The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 66** Legg (Identical H 3521)	Relief of Ronald Miller by the City of Hollywood; Providing for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the City of Hollywood; providing a limitation on the payment of fees and costs, etc. SM 03/19/2015 Recommendation: Fav/1 Amendment JU 03/24/2015 Fav/CS CA FP	Fav/CS Yeas 8 Nays 1
2	**SB 70** Flores (Identical H 3541)	Relief/Amie Draiemann Stephenson, Hailey Morgan Stephenson, and Christian Darby Stephenson, II/Department of Transportation; Providing for the relief of Amie Draiemann Stephenson, individually and as personal representative of the Estate of Christian Darby Stephenson, deceased, and for the relief of Hailey Morgan Stephenson and Christian Darby Stephenson II as surviving minor children of the decedent; providing an appropriation to compensate them for the wrongful death of Christian Darby Stephenson, which was due in part to the negligence of the Department of Transportation; providing a limitation on the payment of fees and costs, etc. SM 03/12/2015 Recommendation: Fav/1 Amendment JU 03/17/2015 JU 03/24/2015 Fav/CS ATD AP	Fav/CS Yeas 8 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 80** Flores (Identical H 3555)	Relief of Michael Rardin by the North Broward Hospital District; Providing for the relief of Michael Rardin by the North Broward Hospital District; providing for an appropriation to compensate Michael Rardin, Patricia Rardin, his wife, and Emily and Kayla Rardin, their two minor children, for injuries sustained as a result of the negligence of the North Broward Hospital District; providing a limitation on the payment of fees and costs, etc. SM 03/19/2015 Recommendation: Fav/1 Amendment JU 03/24/2015 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 2
4	**SB 168** Negron (Identical H 97, Compare H 709, S 500)	Mobile Home Parks; Revising the definition of the term “mobile home park” to clarify that it includes certain lots or spaces regardless of the rental or lease term’s length or person liable for ad valorem taxes; providing that the act is remedial and intended to clarify existing law and to abrogate an interpretation of such law by the Department of Business and Professional Regulation; providing for retroactive application, etc. RI 02/18/2015 Favorable CA 03/17/2015 Favorable JU 03/24/2015 Favorable	Favorable Yeas 10 Nays 0
5	**CS/SB 330** Criminal Justice / Dean (Identical CS/H 69)	Missing Persons with Special Needs; Providing immunity from civil liability for certain persons who comply with a request to release information concerning missing persons with special needs to appropriate agencies; specifying who may submit a report concerning a missing person with special needs, etc. CJ 03/02/2015 Fav/CS JU 03/17/2015 JU 03/24/2015 Favorable CF AP	Favorable Yeas 10 Nays 0
6	**SB 1080** Dean (Similar H 885)	Clerks of the Circuit Court; Redirecting revenues from the filing fee for pleadings in specified civil actions in circuit court from the General Revenue Fund into the fine and forfeiture fund; revising the list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines; specifying the authorized budget for the clerks of the circuit court for the 2015-2016 county fiscal year, etc. JU 03/24/2015 Fav/CS ACJ AP	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 718** Lee (Similar CS/H 435)	Administrative Procedures; Providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; requiring agencies to set a time for workshops for certain unadopted rules; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; providing criteria for establishing whether a nonprevailing party participated in a proceeding for an improper purpose; revising provisions providing for the award of attorney fees and costs by the appellate court or administrative law judge, etc. JU 03/17/2015 JU 03/24/2015 Favorable AGG AP	Favorable Yeas 8 Nays 0
8	**SB 766** Hukill (Similar CS/H 649, Compare H 979, S 1178)	Surveillance by a Drone; Prohibiting a person, a state agency, or a political subdivision from using a drone to capture an image of privately owned real property or of the owner, tenant, or occupant of such property with the intent to conduct surveillance without his or her written consent if a reasonable expectation of privacy exists; specifying when a reasonable expectation of privacy may be presumed, etc. CA 03/10/2015 Favorable JU 03/17/2015 JU 03/24/2015 Fav/CS AP	Fav/CS Yeas 9 Nays 0
9	**CS/SB 856** Banking and Insurance / Latvala (Similar CS/H 769)	Health Provider Contracts; Providing that a contract between a health insurer, a prepaid limited health service organization, or a health maintenance organization, respectively, or a third-party administrator thereof, and a licensed ophthalmologist or optometrist may not require the licensee to provide vision care services as a condition of providing any other service or to purchase certain materials or services from specified entities; providing that a contract between a health insurer, a prepaid limited health service organization, or a health maintenance organization, respectively, or a third-party administrator thereof, and a licensed optician may not require the licensee to purchase certain materials from specified entities, etc. BI 03/17/2015 Fav/CS JU 03/24/2015 Favorable RC	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 922** Latvala (Similar CS/CS/H 775)	Appointment of an Ad Litem; Authorizing a court to appoint an ad litem for any party in certain circumstances; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent in order to serve as ad litem; providing that this section does not abrogate a court's common law authority to appoint an ad litem; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving, etc. JU 03/17/2015 JU 03/24/2015 Fav/CS ACJ FP	Fav/CS Yeas 9 Nays 0
11	**SB 38** Joyner (Identical H 3517)	Relief of Dennis Darling, Sr., and Wendy Smith by the State of Florida; Providing for the relief of Dennis Darling, Sr., and Wendy Smith, parents of Devaughn Darling, deceased; providing an appropriation from the General Revenue Fund to compensate the parents for the loss of their son, Devaughn Darling, whose death occurred while he was engaged in football preseason training on the Florida State University campus; providing a limitation on the payment of fees and costs, etc. SM 03/12/2015 Recommendation: Fav/1 Amendment JU 03/17/2015 JU 03/24/2015 Favorable AED AP	Favorable Yeas 8 Nays 2
12	**CS/SB 554** Commerce and Tourism / Simmons (Similar CS/CS/H 531)	Limited Liability Companies; Specifying that persons who are not members of a limited liability company are not deemed to have notice of a provision of the company's articles of organization which limits a person's authority to transfer real property held in the company's name unless such limitation appears in an affidavit, certificate, or other instrument that is recorded in a specified manner; removing the prohibition that an operating agreement may not vary the power of a person to dissociate, etc. CM 03/02/2015 Fav/CS JU 03/17/2015 JU 03/24/2015 Fav/CS RC	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/SB 1146** Health Policy / Simmons (Similar H 965)	Agency Relationships with Governmental Health Care Contractors; Extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; authorizing such health care provider to collect from a patient, or the parent or guardian of a patient, a nominal fee for administrative costs under certain circumstances, etc. HP 03/10/2015 Fav/CS JU 03/24/2015 Favorable RC	Favorable Yeas 9 Nays 0
14	**SB 1248** Stargel (Similar CS/H 943)	Family Law; Prohibiting a court from using certain presumptive alimony guidelines in calculating alimony pendente lite; prohibiting a combined award of alimony and child support from constituting more than a specified percentage of a payor's net income; creating a presumption that approximately equal time-sharing by both parents is in the best interests of the child; providing that a party may pursue an immediate modification of alimony in certain circumstances, etc. JU 03/24/2015 Fav/CS ACJ AP	Fav/CS Yeas 9 Nays 0
15	**SB 26** Diaz de la Portilla (Identical H 3525)	Relief of Thomas and Karen Brandi by Haines City; Providing for the relief of Thomas and Karen Brandi by Haines City; providing an appropriation to compensate them for injuries and damages sustained as a result of the negligence of an employee of Haines City; providing that the appropriation settles all present and future claims relating to the injuries and damages sustained by Thomas and Karen Brandi; providing a limitation on the payment of fees and costs, etc. SM 03/12/2015 Recommendation: Favorable JU 03/17/2015 JU 03/24/2015 Favorable CA FP	Favorable Yeas 6 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/SB 286** Community Affairs / Diaz de la Portilla (Compare H 323)	Classified Advertisement Websites; Encouraging the Department of Management Services to designate a specified number of state safe-haven facilities in each county based upon population; authorizing public state buildings to serve as state safe-haven facilities; encouraging local governments to approve the use of public local governmental buildings as local safe-haven facilities, etc. CA 03/17/2015 Fav/CS JU 03/24/2015 Favorable AGG FP	Favorable Yeas 9 Nays 0
17	**SB 84** Soto (Identical H 3531)	Relief of Sharon Robinson by the Central Florida Regional Transportation Authority; Providing for the relief of Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson; providing an appropriation to compensate her and her son for the death of Matthew Robinson and for injuries and damages they sustained as a result of the negligence of the Central Florida Regional Transportation Authority as operator of Lynx buses; providing that the amount already paid by the authority and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of fees and costs, etc. SM 03/12/2015 Recommendation: Favorable JU 03/17/2015 JU 03/24/2015 Fav/CS ATD AP	Fav/CS Yeas 8 Nays 0
18	**SB 524** Soto (Similar CS/H 779)	Rental Agreements; Providing that a purchaser taking title to a tenant-occupied residential property following a foreclosure sale takes title to the property as a landlord; specifying conditions under which the tenant may remain in possession of the premises; prescribing the form for a 90-day notice of termination of the rental agreement; establishing requirements for delivery of the notice; providing exception, etc. JU 03/17/2015 JU 03/24/2015 Favorable BI RC	Favorable Yeas 8 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**SB 794** Ring (Similar H 941)	Prejudgment Interest; Requiring a court to include prejudgment interest on the amount of money damages awarded to a plaintiff in a final judgment; providing for retroactive application, etc. JU 03/10/2015 Temporarily Postponed JU 03/17/2015 JU 03/24/2015 Temporarily Postponed ACJ AP	Temporarily Postponed

Other Related Meeting Documents

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
10/23/14	SM	FAV/1 amendment
3/24/15	JU	Fav/CS
	CA	
	FP	

February 2, 2015 (Rev. 3/24/15)

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 66** – Judiciary Committee and Senator Legg
Relief of Ronald Miller by the City of Hollywood

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR $100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

CURRENT STATUS:

On November 17, 2008, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill. On February 1, 2011, for SB 64 (2011), the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. Since that time, the matter has been settled between Mr. Miller and the City of Hollywood. Subsequently, the special master's December 2, 2011, report for SB 8 (2012) reflected the settlement and recommended that the bill be reported favorably. The report reflecting the settlement is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Diana Caldwell. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and

determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, Ronald Miller, changes have not occurred since the hearing which might have altered the findings and recommendations in the report.

Additionally, the prior claim bill, SB 8 (2012), is effectively identical to claim bill filed for the 2015 Legislative Session.

Respectfully submitted,

Diana W. Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary on March 24, 2015:
The committee substitute corrects the spelling of the last name of the city employee who caused the accident leading to the claim bill.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/02/11	SM	Favorable

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 8 (2012)** – Senator Eleanor Sobel
HB 43 (2012) – Representative Evan Jenne
Relief of Ronald Miller

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR $100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

FINDINGS OF FACT:

At about 5:30 p.m. on July 30, 2002, Ronald Miller, a self-employed lawn service provider, was driving north on Federal Highway. As he approached Sheridan Street in the City of Hollywood, Florida, Miller encountered traffic congestion in both of the northbound lanes on Federal Highway; cars were backed up for several blocks south of Sheridan Street, where the light was red.

Miller planned to turn left and travel west on Sherman Street, which is one block south of Sheridan Street. Avoiding the lines of traffic waiting for the light to turn green at Sheridan, Miller maneuvered his pickup truck—which was pulling a trailer carrying his lawn equipment—into the center left-turn lane, which is a common lane providing for the two-way movement of traffic. Miller's speed was at least 20 MPH—within the posted limit but faster than the circumstances warranted, as

the left-turn lane is not meant to be used, as Miller was using it, for passing cars waiting at a red light.

Meantime, Robert Mettler, an employee of the City of Hollywood, was attempting to leave a Burger King restaurant which is located on the east side of Federal Highway, facing Sherman Street. (The Burger King thus was off to Miller's right as he approached from the south.) Mettler was on duty, behind the wheel of a City-owned pickup truck. He wanted to head south on Federal Highway, and thus needed to make a difficult left-hand turn across three lanes of rush-hour traffic: the two northbound lanes, where traffic was currently stopped, and the common turn lane, in which Miller (unbeknownst to Mettler) was presently moving north.

Drivers stopped on Federal Highway (in the northbound lanes) let Mettler out of the Burger King parking lot. As he edged his way between the parked cars, Mettler saw one of the drivers give him a hand signal, which he interpreted as a sign that the center lane was clear. Mettler himself could not get an unobstructed southward view of the turn lane because of the vehicles backed up on Federal Highway.

Mettler decided that the turn lane was clear and began nosing his truck forward. By this time, Miller was almost there; he was looking both forward and to his left and didn't see Mettler on his right. Mettler accelerated, pulling forward into the turn lane. In so doing, he failed to exercise reasonable care under the circumstances. Instantly, the trucks collided head-to-head.

Miller was not wearing his seatbelt. The force of the impact thrust him forward, and his knees struck the dashboard. Though hurt, Miller was not incapacitated; indeed, he walked away from the crash without assistance and later declined medical treatment at the accident site. Mettler was not badly injured.

The Hollywood Police Department was called, and an officer investigated the accident. Metter was given a ticket for failing to yield the right-of-way, in violation of s. 316.125(1), Florida Statutes. (Several months later, Mettler would be found guilty of this infraction.)

Hours after the crash, Miller's knees were painful and his neck was sore, so he sought treatment at Hollywood Medical

Center, checking into the emergency room at around midnight. The emergency room doctor prescribed painkillers and a cervical collar and sent Miller home.

Miller saw a chiropractor on July 31, 2002. After several visits, Miller switched to another chiropractor, Dr. Keith Buchalter, from whom he received treatment for neck and knee pain beginning August 12, 2002, and continuing until March 5, 2003. While under Dr. Buchalter's care, on September 16, 2002, Miller had magnetic resonance imaging (MRI) scans taken of his cervical spine, left knee, and right knee. These MRI scans, taken about one-and-a-half months after the crash, produced the first (and only) post-accident radiologic studies of Miller's knees and neck. The radiologist who read the scans believed the images showed, among other things, a torn anterior cruciate ligament (ACL) in both of Miller's knees.

On October 16, 2002, Miller was seen by Dr. Stephen Wender, an orthopedic surgeon. Dr. Wender prescribed a course of non-steroidal anti-inflammatory drugs for Miller's still-painful knees. On March 20, 2003, approximately eight months after the accident, Dr. Wender performed arthroscopic surgery on Miller's left and right knees. Dr. Wender did not repair the ACL in either of Miller's knees because, it turned out, Miller did not have ligament damage after all.

This was not the first time that an orthopedic surgeon had operated on Miller's right knee. It was, in fact, the *fourth* surgery on Miller's right knee, which had been damaged years earlier when Miller, as a pedestrian, had been hit by a car. The previous accident had led to three knee surgeries by two different doctors. Medical records from the prior surgeries were not produced at hearing, and the orthopedic surgeons who performed them did not testify.

The undersigned is persuaded, and finds, that Miller's right knee sustained some injury as a result of the July 2002 crash. Without information concerning the nature and extent of the previous injuries to Miller's right knee, however, it cannot be determined, with reasonable particularity, which damage was proximately caused by the accident in 2002, and which was present before this accident. That said, the evidence shows (and the undersigned finds) that, broadly speaking, roughly 80

to 90 percent of the damage to Miller's right knee existed before the 2002 accident.

Miller's left knee, too, was injured in the 2002 crash. While the left knee (unlike the right) had not previously suffered a traumatic injury, by July 2002 Miller's left knee already had begun to deteriorate due to degenerative arthritis. In other words, Miller's left knee had a chronic, preexisting condition. There is no evidence, however, that Miller's left knee was bothering him before the accident in question.

Miller incurred approximately $75,000 in medical expenses following the 2002 accident, beginning with the next-day treatment in the emergency room and continuing until he had knee surgery in March 2003. These medical expenses constitute an economic loss that was directly and proximately caused by the 2002 accident.

Miller wants to be compensated for "pain and suffering" (which category includes, in addition to pain and suffering, such noneconomic losses as mental anguish, inconvenience, and loss of capacity to enjoy life). At the trial on the civil suit in which Miller sued the City for negligence, the jury awarded Miller $700,000 for pain and suffering—$200,000 for past suffering and $500,000 for future suffering.

Mettler's failure to use reasonable care to avoid colliding with Miller's pickup truck unquestionably constituted negligence. Miller, however, was negligent too, for he drove too fast for the circumstances and failed to pay reasonable attention to all of the traffic on the road. The jury in the civil trial was asked to compare the negligence of Mettler to that of Miller and apportion the fault between them by percentages. The jury determined that Mettler's negligence comprised 95 percent of the cause of Miller's injuries, while finding Miller himself five percent at fault.

While the undersigned might have placed a bit more blame on Miller, he nonetheless considers the jury's apportionment of the fault to be consistent with the evidence and will defer to the jury's collective wisdom in the matter. It is found, therefore, that Metter was 95 percent responsible for the crash, Miller five percent.

LEGAL PROCEEDINGS:

In January 2005, Miller brought suit against the City. The action was filed in the Broward County Circuit Court.

The case was tried before a jury in June 2006. The jury returned a verdict awarding Miller a total of $1.19 million in damages, broken down as follows: (a) $200,000 for past pain and suffering; (b) $500,000 for future pain and suffering; (c) $75,000 for past medical expenses; and (d) $415,000 for future medical expenses. The trial court entered a judgment against the City in the amount of $1.13 million—or 95 percent of the total damages, in accordance with the jury's apportionment of fault. (All of the foregoing numbers were rounded for ease of reference.)

The City appealed the adverse judgment. The Fourth District Court of Appeal affirmed, per curiam, without issuing an opinion.

On August 16, 2007, the City paid $100,000 to Miller, satisfying so much of the judgment as falls outside the protection of sovereign immunity. The City previously (in 2002) had compensated Miller in full for his property damage, which consequently is not in issue here.

The proceeds recovered on the judgment were distributed to Miller in February 2008. His net recovery, after paying attorney's fees ($30,000), litigation costs ($21,000), and medical bills ($6,400), was $43,000. (These numbers have been rounded for convenience.)

CLAIMANT'S ARGUMENTS:

The City is vicariously liable for its employee's negligent operation of a municipal vehicle, which negligence caused an accident wherein Miller suffered severe and permanent bodily injuries.

RESPONDENT'S POSITION:

In a letter dated September 23, 2011, counsel for the City stated that "the parties involved have agreed on the amounts requested in SB 8/HB 43, as well as the 'whereas' clause findings. Accordingly, it is the parties' intent to ask members to pass this bill as a stipulated matter."

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the City against tort liability in excess of $200,000 per occurrence.

Under the doctrine of respondeat superior, the City is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003). Metter, a City employee, was acting within the course and scope of his employment when he negligently collided with Miller. The City, therefore, is liable for Mettler's negligence.

Miller was negligent, too, and his negligence was a contributory cause of the accident. Therefore, it is necessary to determine the extent of Mettler's fault as compared to Miller's. As noted above, the jury's allocation of 95 percent of the fault to the City (through Miller) is reasonable. The undersigned accordingly concludes that the City was 95 percent to blame for the accident.

Miller proved that Mettler's negligence proximately caused acute injuries that resulted in Miller's incurring $75,000 in medical expenses. An award for these past medical expenses is factually and legally justified (apart from sovereign immunity considerations). Miller established, as well, that he is entitled to an award for pain and suffering.

LEGISLATIVE HISTORY: This is the fourth year that this claim has been presented to the Florida Legislature.

ATTORNEYS FEES: Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Miller's attorney, Winston & Clark, P.A., has submitted proposed distribution statement showing that the attorneys' and lobbyist's fees would be limited, in the aggregate, to 25 percent of the compensation being sought.

SPECIAL ISSUES: The parties have agreed to settle this claim for the payment by the City of $100,000. This amount is reasonable and responsible.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 8 (2012) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Eleanor Sobel
Representative Evan Jenne
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

535770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2015	.	
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	.	
	.	

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment

In title, delete line 12
and insert:
WHEREAS, at that time, Robert Mettler, a City of Hollywood

By Senator Legg

17-00035-15 201566__

A bill to be entitled

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

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

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

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

WHEREAS, the jury returned a verdict in favor of Ronald Miller, and a final judgment was entered in the amount of $1,130,731.89, and a cost judgment was entered in the amount of $17,257.82, and

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

WHEREAS, the parties have negotiated in good faith and have arrived at a stipulated resolution of this matter for the payment by the City of Hollywood of an additional $100,000 to Ronald Miller, NOW, THEREFORE,

Florida Senate - 2015 **(NP) SB 66**

17-00035-15 201566__

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

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

Section 2. The City of Hollywood is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant, payable to Ronald Miller, for the total amount of $100,000 as compensation for injuries and damages sustained as a result of the negligence of an employee of the City of Hollywood.

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

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

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 66
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 535770 Simpson					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
	X	Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	1	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

February 11, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary Chair
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 66 - Relief of Ronald Miller by the City of Hollywood

Dear Chair Diaz de la Portilla:

SB 66 has been referred to your committee. I respectfully request that it be placed on the Committee on Judiciary Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

John Legg
State Senator, District 17

cc: Tom Cibula, Staff Director

JL/jb

REPLY TO:
☐ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

March 5, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 0066 - Relief of Ronald Miller by the City of Hollywood

Dear Chair Diaz de la Portilla:

SB 0066 - Relief of Ronald Miller by the City of Hollywood has been referred to your committee. I respectfully request that it be placed on the Committee on Judiciary Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

John Legg
State Senator, District 17

cc: Tom Cibula, Staff Director

JL/jb

REPLY TO:
☐ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 24, 2015
Meeting Date

66
Bill Number (if applicable)

Topic Ronald Miller Claim Bill

Amendment Barcode (if applicable)

Name Jason Unger

Job Title

Address 301 S. Bronough Street
Street

Phone 577-9090

Tallahassee FL 32301
City *State* *Zip*

Email junger@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Hollywood

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/31/14	SM	Fav/1 amendment
03/24/15	JU	Fav/CS
	ATD	
	AP	

December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 70** – Judiciary Committee and Senator Anitere Flores
Relief of Amie Draiemann Stephenson

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $1,092,040 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON

FINDINGS OF FACT:

On December 11, 2006, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 34 (2007). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, James Knudson. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, no changes have occurred since the hearing which might have altered the findings and recommendations in the report.

The prior claim bill, SB 34 (2007) is effectively identical to the claim bill filed for the 2015 Legislative Session. On December 2, 2011, a subsequent Senate special master issued a Final Report that adopted the findings of the 2006 Final Report and recommended two amendments to a subsequent version of this claim bill, SB 62 (2012), which were not adopted because that bill was not heard in a Senate committee. I also recommend these amendments, which are not incorporated into the claim bill filed for the 2015 Legislative Session.

I recommend an amendment to the claim bill that apportions damages between Mr. Stephenson's estate, his wife, and two children in the amounts awarded in the jury verdict. The jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent). In a letter dated October 29, 2014, the attorney for the Claimant stated that the Claimant intends to propose amendments to incorporate the two amendments recommended in the Special Master Final Report dated December 2, 2011.

The Claimant did not receive the full $200,000 of the sovereign immunity exception. The Department of Transportation paid $175,100 to the Claimant, rather than $200,000 (the remainder was paid to the company that owned the truck that was destroyed in the accident). Accordingly, the claimant should consider an amendment to increase the award by $24,900, apportioned amongst the Stephenson estate, his wife, and two children by the same percentages as are awarded in the jury verdict.

Respectfully submitted,

James Knudson
Senate Special Master

cc: Senator Anitere Flores
Debbie Brown, Secretary of the Senate
Counsel of Record

CS by Judiciary on March 24 2015:
The committee substitute:

- Increases the amount of the appropriation in the claim bill by approximately $24,000, as recommended by the special master;
- Updates the surviving spouse's name to reflect her name change due to her remarriage; and
- Allocates the funds appropriated by the bill among the decedent's survivors.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 70** – Senator Michael S. Bennett
Relief of Amie Draiemann Stephenson (O'Brien)

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $1,092,040 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

FINDINGS OF FACT:

On August 12, 2000, 29-year-old Christian D. Stephenson was killed when he lost control of the gas tanker that he was driving and crashed on the Hart Bridge Expressway in Jacksonville. The truck exploded in the crash, and Mr. Stephenson burned to death in the fire.

The posted speed limit on the portion of the expressway where the crash occurred was 45 MPH. Mr. Stephenson was traveling in excess of the speed limit (perhaps as fast as 60 MPH) at the time of the crash, according to the eye witnesses and experts who testified at the trial.

The road was wet, and it was raining at the time of the crash. However, it was not raining as heavily at the time of the crash as it had been in the hour or so preceding the crash.

Mr. Stephenson was traveling in the left lane of the road, following closely behind a jeep driven by Jason Keiffer.

Unbeknown to Mr. Keiffer or Mr. Stephenson, there was a large pool of standing water in the left lane of the road. The water was estimated to be 300 feet long and 6 to 9 inches deep at its deepest point. The cause of the standing water was a clogged drainage basin in the median.

Mr. Keiffer hit the water and lost control of his jeep. Mr. Stephenson swerved to the right to miss Mr. Keiffer's jeep. That maneuver sent him in the direction of the safety zone in which three other vehicles were sitting. In order to miss those vehicles, Mr. Stephenson steered further to the right down an exit ramp where his truck hit a guardrail, flipped over, and burst into flames.

The three vehicles sitting in the safety zone were a City of Jacksonville police car, a car driven by Shana Williams, and a news van driven by Douglas Lockwood. Ms. Williams and Mr. Lockwood had each hit the water and lost control of their vehicles shortly before the crash involving Mr. Stephenson. The police car was driven by Lt. David Vanaman, who had just responded to the scene to assist Ms. Williams and Mr. Lockwood about the time that Mr. Stephenson lost control of his truck.

The Department of Transportation (DOT) is responsible for maintaining the drainage basins along the Hart Bridge Expressway. After the crash, DOT maintenance supervisor Alex Slaughter was called to the scene.

Mr. Slaughter called for the assistance of a vacuum truck to suck up the standing water and clean up the drainage basin. The vacuum truck was able to suck up all of the water on the road, but it was unable to unclog the drainage basin. As a result, it was necessary for Mr. Slaughter and three other DOT maintenance employees to climb down into the drainage basin and remove by hand the materials clogging the drain. The materials removed from the drainage basin included various items of trash and what was described at trial as a large rubber or plastic flap. It took the four DOT employees two hours to remove all of the materials in the drainage basin. Approximately one cubic yard of debris was removed.

No evidence was presented as to when DOT had last inspected and/or cleaned out the drainage basin. Mr. Slaughter testified that the materials removed from the

drainage basin had likely accumulated over 6 to 8 months. The plaintiffs' expert, Jerome Thomas, testified that the debris had likely been accumulating for several years. Mr. Thomas's estimate is more reasonable in light of the length of time that it took the DOT employees to unclog the drainage basin after the crash, the amount of debris removed, and the evidence of prior flooding at the site.

This was not the first time that the water had accumulated on the road in this location as a result of the clogged drainage basin. Several witnesses testified about seeing standing water at that location, and there had been several prior crashes, including one involving a City of Jacksonville fire truck, in which drivers lost control of their vehicles after hitting the water. However, there was no evidence that these accidents were reported to DOT, or that DOT had actual knowledge of the flooding caused by the clogged drain at this location.

Mr. Stephenson was survived by his wife, Amie, and two children, Hailey and Christian, II. Hailey (now 13) was 2 years old at the time of Mr. Stephenson's death. Christian, II (now 11), was born several months after Mr. Stephenson's death. Amie and Hailey both spent time in counseling after Mr. Stephenson's death. Christian is reportedly experiencing behavioral and emotional problems as a consequence of never having met his father.

Amie is a stay-at-home mom. She last worked outside the home in 1998, which was about the time that Hailey was born. Amie has moved on with her life. She married Kevin O'Brien, Mr. Stephenson's best friend, in October 2005. They have a daughter together.

Amie received approximately $325,000 from various sources after Mr. Stephenson's death. That amount included $104,581.34 in workers' compensation death benefits; a $5,000 funeral benefit from Mr. Stephenson's insurer, State Farm; a $100,000 uninsured motorist settlement from State Farm; a $10,000 settlement of a suit against Mr. Keiffer; a $10,000 settlement of a suit against the City of Jacksonville; $22,000 in donations through a charity fund established by a local hospital where Mr. Stephenson's mother worked; and $75,000 in life insurance. These funds are in addition to the $175,100 paid by DOT in satisfaction of its legal liability for the

judgment in this case, as discussed below. Amie used the money from the charity fund to pay off the family's debts and purchase furniture for a new home. There is a statutory lien on the workers' compensation benefits, which will be paid from the proceeds of the claim bill.

In addition to the lump sum payments referenced above, Amie received Social Security survivor benefits of approximately $700 per month until the time that she married Mr. O'Brien. Hailey and Chris, II, continue to receive survivor benefits. It was reported at the Special Master hearing that each child receives benefits of $917 per month, and that the benefits will continue until the children turn 18.

