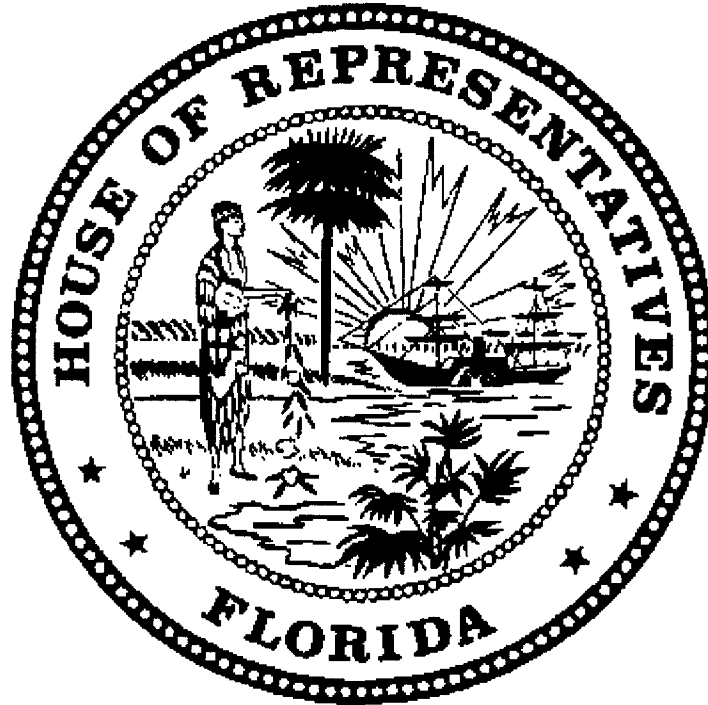


Civil Justice & Claims Subcommittee

Wednesday, March 8, 2017
12:00 PM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Heather Fitzenhagen
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Claims Subcommittee

Start Date and Time: Wednesday, March 08, 2017 12:00 pm

End Date and Time: Wednesday, March 08, 2017 03:00 pm

Location: Sumner Hall (404 HOB)

Duration: 3.00 hrs

Consideration of the following proposed committee bill(s):

PCB CJC 17-01 -- Clerks of the Circuit Court
PCB CJC 17-02 -- Termination of a Condominium Association

Consideration of the following proposed committee substitute(s):

PCS for HB 735 -- Covenants and Restrictions of Property Owners

Consideration of the following bill(s):

HB 329 Child Protection by Harrell
HB 363 Temporary Care of a Child by White, Williams
HB 6503 Relief/Sean McNamee, Todd & Jody McNamee/School Board of Hillsborough County by Shaw
HB 6509 Relief/Robert Allan Smith/Orange County by Cortes, B.
HB 6515 Relief/Wendy Smith and Dennis Darling, Sr./State of Florida by Jones
HB 6521 Relief/Mary Mifflin-Gee/City of Miami by Jenne
HB 6523 Relief/"Survivor" & Estate of "Victim"/DCF by Diaz, J.
HB 6529 Relief/Lillian Beauchamp/St. Lucie County School Board by Byrd
HB 6531 Relief/Dustin Reinhardt/Palm Beach County School Board by Drake
HB 6533 Relief/Jennifer Wohlgemuth/Pasco County Sheriff's Office by Grant, J.

NOTICE FINALIZED on 03/06/2017 4:01PM by Gilliam.Ann

PCB CJC 17-01

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJC 17-01 Clerks of the Circuit Court
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

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

SUMMARY ANALYSIS

Following a 1998 amendment to the state's Constitution, the state was required to pay costs in the judicial system that had previously been the responsibility of the counties. The amendment also required that the 67 county clerks of court fund their activities using revenue from charges, fees, costs, and fines assessed in civil and criminal proceedings. The activities funded through these assessments only include activities that are considered court-related, as provided for by law.

In 2003, the Florida Clerks of Court Operations Corporation ("Corporation") was created to perform various functions as prescribed by law. Initially, the Corporation reviewed and certified proposed budgets from each clerk. In 2009, the Corporation's responsibilities changed and they were tasked with reviewing proposed budgets from each clerk before ultimately submitting a budget to the legislature to be approved as part of the General Appropriations Act.

The clerks of court's budgets are no longer included in the General Appropriations Act. Rather, the Corporation is currently responsible for preparing a combined budget for the clerk of courts and submitting it to the Legislative Budget Commission ("LBC") who has final authority with respect to reviewing, modifying, and approving the budget. Included in these budget requests, as "court-related" functions, are the cost of paying, processing, and providing meals and lodging for jurors and witnesses.

The bill removes the LBC's power of reviewing, modifying, and approving budgets for the clerk of courts and grants this power back to the Corporation. In addition, the bill provides reporting requirements for the Corporation and provides that the total combined budgets of the 67 clerks may not exceed the revenue estimates for the clerks established by the Revenue Estimating Conference.

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs back to the state. The bill provides that each clerk of court and the Corporation will prepare quarterly estimates of the needed funds for the Justice Administrative Commission and, based on these estimates, state funding will be distributed to each clerk of court.

The estimated cost of juror payments, and juror meals and lodging for Fiscal Year 2016-2017 is $11.7 million. This bill will have a recurring negative impact on general revenue funds in that amount. The states' clerk of the courts will see a recurring decrease in expenditures in that amount.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

History of Clerk of Courts Funding

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution describes the responsibilities and functions of officials involved in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. It also provides the source of funding for the state court system.

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued paying for facilities, communications, and security for the court system entities. Article V, section 14(c) provides that:

> No county or municipality, except as provided in this subsection, shall be required to provide any funding for.....the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for .... the offices of the clerks of the circuit and county courts performing court-related functions.

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings.[1] The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees, and fines, the clerks of court are authorized to use collection agents if necessary.

Art. V, s. 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts (the circuit and county courts) are jointly funded by the state and counties. Art. V, s. 14(b) provides that:

> All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Since the approval of Revision 7 the funding for the clerks of court and the process of proposing budgets and having budgets approved has undergone multiple changes.

[1] s. 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions and additional service charges.

Clerk of Court Funding: 2004-2008

In 2004 legislation was passed to implement the changes to Art. V. From 2004-08, each county clerk was responsible for preparing a proposed budget which was then submitted to the Florida Clerks of Court Corporation (the "Corporation"), on or before August 15 of each fiscal year. The Legislature created the Corporation to provide accountability for the revenues collected by the clerks of the court. All clerks of the circuit court are members of the Corporation.[2]

The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.[3] Upon review and certification of the individual clerk of court budgets by the Corporation, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.[4]

Additionally, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.[5] The Department of Revenue would then transfer those excess funds, not needed to resolve clerk deficits, from the Clerks of the Court Trust Fund to the General Revenue Fund.

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk meeting performance standards.[6]

The Legislative Budget Commission ("LBC") had authority to approve increases to the maximum annual budget approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the legislature.[7]

The LBC is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House.[8] The LBC, among other things, approves budget amendments during the interim between sessions.

---

[2] s. 28.35, F.S.
[3] s. 28.36(3), F.S. (2008)
[4] s. 28.36(4), F.S. (2008)
[5] s. 28.37(2), F.S. (2008)
[6] s. 28.35(1)(f), F.S. (2008)
[7] *See* s. 28.36(6), F.S. (2008)

Clerk of Court Funding: 2009-2013

During the 2009 legislative session, the Legislature substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state employees.

Ch. 2009-204, L.O.F., provided that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).[9] The Corporation, moreover, was housed within the JAC but was not subject to the control, supervision, or direction of the JAC.

The new budget procedure also provided that the Corporation was responsible for preparing budget requests for resources necessary to perform its duties and submitting the request pursuant to ch. 216, F.S., to be funded as a budget entity in the General Appropriations Act.[10] Each clerk was required to submit in his or her budget request the number of personnel and the proposed budget for a specified list of core services, and include the unit cost for each service unit within each core services.[11] The Corporation was then required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs were higher than a clerk's peers, the clerk was required to justify the increased costs.

The Corporation had to recommend to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. Beginning in the 2010-2011 fiscal year, the Corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund were insufficient for the first quarter release, the Corporation could make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases was based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.[12]

The Chief Financial Officer (CFO) reviewed unit costs proposed by the Corporation and made recommendations to the Legislature and if necessary, could conduct an audit of a clerk or the Corporation. The Legislature could then reject or modify the proposed unit costs, and appropriate the total amount of the clerk budgets in the General Appropriations Act.

Current Law

In 2013, the Legislature reversed many of the changes made in 2009 legislative session and expanded the role of the LBC. Most notably, funding for the clerks is no longer appropriated in the General Appropriations Act.

---

[8] *See generally* s. 11.90, F.S.
[9] s. 28.37(2), F.S.
[10] Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor's Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission. *See* 216.023(8), F.S.
[11] Those core services included circuit criminal; county criminal; juvenile delinquency; criminal traffic; circuit civil; county civil; civil traffic; probate; family; and juvenile dependency. s. 28.36, F.S. (2011).
[12] s. 28.36(10), F.S. (2011)

Rather, the clerks of court work together with the Corporation, the Legislative Budget Commission, and the Judicial Administrative Commission in requesting, modifying, and finalizing a budget for the clerks of court.

Florida Clerks of Court Operations Corporation

All clerks of the circuit court are still members of the Corporation and hold their position and authority in an ex officio capacity. The Corporation's current functions include:

- Adopting a plan of operations;
- Conducting an election of an executive council;
- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of court;
- Developing and certifying a uniform system of performance measures and applicable performance standards for court-related functions as developed by the Corporation and clerk workload performance in meeting the workload performance standards;
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks;
- Reviewing, certifying, and recommending proposed budgets submitted by clerks of the court;
- Developing and conducting clerk educational programs; and
- Submitting a proposed budget for the clerks of court to the LBC on or before August 1 of each year.[13]

Before October 1 of each year, the LBC must consider the submitted budgets and approve, disapprove, or amend the Corporation's budget and approve, disapprove, or amend and approve the total of the clerks' combined budgets or any individual clerk's budget. If the LBC fails to approve or amend and approve the Corporation's budget or the clerks' combined budgets before October 1, the clerks must continue to perform their court-related functions based upon their budget for the previous fiscal year.[14]

Clerks of Court Court-Related Functions

Pursuant to authority granted in Art. V, s. 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule. Presently, the court-related functions clerks may perform are:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meal or lodging provided to jurors;
- Data collection and reporting;
- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.[15]

---

[13] s. 28.35(2), F.S.
[14] s. 28.35(2)(h), F.S.
[15] s. 28.35(3)(a), F.S.

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.[16]

Juror Payments and Costs

The Justice Administrative Commission ("JAC" or "Commission") was created under s. 43.16, F.S. Its members are appointed and consist of two state attorneys and two public defenders.[17] The commission's duties include maintaining a central state office for administrative services and assistance to and on behalf of the state attorneys and public defenders, the Capital Collateral Regional Counsel, the Office of Criminal Conflict and Civil Regional Counsel, and the Guardian Ad Litem Program

Chapter 40, F.S., provides for juries, their payment, and due process costs. The chief judge of each judicial circuit is authorized and responsible for the management, operation, and oversight of the jury system. The clerk of the circuit court is delegated specific responsibilities regarding the processing of jurors, including qualifications, summons, selection lists, reporting, and compensation of jurors. The clerk of the circuit court may contract with the chief judge for the court's assistance in the provision of services to process jurors. The chief judge may also designate to the clerk of the circuit court additional duties consistent with established uniform standards of jury management practices that the Supreme Court adopts by rule or issues through administrative order.[18]

Prior to 2008, state general revenue funds were used to pay juror and witness payments, as well as juror meals and lodging. Each clerk of court prepared quarterly estimates of the needed funds for the Office of State Courts Administrator. Based on these estimates, state funding was distributed to each clerk of courts. In 2008, the Legislature amended the law to require the clerk of the courts to pay those costs from filing fees, service charges, court costs and fines.

Section 28.35, F.S., currently requires the clerks to pay for juror meals and lodging as well as juror and witness payments from filing fees, service charges, costs and fines. Chapter 40, F.S, provides for the management and operations of the state jury system. The chapter specifies that the clerk of the court is responsible for paying for juror payments and meals and lodging. It also provides for the payment process for jury and due process related costs. Juror service is defined and eligibility criteria for payment to jurors for service is provided. Such payments are to be made by the clerk of the circuit court.

The JAC must pay all due process service related invoices after review for compliance with applicable rates and requirements that were submitted by a state attorney, a private court-appointed counsel, a public defender, and the Office of Criminal Conflict and Civil Regional Counsel. If the funds required for payment of witnesses in civil traffic cases and witnesses of the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs in any county during a quarterly fiscal period exceeds the amount of the funds received from the CFO, the state attorney, public defender, or the Office of Criminal Conflict and Civil Regional Counsel, as applicable, must make a further request upon the JAC for the amount necessary to allow for full payment.

---

[16] s. 28.35(3)(b), F.S.
[17] s. 43.16(2), F.S.
[18] s. 40.001, F.S.

The budget implementing bill for fiscal year 2016-2017 required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.[19]

Effect of Bill

Florida Clerks of Court Operations Corporation

The bill removes the requirement that the LBC annually approve, disapprove, or amend the total combined budget of the clerks of court for court-related functions, and the budget of the Corporation. Instead, the Corporation is responsible for approving the proposed budget for each clerk of court. Moreover, the bill places a cap on combined budgets of the clerks of court; the total combined budgets are not allowed to exceed the revenue estimates established by the Revenue Estimating Conference.

The bill requires that the Corporation prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committee by January 1 of each year on the operations and activities of the Corporation. The report must also detail the budget development for the clerks of court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk.

Court-Related Functions: Juror Costs

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs to the JAC.

This bill amends s. 28.35, F.S., to remove the authorization of the clerks to pay for juror payments and meals and lodging from filing fees, service charges, costs and fines. The bill amends s. 40.29, F.S., to provide that each clerk of court will prepare quarterly estimates of the funds needed to compensate jurors for payments and meals and lodging for the JAC and, based on these estimates, state funding will be distributed to each clerk of courts. The Corporation must prepare quarterly estimates of the funds needed to compensate for jury related personnel costs.

The bill also amends s. 40.31, F.S., to provide that if the amount of the appropriation is not sufficient to fund such jury costs during the fiscal year, the JAC may apportion the funds to the clerks and any deficit would be paid by warrant. Likewise, in a deficit situation the clerks would pay jurors by certificate of the amount of compensation still due. This procedure mirrors current law in respect to witness payments.

Additionally, ss. 40.24, 40.32, 40.33, and 40.34, F.S., are amended to conform to the provisions of the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 11.90, F.S., relating to the Legislative Budget Commission.

Section 2 amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 3 amends s. 28.36, F.S., relating to budget procedure.

Section 4 amends s. 40.24, F.S., relating to compensation and reimbursement policy.

Section 5 amends s. 40.29, F.S., relating to payment of due-process costs.

[19] *See* 2016-62, L.O.F., s. 66.

Section 6 amends s. 40.31, F.S., relating to Justice Administrative Commission appropriations.

Section 7 amends s. 40.32, F.S. relating to payments to jurors and witnesses.

Section 8 amends s. 40.33, F.S., relating to deficiencies.

Section 9 amends s. 40.34, F.S., relating to clerks making triplicate payroll.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The budget implementing bill for fiscal year 2016-2017 required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.[20] The Legislature included $11.7 million for juror related costs in the 2016-2017 General Appropriations Act. .[21] This bill amends the law to require the state to pay for these juror costs for the 2017-2018 fiscal year and in subsequent fiscal years. The necessary appropriation to the Justice Administrative Commission for this purpose will be included in the FY 2017-18 House proposed General Appropriations Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The estimated cost of juror payments, juror meals and lodging and juror related personnel costs for Fiscal Year 2016-17 was $11.7 million. The states' clerk of the courts will see a recurring decrease in expenditures in that amount.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

---

[20] *See* 2016-62, L.O.F., s. 66.

[21] *See* 2016-17 GAA, ch. 2016-66, L.O.F., line 772A.

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

1 A bill to be entitled
2 An act relating to clerks of the circuit court;
3 amending s. 11.90, F.S.; removing duties of the
4 Legislative Budget Commission regarding budgets of the
5 Florida Clerks of Court Operations Corporation and the
6 clerks of the court; amending s. 28.35, F.S.; revising
7 duties of the corporation; prohibiting the total
8 combined proposed budgets of clerks of the court from
9 exceeding specified limits; requiring the corporation
10 to provide an annual report to the Governor,
11 Legislature, and chairs of the legislative
12 appropriations committees regarding court operations
13 and budgets; deleting duties of the commission in
14 considering budgets of the clerks of the court;
15 amending s. 28.36, F.S.; authorizing the corporation
16 to amend budgets of the clerks of the court; amending
17 s. 40.24, F.S.; transferring the responsibility of
18 paying jurors from clerks of the court to the state;
19 amending s. 40.29, F.S.; requiring clerks of the
20 circuit court to forward quarterly estimates of funds
21 necessary for certain jury-related costs to the
22 commission; revising procedures governing the payment
23 of due-process service-related costs; amending s.
24 40.31, F.S.; authorizing the commission to apportion
25 appropriations, and requiring the Chief Financial

26 Officer to issue a warrant to pay apportioned amounts,
27 to counties for jury-related expenses; providing
28 procedures for clerks of the court to follow if the
29 apportioned amounts are insufficient to pay all jury-
30 related expenses; amending s. 40.32, F.S.; removing a
31 provision regarding funding of jury-related costs to
32 conform to changes made by the act; amending s. 40.33,
33 F.S.; authorizing clerks of the circuit court to
34 request from the commission additional funds to pay
35 jury-related expenses in the event of a deficiency;
36 amending s. 40.34, F.S.; requiring clerks of the court
37 to provide for payroll in triplicate for the payment
38 of jurors; specifying information to be included in
39 such payroll; providing an effective date.
40
41 Be It Enacted by the Legislature of the State of Florida:
42
43 Section 1. Subsection (6) of section 11.90, Florida
44 Statutes, is amended to read:
45 11.90 Legislative Budget Commission.—
46 (6) The commission has ~~shall have~~ the power and duty to:
47 (a) Review and approve or disapprove budget amendments
48 recommended by the Governor or the Chief Justice of the Supreme
49 Court as provided in chapter 216.
50 (b) Develop the long-range financial outlook described in

51 s. 19, Art. III of the State Constitution.
52 ~~(c) Review and approve, disapprove, or amend and approve~~
53 ~~the budget of the Florida Clerks of Court Operations~~
54 ~~Corporation.~~
55 ~~(d) Review and approve, disapprove, or amend and approve~~
56 ~~the total combined budgets of the clerks of the court or the~~
57 ~~budget of any individual clerk of the court for court-related~~
58 ~~functions. As part of this review, the commission shall consider~~
59 ~~the workload and expense data submitted pursuant to s. 28.35.~~
60 (c) ~~(e)~~ Exercise all other powers and perform any other
61 duties prescribed by the Legislature.
62 Section 2. Paragraphs (a), (f), and (h) of subsection (2)
63 and subsection (3) of section 28.35, Florida Statutes, are
64 amended to read:
65 28.35 Florida Clerks of Court Operations Corporation.—
66 (2) The duties of the corporation shall include the
67 following:
68 (a) Adopting a plan of operation including a detailed
69 budget for the corporation.
70 (f) Approving the ~~Reviewing, certifying, and recommending~~
71 proposed budgets submitted by clerks of the court pursuant to s.
72 28.36. The corporation must ensure that the total combined
73 budgets of the clerks of the court do not exceed the total
74 estimated revenues available for court-related expenditures as
75 determined by the most recent Revenue Estimating Conference. The

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

V

76 corporation may amend any individual clerk of the court budget
77 to ensure compliance with this paragraph and must consider
78 performance measures, workload performance standards, workload
79 measures, and expense data before modifying the budget. As part
80 of this process, the corporation shall:
81 1. Calculate the minimum amount of revenue necessary for
82 each clerk of the court to efficiently perform the list of
83 court-related functions specified in paragraph (3)(a). The
84 corporation shall apply the workload measures appropriate for
85 determining the individual level of review required to fund the
86 clerk's budget.
87 2. Prepare a cost comparison of similarly situated clerks
88 of the court, based on county population and numbers of filings,
89 using the standard list of court-related functions specified in
90 paragraph (3)(a).
91 3. Conduct an annual base budget review and an annual
92 budget exercise examining the total budget of each clerk of the
93 court. The review shall examine revenues from all sources,
94 expenses of court-related functions, and expenses of noncourt-
95 related functions as necessary to determine that court-related
96 revenues are not being used for noncourt-related purposes. The
97 review and exercise shall identify potential targeted budget
98 reductions in the percentage amount provided in Schedule VIII-B
99 of the state's previous year's legislative budget instructions,
100 as referenced in s. 216.023(3), or an equivalent schedule or

101 instruction as may be adopted by the Legislature.
102 4. Identify those proposed budgets containing funding for
103 items not included on the standard list of court-related
104 functions specified in paragraph (3)(a).
105 5. Identify those clerks projected to have court-related
106 revenues insufficient to fund their anticipated court-related
107 expenditures.
108 6. Use revenue estimates based on the official estimate
109 for funds accruing to the clerks of the court made by the
110 Revenue Estimating Conference. The total combined budgets of the
111 clerks of the court may not exceed the revenue estimates
112 established by the most recent Revenue Estimating Conference.
113 7. Identify ~~and report~~ pay and benefit increases in any
114 proposed clerk budget, including, but not limited to, cost of
115 living increases, merit increases, and bonuses.
116 8. Identify ~~Provide detailed explanation for~~ increases in
117 anticipated expenditures in any clerk budget that exceeds the
118 current year budget by more than 3 percent.
119 9. Identify ~~and report~~ the budget of any clerk which
120 exceeds the average budget of similarly situated clerks by more
121 than 10 percent.
122 (h) Preparing and submitting a report to the Governor, the
123 President of the Senate, the Speaker of the House of
124 Representatives, and the chairs of the legislative
125 appropriations committees by January 1 of each year on the

126 operations and activities of the corporation and detailing the
127 budget development for the clerks of the court and the end-of-
128 year reconciliation of actual expenditures versus projected
129 expenditures for each clerk of court. ~~Beginning August 1, 2014,~~
130 ~~and each August 1 thereafter, submitting to the Legislative~~
131 ~~Budget Commission, as provided in s. 11.90, its proposed budget~~
132 ~~and the information described in paragraph (f), as well as the~~
133 ~~proposed budgets for each clerk of the court. Before October 1~~
134 ~~of each year beginning in 2014, the Legislative Budget~~
135 ~~Commission shall consider the submitted budgets and shall~~
136 ~~approve, disapprove, or amend and approve the corporation's~~
137 ~~budget and shall approve, disapprove, or amend and approve the~~
138 ~~total of the clerks' combined budgets or any individual clerk's~~
139 ~~budget. If the Legislative Budget Commission fails to approve or~~
140 ~~amend and approve the corporation's budget or the clerks'~~
141 ~~combined budgets before October 1, the clerk shall continue to~~
142 ~~perform the court-related functions based upon the clerk's~~
143 ~~budget for the previous county fiscal year.~~
144 (3)(a) The list of court-related functions that clerks may
145 fund from filing fees, service charges, costs, and fines is
146 limited to those functions expressly authorized by law or court
147 rule. Those functions include the following: case maintenance;
148 records management; court preparation and attendance; processing
149 the assignment, reopening, and reassignment of cases; processing
150 of appeals; collection and distribution of fines, fees, service

151 charges, and court costs; processing of bond forfeiture
152 payments; ~~payment of jurors and witnesses; payment of expenses~~
153 ~~for meals or lodging provided to jurors;~~ data collection and
154 reporting; ~~processing of jurors;~~ determinations of indigent
155 status; and paying reasonable administrative support costs to
156 enable the clerk of the court to carry out these court-related
157 functions.
158 (b) The list of court-related functions that clerks may
159 not fund from filing fees, service charges, costs, and fines
160 includes:
161 1. Those functions not specified within paragraph (a).
162 2. Functions assigned by administrative orders which are
163 not required for the clerk to perform the functions in paragraph
164 (a).
165 3. Enhanced levels of service which are not required for
166 the clerk to perform the functions in paragraph (a).
167 4. Functions identified as local requirements in law or
168 local optional programs.
169 Section 3. Paragraph (a) of subsection (2) and subsection
170 (4) of section 28.36, Florida Statutes, are amended to read:
171 28.36 Budget procedure.—There is established a budget
172 procedure for the court-related functions of the clerks of the
173 court.
174 (2) Each proposed budget shall further conform to the
175 following requirements:

176 (a) On or before June 1 ~~of each year beginning in 2014~~,
177 the proposed budget shall be prepared, summarized, and submitted
178 by the clerk in each county to the Florida Clerks of Court
179 Operations Corporation in the manner and form prescribed by the
180 corporation. The proposed budget must provide detailed
181 information on the anticipated revenues available and
182 expenditures necessary for the performance of the court-related
183 functions listed in s. 28.35(3)(a) of the clerk's office for the
184 county fiscal year beginning October 1.
185 (4) The <u>corporation</u> ~~Legislative Budget Commission~~ may
186 approve increases or decreases to the previously authorized
187 budgets approved for individual clerks of the court pursuant to
188 s. 28.35 for court-related functions, if:
189 (a) The additional budget authority is necessary to pay
190 the cost of performing new or additional functions required by
191 changes in law or court rule; or
192 (b) The additional budget authority is necessary to pay
193 the cost of supporting increases in the number of judges or
194 magistrates authorized by the Legislature.
195 Section 4. Paragraph (a) of subsection (3) and subsections
196 (4) and (5) of section 40.24, Florida Statutes, are amended to
197 read:
198 40.24 Compensation and reimbursement policy.—
199 (3)(a) Jurors who are regularly employed and who continue
200 to receive regular wages while serving as a juror are not

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

V

201 entitled to receive compensation from the state ~~clerk of the~~
202 ~~circuit court~~ for the first 3 days of juror service.
203 (4) Each juror who serves more than 3 days is entitled to
204 be paid by the state ~~clerk of the circuit court~~ for the fourth
205 day of service and each day thereafter at the rate of $30 per
206 day of service.
207 (5) Jurors are not entitled to additional reimbursement by
208 the state ~~clerk of the circuit court~~ for travel or other out-of-
209 pocket expenses.
210 Section 5. Subsections (1), (3), and (4) of section 40.29,
211 Florida Statutes, are amended to read:
212 40.29 Payment of due-process costs.—
213 (1)(a) Each clerk of the circuit court, on behalf of the
214 state attorney, private court-appointed counsel, the public
215 defender, and the criminal conflict and civil regional counsel,
216 shall forward to the Justice Administrative Commission, by
217 county, a quarterly estimate of funds necessary to pay for
218 ordinary witnesses, including, but not limited to, witnesses in
219 civil traffic cases and witnesses of the state attorney, the
220 public defender, criminal conflict and civil regional counsel,
221 private court-appointed counsel, and persons determined to be
222 indigent for costs. Each quarter of the state fiscal year, the
223 commission, based upon the estimates, shall advance funds to
224 each clerk to pay for these ordinary witnesses from state funds
225 specifically appropriated for the payment of ordinary witnesses.

226 (b) Each clerk of the circuit court shall forward to the
227 Justice Administrative Commission a quarterly estimate of funds
228 necessary to compensate jurors for their service, to provide
229 jurors with meals and lodging, and for personnel costs related
230 to jury management.
231 (3) Upon receipt of the funds from the Chief Financial
232 Officer, the clerk of the court shall pay all invoices approved
233 and submitted by the state attorney, the public defender, the
234 clerk of the court, criminal conflict and civil regional
235 counsel, and private court-appointed counsel for the items
236 enumerated in subsection (1).
237 (4) After review for compliance with applicable rates and
238 requirements, the Justice Administrative Commission shall pay
239 all due-process service-related ~~due process service related~~
240 invoices, except those enumerated in subsection (1), approved
241 and submitted by the state attorney, the public defender, the
242 clerk of the court, criminal conflict and civil regional
243 counsel, or private court-appointed counsel in accordance with
244 the applicable requirements of ss. 29.005, 29.006, and 29.007.
245 Section 6. Section 40.31, Florida Statutes, is amended to
246 read:
247 40.31 Justice Administrative Commission may apportion
248 appropriation.—
249 (1) If the Justice Administrative Commission believes ~~has~~
250 ~~reason to believe~~ that the amount appropriated by the

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

V

251 Legislature is insufficient to meet the expenses of witnesses
252 during the remaining part of the state fiscal year, the
253 commission may apportion the money in the treasury for that
254 purpose among the several counties, basing such apportionment
255 upon the amount expended for the payment of witnesses in each
256 county during the prior fiscal year. In such case, each county
257 shall be paid by warrant, issued by the Chief Financial Officer,
258 only the amount so apportioned to each county, and, when the
259 amount so apportioned is insufficient to pay in full all the
260 witnesses during a quarterly fiscal period, the clerk of the
261 court shall apportion the money received pro rata among the
262 witnesses entitled to pay and shall give to each witness a
263 certificate of the amount of compensation still due, which
264 certificate shall be held by the commission as other demands
265 against the state.
266 (2) If the Justice Administrative Commission believes that
267 the amount appropriated by the Legislature is insufficient to
268 pay jurors for their service or to provide jurors with meals and
269 lodging during the remaining part of the state fiscal year, the
270 commission may apportion the money in the treasury for that
271 purpose among the counties, basing such apportionment upon the
272 amount expended for such purposes in each county during the
273 prior fiscal year. In such case, the Chief Financial Officer
274 shall issue a warrant to pay only the apportioned amount that is
275 due to each county. If the amount so apportioned is insufficient

276 to pay in full all jury-related expenses during a quarterly
277 fiscal period, the clerk of the court shall:
278 (a) Pay jurors entitled to pay before reimbursing any
279 other jury-related expenses described in this subsection; and
280 (b) Apportion the money received pro rata among the jurors
281 entitled to pay and give each juror a certificate of the amount
282 of compensation still due, which certificate shall be held by
283 the commission as other demands against the state.
284 Section 7. Subsection (3) of section 40.32, Florida
285 Statutes, is renumbered as subsection (2), and subsections (1)
286 and (2) of that section are amended to read:
287 40.32 Clerks to disburse money; payments to jurors and
288 witnesses.—
289 (1) All moneys drawn from the treasury under ~~the~~
290 ~~provisions of~~ this chapter by the clerk of the court shall be
291 disbursed by the clerk of the court as far as needed in payment
292 of jurors and witnesses, except for expert witnesses paid under
293 a contract or other professional services agreement pursuant to
294 ss. 29.004, 29.005, 29.006, and 29.007, for the legal
295 compensation for service during the quarterly fiscal period for
296 which the moneys were drawn and for no other purposes.
297 ~~(2) The payment of jurors and the payment of expenses for~~
298 ~~meals and lodging for jurors under the provisions of this~~
299 ~~chapter are court-related functions that the clerk of the court~~
300 ~~shall fund from filing fees, service charges, court costs, and~~

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

V

301 ~~fines.~~
302 Section 8. Section 40.33, Florida Statutes, is amended to
303 read:
304 40.33 Deficiency.—If the funds required for payment of the
305 items enumerated in s. 40.29(1) in any county during a quarterly
306 fiscal period exceeds the amount of the funds provided pursuant
307 to s. 40.29(3), the state attorney, public defender, clerk of
308 the circuit court, or criminal conflict and civil regional
309 counsel, as applicable, shall make a further request upon the
310 Justice Administrative Commission for the items enumerated in s.
311 40.29(1) for the amount necessary to allow for full payment.
312 Section 9. Subsections (1) and (3) of section 40.34,
313 Florida Statutes, are amended to read:
314 40.34 Clerks to make triplicate payroll.—
315 (1) The clerk of the court shall make out a payroll in
316 triplicate for the payment of jurors and witnesses, which
317 payroll shall contain:
318 (a) The name of each juror and witness entitled to be paid
319 with state funds.~~;~~
320 (b) The number of days for which the jurors and witnesses
321 are entitled to be paid.~~;~~
322 (c) The number of miles traveled by each juror and
323 witness.~~; and~~
324 (d) The total compensation each juror and witness is
325 entitled to receive.

326 (3) Compensation paid to a juror or witness shall be
327 attested as provided in s. 40.32. The payroll shall be approved
328 by the signature of the clerk, or his or her deputy, except for
329 the payroll as to jurors or witnesses appearing before the state
330 attorney, which payroll shall be approved by the signature of
331 the state attorney or an assistant state attorney.
332 Section 10. This act shall take effect July 1, 2017.

PCB CJC 17-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJC 17-02 Termination of a Condominium Association
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

Under current law, a condominium may be terminated at any time if the termination is approved by 80 percent of the condominium's voting interests and no more than 10 percent of the voting interests reject the termination. If a plan of termination is rejected, a subsequent termination may not be considered for 18 months. Terminations involving a bulk owner, who owns 80 percent of the voting interests or more, are subject to additional conditions and limitations to protect the other owners in the condominium, including disclosures regarding who owns or controls the units that constitute the bulk owner.

