit against the City of Lakeland Police Department in the circuit court of the Tenth Judicial Circuit in and for Polk County. After a three day trial held in February 2009, a jury found the City of Lakeland 75% at fault and Mr. Jackson 25% at fault. The jury awarded a verdict in the amount of $550,000 for past and future pain and suffering. The jury verdict was reduced in accordance with Mr. Jackson's negligence and a final judgment was entered in for $412,500. The City of Lakeland has paid the statutory cap of $100,000.

CLAIMANT'S POSITION:

Claimant argues Officer Cochran breached the duty of care he owed to Mr. Jackson by negligently handling and discharging his firearm in his attempt to stop and/or arrest Mr. Jackson.

RESPONDENT'S POSITION: The City of Lakeland argues Officer Cochran's actions were reasonable.

CONCLUSION OF LAW:

The legislature is not bound by the jury's findings of fact. A claim bill is an act of legislative grace in which the legislature allows a citizen to collect damages where they would normally be barred by common law sovereign immunity. The legislature can give the jury's findings of fact weight in making its own determination, but the legislature should conduct its own inquiry of the facts and make its own determination of the facts and law at issue. It is my opinion that the jury was mistaken in this case.

The issue here is whether or not Officer Cochran's use of his firearm constituted negligence. The Florida Supreme Court has said, regarding an officer's negligent use of his or her firearm:

> 'Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist of either doing something that a reasonably careful person would [not][1] do under like circumstances or in the failure to do that which a reasonably careful person would do under like circumstances. In determining this issue, you should consider whether the force used was that which reasonably prudent police officers would have used based on their knowledge of the situation in this case.' It [i]s up to the jury to determine whether the police officers acted as reasonable men.[2]

The current Lakeland Police Department General Order 16 contains guidance for how and when officers should use deadly force. At 16-2.3, the General Order states that an officer is authorized to use lethal force when he or she believes it reasonably necessary "to defend [his or herself] or another person who is in imminent danger of serious physical injury, when making an arrest." Officer Cochran claimed that he feared that Mr. Jackson was going to hit him with the car, which

[1] The original text reads, "would do," but the sentence only makes sense if the court mistakenly left out the word, "not."
[2] *Cleveland v. City of Miami*, 263 So. 2d 573, 578 (Fla. 1972).

could have caused serious bodily injury or death. That belief seems reasonable given his testimony that the car moved forward in a smooth manner until it accelerated and he shot. The eyewitness testimony confirms that factual situation. All the eyewitnesses saw the car bounce or lurch forward at least twice before Officer Cochran shot. Second, "Prior to the use of lethal force, authorized members will, when feasible, identify themselves as police officers and order the subject to stop the activity which authorizes the use of lethal force." Gen. Order 16-2.3(B). No one disputes that Officer Cochran told Mr. Jackson he was under arrest and repeatedly commanded that he stop the car. General Order 16-2.9(B) presents a problem for Officer Cochran. It states, "Sworn members are expected to use care with respect to the direction a firearm is pointed, and take into consideration the potential to cause serious injury or death to innocent parties who may be in the line of fire." Officer Cochran did point the firearm at Mr. Jackson while there was an innocent 18-month-old child sitting right next to him. General Order 16-2.10(B)(3) states, "Sworn members shall not discharge a firearm [a]t a moving vehicle unless the member reasonably believes it is necessary to do so in order to protect themselves or others from death or great bodily harm." Here, we are back to the original question. Was it objectively reasonable for Officer Cochran to believe that he was in danger of death or serious bodily injury? The answer seems clearly to be, yes.

The State Attorney, in a letter laying out why his office was declining to charge Officer Cochran criminally, stated that Officer Cochran's use of his firearm was reasonable. State Attorney Jerry Hill premised this conclusion on the fact that Mr. Jackson's actions—making the car lurch toward the officer and turning the wheels toward him—were sufficient to give Officer Jackson a reasonable fear that his life was in imminent danger. Whether or not Officer Cochran put himself in a dangerous position is not important for determining whether or not he negligently discharged his firearm. The question of negligence is whether or not Officer Cochran's actions were objectively reasonable given the situation he found himself in.

It should be mentioned that the claimants put emphasis on *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1261-65 (11th Cir. 2001), to support the idea that there is a specific legal claim for the negligent use of a firearm. Though federal district and circuit court cases are persuasive, they are not controlling in Florida's state courts. There is no reason to question the validity of this legal claim. As mentioned above, in *Cleveland*, the Florida Supreme Court implicitly acknowledged the existence of a legal claim that a law enforcement officer negligently discharged his or her firearm. *Lewis*, though, makes clear that this claim is distinct from the more common claim of an excessive use of force. Some of Mr. Jackson's attorney's arguments in the 2009 claim bill hearing conflated these two

legal claims. It should be made clear that this case does not hinge on whether or not Officer Cochran's decision to use deadly force was correct. In fact, the claim is that, in using deadly force, Officer Cochran made some negligent action. Normally, this claim would come about when an innocent bystander was hit by a law enforcement officer's gun fire.

Damages
The jury verdict was solely for past and future pain and suffering. Nevertheless, Mr. Jackson argues for permanent physical and mental damages. Claimant states that prolonged strenuous activity can lead to numbness in his fingers and tightening in his shoulder joint. However, the claimant maintains a job almost identical to the one he had before being shot, and he makes a very similar wage. His psychologist has reported that any mental and emotional problems he had due to the shooting, e.g., PTSD, are all in remission at this point.

Since I find that Officer Cochran was not negligent in his actions, the $100,000 paid to Mr. Jackson is a graceful and sufficient amount for any and all of his damages. However, the Legislature is not bound by this report, jury verdicts, or settlement agreements. Any claim bill passed is an act of legislative grace.[3] The Legislature may feel called under a moral obligation to pass this claim bill to reconcile the actions taken place on October 18, 2001.

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 10% of his attorney fee to the lobbyist. There are no outstanding costs.

LEGISLATIVE HISTORY: This is the first time this claim has been filed in the House.

This claim was first filed in the 2010 legislative session as Senate Bill 66 by Senator Smith and died in the Senate Special Master on Claim Bills. Additionally, in the 2012 legislative session, the claim was filed as Senate Bill 48 by Senator Margolis. It was never heard in a committee and died in the Senate Judiciary Committee.

RECOMMENDATIONS: For the reasons set forth above, I respectfully recommend that House Bill 6517 be reported **UNFAVORABLY**

Respectfully submitted,

[3] Gamble v. Wells, 450 So. 2d 850, 853 (Fla. 1984).

PARKER AZIZ

House Special Master

cc: Representative Alexander, House Sponsor
Senator Rouson, Senate Sponsor
Tom Cibula, Senate Special Master

A bill to be entitled

An act for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing legislative intent regarding certain Medicaid liens; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on August 15, 1995, the Department of Children and Families removed 14-month-old L.T. and her infant brother from their mother's custody because they were not receiving adequate care, and

WHEREAS, the Department of Children and Families temporarily placed the children into the home of the children's great aunt and uncle, Vicki and Eddie Thomas, and

WHEREAS, a background check that was conducted shortly after L.T. and her brother were placed in the Thomases' home indicated that Mr. Thomas had once been convicted of a misdemeanor and possession of narcotics equipment, and

WHEREAS, the background check also revealed that Ms. Thomas had been charged with, but apparently not convicted of, larceny, and

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

WHEREAS, the background check did not reveal any prior history of violence, sex offenses, or child abuse, and

WHEREAS, after conducting a home study, interviews, and an investigation, the Department of Children and Families concluded that the Thomases were capable of providing a safe home for L.T. and her brother and approved the placement, and

WHEREAS, on August 21, 1996, approximately 1 year after L.T. and her brother had been placed in the Thomases' home, Mr. Thomas was charged with committing a lewd and lascivious act on a child under the age of 16, and

WHEREAS, the alleged victim was the 13-year-old daughter of a woman with whom Mr. Thomas was having an extramarital affair, and the state later amended the charge to add a count for sexual battery on a child by a familial or custodial authority, and

WHEREAS, after two hung jury trials in January and March of 1997, Mr. Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16, and

WHEREAS, Mr. Thomas was sentenced to 5 years' probation and required to attend sex offender classes and register as a sex offender, and

WHEREAS, on May 9, 1997, 1 month after Mr. Thomas entered his plea and was convicted of a child sex crime, the Department of Children and Families recommended, and the judge approved, an order allowing Mr. Thomas to return home and have unsupervised

contact with the children, and

WHEREAS, although the policies of the Department of Children and Families barred Mr. Thomas from being able to adopt a child because of his conviction for a sex act with a child and his sex offender status, the policies did not prohibit the continued placement of L.T. and her brother in the Thomases' home, and so the children remained with the Thomases, and

WHEREAS, the Department of Children and Families subsequently recommended to the court the permanent, long-term placement of L.T. and her brother in the Thomases' home and further recommended that the children be removed from protective services, with no further supervision by the department, and

WHEREAS, on March 3, 2000, following the recommendation of the Department of Children and Families, the court approved L.T. and her brother's long-term placement with the Thomases and removed the children from continued protective services, and

WHEREAS, on March 24, 2003, an abuse hotline call to the Department of Children and Families reported that L.T. was being abused by Mr. Thomas and that both Mr. and Ms. Thomas were using drugs in the children's presence, and

WHEREAS, the next day, a child protective investigator for the Department of Children and Families interviewed L.T. and her brother while in the presence of Ms. Thomas, and neither child was asked to be interviewed outside Ms. Thomas's presence, and

WHEREAS, L.T. and her brother denied the abuse allegations

while Ms. Thomas watched and listened to them, and

WHEREAS, results from new background checks and drug screens were negative, and the Department of Children and Families concluded that L.T. and her brother were not at risk of abuse and closed the case, and

WHEREAS, on February 24, 2005, L.T. ran away from the Thomases' home and was found by law enforcement officers, and

WHEREAS, L.T. ran away from home because she had been repeatedly sexually and physically abused by Mr. Thomas and physically, verbally, and emotionally abused for years by Ms. Thomas, and

WHEREAS, L.T. and her brother were finally removed from the Thomases' home in 2005, and

WHEREAS, during her adolescent and teenaged years, L.T. was the subject of repeated Baker Act proceedings and suicide attempts and was in and out of inpatient and outpatient psychiatric facilities, and

WHEREAS, L.T. has been seen and treated by physicians and mental health care professionals who have diagnosed her with depression, posttraumatic stress disorder, anxiety disorder, and other disorders attributed to her trauma, and

WHEREAS, although L.T. struggles with the symptoms of depression, posttraumatic stress disorder, and anxiety disorder, she is now 22 years of age, is married to a Naval Petty Officer who is stationed at Naval Air Station Jacksonville, is the

mother of 2 very young daughters, and attends Florida State College at Jacksonville as she works toward her goal of becoming a mental health care professional specializing in treating children who have been abused, neglected, or traumatized, and

WHEREAS, a lawsuit was brought on L.T.'s behalf in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights violations pursuant to 42 U.S.C. s. 1983, and

WHEREAS, the civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County, and

WHEREAS, the parties attended a court-ordered mediation and on June 21, 2010, agreed to a mediated settlement under which L.T. will receive $1 million, of which $200,000 has been paid, and the claim for the remaining $800,000 is being submitted through this bill, which the Department of Children and Families agrees to support, 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. There is appropriated from the General Revenue Fund to the Department of Children and Families the sum of

$800,000 for the relief of L.T. for the injuries and damages she sustained. After payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim; outstanding medical liens other than Medicaid liens; and other immediate needs, the remaining funds shall be placed into a trust created for the exclusive use and benefit of L.T. The trust shall be administered by an institutional trustee of L.T.'s choosing and shall terminate upon L.T.'s 25th birthday, at which time the remaining principal and interest shall revert to L.T. or, if she predeceases the termination of the trust, to her heirs, beneficiaries, or estate.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of L.T. in the sum of $800,000 upon funds in the State Treasury to the credit of the Department of Children and Families, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury not otherwise appropriated.