Amie testified at the Special Master hearing that any money she receives from the claim bill will ultimately pass to her children, and not Mr. O'Brien. She confirmed that intent in writing after the hearing. Additionally, Mr. O'Brien submitted a written statement waiving his right to any of the money received by Amie from the claim bill.

DOT reported that it has sufficient funds available in its "unappropriated trust fund balances" to pay the claim, and those funds were suggested by DOT as the appropriate source for payment of this claim if the bill is approved over its objection. Payment of the claim from those funds will not adversely impact DOT's operations or any particular work program.

LEGAL PROCEEDINGS:

In 2001, Amie, as personal representative of Mr. Stephenson's estate, filed suit against DOT, the City of Jacksonville, Multimedia Holdings Corporation (Mr. Lockwood's employer), Ms. Williams, and Mr. Keiffer, in circuit court in Jacksonville. A two-week jury trial was held in March 2005.

Prior to trial, the court entered summary judgment in favor of Multimedia and Ms. Williams. Those rulings were affirmed on appeal, and judgments were subsequently entered in favor of Ms. Williams ($21,599 in attorney's fees and $1,887.07 in costs) and Multimedia ($5,148 in attorney's fees). Those judgments remain unsatisfied and are against Mr. Stephenson's estate, which has not yet been closed. It is expected that the judgments will be paid out of the proceeds from the claim bill that are paid to the estate.

Summary judgment was also entered in favor of Mr. Keiffer prior to the trial. The claimants' appeal of that ruling was dismissed after Mr. Keiffer agreed to pay $10,000 to settle the suit against him. A $10,000 pre-trial settlement was also reached with the City of Jacksonville.

As a result of the pre-trial rulings and settlements, the case proceeded to trial with DOT as the only defendant. The jury found DOT negligent and apportioned 36 percent of the negligence for Mr. Stephenson's death to DOT. The jury apportioned the remaining 64 percent of the negligence to Mr. Stephenson. The jury awarded a total of $3,589,000, broken down as follows:

Damages to Mr. Stephenson's estate	$1,300,000
Damages to Amie	$763,000
Damages to Hailey	$1,000,000
Damages to Chris, II	$526,000

After the award was reduced to reflect Mr. Stephenson's comparative fault, a final judgment was entered against DOT for $1,292,040.

The final judgment reserved jurisdiction to award costs against DOT. A cost judgment was never entered because the parties agreed that the amount of trial-related costs was roughly equivalent to the amount that would be offset against the judgment for the collateral sources received by Amie after Mr. Stephenson's death.

DOT did not appeal the final judgment. Amie appealed the final judgment, but the appeal was voluntarily dismissed because according to the claimants' attorney, Amie would not have been able emotionally to go through another trial in the event that the judgment was reversed on appeal.

DOT paid $175,100 to the claimants in satisfaction of its legal liability under the judgment. The remainder of the $200,000 available under the sovereign immunity cap was paid to the company that owned the truck Mr. Stephenson was driving which was destroyed in the crash. The "outstanding balance" of the judgment against DOT is $1,117,940.

The claimants only received approximately $26,000 of the $175,100 paid by DOT, with approximately $8,500 going to Amie, approximately $11,300 going to Hailey, and approximately $5,900 going to Christian, II. None of the initial payment went to Mr. Stephenson's estate. The remainder of the initial payment went to attorney's fees, costs, and the repayment of a loan taken out by the claimants.

The claimants' attorney reports that there are approximately $320,000 of billed and unbilled costs and expenses which remain outstanding. Some of those expenses relate to post-trial matters, but the bulk of the expenses relate to the investigation and trial of the case.

CLAIMANT'S ARGUEMENTS: DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death.

DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

The jury verdict against DOT should be given full effect.

RESPONDENT'S ARGUMENTS: DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition.

The clogged drain was not caused by months or years of accumulated debris, but rather by the large rubber or plastic flap that somehow got into the drainage basin.

The primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of the crash.

CONCLUSIONS OF LAW: DOT had a duty to maintain the drainage basin so that it did not become clogged and create an unsafe roadway condition. Although DOT argued that its decisions as to where drainage basins are located and how and when they are inspected are planning level decisions entitled to sovereign immunity, it conceded that its duty to properly maintain a particular drainage basin is an operational level decision for which sovereign immunity has been partially waived by section 768.28, Florida Statutes.

DOT breached its duty, as evidenced by the fact that there was no evidence when the drainage basin was last cleaned out, and the fact that it took four DOT employees a total of two hours to remove the cubic yard of debris that had accumulated in the drainage basin. DOT's argument that the drainage basin became clogged because of a "freak event" (i.e., the rubber or plastic flap) was not persuasive in light of the amount of debris removed from the drainage basin after the crash and the evidence of prior crashes caused by standing water in the same location.

DOTs negligence was a proximate cause of Mr. Stephenson's death because but for the standing water in the roadway caused by the clogged drainage basin, Mr. Keiffer would not have lost control of his jeep causing Mr. Stephenson to take the evasive action that ultimately led to his death.

Mr. Stephenson's own negligence also contributed to his death because he was speeding at the time of his crash despite the wet road conditions, and he may have also been following Mr. Keiffer's jeep too closely. Accordingly, the jury's apportionment of fault between DOT and Mr. Stephenson is reasonable and appropriate.

The damages awarded by the jury are reasonable as well. Dr. Patricia Pacey, the expert who testified at trial for the claimants, calculated the economic damages of Mr. Stephenson's death to be approximately $1.8 million. DOT's expert came to a similar amount. The jury awarded $1.3 million to Mr. Stephenson's estate for economic damages. The remaining $2.2 million of the verdict were non-economic damages apportioned amongst Amie, Hailey, and Christian, II.

The trial court did not enter a cost judgment against DOT, and it did not adjust the jury verdict to take into account collateral sources of recovery by Mr. Stephenson's family.

The evidence presented at the Special Master hearing establishes that, consistent with the agreement of the parties at the trial level, the costs incurred by the claimants are roughly equivalent to, and off-set, the collateral-source payments received by the claimants.

LEGISLATIVE HISTORY: This is the sixth year that this claim has been presented to the Legislature. The bills filed in 2007 (SB 34), 2008 (SB 62), 2009 (SB 22), 2010 (SB 32), and 2011 (SB 30) were not referred to committee.

ATTORNEYS FEES: The bill states that "attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act." (Emphasis supplied). This limitation is within the authority and discretion of the Legislature. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008).

The claimants' attorney provided an affidavit stating that in accordance with s. 768.28(8), F.S., attorney's fees related to this claim will be capped at 25 percent of the amount awarded in the bill. The lobbyist's fee is 6 percent of amount awarded in the bill, and according to lobbyist's affidavit, the lobbyist's fee is "included within the 25 percent attorney fee cap."

There are approximately $320,000 of outstanding costs and expenses. Those costs will not come out of the claimants' portion of the bill as a result of the bill language quoted above.

SPECIAL ISSUES: This Final Report was written by Special Master T. Kent Wetherell, II, who conducted the claim bill hearing on this matter in December 2006. Having reviewed the case, the undersigned has elected to adopt Special Master Wetherell's report and recommendations, with minor editorial changes to the text.

One amendment to the bill is needed. The fourth whereas clause erroneously states that the jeep was traveling towards Mr. Stephenson's tanker truck. This clause should be amended to conform to the undisputed evidence that Mr. Stephenson's tanker truck was following the jeep.

Other amendments might be desirable. First, the last "whereas" clause in the bill states that the amount subject to being awarded pursuant to this act is $1,092,040, which will be the unpaid balance of the final judgment after DOT has paid the claimants $200,000 under the sovereign immunity cap. To date, DOT has not paid the claimants the full $200,000. Instead, DOT paid $25,000 to the company that

owned the truck which was destroyed in the fire and $175,000 to the claimants. Given that the bill seeks payment of $1,092,040, which is the amount of the judgment less $200,000, it appears that the claimants anticipate DOT will pay them the $25,000 balance due under the cap without the compulsion of this legislation–or that they have abandoned the pursuit of this sum. If these assumptions are incorrect, the claimants should seek to amend the bill, to reflect that the "outstanding balance" against DOT is $1,117,940, and to correct the "whereas" clause accordingly.

Second, the bill contemplates a single lump sum payment to Amie, as personal representative of Mr. Stephenson's estate, even though the jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent). Amie testified at the Special Master hearing (and the claimants' attorney confirmed in a written submittal this year) that she has no objection to the children's shares of the claim bill being specifically earmarked for them. It was suggested, however, that the children's shares of the claim bill should be paid into a trust since they are minors. The claimants should consider seeking an amendment to the bill that would provide for the allocation of the proceeds as follows: $404,575.65 to Mr. Stephenson's estate; $237,454.78 to Amie; $311,212.04 in trust for Hailey; and $163,697.53 in trust for Christian, II.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 62 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Michael S. Bennett
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

700958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2015	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 62 - 75
and insert:
Section 2. There is appropriated from the General Revenue Fund to the Department of Transportation the sum of $1,116,940 for the relief of Amie Draiemann O'Brien, as Personal Representative of the Estate of Christian Darby Stephenson, for the wrongful death of Christian Darby Stephenson.
Section 3. The Chief Financial Officer is directed to draw warrants in the sum of $1,116,940 upon the funds of the

700958

Department of Transportation in the State Treasury not otherwise appropriated, payable as follows:

(1) The sum of $404,575.65, to the Estate of Christian Darby Stephenson;

(2) The sum of $237,454.78, to compensate Amie Draiemann O'Brien;

(3) The sum of $311,212.04, to be paid into a trust to compensate Hailey Morgan Stephenson; and

(4) The sum of $163,697.53, to be paid into a trust to compensate Christian Darby Stephenson II.

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

And the title is amended as follows:

Delete lines 2 - 56

and insert:

An act for the relief of Amie Draiemann O'Brien, individually and as personal representative of the Estate of Christian Darby Stephenson, deceased, and for the relief of Hailey Morgan Stephenson and Christian Darby Stephenson II as surviving minor children of the decedent; providing an appropriation to compensate them for the wrongful death of Christian Darby Stephenson, which was due in part to the negligence of the Department of Transportation; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on August 12, 2000, 29-year-old Christian Darby Stephenson was driving a gasoline tanker eastbound on the Hart

700958

Bridge Expressway in Duval County, and

WHEREAS, a clogged drain had caused a large pool of standing water to collect at the base of the bridge, and

WHEREAS, the Department of Transportation was responsible for the maintenance of the drains at that location on the Hart Bridge Expressway, and

WHEREAS, as Mr. Stephenson drove over the bridge, a Jeep that was traveling toward the tanker hit the puddle and hydroplaned, and

WHEREAS, Mr. Stephenson took evasive action to avoid hitting the Jeep, as well as two other vehicles that had been involved in previous accidents and were parked in the striped safety zone alongside the expressway, and

WHEREAS, Mr. Stephenson attempted to make a hard right turn onto the Atlantic Avenue exit so as to avoid the three vehicles, but, as he attempted to exit, the gasoline tanker jackknifed, struck the guardrail, overturned, and exploded, and

WHEREAS, Mr. Stephenson was subsequently pronounced dead at the scene, and

WHEREAS, Mr. Stephenson's widow, Amie Draiemann O'Brien, brought suit against the Department of Transportation in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Case No. 01-03428 CA, and, on March 22, 2005, the jury returned a verdict that assigned the Department of Transportation with 36 percent of the negligence that was a legal cause of Mr. Stephenson's death, and

WHEREAS, the jury verdict states the jury's determination that the total amount of damages sustained by Mr. Stephenson's estate is $1.3 million; the total amount sustained by Amie

700958

Draiemann O'Brien, the widow of Mr. Stephenson, is $763,000; the total amount sustained by Hailey Morgan Stephenson, a surviving minor child of Mr. Stephenson, is $1 million; and the total amount sustained by Christian Darby Stephenson II, a surviving minor child of Mr. Stephenson, is $526,000, and

WHEREAS, 36 percent of the aggregate sum of the damages awarded to Mr. Stephenson's estate and the named survivors under the final judgment is $1,292,040, and

WHEREAS, after the payment of $24,900 to third parties who brought claims against the Department of Transportation for damages claimed as result of the same occurrence, the Department of Transportation has paid to the Stephensons a total of $175,100, under s. 768.28, Florida Statutes, the remainder subject to being awarded under this act is $1,116,940, NOW, THEREFORE,

By Senator Flores

37-00064-15 201570__

A bill to be entitled

An act for the relief of Amie Draiemann Stephenson, individually and as personal representative of the Estate of Christian Darby Stephenson, deceased, and for the relief of Hailey Morgan Stephenson and Christian Darby Stephenson II as surviving minor children of the decedent; providing an appropriation to compensate them for the wrongful death of Christian Darby Stephenson, which was due in part to the negligence of the Department of Transportation; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on August 12, 2000, 29-year-old Christian Darby Stephenson was driving a gasoline tanker eastbound on the Hart Bridge Expressway in Duval County, and

WHEREAS, a clogged drain had caused a large pool of standing water to collect at the base of the bridge, and

WHEREAS, the Department of Transportation was responsible for the maintenance of the drains at that location on the Hart Bridge Expressway, and

WHEREAS, as Mr. Stephenson drove over the bridge, a Jeep that was traveling toward the tanker hit the puddle and hydroplaned, and

WHEREAS, Mr. Stephenson took evasive action to avoid hitting the Jeep, as well as two other vehicles that had been involved in previous accidents and were parked in the striped safety zone alongside the expressway, and

WHEREAS, Mr. Stephenson attempted to make a hard right turn

37-00064-15 201570__

onto the Atlantic Avenue exit so as to avoid the three vehicles, but, as he attempted to exit, the gasoline tanker jackknifed, struck the guardrail, overturned, and exploded, and

WHEREAS, Mr. Stephenson was subsequently pronounced dead at the scene, and

WHEREAS, Mr. Stephenson's widow, Amie Draiemann Stephenson, brought suit against the Department of Transportation in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Case No. 01-03428 CA, and, on March 22, 2005, the jury returned a verdict that assigned the Department of Transportation with 36 percent of the negligence that was a legal cause of Mr. Stephenson's death, and

WHEREAS, the jury verdict states the jury's determination that the total amount of damages sustained by Mr. Stephenson's estate is $1.3 million; the total amount sustained by Amie Draiemann Stephenson, the widow of Mr. Stephenson, is $763,000; the total amount sustained by Hailey Morgan Stephenson, a surviving minor child of Mr. Stephenson, is $1 million; and the total amount sustained by Christian Darby Stephenson II, a surviving minor child of Mr. Stephenson, is $526,000, and

WHEREAS, 36 percent of the aggregate sum of the damages awarded to Mr. Stephenson's estate and the named survivors under the final judgment is $1,292,040, plus taxable costs, and

WHEREAS, after the Department of Transportation has paid $200,000, as allowed under s. 768.28, Florida Statutes, the remainder subject to being awarded under this act is $1,092,040, plus taxable costs, NOW, THEREFORE,

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

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

Section 2. There is appropriated from the General Revenue Fund to the Department of Transportation the sum of $1,092,040 for the relief of Amie Draiemann Stephenson, as Personal Representative of the Estate of Christian Darby Stephenson, for the wrongful death of Christian Darby Stephenson.

Section 3. The Chief Financial Officer is directed to draw a warrant in the sum of $1,092,040, plus taxable costs, upon the funds of the Department of Transportation in the State Treasury not otherwise appropriated payable to Amie Draiemann Stephenson, as Personal Representative of the Estate of Christian Darby Stephenson, to compensate Mrs. Stephenson and the surviving minor children of Mr. and Mrs. Stephenson, Hailey Morgan Stephenson and Christian Darby Stephenson II, for the wrongful death of Christian Darby Stephenson.

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

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 70
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 700958 Ring					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
	X	Brandes						
X		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
	X	Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	2	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

SB 70
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Claim Bill - Stephensen

Name Amie Stephensen

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB70

Meeting Date *Bill Number (if applicable)*

Topic Stephenson Claim Bill

Amendment Barcode (if applicable)

Name Lance Block > on bill and amendment

Job Title Attorney - Lobbyist

Address P.O. Box 840 Phone 850-599-1780

Street

Tallahassee FL 32309 Email lance@lanceblocklaw.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Anne Stephenson

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/31/14	SM	Fav/1 amendment
03/24/15	JU	Fav/CS
	AHS	
	AP	

December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 80** – Judiciary Committee and Senator Anitere Flores
Relief of Michael Rardin

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $2,000,000 AGAINST THE NORTH BROWARD HOSPITAL DISTRICT FOR AN INCIDENT OF MEDICAL MALPRACTICE.

FINDINGS OF FACT:

In 2011, Michael Rardin was a 42-year old construction company employee. He acted in a general contractor role on high value projects and earned a high salary. On July 14, 2011, Mr. Rardin went to his primary care physician complaining of fatigue and shortness of breath. His primary care physician sent Mr. Rardin to the emergency room. Mr. Rardin was triaged as a priority 1/critical patient. Mr. Rardin was seen by Dr. Susan Nesselroth at 2:04 pm. Dr. Nesselroth noted his complaints and ordered an oxygen saturation monitor. Mr. Rardin had an oxygen saturation level of 53%. A normal oxygen saturation level is 95% or greater. Dr. Nesselroth ordered a non-rebreather mask with supplemental oxygen. Mr. Rardin was to be monitored in the emergency department.

Mr. Rardin was not intubated nor placed on a centrally monitored respiratory or cardiac monitor. A chest x-ray was then performed, indicating a left lower lobe infiltrate, and Dr. Nesselroth's diagnostic impression was left lower lobe

pneumonia and hypoxia. Over the next two hours, Mr. Rardin's condition deteriorated.

At 3:57 pm, Dr. Nesselroth was called to Mr. Rardin's bedside. A nurse noted increased respiratory distress and difficulty in arousing Mr. Rardin. Dr. Nesselroth evaluated Mr. Rardin as unresponsive, diaphoretic, and with agonal respirations. Dr. Nesselroth decided to intubate Mr. Rardin. There were two attempts to intubate Mr. Rardin. The first attempt at 4:05 pm, resulted in an "esophageal intubation" where oxygen was being delivered to his stomach rather than his lungs. Mr. Rardin became asystolic. A code was called and CPR and other live saving efforts were administered. By the time the physicians and staff successfully intubated Mr. Rardin, a sufficient period of time had passed with inadequate oxygen to the brain, resulting in a serious and permanent hypoxic brain injury. The second intubation attempt occurred at 4:15 pm, resulting in approximately 10 minutes of time of no heart rate, no blood pressure, and no oxygen being delivered to Mr. Rardin's brain.

The Rardins filed a lawsuit against the North Broward Hospital District. The minor children were subsequently dropped from the lawsuit and the matter continued with Mr. and Mrs. Rardin as plaintiffs. North Broward Hospital District, which owns and operates North Broward Medical Center, reached a settlement agreement with the Rardins by mediation in the amount of $2.2 million dollars, $200,000 of which has been paid in partial satisfaction of the final judgment. As a condition of the settlement, North Broward Hospital District agreed to support passage of a claim bill. If the bill passes, the claim will be paid through a combination of money the North Broward Hospital District has set aside for the payment of claims and insurance.

The Rardins also settled a claim against Dr. Nesselroth for an undisclosed amount. Counsel for the claimants did not disclose the amount of the settlement to the Special Master, citing a confidentiality agreement.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the North Broward Hospital District was liable in negligence for the damages suffered by Michael and Patricia Rardin. The undersigned finds that the staff of the North Broward Hospital District had a duty to treat Mr. Rardin

according to the standard of care and that it failed to do so. In waiting approximately two hours to intubate, despite an initial evaluation indicating critical oxygen values, Dr. Nesselroth and the hospital staff violated the standard of care. The failure of the staff was the cause of Mr. Rardin's injuries.

Due to the failure of hospital personnel to properly monitor and timely intubate Mr. Rardin, he suffers from a permanent brain injury, including but not limited to visual disturbances, short term memory loss and severe depression. Mr. Rardin's catastrophic injuries have rendered him unable to work. Furthermore, Mr. Rardin's injuries render him unable to provide the services, comfort, attention, and affection that he otherwise would have provided to his wife, Patricia Rardin, and his two minor children, Kayla and Emily Rardin The amount of damages agreed to by the parties is reasonable.

ATTORNEYS FEES: Mr. Rardin's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature. Lobbyist fees are included with the attorney fees.

RECOMMENDATIONS: SB 80 names the Rardin's children as claimants when they were dropped from the litigation. The attached amendment names only Michael and Patricia Rardin as the claimants, removing the names of the children. The undersigned recommends that the bill be reported favorably with the suggested amendment.

Respectfully submitted,

L. Michael Billmeier, Jr.
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on March 24. 2015:
The committee substitute revises the underlying bill to clearly identify Patricia Rardin as a claimant. Additionally, the committee substitute also deletes references to the children of Michael and Patricia Rardin.

569698

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2015	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 87
and insert:
Rardin and Patricia Rardin, as compensation for the catastrophic injuries and

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 2 - 69
and insert:

569698

An act for the relief of Michael and Patricia Rardin by the North Broward Hospital District; providing for an appropriation to compensate Michael and Patricia Rardin for injuries sustained as a result of the negligence of the North Broward Hospital District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on July 14, 2011, Michael Rardin, a 42-year-old construction company employee earning a six-figure salary, visited the emergency room at the North Broward Medical Center, which is owned and operated by the North Broward Hospital District, complaining of chest pain, shortness of breath for the prior 2 weeks, and the need to sleep during the day, and

WHEREAS, based on Mr. Rardin's alarming vital signs, he was triaged as a priority 1/critical patient, and

WHEREAS, Mr. Rardin was evaluated by Susan Nesselroth, M.D., at 2:04 p.m., who noted that his chief complaint was persistent shortness of breath with an associated cough, and

WHEREAS, Dr. Nesselroth ordered an oxygen saturation monitor, which reported a critical oxygen saturation level of 53 percent, and a nonrebreather mask with supplemental oxygen, and

WHEREAS, Mr. Rardin was to be monitored in the emergency department, and

WHEREAS, in violation of the standard of care, Mr. Rardin, a priority 1/critical patient, was not placed on a centrally monitored respiratory or cardiac monitor, and

WHEREAS, a chest x-ray was performed, which indicated a left lower lobe infiltrate, and Dr. Nesselroth's diagnostic

569698

impression was left lower lobe pneumonia and hypoxia, and

WHEREAS, Mr. Rardin proceeded to progressively deteriorate for about the following 2 hours, and

WHEREAS, at 3:57 p.m., Dr. Nesselroth was called to Mr. Rardin's bedside and a nurse noted increased respiratory distress and difficulty arousing Mr. Rardin, and

WHEREAS, at Mr. Rardin's bedside, Dr. Nesselroth evaluated him as unresponsive, diaphoretic, and as having agonal respirations, and

WHEREAS, in violation of the standard of care, Mr. Rardin was not intubated until about 2 hours after Dr. Nesselroth's initial evaluation that indicated critical oxygen values, and

WHEREAS, at 4:05 p.m., the first of two intubation attempts resulted in an esophageal intubation, where oxygen was being delivered to Mr. Rardin's stomach rather than his lungs, and

WHEREAS, as a result of the faulty intubation, Mr. Rardin became asystolic and a code was called, which led to the administration of cardiopulmonary resuscitation (CPR) and Advance Life Support (ALS) efforts, and

WHEREAS, by the time hospital personnel were able to successfully intubate Mr. Rardin he had suffered a serious and permanent hypoxic brain injury due to the length of time, approximately 10 minutes, during which his brain did not receive sufficient oxygen, and

WHEREAS, as a result of the hospital personnel's negligent failure to monitor and timely intubate Mr. Rardin, he now suffers from a permanent brain injury and symptoms such as visual disturbances, short-term memory loss, and severe depression, and

569698

WHEREAS, as a result of the hospital personnel's negligent failure to monitor and timely intubate Mr. Rardin, he can no longer support his family or provide the company and affection that he otherwise would have provided to his wife, Patricia Rardin, and their two minor children, Emily and Kayla Rardin, and

WHEREAS, a tort claim was filed on behalf of Michael and Patricia Rardin, Case No. 12-034723(13), in the 17th Judicial Circuit, and

WHEREAS, the North Broward Hospital District and Mr. and Mrs. Rardin

By Senator Flores

37-00065-15 201580__

A bill to be entitled

An act for the relief of Michael Rardin by the North Broward Hospital District; providing for an appropriation to compensate Michael Rardin, Patricia Rardin, his wife, and Emily and Kayla Rardin, their two minor children, for injuries sustained as a result of the negligence of the North Broward Hospital District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on July 14, 2011, Michael Rardin, a 42-year-old construction company employee earning a six-figure salary, visited the emergency room at the North Broward Medical Center, which is owned and operated by the North Broward Hospital District, complaining of chest pain, shortness of breath for the prior two weeks, and the need to sleep during the day, and

WHEREAS, based on Mr. Rardin's alarming vital signs, he was triaged as a priority 1/critical patient, and

WHEREAS, Mr. Rardin was evaluated by Susan Nesselroth, M.D., at 2:04 p.m., who noted that his chief complaint was persistent shortness of breath with an associated cough, and

WHEREAS, Dr. Nesselroth ordered an oxygen saturation monitor, which reported a critical oxygen saturation level of 53 percent, and a nonrebreather mask with supplemental oxygen, and

WHEREAS, Mr. Rardin was to be monitored in the emergency department, and

WHEREAS, in violation of the standard of care, Mr. Rardin, a priority 1/critical patient, was not placed on a centrally monitored respiratory or cardiac monitor, and

37-00065-15 201580__

WHEREAS, a chest x-ray was performed which indicated a left lower lobe infiltrate, and Dr. Nesselroth's diagnostic impression was left lower lobe pneumonia and hypoxia, and

WHEREAS, Mr. Rardin proceeded to progressively deteriorate for about the following 2 hours, and

WHEREAS, at 3:57 p.m., Dr. Nesselroth was called to Mr. Rardin's bedside and a nurse noted increased respiratory distress and difficulty arousing Mr. Rardin, and

WHEREAS, at Mr. Rardin's bedside, Dr. Nesselroth evaluated him as unresponsive, diaphoretic, and as having agonal respirations, and

WHEREAS, in violation of the standard of care, Mr. Rardin was not intubated until about 2 hours after Dr. Nesselroth's initial evaluation that indicated critical oxygen values, and

WHEREAS, at 4:05 p.m., the first of two intubation attempts resulted in an esophageal intubation, where oxygen was being delivered to Mr. Rardin's stomach rather than his lungs, and

WHEREAS, as a result of the faulty intubation, Mr. Rardin became asystolic and a code was called, which led to the administration of cardiopulmonary resuscitation (CPR) and Advance Life Support (ALS) efforts, and

WHEREAS, by the time hospital personnel were able to successfully intubate Mr. Rardin he had suffered a serious and permanent hypoxic brain injury due to the length of time, approximately 10 minutes, during which his brain did not receive sufficient oxygen, and

WHEREAS, as a result of the hospital personnel's negligent failure to monitor and timely intubate Mr. Rardin, he now suffers from a permanent brain injury and symptoms such as

visual disturbances, short-term memory loss, and severe depression, and

WHEREAS, as a result of the hospital personnel's negligent failure to monitor and timely intubate Mr. Rardin, he can no longer support his family or provide the company and affection that he otherwise would have provided to his wife, Patricia Rardin, and their two minor children, Emily and Kayla Rardin, and

WHEREAS, a tort claim was filed on behalf of Mr. Rardin, Case No. 12-034723(13), in the 17th Judicial Circuit, and

WHEREAS, the North Broward Hospital District and Mr. Rardin have agreed to settle the claim for $2.2 million, and

WHEREAS, $200,000 has been paid pursuant to the statutory limits of liability imposed under s. 768.28, Florida Statutes, and

WHEREAS, the North Broward Hospital District has agreed to fully cooperate and promote the passage of this claim bill in the amount of $2 million, the remainder of the settlement amount, NOW, THEREFORE,

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

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

Section 2. The North Broward Hospital District is authorized and directed to appropriate from funds of the district not otherwise appropriated, including insurance, and to draw a warrant in the sum of $2 million payable to Michael Rardin, as compensation for the catastrophic injuries and

damages he sustained.

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

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 80
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 569698 Ring					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
	X	Brandes						
X		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
	X	Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	2	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 24, 2015
Meeting Date

80
Bill Number (if applicable)

Topic Michael Rardin Claim Bill

Amendment Barcode (if applicable)

Name Jason Unger

Job Title

Address 301 S. Bronough Street
Street

Phone 577-9090

Tallahassee FL 32301
City *State* *Zip*

Email junger@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing North Broward Hospital District

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 168
INTRODUCER:	Senator Negron
SUBJECT:	Mobile Home Parks
DATE:	March 23, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Caldwell	Cibula	JU	**Favorable**

I. Summary:

SB 168 revises the definition of the term "mobile home park" or "park" to include rented or leased lots or spaces without regard to rental or lease term or the person liable for the payment of the ad valorem taxes on the lot or space. The bill would subject mobile home lots or spaces that are held under long term leases, i.e., 99-year leases, to the mobile home park requirements in ch. 723, F.S., which includes procedures and limitations on rent amount increases for mobile home lots or spaces.