The bill:

- Provides additional legislative findings regarding the public policy of condominium termination;
- Removes the ability of a declaration of condominium to provide for a termination vote of less than the statutory minimum;
- Changes the veto provision from 10 to 5 percent;
- Extends the re-vote delay after a failed vote to 24 moths;
- Extends the time before a condominium conversion may vote for optional termination to 10 years;
- Removes the restriction that only original purchasers from the developer are entitled to a higher payout during a termination by a bulk owner;
- Removes the restriction that limits payment to only homestead owners who are current on their mortgage;
- Changes disclosure requirements of bulk owners to be given to all voting interests before the approval of a plan of termination; and
- Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes to determine that a plan of termination meets the requirements of the law and grant authority for the termination if said requirements are met.

The bill appropriates $85,006 in recurring funds and $4,046 in nonrecurring funds (1 FTE) from the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund in FY 2017-18. The bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominiums, In General

Condominiums in Florida are governed by ch. 718, F.S., the Condominium Act. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (the "Division") has the power and duty to enforce and ensure compliance with the provisions of the Condominium Act, and to provide consumer protection for Florida residents living in condominiums.

A condominium is a form of ownership of real property created pursuant to the Condominium Act, which is comprised of units which are individually owned, but have an undivided share of common areas. A condominium developer must first file the proposed governing documents with the Division, who examines the documents to ensure statutory compliance. Upon approval by the Division, the condominium is formally created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium 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.

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. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.

Termination of a Condominium

Section 718.117, F.S., governs the process for terminating a condominium association. The section begins with legislative findings regarding the purpose of termination of condominium. These findings provide that there should be a statutory method to terminate condominiums to preserve the value of the property and rights of alienation of the owners.[1] The findings also provide that it is against public policy in the state to require condominium operations to continue when to do so constitutes economic waste or is made impossible by law or regulation.[2] These findings apply to all condominiums in the state in existence on or after July 1, 2007.[3]

There are two primary grounds for termination, each governed by its own requirements. First, a condominium may be terminated where there is economic waste or impossibility.[4] A condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium. A condominium may be terminated for "impossibility" if "it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.

[1] s. 718.117(1), F.S.
[2] *Id.*
[3] *Id.*
[4] s. 718.117(2), F.S.

A condominium may also be terminated in the discretion of the owners.[5] Commonly referred to as "optional termination," current law provides that unless the condominium declaration provides for a lower percentage, the condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than 10 percent of the total voting interests of the condominium reject the termination.[6] A voting interest of the condominium may not be suspended for any reason when voting on an optional termination.[7] If 10 percent or more of the total voting interests reject a plan of termination, another plan of optional termination may not be considered for 18 months after the date of rejection.[8]

Optional terminations are subject to additional limitations and requirements if 80 percent of the total voting interests are owned by a bulk owner.[9] A bulk owner is defined as a single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider holding such voting interests.[10] These limitations are meant to protect the other unit holders. The limitations include allowing former unit owners to lease their units if the former condominium units are offered for lease to the public[11] and paying a relocation fee to former unit owners who had a homestead exemption on their units. [12] All unit owners, other than the bulk owner, must be compensated at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee.[13] An original purchaser from the developer who rejects the plan of termination and whose unit was granted homestead and is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination must receive the original purchase price paid for the unit or current fair market value, whichever is greater.[14] The plan of termination must provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien.[15] The payment may not exceed the unit's share of the proceeds of termination under the plan.[16]

Before a plan of termination is presented to the unit owners for consideration, a bulk owner must prepare a sworn statement with disclosures to the other owners.[17] The bulk owner must identify any person or entity that, directly or indirectly, owns or controls 50 percent or more of the units in the condominium.[18] If these units are owned by an artificial entity or entities, the bulk owner must disclose any natural person who owns or controls, directly or indirectly, 20 percent or more of the artificial entity or entities that constitute the bulk owner.[19] The bulk owner must identify the units it has acquired, the date each unit was acquired, and the total compensation paid to each prior owner by the bulk owner.[20] The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure must also be contained in the statement.[21] The bulk owner must also share the factual circumstances that show that the plan complies with the requirements in the law for optional terminations by a bulk owner and that the plan supports the public policies of the condominium termination law.[22]

---

[5] s. 718.117(3), F.S.
[6] *Id.*
[7] s. 718.117(3)(a)(1), F.S.
[8] s. 718.117(3)(b), F.S.
[9] s. 718.117(3)(c), F.S.
[10] *Id.*
[11] s. 718.117(3)(c)(1), F.S.
[12] s. 718.117(3)(c)(2), F.S.
[13] s. 718.117(3)(c)(3), F.S.
[14] *Id.*
[15] s. 718.117(3)(c)(4), F.S.
[16] *Id.*
[17] s. 718.117(3)(c)(5), F.S.
[18] s. 718.117(3)(c)(5)(a), F.S.
[19] *Id.*
[20] s. 718.117(3)(c)(5)(b), F.S.
[21] s. 718.117(3)(c)(5)(c), F.S.
[22] s. 718.117(3)(c)(5)(d), F.S.

If the members of the board of administration are elected by the bulk owner, the unit owners may elect at least one-third of the members of the board before approval of any plan of termination.

Condominiums in which 75 percent or more of the units are timeshare units are not subject to the optional termination provisions of s. 718.117, F.S.

Condominium Conversion

Most condominiums are created as a part of new construction. However, a condominium conversion is allowed. A conversion is where an existing improvement, usually an apartment complex, is converted to the condominium form of ownership. Condominium conversions have special requirements pursuant to Part VI of ch. 718, F.S.

Number of Condominium Terminations

The Division furnished the number of condominium terminations for the previous 5 calendar years:

Calendar Year	Number of Terminations
2012	30
2013	37
2014	38
2015	33
2016	29

Effect of the Bill

The bill makes a number of changes to condominium terminations pursuant to s. 718.117, F.S.:

Legislative Findings

Current law at s. 718.117(1), F.S., includes legislative findings supporting laws on termination of a condominium association. The bill adds legislative findings.

Vote Required for Optional Termination

The bill:

- Removes the ability of a declaration of condominium to provide for a termination vote of less than the statutory minimum, thus having the effect of requiring at least an 80% vote for termination.
- Changes the veto provision from 10% to 5%
- Extends the re-vote delay after a failed vote for termination from 18 to 24 months.

Restriction Related to Conversions

The bill extends the time from creation of a condominium by conversion to the time that the coversion may vote for optional termination from 5 years to 10 years.

Homestead Protection

Where there is a bulk owner involved in the condominium termination, homestead property owners who object to the plan of termination have special protections. An objecting homestead owner is entitled to:

- Demand to lease their unit for 12 months after the termination on the same terms as similar unit types are being offered to the public;
- Payment of a relocation fee;
- Payment of the higher of the current fair market value of the unit or the amount paid to purchase the unit, provided that the objecting owner was an original purchaser from the developer and provided that the owner is current on his or her mortgage payments.

The bill removes the restriction regarding original purchasers from the developer and removes the restriction requiring that the homestead owner be current on his or her mortgage.

Disclosure Requirements

A bulk owner seeking optional termination must make certain disclosures to the other owners. The bill increases disclosure requirements to

- Change from 50 percent or greater bulk owner must disclose the owner or entity that owns interest before plan is presented to unit owners to 25 percent or greater bulk owner;
- Change from reporting natural persons who own or control 20 percent or more of the artificial entity that is a bulk owner to natural persons who own or control 10 percent or more; and
- Require listing of the factual circumstances that show how the plan supports the public policy of s. 718.117(1), F.S.

Review by the State

Condominium associations are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes, a division of the Department of Business and Professional Regulation ("division"). Current law has no requirement for filing or review of a plan of termination. The bill requires that a proposed plan for termination must be filed with the division, who must determine whether the requirements of s. 718.117, F.S., have been met and whether the plan complies with the requirements of s. 718.117, F.S. If so, the division must grant authority for the termination and the termination may proceed.

Application

The bill is remedial as it addresses the rights and liabilities of the affected parties and therefore applies to all condominiums that have been created under the Condominium Act.

Funding

Section 3 of the bill appropriates funding and authorizes 1 FTE for these reviews.

B. SECTION DIRECTORY:

Section 1 amends s. 718.117, F.S., regarding condominium termination.

Section 2 provides for application to existing condominiums.

Section 3 provides an appropriation.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill appropriates the sums of $85,006 in recurring funds and $4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund to the Department of Business and Professional Regulation in FY 2017-18. The appropriation authorizes and 1.00 full-time equivalent position and associated salary rate of $56,791.

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:

See Fiscal Comments.

D. FISCAL COMMENTS:

The fiscal impact of this bill on the private sector is speculative and difficult to quantify. In general, it appears that this bill may lessen the number of optional terminations and, where they occur, may increase the number of homestead condominium owners entitled to the homestead-level increased payment from a bulk buyer upon termination.

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:

   A declaration of condominium is a form of contract between the members of the association. Where a recorded declaration may have termination provisions or may implement the protections provided by s. 718.110(4), F.S., the bill may be implicate art. I, s. 10 of the Florida Constitution and art. I, s. 10 of the United States Constitution, both of which prohibit the Legislature from passing any law that impairs "the obligation of contracts."

As a threshold matter, a law must "substantially impair" a contractual right for it be constitutionally problematic.[23] The Florida Supreme Court has also held that "[a]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose."[24]

The courts have adopted a balancing test to "determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."[25] Factors considered in the balancing test include:

(a) Was the law enacted to deal with a broad, generalized economic or social problem?[26]
(b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
(c) Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?[27]

Additionally, the United States Supreme Court has found that parties cannot avoid state regulations and restrictions in an enterprise that is already subject to state regulation by simply entering into a contract.[28] This finding may be particularly relevant given the Florida Supreme Court's statement that, "In Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legislature. That body has broad discretion to fashion such remedies as it deems necessary to protect the interests of the parties involved."[29]

The Third District Court of Appeal has found that portions of s. 718.117, F.S., may violate the impairment of contracts provision. In the case, the declaration of a condominium association required a 100% vote for optional termination and a 100% vote to amend the declaration regarding termination. The association attempted a termination in which it was able to achieve the statutory 80% vote. The association argued that the statute controlled over the declaration. The district court of appeal disagreed, relying on the third prong of the *Pompino* test (above) to find that the statute impaired vested contractual rights and thus could not override the 100% vote requirement of the declaration.[30]

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

[23] *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 779 (Fla.1979) (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)).
[24] *Id.* at 778–79 (*citing United States Trust Co.*, 431 U.S. at 25 (1977)).
[25] *Id.* at 780.
[26] In determining the purpose of a statute, courts frequently look to the legislature's express statements of intent in the statute. *See Pomponio*, 378 So. 2d at 781 (noting in its analysis of the public purpose of the statute that the specific objectives for the statute are "neither expressly articulated nor plainly evident" in the statute).
[27] *Id.* at 779.
[28] *Energey Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411 (1983).
[29] *Century Vill., Inc. v. Wellington, E, F, K, L, H, J, M, & G, Condo. Ass'n*, 361 So. 2d 128, 133 (Fla. 1978).
[30] *Tropicana Condo. Ass'n v. Tropical Condo., LLC*, 2016 Fla. App. LEXIS 17090 (3D15-2583, November 16, 2016)

1 A bill to be entitled
2 An act relating to termination of a condominium
3 association; amending s. 718.117, F.S.; providing
4 legislative findings; revising voting requirements for
5 the rejection of a plan of termination; increasing the
6 amount of time to consider a plan of termination under
7 certain conditions; revising applicability; revising
8 the requirements to qualify for payment as a homestead
9 owner if the owner has rejected a plan of termination;
10 revising and providing notice requirements; requiring
11 the Department of Business and Professional Regulation
12 to review and approve a plan of termination; providing
13 applicability; providing an appropriation; providing
14 an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Subsections (1) and (3) of section 718.117,
19 Florida Statutes, are amended, and a new subsection (21) is
20 added to that section to read:
21 718.117 Termination of condominium.—
22 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:
23 (a) Condominiums are created as authorized by statute and
24 include covenants that encumber the land and restrict the use of
25 the use of real property.

26 (b) In some circumstances, the continued enforcement of
27 those covenants ~~that~~ may create economic waste, areas of
28 disrepair that threaten the safety and welfare of the public, or
29 cause obsolescence of the ~~a condominium~~ property for its
30 intended use and thereby lower property tax values, and ~~the~~
31 ~~Legislature further finds that~~ it is the public policy of this
32 state to provide by statute a method to preserve the value of
33 the property interests and the rights of alienation thereof that
34 owners have in the condominium property before and after
35 termination.
36 (c) ~~The Legislature further finds that~~ It is contrary to
37 the public policy of this state to require the continued
38 operation of a condominium when to do so constitutes economic
39 waste or when the ability to do so is made impossible by law or
40 regulation.
41 (d) It is in the interests of the state to provide for
42 termination of the covenants of a declaration of condominium in
43 certain circumstances, namely to:
44 1. Assure the continued maintenance, management and repair
45 of stormwater management systems, conservation areas, and
46 conservation easements;
47 2. Avoid shifting the expense of maintaining infrastructure
48 serving the condominium property, including but not limited to
49 stormwater systems and conservation areas to the general tax
50 bases of the state and local governments;

51 3. Prevent covenants from impairing the continued
52 productive uses of the property;
53 4. Protect state residents from health and safety hazards
54 created by derelict, damaged, obsolete or abandoned condominium
55 properties;
56 5. Preserve individual property rights and property values
57 and the local property tax base; and
58 6. Preserve the state's long history of protecting
59 homestead property and homestead property rights by ensuring
60 that such protection is extended to homestead property owners in
61 the context of a termination of a condominium. ~~This section~~
62 ~~applies to all condominiums in this state in existence on or~~
63 ~~after July 1, 2007.~~
64 (3) OPTIONAL TERMINATION.~~—Except as provided in subsection~~
65 ~~(2) or unless the declaration provides for a lower percentage,~~
66 The condominium form of ownership may be terminated for all or a
67 portion of the condominium property pursuant to a plan of
68 termination meeting the requirements of this section and
69 approved by the division. Before an association submits a plan
70 to the division, the plan must be approved by at least 80
71 percent of the total voting interests of the condominium.
72 However, if 5 ~~10~~ percent or more of the total voting interests
73 of the condominium have rejected the plan of termination by
74 negative vote or by providing written objections~~,~~ the plan of
75 termination may not proceed.

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

V

76 (a) The termination of the condominium form of ownership
77 is subject to the following conditions:
78 1. The total voting interests of the condominium must
79 include all voting interests for the purpose of considering a
80 plan of termination. A voting interest of the condominium may
81 not be suspended for any reason when voting on termination
82 pursuant to this subsection.
83 2. If 5 ~~10~~ percent or more of the total voting interests
84 of the condominium reject a plan of termination, a subsequent
85 plan of termination pursuant to this subsection may not be
86 considered for 24 ~~18~~ months after the date of the rejection.
87 (b) This subsection does not apply to any condominium
88 created pursuant to part VI of this chapter until 10 ~~5~~ years
89 after the recording of the declaration of condominium, unless
90 there is no objection to the plan of termination.
91 (c) For purposes of this subsection, the term "bulk owner"
92 means the single holder of such voting interests or an owner
93 together with a related entity or entities that would be
94 considered an insider, as defined in s. 726.102, holding such
95 voting interests. If the condominium association is a
96 residential association proposed for termination pursuant to
97 this section and, at the time of recording the plan of
98 termination, at least 80 percent of the total voting interests
99 are owned by a bulk owner, the plan of termination is subject to
100 the following conditions and limitations:

101 1. If the former condominium units are offered for lease
102 to the public after the termination, each unit owner in
103 occupancy immediately before the date of recording of the plan
104 of termination may lease his or her former unit and remain in
105 possession of the unit for 12 months after the effective date of
106 the termination on the same terms as similar unit types within
107 the property are being offered to the public. In order to obtain
108 a lease and exercise the right to retain exclusive possession of
109 the unit owner's former unit, the unit owner must make a written
110 request to the termination trustee to rent the former unit
111 within 90 days after the date the plan of termination is
112 recorded. Any unit owner who fails to timely make such written
113 request and sign a lease within 15 days after being presented
114 with a lease is deemed to have waived his or her right to retain
115 possession of his or her former unit and shall be required to
116 vacate the former unit upon the effective date of the
117 termination, unless otherwise provided in the plan of
118 termination.
119 2. Any former unit owner whose unit was granted homestead
120 exemption status by the applicable county property appraiser as
121 of the date of the recording of the plan of termination shall be
122 paid a relocation payment in an amount equal to 1 percent of the
123 termination proceeds allocated to the owner's former unit. Any
124 relocation payment payable under this subparagraph shall be paid
125 by the single entity or related entities owning at least 80

126 percent of the total voting interests. Such relocation payment
127 shall be in addition to the termination proceeds for such
128 owner's former unit and shall be paid no later than 10 days
129 after the former unit owner vacates his or her former unit.
130 3. For their respective units, all unit owners other than
131 the bulk owner must be compensated at least 100 percent of the
132 fair market value of their units. The fair market value shall be
133 determined as of a date that is no earlier than 90 days before
134 the date that the plan of termination is recorded and shall be
135 determined by an independent appraiser selected by the
136 termination trustee. For a person ~~an original purchaser from the~~
137 ~~developer~~ who rejects the plan of termination and whose unit was
138 granted homestead exemption status by the applicable county
139 property appraiser, or was an owner-occupied operating business,
140 as of the date that the plan of termination is recorded and who
141 is current in payment of both assessments and other monetary
142 obligations to the association ~~and any mortgage encumbering the~~
143 ~~unit~~ as of the date the plan of termination is recorded, the
144 fair market value for the unit owner rejecting the plan shall be
145 at least the original purchase price paid for the unit. For
146 purposes of this subparagraph, the term "fair market value"
147 means the price of a unit that a seller is willing to accept and
148 a buyer is willing to pay on the open market in an arms-length
149 transaction based on similar units sold in other condominiums,
150 including units sold in bulk purchases but excluding units sold

151 at wholesale or distressed prices. The purchase price of units
152 acquired in bulk following a bankruptcy or foreclosure shall not
153 be considered for purposes of determining fair market value.
154 4. The plan of termination must provide for payment of a
155 first mortgage encumbering a unit to the extent necessary to
156 satisfy the lien, but the payment may not exceed the unit's
157 share of the proceeds of termination under the plan. If the unit
158 owner is current in payment of both assessments and other
159 monetary obligations to the association and any mortgage
160 encumbering the unit as of the date the plan of termination is
161 recorded, the receipt by the holder of the unit's share of the
162 proceeds of termination under the plan or the outstanding
163 balance of the mortgage, whichever is less, shall be deemed to
164 have satisfied the first mortgage in full.
165 5. Before a plan of termination is presented to the unit
166 owners for consideration pursuant to this paragraph, the plan
167 must include the following written disclosures in a sworn
168 statement:
169 a. The identity of any person or entity that owns or
170 controls 25 ~~50~~ percent or more of the units in the condominium
171 and, if the units are owned by an artificial entity or entities,
172 a disclosure of the natural person or persons who, directly or
173 indirectly, manage or control the entity or entities and the
174 natural person or persons who, directly or indirectly, own or
175 control 10 ~~20~~ percent or more of the artificial entity or

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

V

176 entities that constitute the bulk owner.
177 b. The units acquired by any bulk owner, the date each
178 unit was acquired, and the total amount of compensation paid to
179 each prior unit owner by the bulk owner, regardless of whether
180 attributed to the purchase price of the unit.
181 c. The relationship of any board member to the bulk owner
182 or any person or entity affiliated with the bulk owner subject
183 to disclosure pursuant to this subparagraph.
184 d. The factual circumstances that show that the plan
185 complies with the requirements of this section and that the plan
186 supports the expressed public policies of this section.
187 (d) If the members of the board of administration are
188 elected by the bulk owner, unit owners other than the bulk owner
189 may elect at least one-third of the members of the board of
190 administration before the approval of any plan of termination.
191 (e) Upon approval of a plan of termination by the unit
192 owners, the plan shall be filed with the division. If the
193 division determines that the conditions required by this section
194 have been met and the plan complies with the procedural
195 requirements of this section, it shall authorize the termination
196 and the termination may proceed pursuant to this section.
197 (f) The provisions of subsection (2) do not apply to
198 optional termination pursuant to this subsection.
199 (21) APPLICABILITY.—This section applies to all
200 condominiums in this state in existence on or after July 1,

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

V

201 2007.
202 Section 2. This legislation is remedial as it addresses the
203 rights and liabilities of the affected parties and therefore
204 applies to all condominiums that have been created under the
205 Condominium Act.
206 Section 3. For the 2017-2018 fiscal year, the sums of
207 $85,006 in recurring funds and $4,046 in nonrecurring funds from
208 the Division of Florida Condominiums, Timeshares and Mobile
209 Homes Trust Fund are appropriated to the Department of Business
210 and Professional Regulation and 1.00 full-time equivalent
211 position and associated salary rate of $56,791 are authorized,
212 for the purpose of implementing this act.
213 Section 4. This act shall take effect July 1, 2017.

HB 329

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Child Protection
SPONSOR(S): Harrell
TIED BILLS: None **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Stranburg	Bond
2) Health & Human Services Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. In determining a time-sharing plan for contact with both parents, a court must weigh a number of factors in deciding what is in the best interests of the child.

A recovery residence is a form of group housing that is advertised as a peer-supported, alcohol-free, and drug-free living environment. These residences may be voluntarily certified through a program administered by the Department of Children and Families. The certification program requires the recovery residence to provide various documentation and establish certain policies in the recovery residence.

The bill provides that a time-sharing plan may not require a minor child to visit a parent residing in a recovery residence between the hours of 9 p.m. and 7 a.m. The bill also provides that a certified recovery residence may allow minor children to visit a resident parent, but may not allow the children to remain between the hours of 9 p.m. and 7 a.m.

The bill does not appear to affect state or local revenues and expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Parenting and Time-sharing

Current law provides that it is the public policy of the state that each minor child has frequent and continuing contact with both parents.[1] A court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[2] In determining timesharing with each parent, a court must consider the best interests of the child based on a list of factors.[3] These factors include:

- The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required;
- the anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties;
- the demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent;
- the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- The geographic viability of the parenting plan;
- The moral fitness of the parents;
- The mental and physical health of the parents;
- The home, school, and community record of the child;
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child;
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child;
- The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child; and
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

A final factor allows the court to take into account any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.[4]

Recovery Residences

In current law, a recovery residence is a residential dwelling unit, or other form of group housing, that is offered or advertised through any means by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.[5] Recovery residences may elect to

[1] s. 61.13(2)(c)1, F.S.
[2] s. 61.13(2)(c)2, F.S.
[3] s. 61.13(3), F.S.
[4] s. 61.13(3)(t), F.S.
[5] s. 397.311(33), F.S.

participate in a voluntary certification program administered through the Department of Children and Families.[6] Requirements for certification of a recovery residence include:

- Submission of documents, including a policy and procedure manual, rules for residents, intake procedures, refund policy, a code of ethics, proof of insurance, and proof of background screening;[7]
- Active management by a certified recovery residence administrator;[8]
- Submission of all owners, directors, and chief financial officers to a level 2 background screening;[9] and
- An onsite inspection of the recovery residence.[10]

The certification of a recovery residence may be suspended or revoked if the residence is not in compliance with any part of s. 397.487, F.S.[11]

Effect of Proposed Changes

The bill provides that a time-sharing plan pursuant to s. 61.13, F.S., may not require a minor child to visit a parent residing in a recovery residence between the hours of 9 p.m. and 7 a.m. Additionally, the bill provides that, as a requirement to certification, a recovery residence may not allow minor children to visit or remain between the hours of 9 p.m. and 7 a.m. A certified recovery residence may allow minor children to visit resident parents during the other hours of the day.

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

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., relating to parenting and time-sharing.

Section 2 amends s. 397.487, F.S., relating to recovery residences.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

---

[6] s. 397.487, F.S.
[7] s. 397.487(3), F.S.
[8] s. 397.487(4), F.S.
[9] s. 397.487(6), F.S.
[10] s. 397.487(5), F.S.
[11] s. 397.487(8)(a), F.S.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to child protection; amending s.
3 61.13, F.S.; prohibiting a time-sharing plan from
4 requiring visitation at a recovery residence between
5 specified hours; amending s. 397.487, F.S.;
6 authorizing a certified recovery residence to allow a
7 minor child to visit a recovery residence, excluding
8 visits during specified hours; providing an effective
9 date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsection (9) is added to section 61.13,
14 Florida Statutes, to read:
15 61.13 Support of children; parenting and time-sharing;
16 powers of court.—
17 (9) A time-sharing plan may not require that a minor child
18 visit a parent who is a resident of a recovery residence, as
19 defined by s. 397.311, between the hours of 9 p.m. and 7 a.m.
20 Section 2. Subsection (10) is added to section 397.487,
21 Florida Statutes, to read:
22 397.487 Voluntary certification of recovery residences.—
23 (10) A certified recovery residence may allow a minor
24 child to visit a parent who is a resident of the recovery
25 residence, provided that the minor child may not visit or remain

26 in the recovery residence between the hours of 9 p.m. and 7 a.m.

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

HB 363

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 363 Temporary Care of a Child
SPONSOR(S): White and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N	Tuszynski	Brazzell
2) Civil Justice & Claims Subcommittee		Stranburg CLS	Bond MB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Families are often confronted with circumstances, such as drug abuse, illness, unemployment, or homelessness, which, if not appropriately addressed, can lead to abuse, neglect, or abandonment of their children. Several private organizations in Florida work to support such families in crisis. The organizations assist parents with finding safe temporary placements to ensure their children do not enter the child welfare system while parents work to reestablish a safe and stable living environment.

The bill creates s. 409.1761, F.S., which authorizes organizations to provide assistance to families in crisis by finding volunteer respite families to care for children not in the child welfare system.

The bill authorizes the parent of a minor child to execute a contract for care to delegate certain powers regarding the care and custody of the child to a volunteer respite family that is screened and trained by certain nonprofit organizations. The delegation does not change parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child. The bill includes various requirements to ensure child safety. It:

- Prohibits a parent or agent from receiving compensation related to the delegation of care and custody;
- Limits the contract for care to a period of 6 months;
- Requires that either both parents sign the contract for care or notice be provided to a noncustodial parent;
- Specifies requirements for the execution, form, and revocation of the contract for care;
- Requires nonprofit organizations that assist with the temporary placement of a child with a volunteer respite family to conduct background screenings, provide support services and training to the families, maintain certain records, and register with the Department of Children and Families (DCF); and
- Authorizes DCF to provide information regarding temporary care programs to parents during a child protective investigation, if appropriate.

The bill also exempts the nonprofit organization assisting with the placement and the volunteer respite family from licensure and regulation by DCF. However, the bill does not prevent DCF or law enforcement from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.

The bill does not appear to have a fiscal impact on local government. The bill appears to have an indeterminate fiscal impact on state expenditures.

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

FULL ANALYSIS

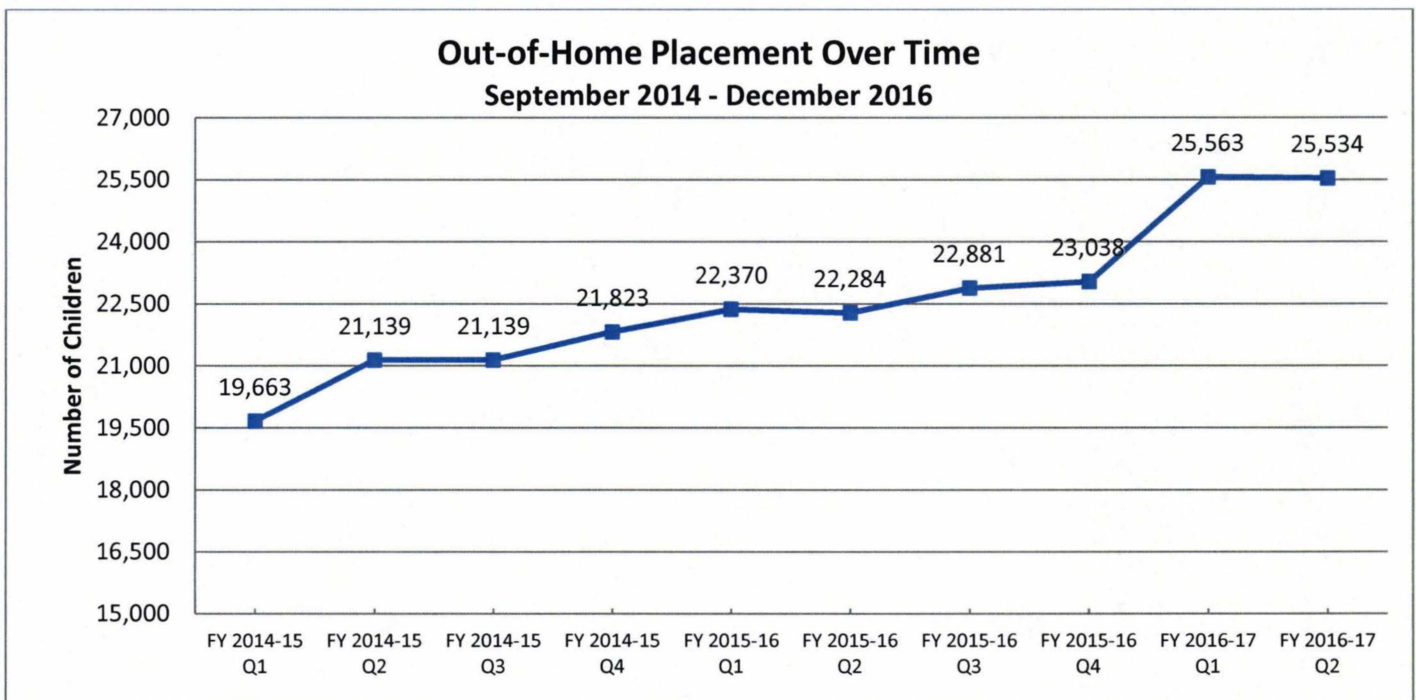
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Welfare System

Families are often confronted with circumstances, such as drug abuse, illness, domestic violence, unemployment, mental health issues, or homelessness, which, if not appropriately addressed, can lead to abuse, neglect, or abandonment of their children.[1] Parents in crisis may be unable to simultaneously deal with both the crisis and parenting due to the lack of family or supportive relationships.[2] This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect as a parent must choose between addressing the immediate crisis and adequately caring for his or her child.[3]

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be ameliorated, the child welfare system finds safe out-of-home placements for children, such as relative and non-relative caregivers, foster families, or adoptive families.[4] As of December 31, 2016, there were 25,534 children under the supervision of the Department of Children and Families (DCF) in out-of-home care.[5] Generally, out-of-home placements have been increasing for the past few years:[6]



[1] Murray, K, et al., *Safe Families for Children's Program Model and Logic Model Description Report,* unpublished presentation, University of Maryland School of Social Work (2012) (on file with Children, Families, & Seniors Subcommittee).
[2] *Id.* at pg. 4.
[3] *Id.* at pg. 2.
[4] *See* s. 39.001(1), F.S.
[5] "Out-of-home care" includes both children in board-paid foster care and those receiving protective supervision in the home of a relative or approved non-relative after a removal. Children under protective supervision in the home of a relative or approved non-relative after removal are considered "out-of-home," as they are entitled to the same safeguards as board-paid foster children. *See* Florida Department of Children and Families, DCF Quick Facts, *2016-17 Quarter 2 Program Data*, http://www.dcf.state.fl.us/general-information/quick-facts/cw/ (last visited February 8, 2017).
[6] Department of Children and Families, DCF Quick Facts, available at http://www.dcf.state.fl.us/general-information/quick-facts/ (last visited February 10, 2017).