Section 4. It is the intent of the Legislature that any and all Medicaid liens arising from the treatment and care of the injuries and damages to L.T. described in this act shall be waived or paid by the state.

Section 5. The amount awarded pursuant to the waiver of sovereign immunity 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

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

the factual situation described in the preamble to this act which resulted in the injuries and damages to L.T. The total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 6. This act shall take effect upon becoming a law.

ATTORNEYS FEES AFFIDAVIT

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority to take oath this day, personally appeared Sean Pittman having being duly sworn according to the law, do hereby declare the following:

1. Affiant is the lobbyist for claimant Reginald Jackson with the firm of Pittman Law Group.

2. Affiant states that he has incurred and is obligated to the following lobbying fees in a civil action against the City of Lakeland on behalf of Reginald Jackson.

a. Pittman Law Group, PL	10% of any attorney fees recovered by Parks & Crump, LLC in regards to the above-referenced cause of action.

3. The lobbying fees are included in the attorneys fees and will be deducted from the amount awarded by the legislature.

FURTHER AFFIANT SAYETH NAUGHT.
Signed and delivered this 9th day of March, 2017.

Sean Pittman for
Pittman Law Group

STATE OF FLORIDA
COUNTY OF LEON

SWORN TO and SUBSCRIBED before me this 9th day of March, 2017 by Sean Pittman, who is personally known to me.

DANA DUDLEY
Commission # GG 019857
Expires August 10, 2020
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public
Dana Dudley

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6517 (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: Civil Justice & Claims Subcommittee

Representative Alexander offered the following:

Amendment

Remove lines 81-84 and insert:

in the injury to Reginald Jackson. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $70,312.50, the total amount paid for lobbying fees may not exceed $7,812.50, and no amount of the act may be paid for costs and other similar expenses relating to this claim.

STORAGE NAME: h6519.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 6519 - Representative Cortes
Relief/Amie Draiemann O'Brien, Hailey Morgan Stephenson, and Christian Darby Stephenson II/Department of Transportation

THIS IS A CLAIM FOR $1,116,940 PAYABLE TO AMIE STEPHENSON FOR NEGLIGENCE OF THE DEPARTMENT OF TRANSPORTATION (DOT) IN FAILING TO MAINTAIN A DRAIN. THE CLAIM IS SUPPORTED BY A JURY VERDICT WHICH ASSESSED 36% OF THE FAULT TO DOT FOR THE DEATH OF CHRISTIAN DARBY STEPHENSON WHILE DRIVING HIS TANKER TRUCK OVER THE HART BRIDGE EXPRESSWAY IN JACKSONVILLE.

FINDING OF FACT:

The Road

The Hart Bridge Expressway is a four-lane, divided roadway which makes a sharp curve to the left at the base of the bridge in the eastbound lanes. There is no shoulder on the left side of the roadway, and the eastbound and westbound lanes are separated by a concrete median. To the right is an exit for Atlantic Boulevard (State Road 10). Between the two expressway lanes and the exit is an area called the "gore," which is a striped 'safety zone' which was formerly used for a toll plaza. The toll booth has been removed and the area is flat and triangular-shaped with stripes.

The drain in question is a curb inlet located in the curve on the

left side of the left lane. The drain is part of a catch basin covered with a metal grate that is approximately 3 feet long, 18 – 24 inches wide, and 6 inches thick. Below the grate is a basin that is approximately 5 feet deep. A sump pump is located approximately 18-24 inches from the bottom of the basin, which drains into an 18-inch pipe. This drain is one of 11,786 maintained by the Florida Department of Transportation (DOT) in the Jacksonville maintenance area.

The particular drain in question was clogged, which caused ponding of water in the left hand lane of the east bound lane of the expressway. The pond measured 269 feet long, 11 feet wide, and 8 inches deep at the curb when measured by the Jacksonville Sheriff's Officer who investigated the crash. The Officer also reported that the pond was larger at the time of the crash and had receded prior to his investigation. The ponding water could not be seen by vehicles traveling down the bridge.

Alex Slaughter, the DOT maintenance officer responsible for clearing the clog, testified that it took a vacuum truck and three men two hours to remove the debris in the basin. Mr. Slaughter believed that the debris had been in the basin for approximately 6-8 months. He also found that the drain pipe was obstructed by a large piece of rubberized plastic which he couldn't describe and which was lost prior to trial.

DOT stipulates that it has an operational level duty to maintain the expressway and the drain. This duty was implemented by having a maintenance officer on call 24 hours a day to respond to maintenance requests from law enforcement, citizens, and other DOT employees. DOT also monitors accident reports to ascertain whether maintenance is needed at particular accident sites (either as a cause of an accident or as a result of an accident.) No evidence was presented that DOT had actual knowledge of this clogged drain prior to the accident.

Evidence was presented, however, that DOT should have known about the ponding due to the clogged drain at base of the Hart Bridge Expressway. There had been two accidents at the same site involving vehicles that hydroplaned in a pool of water at the same spot (one in July 2000, and one in June 1999). Witness testimony was also submitted attesting that water pooled at the spot in question at the base of the Hart Bridge if it rained for more than 30-45 minutes.

The Accident

On August 12, 2000, Christian Darby Stephenson was traveling in his tanker truck across the Hart Bridge Expressway at approximately 6 p.m. He worked for Infinger Transportation and had just filled the tanker with 8,799 gallons of fuel. It had been raining and the road was wet.

Ahead of Mr. Stephenson, a blue Saturn driven by Shana

Williams drove down the bridge, into the ponding water and hydroplaned. She hit the left guardrail and then pulled into the safety zone, or gore. Behind her a Channel 12 news truck driven by Doug Lockwood also drove into the ponding water, hydroplaned, hit the guardrail, and pulled into the safety zone and stopped. Lieutenant Vanaman was alerted to the two accidents, and arrived at the scene and pulled up in the safety zone. The next car over the bridge was a black jeep driven by Justin Keiffer, with Christian Stephenson's tanker truck behind the jeep. The jeep hit the ponding water in the left lane and hydroplaned but did not hit the wall. The jeep pulled through the right lane attempting to get into the safety zone.

At this point, Christian Stephenson was faced with running into the jeep that was changing lanes in front of him, running over the cars and people parked in the safety zone, or trying to make the exit onto Atlantic Boulevard. He chose the latter.

In an effort to make the exit, Christian Stephenson swerved suddenly to the right, skidded across the safety zone, swerved back to the left to avoid leaving the roadway, jackknifed, struck the guardrail, overturned, and exploded. Christian Stephenson died in the explosion.

The posted speed limit on the Hart Bridge Expressway was 45 miles per hour. Officer Vanaman, who was the officer stopped in the safety zone and who witnessed this accident, testified that the tanker was going 55-60 m.p.h., and traveling way too fast for the rainy conditions. Mr. Lockwood who was in the Channel 12 vehicle in the safety zone, testified that the tanker was going 60 m.p.h. A witness who was traveling behind Mr. Stephenson, Mr. Wagner, testified that Stephenson was going between 55-60 m.p.h. The experts testified that Stephenson was traveling anywhere ranging from a low of 46 m.p.h. (claimant's expert, Charles Benedict) to a high of 70 m.p.h. (respondent's expert, Richard Ryabik). In any case, it is clear that Stephenson's speed exceeded both the posted speed limit of 45 m.p.h. and a safe speed based on the rainy conditions coming down a bridge.

There was also conflicting testimony offered by the respondent that Stephenson was following the jeep too closely. However, the driver of the jeep testified that he wasn't aware that any vehicle was behind him, much less a 78,000 pound tanker truck.

The Claimant

At the time of the accident, Christian Stephenson was 29 years old and had been married to Amie for 5 years. Together they had a two-year-old daughter, Hailey, and Amie was 8 months pregnant with their son, Christian. He was working for Infinger Transportation, making short hauls in the tanker truck, and had been employed by Infinger for two years. Amie Stephenson

remarried five years after the accident, and has a daughter with her new husband, Kevin O'Brien. The Jacksonville Times Union newspaper hailed Mr. Stephenson a hero for preventing his tanker from hitting and likely killing the eight other people at the scene.

LITIGATION HISTORY:

A wrongful death suit was filed in the Fourth Circuit in and for Duval County. In addition to DOT, the following entities were sued:

- Multimedia Holdings Corp. d/b/a WTLV-TV and Doug Lockwood (the driver with Channel 12). Summary judgment was entered in favor of Multimedia and Lockwood, and fees and costs ($5,148) were assessed against the plaintiff, which order was appealed. The order was affirmed on appeal and remains outstanding.
- Shana Williams (driver of the first Saturn that parked in the safety zone) and Peggy Hicks (owner of the Williams' vehicle). Summary judgment was entered in favor of Williams and Hicks. A final judgment was entered awarding fees ($21,599) and costs ($1,887.07) to Williams and Hicks, which order was appealed and affirmed on appeal. The amount remains outstanding.
- City of Jacksonville. Summary judgment was entered for the City of Jacksonville, who settled after judgment for $10,000.
- Jason Keiffer (driver of the jeep in front of the Stephenson tanker). Summary judgment was entered in favor of Keiffer, who settled after the judgment for $10,000.

The suit proceeded against DOT. After a two-week trial, the jury assigned 64% of the negligence to Christian Stephenson and 36% of the negligence to DOT. The jury determined total damages to be $3,589,000.

Final judgment was entered against DOT for $1,292,040 on April 21, 2005. Plaintiff's motions for new trial and mistrial were denied. The DOT paid claimant $175,100 pursuant to the statutory caps on tort liability.

CLAIMANT'S POSITION:

Claimant asserts DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death. Additionally, DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

RESPONDENT'S POSITION:

DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition. Additionally, DOT asserts the primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of

the crash.

CONCLUSION OF LAW: Whether or not there is a jury verdict or a settlement agreement every claim bill against the State must be reviewed de novo against the four standard elements of negligence.

Duty
The Florida Department of Transportation was responsible for maintaining the Hart Bridge Expressway drain at the accident site, which responsibility is an operational level duty to which immunity does not apply.[1] No evidence was presented showing that DOT had actual knowledge of the clogged drain. However, I find that sufficient evidence was presented that DOT should have known that this drain was clogged. At trial, several individuals testified that they traveled the area regularly and often saw ponding of water in the area at issue, and there were at least two hydroplaning accidents at the same spot within one year of the accident at issue.

Breach
DOT breached their duty to maintain the road by failing to maintain the drain and allowing it to become so clogged that it created a substantial pond of water in the roadway.