The bill is intended to apply the amendment retroactively to the enactment of s. 723.003, F.S., on June 4, 1984. It provides that the amendment is remedial in nature and intended to clarify existing law. It is intended to abrogate a prior interpretation of the definition of the term "mobile home park" by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in which the division concluded that a subdivision consisting of lots subject to 99-year leases could not be considered a "mobile home park" because the lots or spaces are offered for rent or lease under 99-year leases with an automatic renewal clause. That arrangement, according to the division, is the equivalent of an equitable interest and not a leasehold interest. The bill also provides that the amendment is not intended to affect assessments or liability for, or exemptions from, ad valorem taxation on a lot or space upon which a mobile home is placed.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., is known as the "Florida Mobile Home Act" (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department).

The Florida Mobile Home Act was enacted in 1984.[1] The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides, in part:

> Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.[2]

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[3]

Section 723.003(6), F.S., defines the term "mobile home park" or "park" to mean:

> a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 723.003(8), F.S., defines the term "mobile home subdivision" to mean:

> a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

The terms "mobile home park," "park," and "mobile home subdivision" have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.[4]

Savanna Club Litigation Memorandum

The division issued a "Litigation Memo" dated September 18, 2013, in response to a complaint and a request that the division exercise its jurisdiction. The Litigation Memo considered whether the Savanna Club community in Port St. Lucie, Florida, was a mobile home park as defined in s. 723.003(6), F.S. It also considered whether the community was a "mobile home subdivision" as defined by s. 723.003(8), F.S. The division concluded that the community was not a "mobile home park" or a "mobile home subdivision."[5]

---

[1] Chapter 84-80, Laws of Fla. Formerly ch. 720, F.S.
[2] Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.
[3] Section 723.002(1), F.S.
[4] *See* ch. 84-80, Laws of Fla. The definitions in s. 723.003, were formerly in s. 720.103, F.S. (1984).
[5] *See* Litigation Memo re: Savanna Club, Case No. 2007065818, Sept. 18, 2013 (on file with the Judiciary Committee).

The Savanna Club is a residential mobile home subdivision consisting of approximately 2,560 mobile homes and a recreation complex. An unspecified number of the lots were sold in fee simple and the remainder were sold with 99-year leases that have an automatic renewal clause. All of the lots held in fee simple or through a 99-year lease are subject to a declaration of covenants and restrictions that requires membership in the homeowners' association. All members of the association, including members whose lots are held through a 99-year lease, have one vote in the association with no distinction in membership rights or obligations. The developer has transferred the deed for the common areas and recreational areas to the homeowners' association.

The 99-year leases provide the terms for rent increases. The adjusted monthly rental of the previous lease year is used as a base for the current lease year, plus the greater of a percentage increase based on the U.S. Consumer Price Index or three percent. When an original tenant transfers his or her interest in a lot subject to a 99-year lease, the new rent is based on the fair market value as determined by the landlord, i.e., the developer.

The division found that the subdivision did not meet the definition of "mobile home subdivision" in s. 723.003(8), F.S., because the developer had not retained an interest in any common areas in the subdivision and because the 99-year leaseholders were the equitable owners of the lots.

Leaseholders of 99-year leases are considered equitable owners and the leased property is not exempt from the payment of property taxes.[6] Leaseholders of leases of 98 or more years are also entitled to claim a homestead exemption from ad valorem property taxes.[7]

The division also found that Savanna Club could not be considered a "mobile home park" under s. 723.003(6), F.S., because the lots or spaces are not offered for rent or lease in the way that this provision contemplates. It noted that 99-year leases with an automatic renewal clause are the equivalent of an equitable interest and not a leasehold interest. The division concluded in its Litigation Memo, "Savanna Club does not fall under the regulation of the division under ch. 723[, F.S]."[8] In conclusion, the division stated:

> Ultimately, the underlying matter here is a complaint arising under the leasehold estate contract, specifically dealing with the method of rent increases used by the lessor, which is a private right of action that does not fall within the division's jurisdiction.[9]

Prospectus or Offering Circular

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The

[6] *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005).
[7] *See* s. 196.041(1), F.S.
[8] Litigation Memo, *supra*, note 5 at 8.
[9] Litigation Memo, *supra*, note 5 at 8.

purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.[10]

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner must deliver to the homeowner a prospectus that has been approved by the division.[11] The division maintains copies of each prospectus and all amendments to each prospectus that it has approved. The division must also provide copies of documents within 10 days after receipt of a written request.[12]

The park owner must furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.[13]

If a prospectus is not provided to the prospective lessee before the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the lessee receives the prospectus.[14] If the homeowner cancels the rental agreement, he or she is entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.[15]

The prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the specified circumstances.[16]

Written Notification in the Absence of a Prospectus

Section 723.013, F.S., provides that when a park owner does not give a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner must give written notification of specified information prior to the purchaser's occupancy, including zoning information, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf, and all fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

This provision only applies to mobile home parks containing at least 10 lots but no more than 25 lots. Section 723.011, F.S., requires mobile home park owners to provide a prospectus to all prospective lessees in mobile home parks containing 26 lots or more.

[10] Section 723.011(3), F.S.
[11] Section 723.011(1)(a), F.S.
[12] Section 723.011(1)(d), F.S.
[13] Section 723.011(2), F.S.
[14] Section 723.014(1), F.S.
[15] Section 723.014(2), F.S.
[16] *See* rule 61B-31.001, F.A.C.

Mobile Home Park Rent Increases

Section 723.059(4), F.S., provides that the mobile home park owner has the right to increase rents "in an amount deemed appropriate by the mobile home park owner." The park owner must give mobile home lot tenants 90-day notice of a lot rental increase.[17]

However, the park owner must disclose the increase to the purchaser prior to his or her occupancy and the increase must be imposed in a manner consistent with the initial offering circular or prospectus. The homeowners also have the right to have a meeting with the park owner at which the park owner must explain the factors that led to the increase.[18]

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.[19] A lot rental amount that exceeds market rent shall be considered unreasonable.[20] Market rent is defined as rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 723.003(6), F.S., to revise the definition of the term "mobile home park" or "park" to include rented or leased lots or spaces without regard to rental or lease term or the person liable for the payment of the ad valorem taxes on the lot or space. The bill subjects owners or operators of mobile home lots or spaces that are held under leases of 99 or more years to the requirements of ch. 723, F.S.

Section 2 amends s. 73.072, F.S., which relates to compensation for permanent improvements by mobile home owners after the eminent domain taking of real property, to incorporate the amendment to s. 723.003, F.S.

Section 3 specifies that the bill applies retroactively to the enactment of s. 723.003, F.S., on June 4, 1984. It provides that the amendment is remedial in nature and intended to clarify existing law. It provides that the amendment is intended to abrogate the division's interpretation of law provided in the litigation memorandum dated September 18, 2013. It also provides that the amendment is not intended to affect assessments or liability for, or exemptions from, ad valorem taxation on a lot or space upon which a mobile home is placed.

The effect of this bill is unclear in a circumstance in which mobile home lots are subject to the terms of a long-standing, 99-year lease, i.e., as described in the division's litigation memo regarding the Savanna Club subdivision. Specifically, it is not clear whether the amendment to s. 723.003(6), F.S., subjects lots that are under a preexisting, long-term lease agreement to the rent increase provision in ch. 723, F.S., for any past or future rent increases, particularly if there is no division-approved prospectus.

[17] Section 723.037(1), F.S.
[18] Section 723.037, F.S.
[19] Section 723.033(1), F.S.
[20] Section 723.033(5), F.S.
[21] Section 723.033(4), F.S.

Section 4 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 723.003(6), F.S., to revise the definition of the term "mobile home park" or "park" to include rented or leased lots or spaces without regard to rental or lease term or the person liable for the payment of the ad valorem taxes on the lot or space. The bill retroactively applies the requirements of ch. 723, F.S., to mobile home lots or spaces that are held under a long-term lease, i.e., 99-year leases. To the extent the retroactive or prospective application of the requirements of ch. 723, F.S., conflict with the terms and conditions of affected long-term leases, including rent increase requirements, these provisions appear to implicate constitutional concerns relating to the impairment of contract.

The retroactive application of these provisions may violate the Contract Clause,[22] the prohibition against ex post facto laws,[23] and the Due Process clauses[24] of the U.S. Constitution. The common law also provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[25] Generally, courts will refuse to apply a statute retroactively if it "impairs vested rights, creates new obligations, or imposes new penalties."[26]

The Contract Clause prohibits states from passing laws that impair contract rights. It only prevents substantial impairments of contracts.[27] The courts use a balancing test to determine whether a particular regulation violates the Contract Clause. The courts measure the severity of the contractual impairment against the importance of the state interest advanced by the regulation. Also, courts look at whether the regulation is a

[22] Article I, s. 10, U.S. Constitution.
[23] Article I, s. 9, U.S. Constitution.
[24] Fifth and Fourteenth Amendments, U.S. Constitution.
[25] *Bitterman v. Bitterman*, 714 So. 2d 356 (Fla. 1998).
[26] *Essex Insurance, Co. v. Integrated Drainage Solutions, Inc.*, 124 So. 3d 947 at 951 (Fla. 2d DCA 2013), *quoting State Farm Mut. Auto. Ins., Co. v. Laforet*, 658 So. 2d 55 at 61 (Fla. 1995).
[27] *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1923).

reasonable and narrowly tailored means of promoting the state's interest.[28] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[29] However, courts scrutinize the impairment of public contracts in a stricter fashion, exhibiting less deference to findings of the Legislature, because the Legislature may stand to gain from the outcome.[30]

Although the retroactive application of condominium laws to preexisting lease agreements between condominium associations and third parties may be constitutionally applied,[31] it is not clear whether mobile home park laws may be retroactively applied to pre-existing, long-term lease agreements between a homeowner lessee and the developer lessor.

In *Pomponio v. Claridge of Pompano Condominium, Inc*.,[32] the court stated that some degree of flexibility has developed over the last century in interpreting the Contract Clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated as an unconstitutional impairment of contract a statute that provided for the deposit of rent into a court registry during litigation involving obligations under a contract lease. In *Pomponio*, the court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized, economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[33]

In *United States Fidelity & Guaranty Co.*,*[34]* the U.S. Supreme Court adopted the method used in *Pomponio.* The court stated that the method required a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power. The court outlined the main factors to be considered in applying this balancing test.

[28] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[29] *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945).
[30] *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). *See generally*, Leo Clark, *The Contract Clause: A Basis for Limited Judicial Review of State Economic Regulation*, 39 U. MIAMI L. REV. 183 (1985).
[31] *Century Village, Inc. v. Wellington*, 361 So.2d 128 (Fla. 1978).
[32] *Pomponio v. Claridge of Pompano Condominium, Inc*., 378 So. 2d 774, 776 (Fla. 1979).
[33] *Id.* at 779.
[34] *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

- The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."[35] The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the contract was entered, then it is understood that it would be subject to further regulation upon the same topic.[36]
- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.[37]
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties is appropriate to the public purpose justifying the legislation.[38]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners with a long-term lease on a lot or space in a community with 10 or more leased mobile home lots or spaces may be entitled to use the rent increase procedures in ch. 723, F.S., which limits lot increases to market rent. If the market rent is less than the percentage increase stated in the long-term lease agreement, the homeowner may incur a savings. However, if the market rate is greater than the percentage increase stated in the long-term lease agreement, the homeowner's rent cost may be greater.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[35] *Id.* at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).
[36] *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).
[37] *Id.* at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).
[38] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 723.003 and 73.072.

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Negron

32-00229A-15 2015168__

A bill to be entitled

An act relating to mobile home parks; amending s. 723.003, F.S.; revising the definition of the term "mobile home park" to clarify that it includes certain lots or spaces regardless of the rental or lease term's length or person liable for ad valorem taxes; reenacting and amending s. 73.072, F.S., to incorporate the amendment made to s. 723.003, F.S., in a reference thereto; providing that the act is remedial and intended to clarify existing law and to abrogate an interpretation of such law by the Department of Business and Professional Regulation; providing for retroactive application; providing that the act does not affect specified ad valorem taxation issues; providing an effective date.

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

Section 1. Subsection (6) of section 723.003, Florida Statutes, is amended to read:

723.003 Definitions.—As used in this chapter, the following words and terms have the following meanings unless clearly indicated otherwise:

(6) The term "mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes, regardless of the length of the rental or lease term or the person liable for the payment of ad valorem taxes on the lot or space, and in which the primary use of the park is residential.

32-00229A-15 2015168__

Section 2. For the purpose of incorporating the amendment made by this act to section 723.003, Florida Statutes, in a reference thereto, subsection (1) of section 73.072, Florida Statutes, is reenacted and amended to read:

73.072 Mobile home parks; compensation for permanent improvements by mobile home owners.—

(1) If ~~When~~ all or a portion of a mobile home park as defined in s. 723.003~~(6)~~ is appropriated under this chapter, the condemning authority shall separately determine the compensation for any permanent improvements made to each site. This compensation shall be awarded to the mobile home owner leasing the site if:

(a) The effect of the taking includes a requirement that the mobile home owner remove or relocate his or her mobile home from the site;

(b) The mobile home owner currently leasing the site has paid for the permanent improvements to the site; and

(c) The value of the permanent improvements on the site exceeds $1,000 as of the date of taking.

Section 3. The amendment made by this act to s. 723.003, Florida Statutes, is remedial in nature and is intended to clarify existing law and to abrogate the interpretation of law set forth by the Department of Business and Professional Regulation in a litigation memo dated September 18, 2013, which misclassified certain long-term leases of mobile home lots and spaces as equitable ownership interests for purposes of the statutory definition of "mobile home park." The amendment applies retroactively to the enactment of s. 723.003, Florida Statutes, on June 4, 1984, and is not intended to affect

assessments or liability for, or exemptions from, ad valorem taxation on a lot or space upon which a mobile home is placed.

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 168
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Motion to vote "YEA" after Roll Call Simpson					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
X		Joyner						
X		Simmons						
VA		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
10	0	**TOTALS**	FAV	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 330
INTRODUCER:	Criminal Justice Committee and Senator Dean
SUBJECT:	Missing Persons with Special Needs
DATE:	March 16, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.			CF	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 330 expands the definition of the term "missing endangered person" in ch. 937, F.S., which establishes requirements for state and local law enforcement agencies in responding to and investigating reports of missing endangered persons. Specifically, the definition is expanded to include "a missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition."

The bill also:

- Authorizes any person to submit a missing endangered person report concerning a missing person with special needs to the Missing Endangered Persons Information Clearinghouse (MEPIC) if certain conditions are met; and
- Grants civil immunity to specified persons and entities responding to a law enforcement agency's request to release information relating to a missing person with special needs.

II. Present Situation:

Missing Endangered Person

Chapter 937, F.S., establishes a variety of requirements relating to how state and local law enforcement agencies respond to and investigate reports of missing endangered persons. A "missing endangered person" is:

- A missing child;[1]
- A missing adult[2] younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan of the Florida Department of Law Enforcement (FDLE).[3]

Missing Endangered Person Information Clearinghouse

The Missing Endangered Person Information Clearinghouse (MEPIC) within the FDLE serves as a central repository of information for missing endangered persons. Such information shall be collected and disseminated to assist in the location of missing endangered persons.[4]

The MEPIC must establish a system of intrastate communication of information relating to missing endangered persons; provide a centralized file for the exchange of this information; and collect, process, maintain, and disseminate this information. Every state, county, or municipal law enforcement agency must submit to the MEPIC information concerning missing endangered persons.

Any person having knowledge may submit a missing endangered person report to the MEPIC concerning a child or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, as long as he or she has reported the child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became

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[1] Section 937.0201(3), F.S., defines the term "missing child" as a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

[2] Section 937.0201(2), F.S., defines the term "missing adult" as a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

[3] Section 937.021(4), F.S. According to the FDLE, "[t]he Florida Silver Alert Plan outlines two levels of Silver Alert activation: Local and State. Local and State Silver Alerts engage the public in the search for the missing person and provide a standardized and coordinated community response." "Silver Alert Activation," Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx (last visited on February 17, 2015). "… [E]ach agency may have their own criteria for activation of a Local Silver Alert," but "the Florida Silver Alert Support Committee recommends that agencies use" the following criteria "as a guideline when issuing a Local Silver Alert": "[t]he person is 60 years and older"; "[t]he person is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a Local Silver Alert may be the only possible way to rescue the missing person"; "[t]he person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia) that has been verified by law enforcement." *Id.* Further, there are special criteria that must be met for issuance of a State Silver Alert for persons with dementia who go missing in a vehicle with an identified tag. *Id.*

[4] Section 937.022, F.S. All additional information in this section of the analysis regarding the MEPIC is from s. 937.022, F.S., unless otherwise noted.

missing, and the law enforcement agency has entered the report into the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases. This report is included in the MEPIC database.

Only the law enforcement agency having jurisdiction over the case may:

- Submit a missing endangered person report to the MEPIC involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; and
- Make a request to the MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The person responsible for notifying the MEPIC or a law enforcement agency about a missing endangered person must immediately notify the MEPIC or the agency of any child or adult whose location has been determined.

The law enforcement agency having jurisdiction over a case involving a missing endangered person must, upon locating the child or adult, immediately purge information about the case from the FCIC or the NCIC databases and notify the MEPIC.

The FDLE notes: "While there are no provisions that specifically define "missing person with special needs" or identify a particular protocol regarding such individuals under any section of Chapter 937 Missing Person Investigations, the Missing Endangered Persons Information Clearinghouse (MEPIC) currently includes within its processes of reporting missing endangered persons any missing individual with any special needs (i.e. any persons with autism spectrum disorder, developmental disability, Alzheimer's disease or other form of dementia, or any other such disease or condition), or any person missing and suspected by a law enforcement agency of being endangered due to any circumstance or status of being. (see F.S. 937.0201(4)(c))."[5]

Civil Immunity Relating to Missing Persons Reporting

Law enforcement agencies that receive a report of a missing child, missing adult, or missing endangered person must submit information about the report to other local law enforcement agencies and to the FDLE.[6] In an effort to locate the missing person, the law enforcement agency that originally received the report may request other specified entities (e.g., the FDLE, local law enforcement entities, radio and television networks, etc.) to broadcast information about the missing person to the public.[7]

Currently, specified persons or entities responding to such requests are granted immunity from civil liability if the broadcasted information relates to a missing adult, missing child, or a missing

[5] Analysis of SB 330 (January 28, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as "FDLE Analysis of SB 330."
[6] Sections 937.021 and 937.022, F.S.
[7] The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information. Section 937.021(5)(e), F.S.

adult who meets the criteria for activation of the Silver Alert Plan.[8] Current law does not specifically provide such civil immunity from damages to persons or entities responding to a request to broadcast information relating to a missing person with special needs (as defined in the bill).

III. Effect of Proposed Changes:

The bill expands the definition of the term "missing endangered" person to include a "missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition." Accordingly, information submitted about missing persons will include information about missing persons with special needs, which will be collected, processed, maintained, and disseminated by the MEPIC.

Any person is authorized to submit a missing endangered person report concerning a missing person with special needs to the MEPIC. Before doing so, the person must report the person with special needs missing to the appropriate law enforcement agency in the county where the person with special needs went missing and the agency must enter the missing person with special needs into the FCIC and NCIC databases.

The bill amends s. 937.021(5), F.S., to grant immunity from civil liability to certain entities responding to a request to release information concerning a missing person with special needs, as defined in statute. The bill mirrors existing immunity provisions contained in the statute and:

- Affords those entities a legal presumption that they acted in good faith in releasing the missing person with special needs information;
- Specifies that the presumption is not overcome if a technical or clerical error is made by the entity, or if the information that was broadcast is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect; and
- Specifies that the entity is not obligated to release information regarding a missing person with special needs.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[8] These entities are afforded a legal presumption that they acted in good faith in broadcasting the missing person information. This presumption is not overcome if a technical or clerical error is made by any entity acting at the request of the local law enforcement agency, or if the missing child, missing adult, or Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect. Section 937.021(5), F.S.

C. Trust Funds Restrictions:

None

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE's analysis of SB 330, "Additional resources need to be acquired to complete the request. This request would require the hiring of one new programmer." Additionally, "[i]mplementation of these changes would require an estimated 2,507 hours to complete at $215,460." The FDLE requests that the effective date of the bill be changed to August 6, 2016, to implement these changes.[9]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDLE states "[e]xisting definitions in 937.0201(4)(a), (b), (c), and (d), capture all missing persons, children and adults, that may be endangered. Additionally, the Florida Crime Information Center defines missing categories of 'Disabled' or 'Endangered' to specifically identify missing disabled individuals."[10] The department also "currently issues Missing Child Alerts for all missing children with an autism spectrum disorder." The FDLE further comments that "[s]pecifying individual types of disabilities and circumstances that may limit an individual's capacity for self-care, ability to make sound choices, seeking help when needed, or protect themselves from harm in statute may result in unintended consequences of restricting certain missing person investigative services from others who do not meet the proposed, specified criteria, but who are nonetheless missing and endangered."

[9] Florida Department of Law Enforcement, *2015 FDLE Legislative Bill Analysis for SB 330* (Feb. 28, 2015)(on file with the Senate Committee on Judiciary).
[10] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 937.0201, 937.021, and 937.022.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 2, 2015:

- Removes provisions relating to electronic monitoring of certain persons with special needs.
- Removes a provision requiring the Criminal Justice Standards and Training Commission to incorporate training of law enforcement officers in the retrieval of missing persons with special needs.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Dean

591-01821-15 2015330c1

A bill to be entitled

An act relating to missing persons with special needs; amending s. 937.0201, F.S.; revising the definition of the term "missing endangered person" to include certain persons with special needs; amending s. 937.021, F.S.; providing immunity from civil liability for certain persons who comply with a request to release information concerning missing persons with special needs to appropriate agencies; providing a presumption that a person recording, reporting, transmitting, displaying, or releasing such information acted in good faith; amending s. 937.022, F.S.; specifying who may submit a report concerning a missing person with special needs; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (4) of section 937.0201, Florida Statutes, are amended, and paragraph (e) is added to that subsection, to read:

937.0201 Definitions.—As used in this chapter, the term:

(4) "Missing endangered person" means:

(c) A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; ~~or~~

(d) A missing adult who meets the criteria for activation of the Silver Alert Plan of the Department of Law Enforcement; or

591-01821-15 2015330c1

(e) A missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition.

Section 2. Present paragraphs (d) and (e) of subsection (5) of section 937.021, Florida Statutes, are amended, and a new paragraph (d) is added to that subsection, to read:

937.021 Missing child and missing adult reports.—

(5)

(d) Upon receiving a request to record, report, transmit, display, or release information about a missing person with special needs, as described in s. 937.0201(4)(e), from the law enforcement agency having jurisdiction over the missing person, the Department of Law Enforcement, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing information pertaining to the missing person with special needs.

(e) ~~(d)~~ The presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction~~,~~ or if the information regarding an Amber Alert, Missing Child Alert, Silver Alert, missing child ~~information~~, missing adult ~~information~~, or missing

person with special needs ~~Silver Alert information~~ is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.

(f) ~~(e)~~ Neither this subsection nor any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the information regarding an Amber Alert, Missing Child Alert, Silver Alert, missing child ~~information~~, missing adult ~~information~~, or missing person with special needs ~~Silver Alert information~~ received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.

Section 3. Paragraph (b) of subsection (3) of section 937.022, Florida Statutes, is amended to read:

937.022 Missing Endangered Persons Information Clearinghouse.—

(3) The clearinghouse shall:

(b) Provide a centralized file for the exchange of information on missing endangered persons.

1. Every state, county, or municipal law enforcement agency shall submit to the clearinghouse information concerning missing endangered persons.

2. Any person having knowledge may submit a missing endangered person report to the clearinghouse concerning a child, an ~~or~~ adult younger than 26 years of age, or a person with special needs, as described in s. 937.0201(4)(e), whose whereabouts are ~~is~~ unknown, regardless of the circumstances,

subsequent to reporting such child, ~~or~~ adult, or person with special needs missing to the appropriate law enforcement agency within the county in which the child, ~~or~~ adult, or person with special needs went ~~became~~ missing, and subsequent to entry by the law enforcement agency of the child or person into the Florida Crime Information Center and the National Crime Information Center databases. The missing endangered person report shall be included in the clearinghouse database.

3. Only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report to the clearinghouse involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

4. Only the law enforcement agency having jurisdiction over the case may make a request to the clearinghouse for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

Section 4. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 330
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Motion to vote "YEA" after Roll Call Simpson					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
X		Joyner						
X		Simmons						
VA		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
10	0	**TOTALS**	FAV	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District

March 3, 2015

The Honorable Miguel Diaz de la Portilla
406 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla,

I respectfully request you place Senate Bill 330, relating to Missing Persons with Special Needs, on your Judiciary Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Tom Cibula, Staff Director

REPLY TO:
❒ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
❒ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
❒ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 330 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-24-15
Meeting Date

SB 330
Bill Number (if applicable)

Topic SB 330 Missing Persons w/ Special needs

Amendment Barcode (if applicable)

Name Margaret J. Hooper

Job Title Pub Pol Policy Coordinator

Address 124 Marriott Dr. #203
Street

Phone 850-921-7263

Tallahassee, FL 32301
City *State* *Zip*

Email MargaretD@FDDC.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

330
Bill Number (if applicable)

Topic Missing Persons

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave.
Street

Phone 850 577-5163

Tally FL 32301
City *State* *Zip*

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

SB 0330
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Missing Persons With Special Needs

Name Jay Toth

Job Title Sergeant - Volusia County Sheriff's Office

Address 123 W. Indiana Ave
Street

DeLand FL
City *State* *Zip*

Phone 386 736-5961

Email JToth@VCSO.US

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

SB 330
Bill Number (if applicable)

Topic SB 330 - REGARDING MISSING PERSONS W/ SPECIAL NEEDS

Amendment Barcode (if applicable)

Name GARY STEIN

Job Title DIR. OF PUBLIC POLICY

Address 3333 W. PENSACOLA ST.
Street

Phone (850) 766-3733

TALL. FL
City *State* *Zip*

Email GSTEIN@FAAST.ORG

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing FAAST, INC.

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1080
INTRODUCER:	Committee on Judiciary and Senator Dean
SUBJECT:	Clerks of the Circuit Court
DATE:	March 26, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Cibula	JU	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1080 makes changes to the process for remitting funds received from court fees and payment of certain court related costs by the clerks of the circuit court. More specifically, the bill:

- Redirects revenue from the filing fee for pleadings in certain civil actions in circuit court from the General Revenue Fund to the fine and forfeiture fund.
- Expands the list of duties of the Florida Clerks of Court Operations Corporation.
- Revises the list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines.
- Redirects the transfer of specified excess funds from the General Revenue Fund to the Clerks of the Court Trust Fund if certain future-year revenue deficits are estimated.
- Restricts excess fund transfers to costs submitted for the previous county fiscal year.
- Authorizes the clerk to seek reimbursement for jury-related costs from the state.
- Requires each clerk of court to forward quarterly estimates on jury-related costs to the Florida Clerks of Court Operations Corporation and revises the procedures governing the payment of due-process costs.
- Authorizes the Florida Clerks of Court Operations Corporation to apportion appropriations for jury-related costs if certain conditions are met.
- Removes the criteria that the payment of jurors and the payment of expenses for meals and lodging for jurors are court related functions that the clerk of the court must fund from filing fees, service charges, court costs, and fines as part of the maximum annual budget.

- Authorizes the clerk of court to request additional funds from the Florida Clerks of Court Operations to pay due-process costs in the event of a deficiency.
- Requires a clerk of court to meet the triplicate payroll requirements for the payment of jurors.
- Requires the clerk to forward juror payrolls to the Florida Clerks of Court Operations Corporation and for the corporation to audit the payrolls.
- Redirects a portion of the revenue from the civil penalty for certain traffic infractions from the General Revenue Fund to the fine and forfeiture fund.
- Revises the distribution and payment of certain civil penalties received by a county court.
- Redirects revenue from fines when adjudication is withheld from the General Revenue Fund to the fine and forfeiture fund.

In addition, the bill specifies the authorized budget for clerks of the circuit court for the 2015-2016 county fiscal year. The bill becomes effective October 1, 2015.

II. Present Situation:

Court-Related Functions

Pursuant to authority granted in Article V, s. 14(b) of the Florida Constitution, the list of court-related functions clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of 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 meals 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.[1]

The list of functions clerks may not fund from filing fees, service charges, court costs, and fines includes:

- 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

[1] Section 28.35(3)(a), F.S.

- Functions identified as local requirements in law or local optional programs.[2]

Section 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions, additional service charges, and when recording of certain are required.