Prevention

DCF's Child Welfare Program works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

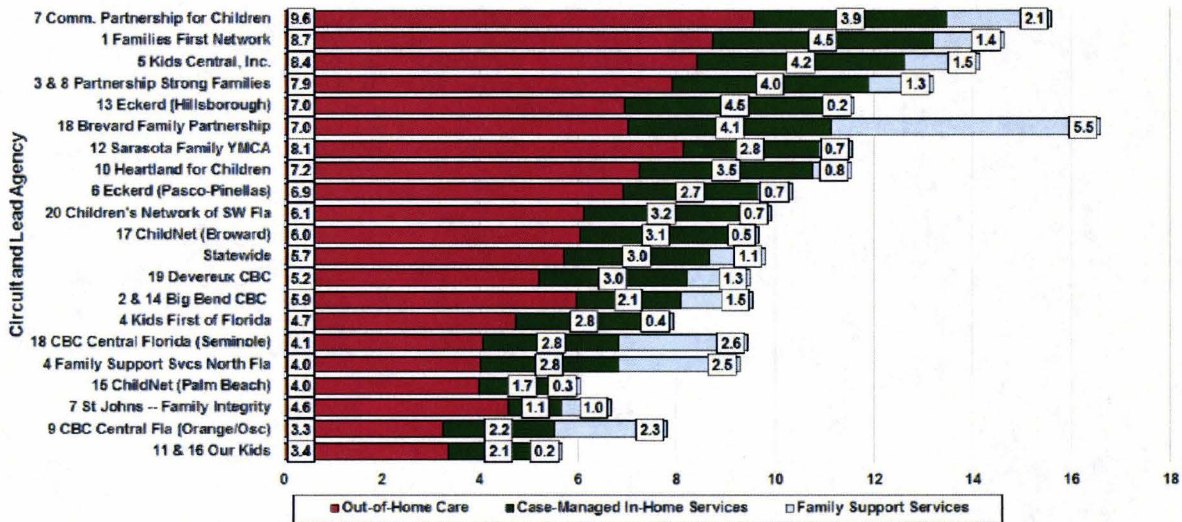
Child welfare services seek to prevent child abandonment, abuse, and neglect.[7] DCF's practice model is based on the safety of the child within his or her home, prioritizing the use of in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. DCF provides these child welfare and related services throughout the state by contracting with lead agencies, also known as community-based-care organizations (CBCs).[8]

Statute requires DCF to offer preventive services[9] to families to avoid removal of children from their homes.[10] Family Support Services (FSS) are preventive services that DCF offers. FSS are used when an investigator has determined that children in the family are safe but have a high or very high risk level and potential of removal. These services are designed to reduce risk and prevent removal by:[11]

- Strengthening protective factors in the family;
- Enhancing the social and emotional well-being of each child and family;
- Enabling families to use other resources and opportunities in the community; and
- Assisting families with creating and strengthening family resource networks.

The rate of FSS services provided varies by CBC. As of December 2016, the variation ranged from a low as 0.2 children per 1,000 (11th,16th, and 13th circuits) to a high of 5.5 children per 1,000 (18th Circuit).[12]

Children Receiving Services by Type – Rates per 1,000 Child Population[13]



[7] s. 39.001(8), F.S.
[8] Community-Based Care, The Department of Children and Families, accessible at http://www.myflfamilies.com/service-programs/community-based-care (last accessed January 28, 2017).
[9] S. 39.01(60), F.S., "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care.
[10] Ss. 39.401(7), F.S.
[11] Department of Children and Families, Operating Procedures, CFOP 170-1, Family Support Services, May 30, 2016, available at http://www.dcf.state.fl.us/admin/publications/policies.asp?path=CFOP%20170-xx%20Child%20Welfare (last accessed February 10, 2017).
[12] Department of Children and Families, Child Welfare Key Indicators Monthly Report, pg. 23, December 2016, available at http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_December_2016_v2.pdf (last accessed February 10, 2017).
[13] Id.

However, when a child cannot safely remain in his or her own home, DCF works to keep the child safe out of home while providing services to reunify the child and family as soon as it is safe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify the child with his or her family, the child welfare system works to find an adoptive family for the child.

Types of Placements and Licensure

For children who cannot safely remain in their own homes, the child welfare system finds an appropriate out-of-home placement. The placements range from temporary placement with a family member to a permanent adoptive placement with a family previously unknown to the child.

The following placements do not require licensure by DCF:

- Relative caregivers, such as a grandmother or aunt;
- Non-relative caregivers, such as a neighbor or family friend;
- An adoptive home which has been approved by DCF or by a licensed child-placing agency for children placed for adoption; and
- Persons or neighbors who care for children in their homes for less than 90 days.[14]

Placements that do require licensure and regulation include family foster homes, residential child-caring agencies, and child-placing agencies.[15]

Section 409.175(2)(d), F.S., defines a "child-placing agency" as any person, corporation or agency, public or private that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.

Section 409.175(2)(e), F.S., defines a "family foster home" as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include a person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption.

Licensed entities must comply with DCF rules pertaining to:

- The operation, conduct, and maintenance of these homes;
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served;
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served;
- The ratio of staff to children required to provide adequate care and supervision of the children served; and
- In the case of foster homes, the maximum number of children in the home and good moral character of personnel based upon screening, education, training, and experience requirements.[16]

[14] s. 409.175, F.S.
[15] s. 409.175, F.S.
[16] s. 409.175, F.S.

Background Screening

DCF is required to determine the good moral character of personnel of the child welfare system[17] through level 2 background screenings.[18] "Personnel" includes all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency.[19] Family members and persons between the ages of 12 and 18 residing with the owner or operator of a family foster home or agency must also undergo a delinquency record check, but such record check does not require fingerprinting.[20]

A level 2 background screening involves a state and national fingerprint-based criminal record check through the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI).[21] Level 2 background screenings require that a person has not been arrested for and awaits final disposition, has not been found guilty of, or entered a plea of nolo contendere to crimes related to sexual misconduct, child or adult abuse, murder, manslaughter, battery, assault, kidnapping, weapons, arson, burglary, theft, robbery, or exploitation.[22] DCF processes the background screenings through the Care Provider Background Screening Clearinghouse for individuals working in the child welfare system, who are required by law to be background screened.

Care Provider Background Screening Clearinghouse

The Care Provider Background Screening Clearinghouse[23] (clearinghouse) is a statewide system that enables specified state agencies, such as DCF and the Agency for Persons with Disabilities, to submit requests for level 2 background screenings for statutorily defined purposes, such as licensure or license-related employment. The level 2 screening results are provided to the requesting agency, not the individual or employer organization, and are also retained in the clearinghouse.

There are several benefits to utilizing the clearinghouse, including significant cost savings due to use of existing screenings, access to a screened individual's Florida public criminal record, and immediate notification of an employee or licensee arrest in Florida due to the active monitoring of the record.

Safe Families Model

In 2002, the Safe Families for Children (SFFC) program originated in Chicago as a ministry of the LYDIA Home Association, a Christian social service organization. The program created a model in which parents in crisis without family or support relationships had a place to go for help without entering the child welfare system and losing custody of their children.[24] The model includes placing a child with an unpaid volunteer host family, allowing a parent the time and space to deal with whatever issues brought them to SFFC, such as hospitalization, or a longer-term crisis, such as drug treatment or incarceration. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.[25] One of the main tenets of this model is the creation of networks and relationships to help care for the child and stabilize the family.[26]

These private, voluntary placements require that the parent sign an agreement with terms and conditions of the arrangement, including what the parent will need to do to be reunified with their

[17] s. 409.175(5)(a), F.S.
[18] s. 409.175(2)(k), F.S.
[19] s. 409.175(2)(i), F.S.
[20] *Id.*
[21] s. 435.04, F.S.
[22] s. 435.04(2), F.S.
[23] s. 435.12, F.S.
[24] *Supra* note 1, pg. 3.
[25] *Id.*
[26] *Supra* note 1, pg. 5.

children and how the program will respond if the parent is unable to complete performance.[27] The parent thereafter delegates care and custody of the child to the host volunteer family.

SFFC reports that under the program parents retain full legal custody of children, volunteer families are screened and supported, and there is an average length of stay of 6 weeks.[28] Volunteers and families served often continue a relationship after reunification has occurred, reducing social isolation and providing ongoing support.[29]

Programs based on the SFFC model are active in 70 cities in the U.S., Canada, and the U.K.,[30] with 9 U.S. states codifying similar models in statute.[31] Florida currently has 3 areas where SFFC models operate: SFFC Naples, SFFC Orlando, and SFFC Tampa Bay.[32]

Safe Families in Illinois, in conjunction with the Illinois Department of Children & Family Services, is currently being evaluated in a randomized control evaluation by the University of North Carolina School of Social Work. Safe Families in the United Kingdom is being evaluated[33] by the Dartington Social Research Unit.[34]

The U.S. Department of Health and Human Service Child Welfare Information Gateway only lists one 2014 article describing, but not evaluating, the SFFC model,[35] and SFFC is not currently listed with the California Evidence Based Clearinghouse for Child Welfare.[36]

Liability and Insurance

Should a child become ill or injured while in the care of a SFFC volunteer host family, the host family may have limited personal liability pursuant to the federal Volunteer Protection Act[37] (VPA) and Florida Volunteer Protection Act[38] (FVPA). The VPA provides that a volunteer of a nonprofit organization may not be liable for harm caused by his or her act or omission if:

- The volunteer was acting within the scope of his or her responsibilities for the organization; and
- The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.[39]

The FVPA also provides immunity from civil liability if the volunteer was acting with good faith within the scope of his or her duties, as an ordinary reasonable person would have acted under the same or similar circumstances, and the harm was not caused by wanton or willful misconduct.[40] Neither the VPA nor the FVPA provide immunity to the nonprofit organization itself.

---

[27] The Florida Senate, Committee on Children, Families, and Elder Affairs, *Issue Brief 2010-304: "Temporary Parents" as an Alternative to the Foster Care System (September 2009)*, at 2, *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-304cf.pdf (last accessed February 8, 2017).
[28] Safe Families for Children, How Safe Families Works, *available at*: http://safe-families.org/about/how-safe-families-works/ (last accessed February 8, 2017).
[29] *Id.*
[30] Safe Families for Children, About Us, available at http://safe-families.org/about/ (last accessed February 8, 2017).
[31] Indiana (Burns Ind. Code Ann. § 29-3-9-1); Kansas (K.S.A. § 38-2403); Kentucky (KRS § 403.352); Maine (18-A M.R.S. § 5-104); Mississippi (Miss. Code Ann. § 93-31-3); Oklahoma (10 Okl. St. § 700); Oregon (ORS § 109.056); West Virginia (W. Va. Code § 49-8-3); and Wisconsin (Wis. Stat. § 48.979).
[32] Safe Families for Children, Locations, *available at* http://safe-families.org/about/locations/ (last visited February 9, 2017).
[33] https://www.dartington.org.uk/projects/view/9
[34] Safe Families for Children, About Us, Impact, available at http://safe-families.org/about/impact/ (last accessed February 10, 2017).
[35] U.S. Department of Health and Human Services, Child Welfare Information Gateway, Library, https://library.childwelfare.gov/cwig/ws/library/ (last accessed February 11, 2017).
[36] California Evidence Based Clearinghouse for Child Welfare, http://www.cebc4cw.org/ (last accessed February 10, 2017).
[37] Volunteer Protection Act of 1997, 42 U.S.C. § 14501 *et seq.*
[38] s. 768.1355, F.S.
[39] 42 U.S.C. § 14503.
[40] s. 768.1355(1), F.S.

Effect of Proposed Changes

HB 363 creates s. 409.1761, F.S., relating to organizations providing respite care for children not in the child welfare system. The purpose of the statute is to prevent the entry of a child at risk of abuse or neglect into the child welfare system.

The bill establishes requirements for a "qualified nonprofit organization," defined as a Florida private nonprofit organization that assists parents by providing temporary respite care for children by volunteer respite families under a contract for care. The nonprofit organization must:

- Register and provide certain information to DCF about the organization.
- Identify appropriate and safe placements for children based on the results of the background screenings and home visits.
- Train volunteer families that will serve as volunteer respite families under a contract for care.
- Provide ongoing services and resources to support the minor child, parents, and volunteer respite families.

In addition, the organization must ensure that level 2 background screenings are conducted on the employees and volunteers of the organization as well as members of the volunteer respite families who are 18 years of age or older. All members of the volunteer family household between 12 and 18 years of age are not required to be fingerprinted but must be screened for delinquency records. The department must inform the organization if such screened persons are eligible to volunteer with children pursuant to s. 409.175, F.S., and ch. 435, F.S.

The bill excludes a qualified nonprofit organization from the definition of a "child-placing agency"[41] in ch. 409, F.S., thereby exempting the organization from DCF licensure requirements unless the qualified nonprofit organization pursues child-placing activities. Further, the bill provides that facilitating the care of a child with a volunteer respite family with a contract for care does not constitute placing the child in foster care and the volunteer respite home is not required to be licensed as a family foster home.

Contract for Care

The bill authorizes a parent of a minor child to delegate the care of his or her child to a volunteer respite family by executing a contract for care. The bill prohibits the parent and the agent from receiving any compensation related to the delegation of care and custody.

The contract for care may not exceed a period of 6 months, and may not delegate the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights of the child.

The contract for care must be signed by both parents, if both parents are living and have shared custody of the child. If the parents do not have shared custody, the parent with sole custody may execute the contract but must notify the noncustodial parent at his or her last known address within 5 days. Notification is not required to a noncustodial parent whose parental rights have been terminated. The contract for care must also be signed by all household members of the volunteer respite family 18 years of age and older and by a representative of the nonprofit organization attesting that the agent has successfully completed the required training and background screening. Finally, the contract for care must be witnessed by two people and notarized.

The bill details the requirements of a contract for care to include sixteen distinct pieces of information relating to the identity of the child and parent(s), the identity of the volunteer respite family, delegated

[41] "Child-placing agency" means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home. s. 409.175(2)(d), F.S.

and non-delegated powers, expiration date, and the health, education, normalcy, and discipline of the child.

Any parent of the child with custodial rights may revoke the contract for care prior to its expiration, and the volunteer respite family must return the child to the custody of the revoking parent as soon as reasonably possible.

The bill further specifies that the execution of a contract for care does not deprive a parent of parental rights, obligations, or authority regarding custody, visitation, or support.

Child Welfare Investigations

The bill permits DCF, during a child protective investigation that does not result in an out-of-home placement, to provide information to a parent regarding temporary respite care services by a qualified nonprofit organization. This aligns with DCF's requirement to provide information on family support resources and prevention services in the community.

The execution of a contract for care authorized by the bill after using such community services may not be construed as abandonment, abuse, or neglect as defined in s. 39.01, F.S. without other evidence or except as otherwise provided by law. However, the bill does not prevent DCF or law enforcement from investigating allegations of abuse, abandonment, neglect, unlawful desertion of a child, or human trafficking.

B. SECTION DIRECTORY:

Section 1 creates s. 409.1761, F.S., relating to organizations providing respite care for children not in the child welfare system.

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 impact state revenues.

2. Expenditures:

   The bill requires Level 2 background screening for employees and volunteers of a nonprofit agency that may have unsupervised contact with the children, the agent and any household members 12 and older. The number of individuals required to be screened by DCF is indeterminate, but most likely not significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires notarization of a contract for care for the temporary care of a minor child. The cost of notarial services varies but is expected to be insignificant. Additionally, a custodial parent that is required to provide notice to a noncustodial parent of the delegation of care and custody may incur approximately $6.74 in postage costs. The bill requires a qualified nonprofit organization to complete a criminal history record check on certain individuals at $44 per individual.[42] Also, additional fees may be charged by each live scan[43] provider for their services.

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 of municipalities.

2. Other:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[44] The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

> The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.[45]

These constitutional protections extend to the parenting interests of custodial and non-custodial parents alike.[46] To the extent that the bill authorizes delegation of the care and custody of a minor child to a volunteer respite family through a contract for care without the consent of both parents, such delegation may be challenged by a nonconsenting parent.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

---

[42] The cost breakdown is $20 for the state and national criminal history checks and $24 for 5 year fingerprint retention in the Care Provider Screening Clearinghouse.

[43] Live Scan is an inkless electronic fingerprinting technology, allowing the electronic recording, storage, and transmission of fingerprints.

[44] *Troxel v. Granville,* 530 U.S. 57, 65 (2000).

[45] *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).

[46] *See Stanley v. Illinois*, 405 U.S. 645(1972); *Caban v. Mohammed*, 441 U.S. 380 (1979).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to the temporary care of a child;
3 creating s. 409.1761, F.S.; providing legislative
4 findings; authorizing qualified nonprofit
5 organizations to establish programs to provide
6 temporary respite care for children; providing
7 definitions; providing registration and recordkeeping
8 requirements for such organizations and the Department
9 of Children and Families; exempting such organizations
10 from specified licensure requirements; providing
11 personnel screening requirements for certain persons;
12 authorizing a parent to enter into a contract for care
13 to provide temporary respite care for a child;
14 specifying the form and execution of the contract;
15 authorizing inspection of documents by the department;
16 providing eligibility; authorizing the department to
17 refer a child for such care; providing applicability;
18 providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Section 409.1761, Florida Statutes, is created
23 to read:
24 409.1761 Organizations providing respite care for children
25 not in the child welfare system.—The Legislature finds that in

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

26 circumstances in which a parent of a minor child is temporarily
27 unable to provide care for the child, but does not need the full
28 support of the child welfare system, a less intrusive
29 alternative to supervision by the department or involvement by
30 the judiciary should be available. A qualified nonprofit
31 organization may establish a program to assist parents in
32 providing temporary respite care for a child by a volunteer
33 respite family.
34 (1) DEFINITIONS.—As used in this section, the term:
35 (a) "Parent" means the parent or parents who are required
36 to sign the contract for care under subparagraph (5)(a)1.
37 (b) "Qualified nonprofit organization" or "organization"
38 means a private Florida nonprofit organization that assists
39 parents by providing temporary respite care for children by
40 volunteer respite families that are under a contract for care.
41 The organization shall provide assistance and support to parents
42 and training and support for volunteer respite families.
43 (c) "Volunteer respite family" means an individual or a
44 family who voluntarily agrees to provide, without compensation,
45 temporary respite care for a child, with the assistance of a
46 qualified nonprofit organization, pursuant to a contract for
47 care with the child's parent.
48 (d) "Volunteer respite home" means the home of a volunteer
49 respite family.
50 (2) REGISTRATION.—

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

51 (a) The organization must register with the department
52 annually by filing with the department:
53 1. The name, address, telephone number, e-mail address,
54 and other contact information of the organization.
55 2. The name of the organization's director.
56 3. The names and addresses of the officers and members of
57 the governing body of the organization.
58 4. A description of the methods used by the organization
59 to recruit, train, and support volunteer respite families in
60 providing temporary respite care for children and the standards
61 used for evaluating whether a volunteer respite home is safe for
62 children.
63 5. If the organization provides volunteer respite family
64 services in affiliation with another entity, including the use
65 of another entity's volunteer respite family program model,
66 provide the entity's name, address, telephone number, e-mail
67 address, and other contact information; a description of the
68 program model; and documentation that the organization is in
69 compliance with the minimum standards of the program model.
70 6. An attestation, with supporting documentation, that the
71 employees and volunteers of the organization are in compliance
72 with the personnel screening requirements in subsection (4).
73 7. An attestation, with supporting documentation, that the
74 volunteer respite families are in compliance with the personnel
75 screening requirements in subsection (4), and that the

76 organization has inspected the volunteer respite homes and
77 considers the homes safe for the placement of children.
78 8. The total number of volunteer respite families working
79 with the organization, the total number of children the
80 organization is able to serve, and the total number of children
81 the organization currently serves in this program.
82 (b) The department shall develop a registration system,
83 maintain a registration record on each organization, and issue a
84 registration number to each organization that meets the
85 registration requirements in this subsection. The department
86 shall maintain each registration record for at least 2 years.
87 (c) Each organization shall maintain information about
88 each volunteer respite family and child served, including, but
89 not limited to:
90 1. The name and age of the child.
91 2. The name, address, telephone numbers, e-mail address,
92 and other contact information of the child's parent.
93 3. The name, address, telephone numbers, e-mail address,
94 and other contact information of the child's volunteer respite
95 family.
96 4. A copy of the contract for respite care executed
97 pursuant to subsection (5).
98 5. Proof of the volunteer respite family's compliance with
99 the personnel screening requirements in subsection (4).
100 (d) The department may access and inspect the

101 organization's records maintained pursuant to this subsection at
102 any time to ensure compliance with this section and may inspect
103 the standards established by any entity with which the
104 organization is affiliated pursuant to subparagraph (2)(a)5.
105 (3) EXEMPTION FROM LICENSURE.—The licensing provisions in
106 s. 409.175 do not apply to a volunteer respite home or an
107 organization registered under this section unless the
108 organization attempts to place or arrange for the placement of a
109 child as provided in s. 409.175. However, such home or
110 organization shall meet the personnel screening requirements in
111 subsection (4).
112 (a) An organization registered under this section shall
113 make every effort to accept or place a child with a volunteer
114 respite family that is qualified or able to adequately care for
115 the child, taking into consideration the child's disabilities,
116 health conditions, and behavioral and emotional challenges. If
117 the organization chooses not to accept or place a child with a
118 volunteer respite family due to the inability of any volunteer
119 respite family to meet the child's needs, the organization shall
120 assist the parent in finding community-based assistance that
121 will meet the child's needs.
122 (b) Chapters 39 and 827, relating to the reporting of
123 child abuse, abandonment, and neglect, apply to an organization
124 registered under this section.
125 (4) PERSONNEL SCREENING REQUIREMENTS.—The department shall

126 attest to the good moral character of the personnel of the
127 organization and members of the volunteer respite home by
128 conducting background screening in compliance with the screening
129 requirements in s. 409.175 and chapter 435. Persons required to
130 be screened pursuant to this section include:
131 (a) Employees of the organization who have direct contact
132 with children while assisting parents in providing temporary
133 respite care.
134 (b) Members of the volunteer respite family or persons
135 residing in the volunteer respite home who are older than 12
136 years of age. However, members of a volunteer respite family or
137 persons residing in the volunteer respite home who are between
138 the ages of 12 years and 18 years are not required to be
139 fingerprinted but must be screened for delinquency records.
140 (c) A volunteer who assists on an intermittent basis for
141 fewer than 10 hours per month is not required to be screened if
142 he or she is always accompanied by and in the line of sight of a
143 person who meets the screening requirements in this subsection.
144 (5) CONTRACT FOR CARE.—Before a volunteer respite family
145 cares for a child, the child's parent must enter into a written
146 contract for care with the volunteer respite family. Under a
147 contract for care, the parent may delegate to the volunteer
148 respite family any of the powers regarding the care and custody
149 of the child, except the power to consent to the marriage or
150 adoption of the child, the performance of or inducement of an

151 abortion on or for the child, or the termination of parental
152 rights to the child. Authorization for the volunteer respite
153 family to consent to routine and emergency medical care on
154 behalf of the parent shall be granted only upon the separate
155 consent of the parent pursuant to s. 743.0645.
156 (a) The contract for care must at a minimum:
157 1. Be signed by the parent or both parents if both parents
158 are living and have shared responsibility and timesharing of the
159 child pursuant to law or a court order. If the parents do not
160 have shared responsibility and timesharing of the child, the
161 parent having sole custody of the child has the authority to
162 enter into the contract for care but shall notify the
163 noncustodial parent in writing of the name and address of the
164 volunteer respite family. Such notification must be provided by
165 certified mail, return receipt requested, to the noncustodial
166 parent at his or her last known address within 5 days after the
167 contract for care is signed. Notification to a noncustodial
168 parent whose parental rights have been terminated is not
169 required.
170 2. Be signed by all members of the volunteer respite
171 family who are 18 years of age or older.
172 3. Be signed by a representative of the organization who
173 assisted with the child's placement with the volunteer respite
174 family.
175 4. Be signed by two subscribing witnesses.

176 5. Be acknowledged by the parent or parents, as applicable
177 under subparagraph 1., and the representative of the qualified
178 nonprofit organization before a notary public.
179 (b) The contract for care must include:
180 1. A statement that the contract does not deprive the
181 parent of any parental or legal authority regarding the care and
182 custody of the child or supersede a court order regarding the
183 care and custody of the child.
184 2. A statement that the contract may be revoked or
185 withdrawn at any time by the parent and that custody of the
186 child shall be returned to the parent as soon as reasonably
187 possible.
188 3. The basic services and accommodations provided by the
189 volunteer respite family and organization.
190 4. Identification of the child, the parent, and the
191 members of the volunteer respite family, including contact
192 information for all parties.
193 5. Identification of the organization, including contact
194 information for the organization and the organization's primary
195 contact person.
196 6. A statement regarding disciplinary procedures that are
197 used by the volunteer respite family and expectations regarding
198 interactions between the volunteer respite family and the child,
199 including any known behavioral or emotional issues, and how such
200 issues are currently addressed by the child's parent.

201 7. A statement of the minimum expected frequency of
202 contact between the parent and the child, expectations for the
203 volunteer respite family to facilitate any reasonable request
204 for contact with the child outside of the established schedule,
205 and the minimum expected frequency of contact between the parent
206 and the volunteer respite family to discuss the child's well-
207 being and health.
208 8. A statement regarding the child's educational needs,
209 including the name and address of the child's school and the
210 names of the child's teachers.
211 9. A list of extracurricular, religious, or community
212 activities and programs in which the child participates.
213 10. A list of any special dietary or nutritional
214 requirements of the child.
215 11. A description of the child's medical needs, including
216 any diagnoses, allergies, therapies, treatments, or medications
217 prescribed to the child and the expectations for the volunteer
218 respite family to address such medical needs.
219 12. A statement that the volunteer respite family agrees
220 to act in the best interests of the child and to consider all
221 reasonable wishes and expectations of the parent concerning the
222 care and comfort of the child.
223 13. A statement that all appropriate members of the
224 volunteer respite family have successfully completed the
225 personnel screening requirements pursuant to subsection (4).

226 14. The expiration date of the contract for care, which
227 may not be more than 6 months after the date of execution.
228 15. A statement that the goal of the organization,
229 volunteer respite family, and parent is to return the child
230 receiving temporary respite care to the parent as soon as the
231 situation requiring such care has been resolved.
232 16. A requirement that the volunteer respite family
233 immediately notify the parent of the child's need for medical
234 care.
235 (6) INSPECTION OF DOCUMENTS.—The department may, at any
236 time, inspect any documents held by the organization relating to
237 children placed pursuant to this section.
238 (7) ELIGIBILITY.—A child who has been removed from a
239 parent due to abuse or neglect and placed in the custody of the
240 department is not eligible for temporary respite care pursuant
241 to this section.
242 (8) DUTIES OF DEPARTMENT.—The department may refer a child
243 to an organization under this section if the department
244 determines that the needs of the child or the needs of the
245 child's parent do not require an out-of-home safety plan
246 pursuant to s. 39.301(9) or other formal involvement of the
247 department and that the child and the child's family may benefit
248 from the temporary respite care and services provided by the
249 organization.
250 (9) APPLICABILITY.—Placement of a child under this section

251 without additional evidence does not constitute abandonment,
252 abuse, or neglect, as those terms are defined in s. 39.01, and
253 is not considered to be placement of the child in foster care.
254 However, nothing in this section prevents the department or a
255 law enforcement agency from investigating allegations of
256 abandonment, abuse, neglect, unlawful desertion of a child, or
257 human trafficking.
258 Section 2. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative White offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 37-143 and insert:
7 (b) "Qualified association" means an association that
8 establishes, publishes, and requires compliance with minimum
9 best practice standards for operating a program that assists
10 parents in providing temporary respite care for a child by a
11 volunteer respite family.
12 (c) "Qualified nonprofit organization" or "organization"
13 means a private Florida nonprofit organization that assists
14 parents by providing temporary respite care for children by
15 volunteer respite families that are under a contract for care
16 and in compliance with the best practice standards of a

17 qualified association. The organization shall provide assistance
18 and support to parents and training and support for volunteer
19 respite families.
20 (d) "Volunteer respite family" means an individual or a
21 family who voluntarily agrees to provide, without compensation,
22 temporary respite care for a child, with the assistance of a
23 qualified nonprofit organization, pursuant to a contract for
24 care with the child's parent.
25 (e) "Volunteer respite home" means the home of a volunteer
26 respite family.
27 (2) DUTIES OF THE QUALIFIED NONPROFIT ORGANIZATION.—
28 (a) A qualified nonprofit organization that provides
29 services assisting parents in providing for the temporary
30 respite care of their child with a volunteer family shall:
31 1. Establish its program under an agreement or
32 certification with a qualified association;
33 2. Prior to allowing personnel, members of the volunteer
34 respite home, or other program volunteers to have contact with a
35 child, work with the department to ensure that background
36 screenings of the personnel of the organization and members of
37 the volunteer respite home are conducted in compliance with the
38 screening requirements in s. 409.175 and chapter 435. Persons
39 required to be screened pursuant to this section include:
40 a. Employees of the organization who have direct contact
41 with children while assisting parents in providing temporary

42 respite care.

43 b. Members of the volunteer respite family or persons
44 residing in the volunteer respite home who are older than 12
45 years of age. However, members of a volunteer respite family or
46 persons residing in the volunteer respite home who are between
47 the ages of 12 years and 18 years are not required to be
48 fingerprinted but must be screened for delinquency records.

49 3. Train all volunteer respite families, such training to
50 include:

51 a. Discussion of the rights, duties, and limitations
52 regarding providing temporary care for a child under a contract
53 for care authorized under this chapter;

54 b. An overview of program processes, including intake and
55 working with third party service providers like schools and
56 medical professionals;

57 c. General safety requirements, including SIDS,
58 supervision, and water/pool safety;

59 d. Appropriate and constructive disciplinary practices,
60 including the prohibition of physical punishment and the
61 prohibition of discipline that is severe, humiliating,
62 frightening, or associated with food, rest, or toileting;

63 e. Abuse and maltreatment reporting requirements, including
64 proper cooperation with the department;

65 f. Confidentiality; and

66 g. Building a healthy relationship with the child's

67 biological family.
68 4. Be solely responsible for ongoing supervision of each
69 placement of a child with a volunteer respite family approved by
70 the organization;
71 5. Maintain records on each volunteer respite family and
72 child served, including, but not limited to:
73 a. The name and age of the child;
74 b. The name, address, telephone number, e-mail address, and
75 other contact information for the child's parents;
76 c. The name, address, telephone number, e-mail address, and
77 other contact information for the child's volunteer respite
78 family;
79 d. A copy of the contract for respite care executed
80 pursuant to this section; and
81 e. Proof of the volunteer respite family's compliance with
82 the personnel screening requirements under this chapter.
83 6. Provide the following information to the department on
84 an annual basis:
85 a. The name, address, telephone number, e-mail address, and
86 other contact information of the organization.
87 b. The name of the organization's director.
88 c. The names and addresses of the officers and members of
89 the governing body of the organization.
90 d. The total number of approved volunteer respite families
91 currently working with the organization and the total number of

92 children served the previous fiscal year.
93 e. A copy of its agreement or certification with a
94 qualified association for the purpose of providing volunteer
95 respite services pursuant to this chapter.
96 7. Provide the qualified association with data and other
97 information required by the qualified association to show that
98 the qualified nonprofit organization is in substantial
99 compliance with standards set by the qualified association.
100 8. Immediately notify the department of any suspected or
101 confirmed incident of abuse, neglect, or other maltreatment of a
102 child while in the care of one of the organization's volunteer
103 respite families.
104 9. Make available to the department or qualified
105 association at any time all records relating to the program and
106 children cared for by the organization's volunteer respite
107 families for inspection to ensure compliance with this section
108 and standards established by any entity with which the
109 organization is affiliated.
110
111 ---
112 **T I T L E A M E N D M E N T**
113 Remove lines 8-9 and insert:
114 requirements for such organizations; exempting such
115 organizations

HB PCS for HB 735

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 735 Covenants and Restrictions of Property Owners
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 318, SB 1046

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

SUMMARY ANALYSIS

The Marketable Record Title Act (MRTA) was enacted to simplify real estate transactions. In general, it provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. One effect of MRTA is that covenants and restrictions affecting real property are extinguished 30 years after their creation. Current law allows residential homeowners' associations to preserve existing covenants and restrictions, and provides a means by which expired covenants and restrictions of a homeowners' association may be revived if previously extinguished by MRTA. The bill:

- Authorizes counties and municipalities to amend, release, or terminate a restriction or covenant that they imposed or accepted during the approval of a development permit. This provision is retroactive and applies to existing restrictions and covenants;
- Replaces the term "homeowners' association" with "property owners' association," thus extending statutory provisions regarding preservation and revival to a broader range of associations, notably commercial property owners' associations;
- Authorizes parcel owners who were subject to covenants and restrictions but who do not have a homeowners' association to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions;
- Repeals the requirement that a homeowners association board achieve a two-thirds vote for preservation of existing covenants and restrictions;
- Requires a homeowners association to annually consider preservation of the covenants and restrictions and requires an association to file a summary preservation every five years; and
- Conforms statutory and definitional cross references.

The bill appears to have an indeterminate minimal positive impact on the clerks of circuit courts and an equal indeterminate negative impact on property owners' association related to recording fees to preserve covenants or restrictions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Marketable Record Title Act - In General

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.[1] In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. Current law includes 9 exceptions to the applicability MRTA.[2]

One effect of MRTA is that homeowner association covenants can lose effect after 30 years. In order to protect such covenants, MRTA has long provided for renewal of such covenants. However, many homeowners' associations fail to timely file a renewal of their covenants. Formerly, MRTA would apply in such cases and accordingly the covenants and restrictions expired and were unenforceable. In 2004, part III of ch. 720, F.S., was enacted to provide a means by which covenants and restrictions of a mandatory homeowners' association may be revived.[3] In 2007, nonmandatory homeowners' associations became eligible for revitalization.[4] Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.[5]

There are two categories of property owners who enact and enforce covenants and restrictions regarding their property and that of their neighbors who are impacted by MRTA, but have not been included in the laws regarding renewal or revival of their covenants and restrictions. These property owners are commercial landowners in office parks, industrial parks, and other commercial districts; and neighborhoods with enforceable covenants but no formal homeowners' association.