Causation
While there were numerous factors that contributed to the accident, it is clear that but for the ponding of the water Stephenson's tanker truck would not have made the evasive actions that ultimately led to the truck's explosion and Stephenson's death.

It is also clear that Stephenson's own actions also contributed to his death. There was undisputed evidence that Stephenson was exceeding the posted speed limit in rainy, wet conditions, in violation of section 316.183(1), F.S.:

> No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance or object on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

Even though there was no expert testimony presented that speed was a causative factor, the jury appeared to apply

[1] *Capo v. State Dept. of Transportation*, 642 So.2d 37 (Fla. 3rd DCA 1994).

reason and common sense to the evidence presented, and I find no evidence sufficient to deviate from the jury's assessment.

The determination of the jury that Stephenson was 64% at fault and that DOT was 36% at fault is reasonable and adopted as a conclusion of law.

Damages
The jury determined damages as follows:

• Damages to the estate	$ 1,300,000
• Damages to Amie Stephenson	763,000
• Damages to Hailey Stephenson	1,000,000
• Damages to Christian Stephenson,II	526,000
TOTAL	$3,589,000

The final judgment reflected a reduction of the total amount by 64%, and awarded $1,292,040, plus interest, to Amie Stephenson. Expert testimony presented indicated that $1,829,700 would compensate Mrs. Stephenson for present and future economic losses. Thus, I find that the amount awarded in the final judgment is reasonable in light of all the circumstances.

COLLATERAL SOURCES:

Mrs. Stephenson has received the following amounts:

- $104,581.34 in workers compensation disability payments and funeral expenses. Gates McDonald has asserted a lien on any recovery
- $5,000 in PIP death benefits from State Farm
- $100,000 uninsured motorist payment from State Farm
- $659 per month for Amie and each of the 2 children in Social Security payments. Amie's payments ceased upon her remarriage, and the children's payments increased to $917 per month until they reach 18
- $50,000 in personal life insurance
- $25,000 from Mr. Stephenson's employer's life insurance
- $22,000 in donations from the St. Vincent's hospital foundation
- $10,000 in settlement with Jason Keiffer
- $10,000 in settlement with City of Jacksonville

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has agreed to waive his 25% fee. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees. Outstanding costs total $223,388.00.

RECOMMENDATIONS:

Accordingly, I respectfully recommend that House Bill 6519 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Cortes, B., House Sponsor
Senator Artilles, Senate Sponsor
James Knudson, Senate Special Master

A bill to be entitled

An act for the relief of Amie Draiemann O'Brien, individually and as personal representative of the Estate of Christian Darby Stephenson, deceased, and for the relief of Hailey Morgan Stephenson and Christian Darby Stephenson II, as surviving minor children of the decedent; providing an appropriation to compensate them for the wrongful death of Christian Darby Stephenson, which was due in part to the negligence of the Department of Transportation; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on August 12, 2000, 29-year-old Christian Darby Stephenson was driving a gasoline tanker eastbound on the Hart Bridge Expressway in Duval County, and

WHEREAS, a clogged drain had caused a large pool of standing water to collect at the base of the bridge, and

WHEREAS, the Department of Transportation was responsible for the maintenance of the drains at that location on the Hart Bridge Expressway, and

WHEREAS, as Mr. Stephenson drove over the bridge, a Jeep that was traveling toward the tanker hit the pool of water and hydroplaned, and

WHEREAS, Mr. Stephenson took evasive action to avoid

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

hitting the Jeep, as well as two other vehicles that had been involved in previous accidents and which were parked in the striped safety zone alongside the expressway, and

WHEREAS, Mr. Stephenson attempted to make a hard right turn onto the Atlantic Avenue exit to avoid the three vehicles, but, as he attempted to exit, the gasoline tanker jackknifed, struck the guardrail, overturned, and exploded, and

WHEREAS, Mr. Stephenson was subsequently pronounced dead at the scene, and

WHEREAS, Mr. Stephenson's widow, Amie Draiemann O'Brien, brought suit against the Department of Transportation in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Case No. 01-03428 CA, and on March 22, 2005, the jury returned a verdict that assigned the Department of Transportation with 36 percent of the negligence that was a legal cause of Mr. Stephenson's death, and

WHEREAS, the jury verdict states the jury's determination that the total amount of damages sustained by Mr. Stephenson's estate is $1.3 million; the total amount sustained by Amie Draiemann O'Brien, the widow of Mr. Stephenson, is $763,000; the total amount sustained by Hailey Morgan Stephenson, a surviving minor child of Mr. Stephenson, is $1 million; and the total amount sustained by Christian Darby Stephenson II, a surviving minor child of Mr. Stephenson, is $526,000, and

WHEREAS, 36 percent of the aggregate sum of the damages

awarded to Mr. Stephenson's estate and the named survivors under the final judgment is $1,292,040, and

WHEREAS, the Department of Transportation has paid a total of $175,100 under s. 768.28, Florida Statutes, after the payment of $24,900 to third parties who brought claims against the Department of Transportation for damages claimed as a result of the same occurrence, the remainder subject to being awarded under this act is $1,116,940, 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. There is appropriated from the General Revenue Fund to the Department of Transportation the sum of $1,116,940 for the relief of Amie Draiemann O'Brien, as the personal representative of the Estate of Christian Darby Stephenson, for the wrongful death of Christian Darby Stephenson.

Section 3. The Chief Financial Officer is directed to draw warrants in the sum of $1,116,940 upon the funds of the Department of Transportation in the State Treasury not otherwise appropriated, payable as follows:

(1) The sum of $404,575.65, to the Estate of Christian Darby Stephenson;

(2) The sum of $237,454.78, to compensate Amie Draiemann

O'Brien;

(3) The sum of $311,212.04, to be paid into a trust to compensate Hailey Morgan Stephenson; and

(4) The sum of $163,697.53, to be paid into a trust to compensate Christian Darby Stephenson II.

Section 4. The amount paid by the Department of Transportation 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 the death of Mr. Stephenson. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

HB 6519
Relating to Relief/Amie Draiemann O'Brien, Hailey Morgan Stephenson, and Christian Darby Stephenson II/Department of Transportation

AFFIDAVIT OF MATHEW FORREST

STATE OF FLORIDA)
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, MATHEW FORREST, who being first duly sworn, deposes and says:

1. My name is Mathew Forrest. I am over the age of twenty-one years and am of sound mine.

2. Ballard Partners and I are registered as lobbyists on behalf of the claimant.

3. My firm is under contract to receive a three percent fee from the recovery of the claim bill in this matter.

4. Our contingency fee is three (3) percent of the total recovery of the claim bill.

5. Our cost for expenses are $315.00 to be recovered from the claim bill.

6. All expenses are external costs.

I declare that I have read the foregoing affidavit and that the facts stated in it are believed to be true.

FURTHER AFFIANT SAYETH NOT.

Mathew Forrest

The foregoing instrument was acknowledged before me this 7th day of March, 2017, by Mathew Forrest **who is personally known to me** or who has produced N/A as identification and who did/did not take an oath.

Notary Signature,

SHANNA KAYE CRAWLEY
Commission # FF 161627
Expires January 4, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

(Seal)

Notary Public, State of Florida

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6519 (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: Civil Justice & Claims Subcommittee

Representative Cortes, B. offered the following:

Amendment

Remove lines 86-89 and insert:

the death of Mr. Stephenson. Of the amount awarded under this act, no amount may be paid for attorney fees, the total amount paid for lobbying fees may not exceed $55,847, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $223,388.

HB 6527

STORAGE NAME: h6527a.CJC
DATE: 3/16/2017

March 9, 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 6527 - Representative Harrison
Relief/Charles Pandrea/North Broward Hospital District

THIS IS AN EQUITABLE CLAIM BASED ON A JURY VERDICT, WHEREIN THE JURY FOUND THE NORTH BROWARD HOSPITAL DISTRICT D/B/A CORAL SPRINGS MEDICAL CENTER 10% LIABLE FOR THE DEATH OF JANET PANDREA BY AND THROUGH ITS PATHOLOGIST, DR. PETER TSIVIS, M.D. THE DISTRICT HAS PAID $200,000 PURSUANT TO THE STATUTORY CAP, LEAVING $608,554.78 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

On January 14, 2002, a 65 year-old Janet Pandrea was presented to Dr. Martin S. Stone, M.D., complaining of a cough. Dr. Stone ordered a chest x-ray which revealed a mass. Mrs. Pandrea returned on January 17 for a CT of her chest which revealed a 6 x 4 centimeter mass.[1] Dr. Stone recommended a fine needle core biopsy be performed.

On January 24, Janet Pandrea was admitted to the North Broward Hospital District d/b/a Coral Springs Medical Center ("the District") under the care of Dr. Stone for a CT guided

[1] The Mayo Clinic defines a CT scan as "[c]omputerized tomography (CT scan) — also called CT — [that] combines a series of X-ray views taken from many different angles and computer processing to create cross-sectional images of the bones and soft tissues inside your body."

chest biopsy.

On January 25, Dr. Peter Tsivis, M.D., a pathologist for the District, interpreted the biopsy tissue as consistent with non-Hodgkin's lymphoma but did not provide any information on the type or classification of the non-Hodgkin's lymphoma in his report.[2] Dr. Tsivis submitted his surgical pathology report from the chest biopsy and stated that the specimen demonstrated malignant neoplasm consistent with malignant non-Hodgkin's lymphoma. However, in the microscopic description of Dr. Tsivis' report, he noted that the material in the biopsy was insufficient for confirmatory studies and that additional tissue would be necessary for further evaluation.

On January 30, Dr. Stone referred Mrs. Pandrea to Dr. Abraham Rosenberg, M.D., at Oncology and Hematology Associates of West Broward for an oncologic evaluation. On February 1, Dr. Rosenberg referred Mrs. Pandrea to have a PET scan performed.[3] The PET scan, when looked at in conjunction with the CT scan, supported that the mass was consistent with underlying lymphomatous process.

On February 6, 2002, Dr. Rosenberg referred Mrs. Pandrea for a bone marrow biopsy (which revealed no evidence of malignancy) and called Dr. Tsivis to request additional stains of the biopsy tissue which would help in determining the type of non-Hodgkin's lymphoma Mrs. Pandrea might have had.

On February 7, Dr. Rosenberg started Mrs. Pandrea on chemotherapy using Rituzan, Cytoxan, Oncovin and Prednisone before receiving the results of the stains he had requested the day before.[4] During the day on February 9, Mrs. Pandrea experienced seizures; she lost consciousness that evening. On February 10, she was transported by ambulance to the emergency room at Northwest Medical Center. Her chief complaint was of nausea and vomiting since the chemotherapy session. It was determined that she was having adverse reactions to the Oncovin which was discontinued and replaced with Fludara. Mrs. Pandrea was discharged from Northwest Medical Center on February 13.

Mrs. Pandrea underwent her second cycle of chemotherapy on February 27. On March 6, based on a decreased white blood cell count, Mrs. Pandrea's oncologist prescribed her an

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[2] At trial, it was established that there are over twenty types of non-Hodgkin's lymphoma and knowing which type and classification is an integral part of determining how a patient should be treated.

[3] The Mayo Clinic defines as PET scan as follows: "[a] positron emission tomography (PET) scan is an imaging test that helps reveal how your tissues and organs are functioning. A PET scan uses a radioactive drug (tracer) to show this activity."