Pursuant to Article V, s. 14(b) of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions are funded from a portion of the revenues derived from statutory fines, fees, service charges, and costs collected by the clerks of the court. Consistent with the constitutional mandate, a portion of all fines, fees, service charges, and costs collected for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must be remitted to the department for deposit into the Clerks of the Court Trust Fund. The collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court must remit the revenues collected during the previous month due to the state on or before the 10th day of each month.[3]

By January 25 of each year, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation (corporation), must remit to the Department of Revenue (department) for deposit in the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund,[4] which exceed the amount needed to meet their authorized budget amounts established under s. 28.35, F.S. The department must transfer from the Clerks of Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court. However, if the official estimate for funds accruing to the clerks of court made by the Revenue Estimating Conference for the current fiscal year or the next fiscal year is less than the cumulative amount of authorized budgets for the clerks of court for the current fiscal year, the department must retain in the Clerks of the Court Trust Fund the estimated amount needed to fully fund the clerks of court for the current and next fiscal year based upon the current established budget.[5]

The department must collect any funds that the corporation determines upon investigation were due but not remitted to the department. The corporation must notify the clerk of the court and the department of the amount due to the department. The clerk of court must remit the amount due no later than the 10th day of the month following the month in which notice is provided by the corporation to the clerk of court.[6]

[2] Section 28.35(3)(b), F.S.
[3] Section 28.37(1) and (2), F.S.
[4] *See*, s. 28.36(3), F.S.
[5] Section 28.37(3), F.S.
[6] Section 28.37(4), F.S.

Florida Clerks of Court Operations Corporation

To provide accountability for the revenues collected by the clerks of the court, the Legislature created the corporation.[7] The corporation is considered a political subdivision of the state and is exempt from corporate income tax.[8] All clerks of the circuit court are members of the corporation and hold their position and authority in an ex officio capacity.[9] The corporation's duties include:

- Adopting a plan of operation.
- Conducting the election of an executive council.
- Recommending to the Legislature changes in the amounts of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.
- Developing and certifying a uniform system of performance measures and applicable performance standards.
- Identifying deficiencies and corrective action plans when clerks fail to meet 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. As part of this process, the corporation must:
    - Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions. The corporation must apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.
    - Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions.
    - Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court.
    - Identify those proposed budgets containing funding for items not included on the standard list of court-related functions.
    - Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.
    - Use revenue estimates based on the official estimate for funds accruing to the clerks of the court made by the Revenue Estimating Conference.
    - Identify and report pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.
    - Provide detailed explanation for increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.
    - Identify and report the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.[10]
- Developing and conducting clerk education programs.

[7] Section 28.35, F.S.
[8] Section 28.35(1)(c), F.S. The corporation is funded pursuant to contract with the Chief Financial Officer. Funds are provided to the Chief Financial Officer for this purpose as appropriated by general law. Section 28.35(5), F.S.
[9] Section 28.35(1)(a), F.S.
[10] Section 28.35(2)(f)1.-9., F.S.

- Submitting to the Legislative Budget Commission on or before August 1 of each year its proposed budget and the required information as well as the proposed budgets for each clerk of the court. Before October 1 of each year, the Legislative Budget Commission must consider the submitted budgets and approve, disapprove, or amend and approve 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 Legislative Budget Commission fails to approve or amend and approve the corporation's budget or the clerks' combined budgets before October 1, the clerk must continue to perform the court-related functions based upon the clerk's budget for the previous county fiscal year.[11]

Payment for Juries and Due Process Costs

The Justice Administrative Commission (JAC or commission) is created under s. 43.16, F.S. Its members are appointed and consist of two state attorneys and two public defenders.[12] 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 criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.[13]

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.[14] The chapter provides for the compensation and reimbursement of jurors from the clerk of the circuit court,[15] the payment for meals and lodging of jurors when ordered by the court,[16] and the payment of due process costs which includes payments for witnesses used in specified proceedings.[17]

Chapter 40, F.S., 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.[18]

Each clerk of the circuit court is required to forward to the JAC a quarterly estimate of funds necessary to pay for ordinary witnesses, including witnesses in civil traffic cases and witnesses for the state attorney, the public defender, criminal conflict and civil regional counsel, private

[11] Section 28.35,(2)(a)-(h)
[12] Section 43.16(2), F.S.
[13] Section 43.16(5)(b), F.S.
[14] Section 40.001, F.S.
[15] Section 40.24, F.S.
[16] Section 40.26, F.S.
[17] Section 40.29, F.S.
[18] Section 40.24, F.S.

court-appointed counsel, and persons determined to be indigent for costs. The estimates must be by county and on behalf of the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel. The commission must advance funds to each clerk to pay for the ordinary witnesses from state funds specifically appropriated for such payment. The funds must be advanced each quarter of the state fiscal year and be based upon the estimates. When the JAC receives the estimate, it must endorse the amount deemed necessary for payment by the clerk of the court during the quarterly fiscal period and must submit a request for payment to the Chief Financial Officer (CFO). The clerk of the court must pay all invoices approved and submitted by each state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel upon receipt of the funds from the CFO. The JAC must pay all due process service related invoices after review for compliance with applicable rates and requirements,[19] that were submitted by the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel.[20] 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,[21] the state attorney, public defender, or 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.[22]

If the JAC has reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of witnesses during the remaining part of the state fiscal year, the commission may apportion the money in the treasury for that purpose among the several counties, basing the apportionment upon the amount expended for the payment of witnesses in each county during the prior fiscal year. In such case, each county is paid by warrant, issued by the CFO, only the amount so apportioned to each county. If the amount apportioned is insufficient to pay in full all the witnesses during a quarterly fiscal period, the clerk of the court must apportion the money received pro rata among the witnesses entitled to pay and give to each witness a certificate of the amount of compensation still due. The commission must hold the certificate as it holds other demands against the state.[23]

All moneys drawn from the treasury by the clerk of the court must be disbursed by the clerk of the court as far as needed in payment of witnesses, except for expert witnesses paid under a contract or other professional services agreement,[24] for the legal compensation for service during the quarterly fiscal period for which the moneys were drawn and for no other purposes. The payment of jurors and the payment of expenses for meals and lodging for jurors are court-related functions that the clerk of the court must fund from filing fees, service charges, court costs, and fines as part of the maximum annual budget under ss. 28.35 and 28.36, F.S.[25]

[19] *See*, ss. 29.005, 29.006, and 29.007, F.S.
[20] Section 40.29, F.S.
[21] *See*, s. 40.29(3), F.S.
[22] Section 40.33, F.S.
[23] Section 40.31, F.S.
[24] *See*, ss. 29.004, 29.005, 29.006, and 29.007, F.S.
[25] Section 40.32(1) and (2), F.S.

All moneys drawn from the treasury by the clerk of the court must be disbursed by the clerk of the court as far as needed in payment of witnesses, except for expert witnesses paid under a contract or other professional services agreement,[26] for the legal compensation for service during the quarterly fiscal period for which the moneys were drawn and for no other purposes.[27] The clerk of the court must pay jurors and witnesses in cash, by check, or by warrant within 20 days after completion of jury service or completion of service as a witness. If the clerk of the court pays a juror or witness by cash, the juror or witness must sign the payroll in the presence of the clerk, a deputy clerk, or some other person designated by the clerk. If the clerk pays a juror or witness by warrant, he or she must endorse on the payroll opposite the juror's or witness's name the words "paid by warrant," giving the number and date of the warrant.[28] Clerks of the court are required to make out a payroll in triplicate for the payment of witnesses. The payroll is required to contain the name of the witness, the number of days for which the witnesses are entitled to be paid, the number of miles traveled by each, and the total compensation each witness is entitled to receive. Compensation paid a witness must be attested as provided in s. 40.32, F.S. The payroll must be approved by the signature of the clerk, or his or her deputy, except for the payroll as to witnesses appearing before the state attorney, which payroll must be approved by the signature of the state attorney or an assistant state attorney.[29]

Fine and Forfeiture Fund

The clerk of the circuit court in each county of this state is required to establish a separate fund known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions. The fund consists of the following:

- Fines and penalties pursuant to ss. 28.2402(2), 34.045(2), 316.193, 327.35, 327.72, 379.2203(1), and 775.083(1), F.S.
- That portion of civil penalties directed to this fund pursuant to s. 318.21, F.S.
- Court costs pursuant to ss. 28.2402(1)(b), 34.045(1)(b), 318.14(10)(b), 318.18(11)(a), 327.73(9)(a) and (11)(a), and 938.05(3), F.S.
- Proceeds from forfeited bail bonds, unclaimed bonds, unclaimed moneys, or recognizances pursuant to ss. 321.05(4)(a), 379.2203(1), and 903.26(3)(a), F.S.
- Fines and forfeitures pursuant to s. 34.191, F.S.
- Filing fees received pursuant to ss. 28.241 and 34.041, F.S., unless the disposition of such fees is otherwise required by law.
- All other revenues received by the clerk as revenue authorized by law to be retained by the clerk.

Notwithstanding the foregoing, all fines and forfeitures arising from operation of s. 318.1215, F.S., must be disbursed in accordance with that section.

III. Effect of Proposed Changes:

Section 1 amends s. 28.241, F.S., to require the clerk to deposit fees from certain parties who file a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint into the fine and forfeiture fund

[26] Sections. 29.004, 29.005, 29.006, and 29.007, F.S.
[27] Section 40.32(1), F.S.
[28] Section 40.32(3), F.S.
[29] Section 40.34, F.S.

established pursuant to s. 142.01, F.S., instead of remitting the fee to the department for deposit into the General Revenue Fund.

Section 2 amends s. 28.35, F.S., to add to the list of duties of the Florida Clerks of Court Operations Corporation the payment of jury-related invoices submitted by the clerks of the court. Payment of jurors and witnesses, payment of expenses for meals or lodging provided to jurors, and processing of jurors, are removed from the list of court-related functions that clerks may fund from filing fees, services, charges, costs, and fines.

Section 3 amends s. 28.37, F.S., to require the clerks of court, each year, no later than January 25, for the previous county fiscal year, in consultation with the Florida Clerks of Court Operations Corporation, to remit to the Department of Revenue for deposit into the Clerks of the Court Trust fund (instead of the General Revenue Fund) the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of the court. In addition, the clerks of the court must remit any funds received by the clerks of the court from the Clerks of the Court Trust fund under s. 28.36(3), F.S., which exceed the amount needed under s. 28.35, F.S. The department is required to transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges and costs submitted by the clerks of court for the previous fiscal year. Current law requires only the portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions. Collections received for the operation of Title IV-D child support collections and disbursement program are not included in the remittance to the department for deposit into the Clerks of the Court Trust Fund. Changes by the bill do not appear to include this exclusion. The bill provides that if the official estimate for funds accruing to the clerks of court made by the Revenue Estimating Conference for the current fiscal year or the next 2 fiscal years, instead of the next year, is less than the cumulative amount of authorized budgets for the clerks of court for the current fiscal year, the department is required to retain the estimated amount needed to fully fund the clerks of court for the current and next 2 fiscal years based upon the current budget.

Section 4 amends s. 40.24, F.S., to provide that clerks of the circuit court are entitled to reimbursement from the state for jury-related costs, including juror compensation and personnel and operational costs of the clerk directly related to jury management.

Section 5 amends s. 40.29, F.S., relating to payment of due process costs to add a requirement whereby clerks of the court submit jury-related costs to the Florida Clerks of Court Operations Corporation for endorsement of the amount deemed necessary for payment which follows the same process used by the Justice Administrative Commission. The clerk of the circuit court is added to the list of entities that the Florida Clerks of Court Operations Corporation must pay upon the submission of invoices related to due process services and juries that have been reviewed and comply with applicable rates and requirements.

Section 6 amends s. 40.31, F.S., to create separate apportionment of appropriations processes for the Justice Administrative Commission and the Florida Clerks of Court Operations Corporation. A new subsection is added to authorize the corporation to apportion money in the treasury to meet remaining jury-related costs during the part of the state fiscal year when the appropriated amount is insufficient to meet those costs. In that case, the CFO must pay each county by

warrant only the amount so apportioned to each county. If the apportioned amount is insufficient to pay in full all jury-related costs during a quarterly fiscal period, the clerk shall pay jurors entitled before reimbursing any other jury-related costs. If the amount is insufficient to pay all jurors during a quarterly fiscal period, the clerk of the court must apportion the money received pro rata among the jurors and give each a certificate of the amount of compensation still due when the amount apportioned is insufficient to pay for those costs in full. The bill requires the certificate to be held by the corporation as other demands against the state.

Section 7 amends s. 40.32, F.S., to conform this section to the changes in the bill relating to payment of jurors. Clerks of the court may use moneys drawn from the treasury under the provisions of ch. 40, F.S., for payment of jurors. The requirement that clerks of the court pay jurors and expenses for meals and lodging from filing fees, service charges, court costs, and fines is deleted.

Section 8 amends s. 40.33, F.S., to include clerks of the circuit court in the list of entities that may make a further request of the Florida Clerks of Court Operations Corporation for funds necessary to make full payment of certain items if there is a deficiency in the funds required during a quarterly fiscal period.

Section 9 amends s. 40.34, F.S., to allow the clerk of the court to also make payments to jurors. When making these payments, the clerk of the court must follow the requirements prescribed in the section. Clerks of the courts must forward copies of juror compensation payrolls to the Florida Clerks of Court Operations Corporation for audit within 2 weeks after the last day of the quarterly fiscal period.

Section 10 amends s. 318.18, F.S., relating to penalties required for certain noncriminal and criminal dispositions to revise the depository into which certain additional civil penalty payments and $30 of a fine when a driver has failed to stop at a traffic signal and when enforced by a law enforcement officer must be made to the fine and forfeiture fund established pursuant to s. 142.01, F.S., from the General Revenue fund. In addition, the provision declaring that of the $16 civil penalty, $4 is not revenue for purposes of s. 28.26, F.S., and may not be used in establishing the budget of the clerk of court is removed.

Section 11 amends s. 318.21, F.S., which provides for the disposition of civil penalties by county courts by revising the percentages of certain traffic infraction remittances. After $2 of each civil penalty is remitted to the department for the Child Welfare Training and the Juvenile Justice Training Trust Funds, of the remainder 20.6 percent must be remitted to the Department of Revenue for deposition into the General Revenue Fund with the exception that the first $300,000 be deposited into the Grants and Donations Trust Fund for specified purposes. The bill reduces the 20.6 percent to 0.6 percent. In addition, the 0.5 percent to be paid to the clerk of the court for administrative costs is increased to 20.5 percent and must be deposited into the fine and forfeiture fund established pursuant to s. 142.01, F.S.

Section 12 amends s. 775.083, F.S., that requires a person who has been convicted of an offense other than a capital felony to pay a fine in addition to any punishment, to delete the requirement that the clerk shall remit fines imposed when adjudication is withheld to the department for deposit into the General Revenue Fund.

Section 13 provides that for the 2015-2016 county fiscal year beginning October 1, 2015, and ending September 30, 2016, the total approved budgets for the clerks of the circuit court shall be $460 million of their total collected revenues for the 2015-2016 county fiscal year. The Florida Clerks of Court Operations Corporation shall determine budget allocations for individual clerks of the circuit court for that fiscal year.

Section 14 provides that the act takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides that the total approved budgets for the clerks of the circuit court will be $460 million of their total collected revenues for the 2015-2016 county fiscal year for the 2015-2016 county fiscal year beginning October 1, 2015, and ending September 30, 2016.

Clerks of the court are relieved of certain juror related costs that will be paid by the state under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.241, 28.35, 28.37, 40.24, 40.29, 40.31, 40.32, 40.33, 40.34, 318.18, 318.21, and 775.083.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 24, 2015:
The committee substitute revises the changes relating to payment of jury related expenses and due process costs. The amendment:

- Includes in the duties of the Florida Clerks of Court Operations Corporation paying jury-related invoices submitted by the clerks of the circuit court.
- Provides that the clerks of the circuit court are entitled to reimbursement from the state for jury-related costs and removes the requirement that the state rather than the clerks pay those costs.
- Separates submission for payments for due process costs to be forwarded to the Justice Administrative Commission and for jury -related costs be forwarded to the Florida Clerk of Courts Operations Corporation.
- Separates apportionment of appropriations to the Justice Administrative Commission for expenses of witnesses and to the Florida Clerk of Courts Operations Corporation for jury-related costs. Provides a process when apportionment is insufficient to pay costs in full.
- Adds the Florida Clerk of Courts Operations Corporation as an entity to which the clerks may request full payments in the case of a deficiency.
- Creates separate reporting requirements to the Justice Administrative Commission for witnesses compensation and to the Florida Clerk of Courts Operations Corporation for jury compensation when reporting payroll.
- Removes the retroactive application of certain sections of chapter 40, F.S., relating to jurors, and payment of jurors and due process costs.
- Removes the requirement that the clerk of the court submit estimates of jury related costs to implement amendments made to certain sections of chapter 40, F.S.
- Changes the effective date to October 1, 2015, from upon becoming a law.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
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The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 89 - 289
and insert:
Section 2. Paragraph (i) is added to subsection (2) of section 28.35, Florida Statutes, and paragraph (a) of subsection (3) of that section is amended, to read:
28.35 Florida Clerks of Court Operations Corporation.—
(2) The duties of the corporation shall include the following:
(i) Paying jury-related invoices submitted by the clerks of

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the circuit court pursuant to s. 40.29.

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of 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 meals or lodging provided to jurors;~~ data collection and reporting; ~~processing of jurors;~~ determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 3. Subsections (2) and (3) of section 28.37, Florida Statutes, are amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(2) The ~~Beginning November 1, 2013, that~~ portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions shall be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. Such collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on

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or before the 10th day of each month.

(3) Each year, no later than January 25, ~~2015, and each January 25 thereafter~~ for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit into the Clerks of the Court Trust ~~in the General Revenue~~ Fund the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(3), which exceed the amount needed to meet their authorized budget amounts established under s. 28.35. The Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court for the previous county fiscal year pursuant to this section ~~subsection (2)~~. However, if the official estimate for funds accruing to the clerks of court made by the Revenue Estimating Conference for the current fiscal year or the next 2 fiscal years ~~year~~ is less than the cumulative amount of authorized budgets for the clerks of court for the current fiscal year, the Department of Revenue shall retain in the Clerks of the Court Trust Fund the estimated amount needed to fully fund the clerks of court for the current and next 2 fiscal years ~~year~~ based upon the current budget established under s. 28.35.

Section 4. Present subsections (6) through (8) of section 40.24, Florida Statutes, are redesignated as subsections (7) through (9), respectively, and a new subsection (6) is added to that section, to read:

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40.24 Compensation and reimbursement policy.—

(6) Clerks of the circuit court are entitled to reimbursement from the state for jury-related costs, including juror compensation and personnel and operational costs of the clerk directly related to jury management.

Section 5. Section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs.—

(1) Each clerk of the circuit court:~~,~~

(a) On behalf of the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel, shall forward to the Justice Administrative Commission, by county, a quarterly estimate of funds necessary to pay for ordinary witnesses, including, but not limited to, 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. Each quarter of the state fiscal year, the commission, based upon the estimates, shall advance funds to each clerk to pay for these ordinary witnesses from state funds specifically appropriated for the payment of ordinary witnesses.

(b) Shall forward a quarterly estimate of funds necessary to pay jury-related costs, by county, to the Florida Clerks of Court Operations Corporation.

(2) Upon receipt of an estimate pursuant to subsection (1), the Justice Administrative Commission or the Florida Clerks of Court Operations Corporation, as applicable, shall endorse the amount deemed necessary for payment by the clerk of the court

during the quarterly fiscal period and shall submit a request for payment to the Chief Financial Officer.

(3) Upon receipt of the funds from the Chief Financial Officer, the clerk of the court shall pay all invoices approved and submitted by the state attorney, the public defender, the clerk of the court, criminal conflict and civil regional counsel, and private court-appointed counsel for the items enumerated in subsection (1).

(4) After review for compliance with applicable rates and requirements, the Justice Administrative Commission or the Florida Clerks of Court Operations Corporation, as applicable, shall pay all invoices related to due process services and juries ~~service related invoices~~, except those enumerated in subsection (1), approved and submitted by the state attorney, the public defender, the clerk of the court, criminal conflict and civil regional counsel, or private court-appointed counsel in accordance with the applicable requirements of ss. 29.005, 29.006, and 29.007.

Section 6. Section 40.31, Florida Statutes, is amended to read:

40.31 Apportionment of appropriations ~~Justice Administrative Commission may apportion appropriation.~~

(1) If the Justice Administrative Commission has reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of witnesses during the remaining part of the state fiscal year, the commission may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of witnesses in each county during the

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prior fiscal year. In such case, each county shall be paid by warrant, issued by the Chief Financial Officer, only the amount so apportioned to each county, and, when the amount so apportioned is insufficient to pay in full all the witnesses during a quarterly fiscal period, the clerk of the court shall apportion the money received pro rata among the witnesses entitled to pay and shall give to each witness a certificate of the amount of compensation still due, which certificate shall be held by the commission as other demands against the state.

(2) If the Florida Clerks of Court Operations Corporation has reason to believe that the amount appropriated by the Legislature is insufficient to meet jury-related costs during the remaining part of the state fiscal year, the corporation may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for jury-related costs in each county during the prior fiscal year. In such case, each county shall be paid by warrant, issued by the Chief Financial Officer, only the amount so apportioned to each county. When the amount so apportioned is insufficient to pay in full all jury-related costs during a quarterly fiscal period, the clerk of the court shall pay jurors entitled to pay before reimbursing any other jury-related costs. If the amount so apportioned is insufficient to pay in full all jurors during a quarterly fiscal period, the clerk of the court shall apportion the money received pro rata among the jurors entitled to pay and shall give to each juror a certificate of the amount of compensation still due, which certificate shall be held by the Florida Clerks of Court Operations Corporation as other demands against the state.

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Section 7. Section 40.32, Florida Statutes, is amended to read:

40.32 Clerks to disburse money; payments to jurors and witnesses.—

(1) All moneys drawn from the treasury under the provisions of this chapter by the clerk of the court shall be disbursed by the clerk of the court as far as needed in payment of jurors and witnesses, except for expert witnesses paid under a contract or other professional services agreement pursuant to ss. 29.004, 29.005, 29.006, and 29.007, for the legal compensation for service during the quarterly fiscal period for which the moneys were drawn and for no other purposes.

~~(2) The payment of jurors and the payment of expenses for meals and lodging for jurors under the provisions of this chapter are court-related functions that the clerk of the court shall fund from filing fees, service charges, court costs, and fines as part of the maximum annual budget under ss. 28.35 and 28.36.~~

(2)~~(3)~~ Jurors and witnesses shall be paid by the clerk of the court in cash, by check, or by warrant within 20 days after completion of jury service or completion of service as a witness.

(a) If the clerk of the court pays a juror or witness by cash, the juror or witness shall sign the payroll in the presence of the clerk, a deputy clerk, or some other person designated by the clerk.

(b) If the clerk pays a juror or witness by warrant, he or she shall endorse on the payroll opposite the juror’s or witness’s name the words “Paid by warrant,” giving the number

and date of the warrant.

Section 8. Section 40.33, Florida Statutes, is amended to read:

40.33 Deficiency.—If the funds required for payment of the items enumerated in s. 40.29(1) in any county during a quarterly fiscal period exceeds the amount of the funds provided pursuant to s. 40.29(3), the state attorney, public defender, clerk of the circuit court, or criminal conflict and civil regional counsel, as applicable, shall make a further request upon the Justice Administrative Commission or the Florida Clerks of Court Operations Corporation, as applicable, for the items enumerated in s. 40.29(1) for the amount necessary to allow for full payment.

Section 9. Section 40.34, Florida Statutes, is amended to read:

40.34 Clerks to make triplicate payroll.—

(1) The clerk of the court shall make out a payroll in triplicate for the payment of jurors and witnesses, which payroll shall contain:

(a) The name of each juror and witness entitled to be paid with state funds;

(b) The number of days for which the jurors and witnesses are entitled to be paid;

(c) The number of miles traveled by each; and

(d) The total compensation each juror and witness is entitled to receive.

(2) The form of such payroll shall be prescribed by the Chief Financial Officer.

(3) Compensation paid a juror or witness shall be attested

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as provided in s. 40.32. The payroll shall be approved by the signature of the clerk, or his or her deputy, except for the payroll as to witnesses appearing before the state attorney, which payroll shall be approved by the signature of the state attorney or an assistant state attorney.

(4) The clerks of the courts shall forward two copies of such payrolls:

(a) Related to witnesses to the Justice Administrative Commission, within 2 weeks after the last day of the quarterly fiscal period, and the commission shall audit such payrolls.

(b) Related to jurors to the Florida Clerks of Court Operations Corporation, within 2 weeks after the last day of the quarterly fiscal period, and the corporation shall audit such payrolls.

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

And the title is amended as follows:

Delete lines 7 - 31

and insert:

F.S.; expanding the list of duties of the Florida Clerks of Court Operations Corporation; revising the list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines; amending s. 28.37, F.S.; removing an obsolete date; redirecting transfer of specified excess funds from the General Revenue Fund to the Clerks of the Court Trust Fund if certain future-year revenue deficits are estimated; restricting excess fund transfers to costs submitted for the previous county fiscal year;

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amending s. 40.24, F.S.; authorizing the clerk to seek reimbursement for jury-related costs from the state; amending s. 40.29, F.S.; requiring the clerk to forward quarterly estimates on jury-related costs to the Florida Clerks of Court Operations Corporation; revising procedures governing the payment of due-process costs; amending s. 40.31, F.S.; authorizing the Florida Clerks of Court Operations Corporation to apportion appropriations for jury-related costs if certain conditions are met; amending s. 40.32, F.S.; removing a provision regarding funding of jury-related costs to conform to changes made by the act; amending s. 40.33, F.S.; authorizing the clerk to request the Florida Clerks of Court Operations Corporation for additional funds to pay due-process costs in the event of a deficiency; amending s. 40.34, F.S.; requiring the clerk to provide for payroll in triplicate for the payment of jurors; requiring the clerk to forward juror payrolls to the Florida Clerks of Courts Operations Corporation; requiring the corporation to audit such payrolls; amending s. 318.18, F.S.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
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The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 410 - 430

and insert:

Section 14. For the 2015-2016 county fiscal year beginning October 1, 2015, and ending September 30, 2016, the total approved budgets for the clerks of the circuit court shall be $460 million. Notwithstanding any provision of s. 28.36, Florida Statutes, clerks of the circuit court are authorized to spend $460 million of their total collected revenues for the 2015-2016 county fiscal year. The Florida Clerks of Court Operations

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Corporation shall determine budget allocations for individual clerks of the circuit court for such fiscal year.

Section 15. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete lines 41 - 46

and insert:

fund; specifying the authorized budget for the clerks of the circuit court for the 2015-2016 county fiscal year; providing an effective date.

By Senator Dean

5-00704-15 20151080__

A bill to be entitled

An act relating to clerks of the circuit court; amending s. 28.241, F.S.; redirecting revenues from the filing fee for pleadings in specified civil actions in circuit court from the General Revenue Fund into the fine and forfeiture fund; amending s. 28.35, F.S.; revising the list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines; amending s. 28.37, F.S.; removing an obsolete date; reducing the amount of the transfer of excess funds from the Clerks of the Court Trust Fund to the General Revenue Fund if certain deficits are estimated; restricting excess fund transfers to costs submitted for the previous county fiscal year; amending ss. 40.24 and 40.26, F.S.; transferring responsibility for payment of jury-related costs from the clerk to the state; amending s. 40.29, F.S.; requiring the clerk to forward quarterly estimates on jury-related costs to the Justice Administrative Commission; amending s. 40.31, F.S.; authorizing the Justice Administrative Commission to issue a certificate to the clerk if apportioned funds are insufficient to cover jury-related costs; amending s. 40.32, F.S.; removing a provision regarding funding of jury-related costs to conform to changes made by the act; amending s. 40.33, F.S.; authorizing the clerk to request the Justice Administrative Commission for additional funds to pay due-process costs in the event of a deficiency; amending s. 40.34, F.S.;

5-00704-15 20151080__

requiring the clerk to provide for triplicate payroll for the payment of jurors; amending s. 318.18, F.S.; redirecting a portion of the revenue from the civil penalty for certain traffic infractions from the General Revenue Fund to the fine and forfeiture fund; removing an obsolete date; amending s. 318.21, F.S.; revising the distribution and payment of civil penalties received by a county court pursuant to ch. 318, F.S.; amending s. 775.083, F.S.; redirecting revenue from fines when adjudication is withheld from the General Revenue Fund to the fine and forfeiture fund; providing for retroactive application; specifying the authorized budget for the clerks of the circuit court for the 2015-2016 county fiscal year; requiring clerks to submit jury-related cost estimates to the Justice Administrative Commission for the 2014-2015 county fiscal year; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(1) Filing fees are due at the time a party files a pleading to initiate a proceeding or files a pleading for relief. Reopen fees are due at the time a party files a pleading to reopen a proceeding if at least 90 days have elapsed since the filing of a final order or final judgment with the clerk. If a fee is not paid upon the filing of the pleading as required

under this section, the clerk shall pursue collection of the fee pursuant to s. 28.246.

(c)1. A party in addition to a party described in sub-subparagraph (a)1.a. who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint shall pay the clerk of court a fee of $395. A party in addition to a party described in sub-subparagraph (a)1.b. who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint shall pay the clerk of court a fee of $295. The clerk shall deposit ~~remit~~ the fee ~~to the Department of Revenue for deposit~~ into the fine and forfeiture fund established pursuant to s. 142.01 ~~General Revenue Fund~~.