Effect of the Bill

Extinguishable Interests in Real Property

In *Save Calusa Trust v. St. Andrews Holding, Ltd.*,[6] a recent decision by the Third District Court of Appeal, the court held that government imposed encumbrances are not subject to extinguishment under MRTA.[7] In the case, the current owner of land sought to redevelop the land. A former owner had agreed with the county to a restrictive covenant as a condition of the building permit. In relevant part, the covenant provided that the restrictions

> continue for a period of ninety-nine years unless released or revised by the Board of County Commissioners of the County of Dade, State of Florida, or its successors with the consent of 75% of the members of the corporation owning the aforedescribed property and those owners within 150 feet of the exterior boundaries of the aforedecribed property.[8]

[1] *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).
[2] s. 712.03, F.S.
[3] ch. 2004-345, L.O.F.
[4] ch. 2007-173, L.O.F.
[5] part III of ch. 720, F.S.
[6] 193 So. 3d 910 (Fla. 3d DCA 2016).
[7] *Id*. at 916.
[8] *Id*.

Currently, more than 140 homes were developed in the ring.[9] None of these homes had any reference to the restrictive covenant in their deeds and the homeowners had no role in maintaining the property or any other reciprocal responsibilities.[10]

The court of appeal held that a restrictive zoning covenant evidences the County's intent to regulate the property.[11] The Third District had previously determined that a Zoning Appeals Board resolution, with a restrictive covenant, constitutes a governmental regulation with the force of law.[12] The court concluded that as a governmental regulation, and not an estate, interest, claim, or charge affecting the property, the restrictive covenant was not subject to extinguishment pursuant to MRTA.[13]

The bill amends ss. 125.022 and 166.033, F.S., to provide that a county or municipality, in its sole discretion, may amend, release, or terminate a restriction or covenant that it imposed or accepted at the approval or issuance of the development permit. The county or municipality may accomplish this through its police powers. The county or municipality may not delegate its police power to a third party and declares any purported delegation to be void. Section 3 of the bill provides that these changes relating to development permits are remedial in nature and apply retroactively.

The bill also repeals an apparently unnecessary statement in ss. 125.022 and 166.033, F.S., that allows a county or city to provide information to an applicant on what other state or federal permits may apply to the development.

The bill also amends s. 712.04, F.S., to add that a marketable record title is also free and clear of all zoning requirements or building or development permits that occurred before the effective date of the root of title. This freedom from encumbrances does not alter or invalidate a zoning ordinance, land development regulation, building code, or other ordinance, rule, regulation or law if such operates independently of matters recorded in the official records. The bill provides that this provision is also intended to clarify existing law and is remedial in nature, applying to all covenants or restrictions imposed or accepted before, on, or after the effective date of the bill.

Preservation of Existing Covenants

Sections 712.05 and 712.06, F.S., provide that a homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;[14]
- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to renew the covenants;[15]
- The board of directors of the association must approve the renewal by a two-thirds vote;[16] and
- Notice of the renewal must be recorded in the Official Records of the county.[17]

The bill changes this procedure to:

- Provide that compliance by a homeowners association with newly created s. 720.3032, F.S. (see discussion below) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;

---

[9] *Id.*
[10] *Id.* at 913.
[11] *Id.* at 915.
[12] *Id.* referencing *Metro Dade Cty. v. Fontainebleau Gas & Wash, Inc.*, 570 So. 2d 1006 (Fla. 3d DCA 1990).
[13] *Id.* at 916.
[14] s. 712.06(1)(b), F.S.
[15] s. 712.05(1), F.S.
[16] *Id.*
[17] s. 712.06(2), F.S.

- Repeal the requirement that the board achieve a two-thirds vote; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

Preservation and Revitalization of Covenants by a Commercial Property Owners' Association

Current law provides for the preservation and for the revitalization of covenants by a homeowners association.

The bill provides a definition for the term community covenant or restriction and substitutes the term property owners' association for homeowners' association. A property owners' association includes a homeowners' association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes changes in s. 712.01, F.S., to conform to these new terms.

The bill replaces all instances of the term "homeowners' association" found in ch. 712, F.S., with the term "property owners' association." The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to these associations, that is, to expand the law to cover commercial associations.

The bill provides that Part III of ch. 720, F.S., comprised of ss. 720.403-.407, F.S., is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities.

Revitalization by an Owner Not Subject to Homeowners' Association

There are residential communities in which there were recorded covenants and restrictions similar to those found in a homeowners association, but no association was ever created. Under current law, individual owners can file notice of preservation of covenants before they expire, see ss. 712.05 and 712.06, F.S., but there is no means of revitalization of such covenants and restrictions.

The bill creates s. 712.12, F.S., relating to covenant or restriction revitalization by parcel owners not subject to a homeowners' association. The bill provides that the parcel owners may use the process available to a homeowners' association in ss. 720.403-.407, F.S., to revive covenants or restrictions that have lapsed under MRTA. The parcel owners are excepted from needing to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the required approval in writing. The organizing committee of the community may execute the revived covenants in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors. A parcel owner who has ceased to be subject to covenants or restrictions as of October 1, 2017, may commence an action by October 1, 2018, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a parcel owner which are recognized by a court order in an action commenced by October 1, 2018, and may not be subsequently altered without the consent of the affected parcel owner.

Requirements on the Board of Directors of a Homeowners' Association

While it is probably good practice for a homeowners association to regularly consider the need for preservation of the covenants and restrictions of their neighborhood, there is no statutory requirement that a board of directors of a homeowners association do so.

The bill amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association must consider whether to file a notice to preserve the covenants and restrictions affecting

the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

The bill creates s. 720.3032, F.S., to require that, at least once every five years, a homeowners' association must file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

The bill creates a statutory form for such information. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

The failure to file this notice does not affect the validity or enforceability of any covenant or restriction. A copy of this notice must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Other Changes Made by the Bill

The bill also:

- Provides a short title of the "Marketable Record Title Act" for ch. 712, F.S.;

- Amends s. 712.05, F.S., to eliminate the requirement that an association seeking to extend existing covenants must obtain a two-thirds vote of the board of directors, and eliminates the notice requirement related to the meeting for that vote (requiring notice be mailed or delivered to each affected landowner prior to the meeting).

- Makes changes to conform various statutory and definitional cross references.

B. SECTION DIRECTORY:

Section 1 amends s. 125.022, F.S., relating to county development permits.

Section 2 amends s. 166.033, F.S., relating to municipality development permits.

Section 3 provides that the amendments to ss. 125.002 and 166.033, F.S., are remedial in nature and apply retroactively.

Section 4 creates s. 712.001, F.S., creating a short title.

Section 5 amends s. 712.01, F.S., relating to definitions applicable to the Marketable Record Title Act.

Section 6 amends s. 712.04, F.S., relating to interests extinguished by marketable record title.

Section 7 amends s. 712.05, F.S., relating to the effect of filing notice to preserve a covenant or restriction.

Section 8 amends s. 712.06, F.S., relating to the contents of a notice to preserve a covenant or restriction and the recording and indexing of the notice.

Section 9 amends s. 712.11, F.S., relating to covenant revitalization.

Section 10 creates s. 712.12, F.S., relating to covenant or restriction revitalization by parcel owners not subject to a homeowners' association.

Section 11 amends s. 720.303(2), F.S., relating to board meetings of a homeowners' association.

Section 12 creates s. 720.3032, F.S., relating to notice of association information and preservation of covenants or restrictions from the Marketable Record Title Act.

Section 13 amends s. 702.09, F.S., relating to definitions applicable to foreclosure of mortgages and statutory liens.

Section 14 amends s. 702.10, F.S., relating to an order to show cause in a mortgage foreclosure.

Section 15 amends s. 712.095, F.S., to conform a cross reference.

Section 16 amends s. 720.403, F.S., relating to preservation of communities and revival of a declaration of covenants.

Section 17 amends s. 720.404, F.S., relating to eligible communities and requirements for revival of a declaration of covenants.

Section 18 amends s. 720.405, F.S., relating to the organizing committee and parcel owner approval for revival of a declaration of covenants.

Section 19 amends s. 720.407, F.S., relating to recording of a declaration of covenants.

Section 20 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of $10.00 for the first page and $8.50 for every subsequent page, payable to the

recording department (in most counties, the clerk of the court).[18] The net revenue to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 12 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal ($10 for the first page, $8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

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:

Impairment of Contracts

To the extent that a court may find that a covenant or restriction may be considered a contract between the parties, the changes made by this bill may affect such current contract rights and obligations. Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the state constitution both prohibit the Legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted. The Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.*[19] set forth the following test:

- Was the law enacted to deal with a broad, generalized economic or social problem?
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

Retroactive Application of Laws

Sections 1, 2, 3 and 6 of the bill appear to operate retroactively. The following analysis applies to those sections to the extent that they may have retroactive application:

[18] s. 28.24(12), F.S.
[19] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774, 779 (Fla. 1979).

Article I, s. 2, of the Florida Constitution guarantees to all persons the right to acquire, possess, and protect property. Article I, s. 9 provides that "[n]o person shall be deprived of life, liberty or property without due process of law." These constitutional due process rights protect individuals from the retroactive application of a substantive law that adversely affects or destroys a vested right; imposes or creates a new obligation or duty in connection with a previous transaction or consideration; or imposes new penalties. For the retroactive application of a law to be constitutionally permissible, the Legislature must express a clear intent that the law apply retroactively, and the law must be procedural or remedial in nature.[20]

Remedial statutes operate to further a remedy or confirm rights that already exist, and a procedural law provides the means and methods for the application and enforcement of existing duties and rights. In contrast, a substantive law prescribes legal duties and rights and, once those rights and duties are vested, due process prevents the Legislature from retroactively abolishing or curtailing them.[21]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 12 of the bill requires every homeowners association to prepare a summary notice every 5 years, which notice is recorded in the public records of the county. Paragraph (1)(e) requires the notice to indicate whether the association desires to preserve the covenants and restrictions from extinguishment by operation of MRTA. Section 712.05(2)(a), F.S., as created by the bill, provides that the filing of the summary notice preserves and extends the covenants and restrictions for a new MRTA 30 year period, even if the association does not desire preservation and extension. An association that does not wish to extend has no apparent means under this bill to not extend other than by violating the 5-year recording requirement of Section 12.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[20] *Maronda Homes, Inc. v. Lakeview Reserve Homeowners Ass'n*, 127 So. 3d 1258, 1272 (Fla. 2013).
[21] *Id.*

1 A bill to be entitled
2 An act relating to covenants and restrictions;
3 amending ss. 125.022 and 166.033, F.S.; deleting
4 provisions specifying that a county or municipality is
5 not prohibited from providing information to an
6 applicant regarding other state or federal permits
7 that may apply under certain circumstances; specifying
8 that the imposition or acceptance of certain
9 restrictions or covenants does not preclude a county
10 or municipality from exercising its police power, in
11 its sole discretion, to later amend, release, or
12 terminate such restrictions or covenants; prohibiting
13 a county or municipality from delegating its police
14 power to a third party by restriction, covenant, or
15 otherwise; declaring any such purported delegation
16 void; providing for retroactive applicability;
17 creating s. 712.001, F.S.; providing a short title;
18 amending s. 712.01, F.S.; defining and redefining
19 terms; amending s. 712.04, F.S.; providing that a
20 marketable title is free and clear of all covenants or
21 restrictions, the existence of which depends upon any
22 act, title transaction, event, zoning requirement,
23 building or development permit, or omission that
24 occurred before the effective date of the root of
25 title; providing for construction; providing

26 applicability; amending s. 712.05, F.S.; revising the
27 notice filing requirements for a person claiming an
28 interest in land and other rights; authorizing a
29 property owners' association to preserve and protect
30 certain covenants or restrictions from extinguishment,
31 subject to specified requirements; providing that a
32 failure in indexing does not affect the validity of
33 the notice; extending the length of time certain
34 covenants or restrictions are preserved; deleting a
35 provision requiring a two-thirds vote by members of an
36 incorporated homeowners' association to file certain
37 notices; conforming provisions to changes made by the
38 act; amending s. 712.06, F.S.; exempting a specified
39 summary notice from certain notice content
40 requirements; revising the contents required to be
41 specified by certain notices; conforming provisions to
42 changes made by the act; amending s. 712.11, F.S.;
43 conforming provisions to changes made by the act;
44 creating s. 712.12, F.S.; defining terms; authorizing
45 the parcel owners of a community not subject to a
46 homeowners' association to use specified procedures to
47 revive certain covenants or restrictions, subject to
48 certain exceptions and requirements; authorizing a
49 parcel owner to commence an action by a specified date
50 under certain circumstances for a judicial

51 determination that the covenants or restrictions did
52 not govern that parcel as of a specified date and that
53 any revitalization of such covenants or restrictions
54 as to that parcel would unconstitutionally deprive the
55 parcel owner of rights or property; providing
56 applicability; amending s. 720.303, F.S.; requiring a
57 board to take up certain provisions relating to notice
58 filings at the first board meeting; creating s.
59 720.3032, F.S.; providing recording requirements for
60 an association; providing a document form for
61 recording by an association to preserve certain
62 covenants or restrictions; providing that failure to
63 file one or more notices does not affect the validity
64 or enforceability of a covenant or restriction or
65 alter the time before extinguishment under certain
66 circumstances; requiring a copy of the filed notice to
67 be sent to all members; requiring the original signed
68 notice to be recorded with the clerk of the circuit
69 court or other recorder; amending ss. 702.09 and
70 702.10, F.S.; conforming provisions to changes made by
71 the act; amending s. 712.095, F.S.; conforming a
72 cross-reference; amending ss. 720.403, 720.404,
73 720.405, and 720.407, F.S.; conforming provisions to
74 changes made by the act; providing an effective date.
75

76 Be It Enacted by the Legislature of the State of Florida:
77
78 Section 1. Subsection (6) of section 125.022, Florida
79 Statutes, is amended to read:
80 125.022 Development permits.—
81 (6) The imposition or acceptance of a recorded or
82 unrecorded restriction or covenant in connection with the
83 approval or issuance of a development permit does not preclude
84 the county from exercising its police power, in its sole
85 discretion, to later amend, release, or terminate the
86 restriction or covenant. A county may not delegate its police
87 power to a third party by restriction, covenant, or otherwise,
88 and any such purported delegation is hereby declared to be void
89 ~~This section does not prohibit a county from providing~~
90 ~~information to an applicant regarding what other state or~~
91 ~~federal permits may apply~~.
92 Section 2. Subsection (6) of section 166.033, Florida
93 Statutes, is amended to read:
94 166.033 Development permits.—
95 (6) The imposition or acceptance of a recorded or
96 unrecorded restriction or covenant in connection with the
97 approval or issuance of a development permit does not preclude a
98 municipality from exercising its police power, in its sole
99 discretion, to later amend, release, or terminate the
100 restriction or covenant. A municipality may not delegate its

101 police power to a third party by restriction, covenant, or
102 otherwise, and any such purported delegation is hereby declared
103 to be void ~~This section does not prohibit a municipality from~~
104 ~~providing information to an applicant regarding what other state~~
105 ~~or federal permits may apply~~.
106 Section 3. The amendments by this act to ss. 125.022 and
107 166.033, Florida Statutes, which relate to development permits,
108 are remedial in nature and apply retroactively.
109 Section 4. Section 712.001, Florida Statutes, is created
110 to read:
111 712.001 Short title.—This chapter may be cited as the
112 "Marketable Record Title Act."
113 Section 5. Section 712.01, Florida Statutes, is reordered
114 and amended to read:
115 712.01 Definitions.—As used in this chapter, the term ~~law~~:
116 (1) "Community covenant or restriction" means any
117 agreement or limitation contained in a document recorded in the
118 public records of the county in which a parcel is located which:
119 (a) Subjects the parcel to any use restriction that may be
120 enforced by a property owners' association; or
121 (b) Authorizes a property owners' association to impose a
122 charge or assessment against the parcel or the parcel owner.
123 (4)~~(1)~~ ~~The term~~ "Person" includes the ~~as used herein~~
124 ~~denotes~~ singular or plural, natural or corporate, private or
125 governmental, including the state and any political subdivision

126 or agency thereof as the context for the use thereof requires or
127 denotes and including any property owners' ~~homeowners'~~
128 association.
129 (6) ~~(2)~~ "Root of title" means any title transaction
130 purporting to create or transfer the estate claimed by any
131 person ~~and~~ which is the last title transaction to have been
132 recorded at least 30 years before ~~prior to~~ the time when
133 marketability is being determined. The effective date of the
134 root of title is the date on which it was recorded.
135 (7) ~~(3)~~ "Title transaction" means any recorded instrument
136 or court proceeding that ~~which~~ affects title to any estate or
137 interest in land and that ~~which~~ describes the land sufficiently
138 to identify its location and boundaries.
139 (5) ~~(4)~~ "Property owners' association" ~~The term~~
140 ~~"homeowners' association"~~ means a homeowners' association as
141 defined in s. 720.301, a corporation or other entity responsible
142 for the operation of property in which the voting membership is
143 made up of the owners of the property or their agents, or a
144 combination thereof, and in which membership is a mandatory
145 condition of property ownership, or an association of parcel
146 owners which is authorized to enforce a community covenant or
147 restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.
148 (3) ~~(5)~~ ~~The term~~ "Parcel" means real property that ~~which~~ is
149 used for residential purposes and that is subject to exclusive
150 ownership and ~~which is subject~~ to any covenant or restriction of

151 a property owners' ~~homeowners'~~ association.
152 (2) ~~(6)~~ ~~The term~~ "Covenant or restriction" means any
153 agreement or limitation contained in a document recorded in the
154 public records of the county in which a parcel is located which
155 subjects the parcel to any use or other restriction or
156 obligation ~~which may be enforced by a homeowners' association or~~
157 ~~which authorizes a homeowners' association to impose a charge or~~
158 ~~assessment against the parcel or the owner of the parcel or~~
159 ~~which may be enforced by the Florida Department of Environmental~~
160 ~~Protection pursuant to chapter 376 or chapter 403~~.
161 Section 6. Section 712.04, Florida Statutes, is amended to
162 read:
163 712.04 Interests extinguished by marketable record title.—
164 (1) Subject to s. 712.03, a marketable record title is
165 free and clear of all estates, interests, claims, covenants,
166 restrictions, or charges, the existence of which depends upon
167 any act, title transaction, event, zoning requirement, building
168 or development permit, or omission that occurred before the
169 effective date of the root of title. Except as provided in s.
170 712.03, all such estates, interests, claims, covenants,
171 restrictions, or charges, however denominated, whether they are
172 or appear to be held or asserted by a person sui juris or under
173 a disability, whether such person is within or without the
174 state, natural or corporate, or private or governmental, are
175 declared to be null and void. However, this chapter does not

176 affect any right, title, or interest of the United States,
177 Florida, or any of its officers, boards, commissions, or other
178 agencies reserved in the patent or deed by which the United
179 States, Florida, or any of its agencies parted with title.
180 <u>(2) This section may not be construed to alter or</u>
181 <u>invalidate a zoning ordinance, land development regulation,</u>
182 <u>building code, or other ordinance, rule, regulation, or law if</u>
183 <u>such ordinance, rule, regulation, or law operates independently</u>
184 <u>of matters recorded in the official records.</u>
185 <u>(3) This section is intended to clarify existing law, is</u>
186 <u>remedial in nature, and applies to all restrictions and</u>
187 <u>covenants whether imposed or accepted before, on, or after</u>
188 <u>October 1, 2017.</u>
189 Section 7. Section 712.05, Florida Statutes, is amended to
190 read:
191 712.05 Effect of filing notice.—
192 (1) A person claiming an interest in land or <u>other right</u>
193 <u>subject to extinguishment under this chapter</u> ~~a homeowners'~~
194 ~~association desiring to preserve a covenant or restriction~~ may
195 preserve and protect <u>such interest or right</u> ~~the same~~ from
196 extinguishment by the operation of this <u>chapter</u> ~~act~~ by filing
197 for record, <u>at any time</u> during the 30-year period immediately
198 following the effective date of the root of title, a written
199 notice in accordance with <u>s. 712.06</u> ~~this chapter~~.
200 <u>(2) A property owners' association may preserve and</u>

201 protect a community covenant or restriction from extinguishment
202 by the operation of this chapter by filing for record, at any
203 time during the 30-year period immediately following the
204 effective date of the root of title:
205 (a) A written notice in accordance with s. 712.06; or
206 (b) A summary notice in substantial form and content as
207 required under s. 720.3032(2). Failure of a summary notice to be
208 indexed to the current owners of the affected property does not
209 affect the validity of the notice or vitiate the effect of the
210 filing of such notice.
211 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
212 preserves an interest in land or other ~~such claim of~~ right
213 subject to extinguishment under this chapter, or a ~~such~~ covenant
214 or restriction or portion of such covenant or restriction, for
215 not less than ~~up to~~ 30 years after filing the notice unless the
216 notice is filed again as required in this chapter. A person's
217 disability or lack of knowledge of any kind may not delay the
218 commencement of or suspend the running of the 30-year period.
219 Such notice may be filed for record by the claimant or by any
220 other person acting on behalf of a claimant who is:
221 (a) Under a disability;
222 (b) Unable to assert a claim on his or her behalf; or
223 (c) One of a class, but whose identity cannot be
224 established or is uncertain at the time of filing such notice of
225 claim for record.

226

227 ~~Such notice may be filed by a homeowners' association only if~~
228 ~~the preservation of such covenant or restriction or portion of~~
229 ~~such covenant or restriction is approved by at least two-thirds~~
230 ~~of the members of the board of directors of an incorporated~~
231 ~~homeowners' association at a meeting for which a notice, stating~~
232 ~~the meeting's time and place and containing the statement of~~
233 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
234 ~~or hand delivered to members of the homeowners' association at~~
235 ~~least 7 days before such meeting.~~ The property owners'
236 ~~homeowners'~~ association or clerk of the circuit court is not
237 required to provide additional notice pursuant to s. 712.06(3).
238 The preceding sentence is intended to clarify existing law.
239 (4)~~(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the
240 marketable record title, as described in s. 712.02 ~~herein~~
241 ~~defined~~, to file a notice to protect his or her marketable
242 record title.
243 Section 8. Subsections (1) and (3) of section 712.06,
244 Florida Statutes, are amended to read:
245 712.06 Contents of notice; recording and indexing.—
246 (1) To be effective, the notice referred to in s. 712.05,
247 other than the summary notice referred to in s. 712.05(2)(b),
248 must ~~shall~~ contain:
249 (a) The name or description and mailing address of the
250 claimant or the property owners' ~~homeowners'~~ association

251 desiring to preserve any covenant or restriction ~~and the name~~
252 ~~and particular post office address of the person filing the~~
253 ~~claim or the homeowners' association~~.
254 (b) The name and mailing ~~post office~~ address of an owner,
255 or the name and mailing ~~post office~~ address of the person in
256 whose name the ~~said~~ property is assessed on the last completed
257 tax assessment roll of the county at the time of filing, who,
258 for purpose of such notice, shall be deemed to be an owner;
259 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
260 is filing the notice, ~~then~~ the requirements of this paragraph
261 may be satisfied by attaching to and recording with the notice
262 an affidavit executed by the appropriate member of the board of
263 directors of the property owners' ~~homeowners'~~ association
264 affirming that the board of directors of the property owners'
265 ~~homeowners'~~ association caused a statement in substantially the
266 following form to be mailed or hand delivered to the members of
267 that property owners' ~~homeowners'~~ association:
268
269 STATEMENT OF MARKETABLE TITLE ACTION
270
271 The [name of property owners' ~~homeowners'~~ association] (the
272 "Association") has taken action to ensure that the [name of
273 declaration, covenant, or restriction], recorded in Official
274 Records Book ...., Page ...., of the public records of ....
275 County, Florida, as may be amended from time to time, currently

276 burdening the property of each and every member of the
277 Association, retains its status ~~as the source of marketable~~
278 ~~title~~ with regard to the affected real property ~~the transfer of~~
279 ~~a member's residence~~. To this end, the Association shall cause
280 the notice required by chapter 712, Florida Statutes, to be
281 recorded in the public records of .... County, Florida. Copies
282 of this notice and its attachments are available through the
283 Association pursuant to the Association's governing documents
284 regarding official records of the Association.
285
286 (c) A full and complete description of all land affected
287 by such notice, which description shall be set forth in
288 particular terms and not by general reference, but if said claim
289 is founded upon a recorded instrument or a covenant or a
290 restriction, ~~then~~ the description in such notice may be the same
291 as that contained in such recorded instrument or covenant or
292 restriction, provided the same shall be sufficient to identify
293 the property.
294 (d) A statement of the claim showing the nature,
295 description, and extent of such claim or other right subject to
296 extinguishment under this chapter or, in the case of a covenant
297 or restriction, a copy of the covenant or restriction, except
298 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any
299 claim for money or the terms of payment.
300 (e) If such claim or other right subject to extinguishment

301 under this chapter is based upon an instrument of record or a
302 recorded covenant or restriction, such instrument of record or
303 recorded covenant or restriction shall be deemed sufficiently
304 described to identify the same if the notice includes a
305 reference to the book and page in which the same is recorded.
306 (f) Such notice shall be acknowledged in the same manner
307 as deeds are acknowledged for record.
308 (3) The person providing the notice referred to in s.
309 712.05, other than a notice for preservation of a community
310 covenant or restriction, shall:
311 (a) Cause the clerk of the circuit court to mail by
312 registered or certified mail to the purported owner of said
313 property, as stated in such notice, a copy thereof and shall
314 enter on the original, before recording the same, a certificate
315 showing such mailing. For preparing the certificate, the
316 claimant shall pay to the clerk the service charge as prescribed
317 in s. 28.24(8) and the necessary costs of mailing, in addition
318 to the recording charges as prescribed in s. 28.24(12). If the
319 notice names purported owners having more than one address, the
320 person filing the same shall furnish a true copy for each of the
321 several addresses stated, and the clerk shall send one such copy
322 to the purported owners named at each respective address. Such
323 certificate shall be sufficient if the same reads substantially
324 as follows:
325

326 I hereby certify that I did on this ...., mail by
327 registered (or certified) mail a copy of the foregoing notice to
328 each of the following at the address stated:
329
330 ...(Clerk of the circuit court)...
331 of .... County, Florida,
332 By...(Deputy clerk)...
333
334 The clerk of the circuit court is not required to mail to the
335 purported owner of such property any such notice that pertains
336 solely to the preserving of any covenant or restriction or any
337 portion of a covenant or restriction; or
338 (b) Publish once a week, for 2 consecutive weeks, the
339 notice referred to in s. 712.05, with the official record book
340 and page number in which such notice was recorded, in a
341 newspaper as defined in chapter 50 in the county in which the
342 property is located.
343 Section 9. Section 712.11, Florida Statutes, is amended to
344 read:
345 712.11 Covenant revitalization.—A property owners'
346 ~~homeowners'~~ association not otherwise subject to chapter 720 may
347 use the procedures set forth in ss. 720.403-720.407 to revive
348 covenants that have lapsed under the terms of this chapter.
349 Section 10. Section 712.12, Florida Statutes, is created
350 to read:

351 712.12 Covenant or restriction revitalization by parcel
352 owners not subject to a homeowners' association.-
353 (1) As used in this section, the term:
354 (a) "Community" means a group of parcels near one another
355 sharing a common interest due to their proximity to one another
356 and sharing a neighborhood name or identity, which parcels are
357 or will be subject to covenants and restrictions which are
358 recorded in the county where the property is located.
359 (b) "Covenant or restriction" means any agreement or
360 limitation imposed by a private party and not required by a
361 governmental agency as a condition of a development permit, as
362 defined in s. 163.3164, which is contained in a document
363 recorded in the public records of the county in which a parcel
364 is located and which subjects the parcel to any use restriction
365 that may be enforced by a parcel owner.
366 (c) "Parcel" means real property that is used for
367 residential purposes and which is subject to exclusive ownership
368 and any covenant or restriction that may be enforced by a parcel
369 owner.
370 (d) "Parcel owner" means the record owner of legal title
371 to a parcel.
372 (2) The parcel owners of a community not subject to a
373 homeowners' association may use the procedures set forth in ss.
374 720.403-720.407 to revive covenants or restrictions that have
375 lapsed under the terms of this chapter, except:

376 (a) A reference to a homeowners' association or articles
377 of incorporation or bylaws of a homeowners' association under
378 ss. 720.403-720.407 is not required to revive the covenants or
379 restrictions.
380 (b) The approval required under s. 720.405(6) must be in
381 writing, and not at a meeting.
382 (c) The requirements under s. 720.407(2) may be satisfied
383 by having the organizing committee execute the revived covenants
384 or restrictions in the name of the community.
385 (d) The indexing requirements under s. 720.407(3) may be
386 satisfied by indexing the community name in the covenants or
387 restrictions as the grantee and the parcel owners as the
388 grantors.
389 (3) With respect to any parcel that has ceased to be
390 governed by covenants or restrictions as of October 1, 2017, the
391 parcel owner may commence an action by October 1, 2018, for a
392 judicial determination that the covenants or restrictions did
393 not govern that parcel as of October 1, 2017, and that any
394 revitalization of such covenants or restrictions as to that
395 parcel would unconstitutionally deprive the parcel owner of
396 rights or property.
397 (4) Revived covenants or restrictions that are implemented
398 pursuant to this section do not apply to or affect the rights of
399 the parcel owner which are recognized by any court order or
400 judgment in any action commenced by October 1, 2018, and any

401 such rights so recognized may not be subsequently altered by
402 revived covenants or restrictions implemented under this section
403 without the consent of the affected parcel owner.
404 Section 11. Paragraph (e) is added to subsection (2) of
405 section 720.303, Florida Statutes, to read:
406 720.303 Association powers and duties; meetings of board;
407 official records; budgets; financial reporting; association
408 funds; recalls.—
409 (2) BOARD MEETINGS.—
410 (e) At the first board meeting, excluding the
411 organizational meeting, which follows the annual meeting of the
412 members, the board shall consider the desirability of filing
413 notices to preserve the covenants or restrictions affecting the
414 community or association from extinguishment under the
415 Marketable Record Title Act, chapter 712, and to authorize and
416 direct the appropriate officer to file notice in accordance with
417 s. 720.3032.
418 Section 12. Section 720.3032, Florida Statutes, is created
419 to read:
420 720.3032 Notice of association information; preservation
421 from Marketable Record Title Act.—
422 (1) Not less than once every 5 years, each association
423 shall record in the official records of each county in which the
424 community is located a notice specifying:
425 (a) The legal name of the association.

426 (b) The mailing and physical addresses of the association.
427 (c) The names of the affected subdivision plats and
428 condominiums or, if not applicable, the common name of the
429 community.
430 (d) The name, address, and telephone number for the
431 current community association management company or community
432 association manager, if any.
433 (e) Indication as to whether the association desires to
434 preserve the covenants or restrictions affecting the community
435 or association from extinguishment under the Marketable Record
436 Title Act, chapter 712.
437 (f) A listing by name and recording information of those
438 covenants or restrictions affecting the community which the
439 association desires to be preserved from extinguishment.
440 (g) The legal description of the community affected by the
441 covenants or restrictions, which may be satisfied by a reference
442 to a recorded plat.
443 (h) The signature of a duly authorized officer of the
444 association, acknowledged in the same manner as deeds are
445 acknowledged for record.
446 (2) Recording a document in substantially the following
447 form satisfies the notice obligation and constitutes a summary
448 notice as specified in s. 712.05(2)(b) sufficient to preserve
449 and protect the referenced covenants and restrictions from
450 extinguishment under the Marketable Record Title Act, chapter

451 712.
452
453 Notice of ...(name of association)... under s. 720.3032, Florida
454 Statutes, and notice to preserve and protect covenants and
455 restrictions from extinguishment under the Marketable Record
456 Title Act, chapter 712, Florida Statutes.
457
458 Instructions to recorder: Please index both the legal name
459 of the association and the names shown in item 3.
460 1. Legal name of association: ....
461 2. Mailing and physical addresses of association: ....
462 ....
463 3. Names of the subdivision plats, or, if none, common
464 name of community: ....
465 4. Name, address, and telephone number for management
466 company, if any: ....
467 5. This notice does .... does not .... constitute a notice
468 to preserve and protect covenants or restrictions from
469 extinguishment under the Marketable Record Title Act.
470 6. The following covenants or restrictions affecting the
471 community which the association desires to be preserved from
472 extinguishment:
473 ...(Name of instrument)...
474 ...(Official Records Book where recorded & page)...
475 ...(List of instruments)...