[4] In his report, dated February 14, 2002, Dr. Tsivis noted that the additional stainings produced "findings . . . insufficient for further diagnostic evaluation of [the] specimen." However, in the addendum diagnosis of the report, Dr. Tsivis noted that the "needle core biopsy specimen demonstrate[ed] malignant neoplasm consistent with malignant non-Hodgkin's lymphoma."

antibiotic, Levofloxacin. Mrs. Pandrea subsequently developed muscle weakness and pain, and the antibiotic was stopped on March 13.

On March 18, Dr. Stone admitted Mrs. Pandrea to University Hospital, LTD d/b/a University Hospital and Medical Center ("University Hospital") with her chief complaints being difficulty breathing and muscle pain. She was subsequently given a differential diagnosis of rhabdomyolysis by Dr. Charles Kimmel, M.D.[5] Mrs. Pandrea's respiratory efforts continued to decline after she was admitted to University Hospital, and she was intubated by a respiratory therapist on the morning of March 21. Later that day she was transferred to ICU.

The doctors made multiple attempts to wean Mrs. Pandrea from the mechanical ventilator but were unsuccessful until March 25. On March 27, an abdominal x-ray revealed free air below the diaphragm. Mrs. Pandrea was diagnosed with a perforated viscus and had emergency abdominal surgery. Subsequent to the viscus repair surgery, Mrs. Pandrea developed sepsis and died on April 2, 2002. Her family had a private autopsy performed after her death, and the coroner determined that the mass in Mrs. Pandrea's chest was a benign thymoma which was erroneously diagnosed as non-Hodgkin's lymphoma.[6]

LITIGATION HISTORY:

On December 17, 2002, Charles Pandrea, as Plaintiff, filed a Complaint in the 17th Judicial Circuit Court, in and for Broward County, Florida, for the death of his wife, Janet Pandrea, against Abraham Rosenberg, M.D., Oncology and Hematology Associates of West Broward, M.D., P.A., Najib Saba, M.D., Edward Dauer, M.D., P.A., Peter A. Tsivis, M.D., North Broward Hospital District d/b/a Coral Springs Medical Center, Steven Charles Kimmel, M.D., West Broward Rheumatology Associates, Inc., Martin S. Stone, M.D., Martin Spencer Stone, M.D., P.A., Ramon Ramirez, M.D., Leonard Buchbinder, M.D., Abraham A. Chamely, M.D., Abraham A. Chamely, M.D., P.A., Marlon A. Labi, M.D., Ted Hugh Brady, D.O., Marlon A. Labi, M.D. and Associates, P.A., Robert Geronemus, M.D., and South Florida Nephrology Associates, P.A.[7]

In the Complaint, Mr. Pandrea alleged that Dr. Tsivis was

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[5] Rhabdomyolysis is a syndrome of striated muscle necrosis that has many different etiologies. However, because Mrs. Pandrea began experiencing the symptoms of rhabdomyolysis during treatment with Levofloxacin, the coroner later determined that the most likely etiology of rhabdomyolysis in her case was a reaction to the Levofloxacin. Rhabdomyolysis during Levofloxacin therapy is rare but has been reported during clinical trials in less than 1% of cases.

[6] The coroner determined that Mrs. Pandrea's demise was ultimately the result of complications of treatment of rhabdomyolysis. He listed the cause of death as complications of treatment of levofloxacin-induced rhabdomyolysis following chemotherapy for non-Hodgkin's lymphoma.

[7] Of the named Defendants, only the District and Dr. Tsivis were subject to the provisions in section 768.28, F.S., which limits liability to $200,000.

negligent when he failed to properly care and treat Mrs. Pandrea, failed to properly interpret the pathology from the chest mass needle core biopsy, failed to recommend a repeat biopsy due to the material in the specimen being insufficient for any confirmatory studies, and/or failed to recommend appropriate additional diagnostic tests. Mr. Pandrea also alleged that the District was vicariously liable for the actions of its employee, Dr. Tsivis. The Defendants denied these allegations.

Trial commenced on May 6, 2005, and ended on June 8, 2005, when the jury rendered its verdict. The jury awarded Mr. Pandrea $72,498.08 in medical/funeral expenses, $3,000,000 in past pain and suffering and $5,000,000 in future pain and suffering for a total of $8,072,498.08 in damages. As to the cause of Janet Pandrea's death, the jury found Abraham Rosenberg, M.D., to be 50% liable, University Hospital 28% liable, Martin S. Stone, M.D., 12% liable, and the District 10% liable.

The Honorable Judge Robert Collins entered a Final Judgment on June 15, 2005, ordering Dr. Rosenberg to pay $4,043,016.09, the University Hospital to pay $2,252,763.06, Dr. Stone to pay $965,469.88, and the District to pay $808,554.78.

After the Final Judgment was rendered Mr. Pandrea entered into settlement agreements with several of the Defendants; the District did not enter into a settlement agreement with Mr. Pandrea.

Post-verdict, the District paid $200,000 to Mr. Pandrea pursuant to the sovereign immunity limit.

CLAIMANT'S POSITION:

The Claimant asserts that as a result of Dr. Tsivis' negligence, Mrs. Pandrea underwent unnecessary chemotherapy which led to the decreased white blood cell count, which led to the administration of the antibiotic, Levofloxacin, which led to the rhabdomyolysis, which led to her respiratory failure, and ultimately her death.

The Claimant also asserts that under Florida law the concept that an initial wrongdoer is responsible for any negligence that occurs and/or arises as a result of medical treatment received from the injuries that flow from there is well established and applies to Dr. Tsivis' misdiagnosis.[8]

Additionally, the Claimant asserts that it was reasonably foreseeable that Dr. Rosenberg would begin chemotherapy

[8] Respondent asserts that this concept is only relevant when the initial wrongdoer causes a physical harm to the injured party, which Dr. Tsivis did not do in this case.

treatment based on Dr. Tsivis' pathology report which reflected the existence of non-Hodgkin's lymphoma. Dr. Tsivis' initial misread of the pathology slides, Claimant asserts, lead to the series of unfortunate events that caused and/or substantially contributed to cause Mrs. Pandrea's death.

RESPONDENT'S POSITION:

The District asserts that Dr. Tsivis' reports were non-diagnostic. To support this assertion, the District points to the fact that Dr. Rosenberg's expert testified that the pathology studies interpreted by Dr. Tsivis were non-diagnostic and agreed that Dr. Rosenberg should not have commenced chemotherapy treatment based upon Dr. Tsivis' reports. Additionally, the District points to the Petitioner's experts who, along with Dr. Rosenberg's expert, agreed that Dr. Rosenberg should not have commenced chemotherapy treatment without obtaining additional biopsy samples and the results of the special staining that he had ordered.

The District also asserts that the jury's verdict in this case was substantially based on a combination of either bias, prejudice or sympathy for the Pandreas and against the District. Further, the District suggests the jury intended to either punish certain co-Defendants in this case for their lack of candor or compassionate medical care or was caught up in a wave of sympathy in favor of the Claimant.

Additionally, the District asserts that Mrs. Pandrea's death was not the direct or natural and probable result of Dr. Tsivis' misinterpretation of the needle core biopsy. In both his initial report and addendum, Dr. Tsivis indicated that the biopsy material was insufficient to run any confirmatory studies. Further, the District asserts that Dr. Rosenberg's negligent commencement of chemotherapy in the absence of a diagnostic pathology study was an unforeseeable, intervening force which extinguishes any liability of Dr. Tsivis.[9]

The District asserts that there are no compelling reasons or justifications to pass and fund the bill.

CONCLUSION OF LAW:

The legislature is not bound by the jury's findings of fact. A claim bill is an act of legislative grace in which the legislature allows a citizen to collect damages where they would normally be barred by common law sovereign immunity. The legislature can give the jury's findings of fact weight in making its own determination, but the legislature should conduct its own inquiry of the facts and make its own determination of the facts and law at issue.

I find that Dr. Tsivis was an employee of the District and was in

[9] Respondent points to the testimony of multiple witnesses (of both the Plaintiff and other Defendants) who, during trial and in depositions, testified that Dr. Rosenberg's initiation of chemotherapy based on non-diagnostic studies was not expected or foreseeable.

the course and scope of his employment at the time he interpreted Mrs. Pandrea's needle core biopsy. I find that Dr. Tsivis had a duty to diagnose. I find that both his initial report and addendum were non-diagnostic reports because they did not address what type of non-Hodgkin's lymphoma Mrs. Pandrea might have had and stated that additional tissue would be necessary to perform confirmatory tests. I find that Dr. Tsivis did not breach any duty he owed to Mrs. Pandrea.

Additionally, I find that Dr. Tsivis could not have reasonably foreseen that Dr. Rosenberg would initiate chemotherapy treatment based on Dr. Tsivis' non-diagnostic reports and before Dr. Rosenberg's requested staining results had been rendered. I find that Dr. Rosenberg's commencement of chemotherapy in the absence of a diagnostic pathology study was an unforeseeable, intervening force which extinguishes any liability of Dr. Tsivis.

COLLATERAL SOURCES: Prior to trial, Claimant settled with Dr. Charles Kimmel for $100,000, Dr. Marlon Labi for $200,000, and Dr. Ramon Ramirez for $10,000, for a total of $310,000.

After the Final Order was entered, and pursuant to post-verdict settlement agreements, Claimant received $2,615,000 from Dr. Rosenberg, $1,200,000 from the University Hospital, and $645,000 from Dr. Stone, for a total of $4,460,000.

In total, including settlements before the trial and the post-verdict payments from all the Defendants, Claimant has received $4,970,000.

Additionally, the Claimant had a life insurance policy on Mrs. Pandrea.

RESPONDENT'S ABILITY TO PAY: Should the bill be enacted, the monies would be paid from Broward Health's General Operating Fund. Payment of these funds, although having some impact, would not preclude the North Broward Hospital District from continuing in its mission to provide affordable and quality health care to the general public within the borders of the North Broward Hospital District.

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 6% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $2,129.81.

LEGISLATIVE HISTORY: This is the tenth legislative session in which this claim has been presented to the Legislature. This claim has been filed in both

of the chambers every year beginning in 2009. It has never been heard in a committee in the House. The only time in which it was heard in the Senate was in the 2015 legislative session, in which Senate Bill 28 by Senator Diaz de la Portilla received a favorable vote from the Senate Judiciary Committee. However, the bill died in the Senate Appropriations Subcommittee on Health and Human Services.