2. A party in addition to a party described in subparagraph (a)2. who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint shall pay the clerk of court a graduated fee of:

a. Three hundred and ninety-five dollars in all cases in which the value of the pleading is $50,000 or less;

b. Nine hundred dollars in all cases in which the value of the pleading is more than $50,000 but less than $250,000; or

c. One thousand nine hundred dollars in all cases in which the value of the pleading is $250,000 or more.

The clerk shall deposit ~~remit~~ the fees collected under this subparagraph ~~to the Department of Revenue for deposit~~ into the fine and forfeiture fund established pursuant to s. 142.01

~~General Revenue Fund~~.

Section 2. Paragraph (a) of subsection (3) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of 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 meals or lodging provided to jurors;~~ data collection and reporting; ~~processing of jurors;~~ determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 3. Subsections (2) and (3) of section 28.37, Florida Statutes, are amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(2) The ~~Beginning November 1, 2013, that~~ portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions shall be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. Such collections do not include funding received for the

operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on or before the 10th day of each month.

(3) Each year, no later than January 25, ~~2015, and each January 25 thereafter~~ for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit into the Clerks of the Court Trust ~~in the General Revenue~~ Fund the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(3), which exceed the amount needed to meet their authorized budget amounts established under s. 28.35. The Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court for the previous county fiscal year pursuant to this section ~~subsection (2)~~. However, if the official estimate for funds accruing to the clerks of court made by the Revenue Estimating Conference for the current fiscal year or the next 2 fiscal years ~~year~~ is less than the cumulative amount of authorized budgets for the clerks of court for the current fiscal year, the Department of Revenue shall retain in the Clerks of the Court Trust Fund the estimated amount needed to fully fund the clerks of court for the current and next 2 fiscal years ~~year~~ based upon the current budget established under s. 28.35.

Section 4. Subsections (3), (4), and (5) of section 40.24,

Florida Statutes, are amended to read:

40.24 Compensation and reimbursement policy.—

(3)(a) Jurors who are regularly employed and who continue to receive regular wages while serving as jurors ~~a juror~~ are not entitled to receive compensation from the state ~~clerk of the circuit court~~ for the first 3 days of juror service.

(b) Jurors who are not regularly employed or who do not continue to receive regular wages while serving as jurors ~~a juror~~ are entitled to receive $15 per day for the first 3 days of juror service.

(4) Each juror who serves more than 3 days is entitled to be paid by the state ~~clerk of the circuit court~~ for the fourth day of service and each day thereafter at the rate of $30 per day of service.

(5) Jurors are not entitled to additional reimbursement by the state ~~clerk of the circuit court~~ for travel or other out-of-pocket expenses.

Section 5. Section 40.26, Florida Statutes, is amended to read:

40.26 Meals and lodging for jurors.—The sheriff, when required by order of the court, shall provide juries with meals and lodging, the expense to be taxed against and paid by the state ~~clerk of the circuit court~~.

Section 6. Subsections (1) and (4) of section 40.29, Florida Statutes, are amended to read:

40.29 Payment of due-process costs.—

(1) Each clerk of the circuit court shall forward to the Justice Administrative Commission:~~,~~

(a) On behalf of the state attorney, private court-

appointed counsel, the public defender, and the criminal conflict and civil regional counsel, ~~shall forward to the Justice Administrative Commission,~~ by county, a quarterly estimate of funds necessary to pay for ordinary witnesses, including, but not limited to, 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. Each quarter of the state fiscal year, the commission, based upon the estimates, shall advance funds to each clerk to pay for these ordinary witnesses from state funds specifically appropriated for the payment of ordinary witnesses.

(b) A quarterly estimate of funds necessary to pay jury-related costs, including juror compensation and personnel and operational costs of the clerk directly related to jury management.

(4) After review for compliance with applicable rates and requirements, the Justice Administrative Commission shall pay all invoices related to due process services and juries ~~service related invoices~~, except those enumerated in subsection (1), approved and submitted by the state attorney, the public defender, the clerk of the circuit court, criminal conflict and civil regional counsel, or private court-appointed counsel in accordance with the applicable requirements of ss. 29.005, 29.006, and 29.007.

Section 7. Section 40.31, Florida Statutes, is amended to read:

40.31 Justice Administrative Commission may apportion appropriation.—If the Justice Administrative Commission has

reason to believe that the amounts ~~amount~~ appropriated by the Legislature are ~~is~~ insufficient to meet the expenses of witnesses or of jury-related costs during the remaining part of the state fiscal year, the commission may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of witnesses or for jury-related costs in each county during the prior fiscal year. In such case, each county shall be paid by warrant, issued by the Chief Financial Officer, only the amount so apportioned to each county.~~, and,~~ When the amount ~~so~~ apportioned is insufficient to pay in full all the witnesses during a quarterly fiscal period, the clerk of the court shall apportion the money received pro rata among the witnesses entitled to pay and shall give to each witness a certificate of the amount of compensation still due, which certificate shall be held by the commission as other demands against the state. When the amount apportioned is insufficient to pay in full all jury-related costs of the clerk of the court during a quarterly fiscal period, the commission shall give each clerk a certificate of the amount still due. The certificate shall be held by the commission as other demands against the state.

Section 8. Section 40.32, Florida Statutes, is amended to read:

40.32 Clerks to disburse money; payments to jurors and witnesses.—

(1) All moneys drawn from the treasury under the provisions of this chapter by the clerk of the court shall be disbursed by the clerk of the court as far as needed in payment of jurors and witnesses, except for expert witnesses paid under a contract or

other professional services agreement pursuant to ss. 29.004, 29.005, 29.006, and 29.007, for the legal compensation for service during the quarterly fiscal period for which the moneys were drawn and for no other purposes.

~~(2) The payment of jurors and the payment of expenses for meals and lodging for jurors under the provisions of this chapter are court-related functions that the clerk of the court shall fund from filing fees, service charges, court costs, and fines as part of the maximum annual budget under ss. 28.35 and 28.36.~~

(2)~~(3)~~ Jurors and witnesses shall be paid by the clerk of the court in cash, by check, or by warrant within 20 days after completion of jury service or completion of service as a witness.

(a) If the clerk of the court pays a juror or witness by cash, the juror or witness shall sign the payroll in the presence of the clerk, a deputy clerk, or some other person designated by the clerk.

(b) If the clerk pays a juror or witness by warrant, he or she shall endorse on the payroll opposite the juror's or witness's name the words "Paid by warrant," giving the number and date of the warrant.

Section 9. Section 40.33, Florida Statutes, is amended to read:

40.33 Deficiency.—If the funds required for payment of the items enumerated in s. 40.29(1) in any county during a quarterly fiscal period exceeds the amount of the funds provided pursuant to s. 40.29(3), the state attorney, public defender, clerk of the circuit court, or criminal conflict and civil regional

counsel, as applicable, shall make a further request upon the Justice Administrative Commission for the items enumerated in s. 40.29(1) for the amount necessary to allow for full payment.

Section 10. Section 40.34, Florida Statutes, is amended to read:

40.34 Clerks to make triplicate payroll.—

(1) The clerk of the court shall make out a payroll in triplicate for the payment of jurors and witnesses, which payroll shall contain:

(a) The name of each juror and witness entitled to be paid with state funds;

(b) The number of days for which the jurors and witnesses are entitled to be paid;

(c) The number of miles traveled by each; and

(d) The total compensation each juror and witness is entitled to receive.

(2) The form of such payroll shall be prescribed by the Chief Financial Officer.

(3) Compensation paid a juror or witness shall be attested as provided in s. 40.32. The payroll shall be approved by the signature of the clerk, or his or her deputy, except for the payroll as to witnesses appearing before the state attorney, which payroll shall be approved by the signature of the state attorney or an assistant state attorney.

(4) The clerks of the courts shall forward two copies of such payrolls to the Justice Administrative Commission~~,~~ within 2 weeks after the last day of the quarterly fiscal period, and the commission shall audit such payrolls.

Section 11. Paragraph (a) of subsection (8) and paragraph

(a) of subsection (15) of section 318.18, Florida Statutes, are amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(8)(a) Any person who fails to comply with the court's requirements or who fails to pay the civil penalties specified in this section within the 30-day period provided for in s. 318.14 must pay an additional civil penalty of $16, $6.50 of which must be deposited into the fine and forfeiture fund established pursuant to s. 142.01 ~~remitted to the Department of Revenue for deposit in the General Revenue Fund,~~ and $9.50 of which must be remitted to the Department of Revenue for deposit in the Highway Safety Operating Trust Fund. ~~Of this additional civil penalty of $16, $4 is not revenue for purposes of s. 28.36 and may not be used in establishing the budget of the clerk of the court under that section or s. 28.35.~~ The department shall contract with the Florida Association of Court Clerks, Inc., to design, establish, operate, upgrade, and maintain an automated statewide Uniform Traffic Citation Accounting System to be operated by the clerks of the court which shall include, but not be limited to, the accounting for traffic infractions by type, a record of the disposition of the citations, and an accounting system for the fines assessed and the subsequent fine amounts paid to the clerks of the court. ~~On or before December 1, 2001,~~ The clerks of the court must provide the information required by this chapter to be transmitted to the department by electronic transmission pursuant to the contract.

(15)(a)1. One hundred and fifty-eight dollars for a

violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a law enforcement officer. Sixty dollars shall be distributed as provided in s. 318.21, $30 shall be deposited into the fine and forfeiture fund established pursuant to s. 142.01 ~~distributed to the General Revenue Fund~~, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and the remaining $65 shall be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.

2. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by the department's traffic infraction enforcement officer. One hundred dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $45 shall be distributed to the county for any violations occurring in any unincorporated areas of the county or to the municipality for any violations occurring in the incorporated boundaries of the municipality in which the infraction occurred, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.

3. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a county's or municipality's traffic infraction enforcement officer. Seventy-

five dollars shall be distributed to the county or municipality issuing the traffic citation, $70 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.

Section 12. Paragraphs (a) and (f) of subsection (2) of section 318.21, Florida Statutes, are amended to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(2) Of the remainder:

(a) ~~Twenty and~~ Six-tenths percent shall be remitted to the Department of Revenue for deposit into the General Revenue Fund ~~of the state~~, except that the first $300,000 shall be deposited into the Grants and Donations Trust Fund in the Justice Administrative Commission for administrative costs, training costs, and costs associated with the implementation and maintenance of Florida foster care citizen review panels in a constitutional charter county as provided for in s. 39.702.

(f) Twenty and five-tenths percent shall be deposited into the fine and forfeiture fund established pursuant to s. 142.01 ~~paid to the clerk of the court for administrative costs~~.

Section 13. Subsection (1) of section 775.083, Florida Statutes, is amended to read:

775.083 Fines.—

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations may ~~shall~~ not exceed:

(a) $15,000, when the conviction is of a life felony.

(b) $10,000, when the conviction is of a felony of the first or second degree.

(c) $5,000, when the conviction is of a felony of the third degree.

(d) $1,000, when the conviction is of a misdemeanor of the first degree.

(e) $500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

(f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

(g) Any higher amount specifically authorized by statute.

Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01~~, except that the clerk shall remit fines imposed when adjudication is withheld to the Department of Revenue for deposit in the General Revenue Fund~~. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. As used in this subsection, the term

"convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

Section 14. The amendments to ss. 40.24, 40.26, 40.29, 40.31, 40.32, 40.33, and 40.34, Florida Statutes, made by this act shall apply retroactively to October 1, 2014.

Section 15. For the 2015-2016 county fiscal year beginning October 1, 2015, and ending September 30, 2016, the total approved budgets for the clerks of the circuit court shall be $460 million. Notwithstanding any provision of s. 28.36, Florida Statutes, clerks of the circuit court are authorized to spend $460 million of their total collected revenues for the 2015-2016 county fiscal year. The Florida Clerks of Court Operations Corporation shall determine budget allocations for individual clerks of the circuit court for such fiscal year.

Section 16. In order to implement the amendments made by this act to ss. 40.24, 40.26, 40.29, 40.31, 40.32, 40.33, and 40.34, Florida Statutes, for the entire 2014-2015 county fiscal year, notwithstanding any provision of law related to quarterly submissions, clerks of the circuit court shall submit estimates of jury-related costs for the first two quarters of the 2014-2015 county fiscal year to the Justice Administrative Commission as soon as practicable after the effective date of this act.

Section 17. This act shall take effect upon becoming a law.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 1080
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 104994 Ring		3/24/2015 2 Amendment 572754 Ring		3/24/2015 3 Motion to vote "YEA" after Roll Call Simpson	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
X		Joyner						
VA		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
10	0	**TOTALS**	RCS	-	RCS	-	FAV	-
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District

March 2, 2015

The Honorable Miguel Diaz de la Portilla
406 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla,

I respectfully request you place Senate Bill 1080, relating to Clerks of the Circuit Court, on your Judiciary Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Tom Cibula, Staff Director

REPLY TO:
☐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
☐ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
☐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

1080
Bill Number (if applicable)

Topic #Clerk Revenue

Amendment Barcode (if applicable)

Name Karen Rushing

Job Title Clerk of Court Sarasota

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Florid Clerks of Court

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 718
INTRODUCER:	Senator Lee
SUBJECT:	Administrative Procedures
DATE:	March 23, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Favorable**
2.			AGG	
3.			AP	

I. Summary:

SB 718 makes a number of changes to the Administrative Procedure Act, which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public. Among the most notable changes, the bill:

- Provides that the decision of an administrative law judge in a challenge to a proposed rule is final agency action that cannot be overturned by an agency.
- Removes the presumption of validity for existing agency rules.
- Expands the circumstances under which a state agency must issue a declaratory statement by eliminating the requirement that a petitioner for a declaratory statement state with particularity the petitioner's set of circumstances.
- Makes a state agency liable for attorney fees and costs when the agency improperly denies a petition for a declaratory statement or loses a challenge to an existing or unadopted rule which is asserted as a defense to agency action.
- Makes a state agency liable for attorney fees and costs in proceedings to determine the entitlement to or amount of fees in related litigation against a prevailing party.
- Requires a person to provide advance notice of the intent to challenge a proposed, existing, or unadopted rule before the person can be entitled to attorney fees and costs in a rule challenge proceeding.

II. Present Situation:

Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the

procedure and practice requirements of an agency.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7]

Declaratory Statements

The Administrative Procedure Act authorizes a substantially affected person to request an agency's opinion as to the applicability of a statute, rule, or order of the agency as it applies to the petitioner's particular set of circumstances.[8] When issued, a declaratory statement is the agency's legal opinion that binds the agency under principles of estoppel. A declaratory statement may "help parties avoid costly administrative litigation, while simultaneously providing useful guidance to others who may find themselves in the same or similar situations."[9]

A number of grounds exist for an agency to dismiss or deny a petition for a declaratory statement, including:

- The issues raised in the petition are being simultaneously litigated in a judicial or another administrative proceeding.[10]
- The petition was filed to challenge another agency decision.[11]
- The petition seeks approval or disapproval of conduct which has already occurred.[12]

Attorney Fees

The Florida Equal Access to Justice Act is intended to diminish the deterrent effect of seeking review of, or defending against governmental actions.[13] Under the act, a small business that prevails in a legal action initiated by a state agency is entitled to attorney fees and costs if the actions of the agency were not substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

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[1] Section 120.52(16), F.S.; *Florida Dep't of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.
[7] *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] Section 120.565, F.S.
[9] *1000 Friends of Fla., Inc., v. State Dept. of Cmty. Affairs*, 760 So. 2d 154, 158 (Fla. 1st DCA 2000).
[10] *Fox v. State Bd. of Osteopathic Med. Examiners*, 395 So. 2d 192 (Fla. 1st DCA 1981).
[11] *Kahn v. Office of Ins. Reg.*, 881 So. 2d 699 (Fla. 1st DCA 2004).
[12] *Novick v. Dept. of Health, Bd. of Med.*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002).
[13] Section 57.111, F.S.

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA authorizes the recovery of attorney fees when:

- A non-prevailing party has participated for an improper purpose;
- An agency's actions are not substantially justified;
- An agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; and
- An agency loses an appeal in a proceeding challenging an unadopted rule.[14]

An agency defense to attorney fees available in actions challenging agency statements defined as rules is that the agency did not know and should not have known that the agency statement was an unadopted rule. Additionally, attorney fees in such actions may be awarded only upon a finding that the agency received notice that the agency statement may constitute an unadopted rule at least 30 days before a petition challenging the agency statement is filed, and the agency fails to publish a notice of rulemaking within that 30 day period.[15]

The authorization for attorney fees in the Equal Access to Justice Act supplement other statutes authorizing attorney fees.[16]

Notice of Rules

Under current law, the Department of Management Services is required to publish the Florida Administrative Register on the Internet.[17] This document must contain:

1. Notices relating to the adoption or repeal of a rule.
2. Notices of public meetings, hearing, and workshops.
3. Notices of requests for authorization to amend or repeal an existing rule or for the adoption of a new uniform rule.
4. Notices of petitions for declaratory statements or administrative determinations.
5. Summaries of objections to rules filed by the Administrative Procedures Committee.
6. Other material required by law or deemed useful by the department.

Burden of Proof

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving a rule's invalidity.[18] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[19] In addition, a rule may not be filed for adoption until any pending challenge is resolved.[20]

[14] Section 120.595, F.S,
[15] Section 120.595(4)(b), F.S.
[16] See s. 120.595(6), F.S. (providing that a statute authorizing attorney fees in challenges to agency actions does not affect the availability of attorney fees and costs under other statutes including ss. 57.105, and 57.111, F.S.).
[17] Section 120.55, F.S.
[18] Section 120.56(3), F.S.
[19] Section 120.56(2), F.S.
[20] Section 120.54(3)(e)2., F.S.

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[21]

Proceedings Involving Rule Challenges

The APA presently applies different procedures in rule challenges when proposed rules, existing rules, and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for the invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that an administrative law judge with the Division of Administrative Hearings (DOAH) may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if it's clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[22] Additionally, in proceedings initiated by agency action, if a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejection or modifying such determination.[23]

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeal.

Final Orders

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH judge enters the final order).

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days after the rendering of the order.[24] An order, however, is rendered when filed with the agency clerk. On occasion, a party might not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule

[21] Section 120.56(4), F.S.
[22] Section 120.57(1)(e)3., F.S.
[23] Section 120.57(1)(k-l), F.S.
[24] Section 120.68(2)(a), F.S.

by appealing its adoption, but the statute authorizes an appeal from a final order in a rule challenge.[25]

Minor Violations

The APA directs agencies to issue a "notice of noncompliance" as the first response when the agency encounters a first minor violation of a rule.[26] The law provides that a violation is a minor violation if it "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm." Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.[27] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules

III. Effect of Proposed Changes:

This bill makes a number of changes to the Administrative Procedure Act, which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public.

Declaratory Statements; Attorney Fees (Section 1)

The Florida Equal Access to Justice Act, s. 57.111, F.S., requires a DOAH judge to award attorney fees to a prevailing small business party in any action under the Administrative Procedure Act, if a state agency initiated the action and the agency's action was not substantially justified.

[25] Section 120.68(9), F.S.
[26] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."
[27] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

The bill redefines the term "substantially justified" as used in the act by identifying specific agency actions that are not substantially justified. As a result of the changed definition, a state agency is liable for the attorney fees and costs of a small business if an agency action is:

- Based on a subject that the prevailing small business party previously raised in a petition for a declaratory statement.
- Contrary to its position in a declaratory statement.
- Based on facts and circumstances similar to those raised in a petition for a declaratory statement, which the agency denied.

These changes defining agency actions that are not substantially justified appear likely cause changes in agency conduct. An agency might be more likely to issue a declaratory statement when proper grounds would otherwise exist for an agency to decline to do so. Alternatively, an agency might decline to initiate an enforcement action when grounds would otherwise exist for an enforcement action.

Schedule for Rulemaking Workshops; Unadopted Rule (Section 2)

Under existing s. 120.54(7)(b), F.S., a person may petition an agency to initiate rulemaking with respect to an unadopted rule. If after a public hearing on the unadopted rule, the agency chooses to initiate rulemaking, the statutes do not establish a timeframe or schedule for the rulemaking activities. Under the bill, an agency, within 30 days after the public hearing, must establish a schedule for rulemaking workshops. By operation of existing s. 120.54(2), F.S., an agency will provide the notice required by the bill through a Notice of Rule Development, which will be published in the Florida Administrative Register. The bill also requires an agency that chooses to initiate rulemaking related to an unadopted rule to discontinue reliance on the unadopted rule.

Distribution of Notices (Section 3)

The bill adds additional items to the list of required contents of the Florida Administrative Register, including:

- Notices of Rule Development Workshops.
- A listing of all rules filed for adoption within the previous 7 days.
- A listing of rules pending ratification by the Legislature.

The bill also requires agencies that provide notices by email to interested persons to include within those email messages, notices of rule development workshops and notices of the intent to adopt, amend, or repeal a rule.

Rule Challenges (Section 4)

Burdens of Proof

The bill amends s. 120.56(1), (2) and (4), F.S., relating to petitions challenging the validity of rules, proposed rules and statements defined as rules ("unadopted rules"). The changes clarify the pleading requirements for the petitions. It also clarifies a person who challenges a proposed or adopted rule has the burden of going forward with the evidence.

Presumption of Validity

The bill amends s. 120.56(3), F.S., with respect to challenges to existing rules. Under current law, existing agency rules are generally presumed valid and a challenger has the burden of proving that the rule is an invalid exercise of legislative authority.[28] Under the bill, existing rules lose the presumption of validity, and the agency in a rule challenge must prove that the rule is not invalid. Thus, under the bill an agency has the same burden in defending the validity of an existing rule as it has under current law in defending the validity of a proposed rule.

Invalidity Determination

Section 120.56(3), F.S., as amended by the bill, provides that an agency may not rely on an invalidated rule for any purpose. Thus, the determination of the validity of an existing rule by a DOAH judge is final agency action.

Bifurcated Proceedings

Lastly, s. 120.56(4), F.S., as amended by the bill, prohibits a DOAH judge from bifurcating a petition challenging agency action into a challenge to an unadopted rule and a challenge to agency action.

Entitlement to a Declaratory Statement (Section 5)

Particularity Requirement

Under existing law, a petitioner must "state with particularity the petitioner's set of circumstances" in a petition seeking a declaratory statement of an agency's opinion as to the application of a rule or statute. There seems to be two purposes of the particularity requirement, according to case law. First, the particularity requirement is intended to prevent an agency from responding to a purely hypothetical question unrelated to the petitioner's personal situation.[29] The second purpose of the particularity requirement seems intended to prevent an agency from using a declaratory statement to define agency policy instead of rulemaking procedures.[30] The bill deletes the particularity requirement for declaratory statements.

The bill deletes the requirement that a petition for a declaratory statement state with particularity the petitioner's set of circumstances. The elimination of this requirement appears likely to cause agencies to issue more declaratory statements. Those statements might also be more broadly worded if the agency does not have specific information needed to tailor the statement to a petitioner's specific needs. The issuance of broadly-worded declaratory statements might also cause the agency to initiate rulemaking on the substance of the petitions.

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[28] *See St. Johns River Water Mgmt. Dist. v. Consolidated–Tomoka Land Co.*, 717 So. 2d 72, 76 (Fla. 1st DCA 1998), superseded by statute on other grounds; Willette v. Air Products, 700 So. 2d 397, 399 (Fla. 1st DCA 1997); *Injured Workers Ass'n of Fla. v. Dep't of Labor & Employment Sec.*, 630 So. 2d 1189, 1191 (Fla. 1st DCA 1994) ("Rules are entitled to a presumption of constitutional validity and should be interpreted, if possible, in a manner that preserves their validity.").

[29] *Fla. Dept. of Bus. &Prof'l Reg., Div. of Pari-Mutuel Wagering v. Inv. Corp. of Palm Beach*, 747 So. 2d 374, 383 (Fla. 1999).

[30] *Chiles v. Dept. of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998).

Agency Response Time

Existing law requires agencies to issue a declaratory statement or deny a petition for a declaratory statement within 90 days after the filing of the petition. The bill reduces that time period to 60 days if a petitioner sets forth its understanding of the application of a statute or rule in its petition.

Attorney Fees and Costs

Lastly, the bill entitles a petitioner to its reasonable attorney fees and costs if an agency improperly denies a petition for a declaratory statement and the denial is reversed on appeal.

Time Period for Issuance of Final Order (Section 6)

Under existing law, an agency must issue a final order within 90 days after a DOAH judge issues a recommended order. The bill, however, contemplates that a DOAH judge's decision on a rule challenge is final agency action, reversible only by an appellate court. But the bill, consistent with existing law provides that the DOAH judge's decision with respect to other disputed matters in the same proceeding is a recommended decision. As a result, the agency might not as a practical matter be able to issue a final order until an appellate court rules on the validity of a challenged rule. For those cases, the bill provides that an agency must issue its final order within 10 days after the appellate court issues its mandate.

Rule Challenges in Proceedings Involving Disputed Facts (Section 7)

Section 7 amends s. 120.57, F.S., relating to DOAH hearings of agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the rule challenge provisions of s. 120.56, F.S., allowing the administrative law judge to enter a final order on a challenge to the validity of a rule or to an unadopted rule in all contests before DOAH. This treats a challenge to a rule in defending against or attacking an agency action much as a challenge in an action initiated solely to challenge the rule. Notably, the decision on the rule challenge in the DOAH proceeding is binding on the agency.

The bill allows the agency, within 15 days after notice of the rule challenge in such matters, to waive its reliance on an unadopted rule or a rule alleged to be invalid, and thereby eliminate that aspect of the litigation, without prejudice to the agency reasserting its position in another matter or rule challenge.

Mediation (Section 8)

The bill authorizes a person challenging a rule, proposed rule, or unadopted rule or a person seeking a declaratory statement to request mediation. However, the bill does not appear to limit an agency's discretion to approve or deny a request for mediation.

Attorney Fees (Section 9)

The bill amends s. 120.595, F.S., to make many technical and clarifying changes, but it also increases the circumstances under which an agency may be liable for attorney fees and costs.

Rule Challenge as Defense to Agency Action

The bill makes agencies liable for reasonable attorney fees and costs when a challenge to an existing rule or unadopted rule is successfully asserted as a defense to agency action. Under existing law, attorney fees and costs are available only in a rule challenge proceeding.

Exceptions to Liability

Under existing law, an agency generally is liable for attorney fees and costs if it loses a challenge to a proposed or existing rule. However, the agency is not liable for attorney fees and costs if its actions were substantially justified. The bill eliminates this exception to circumstances in which an agency might otherwise be liable for attorney fees and costs.

Existing law provides an additional exception protecting an agency from liability for attorney fees and costs with respect to an unadopted rule. Specifically, if an agency initiates rulemaking after a challenge to an unadopted rule is initiated, an agency has liability protection if it proves to the DOAH judge that did not know and should not have known that an agency statement was an unadopted rule. The bill eliminates this exception to an agency's liability for attorney fees and costs.

Prerequisite to Attorney Fees and Costs

As a prerequisite to the entitlement to attorney fees and costs in a rule challenge proceeding, the bill requires a person challenging the proposed, existing, or unadopted rule to provide advance notice of the intent to challenge the rule to the agency head. However, the advance notice requirement does not apply to a rule challenge asserted as a defense to an agency action.

Fees for Fees

Existing law generally limits the maximum amount of an agency's liability for attorney fees and costs to $50,000. The bill authorizes a person to recover attorney fees and costs for litigating the entitlement to or amount of attorney fees to which it is entitled in the underlying litigation against the agency. The additional amounts are not subject to any limits.

Judicial Review (Section 10)

Existing law requires an agency to notify the Administrative Procedures Committee of the appeal of orders from a rule challenge proceeding. The bill requires an agency to report to the committee the appeal of orders relating to the assertion of a rule challenge as a defense to agency action. Section 10 also contains provisions conforming to other provisions of the bill which allow the direct appeal of a decision of a DOAH judge ruling on a rule challenge asserted as a defense to agency action.

Designation of Minor Violation of Rules (Section 11)

Section 11 amends s. 120.695, F.S., to authorize the rules ombudsman in the Executive Office of the Governor to require agencies to designate rules, the violation of which constitute a minor rule violation.

Effective Date (Section 12)

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not apply to counties or municipalities. As such, the bill is not subject to the constitutional restrictions on the Legislature to enact mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may require an agency to provide precise guidance either through more precise rules or declaratory to those regulated before the agency may sanction a regulated entity for a rule or statutory violation.