476 ...(List of recording information)...
477 7. The legal description of the community affected by the
478 listed covenants or restrictions is: ...(Legal description,
479 which may be satisfied by reference to a recorded plat)...
480 This notice is filed on behalf of ...(Name of
481 association)... as of ...(Date)....
482 ...(Name of association)...
483
484 By: ....
485 ...(Name of individual officer)...
486 ...(Title of officer)...
487 ...(Notary acknowledgment)...
488
489 (3) The failure to file one or more notices does not
490 affect the validity or enforceability of any covenant or
491 restriction nor in any way alter the remaining time before
492 extinguishment by the Marketable Record Title Act, chapter 712.
493 (4) A copy of the notice, as filed, must be included as
494 part of the next notice of meeting or other mailing sent to all
495 members.
496 (5) The original signed notice must be recorded in the
497 official records of the clerk of the circuit court or other
498 recorder for the county.
499 Section 13. Section 702.09, Florida Statutes, is amended
500 to read:

501 702.09 Definitions.—For the purposes of ss. 702.07 and
502 702.08, the words "decree of foreclosure" shall include a
503 judgment or order rendered or passed in the foreclosure
504 proceedings in which the decree of foreclosure shall be
505 rescinded, vacated, and set aside; the word "mortgage" shall
506 mean any written instrument securing the payment of money or
507 advances and includes liens to secure payment of assessments
508 arising under chapters 718 and 719 and liens created pursuant to
509 the recorded covenants of a property owners' ~~homeowners'~~
510 association as defined in s. 712.01; the word "debt" shall
511 include promissory notes, bonds, and all other written
512 obligations given for the payment of money; the words
513 "foreclosure proceedings" shall embrace every action in the
514 circuit or county courts of this state wherein it is sought to
515 foreclose a mortgage and sell the property covered by the same;
516 and the word "property" shall mean and include both real and
517 personal property.
518 Section 14. Subsection (1) of section 702.10, Florida
519 Statutes, is amended to read:
520 702.10 Order to show cause; entry of final judgment of
521 foreclosure; payment during foreclosure.—
522 (1) A lienholder may request an order to show cause for
523 the entry of final judgment in a foreclosure action. For
524 purposes of this section, the term "lienholder" includes the
525 plaintiff and a defendant to the action who holds a lien

526 encumbering the property or a defendant who, by virtue of its
527 status as a condominium association, cooperative association, or
528 property owners' ~~homeowners'~~ association, may file a lien
529 against the real property subject to foreclosure. Upon filing,
530 the court shall immediately review the request and the court
531 file in chambers and without a hearing. If, upon examination of
532 the court file, the court finds that the complaint is verified,
533 complies with s. 702.015, and alleges a cause of action to
534 foreclose on real property, the court shall promptly issue an
535 order directed to the other parties named in the action to show
536 cause why a final judgment of foreclosure should not be entered.
537 (a) The order shall:
538 1. Set the date and time for a hearing to show cause. The
539 date for the hearing may not occur sooner than the later of 20
540 days after service of the order to show cause or 45 days after
541 service of the initial complaint. When service is obtained by
542 publication, the date for the hearing may not be set sooner than
543 30 days after the first publication.
544 2. Direct the time within which service of the order to
545 show cause and the complaint must be made upon the defendant.
546 3. State that the filing of defenses by a motion, a
547 responsive pleading, an affidavit, or other papers before the
548 hearing to show cause that raise a genuine issue of material
549 fact which would preclude the entry of summary judgment or
550 otherwise constitute a legal defense to foreclosure shall

551 constitute cause for the court not to enter final judgment.
552 4. State that a defendant has the right to file affidavits
553 or other papers before the time of the hearing to show cause and
554 may appear personally or by way of an attorney at the hearing.
555 5. State that, if a defendant files defenses by a motion,
556 a verified or sworn answer, affidavits, or other papers or
557 appears personally or by way of an attorney at the time of the
558 hearing, the hearing time will be used to hear and consider
559 whether the defendant's motion, answer, affidavits, other
560 papers, and other evidence and argument as may be presented by
561 the defendant or the defendant's attorney raise a genuine issue
562 of material fact which would preclude the entry of summary
563 judgment or otherwise constitute a legal defense to foreclosure.
564 The order shall also state that the court may enter an order of
565 final judgment of foreclosure at the hearing and order the clerk
566 of the court to conduct a foreclosure sale.
567 6. State that, if a defendant fails to appear at the
568 hearing to show cause or fails to file defenses by a motion or
569 by a verified or sworn answer or files an answer not contesting
570 the foreclosure, such defendant may be considered to have waived
571 the right to a hearing, and in such case, the court may enter a
572 default against such defendant and, if appropriate, a final
573 judgment of foreclosure ordering the clerk of the court to
574 conduct a foreclosure sale.
575 7. State that if the mortgage provides for reasonable

576 attorney fees and the requested attorney fees do not exceed 3
577 percent of the principal amount owed at the time of filing the
578 complaint, it is unnecessary for the court to hold a hearing or
579 adjudge the requested attorney fees to be reasonable.
580 8. Attach the form of the proposed final judgment of
581 foreclosure which the movant requests the court to enter at the
582 hearing on the order to show cause.
583 9. Require the party seeking final judgment to serve a
584 copy of the order to show cause on the other parties in the
585 following manner:
586 a. If a party has been served pursuant to chapter 48 with
587 the complaint and original process, or the other party is the
588 plaintiff in the action, service of the order to show cause on
589 that party may be made in the manner provided in the Florida
590 Rules of Civil Procedure.
591 b. If a defendant has not been served pursuant to chapter
592 48 with the complaint and original process, the order to show
593 cause, together with the summons and a copy of the complaint,
594 shall be served on the party in the same manner as provided by
595 law for original process.
596
597 Any final judgment of foreclosure entered under this subsection
598 is for in rem relief only. This subsection does not preclude the
599 entry of a deficiency judgment where otherwise allowed by law.
600 The Legislature intends that this alternative procedure may run

601 simultaneously with other court procedures.
602 (b) The right to be heard at the hearing to show cause is
603 waived if a defendant, after being served as provided by law
604 with an order to show cause, engages in conduct that clearly
605 shows that the defendant has relinquished the right to be heard
606 on that order. The defendant's failure to file defenses by a
607 motion or by a sworn or verified answer, affidavits, or other
608 papers or to appear personally or by way of an attorney at the
609 hearing duly scheduled on the order to show cause presumptively
610 constitutes conduct that clearly shows that the defendant has
611 relinquished the right to be heard. If a defendant files
612 defenses by a motion, a verified answer, affidavits, or other
613 papers or presents evidence at or before the hearing which raise
614 a genuine issue of material fact which would preclude entry of
615 summary judgment or otherwise constitute a legal defense to
616 foreclosure, such action constitutes cause and precludes the
617 entry of a final judgment at the hearing to show cause.
618 (c) In a mortgage foreclosure proceeding, when a final
619 judgment of foreclosure has been entered against the mortgagor
620 and the note or mortgage provides for the award of reasonable
621 attorney fees, it is unnecessary for the court to hold a hearing
622 or adjudge the requested attorney fees to be reasonable if the
623 fees do not exceed 3 percent of the principal amount owed on the
624 note or mortgage at the time of filing, even if the note or
625 mortgage does not specify the percentage of the original amount

626 that would be paid as liquidated damages.
627 (d) If the court finds that all defendants have waived the
628 right to be heard as provided in paragraph (b), the court shall
629 promptly enter a final judgment of foreclosure without the need
630 for further hearing if the plaintiff has shown entitlement to a
631 final judgment and upon the filing with the court of the
632 original note, satisfaction of the conditions for establishment
633 of a lost note, or upon a showing to the court that the
634 obligation to be foreclosed is not evidenced by a promissory
635 note or other negotiable instrument. If the court finds that a
636 defendant has not waived the right to be heard on the order to
637 show cause, the court shall determine whether there is cause not
638 to enter a final judgment of foreclosure. If the court finds
639 that the defendant has not shown cause, the court shall promptly
640 enter a judgment of foreclosure. If the time allotted for the
641 hearing is insufficient, the court may announce at the hearing a
642 date and time for the continued hearing. Only the parties who
643 appear, individually or through an attorney, at the initial
644 hearing must be notified of the date and time of the continued
645 hearing.
646 Section 15. Section 712.095, Florida Statutes, is amended
647 to read:
648 712.095 Notice required by July 1, 1983.—Any person whose
649 interest in land is derived from an instrument or court
650 proceeding recorded subsequent to the root of title, which

651 instrument or proceeding did not contain a description of the
652 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
653 interest had not been extinguished prior to July 1, 1981, shall
654 have until July 1, 1983, to file a notice in accordance with s.
655 712.06 to preserve the interest.
656 Section 16. Section 720.403, Florida Statutes, is amended
657 to read:
658 720.403 Preservation of ~~residential~~ communities; revival
659 of declaration of covenants.—
660 (1) Consistent with required and optional elements of
661 local comprehensive plans and other applicable provisions of the
662 Community Planning Act, property owners ~~homeowners~~ are
663 encouraged to preserve existing residential and other
664 communities, promote available and affordable housing, protect
665 structural and aesthetic elements of their ~~residential~~
666 community, and, as applicable, maintain roads and streets,
667 easements, water and sewer systems, utilities, drainage
668 improvements, conservation and open areas, recreational
669 amenities, and other infrastructure and common areas that serve
670 and support the ~~residential~~ community by the revival of a
671 previous declaration of covenants and other governing documents
672 that may have ceased to govern some or all parcels in the
673 community.
674 (2) In order to preserve a ~~residential~~ community and the
675 associated infrastructure and common areas for the purposes

676 described in this section, the parcel owners in a community that
677 was previously subject to a declaration of covenants that has
678 ceased to govern one or more parcels in the community may revive
679 the declaration and the ~~homeowners'~~ association for the
680 community upon approval by the parcel owners to be governed
681 thereby as provided in this act, and upon approval of the
682 declaration and the other governing documents for the
683 association by the Department of Economic Opportunity in a
684 manner consistent with this act.
685 <u>(3) Part III of this chapter is intended to provide</u>
686 <u>mechanisms for the revitalization of covenants or restrictions</u>
687 <u>for all types of communities and property associations and is</u>
688 <u>not limited to residential communities.</u>
689 Section 17. Section 720.404, Florida Statutes, is amended
690 to read:
691 720.404 Eligible ~~residential~~ communities; requirements for
692 revival of declaration.—Parcel owners in a community are
693 eligible to seek approval from the Department of Economic
694 Opportunity to revive a declaration of covenants under this act
695 if all of the following requirements are met:
696 (1) All parcels to be governed by the revived declaration
697 must have been once governed by a previous declaration that has
698 ceased to govern some or all of the parcels in the community;
699 (2) The revived declaration must be approved in the manner
700 provided in s. 720.405(6); and

701 (3) The revived declaration may not contain covenants that
702 are more restrictive on the parcel owners than the covenants
703 contained in the previous declaration, except that the
704 declaration may:
705 (a) Have an effective term of longer duration than the
706 term of the previous declaration;
707 (b) Omit restrictions contained in the previous
708 declaration;
709 (c) Govern fewer than all of the parcels governed by the
710 previous declaration;
711 (d) Provide for amendments to the declaration and other
712 governing documents; and
713 (e) Contain provisions required by this chapter for new
714 declarations that were not contained in the previous
715 declaration.
716 Section 18. Subsections (1), (3), (5), and (6) of section
717 720.405, Florida Statutes, are amended to read:
718 720.405 Organizing committee; parcel owner approval.—
719 (1) The proposal to revive a declaration of covenants and
720 <u>an</u> ~~a homeowners'~~ association for a community under the terms of
721 this act shall be initiated by an organizing committee
722 consisting of not less than three parcel owners located in the
723 community that is proposed to be governed by the revived
724 declaration. The name, address, and telephone number of each
725 member of the organizing committee must be included in any

726 notice or other document provided by the committee to parcel
727 owners to be affected by the proposed revived declaration.
728 (3) The organizing committee shall prepare the full text
729 of the proposed articles of incorporation and bylaws of the
730 revived ~~homeowners'~~ association to be submitted to the parcel
731 owners for approval, unless the association is then an existing
732 corporation, in which case the organizing committee shall
733 prepare the existing articles of incorporation and bylaws to be
734 submitted to the parcel owners.
735 (5) A copy of the complete text of the proposed revised
736 declaration of covenants, the proposed new or existing articles
737 of incorporation and bylaws of the ~~homeowners'~~ association, and
738 a graphic depiction of the property to be governed by the
739 revived declaration shall be presented to all of the affected
740 parcel owners by mail or hand delivery not less than 14 days
741 before the time that the consent of the affected parcel owners
742 to the proposed governing documents is sought by the organizing
743 committee.
744 (6) A majority of the affected parcel owners must agree in
745 writing to the revived declaration of covenants and governing
746 documents of the ~~homeowners'~~ association or approve the revived
747 declaration and governing documents by a vote at a meeting of
748 the affected parcel owners noticed and conducted in the manner
749 prescribed by s. 720.306. Proof of notice of the meeting to all
750 affected owners of the meeting and the minutes of the meeting

751 recording the votes of the property owners shall be certified by
752 a court reporter or an attorney licensed to practice in the
753 state.
754 Section 19. Subsection (3) of section 720.407, Florida
755 Statutes, is amended to read:
756 720.407 Recording; notice of recording; applicability and
757 effective date.—
758 (3) The recorded documents shall include the full text of
759 the approved declaration of covenants, the articles of
760 incorporation and bylaws of the ~~homeowners'~~ association, the
761 letter of approval by the department, and the legal description
762 of each affected parcel of property. For purposes of chapter
763 712, the association is deemed to be and shall be indexed as the
764 grantee in a title transaction and the parcel owners named in
765 the revived declaration are deemed to be and shall be indexed as
766 the grantors in the title transaction.
767 Section 20. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Edwards offered the following:
4
5 **Amendment**
6 Remove lines 81-88 and insert:
7 (6) A county may not delegate its police power to a third
8 party by restriction, covenant, or otherwise, and any such
9 purported delegation is hereby declared void. The imposition or
10 acceptance of a recorded or unrecorded restriction or covenant
11 as a condition of a county's approval or issuance of a
12 development permit does not preclude the county from exercising
13 its police power, in its sole discretion, to later amend,
14 release, or terminate the restriction or covenant. Any such
15 amendment, release, or termination of the restriction or

16 covenant must follow the procedural requirements set forth in s.
17 125.66
18 Remove lines 95-103 and insert:
19 (6) A municipality may not delegate its police power to a
20 third party by restriction, covenant, or otherwise, and any such
21 purported delegation is hereby declared void. The imposition or
22 acceptance of a recorded or unrecorded restriction or covenant
23 as a condition of a municipality's approval or issuance of a
24 development permit does not preclude a municipality from
25 exercising its police power, in its sole discretion, to later
26 amend, release, or terminate the restriction or covenant. Any
27 such amendment, release, or termination of the restriction or
28 covenant must follow the procedural requirements set forth in s.
29 166.041(c), Florida Statutes.~~This section does not prohibit a~~
30 ~~municipality from~~

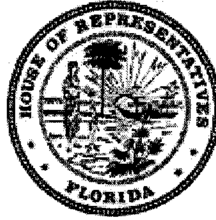
Amendment No. 2

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		

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Edwards offered the following:
4
5 **Amendment**
6 Remove line 422 and insert:
7 (1) Not less than once every 5 years, if it wishes to
8 preserve its covenants and restrictions, each association



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

Florida House of Representatives
Summary Claim Bill Report

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

Basic Information:

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

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

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

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

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

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

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

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

Parker Aziz, Special Master Date: March 6, 2017

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

1 A bill to be entitled
2 An act for the relief of Sean McNamee and his parents,
3 Todd McNamee and Jody McNamee, by the School Board of
4 Hillsborough County; providing for an appropriation to
5 compensate them for injuries and damages sustained by
6 Sean McNamee as a result of the negligence of
7 employees of the School Board of Hillsborough County;
8 providing a limitation on the payment of compensation,
9 fees, and costs; providing an effective date.
10
11 WHEREAS, on October 9, 2013, Sean McNamee, a minor student
12 and member of the football team at Wharton High School,
13 participated in a warm-up session as part of organized team
14 activities at the start of football practice, and
15 WHEREAS, during a passing drill, Sean McNamee lost his
16 balance when he came into contact with another player, and while
17 falling to the ground, struck his head on a paint machine used
18 to line the practice field which had been improperly left in the
19 practice area, and
20 WHEREAS, Sean McNamee appeared confused, disoriented, and
21 not "symptom free" while in the training and locker rooms for
22 evaluation and treatment by the school's athletic trainer, and
23 WHEREAS, the coaching and training staff did not properly
24 evaluate or assess Sean McNamee for a concussion or head injury,
25 left him unattended, did not call 911 or summon a physician or

26 ambulance, and did not immediately notify Sean's parents of the
27 possibility that their son had sustained a brain injury, and
28 WHEREAS, the coaching and training staff responsible for
29 the supervision and welfare of participating student athletes
30 should have known of the severity of the injury experienced by
31 Sean McNamee and were responsible for ensuring he received
32 appropriate and timely evaluation and attention, and
33 WHEREAS, after being left alone for an extended time, Sean
34 McNamee drove himself home, endangering himself and others, and
35 there his sister found him incoherent and acting strangely, and
36 she notified their father, Todd McNamee, who rushed him to the
37 emergency department at Florida Hospital Tampa, and
38 WHEREAS, physicians at Florida Hospital Tampa diagnosed
39 Sean McNamee with a traumatic brain injury from a depressed
40 temporal bone fracture with epidural and subdural hemorrhage
41 which required multiple brain surgeries, including emergency
42 decompression craniotomy, a 9-day induced coma, and
43 reconstruction with a titanium plate permanently inserted into
44 his fractured skull, and
45 WHEREAS, as a result of the traumatic brain injury and
46 delayed treatment, Sean McNamee suffers from permanent and
47 significant changes in his cognitive functions and from an
48 epileptic seizure disorder with breakthrough episodes, and
49 WHEREAS, Sean McNamee and his parents Todd McNamee and Jody
50 McNamee brought suit against the School Board of Hillsborough

51 County in the Circuit Court of the Thirteenth Judicial Circuit
52 in and for Hillsborough County, Case No 14-CA-009239, and the
53 parties entered into a court-ordered mediation on September 14,
54 2015, and
55 WHEREAS, the School Board of Hillsborough County approved a
56 settlement in the amount of $2 million, paid the statutory limit
57 of $300,000 under s. 768.28, Florida Statutes, and further
58 agreed to support the passage of this claim bill in the amount
59 of $1.7 million for the unpaid portion of the settlement, NOW,
60 THEREFORE,
61
62 Be It Enacted by the Legislature of the State of Florida:
63
64 Section 1. The facts stated in the preamble to this act
65 are found and declared to be true.
66 Section 2. The School Board of Hillsborough County is
67 authorized and directed to appropriate from funds not otherwise
68 encumbered and to draw a warrant in the sum of $1.7 million
69 payable to Sean McNamee and his parents Todd McNamee and Jody
70 McNamee as compensation for injuries and damages sustained as a
71 result of the negligence of employees of the School Board of
72 Hillsborough County.
73 Section 3. The amount paid by the School Board of
74 Hillsborough County under s. 768.28, Florida Statutes, and the
75 amount awarded under this act are intended to provide the sole

76 compensation for all present and future claims arising out of
77 the factual situation described in this act which resulted in
78 injuries to Sean McNamee and damages to Todd McNamee and Jody
79 McNamee. The total amount paid for attorney fees, lobbying fees,
80 costs, and similar expenses relating to this claim may not
81 exceed 25 percent of the amount awarded under this act.
82 Section 4. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER ____

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Shaw offered the following:
4
5 **Amendment**
6 Remove lines 69-81 and insert:
7 payable to the Sean R. McNamee Irrevocable Trust as compensation
8 for injuries and damages sustained as a result of the negligence
9 of employees of the School Board of Hillsborough County.
10 Section 3. The amount paid by the School Board of
11 Hillsborough County under s. 768.28, Florida Statutes, and the
12 amount awarded under this act are intended to provide the sole
13 compensation for all present and future claims arising out of
14 the factual situation described in this act which resulted in
15 injuries to Sean McNamee and damages to Todd McNamee and Jody
16 McNamee. Of the amount awarded under this act, the total amount

17 paid for attorney fees may not exceed $340,000, the total amount
18 paid for lobbying fees may not exceed $85,000, and no amount of
19 the act may be paid for costs and other similar expenses
20 relating to this claim.

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

Claimants' Supplemental Attorney/Lobbyist Fees and Costs Affidavit

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

1. I am over eighteen years of age. The statements made in this affidavit are based upon my personal knowledge.

2. David Dickey is an attorney licensed to practice law in the State of Florida since 1992 and along with Steven Yerrid, Esq. and other members of The Yerrid Law Firm, represent Claimants Sean McNamee and his parents Todd McNamee and Jody McNamee, for legal services resulting from a head injury that occurred on October 9, 2013 at Wharton High School in Hillsborough County, Florida, including this claim bill.

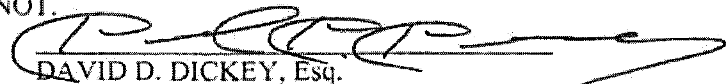
3. Matthew Blair is a registered lobbyist and along with other members of the Corcoran & Johnson firm represent Claimants for lobbying services associated with this bill.

4. The claimants, attorneys and lobbyist have contractually agree to cap the total amount of all attorney's fees and lobbyist's fees at 25% of the total claim award in accordance with Florida Statute § 768.28(8) with the total attorney's fees being 20% and the Lobbyist fee being 5% of any amount awarded by the Legislature.

5. The Yerrid Law Firm incurred costs in the amount of $9,056.52, of which $405.16 was for copying, legal research fees, courier charges, and other miscellaneous in-house charges, associated with the legal services for claimants' representation, that was reimbursed from the statutory cap payment previously recovered.

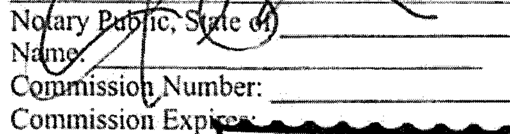
6. There are no additional outstanding costs that will be paid by claimants from any amount awarded by the Legislature. The attorneys and lobbyist have agreed to waive any additional costs.

FURTHER AFFIANT SAYETH NOT.

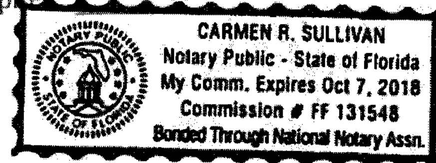


DAVID D. DICKEY, Esq.

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



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



FURTHER AFFIANT SAYETH NOT.

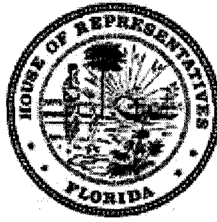
MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

MATTHEW BLAIR

SWORN TO and SUBSCRIBED before me this 28th day of February, 2017, by Matthew Blair, who is personally known to me.

Notary Public, State of Florida

Name: Michelle A. Kazouris
Commission Number: FF 038908
Commission Expires: 8/7/2017



STORAGE NAME: h6509.CJC
DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

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

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

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

FINDING OF FACT:

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

The Accident

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

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

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

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

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

Mr. Godden was issued a citation for failing to yield to a stop sign[1] but later had the citation dismissed. He was not

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

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

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

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

LITIGATION HISTORY:

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

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

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

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

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

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

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

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

Duty

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

Breach

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

Comparative Negligence

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

---

[3] *Mosby v. Harrell*, 909 So. 2d 323, 327 (Fla. 1st DCA 2005).
[4] *Stinson v. Prevatt*, 94 So. 656, 657 (1922).
[5] *Hoffman v. Jones*, 280 So. 2d 431, 436 (Fla. 1973).

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

It is understandable for both the jury and for Orange County to find Mr. Smith somewhat liable for the accident. As Orange County presented to the jury and to the Special Masters, the medical records from Orlando Regional Medical Center reveal Mr. Smith reported drinking a beer on the day of the accident. Additionally, Orange County cites to Mr. Smith's two prior DUIs[7] as evidence Mr. Smith may have been drinking and driving. Mr. Smith has repeatedly denied drinking on the day of the accident and does not know how the notation appeared in the hospital records. The two paramedics who stabilized and transported Mr. Smith did not report any smell of alcohol. There was no blood alcohol analysis performed at the hospital.

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

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

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

---

[6] s. 768.81(2), F.S.

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

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

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

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

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

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

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

<u>ATTORNEY'S/ LOBBYING FEES</u>:

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

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

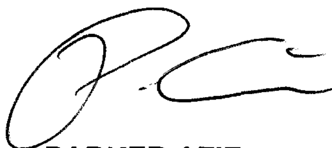
attorney's 25% fee. Outstanding costs total $ $76,312.81.

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

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

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

Respectfully submitted,



PARKER AZIZ

House Special Master

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

1 A bill to be entitled
2 An act for the relief of Robert Allan Smith by Orange
3 County; providing for an appropriation to compensate
4 him for injuries sustained as a result of the
5 negligence of an employee of Orange County; providing
6 a limitation on the payment of fees and costs;
7 providing an effective date.
8
9 WHEREAS, Robert Allan Smith was involved in a motor vehicle
10 accident on DePauw Avenue and Orlando Street in Orlando, Orange
11 County, on September 7, 2006, and
12 WHEREAS, Mr. Smith was operating his motorcycle within the
13 25 mph speed limit, with headlights on, at approximately 1:43
14 p.m., in clear, dry weather, headed north on DePauw Avenue, the
15 quiet residential street he lived on and within 300 feet of his
16 home, and
17 WHEREAS, Mr. Smith approached the intersection of Orlando
18 Street, which is governed by a stop sign, and a work van headed
19 west on Orlando Avenue, owned by Orange County and driven by
20 Orange County employee Lynn Lawrence Godden, negligently pulled
21 from said stop sign directly into Mr. Smith's path and caused a
22 collision with Mr. Smith, and
23 WHEREAS, Mr. Smith saw the driver of the van visibly slow
24 down upon approaching the stop sign and look at Mr. Smith as he
25 approached on his motorcycle, but the driver of the van drove

26 through the stop sign into Mr. Smith's path, and Mr. Smith had
27 too little time and distance to prevent a collision, and
28 WHEREAS, the front of the Orange County van struck the
29 right side of Mr. Smith, causing severe and life-threatening
30 injuries, including traumatic amputation of his right leg above
31 the knee, a badly fractured lower left leg with internal
32 fixation, and a broken pelvis and sacrum with internal fixation,
33 and Mr. Smith required a laparotomy to repair damage to his
34 rectum and internal organs, and
35 WHEREAS, the Orange County employee testified he stopped at
36 the stop sign and saw, to his left, the motorcycle pull out of a
37 driveway but erroneously thought it was heading in the other
38 direction away from him, though there was no evidence to support
39 this claim, so he then looked to his right and entered the
40 intersection without looking back to his left, and
41 WHEREAS, the Orange County employee violated Mr. Smith's
42 right-of-way and was issued a citation by the Orlando Police
43 Department for failure to yield from a stop sign and was found
44 guilty of said citation by the traffic court judge, and
45 WHEREAS, before the civil jury trial, Robert Allan Smith's
46 past hospitalization, medical, and rehabilitation expenses
47 exceeded $550,000 and his past lost earnings were in excess of
48 $137,000, and

49 WHEREAS, the jury determined that Mr. Smith's future
50 medical expenses will total $2,376,000 over 40 years, and past
51 medical expenses and lost wages totaled $688,807.37, and
52 WHEREAS, Robert Allan Smith was awarded $1,749,978 in
53 damages for past and future pain and suffering, for a total
54 verdict award of $4,814,785.37, and
55 WHEREAS, after reduction for comparative negligence and
56 setoffs to allow for bill reductions by Medicaid and the
57 Veteran's Administration, a judgment was entered in Orange
58 County on November 27, 2012, against Orange County and in favor
59 of Robert Allan Smith in the amount of $2,913,536.09, plus
60 taxable costs, and
61 WHEREAS, after entry of the judgment, Orange County has
62 made partial payment to Robert Allan Smith in the amount of
63 $100,000, but the remainder of the judgment remains wholly
64 unsatisfied, pending passage of this act into law, NOW,
65 THEREFORE,
66
67 Be It Enacted by the Legislature of the State of Florida:
68
69 Section 1. <u>The facts stated in the preamble to this act</u>
70 <u>are found and declared to be true.</u>
71 Section 2. <u>Orange County is authorized and directed to</u>
72 <u>appropriate from funds of the county not otherwise appropriated</u>
73 <u>and to draw a warrant in the sum of $2,813,536.09 payable to</u>

74 Robert Allan Smith as compensation for injuries and damages
75 sustained as a result of the negligence of an employee of Orange
76 County.
77 Section 3. The amount paid pursuant to s. 768.28, Florida
78 Statutes, and the amount awarded under this act are intended to
79 provide the sole compensation for all present and future claims
80 arising out of the factual situation described in the preamble
81 to this act which resulted in the injuries and damages sustained
82 by Robert Allan Smith. The total amount paid for attorney fees,
83 lobbying fees, costs, and similar expenses relating to this
84 claim may not exceed 25 percent of the total amount awarded
85 under this act.
86 Section 4. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Cortes, B. offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. The facts stated in the preamble to this act
8 are found and declared to be true.
9 Section 2. Orange County is authorized and directed to
10 appropriate from funds of the county not otherwise appropriated
11 and to draw a warrant in the sum of $2,813,536.09 payable to
12 Robert Allan Smith as compensation for injuries and damages
13 sustained as a result of the negligence of an employee of Orange
14 County.
15 Section 3. The governmental entity responsible for payment
16 of the warrant shall pay to the Florida Agency for Health Care

17 Administration the amount due under section 409.910, Florida
18 Statutes, prior to disbursing any funds to the claimant. The
19 amount due to the agency shall be equal to all unreimbursed
20 medical payments paid by Medicaid up to the date upon which this
21 bill becomes law.
22 Section 4. The amount paid pursuant to s. 768.28, Florida
23 Statutes, and the amount awarded under this act are intended to
24 provide the sole compensation for all present and future claims
25 arising out of the factual situation described in the preamble
26 to this act which resulted in the injuries and damages sustained
27 by Robert Allan Smith. Of the amount awarded under this act, the
28 total amount paid for attorney fees may not exceed $562,707.218,
29 the total amount paid for lobbying fees may not exceed
30 $140,676.80, and the total amount paid for costs and other
31 similar expenses relating to this claim may not exceed
32 $70,351.88.
33 Section 5. This act shall take effect upon becoming a law.
34
35 ---
36 **T I T L E A M E N D M E N T**
37 Remove everything before the enacting clause and insert:
38 An act for the relief of Robert Allan Smith by Orange
39 County; providing for an appropriation to compensate
40 him for injuries sustained as a result of the
41 negligence of an employee of Orange County; providing

42 for repayment of Medicaid liens; providing a
43 limitation on the payment of fees and costs; providing
44 an effective date.
45 WHEREAS, Robert Allan Smith was involved in a motor vehicle
46 accident on DePauw Avenue and Orlando Street in Orlando, Orange
47 County, on September 7, 2006, and
48 WHEREAS, Mr. Smith was operating his motorcycle within the
49 25 mph speed limit, with headlights on, at approximately 1:43
50 p.m., in clear, dry weather, headed north on DePauw Avenue, the
51 quiet residential street he lived on and within 300 feet of his
52 home, and
53 WHEREAS, Mr. Smith approached the intersection of Orlando
54 Street, which is governed by a stop sign, and a work van headed
55 west on Orlando Avenue, owned by Orange County and driven by
56 Orange County employee Lynn Lawrence Godden, negligently pulled
57 from said stop sign directly into Mr. Smith's path and caused a
58 collision with Mr. Smith, and
59 WHEREAS, Mr. Smith saw the driver of the van visibly slow
60 down upon approaching the stop sign and look at Mr. Smith as he
61 approached on his motorcycle, but the driver of the van drove
62 through the stop sign into Mr. Smith's path, and Mr. Smith had
63 too little time and distance to prevent a collision, and
64 WHEREAS, the front of the Orange County van struck the
65 right side of Mr. Smith, causing severe and life-threatening
66 injuries, including traumatic amputation of his right leg above

67 the knee, a badly fractured lower left leg with internal
68 fixation, and a broken pelvis and sacrum with internal fixation,
69 and Mr. Smith required a laparotomy to repair damage to his
70 rectum and internal organs, and
71 WHEREAS, the Orange County employee testified he stopped at
72 the stop sign and saw, to his left, the motorcycle pull out of a
73 driveway but erroneously thought it was heading in the other
74 direction away from him, though there was no evidence to support
75 this claim, so he then looked to his right and entered the
76 intersection without looking back to his left, and
77 WHEREAS, the Orange County employee violated Mr. Smith's
78 right-of-way and was issued a citation by the Orlando Police
79 Department for failure to yield from a stop sign, and
80 WHEREAS, before the civil jury trial, Robert Allan Smith's
81 past hospitalization, medical, and rehabilitation expenses
82 exceeded $550,000 and his past lost earnings were in excess of
83 $137,000, and
84 WHEREAS, the jury determined that Mr. Smith's future
85 medical expenses will total $2,376,000 over 40 years, and past
86 medical expenses and lost wages totaled $688,807.37, and
87 WHEREAS, Robert Allan Smith was awarded $1,749,978 in
88 damages for past and future pain and suffering, for a total
89 verdict award of $4,814,785.37, and
90 WHEREAS, after reduction for comparative negligence and
91 setoffs to allow for bill reductions by Medicaid and the

92 Veteran's Administration, a judgment was entered in Orange
93 County on November 27, 2012, against Orange County and in favor
94 of Robert Allan Smith in the amount of $2,913,536.09, plus
95 taxable costs, and
96 WHEREAS, after entry of the judgment, Orange County has
97 made partial payment to Robert Allan Smith in the amount of
98 $100,000, but the remainder of the judgment remains wholly
99 unsatisfied, pending passage of this act into law, NOW,
100 THEREFORE,
101

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

CASE NO: 07-CA-1925

ROBERT ALAN SMITH,

Plaintiff,

vs.