RECOMMENDATIONS: For the reasons stated above, I respectfully recommend that the be reported **UNFAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Harrison, House Sponsor
Senator Steube, Senate Sponsor
Tom Cibula, Senate Special Master

A bill to be entitled

An act for the relief of Charles Pandrea by the North Broward Hospital District; providing for an appropriation to compensate Charles Pandrea, husband of Janet Pandrea, for the death of Janet Pandrea as a result of the negligence of the North Broward Hospital District; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, Janet Pandrea died on April 2, 2002, in Broward County as a result of the treatment that she received for non-Hodgkin's lymphoma, a disease that she did not have, and

WHEREAS, the Coral Springs Medical Center, part of the North Broward Hospital District, by and through its pathologist, Peter Tsivis, M.D., breached the applicable standard of care by and through his diagnosis and interpretation of certain slides as being consistent with non-Hodgkin's lymphoma, when the tissue was, in fact, a benign thymoma, and

WHEREAS, based upon this misdiagnosis, Janet Pandrea was subsequently treated with multiple rounds of chemotherapy to which she had adverse reactions, which led to multiple complications and her eventual demise, and

WHEREAS, Charles and Janet Pandrea were married on May 19, 1956, and they had four children together during the course of

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

their 46-year marriage, and

WHEREAS, Charles Pandrea suffers from the tragic memories of the suffering of his wife from complications of chemotherapy and her prolonged hospital stay and eventual demise, which stemmed from the initial misdiagnosis, and

WHEREAS, Charles Pandrea will continue to suffer mental pain and anguish for the remainder of his life, which has caused and will continue to cause serious psychological problems for him, and

WHEREAS, as a matter of law, a jury in Broward County on June 8, 2005, returned a verdict against the North Broward Hospital District and the verdict was reduced to a final judgment in the amount of $808,554.78 on June 15, 2005, and

WHEREAS, as a matter of law, it was determined that neither Charles Pandrea nor Janet Pandrea caused or contributed to the losses and injuries complained of, and

WHEREAS, the North Broward Hospital District has paid the statutory limit of $200,000 under s. 768.28, Florida Statutes, and

WHEREAS, the North Broward Hospital District is responsible for paying the remainder of the judgment, which is $608,554.78, NOW, THEREFORE,

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

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

Section 2. The North Broward Hospital District is authorized and directed to appropriate from funds of the district not otherwise appropriated and to draw a warrant in the sum of $608,554.78, payable to Charles Pandrea, husband of Janet Pandrea, deceased, as compensation for the death of Janet Pandrea as a result of the negligence of the North Broward Hospital District.

Section 3. The amount paid by the North Broward Hospital District 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 the death of Janet Pandrea. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

March 2, 2017

IN THE MATTER FOR RELIEF OF:

Charles Pandrea
Claimant,

v.

North Broward Hospital District
Respondent.
_____/

RE: HB 6527 (companion to SB 16)
Relief of Charles Pandrea v. North Broward Hospital District

COUNTY OF BROWARD)
) SS:
STATE OF FLORIDA)

AFFIDAVIT OF IVAN F. CABRERA, ESQUIRE and MATTHEW BLAIR

PERSONALLY APPEARED before me, the undersigned authorities, **IVAN F. CABRERA, ESQUIRE** and **MATTHEW BLAIR**, who, after being duly sworn, depose and state:

1. My name is IVAN F. CABRERA. I am over twenty-one (21) years of age and have personal knowledge of all of the information contained within this Affidavit.

2. At all times relevant to this cause of action, I am and have been a Partner at the Law Firm of Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A.

3. Although the Law Firm of Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A., utilized a standard contingency fee contract with Mr. Pandrea, Florida law would limit the recovery in cases involving a sovereign entity or subdivisions thereof, to a twenty-five (25%) percent contingency fee. As such, the contingency fee in this cause of action as it relates to the North Broward Hospital District d/b/a Coral Springs Medical Center would be twenty-five (25%) percent.

4. My name is MATTHEW BLAIR. I am over twenty-one (21) years of age and have personal knowledge of all of the information contained within this Affidavit.

5. I am an employee of Corcoran & Johnston in Lutz, Florida and I became involved as a lobbyist in this claim on July 22, 2009.

6. Pursuant to the "Contingency Fee Agreement for Claims Bill Legislative Consulting and Lobbying Services" entered on July 22, 2009, the lobbyist fee is a total of six (6%) percent of the final claims bill amount, contingent upon the bill becoming law.

7. The 6% lobbyist fee is included within the 25% total attorney fee.

8. The outstanding costs of the Law Firm of Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A., as of this date, that will be paid from any amount that may be awarded by the Legislature are $2,129.81.

9. The dollar amount of costs that were paid from the $200,000 statutory cap payment from North Broward Hospital District was $100,000, from the total cost amount of $459,505.58 as of 11-11-2005.

10. The total costs expended in this case as of the current date are $481,785.54 (i.e. breakdown $58,324.37 internal / soft costs and $423,461.17 external / hard costs).

FURTHER AFFIANTS SAYETH NAUGHT.

IVAN F. CABRERA, ESQUIRE
Florida Bar No. 972215
Counsel for Claimant / PANDREA
icabrera@krupnicklaw.com
(954)763-8181 office

LISA C. BONO
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES July 25, 2017
#FF 009545

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

Notary Public / State of Florida
My Commission Expires:

MATTHEW BLAIR
Corcoran & Johnston
Lobbyist for Claimant / PANDREA
matt@corcoranfirm.com
(813)527-0172 office

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

Notary Public / State of Florida
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 17, 2017
Bonded Thru Budget Notary Services

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6527 (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: Civil Justice & Claims Subcommittee

Representative Harrison offered the following:

Amendment (with title amendment)

Remove lines 65-68 and insert:

the death of Janet Pandrea. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $115,625.41, the total amount paid for lobbyist fees may not exceed $36,513.29, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $2,129.81.

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

Remove lines 20-38 and insert:

WHEREAS, in part based upon the misdiagnosis, Janet Pandrea was subsequently treated by other doctors and underwent multiple rounds of chemotherapy to which she had adverse reactions, which led to multiple complications and her eventual demise, and

WHEREAS, Charles and Janet Pandrea were married on May 19, 1956, and they had four children together during the course of their 46-year marriage, and

WHEREAS, Charles Pandrea suffers from the tragic memories of the suffering of his wife from complications of chemotherapy and her prolonged hospital stay and eventual demise, which stemmed from the initial misdiagnosis, and

WHEREAS, Charles Pandrea will continue to suffer mental pain and anguish for the remainder of his life, which has caused and will continue to cause serious psychological problems for him, and

WHEREAS, Charles Pandrea brought a civil action against the North Broward Hospital District and other treating physicians from other medical providers, and

WHEREAS, as a matter of law, a jury in Broward County on June 8, 2005, returned a verdict in the amount of $8,069,803.50, in which the North Broward Hospital District was found to be 10% at fault and a final judgment was entered in the amount of $808,554.78 on June 15, 2005, and

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 was subsequently struck by the bus, 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 was unable to return to school for approximately 18 months and 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, plus interest accruing at the rate of 7 percent per annum until paid, payable to 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

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

present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Jerry Cunningham. The total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

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:

JODIE ORRICO
Notary Public - State of Florida
My Comm. Expires Aug 28, 2018
Commission # FF 129790

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6545 (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: Civil Justice & Claims Subcommittee

Representative Raburn offered the following:

Amendment (with title amendment)

Remove lines 70-81 and insert:

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.

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

Remove lines 29-47 and insert:
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

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

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

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

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

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)

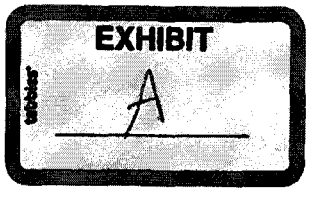
BEFORE ME, the undersigned authority, personally appeared, Brian R. Denney who being first duly sworn, deposes and says:

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.



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)

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6549 (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: Civil Justice & Claims Subcommittee

Representative Diaz, J. offered the following:

Amendment

Remove lines 67-70 and insert:

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.

STORAGE NAME: h6553.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 6553 - Representative Toledo
Relief/Cristina Alvarez and George Patnode/Department of Health

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $2,400,000 BASED ON A JURY VERDICT IN THE AMOUNT OF $2,600,000 AGAINST THE MARTIN COUNTY HEALTH DEPARTMENT/DEPARTMENT OF HEALTH TO COMPENSATE CRISTINA ALVAREZ AND GEORGE PATNODE FOR THE WRONGFUL DEATH OF THEIR 5 MONTH-OLD SON, NICHOLAS. THE DEPARTMENT HAS PAID THE STATUTORY LIMIT OF $200,000.

FINDING OF FACT:

Nicolas Patnode was born on August 8, 1997. On December 26, 1997, his mother brought him to the Martin County Health Department – Indiantown Clinic due to a fever. At that time, Nicolas was diagnosed with an ear infection by Dr. Williams, Nicolas' regular pediatrician. Dr. Williams prescribed an antibiotic, and asked Cristina Alvarez to bring him back in 10 days. Nicolas completed the antibiotic, and went in for the follow up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicolas had recovered from the ear infection. Two days later, on Thursday, January 8, Nicolas again ran a fever causing his mother to bring him back to the Indiantown Clinic. Dr. Williams again saw Nicolas, who then had a fever of 103.7° F. Dr. Williams ordered a CBC (complete blood count) and a urine test, prescribed Tylenol,

asked his mother to keep cool clothes on him, and to watch for a rash. Dr. Williams then told her that if there was a rash or if the fever persisted or got worse, she should take Nicolas immediately to the emergency room.

The next day, January 9, 1998, Cristina Alvarez stated that she checked his temperature every 4 hours, and that his temperature was normal throughout the day. At about 4:30 p.m. Nicolas felt hot and had a fever of 100°F. His mother gave him a dose of Tylenol and checked his temperature again, and it was up to 101°F. At about the same time, George Patnode, Nicolas's father, and her husband at the time, arrived home from working on a friend's car. They proceeded directly to Martin Memorial Hospital South.

They arrived at Martin Memorial Hospital at 6:50 p.m. A CBC test was ordered, which showed an abnormal white blood count. While waiting for tests, Cristina noticed that Nicolas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture indicated that Nicolas had pneumoccoccal meningitis. Nicolas was given intravenous antibiotics, and transferred by ambulance to St. Mary's pediatric intensive care unit.

Nicolas arrived at St. Mary's at 1:57 a.m. on January 10th. At this point Nicolas went into septic shock, and was removed from life support later that morning and died.

The Lab Results at Martin County Health Department

When Cristina Alvarez brought Nicolas back to the lab on January 8, 1998, Dr. Williams correctly noted that he was running a fever without a focus (meaning there was no apparent cause for the fever). In order to rule out a dangerous bacterial infection, he ordered a regular CBC.

The Indiantown Clinic did not have lab facilities. Samples were sent by courier to the Martin Memorial Medical Center, Inc., lab, and the lab would fax the results back to the clinic. On the January 8 visit, Dr. Williams ordered a routine CBC. Once the blood is drawn, various tests are performed and reported back to the ordering physician. The tests were completed at 11:30 p.m. on January 8, 1998, and showed a white blood cell count of 24,900.[1] The printed lab results showed that they were faxed to the Indiantown Clinic at 12:17 p.m. on January 9. Had Dr. Williams ordered the CBC 'stat', the results would have been ready by 5:30 p.m. that day. Expert testimony revealed that because this child had a fever without a focus, in order to meet the standard of care, Dr. Williams should have ordered the CBC stat.

At the time, the Martin County Health Department had a policy

[1] A normal white blood cell count for an infant is between 5,000 to 10,000.

regarding review of lab results. The policy specifically required lab results to be date stamped upon receipt and routed to the appropriate physician. The policy further required abnormal lab results to be followed-up within 24 hours of receipt. Expert testimony revealed that the normal white blood count for a six-month old baby is no greater than 15,000. Nicolas' white blood count was 24,900. However, Dr. Williams did not review Nicolas' lab report until January 14, 1998, four days after he passed away.