C. Government Sector Impact:

This bill increases the circumstance in which agencies may liable for attorney fees and costs. The risk of incurring additional attorney fees and costs might deter agencies from engaging in enforcement actions. The bill may also encourage agencies to enact more rules or more precisely define their existing rules and issue more declaratory statements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As the Administrative Procedure Act has evolved over time through amendments by the Legislature, it has become more complex. This bill seems to add to the complexity of the act. At some point, the Legislature may wish to simplify the structure of the act to ensure that persons regulated by an agency can easily understand their rights to challenge agency actions.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 57.111, 120.54, 120.55, 120.56, 120.565, 120.569, 120.57, 120.573, 120.595, 120.68, and 120.695.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Lee

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A bill to be entitled

An act relating to administrative procedures; amending s. 57.111, F.S.; providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; amending s. 120.54, F.S.; requiring agencies to set a time for workshops for certain unadopted rules; amending s. 120.55, F.S.; providing additional items that must be noticed by an agency in the Florida Administrative Register; requiring agencies to provide such notice to registered recipients under certain circumstances; amending s. 120.56, F.S.; clarifying that petitions for administrative determinations apply to rules and proposed rules; identifying which entities have the burden in hearings in which a rule, proposed rule, or agency statement is at issue; prohibiting an administrative law judge from bifurcating certain petitions; amending s. 120.565, F.S.; authorizing certain parties to state to an agency their understanding of how certain rules apply to specific facts; specifying the timeframe for an agency to provide a declaratory statement; authorizing the award of attorney fees under certain circumstances; amending s. 120.569, F.S.; granting agencies additional time to render final orders under certain circumstances; amending s. 120.57, F.S.; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; requiring an agency to issue a notice regarding its reliance on the

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challenged rule or alleged unadopted rule; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; requiring the administrative law judge to issue a separate final order on certain rules and alleged unadopted rules; prohibiting agencies from rejecting specific conclusions of law; limiting situations under which an agency may reject or modify conclusions of law; providing for stay of proceedings not involving disputed issues of fact upon timely filing of a rule challenge; providing that the final order terminates the stay; amending s. 120.573, F.S.; providing additional situations in which a party may request mediation; amending s. 120.595, F.S.; providing criteria for establishing whether a nonprevailing party participated in a proceeding for an improper purpose; revising provisions providing for the award of attorney fees and costs by the appellate court or administrative law judge; providing exceptions; removing a provision authorizing an agency to demonstrate its actions were substantially justified; requiring notice of a proposed challenge by the petitioner as a condition precedent to filing a challenge and being eligible for the reimbursement of attorney fees and costs; authorizing the recovery of attorney fees and costs incurred in litigating rights to attorney fees and costs in certain actions; providing such attorney fees and costs are not limited in amount; amending s. 120.68, F.S.; requiring

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

specified agencies to provide notice of appeal to the Administrative Procedures Committee under certain circumstances; amending s. 120.695, F.S.; removing obsolete provisions; requiring agency review and certification of minor rule violations by a specified date; requiring the reporting of agency failure to complete such review and certification; requiring certification of minor violations for all rules adopted after a specified date; requiring public notice; providing for nonapplicability; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorney ~~attorneys'~~ fees and costs.—

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not "substantially justified" if the law, rule, or order at issue in the current agency action is the subject upon which the prevailing party previously petitioned the agency for a declaratory statement under s. 120.565; the current agency action involves identical or substantially similar facts and circumstances as those raised in the previous petition; and:

1. The agency action contradicts the declaratory statement issued by the agency upon the previous petition; or

2. The agency denied the previous petition under s. 120.565 before initiating the current agency action against the substantially affected party.

Section 2. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) Within 30 days following the public hearing provided for in ~~by~~ paragraph (b), if the petition's requested action requires rulemaking and the agency initiates rulemaking, the agency shall establish a time certain for rulemaking workshops and shall discontinue reliance upon the agency statement or unadopted rule until it adopts rules pursuant to subsection (3). If the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise

modifying the authority of the agency.

Section 3. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or

effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating

reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A listing of rules filed for adoption in the previous 7 days.

7. A listing of all rules filed for adoption pending legislative ratification under s. 120.541(3). Each rule on the list shall be taken off the list once it is ratified or withdrawn.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on

the Florida Administrative Register Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3)(a) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6) ~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~ (a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any

excess shall be transferred to the General Revenue Fund.

Section 4. Subsections (1), (3), and (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination of the invalidity of a rule or proposed rule must state the facts and ~~with particularity the~~ provisions alleged to be invalid with sufficient explanation of the ~~facts or~~ grounds for the alleged invalidity and facts sufficient to show that the petitioner ~~person~~ challenging a rule is substantially affected by it, or that the petitioner ~~person~~ challenging a proposed rule would be substantially affected by it.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw

the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. The petitioner has the burden of going forward with the evidence. The agency has the burden of proving by a preponderance of the evidence that the rule, proposed rule, or agency statement is not an invalid exercise of delegated legislative authority. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. The petitioner has the ~~a~~ burden of going forward with the evidence as set forth in paragraph (1)(b), and the agency has the burden of proving by a preponderance of the evidence that the existing rule is not an invalid exercise of delegated legislative authority as to the objections raised.

(b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Register in the first available issue after the rule has become void.

(c) If an existing agency rule is declared invalid, the agency may no longer rely on the rule for final agency action, including any final action on cases pending under s. 120.57.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

(b) The administrative law judge may extend the hearing

date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(c) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(d) If an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.

(e) If proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the statement

and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(f) If a petitioner files a petition challenging agency action and a part of that petition alleges the presence of or reliance upon agency statements or unadopted rules, the administrative law judge may not bifurcate the petition into two cases but shall consider the challenge to the proposed agency action and the allegation that such agency action was based upon the presence of or reliance upon agency statements or unadopted rules.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 5. Subsection (2) of section 120.565, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

120.565 Declaratory statement by agencies.—

(2) The petition seeking a declaratory statement shall state ~~with particularity~~ the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(4) The petitioner may submit to the agency clerk a statement that describes or asserts the petitioner's understanding of how the statutory provision, rule, or order

applies to the set of circumstances. The agency has 60 days to review the petitioner's statement and to either accept the statement or offer changes and other clarifications to establish the plain meaning of how the statutory provision, rule, or order applies to the set of circumstances described in the petitioner's statement.

(5) If the agency denies a request for a declaratory statement and the petitioner appeals the denial and it is determined that the agency improperly denied the request, the petitioner is entitled to an award of reasonable attorney fees and costs.

Section 6. Paragraph (l) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, except that, at the election of the agency, the time for rendering the final order may be extended up to 10 days after the entry of a mandate on any appeal from a final order under s. 120.57(1)(e)4.; or

3. After the agency has received the written and oral

material it has authorized to be submitted, if there has been no hearing.

Section 7. Paragraphs (e), (h), and (l) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, a party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge shall be pled as a defense using the procedures set forth in s. 120.56(1)(b).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. The agency has 15 days from the date of receipt of a challenge under this subparagraph to serve the challenging party with a notice as to whether the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to serve or to timely serve the notice constitutes a binding determination that the agency may not rely upon the rule or unadopted rule further in the proceeding. The agency shall include a copy of the notice, if one was served, when it refers the matter to the division under s. 120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule is ~~The agency action shall~~ not ~~be~~ presumed to be valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State

Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. If the agency timely serves notice of continued reliance upon a challenged rule or an alleged unadopted rule under sub-subparagraph 2.d., the administrative law judge shall determine whether the challenged rule is an invalid exercise of delegated legislative authority or whether the challenged agency statement constitutes an unadopted rule and if that unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete~~

~~record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order. This paragraph does not apply to proceedings set forth in paragraph (e).

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may only reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction if the agency

determines that the conclusions of law are clearly erroneous. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as reasonable as, or more reasonable than, that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a

convenient time and place, to present to the agency or administrative law judge ~~hearing officer~~ written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2., the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule upon which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge. The final order shall provide notice that the stay of the pending agency action is terminated and any further stay pending appeal of the final order must be sought from the appellate court.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 8. Section 120.573, Florida Statutes, is amended to read:

120.573 Mediation of disputes.—

(1) Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days after ~~of~~ such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

(2) A party in a proceeding conducted pursuant to a petition seeking an administrative determination of the invalidity of an existing rule, proposed rule, or agency statement under s. 120.56 or a proceeding conducted pursuant to a petition seeking a declaratory statement under s. 120.565 may request mediation of the dispute under this section.

Section 9. Section 120.595, Florida Statutes, is amended to read:

120.595 Attorney ~~Attorney's~~ fees.—

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney fees ~~attorney's fee~~ to the prevailing party if the administrative law judge determines ~~only where~~ the nonprevailing adverse party ~~has been determined by the administrative law judge to have~~ participated in the proceeding for an improper purpose.

1.~~(c)~~ Other than as provided in paragraph (d), in proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. ~~In making such determination, the administrative law judge shall consider whether~~ The nonprevailing adverse party shall be presumed to have participated in the pending proceeding for an improper purpose

if:

a. Such party was an adverse party ~~has participated~~ in three ~~two~~ or more ~~other such~~ proceedings involving the same prevailing party and the same subject;

b. In those ~~project as an adverse party and in which such two or more~~ proceedings, the nonprevailing adverse party did not establish either the factual or legal merits of its position;~~, and shall consider whether~~

c. The factual or legal position asserted in the pending ~~instant~~ proceeding would have been cognizable in the previous proceedings; and

d. The nonprevailing adverse party has not rebutted the presumption of participating~~. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated~~ in the pending proceeding for an improper purpose.

2.~~(d)~~ If ~~In any proceeding in which the administrative law judge determines that~~ a party is determined to have participated in the proceeding for an improper purpose, the recommended order shall include such findings of fact and conclusions of law to establish the conclusion ~~so designate~~ and shall determine the award of costs and attorney ~~attorney's~~ fees.

(c)~~(c)~~ For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(d) For challenges brought under s. 120.57(1)(e), when the agency relies on a challenged rule or an alleged unadopted rule pursuant to s. 120.57(1)(e)2.d., if the appellate court or the administrative law judge declares the rule or portion of the rule to be invalid or that the agency statement is an unadopted rule that does not meet the requirements of s. 120.57(1)(e)4., a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney fees. An award of attorney fees as provided by this paragraph may not exceed $50,000.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist

which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the petitioner before ~~prior to~~ the date the notice was published~~, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an~~

~~unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7)~~. An award of attorney ~~attorney's~~ fees as provided by this paragraph may not exceed $50,000.

(c) Notwithstanding ~~the provisions of~~ chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency is ~~shall~~ not ~~be~~ entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(c) ~~(1)(c)~~ or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney ~~attorney's~~ fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the

appellate process, or that the agency action that ~~which~~ precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney ~~attorney's~~ fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) NOTICE OF INVALIDITY.—A party failing to serve a notice of proposed challenge under this subsection is not entitled to an award of reasonable attorney fees and reasonable costs under this section.

(a) Before filing a petition challenging the validity of a proposed rule under s. 120.56(2), an adopted rule under s. 120.56(3), or an agency statement defined as an unadopted rule under s. 120.56(4), a substantially affected person shall serve the agency head with notice of the proposed challenge. The notice shall identify the proposed or adopted rule or the unadopted rule that the person proposes to challenge and a brief explanation of the basis for that challenge. The notice must be received by the agency head at least 5 days before the filing of a petition under s. 120.56(2) and at least 30 days before the filing of a petition under s. 120.56(3) or s. 120.56(4).

(b) This subsection does not apply to defenses raised and challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of reasonable attorney fees and reasonable costs, the prevailing party shall also recover reasonable

attorney fees and reasonable costs incurred in litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter. Reasonable attorney fees and reasonable costs awarded for litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

(8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing in~~ This section does not ~~shall~~ affect the availability of attorney ~~attorney's~~ fees and costs as provided in those sections.

Section 10. Paragraph (a) of subsection (2) and subsection (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56 or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority may not ~~shall~~ be

instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 11. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with

a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c)1. Within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the

House of Representatives, the Administrative Procedures Committee, and the rules ombudsman any designated rules, ~~have been designated as rules~~ the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). The rules ombudsman shall promptly report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Administrative Procedures Committee each failure of an agency to timely complete the review and file the certification as required by this section.

2. Beginning July 1, 2015, each agency shall:

a. Publish all rules that the agency has designated as rules that the violation of which would be a minor violation, either as a complete list on the agency's Internet web page or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule that the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not

apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

Section 12. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 718
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General Government
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

SENATOR TOM LEE
24th District

February 16, 2015

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
406 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla,

I respectfully request that SB 718 related to *Administrative Procedures,* be placed on the Senate Committee on Judiciary agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Tom Lee
Senator, District 24

Cc: Tom Cibula, Staff Director

REPLY TO:
☐ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
☐ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 718 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 766
INTRODUCER:	Judiciary Committee and Senator Hukill
SUBJECT:	Surveillance by a Drone
DATE:	March 26, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Procaccini	Cibula	JU	**Fav/CS**
3.			AP	

I. Summary:

CS/SB 766 generally prohibits a person, state agency or political subdivision from using a drone to record an image of privately owned or occupied real property of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property, if reasonable expectations of privacy exist.

However, the bill also generally allows a person or entity engaged in a business or profession licensed by the state, to use a drone within the scope of his or her license. Additionally, tax collectors may use drones for assessing property for ad valorem taxes.

II. Present Situation:

History of Drones

Drones are unmanned aircraft, capable of being operated remotely or autonomously on a preprogrammed path. A drone can be the size of a mosquito or as large as a commercial airplane.[1] Additional drone features include thermal scanners, license plate readers, tracking, crop dusting, and an array of continuously developing technologies.[2]The Federal Aviation Administration (FAA) authorized drones as far back as 1990 for a broad array of domestic uses by governmental actors including firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.[3] In recent years, drones have been increasingly operated by members of the public (in addition to governmental actors), for

[1] Taly Matiteyahu, 48 COLUM. J.L. & SOC. PROBS. 265, 1 (Winter, 2015).
[2] *Id.*
[3] Federal Aviation Administration, *Fact Sheet – Unmanned Aircraft Systems (UAS)* (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsid=18297.

commercial and recreational purposes. One prominent drone manufacturer estimates that more than 500,000 personal drones have been sold in the United States alone.[4]

As drones have become more commonplace and drone technologies have improved, their universe of potential commercial uses has broadened. Drones are being used by commercial photographers and filmmakers, due to their high-power cameras and aerial picture perspective.[5] Additional commercial uses for drones are being explored by Google and Amazon, which have made significant investments in development of drone parcel delivery systems.[6]

The use of a drone for commercial operation is prohibited unless the drone operator has received prior approval from the FAA through one of three certificate programs:[7]

- Section 333 exemption and a Certificate of Waiver or Authorization (COA). This certificate may be used for commercial operations in low-risk, controlled environments.
- Special Airworthiness Certificate – Experimental Category. This certificate is for experimentation and research on new drone designs. "For-hire" operations are prohibited under this certificate.
- Special Airworthiness Certificate – Restricted Category. For a special purpose or a type certificate for production of the drone.

All public (governmental) drone operators must go through the Public COA process.[8] Model aircraft operators do not need permission from the FAA to fly.[9] While the number of authorized commercial operators is still small (24), the FAA continues to grant more regulatory exemptions, including one recent exemption for "flare stack inspections."[10] Those numbers will increase exponentially soon, as the FAA is nearing completion of an initial rule related to the use of small (under 55 pounds) drones, pursuant to the FAA Modernization and Reform Act of 2012.[11] The rule would allow "routine use of certain small unmanned aircraft systems," clearing the way for much wider commercial use of drones by the private sector.[12] The draft rule for small drones was released on February 15, 2015, opening a 60-day period for public comment prior to finalization of the rule.[13]

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[4] David Rose, THE ATLANTIC, *Dudes with Drones* (Nov. 2014), http://www.theatlantic.com/magazine/print/2014/11/dudes-with-drones/380783/.
[5] *Id.*
[6] Alexis Madrigal, THE ATLANTIC, *Inside Google's Secret Drone-Delivery Program* (Aug. 2014) http://www.theatlantic.com/technology/print/2014/08/inside-googles-secret-drone-delivery-program/379306/.
[7] Federal Aviation Administration, *Civil Operations (Non-Governmental)*, http://www.faa.gov/uas/civil_operations/ (Page last modified Mar. 4, 2015).
[8] Federal Aviation Administration, *Unmanned Aircraft Systems – Frequently Asked Questions*, http://www.faa.gov/uas/faq/ (Page last modified Mar. 4, 2015).
[9] Federal Aviation Administration *Model Aircraft Operations*, http://www.faa.gov/uas/model_aircraft/ (Page last modified Mar. 4, 2015).
[10] Federal Aviation Administration, *FAA Grants Eight More UAS Exemptions*, http://www.faa.gov/news/updates/?newsId=81565 (Page last modified Feb. 3, 2015).
[11] Office of the Press Secretary, The White House, *Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems* (Feb. 15, 2015), https://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua/ .
[12] Federal Aviation Administration, *Press Release – DOT and FAA Propose New Rules for Small Unmanned Aircraft Systems* (Feb. 15, 2015), http://www.faa.gov/news/press_releases/news_story.cfm?newsId=18295.
[13] *Id.*

While drones have already been put to a wide array of uses, their potential uses are practically boundless. Researchers in France have found that drones are very useful for monitoring birds without disturbing them and have "a lot of potential to revolutionize bird censuses."[14] Developers at Google believe that, at best, drones could be the foundation of a new "access society" that relies on principles similar to the burgeoning "sharing economy" that underpins companies such as Uber and Airbnb, rather than today's "ownership society," and at worst, they represent a much faster, cheaper and safer option for shipping packages.[15] One successful drone developer believes that drones will be able to respond to speech commands and may even be able to walk your dog, while another predicts that they will be so ubiquitous that in developed countries there will be one drone per person.[16] As a result, *Business Insider* predicts that the drone industry will generate $10 billion in new spending over the next decade.[17]

Privacy Issues Related to Drones

As stated prior, drones are manufactured in all shapes and sizes, from the 6.5 inch, 19 gram AeroVironment's Nano Hummingbird to massive drones with wingspans up to 150 feet and weights over 30,000 pounds.[18] Some drones are powered by batteries with lifespans of a few minutes, while others are designed to stay aloft for days at a time.[19] Some drones are built to last, while others are built to decompose.[20] Some drones are designed to fly like an airplane, some use rotors similar to a helicopter, while others have the ability to enter "perch and stare" mode.[21] Perhaps even more relevant to a discussion of their potential privacy implications, drones can be equipped with a wide array of sensory equipment, including high-magnification lenses, infrared, ultraviolet and see-through imaging devices, acoustical eavesdropping devices, laser optical microphones, and face and body recognition software.[22]

This variety of designs and technology means that drones possess capabilities which could be used by private individuals or commercial organizations to breach reasonable expectations of privacy, including the voyeuristic actions of spying on and recording private acts. Because of their ability to stay aloft for long durations, drones could track a person's every move, if not indefinitely, then at least over a period of days. While larger drones may be more useful for following a person in more rural areas, smaller drones work better in urban areas. A drone could be programed to watch a specific piece of property for a period of time, or could have its facial recognition software programmed so that it automatically focused on a single person in a crowd. One drone could watch a building (or look inside the building), while another listens to

[14] Nicholas St. Fleur, THE ATLANTIC, *Birds Are Mostly Cool with Drones* (Feb. 2015), http://www.theatlantic.com/technology/print/2015/02/drones-might-not-disrupt-birds-after-all/385338/.
[15] Madrigal, *supra* note 6.
[16] Rose, *supra* note 4.
[17] Matt Schiavenza, THE ATLANTIC, *FAA Drone Regulations Deal Blow to Amazon* (Feb. 15, 2015), http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations-deal-blow-to-amazon/385529/.
[18] Jonathan Olivito, 74 OHIO STATE L.J., 670, *Beyond the Fourth Amendment: Limiting Drone Surveillance Through the Constitutional Right to Informational Privacy* (2013).
[19] *Id.*
[20] Shirley Li, THE ATLANTIC, *A Drone for the Environment* (Nov. 2014), http://www.theatlantic.com/technology/print/2014/11/a-drone-for-the-environment/382776/.
[21] Olivito, *supra* note 18 at 677.
[22] *Id.*

conversations taking place inside. Or one drone outfitted with the proper equipment could perform all three tasks at once.

The prospect of constant monitoring, whether performed by a government entity or some private actor (perhaps a potential employer, insurance company, private detective, etc.), may have a chilling effect on associational and expressive freedoms enjoyed by the American populace. Some commentators argue that such constitutional rights, in addition to an "assumed" (but not decided) constitutional right to privacy, are not adequately protected by currently existing laws. A discussion of those laws (both statutory and common) and their possible shortcomings as applied to privacy in the context of drones, is presented below.

Nuisance Law

In ancient common law doctrine, ownership of the land "extended to the periphery of the universe."[23] However, the Supreme Court abrogated the common law in 1946 when it held that flights over property only constitute a taking if they are "so low and so frequent as to be a direct and immediate interference with the enjoyment and use of the land."[24] Due to the relatively high altitude and relatively quiet operation of drones, it is unlikely that the isolated use of a drone would support a nuisance claim.[25] However, if a property owner were regularly subjected to the interference of the enjoyment of his land by a low-flying drone, then that owner might be able to maintain a nuisance claim.[26]

Trespass Law

A claim of trespass might be supported against an aircraft if the aircraft flies so low as to interfere substantially with the owner's use and enjoyment of the land.[27] However, drones often fly at an altitude lower than low-flying airplanes and yet well above a property owner's land. This airspace has been described as a property rights no-man's land for which courts have not defined a property owner's property interest.[28]

Intrusion Upon Seclusion

The tort of intrusion upon seclusion must be supported by two findings:
1. That a person intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, and
2. The intrusion would be highly offensive to a reasonable person.

The key to successfully alleging an intrusion upon seclusion is that the victim had a "reasonable expectation of privacy."[29] As will be discussed more fully in relation to the inadequacy of Fourth Amendment protections, it is very difficult for a person to maintain a reasonable expectation of

[23] *United States v. Causby*, 328 U.S. 256, 260 (1946) (The Court explained the common law doctrine with the Latin sentence, "Cujus est solum ejus est usque ad coelom," which means whoever owns soil, is theirs all the way to Heaven and to Hell.
[24] *Id.* at 265.
[25] Olivito, *supra* note 18 at 680.
[26] *See* Y. Douglas Yang, *Big Brother's Grown Wings: The Domestic Proliferation of Drone Surveillance and the Law's Response*, 23 B.U. PUB. INT. L.J. 343, note 266 (Summer 2014).
[27] United States v. Causby, 328 U.S. 256, 1068 (1946).
[28] Colin Cahoon, *Low Altitude Airspace: A Property Rights No-Man's Land*, 56 J. AIR L. & COM. 157, 197-198 (Fall 1990).
[29] Restatment (Second) of Torts s. 652B.

privacy outside of their private home or car. The fact that the intrusion must be "highly offensive to the reasonable person" narrows the scope of protection provided by this common law further.[30] However, "[c]onduct that amounts to a persistent course of hounding, harassment and unreasonable surveillance, even if conducted in a public or semi-public place, may nevertheless rise to the level of invasion of privacy based on intrusion upon seclusion."[31]

Publication of Private Facts

To commit the tort of publication of private facts, a person must publish or broadcast private information about someone else and the disclosure of that information would be highly offensive to the reasonable person and the information is not a matter of legitimate public concern.[32] Again, the scope of protection is limited by the fact that the disclosure must be highly offensive to the reasonable person. Also significant, the private information must be actually published to trigger the tort. Should the person collecting the information through the drone never actually widely disseminate any of the information, the victim may be prevented from asserting an injury under this doctrine.

Section 810.14, Florida Statutes – Voyeurism

A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent:
1. Secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.
2. Secretly observes another person's intimate areas in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance. As here, the term "intimate area" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

Wiretapping

Section 934.03, F.S., restricts people from intentionally intercept wire, oral, or electronic communications. This statute in its current form appears applicable to drones. However, the protection from the statute is qualified by the requirement that a victim has a reasonable expectation of privacy.[33]

Fourth Amendment Jurisprudence

The Fourth Amendment to the United States Constitution protects against "unreasonable searches and seizures" by the government. The amendment provides some protection against drone surveillance directed at a private home, particularly when the drone uses a sense-enhancing technology; however, recent Supreme Court decisions have greatly circumscribed those protections.[34] Furthermore, the Fourth Amendment provides almost no protection against

[30] *Beyond the Fourth Amendment* at 680.
[31] *Goosen v. Walker*, 714 So. 2d 1149, 1150 (Fla. 4th DCA 1998) (quoting *Wolfson v. Lewis*, 924 F.Supp 1413 (E.D. Pa. 1996)).
[32] *Heath v. Playboy Enterprises, Inc.*, 732 F.Supp. 1145, 1148 (S.D. Fla. 1990).
[33] *Jatar v. Lamaletto*, 758 So. 2d 1167, (Fla. 3d DCA 2000).
[34] Olivito, *supra* note 18 at 682.

drone surveillance conducted in public places, which effectively is anywhere outside of a home.[35]

In *California v. Ciraolo*¸ 476 U.S. 207 (1986), the U.S. Supreme Court held that it was not a violation of the Fourth Amendment for a police department to fly in a plane 1,000 feet over a person's backyard (which was surrounded by a six-foot fence and a second ten-foot fence) in order to observe that person's property. The Court's holding was based on the fact that the backyard was visible from a "public vantage point," in this case, a plane flying 1,000 feet above the backyard.

In *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986), the Supreme Court extended its holding in *Ciraolo*, holding that it was not a violation of the Fourth Amendment prohibition on searches and seizures for the Environmental Protection Agency to charter a private plane equipped with a camera with a magnification capability of 240x to take aerial photographs of a chemical manufacturing plant to which it had been denied access by the landowner.

Finally, in *Florida v. Riley*, 488 U.S. 445 (1989), a police department used a helicopter to fly 400 feet above a private greenhouse that was missing two panels on the roof. A deputy on board the helicopter looked through the uncovered portion of the roof and saw marijuana growing in the greenhouse. The U.S. Supreme Court held this was not a violation of the Fourth Amendment because the defendant did not have a reasonable expectation of privacy in the portion of his greenhouse that was partially exposed to aerial observation.

In summary, the Fourth Amendment may only protect a private landowner from drone surveillance if that person is within a portion of his or her home that is not observable from the air. Once that person is out in a public (or private) area that does not provide that person with a reasonable expectation of privacy, the government likely could observe that person via a drone without violating the Fourth Amendment. The Fourth Amendment does not provide any protection against actions taken by private actors, unless those actions were pursuant to governmental direction.[36]

Section 934.50, Florida Statutes – Searches and Seizure Using a Drone

The Freedom from Unwarranted Surveillance Act, passed in 2013, prohibits a law enforcement agency from using a drone to gather evidence or other information, subject to certain exceptions. The law does not restrict the use of drones to engage in surveillance by private actors.

III. Effect of Proposed Changes:

General Prohibition on the Use of Drones for Surveillance

This bill prohibits a person, state agency or political subdivision from using a drone equipped with an imaging device to record an image of privately owned or occupied real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct

[35] *Id.*
[36] Findlaw, *When the Fourth Amendment Applies*, http://criminal.findlaw.com/criminal-rights/when-the-fourth-amendment-applies.html (last visited Mar. 14, 2015).

surveillance on the property or person. The surveillance must be in violation of the person's reasonable expectation of privacy and without his or her written consent. The bill provides that a person is presumed to have a reasonable expectation of privacy if the person is not observable by a person at ground level, regardless of whether the person is observable by a drone in the air. By "surveillance," the bill reaches many if not all of the potential modes of information capture by a drone by providing expansive definitions for the terms "image" and "imaging device."

Authorized Users of Drones

The bill includes exceptions to those who may use a drone. Specifically, the bill authorizes a person or entity that is licensed by the state to use a drone to perform reasonable tasks within the scope of that person's or entity's license. However, the bill excludes from the exception to professions in which the licensee's scope of practice includes information about a person or group of persons. As such, the bill appears to prohibit private investigators from using drones. Finally, the bill expressly provides that is not intended to limit or restrict the application of federal law to the use of drones for surveillance purposes.

Enforcement of Privacy Rights

The bill provides that an owner, tenant, occupant, invitee, or licensee of real property may receive compensatory damages and seek an injunction against future surveillance. A prevailing party is entitled to recover reasonable attorney fees under the bill. Additionally, if a case is tried to verdict, a contingency fee multiplier of up to two times the actual value of the attorney's time spent may be awarded to the plaintiff at the discretion of the court. A contingency fee multiplier is designed to promote access to the courts by providing an incentive to lawyers to take cases they might not otherwise accept.[37] The bill also authorizes punitive damages for a violation of the bill's prohibition on use of drones, and provides that the remedies provided in the bill are cumulative to other existing remedies.

Effective Date

The bill Takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

[37] *See e.g., Lane v. Head*, 566 So. 2d 508, 513 (Fla. 1990) (Grimes, J., concurring).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who uses a drone to conduct surveillance of persons or property may be liable for damages under the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.50, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 24, 2015:
The committee substitute differs from the underlying bill by:

- Adding licensees and invitees on private property to the list of individuals whose privacy is protected by the bill.
- Generally authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state, within the scope of a license.
- Authorizing tax collectors to use drones for assessing property for ad valorem taxes.

B. Amendments:

None.

114264

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
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	.	
	.	

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 54 - 100

and insert:

property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is

not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone. This paragraph is not intended to limit or restrict the application of federal law to the use of drones for surveillance purposes.

(4) EXCEPTIONS.—This act does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(d) By a person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license.

(e) By an employee or contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.

(5) REMEDIES FOR VIOLATION.—

(a) An aggrieved party may initiate a civil action against

a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this act.