ORANGE COUNTY BOARD OF
COUNTY COMMISSIONERS,

Defendant.
______________________________________ /

AFFIDAVIT OF DAVID B. MOFFETT AND ALBERT BALIDO

STATE OF FLORIDA

COUNTY OF ORANGE

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

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

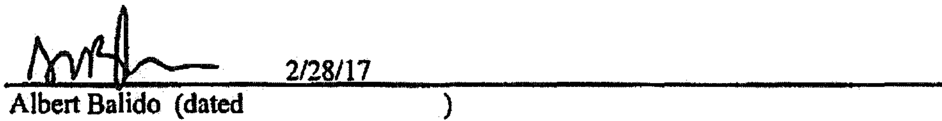
twenty percent (20%) of any amount that may be awarded by the Legislature pursuant to Mr. Smith's claim bill petition.

4. The total dollar amount of outstanding law firm costs that will be paid from any amount that may be awarded by the legislature is $70,351.88 (seventy thousand, three hundred fifty ONE dollars and eighty eight cents), to include Valenzuela and Stern (per lien letter $2,697.44); Nation Law Firm ($10,493.68); and Morgan and Morgan ($57,164.01).

5. The dollar amount of costs that were paid from the statutory cap payment is zero dollars ($0). All of the statutory cap payment ($100,000) is held in trust pending resolution of the claims bill petition.

6. Of the $70,351.88 total amount of law firm costs, $1,483.10 is for internal costs (expenses associated with the firms' overhead such as copying (of the V & S firm costs, Morgan and Morgan does not have a breakdown of internal versus external), and $68,868.78 is associated with the firms' external costs (such as expert witness fees).

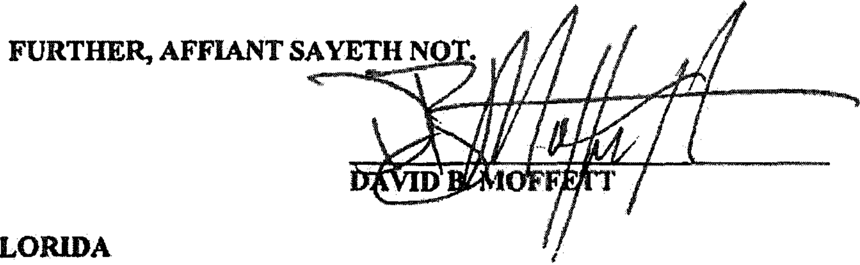
I, Albert Balido, agree with the forgoing statement of lobbyists fees.



2/28/17

Albert Balido (dated)

FURTHER, AFFIANT SAYETH NOT.

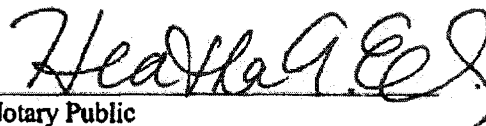


DAVID B. MOFFETT

STATE OF FLORIDA
COUNTY OF ORANGE

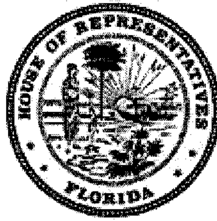
The foregoing instrument was subscribed and sworn to before me this 1st day of march, 2017

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



Notary Public
My commission expires:

HB 6515



STORAGE NAME: h6515.CJC
DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

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

Re: HB 6515 - Representative Jones
Relief of Wendy Smith and Dennis Darling, Sr. by the State of Florida

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

FINDING OF FACT:

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

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

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

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

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

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

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

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

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

LITIGATION HISTORY:

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

CLAIMANT'S POSTION:

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

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

personnel and medical equipment during mat drills.

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

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

RESPONDENT'S POSTIION:

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

CONCLUSION OF LAW:

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

Duty

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Causation

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

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

[4] *Goldberg v. Florida Power & Light Co.*, 899 So. 2d 1105, 1116 (Fla. 2005) (quoting *McCain v. Florida Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992)).
[5] *Pope v. Pinkerton-Hays Lumber Co.*, 120 So. 2d 227, 229-230 (Fla. 1st DCA 1960)(emphasis in original).

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

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

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

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

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

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

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

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs are $40,785.27.

LEGISLATIVE HISTORY:

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

PARKER AZIZ

House Special Master

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

1 A bill to be entitled
2 An act for the relief of Wendy Smith and Dennis
3 Darling, Sr., parents of Devaughn Darling, deceased;
4 providing an appropriation from the General Revenue
5 Fund to compensate the parents for the loss of their
6 son, Devaughn Darling, whose death occurred while he
7 was engaged in football preseason training on the
8 Florida State University campus; providing a
9 limitation on the payment of fees and costs; providing
10 an effective date.
11
12 WHEREAS, on February 21, 2001, Devaughn Darling, the son of
13 Wendy Smith and Dennis Darling, Sr., collapsed and died while
14 participating in preseason training in preparation for the
15 upcoming football season at Florida State University, and
16 WHEREAS, after litigation had ensued and during mediation,
17 the parents of Devaughn Darling and Florida State University
18 agreed to compromise and settle all of the disputed claims
19 rather than continue with litigation and its attendant
20 uncertainties, and
21 WHEREAS, the parties resolved, compromised, and settled all
22 claims by a stipulated settlement agreement providing for the
23 entry of a consent final judgment against Florida State
24 University in the amount of $2 million, of which the Division of
25 Risk Management of the Department of Financial Services has paid

26 the statutory limit of $200,000 pursuant to s. 768.28, Florida
27 Statutes, and
28 WHEREAS, as provided by the settlement agreement, Florida
29 State University has agreed to support the passage of this claim
30 bill for the remaining unpaid portion of the consent judgment,
31 $1.8 million, NOW, THEREFORE,
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. The facts stated in the preamble to this act
36 are found and declared to be true.
37 Section 2. The sum of $1.8 million is appropriated from
38 funds in the General Revenue Fund not otherwise encumbered, to
39 be paid to Wendy Smith and Dennis Darling, Sr., parents of
40 decedent Devaughn Darling, as relief for their losses.
41 Section 3. The Chief Financial Officer is directed to draw
42 a warrant in favor of Wendy Smith and Dennis Darling, Sr.,
43 parents of decedent Devaughn Darling, in the sum of $1.8
44 million.
45 Section 4. The amount paid by the Division of Risk
46 Management of the Department of Financial Services pursuant to
47 s. 768.28, Florida Statutes, and the amount awarded under this
48 act are intended to provide the sole compensation for all
49 present and future claims arising out of the factual situation
50 described in the preamble to this act which resulted in the

51 death of Devaughn Darling. The total amount paid for attorney
52 fees, lobbying fees, costs, and other similar expenses relating
53 to this claim may not exceed 25 percent of the amount awarded
54 under this act.
55 Section 5. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER ______

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Jones offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 37-55 and insert:
7 Section 2. Florida State University is authorized and
8 directed to appropriate from funds of the university not
9 otherwise appropriated and to draw a warrant in the amount of
10 $1.8 million, to be paid to Wendy Smith and Dennis Darling, Sr.,
11 parents of decedent Devaughn Darling, as relief for their
12 losses.
13 Section 3. The amount paid by the Division of Risk
14 Management of the Department of Financial Services pursuant to
15 s. 768.28, Florida Statutes, and the amount awarded under this
16 act are intended to provide the sole compensation for all

17 present and future claims arising out of the factual situation
18 described in the preamble to this act which resulted in the
19 death of Devaughn Darling. Of the amount awarded under this act,
20 the total amount paid for attorney fees may not exceed $360,000,
21 the total amount paid for lobbying fees may not exceed $90,000,
22 and the total amount paid for costs and other similar expenses
23 relating to this claim may not exceed $40,785.27.
24 Section 4. This act shall take effect upon becoming a law.
25
26 ---
27 **T I T L E A M E N D M E N T**
28 Remove lines 4-5 and insert:
29 providing an appropriation to compensate the parents for the
30 loss of their

The Florida House of Representatives

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

AFFIDAVIT OF COUNSEL

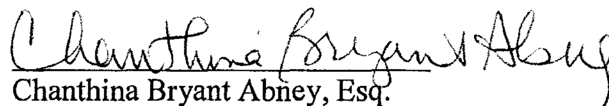
BEFORE ME, the undersigned authority, personally appeared Chanthina Bryant Abney, General Counsel of the Law Offices of Gary, Williams, Parenti, Watson & Gary, P.L.L.C., ("GWP") and upon oath, deposes on personal knowledge and says:

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following, this 3rd day of March, 2017.



Chanthina Bryant Abney, Esq.
Florida Bar No.: 121738
Gary, Williams, Parenti,
Watson & Gary, P.L.L.C.
221 SE Osceola Street
Stuart, Florida, 34994
772-283-8260
cba@williegary.corn

Jason Taylor, Esq.
McConnaughhay, Duffy, Coonrod,
Pope, Weaver, Stern & Thomas, P.A.
1709 Hermitage Blvd, Suite 200
Tallahassee, Florida 32308
Jtaylor@rncconnaughhay.com

Parker Aziz, Special Master
Florida House of Representatives
412 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300
Ann.gilliarn@rnyfloridahouse.gov

Barbara Crosier, Attorney
Senate Committee on Children, Families, and Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100
Butler. joyce@flsenate.gov

Yolanda Cash-Jackson, Esq.
Becker, Poliakoff, P.A.
1 East Broward Blvd, Suite 1800
Fort Lauderdale, Florida 33301
Yjackson@bplegal.com

FURTHER AFFIANTS SAYETH NAUGHT.

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

Chanthina Bryant Abney
General Counsel

STATE OF FLORIDA
COUNTY OF Martin

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

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

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

Signature of Notary Public

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

BECKER & POLIAKOFF, P.A.

____
Yolanda Cash Jackson, Esq.

STATE OF FLORIDA
COUNTY OF __________

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

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

____
Signature of Notary Public

____
Printed name of Notary Public
My Commission Expires:

The Florida House of Representatives

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

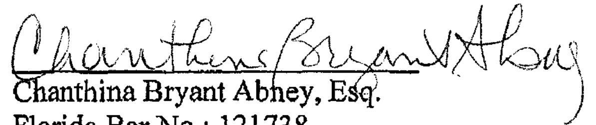
AFFIDAVIT OF COUNSEL

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

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

CERTIFICATE OF SERVICE

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



Chanthina Bryant Abney, Esq.
Florida Bar No.: 121738
Gary, Williams, Parenti,
Watson & Gary, P.L.L.C.
221 SE Osceola Street
Stuart, Florida, 34994
772-283-8260
cba@williegary.corn

Jason Taylor, Esq.
McConnaughhay, Duffy, Coonrod,
Pope, Weaver, Stern & Thomas, P.A.
1709 Hermitage Blvd, Suite 200
Tallahassee, Florida 32308
Jtaylor@rncconnaughhay.com

Parker Aziz, Special Master
Florida House of Representatives
412 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300
Ann.gilliarn@rnyfloridahouse.gov

Barbara Crosier, Attorney
Senate Committee on Children, Families, and Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100
Butler. joyce@flsenate.gov

Yolanda Cash-Jackson, Esq.
Becker, Poliakoff, P.A.
1 East Broward Blvd, Suite 1800
Fort Lauderdale, Florida 33301
Yjackson@bplegal.com

FURTHER AFFIANTS SAYETH NAUGHT.

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

Chanthina Bryant Abney
General Counsel

STATE OF FLORIDA
COUNTY OF Martin

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

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

Signature of Notary Public

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

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

BECKER & POLIAKOFF, P.A.

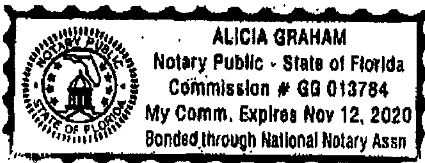
Yolanda Cash Jackson, Esq.

STATE OF FLORIDA
COUNTY OF Broward

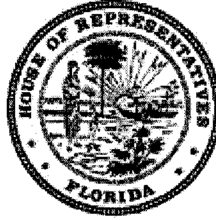
SWORN to (or affirmed) and subscribed before me this 1st day of March by Yolanda Cash Jackson to me well known to be the person described in or who produced State-Issued ID: FDL Personally Known as identification and who executed the foregoing instrument acknowledging before me that he believes the same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

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

Signature of Notary Public



Alicia Graham
Printed name of Notary Public
My Commission Expires:



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

Florida House of Representatives
Summary Claim Bill Report

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

Basic Information:

Claimants:	Marilyn Jelks, as the legal guardian of Mary Mifflin-Gee
Respondent:	City of Miami
Amount Requested:	$2,300,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The City of Miami does not oppose a claim bill and will be reimbursed $2,000,000 by its insurer.
Collateral Sources:	None.
Attorney's/Lobbying Fees:	Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has not retained a lobbyist. Outstanding costs total $17,110.39.
Prior Legislative History:	This is the first time House Bill 6521 by Representative Jenne and Senate Bill 46 by Senator Montford has been introduced to the Legislature.

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

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

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

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

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

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

Parker Aziz, Special Master Date: March 6, 2017

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

1 A bill to be entitled
2 An act for the relief of Mary Mifflin-Gee by the City
3 of Miami; providing for an appropriation to compensate
4 her for injuries and damages sustained as a result of
5 the negligence of employees of the City of Miami
6 Department of Fire-Rescue; providing a limitation on
7 the payment of compensation, fees, and costs;
8 providing an effective date.
9
10 WHEREAS, on October 25, 2012, Mary Mifflin-Gee was in her
11 vehicle located in a parking lot at 1498 NW 54th Street in Miami
12 when, according to eyewitness statements, she exhibited seizure-
13 like symptoms and foamed from the mouth, and
14 WHEREAS, a call was placed to 911, and paramedics Eric
15 Hough, Marc Alexandre, and Steven Mason of the City of Miami
16 Department of Fire-Rescue responded to treat Mary Mifflin-Gee,
17 and
18 WHEREAS, the fire rescue personnel removed Mary Mifflin-Gee
19 from her vehicle, and, even though it is a basic Emergency
20 Medical Technician (EMT) requirement to secure an unconscious
21 patient to the gurney with the seatbelt, the fire rescue
22 personnel placed Mary Mifflin-Gee on a gurney without securing
23 her with the seatbelt and attempted to transfer her into the
24 ambulance, and
25 WHEREAS, because of the fire personnel's failure to follow

26 the basic EMT requirement, Mary Mifflin-Gee fell off the gurney
27 and struck her head and, as a result, suffered a severe
28 traumatic brain injury, and
29 WHEREAS, Mary Mifflin-Gee was transported to Jackson
30 Memorial Hospital, where she underwent a left craniectomy and
31 cranioplasty as well as a posttraumatic hydrocephalus
32 ventriculoperitoneal shunt placement for her head injury, and
33 WHEREAS, Mary Mifflin-Gee became tracheostomy dependent and
34 suffered numerous complications, such as dysphagia,
35 hypertension, anemia of chronic disease, acute renal failure,
36 respiratory distress, urinary tract infections, rectal bleeding,
37 and deep vein thrombosis, and
38 WHEREAS, Mary Mifflin-Gee was transferred to Jackson
39 Memorial Long-Term Care Center, where she now depends on nursing
40 staff for all daily activities and all levels of care and
41 remains in a persistent vegetative state, and
42 WHEREAS, Mary Mifflin-Gee was treated by Dr. Craig
43 Lichtblau, a specialist certified by the American Board of
44 Physical Medicine and Rehabilitation, who determined that she is
45 93 percent impaired as a result of the accident in question and
46 that her future medical care will cost several million dollars,
47 and
48 WHEREAS, additionally, Mary Mifflin-Gee's past medical
49 expenses amount to $1,168,857.93, and
50 WHEREAS, before the accident, Mary Mifflin-Gee lived alone,

51 had no significant health issues, and was completely
52 independent, and
53 WHEREAS, Marilyn Jelks, as legal guardian of the person and
54 property of Mary Mifflin-Gee, filed a claim and lawsuit against
55 the City of Miami in the Circuit Court of the 11th Judicial
56 Circuit of Florida, Case No. 13-026644 CA 01, for compensation
57 for the injuries, alleging negligence in the care and treatment
58 by the EMT workers who attended to Mary Mifflin-Gee, and
59 WHEREAS, mediation was conducted on February 6, 2015, and
60 the case was settled for $2.5 million, and
61 WHEREAS, the insurance company of the City of Miami,
62 Lloyd's of London, which has a policy that provides for a
63 $500,000 self-insured retention before the company is
64 responsible for any excess amount, has agreed to pay $2 million,
65 and
66 WHEREAS, the City of Miami has agreed to pay $200,000 in
67 satisfaction of the sovereign immunity limits under s. 768.28,
68 Florida Statutes, and
69 WHEREAS, the amount of $300,000 of the $2.5 million
70 settlement remains to be paid, NOW, THEREFORE,
71
72 Be It Enacted by the Legislature of the State of Florida:
73
74 Section 1. The facts stated in the preamble to this act
75 are found and declared to be true.

76 Section 2. The City of Miami is authorized and directed to
77 appropriate from funds not otherwise encumbered and to draw a
78 warrant in the sum of $300,000 payable to Marilyn Jelks, as
79 legal guardian of Mary Mifflin-Gee. This sum, in addition to the
80 $200,000 that the City of Miami has agreed to pay in
81 satisfaction of the sovereign immunity limits under s. 768.28,
82 Florida Statutes, and the $2 million that the insurance company
83 of the City of Miami, Lloyd's of London, has agreed to pay,
84 shall be placed in the guardianship account of Mary Mifflin-Gee,
85 to compensate her for injuries and damages sustained as a result
86 of the negligence of employees of the City of Miami.
87 Section 3. The amount paid by the City of Miami pursuant
88 to s. 768.28, Florida Statutes; the amount paid by Lloyd's of
89 London; and the amount awarded under this act are intended to
90 provide the sole compensation for all present and future claims
91 arising out of the factual situation described in this act which
92 resulted in injuries and damages to Mary Mifflin-Gee. The total
93 amount paid for attorney fees, lobbying fees, costs, and similar
94 expenses relating to this claim may not exceed 25 percent of the
95 total amount awarded under this act.
96 Section 4. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Jenne offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 76-95 and insert:
7 Section 2. The City of Miami is authorized and directed to
8 appropriate from funds not otherwise encumbered and to draw a
9 warrant in the sum of $2,300,000 payable to Marilyn Jelks, as
10 legal guardian of Mary Mifflin-Gee. This sum shall be placed in
11 the Special Needs Trust created for the exclusive use and
12 benefit of Mary Mifflin-Gee, to compensate her for injuries and
13 damages sustained as a result of the negligence of employees of
14 the City of Miami.
15 Section 3. The amount paid by the City of Miami pursuant
16 to s. 768.28, Florida Statutes, and the amount awarded under

17 this act are intended to provide the sole compensation for all
18 present and future claims arising out of the factual situation
19 described in this act which resulted in injuries and damages to
20 Mary Mifflin-Gee. Of the amount awarded under this act, the
21 total amount paid for attorney fees may not exceed $575,000, no
22 amount of the act may be paid for lobbying fees, and the total
23 amount paid for costs and other similar expenses relating to
24 this claim may not exceed $17,110.39.
25
26 ---
27 **T I T L E A M E N D M E N T**
28 Remove lines 68-70 and insert:
29 Florida Statutes, NOW, THEREFORE

AFFIDAVIT OF JASON D. WEISSER

STATE OF FLORIDA
COUNTY OF PALM BEACH

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

1. My name is Jason D. Weisser and I am over the age of twenty-one (21), competent to make this Affidavit with personal knowledge of the facts and the opinions contained herein.

2. I am a partner in the Law Firm of Schuler, Halvorson, Weisser, Zoeller & Overbeck, P.A. and have been in practice for twenty years. My business address is 1615 Forum Place, Suite 4D, West Palm Beach, FL 33401.

3. I have been retained to represent Claimant, Marilyn Jelks as guardian over person and property of Mary Mifflin-Gee, Incapacitated.

4. I have admissions to The Florida Bar; the U.S. District Court for the Southern, Northern and Middle Districts; as well as the Eleventh Circuit Court of Appeals and the United States Supreme Courts.

5. I am Board Certified in Civil Trial Law and a member of the American Board of Trial Lawyers.

6. That pursuant to Florida Statute 768.28, the attorney's fees in this case are capped at 25% of any recovery and this has been agreed to by my firm and the client, pending legislative approval.

7. Based on a $2,300,000.00 settlement, Claimant's counsels attorneys' fees are $575,000.00.

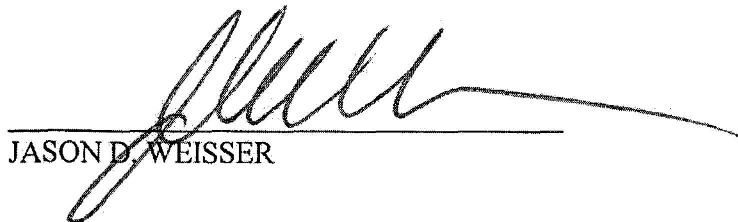
8. There is no lobbyist retained. No lobbyist fees have been previously paid or are owing.

9. The total amount of costs in this matter to date are $17,110.39 which have not been paid and are still outstanding.

10. The statutory cap has not been paid to date, thus no costs have been reimbursed from the cap proceeds.

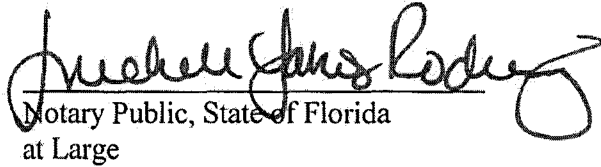
11. The firm internal costs are $2,804.51 and the external costs are $14,305.88.

FURTHER AFFIANT SAYETH NAUGHT.

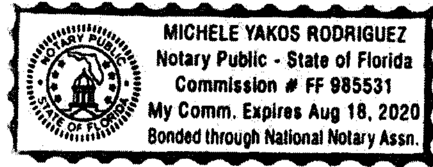


JASON D. WEISSER

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



Notary Public, State of Florida
at Large

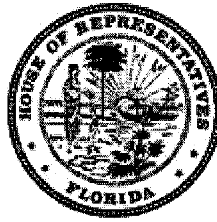


My Commission Expires:

Name of Notary Public, Print, Typed or Stamped.

Personally known, ✓ or Produced Identification ___Type of identification produced

HB 6523



STORAGE NAME: h6523.CJC
DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

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

Re: HB 6523 - Representative Diaz
Relief/"Survivor" & Estate of "Victim"/DCF

THIS IS AN EQUITABLE CLAIM BASED ON A SETTLEMENT AGREEMENT, WHEREIN THE DEPARTMENT OF CHILDREN AND FAMILIES HAS AGREED TO PAY $5,000,000 TO SURVIVOR AND THE ESTATE OF VICTIM FOR DAMAGES THEY RECEIVED AS A RESULT OF ALLEGED NEGLIGENT ACTIONS OF THE DEPARTMENT THAT FAILED TO PROTECT THEM FROM THE ABUSIVE BEHAVIOR OF THEIR ADOPTIVE PARENTS. DCF, THROUGH THE CHIEF FINANCIAL OFFICER, HAS PAID $1,250,000 PURSUANT TO THE SETTLEMENT LEAVING, $3,750,000 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

On February 14, 2011, eleven year-old Victim was found dead in a truck parked off on I-95 in Palm Beach County. Victim's twin, Survivor, was found inside the truck, suffering from chemical burns. Mr. Barahona, the children's adoptive father, claims Survivor received those burns when the truck they were in bounced off the highway, spilling caustic chemicals over both of them, but it appears that something far more insidious occurred.

The events that precede this span seven years and lucidly portray the Barahona's ongoing abuse of Survivor and Victim

both during and after the twins were in the care of the Department of Children and Families (DCF). In August 2003, the court terminated the parental rights of the twins' mother. In March of 2004, DCF removed Survivor and Victim from their biological father's custody when he was charged with sexual battery on a minor that he was not related to. DCF placed the twins in the foster home of Jorge and Carmen Barahona.

Just four days after Survivor and Victim were placed in the Barahona home, a paternal aunt and uncle in Texas reached out to DCF and asked for custody of the twins. A month later the Court ordered the home study be conducted. In May of 2004, two months after the relatives made their existence and desire to take custody of the children known, the Guardian ad Litem noted that a home study that needed to be done before the relatives could take custody would take up to three months. However, Texas did not return the home study until over a year later. By that time it was determined that removing the children from the Barahona's home would not be in their best interests.

In the five years the Barahonas first became foster parents until the twins were adopted, several questionable incidents were recorded. Near the end of 2004, a nurse for Victim's endocrinologist said she felt the twins were not in a good placement situation because the parents sent Victim to her doctor's appointment in DCF provided transportation but did not accompany her.

In January 2005, less than a year after Victim came into the Barahona home, Victim reported being sexually abused by one of her fathers. It was initially believed that she was alleging that Mr. Barahona was the abuser, but her psychologist determined that, because of inconsistencies in her story, she was talking about her biological father. The DCF investigation was closed after face to face meetings with the family members alleviated any lingering concerns. The biological father was ultimately charged with sexual abuse of both of the twins and ordered to undergo treatment.

In February 2006, a call came into the child abuse hotline mentioning Victim had a large bruise on her neck and was missing many days of school. DCF investigated the event by interviewing Survivor and Victim at school and by interviewing Mr. Barahona and school officials. Victim had two different stories about how she got the bruise, but Survivor said that no one hit Victim and that he did not know how she got the bruise. DCF found no abuse but stated that the child was very hyper and should be tested for hyperactivity.

In March 2007, DCF received another hotline call. School administrators stated that Victim was unclean, smelled, hoarded food at school, fell asleep in class often, and was, at times, scared to go home at the end of the day. She also was

observed one morning with applesauce in her hair, but when she came back the next day with the same applesauce in her hair, it was a cause for concern for school officials. There were also worries that Mrs. Barahona was punishing Victim by hitting her on the bottom of her feet, a method of corporal punishment often used by abusers that does not leave bruises or marks. The case was investigated by staff, but the information was never sufficiently communicated with all those involved in caring for the twins. Also, staff did not conduct an interview with Victim outside the presence of her alleged abuser. The Gaurdian ad Litem stated in his notes regarding the incident that "the principal said that something just does not seem right with the foster parents situation; I'm starting to agree." The case was closed with staff noting no indication of neglect.

In October of 2007 a citizen review panel was established to provide opinion on Survivor and Victim's case thus far, and said that DCF was in substantial compliance. The review panel noted some missing documentation regarding medical care, but the prevalent suggestion was that permanence (adoption) be achieved as soon as possible.

In 2008, the biological father's appeals of his termination of parental rights were exhausted. Dr. Archer declared that Survivor and Victim were already a part of the Barahona family, and their adoption would merely formalize what was already true in fact. The possibility of placement with the relatives in Texas was all but permanently foreclosed when Dr. Archer said that removing the children from their current home would inflict irreparable mental and developmental harm while also encouraging their adoption by the Barahonas.

In May 2009, the adoption of Survivor and Victim was finalized.

A year later, in June 2010, the DCF hotline received another call from school officials alleging many of the same symptoms of neglect from the March 2007 call. Victim was hungry, unfocused, jittery, exhibited hair loss, and had missed many days of school due to heavy bleeding. Mrs. Barahona attributed most of Victim's symptoms to her medical condition, which includes hormone imbalances, but the report from DCF admits that the investigator does not know the last time Victim visited her endocrinologist. A simple check with Victim's doctor would have turned up the fact that her medical condition would not cause any of the problems Mrs. Barahona attributed to it. It is also noted that Victim's adoption was held up because she often came to school dirty while in Mrs. Barahona's care. DCF also admitted that the call was misclassified and that CPI's were required by policy to interview neighbors but did not. The referral was closed with no services recommended. The Barahonas removed the twins from school and began homeschooling them shortly after, realizing that most of the complaints about the twins' condition was coming from school

officials.

Two days before Victim's death, DCF received two calls on back to back days. The first call came from a doctor treating one of the Barahona's grandchildren. The grandchild stayed with them in the afternoons and said that Victim and Survivor were constantly tied up and put in the bath tub. When she went in the bathroom to use the bathroom, Mrs. Barahona went in and watched to make sure that she didn't talk to or even acknowledge Victim and Survivor. This call should have warranted an immediate response and a referral to law enforcement. Instead it was given a 24-hour response time. DCF investigators attempted to locate the children at school but they were not there. Even though the children were missing, DCF investigators never called the police.

The next day, Mr. Barahona's brother made a disturbing call to the hotline. He had seen Mr. Barahona and Survivor that day, but Victim wasn't with them. He asked where Victim was, and Mr. Barahona gave evasive, non-responsive answers. Even though DCF had this information, it was not aware that Victim had been missing since the day before and did not call law enforcement. This is illustrative of DCF's failure to communicate pertinent information with all others in the organization. If this information had been properly communicated, DCF would have certainly realized the gravity of the situation and called law enforcement.

Two days later, on February 14, 2011, Victim was found dead, wrapped in a plastic bag in the back of the truck where Mr. Barahona and Survivor were found. Due to Mr. Barahona's actions involving the caustic chemicals, Survivor suffered burns to 10% of his body.

Survivor has since revealed more specifics about the abuse that he and Victim were subjected to in the Barahona house. The children were made to eat feces, while at other times the Barahonas smeared it on their faces. At one point Mr. Barahona put it into Survivor's ears with a q-tip. They also had hot sauce put in their ears. Victim was subjected to electrical shocks. Both children had marks on their ankles and wrists from constantly being tied up in the bathtub. Survivor reported being suffocated with a plastic bag while lying on his bed. All of these things illustrate systematic efforts of the Barahonas to emotionally and physically torture the twins.

Dr. Newberger, a pediatrician who has met and examined Survivor on numerous occasions, stated that he suffers from ongoing, chronic post-traumatic stress disorder as a result of the physical and mental abuse he suffered at the hands of the Barahonas. Like many with PTSD, Survivor struggles to turn off his body's fight or flight response, which prevents higher order brain functioning. He has trouble going to therapy to discuss

what has happened to him and is constantly overwhelmed with his abuse. The chemical burns to his lower back and genitals will be long lasting, if not permanent, and are a haunting reminder of the trauma he suffered.

LITIGATION HISTORY:

The plaintiffs brought two cases against DCF and their agents. Survivor v. Our Kids of Miami-Dade/Monroe, Inc., Case No. 1:11-cv-24611 PAS (the "Federal Case"), and Survivor v. Fla. Dep't of Children & Families, Case No. 13-2715-ca-25 (the "State Case").

The Federal Case included DCF, Our Kids, Center for Family and Child Enrichment, and individual employees of those name entities. The plaintiffs settled Our Kids and CFCE for an amount that remains confidential.

The State Case named only one defendant, DCF.

On March 6, 2013, DCF entered into a settlement with the plaintiffs in the Federal Case for $1,250,000. As a part of the settlement, DCF agreed to settle the state negligence claims and not oppose this $3,750,000 claim bill and submit a letter supporting the claimants. On June 18, 2013 the State Case was settled under the same terms.

CONCLUSION OF LAW:

I concur with the claimants' assertion that DCF had a duty to act reasonably in protecting Survivor and Victim, that they breached that duty, and that those negligent acts were the legal cause of Victim's death and the permanent physical and emotional damage suffered by Survivor.

Florida's limited waiver of sovereign immunity requires that the state's actions be operational as opposed to decisional in order to be subject to the waiver.[1] In other words, the state has waived sovereign immunity for actions that carry out policy rather than create it. Florida courts have decided that failure to remove a foster child from an abusive home is operational, not decisional.[2] The Florida Supreme Court has also said that the state owes a duty where it is providing general services for the health and welfare of its citizens.[3] Therefore, DCF had a duty to act reasonably in detecting, preventing, and remedying child abuse.