The Martin County Health Department also had a policy with the lab, that the lab would call them immediately if any lab results revealed results that exceeded 'panic values' that were set by the Health Department. The Martin County Health Department had set the 'panic value' on white blood counts at 25,000, 100 more than Nicolas' results of 24,900, thus not qualifying for an immediate call from the lab. The claimant's expert opined that the 'panic value' should have been set at 15,000, which was the reference range published by the American Academy of Pediatrics Red Book.

The claimant's expert ultimately opined that had the CBC test been ordered stat, or if the regular and actual results had been reviewed and acted upon according to policy, then a course of intravenous antibiotics could have been administered in time to save Nicolas' life.

The Parents

Cristina and George Patnode had been married for approximately 10 years and had two children prior to Nicolas, George IV, who is now 18 and Christopher, who is now 17. George IV is emotionally handicapped, has ADHD, and has pervasive developmental disorder. Christopher Patnode has ADHD.

George Patnode is a disabled veteran, who also has other non-military disabilities and is a recovering alcoholic. He testified that he has been 10 years without a drink and is a staunch member of Alcoholics Anonymous. He is currently unemployed, and has been on Social Security disability since 1998.

Cristina is also unemployed and has moved to Mesa, Arizona. She receives Social Security disability for all three of her children.

Cristina and George separated four days after Nicolas' death, and divorced in 2000. Both have remarried. Cristina had another child, Jordan, who is eight. George had another two children, Jade and Stone.

LITIGATION HISTORY: Cristina Alvarez and George Patnode filed suit in 2000 in the Martin County Circuit Court, against Dr. Williams; the

Department of Children and Family Services; Martin County Health Department; Dr. Polsky (ER doctor); Nurse Andrew Walker (ER nurse); and Martin Memorial Health Systems. Martin Memorial Health Systems settled with the claimants for $35,000, and was dismissed with prejudice. Dr. Polsky and Nurse Walker were also released from the suit. The Department of Health was substituted for the Department of Children and Family Services. Personnel of county health departments are employed by the Department of Health pursuant to s. 154.04(2), F.S. Prior to trial, claimant's offered to settle the case for $200,000, which offer the Department of Health declined.

The case went to trial in February of 2002. The trial judge granted a directed verdict in favor of George Patnode on the affirmative defense of comparative negligence. The jury had the opportunity to apportion liability to the Department of Health (Martin County Health Department) , Cristina Alvarez, and the Martin Memorial Medical Center Laboratory. The jury found 100% liability on the Martin County Health Department, and awarded the following: for Cristina Alvarez, $1,000,000 for past pain and suffering and $600,000 for future pain and suffering (for a total of $1.6 million); for George Patnode, $750,000 for past pain and suffering and $250,000 for future pain and suffering (for a total of $1 million), for a total award of $2,600,000.

The Department's Motion for a New Trial was denied. The Department then appealed to the Fourth District Court of Appeal, arguing that the trial court erred by granting a directed verdict in favor of George Patnode on the affirmative defense of comparative negligence, and that the trial court erred by not allowing the Department to use a specific deposition for impeachment purposes. The Fourth District Court of Appeal issued a per curiam affirmance. The Department has paid the initial $200,000 as allowed by s. 768.28, F.S.

CLAIMANT'S POSITION: Claimant argues the jury verdict is supported by the evidence and should be given full effect.

RESPONDENT'S POSITION: The Department argues the following:

- Cristina Patnode should be comparatively negligent for not taking Nicolas to the emergency room sooner, and for not telling the emergency room nurse about seeing Dr. Williams the day before.
- There was no evidence that the lab transmitted the lab results at the time marked on the lab results.
- Because many labs don't choose to establish 'panic values' at all, Martin County Health Department's establishment of these particular 'panic values' did not fall below the standard of care.

CONCLUSION OF LAW:

Rather than the subjective, traditional "shock the conscience" standard used by courts, for purposes of a claim bill, a respondent that assails a jury verdict as being excessive should have the burden of showing the Legislature that the verdict was unsupported by sufficient credible evidence; that it was influenced by corruption, passion, prejudice, or other improper motives; that it has not reasonable relation to the damages shown; that it imposes an overwhelming hardship on the respondent out of proportion to the injuries suffered; that it obviously and grossly exceeds the maximum limit of a reasonable range within which a jury may properly operate; or that there are post-judgment considerations that were not known at the time of the jury verdict. The Department of Health failed to demonstrate any of these factors.

I find that there was substantial, competent evidence to show that the medical care provided by Dr. Williams at the Indiantown Clinic of the Martin County Health Department fell below the prevailing professional standard of care, and that as an employee of the Department of Health, the Department is vicariously liable for Dr. Williams' negligence. I further find that Nicolas' death was caused by such negligence, and that the damages are appropriate.

ATTORNEY'S/ LOBBYING FEES:

Claimants' attorney has an agreement with Claimants to take a fee of 25% of Claimants' total recovery. Claimants' 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 $2,080.64.

LEGISLATIVE HISTORY:

This is the seventh session this claim has been presented to the Legislature. It was initially filed in 2004 as House Bill 235 by Representative Kottkamp and Senate Bill 26 by Senator Campbell. The House Bill passed both the Claims Subcommittee and the Judiciary Committee, but died in the Subcommittee on Health Appropriations. The Senate Bill was never considered by any Senate committee.

In the years following, this claim has been filed in both chambers but never heard in a committee.

RECOMMENDATIONS:

Based on the foregoing, I recommend that House Bill 6553 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Toldeo, House Sponsor
Senator Rodriguez, Senate Sponsor
Tom Cibula, Senate Special Master

A bill to be entitled

An act for the relief of Cristina Alvarez and George Patnode; providing appropriations to compensate them for the death of their son, Nicholas Patnode, a minor, due to the negligence of the Department of Health; providing for the repayment of Medicaid liens; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on January 8, 1998, Nicholas Patnode, 5 months of age, was seen for a fever at the Martin County Health Department - Indiantown Clinic, and

WHEREAS, a blood test was ordered, the results of which were abnormal and consistent with bacteremia, a condition that requires immediate administration of antibiotics, and

WHEREAS, the results of the blood test were printed that day but not picked up from the printer at the clinic, and as a result, treatment was not begun and Nicholas Patnode's condition deteriorated, and

WHEREAS, several hours later, Nicholas Patnode's parents took him to Martin Memorial Medical Center, where a spinal tap confirmed a diagnosis of bacterial meningitis, and Nicholas Patnode was transferred to St. Mary's Hospital in critical condition, and

WHEREAS, a decision was made to discontinue life support

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

due to irreversible brain damage, and Nicholas Patnode died on January 10, 1998, and

WHEREAS, Nicholas Patnode is survived by his parents, Cristina Alvarez and George Patnode, and

WHEREAS, the actions of the Martin County Health Department demonstrated the failure to adhere to a reasonable level of care for Nicholas Patnode and resulted in his death, and

WHEREAS, after an unsuccessful attempt by Nicholas Patnode's parents to settle this claim, it proceeded to litigation, resulting in a judgment in favor of the parents in the amount of $2.6 million, and

WHEREAS, the Department of Health has paid $200,000 to Cristina Alvarez and George Patnode under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

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

Section 2. The sum of $1.5 million is appropriated from the General Revenue Fund to the Department of Health for the relief of Cristina Alvarez as compensation for the death of her son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Cristina Alvarez in the sum of $1.5 million upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The sum of $900,000 is appropriated from the General Revenue Fund to the Department of Health for the relief of George Patnode as compensation for the death of his son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 5. The Chief Financial Officer is directed to draw a warrant in favor of George Patnode in the sum of $900,000 upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 6. The governmental entity responsible for payment of the warrant shall pay to the Agency for Health Care Administration the amount due under s. 409.910, Florida Statutes, before disbursing any funds to the claimants. The amount due to the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date on which this act becomes a law. Such amounts shall be deducted in equal amounts from the award to each parent.

Section 7. The amount paid by the Department of Health pursuant to s. 768.28, Florida Statutes, and the amounts awarded

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

under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Nicholas Patnode. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 8. This act shall take effect upon becoming a law.

AFFIDAVIT

COMES NOW, RONALD S. GILBERT, ESQUIRE, who was sworn and declares the following:

1. Affiant was retained by Claimants, Cristina Alvarez f/k/a Cristina Patnode, and George Patnode, Co-Personal Representatives of the Estate of Nicholas Patnode, deceased, for representation regarding the wrongful death/medical malpractice claim involving the death of their son.

2. The representation agreement was pursuant to a contingency fee contract, which has been approved by the Florida Supreme Court.

3. Notwithstanding the representation agreement, Affiant has agreed to represent Claimants through the Claims Bill process for a total amount of twenty-five percent (25%) of the Claims Bill for attorney's fees, lobbyist fees, and costs.

4. It has been agreed between Affiant, Claimants, and Lobbyist that twenty-five percent (25%) of the Claims Bill will be paid for full satisfaction of the contingency fee, lobbyist fee, and all costs.

5. The total amount of attorney's fees, lobbyist fees, and costs will be twenty-five percent (25%) of the amount of the approved Claims Bill.

6. The lobbyist fee is five percent (5%) of the amount of the approved Claims Bill.

7. The attorney's fees and costs will be twenty percent (20%), less the amount of any accrued costs, which is currently Two Thousand, Eighty Dollars and Sixty-Four Cents ($2,080.64). One Thousand, Nine Hundred Three Dollars and Thirty-Five Cents ($1,903.35) represents the amount of costs paid by Claimants' law firm in the prosecution of this matter. One Hundred Seventy-Seven Dollars and Twenty-Nine Cents ($177.29) represents the internal costs accrued by Claimants' law firm in the prosecution of this matter.

Further Affiant Sayeth Naught.

RONALD S. GILBERT, ESQUIRE
Colling Gilbert Wright & Carter

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing Affidavit was acknowledged before me this 1st day of March, 2017, by Ronald S. Gilbert, Esquire, who is personally known to me.

Audrey D. Haun
Signature of Notary Public

Audrey D. Haun
Printed Name of Notary Public

Notary Public State of Florida
Audrey D Haun
My Commission FF 951433
Expires 01/19/2020

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6553 (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: Civil Justice & Claims Subcommittee

Representative Toledo offered the following:

Amendment

Remove lines 79-82 and insert:

Nicholas Patnode. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $300,000, the total amount paid for lobbyist fees may not exceed $75,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $2,080.64.

STORAGE NAME: h6555.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 6555 - Representative Grant, M.
Relief/Thomas and Karen Brandi/Haines City

THIS IS A CONTESTED EQUITABLE CLAIM BASED ON A JURY VERDICT AWARDING DAMAGES IN THE AMOUNT OF $1,807,330 TO THOMAS AND KAREN BRANDI FOR DAMAGES RECEIVED AS A RESULT OF A MOTOR VEHICLE ACCIDENT WITH A VEHICLE DRIVEN BY A POLICE OFFICER OF THE CITY OF HAINES CITY, FLORIDA. THE JURY REDUCED THE AWARD BY 40% AFTER FINDING THOMAS BRANDI CONTRIBUTORILY NEGLIGENT AND THE CITY OF HAINES CITY HAS PAID $200,000 PURSUANT TO THE STATUTORY CAP. THE BILL SUBMITTED REQUESTS PAYMENT OF $825,094.