(b) The owner, tenant, occupant, invitee, or licensee of privately owned or occupied real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision that violates paragraph (3)(b). In such action, the prevailing party is entitled to recover reasonable attorney fees from the nonprevailing party based on the actual and reasonable time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

(c) Punitive damages for a violation of paragraph (3)(b) may be sought against a person subject to other requirements and limitations of law, including, but not limited to, part II of chapter 768 and case law.

(d) The remedies provided for a violation of paragraph (3)(b) are cumulative to

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

And the title is amended as follows:

Delete lines 6 - 15

and insert:

property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to

conduct surveillance without his or her written consent if a reasonable expectation of privacy exists; specifying when a reasonable expectation of privacy may be presumed; authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state in certain circumstances; authorizing the use of a drone by an employee or contractor of a property appraiser for the purpose of assessing property for ad valorem taxation; providing that an owner, tenant, occupant, invitee, or licensee may initiate a civil action for compensatory damages and may seek injunctive relief against a person, a state agency, or a political subdivision that violates the act; providing for construction; providing for the recovery of attorney fees and

554452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
	.	
	.	
	.	

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment to Amendment (114264)

Delete line 35
and insert:
permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

834932

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/24/2015	.	
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	.	

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment (with title amendment)

Between lines 77 and 78
insert:

(d) By a person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information

834932

about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

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

And the title is amended as follows:

Between lines 10 and 11

insert:

authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state in certain circumstances;

By Senator Hukill

8-00033D-15 2015766__

A bill to be entitled

An act relating to surveillance by a drone; amending s. 934.50, F.S.; defining terms; prohibiting a person, a state agency, or a political subdivision from using a drone to capture an image of privately owned real property or of the owner, tenant, or occupant of such property with the intent to conduct surveillance without his or her written consent if a reasonable expectation of privacy exists; specifying when a reasonable expectation of privacy may be presumed; providing that an owner, tenant, or occupant may initiate a civil action for compensatory damages or seek injunctive relief against a person, a state agency, or a political subdivision that violates the act; providing for the recovery of attorney fees and punitive damages; specifying that remedies provided by the act are cumulative to other remedies; providing an effective date.

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

Section 1. Section 934.50, Florida Statutes, is amended to read:

934.50 Searches and seizure using a drone.—

(1) SHORT TITLE.—This act may be cited as the "Freedom from Unwarranted Surveillance Act."

(2) DEFINITIONS.—As used in this act, the term:

(a) "Drone" means a powered, aerial vehicle that:

1. Does not carry a human operator;

8-00033D-15 2015766__

2. Uses aerodynamic forces to provide vehicle lift;

3. Can fly autonomously or be piloted remotely;

4. Can be expendable or recoverable; and

5. Can carry a lethal or nonlethal payload.

(b) "Image" means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

(c) "Imaging device" means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

(d) ~~(b)~~ "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(3) PROHIBITED USE OF DRONES.—

(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned or occupied real property or of the owner, tenant, or occupant of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to

have a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

(4) EXCEPTIONS.—This act does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(5) REMEDIES FOR VIOLATION.—

(a) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this act.

(b) The owner, tenant, or occupant of privately owned or occupied real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision that violates paragraph (3)(b). In such action, the prevailing party

is entitled to recover reasonable attorney fees from the nonprevailing party based on the actual and reasonable time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

(c) Punitive damages under this section may be sought against a person subject to other requirements and limitations of law, including, but not limited to, part II of chapter 768 and case law.

(d) The remedies provided by this section are cumulative to other existing remedies.

(6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or collected in violation of this act is not admissible as evidence in a criminal prosecution in any court of law in this state.

Section 2. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 766
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 114264 Simpson		3/24/2015 2 Amendment 554452 to A114264 Simpson		3/24/2015 3 Amendment 114264 Simpson	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**	PEND	-	RCS	-	RCS	-
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 766 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 856
INTRODUCER:	Banking and Insurance Committee and Senator Latvala
SUBJECT:	Vision Insurance
DATE:	March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 856 prohibits an insurer, prepaid limited health service organization (PLHSO), health maintenance organization (HMO), or a third-party administrator (TPA) from requiring a licensed ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to an insured. The bill also prohibits those entities from requiring a licensed ophthalmologist or optometrist to purchase a material or service used by the ophthalmologist or optometrist from another entity in which the insurer, PLHSO or HMO or its TPA has a financial interest. The bill also provides the same prohibition relating to the purchase of materials by opticians. The bill provides that a violation of one of these provisions constitutes an unfair insurance trade practice under s. 626.9541, F.S.

II. Present Situation:

Regulation of Insurance

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities. The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency pursuant to part III of ch. 641, F.S.

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include ambulance, dental, vision, mental health, substance abuse, chiropractic, podiatric, and pharmaceutical.[1] Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Health Maintenance Organization Provider Contracts

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment, and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying the payment of benefits for out-of-network services rendered to the member. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers.

Third Party Administrators

Third party administrators are regulated under part VII of ch. 626, F.S. An administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1), F.S., or any person who, through a contract as defined in s. 641.234, F.S., with an insurer or HMO, provides billing and collection services to health insurers and HMO on behalf of health care providers.[2]

Prohibition against "All Products" Clauses in Health Care Provider Contracts

Section 627.6474, F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, exclusive provider organization, or preferred provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group.

State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance, administers the State Group Insurance Program providing employee benefits under a cafeteria plan consistent with Section 125, Internal Revenue Code. The Division of State Group Insurance offers a fully-insured vision insurance plan to eligible employees and their eligible dependents.

[1] Section 636.003(5), F.S.
[2] Section 626.88(1), F.S.

Unfair Insurance Trade Practices

Part IX of ch. 626, F.S., regulates practices relating to the business of insurance by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices and prohibits those activities. Section 626.9541(1)(d), F.S., provides that the following acts are an unfair insurance trade practice:

> Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Section 626.9521, F.S., provides administrative fines and criminal penalties for violations under s. 626.9541, F.S. Further, the OIR is authorized to issue cease and desist orders and suspend or revoke an entity's certificate of authority for engaging in unfair insurance trade practices.[3]

Credentialing

Section 641.495(6), F.S., provides that each HMO must have a system for verification and examination of the credentials of each of its providers. If the organization has delegated the credentialing process to a contracted provider or entity, it must verify that the policies and procedures of the delegated provider or entity are consistent with the policies and procedures of the organization and there is evidence of oversight activities of the organization to determine that required standards are met and maintained.[4]

Credentialing is a process for the collection and verification of a provider's professional qualifications. The qualifications that are reviewed and verified include, but are not limited to, relevant training, licensure, certification and/or registration to practice in a health care field, experience, and academic background. A credentialing process is used by: healthcare facilities as part of its process to allow practitioners to provide services at its facilities; health plans to allow providers to participate in its network (provider enrollment); medical group when hiring new providers; and other healthcare entities that have a need to hire or otherwise engage providers.

III. Effect of Proposed Changes:

Sections 1, 2, and 3 amend ss. 627.6474, 636.035, and 641.315, F.S., to prohibit insurers, PLHSO, HMOs, respectively, or their third-party administrators from requiring a licensed ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to an insured. The bill also prohibits these entities from requiring an ophthalmologist or optometrist to purchase certain materials or services from an entity in which the insurer, PLHSO, the HMO, or the entity's third-party administrators has a direct or indirect ownership, financial, or controlling interest. The bill also provides the same prohibition relating to the purchase of materials by opticians.

[3] Section 626.9581, F.S.

[4] Agency for Health Care Administration, *Interpretive Guidelines for Initial Health Care Provider Certificates for Health Maintenance Organizations and Prepaid Health Clinics*, (2010).

The bill provides that a violation of one of these provisions constitutes an unfair insurance trade practice under s. 626.9541 (1)(d), F.S., which relates to any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Potential fines under the Unfair Insurance Trade Practices Act include an amount not greater than:

- $5,000 for each nonwillful violation;
- $40,000 for each willful violation;
- An aggregate amount of $20,000 for all nonwillful violations arising out of the same action; or
- An aggregate amount of $200,000 for all willful violations arising out of the same action.

The fines may be imposed in addition to any other applicable penalty.[5]

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill takes effect upon becoming a law. The general rule of law is that legislation applies prospectively and not retrospectively. In other words, this bill will not apply retroactively to impair the effectiveness of contracts already in existence on the date this legislation becomes effective. It will apply only to contracts signed on or after the effective date of the bill.

The State Constitution provides that "No…. law impairing the obligation of contracts shall be passed."[6] The Florida Supreme Court[7] has noted that "Virtually no degree of contract impairment has been tolerated in this state" and strongly favors the sanctity of

[5] Section 626.9521(2), F.S.
[6] FLA. CONST. art. I, s. 10.
[7] *Yamaha Part Distributors Inc., et al, v. Ehrman et al.,* 316 So. 2d 557, 559 (Fla 1975).

contracts. Accordingly, contracts already in existence on the date this bill becomes effective will remain in effect between the parties to the contracts, regardless of the language in this bill. However, to avoid confusion, the Legislature may wish to expressly state in the bill that it does not apply to existing contracts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Ophthalmologists or optometrists contracting with insurers, PLHSOs, HMOs, and third-party administrators would not be required to purchase materials and services from an entity in which the insurer, PLHSO, or HMO has a direct or indirect financial ownership or financial interest. Opticians would not be required to purchase materials from those entities under similar circumstances. This gives the provider flexibility in the provision of those materials or services.

Further, the entities specified above could not require an ophthalmologist or optometrist with whom they contract to provide vision care services as a condition of participating as a provider of any other type of service to an insured. According to advocates of the bill, insurers and HMOs outsource credentialing to third parties. As a condition of that credentialing, a third party, such as a vision plan, may require the optometrist to join the vision plan network as a provider as a condition for being credentialed and participating on a panel with another health insurer, HMO, or PLHSO. This would not be allowed under the bill.

According to proponents of the bill, consumers access a wide variety of specialty care through limited benefit plans, such as vision care plans. Vision care plans contract with preferred providers and build supplier and laboratory networks to provide efficient networks that reduce consumer costs. They also assert that limiting business models flattens competition and provides fewer options to consumers and employers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 627.6474, 636.035, and 641.315 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 17, 2015
The CS amends the Insurance Code rather than ch. 501, F.S. The CS also provides that violations under the bill constitute an unfair insurance trade practice under part IX of ch. 626, F.S., of the Insurance Code rather than a violation of the Florida Deceptive and Unfair Trade Practices Act, under part II of ch. 501, F.S.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Latvala

597-02407-15 2015856c1

A bill to be entitled

An act relating to health provider contracts; amending ss. 627.6474, 636.035, and 641.315, F.S.; providing that a contract between a health insurer, a prepaid limited health service organization, or a health maintenance organization, respectively, or a third-party administrator thereof, and a licensed ophthalmologist or optometrist may not require the licensee to provide vision care services as a condition of providing any other service or to purchase certain materials or services from specified entities; providing that a contract between a health insurer, a prepaid limited health service organization, or a health maintenance organization, respectively, or a third-party administrator thereof, and a licensed optician may not require the licensee to purchase certain materials from specified entities; providing that a violation of the act's prohibitions constitutes a specified unfair insurance trade practice; providing an effective date.

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

Section 1. Subsection (3) is added to section 627.6474, Florida Statutes, to read:

627.6474 Provider contracts.—

(3)(a) A contract between a health insurer or the insurer's third-party administrator and:

1. An ophthalmologist licensed pursuant to chapter 458 or

597-02407-15 2015856c1

chapter 459 or an optometrist licensed pursuant to chapter 463 may not require such licensee to:

a. Provide vision care services as a condition of participating as a provider of any other type of service to an insured; or

b. Purchase a material or service used by the licensee from an entity in which the insurer or the insurer's third-party administrator has a direct or indirect ownership, financial, or controlling interest.

2. An optician licensed pursuant to part I of chapter 484 may not require such licensee to purchase a material used by the licensee from an entity in which the insurer or the insurer's third-party administrator has a direct or indirect ownership, financial, or controlling interest.

(b) A violation of this subsection constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 2. Subsection (14) is added to section 636.035, Florida Statutes, to read:

636.035 Provider arrangements.—

(14)(a) A contract between a prepaid limited health service organization or the organization's third party administrator and:

1. An ophthalmologist licensed pursuant to chapter 458 or chapter 459 or an optometrist licensed pursuant to chapter 463 may not require such licensee to:

a. Provide vision care services as a condition of participating as a provider of any other type of service to a subscriber; or

b. Purchase a material or service used by the licensee from

an entity in which the organization or organization's third-party administrator has a direct or indirect ownership, financial, or controlling interest.

2. An optician licensed pursuant to part I of chapter 484 may not require such licensee to purchase a material used by the licensee from an entity in which the organization or organization's third-party administrator has a direct or indirect ownership, financial, or controlling interest.

(b) A violation of this subsection constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 3. Subsection (12) is added to section 641.315, Florida Statutes, to read:

641.315 Provider contracts.—

(12)(a) A contract between a health maintenance organization or the organization's third-party administrator and:

1. An ophthalmologist licensed pursuant to chapter 458 or chapter 459 or an optometrist licensed pursuant to chapter 463 may not require such licensee to:

a. Provide vision care services as a condition of participating as a provider of any other type of service to a subscriber; or

b. Purchase a material or service used by the licensee from an entity in which the organization or organization's third-party administrator has a direct or indirect ownership, financial, or controlling interest.

2. An optician licensed pursuant to part I of chapter 484 may not require such licensee to purchase a material used by the licensee from an entity in which the organization or

organization's third-party administrator has a direct or indirect ownership, financial, or controlling interest.

(b) A violation of this subsection constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 4. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 856
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 17, 2015

The Honorable Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

I respectfully request consideration of Senate Bill 856/Vision Insurance by the Senate Judiciary Committee at your earliest convenience. The bill was referred favorably by the Banking and Insurance Committee on March 17.

This bill will prohibit insurance companies from requiring a licensed ophthalmologist or optometrist to provide vision care services under specified circumstances or to purchase certain materials or services as a condition for participating as a provider.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Tom Cibula, Staff Director; Shirley Proctor, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 856 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

856
Bill Number (if applicable)

Topic Vision Plans

Amendment Barcode (if applicable)

Name Jim Daughton

Job Title Metz, Husband & Daughton

Address 215 S. Monroe St.
Street

Phone 595-9000

Tallv
City

FL
State

32301
Zip

Email jim.daughton@metzlaw.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Assn of Vision Care Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

SB 856
Bill Number (if applicable)

Topic Vision Insurance

Amendment Barcode (if applicable)

Name Dr Kennen Lawson

Job Title FOA Legislative chair / Optometrist

Address 5632 - 26th St W
Street

Bradenton FL 34207
City *State* *Zip*

Phone 941 757 4448

Email doc151@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FOA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

SB856
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Vision Insurance

Name Joy Ryan

Job Title

Address 325 W. College Ave.
Street

Phone 425-4000

32301
City *State* *Zip*

Email joy@meenanlawfirm.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing America's Health Insurance Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 922
INTRODUCER:	Judiciary Committee and Senator Latvala
SUBJECT:	Appointment of an Ad Litem
DATE:	March 25, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922 authorizes a court to appoint an ad litem, which is an attorney, administrator, or guardian ad litem, for a person who is served by publication with notice of a lawsuit and fails to respond to the lawsuit. The purpose of the ad litem is to represent the interests of an absent party during a legal action if the party is not otherwise represented. An ad litem is not required to post bond. Additionally, the ad litem is entitled to reasonable fees and costs, assessed against the party requesting the appointment of the ad litem, or as otherwise ordered by the court. However, state funds may not be used to pay for services rendered by the ad litem, unless the state requested the ad litem.

II. Present Situation:

Ad Litem

The term "ad litem" means "for the suit."[1] An ad litem can take several forms, such as a guardian ad litem or an attorney ad litem. A guardian ad litem is typically an attorney, appointed by the court to appear in a lawsuit on behalf of an incompetent party or minor child.[2] An attorney ad litem is a court-appointed lawyer who represents a child during the course of a legal action, such as a divorce, termination of parental rights, or child abuse case.[3]

[1] BLACK'S LAW DICTIONARY (10th ed. 2014).
[2] *Id*.
[3] *Id*.

Service of Process

The sheriff of the county where the person is to be served is generally responsible for serving as process server. The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.[4] The term "to serve" means to make legal delivery of a notice or a pleading.[5] A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.[6] A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.[7] A subpoena can command a person to be present for a deposition or for a court appearance.

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.[8]

Constructive Service of Process

Constructive service of process is service accomplished by a method or circumstance that does not give actual notice.[9] This method of providing notice is accomplished by publishing notice of a lawsuit in a newspaper or, in some circumstances, posting notice of a lawsuit in three different conspicuous places in the county.[10] Constructive service is authorized only if personal service of process cannot be accomplished.[11]

Florida law enumerates a number of legal actions for which constructive service of process is authorized:

- In real or personal property cases, to partition property within the jurisdiction of the court, enforce legal or equitable liens, enforce claims to title or interest, quiet title or to remove an encumbrance, lien, or cloud on property;
- For the dissolution of marriage or in an annulment case;

[4] Sections 48.011 and 48.021, F.S.
[5] BLACK'S LAW DICTIONARY (10th ed. 2014).
[6] *Id*.
[7] *Id*.
[8] Section 48.031(1) and (2), F.S.
[9] BLACK'S LAW DICTIONARY (10th ed. 2014).
[10] Sections 49.10 and 49.11, F.S.
[11] Section 49.021, F.S.

- For the termination of parental rights, temporary custody of a minor child, adoption, and in certain paternity actions;
- For the construction of a will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien or interest; and
- For a case in which a writ of replevin, garnishment, or attachment has been issued and executed.[12]

Service of process by publication may be made to:
- Known or unknown persons, and in some instances, persons unknown to be dead or alive;
- Corporations or other legal entities, whether foreign, domestic, or unknown, and dissolved or existing; and
- Any group, firm, entity, or persons who operate or do business, or have operated or done business in the state; and
- All claimants under any of the above intended recipients of process.[13]

Before effecting service on a person by publication, the plaintiff or the plaintiff's agent or attorney must file a sworn statement with the court which specifies the following:
- That a diligent search and inquiry has been made to discover the name and residence of the person to be served;
- That the person is either over or under the age of 18 years old, if known, or that age is unknown; and
- That if the residence of the person is unknown, in another state or country, or if in the state, the person has been absent from the state for more than 60 days or concealed himself or herself in the state so as not to be found.[14]

Before effecting service on a corporation by publication, the plaintiff must address in the sworn statement:
- That diligent search and inquiry has been made to discover the true name, domicile, principal place of business, and status (foreign, domestic, or dissolved) of the corporate defendant and others who would bind the corporation;
- Whether the corporation has ever qualified to do business in this state, unless the corporation is a Florida corporation; and
- That all officers, directors, managers, cashiers, and agents of the corporation are absent or cannot be found in the state, conceal themselves to avoid process, or that their whereabouts are unknown.[15]

Within 60 days after filing the sworn statement, the clerk or judge must issue a notice of action which provides:
- The names of the known defendants or a description of the unknown defendants;
- The nature of the action or the proceeding;
- The name of the court in which the plaintiff initiated the action; and

[12] Section 49.011, F.S.
[13] Section 49.021, F.S.
[14] Section 49.041, F.S.
[15] Section 49.051, F.S.

- If relevant, the description of real property.[16]

Most notices of action are published once a week for 4 consecutive weeks in a newspaper published in the county where the court is located.[17] If the county does not have a newspaper, three copies of the notice must be posted in three different and conspicuous places in the county, including the front door of the courthouse.[18] Proof of publication is made by affidavit of the owner, publisher, editor, business manager, or other officer or employee of the newspaper.[19]

III. Effect of Proposed Changes:

This bill authorizes a court to appoint an ad litem to represent the interest of a party who fails to respond to a lawsuit after service of process by publication has been made. An ad litem is an attorney, administrator, or guardian ad litem. An ad litem may represent a party in any case for which service of process by publication is authorized, such as cases relating to real property, probate, and certain kinds of family law issues.

If a court appoints an ad litem, the court:
- May not require the ad litem to post a bond or designate a resident agent.
- May not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is already serving.
- Must discharge the ad litem when final judgment is entered or as otherwise ordered by the court.

Must assess the reasonable fees and costs of the ad litem against the party requesting the appointment of an ad litem, typically the plaintiff, or as otherwise ordered by the court. However, the bill prohibits the use of state funds for services rendered by the ad litem unless the state requested the ad litem.

The bill also expressly validates the adjudication of cases in which a court appointed an ad litem without statutory authority to make the appointment. Specifically, the bill states: "In all cases adjudicated in which the court appointed an ad litem, a proceeding may not be declared ineffective solely due to the lack of statutory authority to appoint an ad litem."

The bill clarifies that it does not impede the common law authority of a court to appoint an ad litem.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

[16] Section 49.08, F.S.
[17] Section 49.10(1)(a), F.S.
[18] Section 49.11, F.S.
[19] Section 49.10(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Real Property Probate, and Trust Law Section of the Florida Bar, this bill will help protect the property rights of individuals who cannot be notified of lawsuits. The bill also preserves the marketability of title to real estate, which might be questioned if a person is not represented in a quiet title action or foreclosure proceeding.[20]

The bill also validates previous legal proceedings in which a court appointed an ad litem to represent an unknown or unavailable defendant without express statutory authority to do so. This retroactive validation of legal proceedings likely benefits foreclosing lenders and title insurance companies by eliminating a potential ground for setting aside a foreclosure or judgment in a quiet title action.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the discretionary appointment of an ad litem will require the assessment of fees and costs, review of reports, and processing petitions for discharge, all of which would result in additional judicial time. However OSCA cannot accurately determine the fiscal impact.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 49.31, Florida Statutes.

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[20] Real Property Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to s. 49.021, Fla. Stats., Concerning Appointment of Ad Litems* (Nov. 23, 2013) (on file with the Senate Committee on Judiciary).
[21] Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 13, 2015).

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 24, 2015:
The CS:

- Removes the requirement that a personal representative must notify the court and petition for discharge where representation would overlap if the ad litem discovers that the person for whom the ad litem is serving is already represented;
- Removes the requirement that if an ad litem discovers that the person he or she represents is deceased, the ad litem must reasonably attempt to notify relatives and heirs, report to the court the contact of any persons located, and petition for discharge; and
- Prohibits the use of state funds for services rendered by the ad litem unless the state requested the ad litem.

B. Amendments:

None.

563684

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2015	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 49.31, Florida Statutes, is created to read:

49.31 Appointment of ad litem.—

(1) As used in this section, the term "ad litem" means an attorney, administrator, or guardian ad litem.

(2) The court may appoint an ad litem for any party, whether known or unknown, upon whom service of process by

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publication under this chapter has been properly made and who has failed to file or serve any paper in the action within the time required by law. A court may not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving.

(a) If the court has appointed an ad litem and the ad litem discovers that a personal representative, guardian of property, or trustee is serving who represents the interest for which the ad litem was appointed, the ad litem must promptly report that finding to the court and must file a petition for discharge as to any interest for which the personal representative, guardian of property, or trustee is serving.

(b) If the court has appointed an ad litem to represent an interest and the ad litem discovers that the person whose interest he or she represents is deceased and there is no personal representative, guardian of property, or trustee to represent the decedent's interest, the ad litem must make a reasonable attempt to locate any spouse, heir, devisee, or beneficiary of the decedent, must report to the court the name and address of all such persons whom the ad litem locates, and must petition for discharge as to any interest of the person located.

(3) The court may not require an ad litem to post a bond or designate a resident agent in order to serve as an ad litem.

(4) The court shall discharge the ad litem when the final judgment is entered or as otherwise ordered by the court.

(5) The ad litem is entitled to an award of a reasonable fee for services rendered and costs, which shall be assessed against the party requesting the appointment of the ad litem, or

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as otherwise ordered by the court. State funds may not be used to pay fees for services rendered by the ad litem unless the ad litem was requested by the state.

(6) In all cases adjudicated in which the court appointed an ad litem, a proceeding may not be declared ineffective solely due to lack of statutory authority to appoint an ad litem.

(7) This section does not abrogate a court's common law authority to appoint an ad litem.

Section 2. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the appointment of an ad litem; creating s. 49.31, F.S.; defining the term "ad litem"; authorizing a court to appoint an ad litem for certain parties upon whom service of process by publication is made; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving; requiring an ad litem, upon discovery that the party he or she represents is already represented by a personal representative, guardian of property, or trustee, or is deceased, to take certain actions; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent; requiring a court to discharge an ad litem when the final judgment

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is entered or as otherwise ordered by the court; providing that an ad litem is entitled to an award of a reasonable fee for services and costs; providing for assessment; prohibiting the use of state funds to pay fees for services rendered by the ad litem except in certain circumstances; prohibiting declaring certain proceedings ineffective solely due to a lack of statutory authority to appoint an ad litem; providing construction; providing an effective date.

By Senator Latvala

20-01205-15 2015922__

A bill to be entitled

An act relating to the appointment of an ad litem; amending s. 49.021, F.S.; defining the term "ad litem"; authorizing a court to appoint an ad litem for any party in certain circumstances; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent in order to serve as ad litem; requiring courts to discharge an ad litem when the final judgment is entered or as otherwise ordered by the court; providing that an ad litem is entitled to an award of a reasonable fee for services rendered and costs that must be assessed by the court against a specified party or as otherwise ordered by the court; prohibiting a proceeding in which the court appointed an ad litem from being declared ineffective solely due to a lack of statutory authority to appoint an ad litem; providing that this section does not abrogate a court's common law authority to appoint an ad litem; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving; requiring an ad litem, upon discovery that the party it represents is already represented by a personal representative, guardian of property, or trustee, or is deceased, to take certain actions; providing an effective date.

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

20-01205-15 2015922__

Section 1. Section 49.021, Florida Statutes, is amended to read:

49.021 Service of process by publication; appointment of ad litem.—

(1) If~~, upon whom. Where~~ personal service of process or, if appropriate, service of process under s. 48.194 cannot be made ~~had~~, service of process by publication may be made ~~had~~ upon any party, natural or corporate, known or unknown, including:

(a) ~~(1)~~ Any known or unknown natural person, and, if ~~when~~ described as such, the unknown spouse, heirs, devisees, grantees, creditors, or other parties claiming by, through, under, or against any known or unknown person who is known to be dead or is not known to be either dead or alive;

(b) ~~(2)~~ Any corporation or other legal entity, regardless of whether its domicile is ~~be~~ foreign, domestic, or unknown, and whether dissolved or existing, including corporations or other legal entities not known to be dissolved or existing, and, if ~~when~~ described as such, the unknown assigns, successors in interest, trustees, or any other party claiming by, through, under, or against any named corporation or legal entity;

(c) ~~(3)~~ Any group, firm, entity, or persons who operate or do business, or have operated or done business, in this state, under a name or title that ~~which~~ includes the word "corporation," "company," "incorporated," "Inc.," or any combination thereof, or under a name or title which indicates, tends to indicate, or leads one to think that the same may be a corporation or other legal entity; and

(d) ~~(4)~~ All claimants under any of the ~~such~~ parties specified in paragraph (a), paragraph (b), or paragraph (c).

Unknown parties may be proceeded against exclusively or together with other parties.

(2) For the purposes of this section, the term "ad litem" means an attorney, administrator, or guardian ad litem. The court may appoint an ad litem for any party, whether known or unknown, upon whom constructive service of process under this chapter has been properly made and who has failed to file or serve any paper in the action within the time required by law. The court may not require an ad litem to post a bond or designate a resident agent in order to serve as an ad litem.

(a) The court shall discharge the ad litem when the final judgment is entered or as otherwise ordered by the court.

(b) The ad litem is entitled to an award of a reasonable fee for services rendered and costs, which shall be assessed against the party requesting the appointment of the ad litem, or as otherwise ordered by the court.

(3) In all cases adjudicated in which the court appointed an ad litem, a proceeding may not be declared ineffective solely due to lack of statutory authority to appoint an ad litem.

(4) This section does not abrogate a court's common law authority to appoint an ad litem.

(5) A court may not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving. If the court has appointed an ad litem and the ad litem discovers that a personal representative, guardian of property, or trustee is serving who represents the interest for which the ad litem was appointed, the ad litem must promptly report that finding to the court and

must file a petition for discharge as to any interest for which the personal representative, guardian of the property, or trustee is serving. If the court has appointed an ad litem to represent an interest and the ad litem discovers that the person whose interest he or she represents is deceased, and there is no personal representative, guardian of the property, or trustee to represent the decedent's interest, the ad litem must make a reasonable attempt to locate any spouse, heir, devisee, or beneficiaries of the decedent, must report to the court the name and address of any such persons that the ad litem locates, and must petition for discharge as to any interest of the person located.

Section 2. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 922
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 563684 Ring					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 2, 2015

The Honorable Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

I respectfully request consideration of Senate Bill 922/Appointment of an Ad Litem by the Senate Judiciary Committee at your earliest convenience.