DCF had evidence of several instances of abuse that were each ruled as not being abusive in nature because the Department failed to properly share and gather evidence together in order to more clearly establish the pattern of abuse the twins suffered while being fostered by the Barahonas. On many occasions, DCF employees failed to properly follow DCF

---

[1] *Commercial Carrier Corp. v. Indian River Cty*, 371 So. 2d 1010 (Fla. 1979).
[2] *Department of Health & Rehabilitative Svcs. v. Yamuni*, 529 So. 2d 258 (Fla. 1988).
[3] *Trianon Park Condominium Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 921 (Fla. 1985).

policies and generally acted in a manner that fell far below the reasonable duty of care. In sum, the cumulative effect of the evidence shows that DCF should have known the twins were being abused and failed to prevent the situation from continuing. DCF employees performed their tasks in a mere perfunctory fashion, filling out forms and bubbling in boxes without adequate critical thinking and analysis of the data they were collecting. The Department and its employees had a duty and breached that duty.

It should be noted that though almost all of the injuries suffered by the twins were at the hands of the Barahonas, DCF's failure to detect, prevent, and remedy the abuse was a legal cause of the twins' injuries.

In sum, before the adoption, DCF had an ongoing duty to protect the children from threats that it knew of or should have discovered by exercising reasonable care. After the adoption, DCF had a duty to act reasonably in discovering and stopping abuse when it received calls alleging abuse and agreed to investigate those allegations. DCF was negligent on multiple instances relating to the care of Survivor and Victim therefore breaching those duties.

The injuries the twins suffered have been outlined above. The permanent emotional and physical damages that Survivor has to carry with him are significant, and the years of suffering Victim endured that ultimately led to her death defies calculation. The prolonged nature and severity of the injuries justifies a large settlement.

COLLATERAL SOURCES & OTHER ISSUES:

There is still the issue of collateral sources. The claimants argue that collateral sources should not factor into the Legislature's decision because DCF settled with the claimants for $5,000,000 knowing the amount Our Kids and CFCE had settled for. Therefore, the collateral sources have already been factored in. This argument neglects to understand that the Legislature is not bound by the settlement amount DCF has agreed to and has the prerogative to assess the collateral sources to determine the total amount it thinks should be fair compensation. For that reason, I feel that the amount of the settlement with CFCE and Our Kids is relevant in determining the amount of the settlement with the state. The state waived sovereign immunity and made itself amenable to tort suits up to a $300,000 threshold for multiple claimants.[4] Any amount over that threshold is an equitable remedy, not a legal right that is subject to the independent approval of the Legislature.[5] Thus, the Legislature has the unfettered ability to grant any award over the threshold on whatever basis it determines to

[4] s. 768.28(5).
[5] *Id.*

be best. Here, that determination should include the calculation of collateral sources. The fact that the amount is confidential, thus effectively unavailable for calculating the total compensation, is somewhat problematic. My recommendation is that the $5,000,000 ($3,750,000 of which is to be paid by this claim bill) settlement amount is appropriate compensation.

Since Victim has died intestate, her share of this claim bill will pass through intestacy by the Florida rules of intestate succession. Those intestate heirs have been determined.[6] Her three siblings, Survivor, her blood brother, and GK and JB, her two adoptive siblings, will split her share.[7]

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 $76,312.81.

The attorney's fees collected from the settlement with Our Kids and CFCE are unavailable.

LEGISLATIVE HISTORY:

This is the fourth legislative session this claim has been filed. In the 2016 legislative session, the claim was filed as Senate Bill 48 by Senator Flores and House Bill 3529 by Representative Diaz, J. The Senate bill was heard in two committees but died in the Appropriations Committee. The House bill was not heard in a committee and died in the Civil Justice Subcommittee.

In 2015, the claim was filed as Senate Bill 74 by Senator Flores and House Bill 3539 by Representative Avila. Neither bill was heard in a committee.

In 2014, the claim was filed as Senate Bill 44 by Senator Flores. It was not heard in a committee and a House bill was not filed.

RECOMMENDATIONS:

I respectfully recommend House Bill 6523 be reported **FAVORABLY**.

---

[6] On October 7, 2015, Circuit Judge Bernard Shapiro approved an Order Determining Heirs, which provided that for $200, Jorge and Carmen Barahona waived any claims they had as heirs to Victim's estate.
[7] Both G.K. and J.B. brought lawsuits against DCF. In 2016, G.K.'s claim was settled for $100,000 while J.B.'s claim is still pending and in the discovery phase.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Diaz, J., House Sponsor
Senator Flores, Senate Sponsor
Tom Cibula, Senate Special Master

1 A bill to be entitled
2 An act for the relief of "Survivor" and the Estate of
3 "Victim"; providing an appropriation to compensate
4 Survivor and the Estate of Victim for injuries and
5 damages sustained as result of the negligence of the
6 Department of Children and Families, formerly known as
7 the Department of Children and Family Services;
8 providing a limitation on the payment of compensation,
9 fees, and costs; providing an effective date.
10
11 WHEREAS, on May 30, 2000, 4 days after their birth, a baby
12 boy, hereinafter referred to as "Survivor" and his twin sister,
13 hereinafter referred to as "Victim," first came to the attention
14 of the Department of Children and Families, formerly known as
15 the Department of Children and Family Services, due to the fact
16 that the children were to be sent to separate foster homes, and
17 WHEREAS, Survivor was reunited with his biological mother
18 and father on July 26, 2000, and Victim was reunited with them
19 on January 8, 2001, and
20 WHEREAS, on August 4, 2003, the court terminated the
21 parental rights of Survivor's and Victim's biological mother,
22 and
23 WHEREAS, on March 26, 2004, Survivor's and Victim's
24 biological father was arrested, which resulted in both Survivor
25 and Victim being placed in the custody of the state and moved

26 into the foster home of Jorge and Carmen Barahona, and
27 WHEREAS, within 4 days of the placement of Survivor and
28 Victim in foster care, contact was made with paternal relatives
29 in Texas, Mr. and Mrs. Reyes, to explore their potential role as
30 caregivers, and
31 WHEREAS, on March 30, 2004, Mr. and Mrs. Reyes informed the
32 Department of Children and Families that they were interested in
33 caring for Survivor and Victim, and
34 WHEREAS, pursuant to s. 39.521, Florida Statutes, placement
35 with adult relatives takes priority over out-of-home licensed
36 foster care placement, and Survivor and Victim should have been
37 placed in the Reyes's home as soon as due diligence allowed, and
38 WHEREAS, pursuant to s. 39.001, Florida Statutes,
39 Department of Children and Families case workers are required to
40 achieve permanency within 1 year, either through reunification
41 with a child's natural parents or adoption, and
42 WHEREAS, due to significant delays in the placement
43 process, the Reyes' were not permitted to adopt Survivor and
44 Victim, who were ultimately adopted by the Barahonas on May 29,
45 2009, and
46 WHEREAS, prior to the adoption of Survivor and Victim by
47 the Barahonas, significant events occurred which the Department
48 of Children and Families knew or should have known were
49 indicative of the perpetration of abuse of Survivor and Victim,
50 and

51 WHEREAS, in at least one instance, allegations of medical
52 neglect were reported and, pursuant to Department of Children
53 and Families Operating Procedure 175-28, the allegations should
54 have been verified and Survivor and Victim should have been
55 immediately removed from the Barahona home, and
56 WHEREAS, in January 2005, it was reported that Jorge
57 Barahona had "tickled the private parts" of Victim, which the
58 child protective investigator dismissed as being of "little
59 concern," and
60 WHEREAS, on March 20, 2007, Survivor's and Victim's school
61 principal called in an abuse report to the Department of
62 Children and Families which alleged that, for 5 months, Victim
63 had been going to school at least two to three times per week
64 with serious body odor, smelling rotten, and appearing unkempt;
65 that Victim's uniforms were not clean and her shoes were dirty;
66 that on one occasion Victim had spilled applesauce in her hair
67 at school and returned the following day with the applesauce
68 still in her hair; that Victim was always hungry and eating a
69 lot at school, hoarding food in her backpack from breakfast and
70 lunch, and there was a concern that she was not eating at home;
71 that Victim was afraid to talk; that Survivor also went to
72 school appearing unkempt; and that both Survivor and Victim were
73 having trouble staying awake during classes, and
74 WHEREAS, on March 29, 2007, the Department of Children and
75 Families learned that Survivor and Victim had been absent from

76 school approximately 20 days, taken out of school early about a
77 dozen times, and were expected to be retained in the first
78 grade, and
79 WHEREAS, on May 29, 2009, Victim and Survivor were adopted
80 by the Barahonas, despite numerous incidents that should have
81 led to an active investigation and discovery of abuse, and
82 WHEREAS, in February 2011, the Department of Children and
83 Families Abuse Hotline received another report concerning
84 Survivor and Victim, this time alleging that Survivor and Victim
85 were being severely abused and imprisoned from the world, and
86 WHEREAS, it was the duty of the Department of Children and
87 Families to remove Survivor and Victim from a placement in which
88 there was a substantial risk of harm and, over the course of 6
89 years, there were multiple instances of abuse which the
90 department either knew or should have known were occurring in
91 connection with their placement with the Barahonas, and
92 WHEREAS, on February 14, 2011, Victim, was found dead in a
93 truck parked off I-95 in Palm Beach County, and Survivor was
94 found near-death, in critical condition, and
95 WHEREAS, after the death of Victim and the discovery of the
96 severe abuse of both children, the Secretary of the Department
97 of Children and Families, David E. Wilkins, conducted an
98 investigation that culminated on March 14, 2011, with the
99 issuance of a report of findings and recommendations, and
100 WHEREAS, in the executive summary of the report,

101 investigators reported that there were significant gaps and
102 failures in common sense, critical thinking, ownership, follow-
103 through, and timely and accurate information sharing, all of
104 which defined the care of Survivor and Victim from the inception
105 of their relationship with the state child welfare system, and
106 WHEREAS, investigators determined that the systematic
107 failure included both investigative and case management
108 processes, as well as the pre- and post-adoption processes, and
109 WHEREAS, the investigative report cited numerous incidents
110 of abuse of the children, including, but not limited to,
111 punching, kicking, choking, beatings, the denial of basic and
112 necessary medical care, forcing the children to eat cockroaches
113 and food that contained feces, sexual abuse, sticking cotton
114 swabs with human feces in the children's ears, suffocating one
115 child with a plastic bag while the other child watched, smearing
116 feces over the children's faces and placing feces on the
117 children's hands for extended periods of time, and binding the
118 children with duct tape and placing them naked in a bathtub
119 together for days on end, and
120 WHEREAS, after the death of Victim and the discovery of
121 Survivor, criminal charges were filed against the Barahonas, and
122 WHEREAS, tort claims were filed on behalf of Victim and
123 Survivor in the United States District Court for the Southern
124 District of Florida, Case No. 1:11-civ-24611-PAS, and a
125 complaint was also filed in the Circuit Court for the Eleventh

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

126 Judicial Circuit of Miami-Dade County, Case No. 13-2715 CA 25,
127 and
128 WHEREAS, the personal representative of the Estate of
129 Victim and the newly adoptive parents of Survivor have agreed to
130 amicably settle this matter and have entered into a settlement
131 agreement in which the Department of Children and Families has
132 agreed to pay $5 million to Survivor and the Estate of Victim,
133 and
134 WHEREAS, as a result of the allegations of both negligence
135 and civil rights violations, and pursuant to s. 768.28, Florida
136 Statutes, the Department of Children and Families has paid $1.25
137 million to Survivor and the Estate of Victim, and
138 WHEREAS, the balance of the settlement agreement is to be
139 paid through the passage of this claim bill in the amount of
140 $3.75 million, and
141 WHEREAS, the Department of Children and Families fully
142 supports the passage of this claim bill, NOW, THEREFORE,
143
144 Be It Enacted by the Legislature of the State of Florida:
145
146 Section 1. The facts stated in the preamble to this act
147 are found and declared to be true.
148 Section 2. The sum of $3.75 million is appropriated from
149 the General Revenue Fund to the Department of Children and
150 Families for the relief of Survivor for the personal injuries he

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

151 sustained and to the Estate of Victim for damages relating to
152 the death of Victim.
153 Section 3. The Chief Financial Officer is directed to draw
154 a warrant in favor of the adoptive parents of Survivor, as legal
155 guardians of Survivor, and to Richard Milstein, as personal
156 representative of the Estate of Victim, in the sum of $3.75
157 million upon funds of the Department of Children and Families in
158 the State Treasury, and the Chief Financial Officer is directed
159 to pay the same out of such funds in the State Treasury.
160 Section 4. The amount paid by the Department of Children
161 and Families pursuant to s. 768.28, Florida Statutes, and the
162 amount awarded under this act are intended to provide the sole
163 compensation for all present and future claims arising out of
164 the factual situation described in the preamble to this act
165 which resulted in the personal injuries of Survivor and the
166 death of Victim. The total amount paid for attorney fees and
167 lobbying fees relating to this claim may not exceed 25 percent
168 of the amount awarded under this act.
169 Section 5. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6523 (2017)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Diaz, J. offered the following:
4
5 **Amendment**
6 Remove lines 166-168 and insert:
7 death of Victim. Of the amount awarded under this act, the total
8 amount paid for attorney fees may not exceed $750,000, the total
9 amount paid for lobbyist fees may not exceed $187,500, and the
10 total amount paid for costs and other similar expenses relating
11 to this claim may not exceed $76,312.81.

IN RE: HOUSE BILL 6523 Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families

IN RE: SENATE BILL 18 Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families

AFFIDAVIT OF NEAL A. ROTH AND J. ALEX VILLALOBOS

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority personally appeared NEAL A. ROTH and J. ALEX VILLALOBOS, personally known to me who, after being duly sworn, deposes and says:

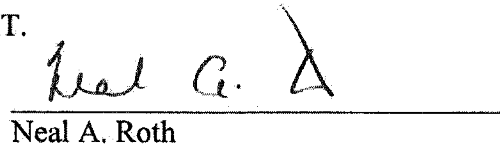
1. Pursuant to the Contract entered into with the clients relating to this claim bill, the attorneys' fee is contingent in nature and pursuant to §768.28 represents twenty-five (25%) percent of the total recovery to be made from the claim bill should it pass the Florida Legislature and become law.

2. The lobbyist fee is five (5%) percent of the total amount of the claim bill to be awarded upon becoming law and is inclusive of the 25% total fee charged as set forth in paragraph 1. That is, there are no additional lobbyist fees to be paid by the clients.

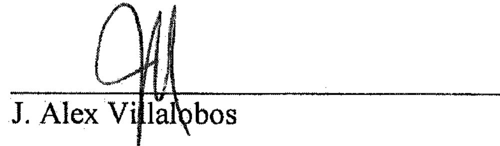
3. The total amount of outstanding costs which relate to the underlying cases of Survivor 1 and Estate of Victim is $76,312.81. Of that amount, $66,914.12 are external costs and $9,398.69 are internal costs.

4. The total dollar amount of costs that were paid from the statutory cap payment equaled $33,842.81 and of that amount $32,403.73 were external costs and $1,439.08 were internal costs.

FURTHER AFFIANTS SAYETH NAUGHT.



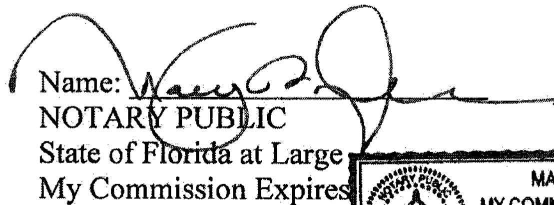
Neal A. Roth



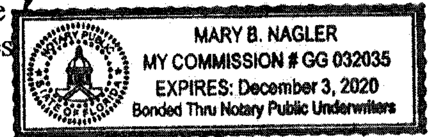
J. Alex Villalobos

STATE OF FLORIDA
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 28 day of February, 2017 by Neal A. Roth, who is personally known to me and who did take an oath.

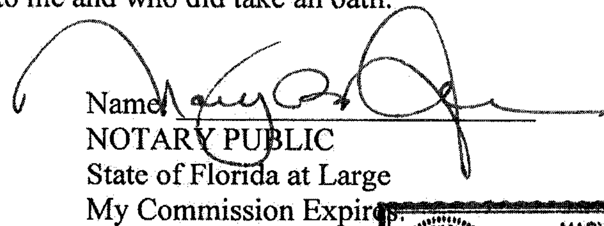


Name:
NOTARY PUBLIC
State of Florida at Large
My Commission Expires:

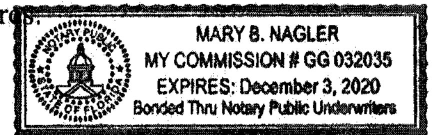


STATE OF FLORIDA
COUNTY OF MIAMI-DADE)

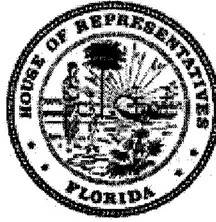
The foregoing instrument was acknowledged before me this 28 day of February, 2017 by J. Alex Villalobos, who is personally known to me and who did take an oath.



Name:
NOTARY PUBLIC
State of Florida at Large
My Commission Expires:



HB 6529



STORAGE NAME: h6529.CJC
DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

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

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

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR DAMAGES SUFFERED BY LILIAN BEAUCHAMP AS PERSONAL REPRESENTATIVE OF THE ESTATE OF AARON BEAUCHAMP BECAUSE AARON WAS KILLED WHEN HIS SCHOOL BUS WAS STRUCK BY A TRACTOR TRAILER ON MARCH 26, 2012.

FINDING OF FACT:

The Accident

On March 26, 2012, Aaron Beauchamp was a nine year old boy riding on a St. Lucie County school bus. The bus was heading west on Okeechobee Road in Port St. Lucie carrying thirty elementary age students. The driver of the bus, Albert Hazen, had picked up the students from Francis K. Sweet Elementary in Ft. Pierce and was nearing his first stop on the afternoon route. While Mr. Hazen did not normally drive this route for the school, he was familiar with the area. At around 3:45 p.m., he approached Midway Road and was traveling to the St. Lucie County Fairgrounds to make his first drop off of the day. Mr. Hazen steered the bus into the left turn lane and approached the intersection.

There is no traffic signal or stop sign at the intersection of

Okechobee Road and Midway Road. It was a clear day with no visual obstructions.

At the same time, heading east on Okechobee Road, Charles Cooper was driving a tractor trailer transporting pallets of sod. The truck's approximate weight that day was 78,600 pounds. The truck was driving approximately 60 miles per hour in a 55 mph speed limit. The tractor trailer driven by Mr. Cooper was visible to Mr. Hazen's bus, and vice versa.

As Mr. Hazen arrived at the intersection at Midway Road, he turned directly into the path of the tractor trailer driven by Mr. Cooper. Realizing his mistake, Mr. Hazen accelerated the bus through the intersection. However, the bus was unable to clear the intersection before the tractor trailer arrived. Mr. Cooper attempted to dodge the bus by steering his tractor trailer towards the right, even swerving off Okechobbee Road. The front of the tractor trailer struck the right side of the school bus at the rear wheel and continued to travel forward and into the right side of the bus. The force of the impact caused the bus to partially rise off the ground and rotate clockwise slightly less than 180 degrees. The tractor trailer continued to travel forward and its trailer overturned, flipping the body of the truck until it landed in a ditch.

Injuries

Aaron Beauchamp was wearing his seatbelt and sitting in the second to last row on the driver side of the bus. The impact of the tractor trailer into the bus caused several of the bench seats on the bus to shift and break. The bus's sudden rotation caused some passengers to be ejected from their seats. Though he was wearing his seatbelt, Aaron's seat broke and he was violently thrown out of his seat. Aaron hit his head on the ceiling of the bus. Aaron Beauchamp's injuries proved to be fatal and he was pronounced dead at the scene.

Other drivers stopped and aided the children out of the bus. Of the 31 people on the bus, including the driver, 21 suffered injuries from the crash. Aaron was the only person to die from the crash. The medical examiner reported Aaron fractured his skull, broke his neck at the C7-T1 vertebrae (nearly severed the spinal cord), and suffered several internal injuries including a near rupture of his small intestine. The other children suffered injuries ranging from pelvic fractures to chest contusions.

Following a Florida Highway Patrol investigation, it was determined that neither the school bus driver nor the tractor trailer driver had alcohol or drugs in their system. No criminal charges were filed against Mr. Hazen, the school bus driver. He did receive a ticket for violating s. 316.122, F.S.,[1] for failing to

[1] Section 316.122, F.S., provides " The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the

yield the right-of-way to the tractor trailer approaching from the opposite direction. Mr. Hazen was fined $1,166 and was fired by the St. Lucie County School District. Additionally, Mr. Cooper, the driver of the tractor trailer, was cited for violating s. 316.302, F.S., for not having adequate brakes. The investigation discovered the tractor trailer's automatic airbrake adjustment system did not compensate for wear as required by Federal Motor Vehicle Safety Standards.

LITIGATION HISTORY: In February of 2013, Lilian Beauchamp, Aaron's mother and personal representative of Aaron's estate ("Claimant"), brought a lawsuit for wrongful death against the St. Lucie County School District ("School District") in the Circuit Court of the 19th Judicial Circuit in St. Lucie County. The School District and the insurer of the tractor trailer held a global mediation to settle all the claims arising from the crash. The School District had a self-insured consortium for the $300,000 statutory cap and maintained an insurance policy for the excess coverage of $1,000,000. Additionally, the tractor trailer's insurance carried a policy of $2,000,000. The Claimant settled with the trucking company's insurance in the amount of $575,000. The School District offered Claimant $374,300 in an effort to resolve Claimant's claim but Claimant rejected the offer. The School District exhausted their insurance limits when it resolved the other 16 claims brought at mediation.

In March of 2014, Claimant amended their complaint against the School District to include the IC Buses Corporation, the manufacturer of the school bus. Prior to trial, Claimant reached a settlement with the school bus manufacturer for an undisclosed amount.

The claim against the School District proceeded to trial on September 1, 2015. At trial, the School District admitted Mr. Hazen failed to see the approaching truck but argued it was an avoidable accident because of the comparative negligence of the tractor trailer and bus manufacturer. The jury awarded a verdict of $10,000,000 and found the School District was 87% at fault and the tractor trailer was 13% at fault. On November 2, 2015, a final judgment was entered against the School District for $8,700,000. Since the $300,000 statutory caps were exhausted paying the other claims, Claimant has not received any payment from the School District.

CLAIMANT'S ARGUMENTS: The School District is liable for the death of Aaron Beauchamp under the legal theory of respondent superior and the negligent driving of Albert Hazen causing the collision between the school bus and the tractor trailer.

---

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

RESPONDENT'S ARGUMENTS: The School District's liability is out flanked by the comparative negligence of the driver of the tractor trailer and the school bus manufacturer for deficient seats. Additionally, the School District has exhausted insurance funds on other claims and any award granted will be paid from the general operating funds and have a devastating effect on the School District's operating ability.

CONCLUSION OF LAW: Whether or not there is a jury verdict or a settlement agreement, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. In order to state a claim of negligence against a sovereign under Florida law, a claimant must allege a duty of care owed by the sovereign to the claimant, breach of that duty of care, and resulting damages.[2]

Duty
A threshold issue in negligence is whether there was a duty owed to claimant.[3] "As a general rule, if a public school entity provides transportation for its pupils, it owes a duty of care with regard to that transportation."[4] Here, the School District owed a duty of care to nine year old Aaron Beauchamp as he was a student of the School District and the School District undertook the responsibility of transporting its students.

Liability
Under the legal theory of respondent superior, an employer is liable for the negligence of their employees for wrongful acts committed within the course and scope of their employment.[5] Here, Albert Hazen, as an employee of the School District, was negligent in driving the school bus. As a school bus driver for the School District, Hazen was within the scope of his employment when he was transporting the students. Hazen was negligent in not seeing the tractor trailer heading east on Okechobee Road. The conditions that day were clear and dry. There was nothing obstructing Hazen's vision from seeing the tractor trailer. Hazen's failure to yield till the tractor trailer passed and instead turn in front of the tractor trailer caused the crash.

Comparative Negligence
At trial, the School District presented evidence that while Hazen's turn was negligent, the accident was avoidable because of the comparative negligence by the driver of the tractor trailer and the manufacturer of the school bus seats. Dr. Rolin Barret, an accident reconstructionist and mechanical engineer, testified for the School District with the following five

[2] *Mosby v. Harrell*, 909 So. 2d 323, 327 (Fla. 1st DCA 2005).
[3] *Dep't of Envtl. Prot. v. Hardy*, 907 So. 2d 655, 660 (Fla. 5th DCA 2005).
[4] *Harrison v. Escambia Cty. Sch. Bd.*, 434 So. 2d 316, 319 (Fla. 1983).
[5] *Cintron v. St. Joseph's Hosp., Inc.*, 112 So. 3d 685, 686 (Fla 2d DCA 2013).

opinions:

1. If the school bus did not turn left, the accident would not have happened.
2. If the tractor trailer truck had not been speeding, the accident would not have happened.
3. If the brakes had been up to minimum standards, then the accident would not have happened.
4. If the tractor trailer driver had slowed down or applied brakes sooner, then the accident would not have happened.
5. The tractor trailer truck driver turned right to avoid the collision when he should have turned left and the accident would not have happened.

The findings of Dr. Barret are informative and provide context to the accident. The jury at trial found the tractor trailer driver to be 13% at fault. Weighing the actions of both drivers in this incident, I find the superseding cause of the accident was the school bus turning into oncoming traffic. As for the allegation that the tractor trailer's speeding (traveling at 60 mph in a 55 mph zone) caused the accident, the Florida Highway Patrol Investigative Report conducted on this crash found that speed was not a factor in the crash. Dr. Barret's conclusion that the driver of the tractor trailer should have steered in the direction of the turning school bus instead of instinctively steering away from the bus cannot be found to be a credible act for any experienced driver. Finally, certainly the tractor trailer's brakes not meeting federal standards played a role in the crash and the jury's apportionment of fault is an adequate apportionment of fault.

The School District also argues that the school bus manufacturer is comparatively negligent in both the manufacturing and design of the seat on the bus. Aaron Beauchamp's seat broke in the accident which rendered his seat belt useless, ejected him into the air, and caused his head to strike the ceiling of the bus. Dr. Kenneth Saczalski, a consulting engineer hired by the School District, testified at trial that the latch holding the seat down did not have enough strength to withstand such an accident and was defective. The base of the seat was fastened to a metal tubular frame by clamps. The clamps failed and broke, allowing the seat to separate from the frame. Dr. John Lenox, a mechanical engineer and a medical doctor hired by the School District, testified at trial that had Aaron Beauchamp's seat not failed, Aaron would probably have survived the crash. Aaron was the only one of the nearly thirty children to die from the crash. His seat was on the opposite side of the impact. However, at trial, Dr. Lenox admitted that it is possible Aaron would still have died from the collision even if his seat had not broken. The medical examiner reported that Aaron suffered a fatal skull fracture but he also nearly severed his spinal cord and ruptured his small intestine. Many of the other children suffered severe

injuries but survived the crash and from the video from inside the school bus, several of the other seats broke and were dislocated from the crash. Ultimately, if Aaron's seat had not broken, he may have survived.

Claimant appears to agree that there was comparative negligence by the tractor trailer and by the bus manufacturer as shown by the fact that Claimant brought lawsuits against both entities. Claimant settled with the tractor trailer trucking company for $575,000 and entered into a confidential settlement with the bus seat manufacturer. However, the jury was not informed of these settlements or these claims at trial. Given the testimony and evidence presented, the jury found the School District 87% at fault, the tractor trailer trucking company 13% at fault, and found no liability against the school bus manufacturer. The challenge is, being presented with the fault of all parties and corresponding settlement agreements, what proportion of fault for all three entities? I find the 13% fault attributed to the trucking company by the jury is just and supported by the evidence. However, the jury's refusal to attribute liability to the school bus manufacturer is confounding. I find there was negligence on behalf of the school bus manufacturer for the defective seats. Unfortunately, there is no evidence presented that would establish what amount of damages for Aaron's injuries had his seat not broken. He would still have suffered injuries that would require medical care. I find the school bus manufacturer to be 10% at fault for the injuries in this instant claim. Going off the jury's award of $10 million, the amount awarded in the claim bill should be reduced by $1,000,000.

Damages
There is no question that the damages in this claim are tragic. Lilian and Simon Beauchamp, in losing their youngest son, have suffered an immense amount of pain. From the testimony presented at the special master hearing, Simon lives in a constant state of grief over the loss of his son and refers to Aaron in the present tense. Lilian, a principal of a middle school in the School District, is reminded daily of the tragic accident every time she sees a school bus. The jury's finding of $10,000,000 for their pain and suffering is appropriate. The Beauchamp's have focused their grief by honoring Aaron by creating the Aaron Project that provides collegiate scholarships for local students from St. Lucie County.

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $4,246.02.

COLLATERAL SOURCES: Claimant received $575,000 from Cypress Trucking Company. Additionally, Claimant also entered into a confidential settlement with the school bus manufacturer.

Despite Claimant's requests, the school bus manufacturer would not waive confidentiality.

PRIOR LEGISLATIVE HISTORY: This is the first session this instant claim has been presented to the Legislature.

RECOMMENDATIONS: Given the comparative negligence of the school bus manufacturer, the $8,700,000 amount in the bill should be amended and reduced by $1,000,000.

Accordingly, I respectfully recommend that House Bill 6529 bill be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ.

House Special Master

cc: Representative Byrd, House Sponsor
Senator Artilles, Senate Sponsor
Lauren Jones, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Lillian Beauchamp, as the
3 personal representative of the estate of Aaron
4 Beauchamp, by the St. Lucie County School Board;
5 providing for an appropriation to compensate the
6 estate of Aaron Beauchamp for his wrongful death as a
7 result of the negligence of the St. Lucie County
8 School District; providing a limitation on the payment
9 of compensation, fees, and costs; providing an
10 effective date.
11
12 WHEREAS, on the afternoon of March 26, 2012, 9-year-old
13 Aaron Beauchamp boarded a school bus driven by St. Lucie County
14 School District employee, Albert Hazen, and
15 WHEREAS, shortly before Mr. Hazen reported to work that
16 afternoon, the district assigned him an additional bus route
17 that was unfamiliar to him, and
18 WHEREAS, at approximately 3:45 p.m., Mr. Hazen was driving
19 the school bus along the unfamiliar route, headed west on
20 Okeechobee Road with approximately 30 elementary school students
21 on board, and
22 WHEREAS, Mr. Hazen's first stop that afternoon was at the
23 St. Lucie County Fairgrounds, which he planned to reach by
24 making a left turn from Okeechobee Road onto Midway Road, and
25 WHEREAS, the school bus driven by Mr. Hazen was equipped

26 with a district-installed surveillance camera which captured the
27 events of that afternoon, and
28 WHEREAS, as Mr. Hazen approached the intersection of
29 Okeechobee Road and Midway Road and activated his left turn
30 signal, the weather was clear and there were no visual
31 obstructions in the roadway, and
32 WHEREAS, Mr. Hazen turned onto Midway Road without stopping
33 at the intersection, travelling directly into the path of an
34 oncoming, fully-loaded tractor trailer, and
35 WHEREAS, Mr. Hazen operated the school bus in a negligent
36 manner and the district, through the negligent action of its
37 employee, Mr. Hazen, breached a duty of care to Aaron Beauchamp,
38 and
39 WHEREAS, the tractor trailer violently slammed into the
40 rear passenger side of the school bus, propelling it into the
41 air and spinning it around, and
42 WHEREAS, the impact of the crash inflicted numerous
43 catastrophic injuries upon the students, and first responders to
44 the accident had to follow procedures for a mass casualty event,
45 and
46 WHEREAS, Aaron Beauchamp was sitting in the back of the
47 school bus on the driver's side and, despite the fact that he
48 was wearing his seatbelt, was ejected from his seat into the
49 interior of the bus, and
50 WHEREAS, Aaron Beauchamp suffered massive injuries to his

51 spine and brain and died at the scene of the crash, and
52 WHEREAS, Aaron Beauchamp is survived by his mother, Lillian
53 Beauchamp, a school principal and long-time district employee,
54 his father, Simon Beauchamp, and an older brother, Benjamin
55 Beauchamp, and
56 WHEREAS, Lillian Beauchamp, as the personal representative
57 of the estate of Aaron Beauchamp, filed a wrongful death lawsuit
58 against the district in the case of *Lillian Beauchamp, as*
59 *Personal Representative of the Estate of Aaron Beauchamp, a*
60 *deceased Child v. The St. Lucie County School District*, which
61 was assigned case number 2013CA000569, and
62 WHEREAS, on September 8, 2015, a jury returned a unanimous
63 verdict awarding $10 million to Lillian Beauchamp, as the
64 personal representative of the estate of Aaron Beauchamp,
65 finding that the district was 87 percent at fault for the
66 accident, and
67 WHEREAS, on November 2, 2015, the judge in the case entered
68 a final judgment against the district for $8.7 million, which
69 the district did not appeal, and
70 WHEREAS, in accordance with s. 768.28, Florida Statutes,
71 the district paid the statutory limit of $300,000 to other
72 children who were injured in the same incident that resulted in
73 the wrongful death of Aaron Beauchamp, and
74 WHEREAS, the full amount of the judgment against the
75 district for the wrongful death of Aaron Beauchamp remains

76 unpaid, and
77 WHEREAS, the district and Lillian Beauchamp, as the
78 personal representative of the estate of Aaron Beauchamp, have
79 not reached a settlement regarding this claim, and the district
80 contests the bill, NOW, THEREFORE,
81
82 Be It Enacted by the Legislature of the State of Florida:
83
84 Section 1. The facts stated in the preamble to this act
85 are found and declared to be true.
86 Section 2. The St. Lucie County School Board is authorized
87 and directed to appropriate from its funds not otherwise
88 encumbered and to draw a warrant in the amount of $8.7 million
89 payable to Lillian Beauchamp, as the personal representative of
90 the estate of Aaron Beauchamp, as compensation for damages
91 sustained in connection with his wrongful death.
92 Section 3. The amount awarded under this act is intended
93 to provide the sole compensation for all present and future
94 claims arising out of the factual situation described in this
95 act which resulted in the wrongful death of Aaron Beauchamp. The
96 total amount paid for attorney fees, lobbying fees, costs, and
97 similar expenses relating to this claim may not exceed 25
98 percent of the amount awarded under this act.
99 Section 4. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Byrd offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 86-98 and insert:
7 Section 2. The St. Lucie County School District is
8 authorized and directed to appropriate from its funds not
9 otherwise encumbered and to draw a warrant in the amount of $8.7
10 million payable to Lillian Beauchamp, as the personal
11 representative of the estate of Aaron Beauchamp, as compensation
12 for damages sustained in connection with his wrongful death.
13 Section 3. The amount awarded under this act is intended
14 to provide the sole compensation for all present and future
15 claims arising out of the factual situation described in this
16 act which resulted in the wrongful death of Aaron Beauchamp. Of

17 the amount awarded under this act, the total amount paid for
18 attorney fees may not exceed $1,740,000, the total amount paid
19 for lobbying fees may not exceed $435,000, and the total amount
20 paid for costs and other similar expenses relating to this claim
21 may not exceed $4,246.02.
22
23 ---
24 **T I T L E A M E N D M E N T**
25 Remove line 4 and insert:
26 Beauchamp, by the St. Lucie County School District;

IN RE:

SENATE BILL 14
Relief of LILLIAN BEAUCHAMP by the ST. LUCIE COUNTY SCHOOL DISTRICT
____/

AFFIDAVIT OF ATTORNEY'S FEES AND LOBBYIST'S FEES

STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, this day personally appeared **Matthew E. Haynes, Esq. and Patrick E. Bell, Lobbyist**, who after being first duly sworn under oath, depose and state:

1. The Claimant has agreed to pay twenty-five percent (25%) of the amount awarded by the Legislature for legal services.
2. The Claimant has agreed to pay five percent (5%) of the amount awarded by the Legislature for lobbying services.
3. Notwithstanding the following, Claimant, Claimant's attorneys, and Claimant's lobbyists acknowledge that the mount of the attorney's fees, lobbying fees, and costs associates with the claim will not exceed twenty-five percent (25%) of the amount awarded by the Legislature.
4. The twenty-five percent (25%) for legal services provided by the Claimant's attorneys include lobbying fees and costs, if any.
5. The dollar amount of any outstanding costs that will be paid from any amount awarded by the Legislature is $4,246.02. This amount includes only external costs and that the internal costs have been waived.