FINDING OF FACT: On the evening of March 26, 2005, Mr. Thomas Brandi was crossing U.S. 27 via Southern Dunes Boulevard. At the same time, Officer Pamela Graham was proceeding northbound on U.S. 27.[1] The two vehicles collided at the intersection of Southern Dunes Boulevard and U.S. 27; Officer Graham's police vehicle struck the driver's side of Mr. Brandi's vehicle sending Officer Graham's vehicle into the southbound lane of

[1] The Petitioners assert that Mr. Brandi was proceeding on a green light, and Officer Pamela Graham was proceeding on a red light when the accident occurred. However, one witness reported, in a letter and not under oath, that Officer Graham was proceeding northbound on U.S. 27 on a yellow light.

U.S. 27 and Mr. Brandi's vehicle northeast, off the road and into a Checker's parking lot.

After the accident Officer Graham stated that she was responding to a distress call at the time of the accident. An internal investigation by the Haines City Police Department later determined that there was no evidence to support Officer Graham's statement, and Officer Graham later stated that she misheard information over her police radio that led her to believe there was another officer in distress. The Haines City Police Department's internal investigation found Officer Graham to be at fault for the accident.[2] Following this finding, Officer Graham was suspended for three days with no pay and required to take a driving safety course through the Department.

As a result of the crash, both Officer Graham and Mr. Brandi sustained injuries. Officer Graham's ankle was injured. Mr. Brandi sustained multiple injuries including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and severe traumatic brain injury. On March 27, 2005, Mr. Brandi underwent a surgical repair of the descending thoracic aorta with grafting. He was also treated for a complete collapse of the upper lobe of his right lung and received a number of blood transfusions.

Following the accident Mr. Brandi spent ten days in the Lakeland Regional Medical Center and ten days at the Florida Hospital in Orlando.[3] He was discharged from the Florida Hospital to an outpatient rehabilitation facility in Winter Haven, Florida, where he spent May through July of 2005 in rehabilitation. Mr. Brandi's medical care included physical therapy for his orthopedic injuries. Mr. Brandi was also treated for sexual dysfunction and for sleep deprivation due to chronic pain.[4]

The Claimants retained Dr. Craig Lichtblau, a rehabilitative pain medicine specialist, who prepared a life care plan outlining the therapies and medical treatments that Mr. Brandi would and

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[2] The internal investigation was conducted by a Lieutenant against whom Officer Graham had previously filed a harassment complaint (not a sexual harassment complaint). The Lieutenant suggested that Officer Graham did not have her lights or sirens activated; however, one witness travelling in the same direction as Officer Graham submitted a written statement, not under oath, saying she observed Officer Graham's lights while another witness, operating a semi-truck, stated via telephone, not under oath, that he heard Officer Graham's sirens.

[3] During this time, his family reports that Mr. Brandi had to relearn how to perform daily activities, including how to use utensils and how to verbally articulate his thoughts clearly and accurately.

[4] Thomas Brandi also asserts that he developed or manifested facial motor tics as well as right-hand tremors and suffered from low back pain which radiated into his lower extremities. The Respondent disputes that Petitioner developed tics and tremors and points to the statement of one of Mr. Brandi's physicians that his back pain, first reported in 2007, is not a result of the accident.

might need over the remainder of his life. The Claimants also retained Dr. A.M. Gamboa Jr., Ph.D., M.D., an economic and vocational expert, to evaluate the financial losses associated with Mr. Brandi's injuries. Dr. Gamboa's determined, based in part on Dr. Lichtblau's evaluation, that the present money value of Mr. Brandi's future medical care is between $836,260 and $933,610 and that Mr. Brandi's loss of wages and diminution of earning capacity totals between $787,519 and $983,610.[5]

LITIGATION HISTORY:

On August 4, 2006, Thomas and Karen Brandi, as Plaintiffs, filed a Complaint in the 10th Judicial Circuit Court, in and for Polk County, Florida, against the City of Haines City, Florida, for Mr. Brandi's personal injuries resulting from the March 26, 2005, accident and for Mrs. Brandi's consortium damages resulting from the same accident. Haines City answered denying the Petitioners' claims and asserting that Mr. Brandi was comparatively negligent by failing to wear his seatbelt.[6]

Following a six day trial, the jury entered a verdict on November 17, 2009, finding the City of Haines City 60% responsible for Mr. Brandi's injuries and Mr. Brandi 40% responsible for his own injuries. The verdict included an award of past medical expenses and lost wages totaling $279,330 and future medical expenses and lost earning ability in the future totaling $903,000. Additionally, Thomas Brandi was awarded $450,000 in past and future pain and suffering damages, and his wife, Karen Brandi, was awarded $175,000 in past and future damages for loss of consortium. After the reduction for contributory negligence, the net award to the Petitioners was $1,084,396.

The Respondent did not file an appeal.

The Honorable Karla Foreman Wright entered a Final Judgment on January 14, 2010, ordering Haines City to pay $100,000 to Thomas Brandi and $100,000 to Karen Brandi for a total of $200,000. This Final Judgment was entered without prejudice acknowledging the Petitioners' right to pursue payment of the full jury verdict. On May 17, 2010, Judge Foreman Wright entered an order requiring Haines City to pay the stipulated cost judgment in the amount of $94,049.84.

Post-verdict, the Respondent paid $200,000 to the Petitioners in satisfaction of the sovereign immunity limits. Of the $200,000, $25,000 was paid to the Claimants and $50,000 was used to satisfy attorneys' fees with the remainder used to

[5] The Respondent contests the evaluation done by Dr. Lichtblau and asserts that Dr. Lichtblau's assessment of Mr. Brandi's future medical needs is excessive and includes treatments that Mr. Brandi may never need.
[6] Whether or not Mr. Brandi was wearing a seatbelt at the time the accident occurred was heavily debated by both sides. The trial judge orally granted a directed verdict for the Petitioner concerning the seatbelt issue during the course of the trial.

satisfy costs.[7] Additionally, Thomas Brandi received $100,000 from his insurance carrier, Farm Bureau, pursuant to an uninsured motorist policy.

CLAIMANT'S POSITION:

The Thomas and Karen Brandi (Claimants) assert that as Officer Graham approached the intersection, she failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of Haines City Police Department procedures. The Claimants assert that Officer Graham entered the intersection on a red light and failed to yield the right-of-way to Mr. Brandi who was proceeding on a green light.

The Claimants also dispute the Respondent's assertions that Mr. Brandi was not wearing his seatbelt at the time of the accident and assert that Mr. Brandi's alleged drinking prior in the day was not a factor in the accident.[8]

The Claimants retained Dr. Brown, a psychiatric expert, who determined that Mr. Brandi's functioning level is much lower than reported by other physicians. Dr. Brown diagnosed Mr. Brandi with seizures.[9] Dr. Brown also states that Mr. Brandi suffered additional brain damage after the accident because of lack of oxygen to the brain.[10] Additionally, Dr. Brown diagnosed Mr. Brandi with PTSD from the accident.[11] Additionally, Claimants retained an expert radiologist who found evidence of trauma in Mr. Brandi's brain.[12]

RESPONDENT'S POSITION:

The City of Haines City (Respondent) asserts that this claim bill does not comply with the statutory requirements of s. 768.28, F.S., because it is not based upon an unsatisfied judgment. Haines City asserts that the Petitioners' lawyers did not seek to have the jury verdict reduced to a judgment and that the only judgments entered following trial are a Final Judgment for $200,000 and a Cost Judgment for $94,049. Haines City asserts that because the Final Judgment of $200,000 has been satisfied, Thomas and Karen Brandi have no standing to seek this claim bill.

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[7] Pursuant to the Closing Statement submitted by the Claimants' counsel, of the $50,000 paid to attorneys, $35,000 was paid to Dellecker, Wilson, King, McKenna, & Ruffier, LLP to be held in trust with the remaining $15,000 paid to Thomas Shafovaloff, Esq.

[8] Haines City points to the fact that Mr. Brandi admitted to having consumed four beers earlier in the day and that he may not have been wearing a seatbelt at the time of the accident. The blood test done on Mr. Brandi two hours after the accident came back negative for alcohol, and the trial judge granted a directed verdict at trial for the Claimants regarding Mr. Brandi's seatbelt use.

[9] The Respondent disagrees with this diagnosis and points to Dr. Cambridge, Mr. Brandi's treating neurologist/psychiatrist, who completed an EEG of Mr. Brandi's brain and saw no seizures. The Claimants rebut this asserting that the type of scans Dr. Brown performed are done at a different resolution and with more detail than an EEG.

[10] The Respondents dispute this assertion.

[11] The Respondent disagrees with this diagnosis and states that Mr. Brandi's treating psychiatrist and neurologist have not diagnosed Mr. Brandi with PTSD.

[12] The Respondent disagrees with this conclusion.

Haines City further asserts that Officer Graham entered the intersection on a yellow light and that Mr. Brandi failed to yield right-of-way to her. Haines City also acknowledges that Officer Graham had previously filed a harassment complaint against the Lieutenant who led the investigation of Officer Graham following the accident.[13]

Respondent retained Dr. Hall, a psychiatrist, and Dr. Herkov, a neuropsychologist, both of whom disputed the Claimants' expert, Dr. Brown. Dr. Hall stated that in his opinion Mr. Brandi suffers from the same depression that he did before the accident and that preexisting depression, not the accident, is the reason for Mr. Brandi's memory issues. Dr. Herkov stated that he found no evidence of brain injury causing cognitive dysfunction or deficits in Mr. Brandi. Additionally, Haines City asserts that Mr. Brandi's insurer hired an accident reconstructionist who admitted assumptions he made during his reconstruction had no engineering or factual basis.

Haines City also contests the amount of the damages awarded. Haines City asserts that the jury had no basis to award past medical expenses and lost wages of $279,330 because the medical bills presented at trial did not reflect payments or reductions due to insurance contracts or portions of bills written off by providers.[14] Additionally, Respondents dispute Claimants' expert, Dr. Lichtblau's, estimate of the amount and costs of treatments Mr. Brandi will require in the future.[15]

Respondent further disputes the amount of past lost wages and claimed damages for the future. Haines City asserts that Mr. Brandi did not work for two years prior to the accident and therefore his lost wages should be $0.00. Respondent also suggests that Dr. Gamboa, who created the Claimant's vocational report, relied too heavily on Dr. Lichtblau's assessment of Mr. Brandi.

CONCLUSION OF LAW:

I find that the Claimants are not barred from seeking a claim bill award on this issue. Judge Foreman Wright's Final Judgment ordering payment of $200,000 was entered without prejudice and stated that it was entered without prejudice "to the

[13] The harassment complaint was not a sexual harassment complaint, but Haines City suggests that the Lieutenant was not unbiased in his review of the accident and Officer Graham.
[14] Respondent submitted a motion requesting the reduced amounts be submitted to the jury, but the trial judge held that, based on a Florida Supreme Court opinion, the total amount of the medical bills was admissible without reflection of previous payment or reduction.
[15] Haines City posits that Mr. Brandi's treating doctors disagree with his hired experts and that any depression, psychiatric/psychological treatment and/or annual cardiac monitoring would have been required prior to the accident for pre-existing conditions Mr. Brandi had. Haines City further assert that Mr. Brandi does not suffer from brain damage or cognitive disability from this accident and points to his consistent grades as evidenced in school records before and college records after the accident as well as his ability to drive his motorcycle and perform mechanical repairs after the accident.