6. The amount of costs paid from the statutory cap payment is $0.00. No payments have been made to the Claimants from the statutory cap.

FURTHER AFFIANT SAYETH NAUGHT.

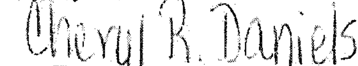
MATTHEW E. HAYNES, ESQ.

The foregoing document was acknowledged before me, an officer duly authorized in the State and County to take acknowledgments, this 27th day of February, 2017, of Matthew E. Haynes, Esq., who:

[X] is personally known to me; or
[ ] has produced ______________ as identification; and who:
[X] did or
[ ] did not, take an oath,

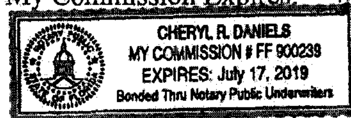
And who executed the within document, and who acknowledged the within document to be freely and voluntarily executed for the purposes therein recited.

Notary Public – State of Florida



Print Name

My Commission Expires: 7/17/2019



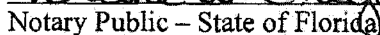
AND

PATRICK E. BELL, LOBBYIST

The foregoing document was acknowledged before me, an officer duly authorized in the State and County to take acknowledgments, this 27th day of February, 2017, of Patrick E. Bell, Lobbyist, who:

[X] is personally known to me; or
[ ] has produced ______________ as identification; and who:
[ ] did or
[ ] did not, take an oath,

And who executed the within document, and who acknowledged the within document to be freely and voluntarily executed for the purposes therein recited.

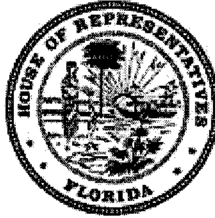


Notary Public – State of Florida

Print Name

My Commission Expires: June 29, 2018

HB 6531



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

Florida House of Representatives
Summary Claim Bill Report

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

Basic Information:

Claimants:	Dustin Reinhardt
Respondent:	Palm Beach County School Board
Amount Requested:	$4,700,000; with $1,700,000 paid upon passage and $3,000,000 to purchase annuities.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	Claimant has received $1,373,000 in collateral sources as the result of settlements with the school teacher, the tire owner, and Claimant's own uninsured motorist policy.
Attorney's/Lobbying Fees:	Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. There are no outstanding costs remaining.
Prior Legislative History:	This is the first time this instant claim has been presented to the Legislature.

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

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

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

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

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

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

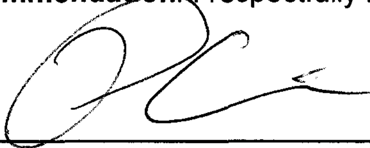
Dustin's injuries are severe and life altering. He suffered a traumatic brain injury and the loss of his right eye. He suffered extensive facial fractures, hematoma, and contusions. He underwent a bi-frontal craniotomy. Dr. Lichtblau, a board certified doctor in physical medicine and rehabilitation,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

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

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

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

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



Parker Aziz, Special Master   Date: March 6, 2017

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

1 A bill to be entitled
2 An act for the relief of Dustin Reinhardt by the Palm
3 Beach County School Board; providing for an
4 appropriation and annuity to compensate him for
5 injuries sustained as a result of the negligence of
6 employees of the Palm Beach County School District;
7 providing that certain payments and the amount awarded
8 under the act satisfy all present and future claims
9 related to the negligent act; providing a limitation
10 on the payment of compensation, fees, and costs;
11 providing an effective date.
12
13 WHEREAS, in September 2013, Dustin Reinhardt was a student
14 at Seminole Ridge Community High School in Loxahatchee in Palm
15 Beach County, and was involved in the Army Junior Reserve
16 Officer Training Corps for which he received honors for his
17 participation, and
18 WHEREAS, on September 4, 2013, while in auto shop class at
19 Seminole Ridge Community High School, Dustin Reinhardt was
20 inflating a large truck tire, which proceeded to explode,
21 striking him in his head, and
22 WHEREAS, immediately following the explosion, Dustin
23 Reinhardt was airlifted to St. Mary's Medical Center in West
24 Palm Beach where he underwent multiple surgeries, including
25 skull and facial reconstruction procedures, was placed in a

26 chemically induced coma, and spent more than 4 weeks in the
27 intensive care unit, and
28 WHEREAS, Dustin Reinhardt has continued to be impacted by
29 the injuries he incurred from the explosion, including the loss
30 of vision in his right eye, short-term memory loss, and a recent
31 diagnosis of severe traumatic brain injury, and
32 WHEREAS, the traumatic brain injury will impair Dustin
33 Reinhardt's executive function and has resulted in symptoms such
34 as the exhibition of socially inappropriate behavior, difficulty
35 in planning and taking initiative, difficulty with verbal
36 fluency, an inability to multitask, and difficulty in
37 processing, storing, and retrieving information, and
38 WHEREAS, because of the explosion, Dustin Reinhardt
39 continues to live in supervised care at the Florida Institute
40 for Neurologic Rehabilitation and is unlikely to ever live an
41 independent life, and
42 WHEREAS, the injuries that Dustin Reinhardt sustained were
43 foreseeable and preventable and the school had a duty to prevent
44 his injuries, and
45 WHEREAS, the parties have agreed to a settlement in the sum
46 of $5 million, and the Palm Beach County School Board has agreed
47 to pay $300,000 of the settlement pursuant to the statutory
48 limits of liability set forth in s. 768.28, Florida Statutes,
49 leaving a remaining balance of $4.7 million, NOW, THEREFORE,
50

51 Be It Enacted by the Legislature of the State of Florida:
52
53 Section 1. The facts stated in the preamble to this act
54 are found and declared to be true.
55 Section 2. The Palm Beach County School Board is
56 authorized and directed to:
57 (1) Appropriate from funds of the school board not
58 otherwise encumbered and, no later than 30 days after the
59 effective date of this act, draw a warrant in the sum of $1.7
60 million payable to Dustin Reinhardt as compensation for injuries
61 and damages sustained.
62 (2) Purchase an annuity for the sum of $3 million for
63 Dustin Reinhardt's benefit. The annuity must provide annual
64 disbursements to Dustin Reinhardt for 3 years, with the first
65 disbursement occurring 1 year after the payment made pursuant to
66 subsection (1) and the following disbursements occurring the
67 following 2 years thereafter. Each annual disbursement must be
68 at least $1 million.
69 Section 3. The amount paid by the Palm Beach County School
70 Board pursuant to s. 768.28, Florida Statutes, and the amount
71 awarded under this act are intended to provide the sole
72 compensation for all present and future claims arising out of
73 the factual situation described in this act which resulted in
74 injuries and damages to Dustin Reinhardt. The total amount paid
75 for attorney fees, lobbying fees, costs, and similar expenses

76 relating to this claim may not exceed 25 percent of the amount
77 awarded under this act. Attorney or lobbyist fees may not be
78 assessed against the value of the annuity.
79 Section 4. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Drake offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. The facts stated in the preamble to this act are
8 found and declared to be true.
9 Section 2. The Palm Beach County School Board is
10 authorized and directed to:
11 (1) Appropriate from funds of the school board not
12 otherwise encumbered and, no later than 30 days after the
13 effective date of this act, draw a warrant in the sum of $1.7
14 million payable to Dustin Reinhardt, to be placed in the Special
15 Needs Trust created for the exclusive use and benefit of Dustin
16 Reinhardt, as compensation for injuries and damages sustained.

17 (2) Purchase an annuity for the sum of $3 million for
18 Dustin Reinhardt's benefit. The annuity must provide annual
19 disbursements to Dustin Reinhardt, to be placed in the Special
20 Needs Trust created for the exclusive use and benefit of Dustin
21 Reinhardt, for 3 years, with the first disbursement occurring on
22 or before September 1, 2023, and the following disbursements
23 occurring the following 2 years thereafter. Each annual
24 disbursement must be at least $1 million.
25 Section 3. The amount paid by the Palm Beach County School
26 Board pursuant to s. 768.28, Florida Statutes, and the amount
27 awarded under this act are intended to provide the sole
28 compensation for all present and future claims arising out of
29 the factual situation described in this act which resulted in
30 injuries and damages to Dustin Reinhardt. Of the amount awarded
31 under this act, the total amount paid for attorney fees may not
32 exceed $340,000, the total amount paid for lobbying fees may not
33 exceed $85,000, and no amount of the act may be paid for costs
34 and other similar expenses relating to this claim. Attorney or
35 lobbyist fees may not be assessed against the value of the
36 annuity.
37 Section 4. This act shall take effect upon becoming a law.
38
39
40
41 ---

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

43 Remove everything before the enacting clause and insert:
44 An act for the relief of Dustin Reinhardt by the Palm
45 Beach County School Board; providing for an
46 appropriation and annuity to compensate him for
47 injuries sustained as a result of the negligence of
48 employees of the Palm Beach County School District;
49 providing that certain payments and the amount awarded
50 under the act satisfy all present and future claims
51 related to the negligent act; providing a limitation
52 on the payment of compensation, fees, and costs;
53 providing an effective date.
54
55 WHEREAS, in September 2013, Dustin Reinhardt was a student
56 at Seminole Ridge Community High School in Loxahatchee in Palm
57 Beach County, and was involved in the Army Junior Reserve
58 Officer Training Corps for which he received honors for his
59 participation, and
60 WHEREAS, on September 4, 2013, while in auto shop class at
61 Seminole Ridge Community High School, Dustin Reinhardt was
62 inflating a large truck tire, which proceeded to explode,
63 striking him in his head, and
64 WHEREAS, immediately following the explosion, Dustin
65 Reinhardt was airlifted to St. Mary's Medical Center in West
66 Palm Beach where he underwent multiple surgeries, including

67 skull and facial reconstruction procedures, was placed in a
68 chemically induced coma, and spent more than 4 weeks in the
69 intensive care unit, and
70 WHEREAS, Dustin Reinhardt has continued to be impacted by
71 the injuries he incurred from the explosion, including the loss
72 of vision in his right eye, short-term memory loss, and a recent
73 diagnosis of severe traumatic brain injury, and
74 WHEREAS, the traumatic brain injury will impair Dustin
75 Reinhardt's executive function and has resulted in symptoms such
76 as the exhibition of socially inappropriate behavior, difficulty
77 in planning and taking initiative, difficulty with verbal
78 fluency, an inability to multitask, and difficulty in
79 processing, storing, and retrieving information, and
80 WHEREAS, because of the explosion, Dustin Reinhardt
81 continues to live in supervised care at the Neuro International
82 and is unlikely to ever live an independent life, and
83 WHEREAS, the injuries that Dustin Reinhardt sustained were
84 foreseeable and preventable and the school had a duty to prevent
85 his injuries, and
86 WHEREAS, the parties have agreed to a settlement in the sum
87 of $5 million, and the Palm Beach County School Board has paid
88 $300,000 of the settlement pursuant to the statutory limits of
89 liability set forth in s. 768.28, Florida Statutes, leaving a
90 remaining balance of $4.7 million, NOW, THEREFORE,
91

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

CASE NO. 2015CA002262XXXXMBAO

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

Plaintiffs,

v.

THE SCHOOL DISTRICT OF PALM BEACH
COUNTY

Defendant.

_______________________________________/

AFFIDAVIT

STATE OF FLORIDA

: **SS.**:

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

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

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

FURTHER THE AFFIANTS SAYETH NAUGHT.

JONATHAN M COX

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

Notary Public, State of Florida

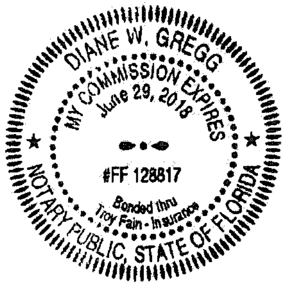
My Commission Expires:

PATRICK BELL

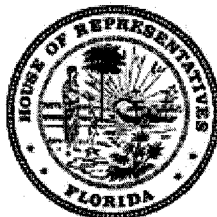
SUBSCRIBED AND SWORN to before me this 28 day of February 2017.

Notary Public, State of Florida

My Commission Expires:



HB 6533



STORAGE NAME: **h6533.CJC**
DATE: 3/6/2017

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 6533; Relief/Jennifer Wohlgemuth/Pasco County Sheriff's Office
Sponsor: Grant
Companion Bill: CS/SB 36 by Judiciary, Montford
Special Master: Parker Aziz

Basic Information:

Claimants:	Jennifer Wohlgemuth
Respondent:	Pasco County Sheriff's Office
Amount Requested:	$2,600,000, to be paid out over 8 years
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Pasco County Sheriff's Office does not oppose 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 seventh session this claim has been presented to the Legislature. In the prior six sessions, this claim has never been heard in a House committee. In the past two sessions, the Senate bill was heard in Senate Judiciary Committee before dying in Senate Committee on Community Affairs.

Procedural Summary: On March 15, 2007, Traci Wohlgemuth as plenary guardian of her daughter, Jennifer Wohlgemuth, filed suit against the Pasco County Sherriff's Office, Case No. 512007 CA 000859, in the 6th Judicial Circuit, in and for Pasco County, Florida, alleging negligence. Mrs. Wohlgemuth received a verdict in a bench trial against the Pasco County Sherriff's Office, awarding total damages of $9,141,267.32. The court found that Deputy Petrillo was 95% responsible for Jennifer's injuries, and that Jennifer was responsible for the remaining 5%, due to her alleged failure to wear a seat belt. Accordingly, the court entered its Amended Final Judgment

in the amount of $8,724,754.40. The Pasco County Sherriff appealed the Amended Final Judgment to the Second District Court of Appeals. Oral arguments were heard on March 2, 2010, and eight days later on March 10, 2010, the 2nd DCA affirmed the trial court's Final Judgment. Pursuant to the Judgment, Pasco County Sherriff's Office paid the sovereign immunity limit of $100,000.

On April 15, 2016, the parties entered into a settlement agreement for the amount of $2,600,000. Under the terms of the agreement, Pasco County Sheriff's Office will pay $325,000 a year for 8 years. If Jennifer Wohlgemuth dies anytime during the 8 years of payments, any future payments will cease and the agreement will become null and void. The first payment will be paid by October 31st of the year the Governor signs the claim bill.

Facts of Case: In the very early morning of January 3, 2005, 21-year-old Jennifer Wohlgemuth was driving southbound on Regency Park Boulevard with two of her friends. At approximately 1:35 a.m., Pasco County Sherriff's Deputy Kenneth Petrillo, while training another officer, was driving one of four law enforcement vehicles engaged in a high-speed chase. The other law enforcement vehicles (one New Port Richey police vehicle and two Port Richey police vehicles) were in pursuit a vehicle drive by a possible drunk driver. Deputy Petrillo's vehicle was seven to ten seconds behind the other pursuit vehicles. Testimony from several witnesses indicated that Deputy Petrillo's vehicle's siren and flashing red/blue lights were not engaged. Testimony from other witnesses provided his lights were on, however, the FHP investigator concluded that evidence of his lights being on was inconclusive. After the crash, Deputy Petrillo's siren switch was found to be in the radio mode, indicating that the siren was not activated at the time of the crash. Additionally, video from a nearby gas station showed reflections of the first three pursuit vehicles red/blue lights but failed to show red/blue lights on Deputy Petrillo's vehicle. While still engaged in the pursuit, Deputy Petrillo sped through a red light at Ridge Road and Regency Park Boulevard, and directly struck the passenger side of Jennifer's vehicle. Jennifer's car traveled 147 feet from the impact location and after the accident Deputy Petrillo's vehicle caught on fire.

Witness testimony estimates Deputy Petrillo's speeds ranging upwards of 110 MPH; however, accident reconstruction models indicate that the actual speed of Deputy Petrillo's vehicle was roughly 60 MPH at the time of impact. In either respect, Deputy Petrillo was travelling well above posted speed limits. An Internal Affairs review of the accident determined that Deputy Petrillo violated Pasco County Sherriff's Office policies and Florida Statutes regarding police pursuit. Deputy Petrillo was disciplined by Internal Affairs and received a 30 day suspension without pay, was re-assigned for 45 days, and was required to conduct a training course for his fellow deputies regarding pursuits and safety.

Blood draws were taken from Jennifer while she was unconscious. Toxicology reports indicated that Jennifer had been drinking that night with a blood alcohol level of .022 which is below the impairment standard of .05.[1] Toxicology reports also indicated that Jennifer tested positive for cocaine metabolites and benzodiazepine. Witnesses observed her drinking two "Jaeger Bombs" at roughly 11:00 p.m. the night immediately preceding the accident. It was also reported that Mrs. Wohlgemuth was in possession of several pills of Xanax. Despite these reports, there is no evidence that Jennifer was actually impaired at the time of the accident.

Jennifer's injuries were a direct and proximate result of Deputy Petrillo's breach of the duty he owed to her. Jennifer sustained significant injuries and was immediately transported to the hospital. As a result of the accident, Jennifer was in a coma for 18 days, unable to speak for several months, and did not return home from the hospital until August 2005. Jennifer suffered serious brain injuries, including subdural hematoma of the right frontal lobe and a subarachnoid hemorrhage. Due to the

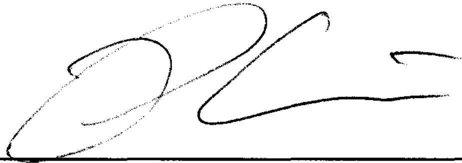
---

[1] s. 316.1934(2)(b), F.S. (Toxicology report in excess of .05 but less than .08 may be considered with other evidence in determining whether a person was under the influence of alcoholic beverage to the extent that his or her normal faculties were impaired.).

swelling in her brain, part of her skull was removed. Jennifer continues to suffer from her injuries from the accident, including, severe memory loss, partial loss of vision, lack of balance, urinary problems, anxiety, depression, dysarthric speech, acne, and weight fluctuations. Jennifer's behavior and impulse control are similar to those of a 7-year-old and require her to be supervised at all times. Her injuries have severely limited her ability to drive, hold a job, or live independently.

Recommendation: Jennifer's attorneys have indicated a special needs trust has been established and any amount awarded in the claim bill will be placed in the trust. The bill should be amended to direct any amount awarded in the bill be placed in the special needs trust.

Accordingly, I respectfully recommend that House Bill 6533 be reported **FAVORABLY**.



Parker Aziz, Special Master Date: March 6, 2017

cc: Representative Grant, House Sponsor
Senator Montford, Senate Sponsor
Tracy Sumner, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Jennifer Wohlgemuth by the
3 Pasco County Sheriff's Office; providing for an
4 appropriation to compensate her for injuries and
5 damages sustained as a result of the negligence of an
6 employee of the Pasco County Sheriff's Office;
7 providing a limitation on the payment of compensation,
8 fees, and costs; providing an effective date.
9
10 WHEREAS, in the early morning of January 3, 2005, 21-year-
11 old Jennifer Wohlgemuth was lawfully and properly operating her
12 vehicle and traveling southbound on Regency Park Boulevard, and
13 WHEREAS, at the same time, Deputy Kenneth Petrillo, an
14 officer of the Pasco County Sheriff's Office, was driving one of
15 four law enforcement vehicles engaged in a high-speed pursuit,
16 and
17 WHEREAS, Deputy Petrillo's vehicle was traveling eastbound
18 on Ridge Road, well behind the other law enforcement vehicles,
19 which had already cleared the intersection of Ridge Road and
20 Regency Park Boulevard in Pasco County, and
21 WHEREAS, Deputy Petrillo did not activate his vehicle's
22 siren or flashing lights and sped through the intersection on a
23 red light at a speed of at least 20 miles per hour over the
24 posted speed limit, and
25 WHEREAS, Deputy Petrillo's vehicle violently struck the

26 passenger side of Jennifer Wohlgemuth's vehicle as she entered
27 the intersection on a green light while observing the speed
28 limit, and
29 WHEREAS, none of the numerous witnesses to the crash heard
30 Deputy Petrillo's siren or saw flashing lights, and
31 WHEREAS, after the crash, Deputy Petrillo's siren switch
32 was found to be in the radio mode, which indicates that the
33 siren was not activated at the time of the crash, and
34 WHEREAS, an internal affairs investigation of the accident
35 found that Deputy Petrillo violated the policies of the Pasco
36 County Sheriff's Office, and he was suspended for 30 days
37 without pay and subjected to other disciplinary measures, and
38 WHEREAS, as a result of the accident, Jennifer Wohlgemuth
39 was in a coma for 3 weeks, was unable to speak for several
40 months after emerging from the coma, and did not return home
41 until August 2005, and
42 WHEREAS, Jennifer Wohlgemuth suffered profound brain
43 injuries, including a subdural hematoma of the right frontal
44 lobe and subarachnoid hemorrhage that resulted in the removal of
45 a portion of her skull, and
46 WHEREAS, due to the damage to her frontal lobe, Jennifer
47 Wohlgemuth's behavior and impulse control are similar to those
48 of a 10-year-old child and require that she be supervised 24
49 hours a day, 7 days a week, and
50 WHEREAS, Jennifer Wohlgemuth currently suffers from severe

51 memory loss, partial loss of vision, lack of balance, urinary
52 problems, anxiety, depression, dysarthric speech, acne, and
53 weight fluctuations, and
54 WHEREAS, as a result of her significant memory impairment
55 and lack of judgment, Jennifer Wohlgemuth is unable to drive,
56 work at a job, or live independently and is under the
57 guardianship of Traci Wohlgemuth, and
58 WHEREAS, a 3-day bench trial was held in the Sixth Judicial
59 Circuit in the case of *Traci Wohlgemuth, as guardian of Jennifer*
60 *K. Wohlgemuth, an incompetent, v. Robert White, as Sheriff of*
61 *Pasco County, Florida*, which was assigned case number 51-2007-
62 CA-000859, and on March 12, 2009, the trial court rendered a
63 verdict in Jennifer Wohlgemuth's favor, awarding her total
64 damages of $9,141,267.32, and
65 WHEREAS, the trial court found that Deputy Petrillo was 95
66 percent responsible for Jennifer Wohlgemuth's injuries and that
67 Ms. Wohlgemuth was responsible for the remaining 5 percent due
68 to her alleged failure to wear a seat belt, and
69 WHEREAS, on August 4, 2009, the trial court entered its
70 amended final judgment in the amount of $8,724,754.40, and
71 WHEREAS, the Pasco County Sheriff's Office appealed the
72 amended final judgment to the Second District Court of Appeal,
73 and the appellate court affirmed the trial court's final
74 judgment on March 10, 2010, and
75 WHEREAS, in accordance with s. 768.28, Florida Statutes,

76 the Pasco County Sheriff's Office paid the statutory limit of
77 $100,000, and the remaining amount of $8,624,754.40 remains
78 unpaid, and
79 WHEREAS, the Pasco County Sheriff's Office and Jennifer
80 Wohlgemuth have since entered into a settlement agreement
81 regarding the unpaid amount, with the sheriff's office promising
82 to make annual payments to Ms. Wohlgemuth and agreeing not to
83 oppose this claim bill, NOW, THEREFORE,
84
85 Be It Enacted by the Legislature of the State of Florida:
86
87 Section 1. The facts stated in the preamble to this act
88 are found and declared to be true.
89 Section 2. The Pasco County Sheriff's Office is authorized
90 and directed to appropriate from funds of the sheriff's office
91 and to pay Jennifer Wohlgemuth the settlement amount of $2.6
92 million as compensation for injuries and damages sustained due
93 to the negligence of an employee of the sheriff's office.
94 Payment shall be made in the amount of $325,000 per year for 8
95 consecutive years. The first payment must be made no later than
96 October 31, 2017. Payments must be made by October 31 each
97 subsequent year until paid in full. However, if Jennifer
98 Wohlgemuth dies before October 31, 2024, payments shall cease
99 with her death and the award under this act shall be deemed paid
100 in full.

101 Section 3. The amount paid by the Pasco County Sheriff's
102 Office under s. 768.28, Florida Statutes, and the amount awarded
103 under this act are intended to provide the sole compensation for
104 all present and future claims arising out of the factual
105 situation described in this act which resulted in the injuries
106 and damages to Jennifer Wohlgemuth. The total amount paid for
107 attorney fees, lobbying fees, costs, and other similar expenses
108 relating to this claim may not exceed 25 percent of the amount
109 awarded under this act.
110 Section 4. This act shall take effect upon becoming a law.
111

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER ______

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee
3 Representative Grant, J. offered the following:
4
5 **Amendment**
6 Remove lines 92-109 and insert:
7 million, to be placed in the Special Needs Trust created for the
8 exclusive use and benefit of Jennifer Wohlgemuth as compensation
9 for injuries and damages sustained due to the negligence of an
10 employee of the sheriff's office. Payment shall be made in the
11 amount of $325,000 per year for 8 consecutive years. The first
12 payment must be made no later than October 31, 2017. Payments
13 must be made by October 31 each subsequent year until paid in
14 full. However, if Jennifer Wohlgemuth dies before October 31,
15 2024, payments shall cease with her death and the award under
16 this act shall be deemed paid in full.

17 Section 3. The amount paid by the Pasco County Sheriff's
18 Office under s. 768.28, Florida Statutes, and the amount awarded
19 under this act are intended to provide the sole compensation for
20 all present and future claims arising out of the factual
21 situation described in this act which resulted in the injuries
22 and damages to Jennifer Wohlgemuth. Of the amount awarded under
23 this act, the total amount paid for attorney fees may not exceed
24 $520,000, the total amount paid for lobbyist fees may not exceed
25 $130,000, and no amount of the act may be paid for costs and
26 other similar expenses relating to this claim.

IN RE: SENATE BILL 0036—RELIEF OF JENNIFER WOHLGEMUTH V. PASCO COUNTY SHERIFF'S OFFICE, DOAH CASE NO. 11-4088

AFFIDAVIT OF D. FRANK WINKLES, ESQUIRE

STATE OF FLORIDA
COUNTY OF Hillsborough

BEFORE ME, the undersigned authority, personally appeared, D. Frank Winkles, who bring first duly sworn, deposes and says:

1. Attorney's fee, as a percentage of any amount that may be awarded by the Legislature, will be twenty-five percent 25% of the awarded amount.

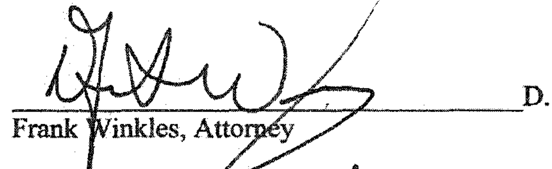
2. Lobbyist's fee, as a percentage of any amount that may be awarded by the Legislature, will be five percent (5%) of the awarded amount.

3. The attorney's fee specified in (1.) does include the lobbyist fee; lobbyist's fee will not be "in addition to" attorney fee set forth in (1.).

4. The percentage specified in (1.) of 25% includes all costs and fees.

5. There are no outstanding costs.

6. The costs paid from the statutory cap payment were $98,065.05 and were delineated in correspondence to the Special Masters dated November 9, 2016.



D. Frank Winkles, Attorney

The foregoing instrument was acknowledged before me this 28 day of February 2017, by D. Frank Winkles, who ✓ is personally known to me or ____ provided identification in the form of ______________.

Notary Signature

KRISTINA MAZZA
State of Florida-Notary Public
Commission # GG 21141
My Commission Expires
August 14, 2020

Notary Name (Printed)
NOTARY PUBLIC, State of Florida

(Serial number, if any)

TAL 452070092v1

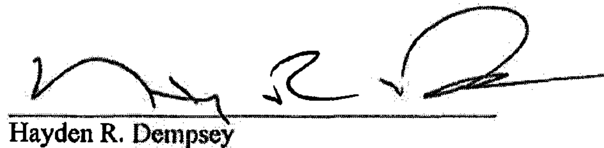
IN RE: SENATE BILL 0036—RELIEF OF JENNIFER WOHLGEMUTH V. PASCO COUNTY SHERIFF'S OFFICE, DOAH CASE NO. 11-4088

AFFIDAVIT OF HAYDEN R. DEMPSEY, LOBBYIST

STATE OF FLORIDA
COUNTY OF Hillsborough

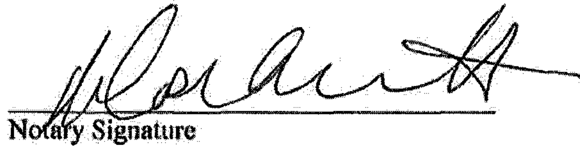
BEFORE ME, the undersigned authority, personally appeared, Hayden R. Dempsey, who bring first duly sworn, deposes and says:

1. Attorney's fee, as a percentage of any amount that may be awarded by the Legislature, will be twenty-five percent 25% of the awarded amount.
2. Lobbyist's fee , as a percentage of any amount that may be awarded by the Legislature, will be five percent (5%) of the awarded amount.
3. The attorney's fee specified in (1.) does include the lobbyist fee; lobbyist's fee will not be "in addition to" attorney fee set forth in (1.).
4. The percentage specified in (1.) of 25% includes all costs and fees.
5. There are no outstanding costs.
6. I hereby agree to the above-stated terms as provided in an affidavit signed by Frank Winkles, Esquire, on February 28, 2017.

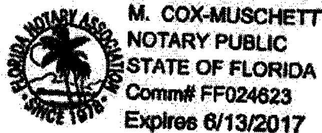


Hayden R. Dempsey

The foregoing instrument was acknowledged before me this 28th day of February 2017, by Hayden R. Dempsey, who ____ is personally known to me or ✓ provided identification in the form of FL DL D512331674030



Notary Signature



M Cox-Muschett
Notary Name (Printed)
NOTARY PUBLIC, State of Florida

FF024623
(Serial number, if any)

TAL 452070092v1