[Claimants'] right to pursue payment of the full jury verdict." This language contemplates that the Claimants could pursue a claim bill and therefore, it is my conclusion that the Final Order does not preclude Mr. or Mrs. Brandi from pursuing this claim bill.

I find that Officer Graham was an employee of the City of Haines City, Florida, and was in the course and scope of her employment when the accident occurred. I find that Officer Graham had a duty to follow protocol and the law which requires an officer to operate his or her emergency vehicle with due regard for the safety of all persons using the highway.[16] Furthermore I find that, pursuant to Haines City Police procedures, Officer Graham had a duty to slow or stop her vehicle when entering the intersection on a red light to allow vehicles proceeding lawfully to clear the intersection.[17] I find that in failing to follow both s. 316.126, F.S., and Haines City Police Department procedures, Officer Graham negligently operated her vehicle on the night of the accident and that her negligence was the direct and proximate cause of Mr. Brandi's injuries.

The damages awarded by the jury are based on sufficient evidence and will not be disturbed.

COLLATERAL SOURCES: Mr. Brandi received $100,000 from his insurance carrier, Farm Bureau, pursuant to an uninsured motorist policy.

RESPONDENT'S ABILITY TO PAY: The City of Haines City, Florida, is a member of Preferred Governmental Insurance Trust, a governmental self-insuring trust. State National Insurance Company has the excess indemnity coverage at $2,000,000 per occurrence.

ATTORNEY'S/ LOBBYING FEES: Claimants' attorney has an agreement with Claimants to take a fee of 25% of Claimants' total recovery. Claimants' 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 $ 27,202.07.

LEGISLATIVE HISTORY: This is the seventh session this claim has been introduced to the Legislature. Senate Bill 28 by Senate Diaz de la Portilla was filed during the 2016 Legislative Session. It was not heard in any committee.

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[16] Section 316.126(5), F.S.

[17] Sergeant R. B. Brannon of the Florida Highway Patrol conducted an accident investigation at the scene on the day of the accident. In his report, Sergeant Brannon noted that witnesses stated that the police vehicle proceeded through the intersection on a red light with its blue lights and siren activated. Although Officer Graham testified that she entered the intersection on a yellow light, I find that the statements of the witnesses at the accident site and Sergeant Brannon's report are sufficient to support a conclusion by the preponderance of the evidence that Officer Graham proceeded through the intersection on a red light.

House Bill 3525 by Representative Rouson and Senate Bill 26 by Senator Diaz de la Portilla were filed during the 2015 Legislative Session. The Senate Bill was reported favorable out of the Judiciary Committee but was reported unfavorably out of the Committee on Community Affairs. The House Bill died in the Civil Justice Subcommittee.

House Bill 3509 by Representative Rouson and Senate Bill 26 by Senator Diaz de la Portilla were filed during the 2014 Legislative Session. The bills died in the Civil Justice Subcommittee and the Judiciary Committee, respectively.

House Bill 809 by Representative Rouson and Senate Bill 34 by Senator Diaz de la Portilla were filed during the 2013 Legislative Session. The bills died in the Civil Justice Subcommittee and the Judiciary Committee, respectively.

House Bill 1029 by Representative Rouson and Senate Bill 60 by Senator Norman were filed during the 2012 Legislative Session. The House Bill was laid on the table, and the Senate Bill died in the Special Master on Claims Bills.

House Bill 1339 by Representative Rouson and Senate Bills 36 and 280 by Senators Smith and Norman, respectively, were filed during the 2011 Legislative Session. The House Bill died in the Civil Justice Subcommittee. Senate Bill 36 was withdrawn prior to introduction, and Senate Bill 280 died in the Special Master on Claims Bills.

RECOMMENDATIONS: I recommend that the bill be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Grant, M., House Sponsor
Senator Steube, Senate Sponsor
Connie Cellon, Senate Special Master

A bill to be entitled

An act for the relief of Thomas and Karen Brandi by Haines City; providing an appropriation to compensate them for injuries and damages sustained as a result of the negligence of an employee of Haines City; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on March 26, 2005, Thomas Brandi was turning onto U.S. Highway 27 from Southern Dunes Boulevard in Haines City on a green arrow when his vehicle was broadsided on the driver's side by a car operated by Officer Pamela Graham, an employee of the Haines City Police Department, and

WHEREAS, Officer Graham entered the intersection on a red light and struck the driver's side door of Mr. Brandi's vehicle at a speed in excess of 45 miles per hour, and

WHEREAS, although Officer Graham claimed that she was responding to a distress call, there was no evidence to support her claim, and the internal investigation conducted by the Haines City Police Department concluded that she was not called or dispatched to the location where she was headed, and

WHEREAS, the internal investigation found that Officer Graham was at fault in the accident, having failed to operate her vehicle in a reasonably safe manner and having conducted herself in direct violation of procedures of the Haines City

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

Police Department, and

WHEREAS, as a result of the crash, Thomas Brandi sustained life-threatening injuries, including an aortic arch tear with contained hematoma and suggestion of active bleeding, a rib fracture, a right fibula fracture, a sternal fracture, a left acetabular fracture, multiple right inferior pubic ramus fractures, and severe traumatic brain injury resulting in cognitive disorder, complex personality change, depressive disorder, pain disorder, post-traumatic stress disorder, and panic disorder, and

WHEREAS, Thomas Brandi's medical expenses at the time of trial exceeded $156,000, and

WHEREAS, at a trial, a jury entered a verdict assessing 60 percent liability to Haines City and 40 percent liability to Thomas Brandi for the injuries sustained by Thomas Brandi in the accident, and

WHEREAS, Thomas Brandi was awarded $903,000 in damages for future medical expenses and future lost earning ability, $279,330 for past medical expenses and lost wages, and $450,000 for past and future pain and suffering, and

WHEREAS, Karen Brandi, Thomas Brandi's wife, was awarded $175,000 in damages for past and future loss of consortium, and

WHEREAS, after reduction for comparative negligence, the net award to Thomas and Karen Brandi was $1,084,396, and

WHEREAS, a stipulated cost judgment in the amount of

$94,049 was entered by the trial court against Haines City, and

WHEREAS, Thomas Brandi's medical expenses as of August 1, 2011, were $167,330, and, as a result of these expenses, Aetna, Inc., has a lien on any recovery in this matter in the amount of $78,109, and

WHEREAS, Haines City has paid $200,000 to Thomas and Karen Brandi in satisfaction of the sovereign immunity limits under s. 768.28, Florida Statutes, applicable at the time the claim arose, and

WHEREAS, Thomas Brandi received a payment of $100,000 from his uninsured motorist insurance coverage, 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. Haines City is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant in the sum of $825,094, payable to Thomas Brandi and his wife, Karen Brandi, as compensation for injuries and damages sustained as a result of the negligence of an employee of Haines City.

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

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

and future claims arising out of the factual situation described in this act which resulted in the injuries and damages to Thomas and Karen Brandi. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

IN RE: SENATE BILL 26)
RELIEF OF THOMAS AND KAREN)
BRANDI BY CITY OF HAINES CITY)
)

AFFIDAVIT OF ATTORNEY KENNETH J. MCKENNA AND ATTESTATION OF LOBBYIST MATTHEW BLAIR

I, KENNETH J. MCKENNA, am over the age of eighteen (18), and, after being duly sworn, depose and state as follows:

1. I am the attorney of record for Thomas Brandi and Karen Brandi with respect to damages they sustained as a result of the automobile collision which occurred on March 26, 2005.

2. Pursuant to the request of Parker Aziz, Special Master of the Florida House of Representatives, the following information is provided:

3. In July of 2006, Thomas and Karen Brandi retained the undersigned and the Dellecker Wilson law firm pursuant to a standard Florida Bar contingency fee contract that provides for a contingent attorney's fee of Twenty Five Percent (25%) for any claim brought against a state entity entitled to the Sovereign Immunity limitations of Fla. Stat. 768.28. The contract allows the undersigned's firm to recover costs in addition to the contingent fee.

4. In 2010, after the trial and excess verdict, Thomas and Karen Brandi entered into a Claims Bill Contingency Fee Agreement with Corcoran & Johnston to serve as lead lobbyists and consultants in connection with the subject Claims Bill in

exchange for a Five Percent (5%) contingent fee. The Agreement specifically provides: "Clients understand that

it is the clear intent of the Florida Legislature to limit the award of attorney's fees and costs and lobbyists' fees and costs to an amount not to exceed twenty-five percent (25%) of the total recovery by way of any judgment or settlement. Clients further understand that the Firm's compensation of five-percent (5%) in this matter is included within, and will be paid from, the permissible twenty-five percent (25%) of the total Claims Bill recovery."

5. The Corcoran and Johnston Claims Bill Contingency Fee Agreement was also executed by the undersigned as a Partner of the Dellecker Wilson law firm.

6. I acknowledge that all lobbying fees related to this claims bill will be included as part of the statutory cap on attorney's fees.

7. As of today's date, the outstanding costs that will be paid from any amount paid by the Florida Legislature total Twenty Seven Thousand Two Hundred Two Dollars and Seven Cents ($27,202.07).

8. The costs paid to the undersigned's law firm from the statutory cap payment total One Hundred Twenty Thousand Dollars ($120,000).

9. An itemization of the total costs is attached hereto as Exhibit "A". Hard cost expenditures total One Hundred Forty One Thousand Six Hundred Ninety Eight

Dollars and Thirty Cents ($141,698.30). Soft cost expenditures total Five Thousand Five Hundred Three Dollars and Seventy Seven Cents ($5,503.77).

FURTHER AFFIANT SAYETH NOT.

KENNETH J. MCKENNA

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 1st day of March, 2017 by Kenneth McKenna who is (personally known) to me or who has produced _____ as identification and who did/did not take an oath.

NOTARY PUBLIC (signed name)

{NOTARY SEAL}

Sandra Rosati
NOTARY PUBLIC (printed name)

SANDRA ROSATI
Notary Public - State of Florida
Commission # GG 058135
My Comm. Expires Dec 27, 2020
Bonded through National Notary Assn.

MY COMMISSION EXPIRES 12/27/2020

ATTESTATION OF MATTHEW BLAIR

I am a lobbyist employed by Corcoran & Johnston. I have read and reviewed the above affidavit of Kenneth J. McKenna and attest and affirm that the Claims Bill Contingency Fee Agreement with Corcoran & Johnston contains the above-quoted language and further confirm that my Firm's compensation of five-percent (5%) in this matter is included within, and will be paid from, the permissible twenty-five percent (25%) of the total Claims Bill recovery.

MATTHEW BLAIR

STATE OF FLORIDA
COUNTY OF Pasco

The foregoing instrument was acknowledged before me this 1st day of March, 2017 by Robert M. Blair, who is personally known to me or who has produced as identification and who did/did not take an oath.

NOTARY PUBLIC (signed name)

{NOTARY SEAL}

MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

NOTARY PUBLIC (printed name)

MY COMMISSION EXPIRES 8/7/2017

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6555 (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: Civil Justice & Claims Subcommittee

Representative Grant, M. offered the following:

Amendment

Remove lines 78-81 and insert:

and Karen Brandi. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $165,018.80, the total amount paid for lobbying fees may not exceed $41,254.70, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $27,202.07.