This bill will provide a specific authority for a judge to appoint a representative for an individual who is personally absent from the court's jurisdiction in order to protect their property rights. Examples would include deployed military personnel or an individual who could not be located by the process server.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Tom Cibula, Staff Director; Shirley Proctor, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

922
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Pete Dunbar

Job Title _____

Address 215 S. Monroe
Street

Phone 999-4111

Tallahassee, Fla 32301
City *State* *Zip*

Email pdunbar@deanmead

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Real Property, Probate & Trust Law Section Fla. Bar

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/18/14	SM	Favorable
3/24/15	JU	Favorable

December 18, 2014 (Rev. 3/24/15)

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 38** – Senator Joyner
Relief of Dennis Darling and Wendy Darling

AMENDED SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BILL BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR $1.8 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHN WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

CURRENT STATUS:

On February 16, 2009, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 32 (2008). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably. The special master report was last updated in 2011 when the bill was filed as SB 14 for the 2012 session. The 2012 report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Barbara M. Crosier. My responsibilities were to review the records relating to the claim

bill, be available for questions from members, and determine whether any changes have occurred since the hearing, which if known at the hearing might have significantly alter the findings or recommendations in the previous report.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report.

Additionally, SB 14 (2012) the prior claim bill on which the special master report is based is effectively identical to the claim bill filed for the 2015 Legislative Session.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Senator Joyner
Deborah Brown , Secretary of the Senate
Counsel of Record

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/11	SM	Favorable

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 14 (2012)** – Senator Arthenia Joyner
Relief of Dennis Darling and Wendy Darling

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR $1.8 MILLION, BASED ON A COURT-APPROVED SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY TO COMPENSATE FOR DEVAUGHN'S DEATH, WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS.

FINDINGS OF FACT:

On February 26, 2001, while participating in "mat drills" in the Moore Athletic Center at Florida State University (FSU), Devaughn Darling collapsed and died. Two autopsies were performed, but found "no definite morphologic cause of death." The autopsies, however, did find evidence of distended blood vessels "engorged" with sickled blood cells in several organs of his body.

It was determined months before, during Devaughn's initial physical examination upon entering FSU as a freshman, that he had sickle cell trait. Sickle cell trait is the inheritance of one gene of sickle hemoglobin and one for normal hemoglobin. In contrast, sickle cell anemia is caused by the inheritance of two sickle cell genes and is a much more serious condition with many adverse health consequences. In both the trait and the

anemia, blood cells can distort (changing from a round shape to a crescent shape) and become less flexible. The cells are then less efficient at transporting oxygen to the muscles and organs of the body. The distortion and inflexibility of the blood cells impairs their ability to pass through the smaller blood vessels.

Sickle cell trait occurs most commonly in persons of African descent and occurs in approximately 8 percent of African-Americans. It occurs in persons of other ancestry as well, but less frequently.

Sickle cell trait is not treatable, but usually does not compromise the health of the individual with the trait. However, the trait has been linked to the deaths of 13 high school and college football players and a larger number of U.S. Army recruits. In all cases, the deaths occurred during extreme exertion during training. The sickling of blood cells during extreme exertion is brought on by four factors: (1) deficiency in the concentration of oxygen in arterial blood, (2) increase in body acids, (3) hyperthermia in muscles, and (4) red cell dehydration. It was established before 2001 that sickle cell trait, when combined with other stress factors such as high temperature and dehydration, can result in "sickle cell collapse" and death during extreme exertion.

The medical issues related to athletes with sickle cell trait caused the National Collegiate Athletic Association (NCAA) to adopt guidelines in 1998 regarding athletes with sickle cell trait. The guidelines contain a statement that, "There is controversy in the medical literature concerning whether sickle cell trait increases the risk of exercise-associated sudden death," but recommended that all athletes (1) avoid dehydration and acclimatize gradually to heat and humidity, (2) condition gradually for several weeks before engaging in exhaustive exercise regimens, and (3) refrain from extreme exertion during acute illness, especially one involving fever.

Mat drills are the name given to the pre-season conditioning drills for FSU football players conducted in February of each year. They consist of three different physical activities conducted at separate "stations" which the players rotate through. There is a station which mostly involves running sprints, an "agility station" which involves running through ropes and around cones, and a station which involves drills

on a large wrestling mat. The football players are divided into three groups, according to their size. As soon as the players in a group finish the drills at one station, they move together to another station. The stations are run simultaneously, beginning and ending at the same time. The entire exercise takes about 90 minutes to complete.

FSU football coaches are assigned to a single station for the entire 90-minute period. Trainers are also divided between stations. The coaches and trainers watch the players closely at all times. The coaches grade the players' performances in the drills, record the grades, and discuss the grades with the players at a meeting of all of the players after all the drills have been completed.

The mat drills had a reputation for being extremely challenging because of the physical exertion required. Devard Darling, Devaghn's twin brother and also a FSU football player, said the older players teased the freshmen about what was in store for them when February came around and the mat drills started. The players were awakened at 5:30 a.m. and started the mat drills soon after getting up. Trash cans were set out for the specific purpose of providing receptacles for the players to vomit into.

At the mat drill station, the players formed in groups, usually four abreast, at one end of the mat. There would usually be three or four lines with four players in each line. The seniors and starters formed the first lines; freshmen formed the back lines. At the oral commands or hand signals of the coaches, the players would throw themselves onto the mat on their chests and stomachs, spin quickly to the left and right, jump onto their feet, move laterally, sprint forward to the middle of the mat, run in place, sprint to the end of the mat, run in place, and then sprint forward to a matted wall. The number of times the players performed any single maneuver on the mat and the sequence of maneuvers would vary. After completing the drill, the four players would return to the end of the formation to await their turn to go again.

If a player did not perform a drill correctly, or "fell out" during a mat drill, all four players would be sent back to redo the drill. They redid the drill immediately while the other lines of players waited. Because of the inexperience of the freshmen, they

would usually have to do more "go backs" than the older players.

The room where the mat drill took place was relatively small, about 120 feet by 49 feet. Devard Darling said the room was always hot and muggy. In his statement to a police investigator, the head trainer said Devaughn was taken from the mat room to the training room after he collapsed because the mat room was "very hot."

The parties disputed whether the players were given reasonable access to water. The head trainer said the players were told to drink water before the mat drills began and there were water fountains in the hallways not far from the mat area. The players, however, said it was impossible to get a drink of water during the drills and nearly impossible to get water in the short time when the players moved to a new station. There was no designated "water break" during the 90-minute mat drills. Furthermore, a high-pressure, hurry-up atmosphere was created that discouraged and impeded the players from going for water. The more persuasive evidence established that it was difficult for the players to get water, many players did not get water, and players that managed to get water got less than they wanted.

On February 26, 2001, the mat drill was the last station for Devaughn. Four coaches and seven trainers (including student trainers) were present. The written statements provided by FSU's coaches and non-student trainers were identical in stating that they saw "nothing out of the ordinary" in Devaughn's level of fatigue or behavior leading up to his collapse at the conclusion of the mat drill. The repeated use of the phrase "nothing out of the ordinary" in these statements strongly suggests that there had been some discussion, and perhaps even instructions given, about what should be said. The statements of several players and a couple of the student trainers were quite different. Some players said Devaughn told them he couldn't see, that they saw him clutching his chest, and that he was having trouble getting up off the mat and sometimes could not get up without help from other players. One student trainer said that, instead of diving forward onto the mat like the others, Devaughn would just fall forward "like a board." Another student trainer said Devaughn would sometimes attempt to stand, but would fall back down.

Devaughn's line of four players was made to go back more than once and was the last to finish the drill. Devaughn was not able to get into position fast enough to go back with his line and finished the drill by himself. He was the last player to finish the last station.

When Devaughn finished the mat drill, he fell to his knees with his head resting against the wall. The head trainer and one of the players carried Devaughn to the edge of the mat. His pulse was irregular and his breathing was shallow and erratic. Devaughn was then carried downstairs to the training room where he was given oxygen and surrounded with ice packs to reduce his body temperature. Soon thereafter, Devaughn stopped breathing and the training staff called 911. Policemen arrived first and brought a defibrillator which was used on Devaughn in an attempt to get his pulse going again. When the ambulance arrived, Devaughn was taken to the hospital where he was pronounced dead.

Beginning in 2002, FSU changed the way it conducted the mat drills. Now, a water break and short rest are provided to the players when they are between stations and an emergency medical crew and ambulance are standing by to render medical assistance to a player if needed.

LITIGATION HISTORY:

The Claimants sued FSU in the circuit court for Leon County in 2002. The case was successfully mediated and the parties entered into a Stipulated Settlement Agreement which called for payment to Dennis and Wendy Darling, as representatives of the estate of Devaughn Darling, the sovereign immunity limit of $200,000 and for FSU to support the passage of a claim bill for an additional $1.8 million. The agreement does not contain an admission or denial of liability by FSU. The circuit court entered a Final Judgment approving the settlement agreement on June 28, 2004.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether FSU is liable in negligence for the death of Devaughn Darling and, if so, whether the amount of the claim is reasonable.

FSU had a duty to conduct its football training activities in a manner that did not unreasonably endanger the health of the players beyond the dangers that are inherent in the game of

football. FSU breached that duty when its employees, both coaches and trainers, created a situation with the mat drills that was unreasonably dangerous for all players, but especially for a player with sickle cell trait. The situation was unreasonably dangerous because it involved extreme physical exertion in high temperature without reasonable access to water and without adequate opportunity to rest. Furthermore, the FSU coaching and training staff did not respond reasonably to signs of extreme physical distress that Devaugn was exhibiting.

I am not persuaded by the statements of the coaches and trainers that Devaughn's fatigue was "not out of the ordinary." No coach or trainer noted that other players were grasping their chests, falling over "like boards," and unable to stand without help. The evidence shows that Devaughn was showing signs of more intense physical exhaustion than other players and was probably suffering from sickle cell collapse during the course of the mat drill. However, only his final collapse at the end of the mat drill was considered by the training staff to be significant enough to warrant their intervention and assistance. It was negligent for the coaches and trainers not to intervene and render assistance to Devaughn earlier than they did. Instead, the coaches worsened his physical distress by making him repeat the drill without rest or water.

Devaughn's death was foreseeable because FSU knew that Devaughn had sickle cell trait, knew that sickle cell trait was linked to the deaths of football players during preseason training, and was aware of the sports medicine literature and NCAA guidelines about extreme exertion, heat, dehydration, and lack of adequate pre-conditioning as factors that contribute to incidents of exercise-associated sudden death.

The sickling of blood cells in a person with sickle cell trait begins quickly with extreme exertion, but is relieved quickly by rest. Providing water or sports drinks and short periods of rest during the mat drills, both of which are provided to players during a football game, is all that was needed to avoid the tragedy of Devaughn Darling's death.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES: Claimant's attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S.

LEGISLATIVE HISTORY: A claim bill for these Claimants was first filed in the 2007 Session, and a bill has been filed each session thereafter.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 14 (2012) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Arthenia Joyner
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Joyner

19-00018-15 201538__

A bill to be entitled

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

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

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

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

WHEREAS, as provided by the settlement agreement, the remaining unpaid portion of the consent judgment, $1.8 million,

19-00018-15 201538__

is sought to be paid to the plaintiffs by the filing of this claim bill and by the university's support of the filing of this claim bill seeking specific appropriation by the Legislature, NOW, THEREFORE,

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

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

Section 2. The sum of $1.8 million is appropriated from funds in the General Revenue Fund not otherwise encumbered, to be paid to Wendy Smith and Dennis Darling, Sr., parents of decedent Devaughn Darling, as relief for their losses.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Wendy Smith and Dennis Darling, Sr., parents of decedent Devaughn Darling, in the sum of $1.8 million.

Section 4. The amount paid by the Division of Risk Management of the Department of Financial Services pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Devaughn Darling. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 38
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
	X	Brandes						
X		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
	X	Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	2	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

February 5, 2015

Senator Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

This is to request that Senate Bill 38, Act of Relief for Dennis Darling, Sr. and Wendy Smith, be placed on the agenda for the Committee on Judiciary. It is my understanding the Special Master has completed a review of this bill. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:
❒ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
❒ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/CS/SB 554
INTRODUCER:	Judiciary Committee; Commerce and Tourism Committee; and Senator Simmons
SUBJECT:	Limited Liability Companies
DATE:	March 25, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	**Fav/CS**
2.	Davis	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 554 deletes or replaces obsolete references to the Florida Limited Liability Company Act which has been replaced by the Florida Revised Limited Liability Company Act and makes technical, grammatical, and stylistic changes due to the repeal of the earlier act.

The bill also makes the following changes to the Revised Limited Liability Company Act:

- Provides that a third-party does not have notice of a person's lack of authority to transfer real property on behalf of the LLC unless the limitation of authority is recorded in the official records of the county where the property is located;
- Conditions the authority of the members of an LLC to vote outside of a meeting on having a certain minimum number of votes and recording those votes;
- Requires a member-managed LLC to identify within 10 days after a member's request for information about the LLC, the information that the LLC will provide or reasons why the LLC will not provide the information;
- Clarifies that, in the event of a conflict between an operating agreement and the LLC's articles of organization, the provisions of the operating agreement prevail over inconsistent provisions of the LLC's articles of organization;
- Repeals a provision that prohibits an LLC's operating agreement from varying the power of a person to dissociate from the LLC; and
- Limits the circumstances under which an appraisal event that is an interested transaction may be contested or set aside.

Permits domestic and foreign LLCs to submit an annual report, in lieu of a reinstatement application, when seeking reinstatement with the department.

II. Present Situation:

Current Law

The Legislature enacted the Florida Revised Limited Liability Act[1] in 2013 to replace its predecessor, the Florida Limited Liability Company Act. The original act is contained in ch. 608, F.S., and the new act is contained in ch. 605, F.S. Both chapters govern the formation and operation of limited liability companies in the state.

The revised act became effective January 1, 2014, and applied to all Florida limited liability companies formed on or after that date, with a one year transition period for limited liability companies that existed before January 1, 2014. Foreign limited liability companies that were formed outside of the state, but which qualified to do business in the state, became subject to the revised act on January 1, 2014. On January 1, 2015, the one year transition period for Florida limited liability companies ended and the revised act now governs all limited liability companies in the state. The previous limited liability act contained in ch. 608, F.S., was repealed at that same time.[2]

A limited liability company (LLC) is a type of hybrid business entity that draws from the structure of a corporation and a partnership. It provides it members with limited liability against the entity's debts and obligations, like a corporation does. It also provides its members with the flexibility to choose the federal income tax classification of the entity. For multi-member limited liability companies, the members may choose federal income tax classification as a partnership, S corporation, or C corporation. For single-member limited liability companies, the member may choose federal income tax classification as an S corporation, C corporation, or disregarded entity.[3]

In order to lawfully transact business as a limited liability company in Florida, a company must sign and file its articles of organization[4] with the Florida Department of State and pay the appropriate fee.[5] A company must file an annual report with the Department of State to maintain its ability to transact business in this state.[6]

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[1] Chapter 2013-180, s. 2, Laws of Fla. This act is based upon the Uniform Law Commission's Revised Uniform Limited Liability Company Act of 2006, as amended through 2013.
[2] The Florida Bar Business Law Section Drafting Committee, *White paper for SB 554 and HB 531, An Act Relating to Limited Liability Companies* (February 9, 2015)(on file with the Senate Committee on Judiciary).
[3] Telephone interview and e-mail correspondence with A. Edward McGinty, Attorney, March 13, 2015 (E-mail on file with the Senate Committee on Judiciary).
[4] Section 605.0201, F.S.
[5] For a list of fees associated with the formation and maintenance of an LLC in this state, *see* http://www.sunbiz.org/feellc.html (last visited February 25, 2015).
[6] Section 605.0212, F.S. The annual report must include the name of the LLC, the street address of the LLC, the date of organization, the federal employer identification number, the name and address of the person having authority to manage the LLC, and any information required by the Department of State. The annual report is due by May 1 of each year.

Because ch. 608, F.S., the original Florida Limited Liability Company Act, was repealed on January 1, 2015, the statutes need to be updated to reflect those changes.

III. Effect of Proposed Changes:

The bill makes the following changes to ch. 605, F.S.:

Knowledge and Notice Provision (Section 1)

Section 605.0103(4), F.S., generally provides that a person who is not a member of a limited liability company is deemed to have notice of the company's grant or limitation of authority to a person to act on its behalf if that grant or limitation is contained in its articles of organization.

The bill amends s. 605.0103(4)5. F.S., to provide that a provision in the articles of organization limiting the authority of a person to transfer real property held in the name of the LLC is *not* effective notice of the limitation to a nonmember unless the limitation appears in an affidavit, certificate, or other instrument bearing the name of the LLC and recorded in the "office for recording transfers of real property." Statutes outside of ch. 605, F.S., provide that property and related records are maintained by the clerk of circuit court in the official records of the county where the property is located.[7]

Operating Agreement and Dissociation (Section 2)

Section 605.0105(3), F.S., provides a lengthy list of what an operating agreement of an LLC may not do. The bill amends this section to provide that an operating agreement may not vary the power of a person to dissociate.

Voting Rights of Members and Managers (Section 3)

Section 605.04073(4), F.S., provides that any action requiring the vote or consent of the members may be taken without a meeting. The bill amends this section to provide that a vote or consent of members may be taken without a meeting if the action is approved by the members with at least the minimum number of votes necessary to authorize the action at a meeting of the members. Additionally, a record of the meeting must be made.

Member Demand for Records (Section 4)

Section. 605.0410, F.S., provides the circumstances under which a member managed LLC must provide records and information to its members. The bill amends this section to require that a member managed LLC provide a member, within 10 days after receiving a demand, a record of the information, and when and where the company will provide the information. If the LLC is not providing the requested information, it must state the reasons why.

[7] Section 28.222, F.S.

Reinstatement (Sections 5 and 6)

Sections 605.0715 and 605.0909, F.S., specify what information must be included in a reinstatement application. As permitted previously in ch. 608, F.S., domestic and foreign LLCs may submit a current annual report form in lieu of a reinstatement application.

Other Remedies (Section 7)

This bill amends s. 605.1072(2), F.S., to delete a provision that provides an exception to the limitations of remedies that an LLC may pursue regarding the legality of an appraisal event involving an interested transaction. This repeal makes the limitation of remedies in appraisal events comparable to the limitations for other business entities.[8]

Application of the Revised LLC Act to LLCs Formed Under the Previous LLC Act (Section 8)

Section 605.1108, F.S., established the 1 year transition period of the Revised LLC Act and permitted LLCs formed before January 1, 2014, under the previous act, to operate under the previous act until January 1, 2015, when all Florida LLCs became subject to the Revised LLC Act. For member-managed LLCs formed under the previous act, s. 605.1108, (3)(b), F.S., states that "the language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement." Some situations exist in which a company's articles of organization may differ from its operating agreement as to how the company's management structure is established, leading to confusion over which language controls. In an effort to remedy this problem, s. 605.1108(3)(b), F.S., is deleted. Thus, the bill clarifies that the provisions of an operating agreement prevail over inconsistent provisions of an LLC's articles of organization.

Repeal of Chapter 608, F.S., the Florida Limited Liability Act (Section 9 and others)

As discussed in the "Present Situation" section of this analysis, the Florida Limited Liability Company Act was repealed by ch. 2013-180, Laws of Fla., effective January 1, 2015, and replaced by the Florida Revised Limited Liability Company Act.[9] It is the duty of the Office of Legislative Services in its operation of a statutory revision program to omit from the statutes all sections of the statutes which are expressly repealed by "any *current session* of the Legislature."[10] Because the act was not repealed by a current session of the Legislature, it may be omitted from the 2015 Florida Statutes only by a bill enacted by a current Legislature. Therefore, this bill repeals ch. 608, F.S., the Florida Limited Liability Company Act.

To correctly reflect the repeal of ch. 608 from the Florida Statutes, obsolete references to ch. 608, F.S., are deleted and replaced with current references to ch. 605, F.S. If it is necessary to retain a reference to ch. 608, F.S., the bill adds the word "former" before the reference to

[8] *See* s. 607.1302(3), F.S.
[9] Chapter 2013-180, s. 5, Laws of Fla. Section 5 provides "Effective January 1, 2015, the Florida Limited Liability Company Act, consisting of ss. 608.401-608.705, Florida Statutes, is repealed."
[10] Section 11.242(5)(b), F.S.

ch. 608, F.S. This bill also makes technical, stylistic, and conforming changes necessitated by the repeal of ch. 608, F.S.

"Majority-in-interest" Definition (Section 18)

This bill amends s. 605.0102, F.S., to revise the definition of "majority-in-interest" to provide that the determination of what constitutes an action taken by a "majority-in-interest" is based upon the percentage interest in the LLC's profits owned by all of the members and not by those who have the right to vote.

Duty of Loyalty (Section 21)

The bill amends s. 605.04091, F.S., to provide that in order for the exception to a member or manager's duty of loyalty to apply in cases of conflict of interest transactions, the conflict of interest transaction provisions in s. 605.04092, F.S., must be satisfied.

Additional Provisions

This bill amend ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074,605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S., respectively, to revise cross-references and make technical changes associated with the repeal of the Florida Limited Liability Company Act on January 1, 2015.

Effective Date

This act is effective July 1, 2015, unless otherwise expressly provided. To correct technical errors associated with the 2013 enactment of the Revised LLC Act and the January 1, 2015, repeal of the prior LLC Act, the bill provides a retroactive effective date of January 1, 2015, for those provisions related to the repeal of the Florida LLC Act. The remaining substantive provisions of the bill have an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, it does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides a retroactive effective date of January 1, 2015, for those provisions related to the repeal of the Florida Limited Liability Company Act. Retroactive application of a statute is generally unconstitutional if the statute impairs vested rights, creates new obligations, or imposes new penalties.[11]

To determine whether a statute should be retroactively applied, courts apply two interrelated inquiries. First, courts determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If so, then courts determine whether retroactive application is constitutionally permissible.[12] The first prong of the test appears to clearly be met by those sections of the bill that contain an explicit statement of retroactivity.

The second prong looks to see if a vested right is impaired. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law.[13] It must be an immediate, fixed right of present or future enjoyment.[14] "Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes."[15]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0103, 605.0105, 605.04073, 605.0410, 605.0712, 605.0715, 605.0717, 605.0805, 605.0909, 605.1072,

[11] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc*., 869 So. 2d 1210, 1216 (Fla. 2nd DCA 2004).
[12] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999).
[13] *R.A.M.* at 1218.
[14] *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).
[15] *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

605.1108, 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0102, 605.0401, 605.04074, 605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395.

The bill repeals chapter 608, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on March 24, 2015:
The CS/CS:

- Specifies what information must be included in a reinstatement application by an LLC; and
- Permits domestic and foreign LLCs to submit an annual report, in lieu of a reinstatement application, when seeking reinstatement with the department.

CS by Commerce and Tourism on March 2, 2015:

- Repeals a provision that provides an exception to the limitation of the remedies in appraisal events if the appraisal event is an interested transaction.
- Repeals ch. 608, F.S., the Limited Liability Company Act.
- Makes retroactive the effective date to January 1, 2015, those provisions that correct technical errors and cross-references associated with the repeal of the Florida Limited Liability Company Act and enactment of the Florida Revised Limited Liability Company Act in 2013.
- Adds additional cross-references that needed to be updated.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2015	.	
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	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 469
and insert:
Section 1. Paragraph (b) of subsection (4) of section 605.0103, Florida Statutes, is amended to read:
605.0103 Knowledge; notice.—
(4) A person who is not a member is deemed to:
(b) Have notice of a limited liability company's:
1. Dissolution, 90 days after the articles of dissolution filed under s. 605.0707 become effective;


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2. Termination, 90 days after a statement of termination filed under s. 605.0709(7) becomes effective;

3. Participation in a merger, interest exchange, conversion, or domestication, 90 days after the articles of merger, articles of interest exchange, articles of conversion, or articles of domestication under s. 605.1025, s. 605.1035, s. 605.1045, or s. 605.1055, respectively, become effective;

4. Declaration in its articles of organization that it is manager-managed in accordance with s. 605.0201(3)(a); however, if such a declaration has been added or changed by an amendment or amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement; and

5. Grant of authority to or limitation imposed on the authority of a person holding a position or having a specified status in a company, or grant of authority to or limitation imposed on the authority of a specific person, if the grant of authority or limitation imposed on the authority is described in the articles of organization in accordance with s. 605.0201(3)(d); however, if that description has been added or changed by an amendment or an amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement. A provision of the articles of organization that limits the authority of a person to transfer real property held in the name of the limited liability company is not notice of such limitation to a person who is not a member or manager of the company, unless such


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limitation appears in an affidavit, certificate, or other instrument that bears the name of the limited liability company and is recorded in the office for recording transfers of such real property.

Section 2. Paragraph (i) of subsection (3) of section 605.0105, Florida Statutes, is amended to read:

605.0105 Operating agreement; scope, function, and limitations.—

(3) An operating agreement may not do any of the following:

~~(i) Vary the power of a person to dissociate under s. 605.0601, except to require that the notice under s. 605.0602(1) be in a record.~~

Section 3. Subsection (4) of section 605.04073, Florida Statutes, is amended to read:

605.04073 Voting rights of members and managers.—

(4) An action requiring the vote or consent of members under this chapter may be taken without a meeting if the action is approved in a record by members with at least the minimum number of votes that would be necessary to authorize or take the action at a meeting of the members.~~, and~~ A member may appoint a proxy or other agent to vote or consent for the member by signing an appointing record, personally or by the member's agent. On an action taken by fewer than all of the members without a meeting, notice of the action must be given to those members who did not consent in writing to the action or who were not entitled to vote on the action within 10 days after the action was taken.

Section 4. Subsection (2), paragraph (a) of subsection (3), and subsection (4) of section 605.0410, Florida Statutes, are

amended to read:

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(2) In a member-managed limited liability company, the following rules apply:

(a) Upon reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company:

1. The records described in subsection (1); and

2. Each other record maintained by the company regarding the company's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The company shall furnish to each member:

1. Without demand, any information concerning the company's activities, affairs, financial condition, and other circumstances that the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

2. On demand, other information concerning the company's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) Within 10 days after receiving a demand pursuant to subparagraph (b)2., the company shall provide to the member who

made the demand a record of:

1. The information that the company will provide in response to the demand and when and where the company will provide such information.

2. For any demanded information that the company is not providing, the reasons that the company will not provide the information.

(d)~~(c)~~ The duty to furnish information under this subsection also applies to each member to the extent the member knows any of the information described in this subsection.

(3) In a manager-managed limited liability company, the following rules apply:

(a) The informational rights stated in subsection (2) and the duty stated in paragraph (2)(d) ~~(2)(c)~~ apply to the managers and not to the members.

(4) Subject to subsection (10) ~~(9)~~, on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(a) The information pertains to the period during which the person was a member;

(b) The person seeks the information in good faith; and

(c) The person satisfies the requirements imposed on a member by paragraph (3)(b).

Section 5. Section 605.0715, Florida Statutes, is amended to read:

605.0715 Reinstatement.—

(1) A limited liability company that is administratively dissolved under s. 605.0714 or former s. 608.4481 may apply to

the department for reinstatement at any time after the effective date of dissolution. The company must submit ~~a form of application for reinstatement prescribed and furnished by the department and provide all of the information required by the department, together with~~ all fees and penalties then owed by the company at the rates provided by law at the time the company applies for reinstatement together with an application for reinstatement prescribed and furnished by the department, which is signed by both the registered agent and an authorized representative of the company and states:

(a) The name of the limited liability company.

(b) The street address of the company's principal office and mailing address.

(c) The date of the company's organization.

(d) The company's federal employer identification number or, if none, whether one has been applied for.

(e) The name, title or capacity, and address of at least one person who has authority to manage the company.

(f) Additional information that is necessary or appropriate to enable the department to carry out this chapter.

(2) In lieu of the requirement to file an application for reinstatement as described in subsection (1), an administratively dissolved limited liability company may submit all fees and penalties owed by the company at the rates provided by law at the time the company applies for reinstatement, together with a current annual report, signed by both the registered agent and an authorized representative of the company, which contains the information described in subsection (1).


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(3) ~~(2)~~ If the department determines that an application for reinstatement contains the information required under subsection (1) or subsection (2) and that the information is correct, upon payment of all required fees and penalties, the department shall reinstate the limited liability company.

(4) ~~(3)~~ When reinstatement under this section becomes effective:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(b) The limited liability company may resume its activities and affairs as if the administrative dissolution had not occurred.

(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

(5) ~~(4)~~ The name of the dissolved limited liability company is not available for assumption or use by another business entity until 1 year after the effective date of dissolution unless the dissolved limited liability company provides the department with a record executed as required pursuant to s. 605.0203 permitting the immediate assumption or use of the name by another limited liability company.

Section 6. Section 605.0909, Florida Statutes, is amended to read:

605.0909 Reinstatement following revocation of certificate of authority.—

(1) A foreign limited liability company whose certificate of authority has been revoked may apply to the department for reinstatement at any time after the effective date of the


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revocation. The foreign limited liability company applying for reinstatement must submit ~~provide information in a form prescribed and furnished by the department and pay~~ all fees and penalties then owed by the foreign limited liability company at rates provided by law at the time the foreign limited liability company applies for reinstatement together with an application for reinstatement prescribed and furnished by the department, which is signed by both the registered agent and an authorized representative of the company and states:

(a) The name under which the foreign limited liability company is registered to transact business in this state.

(b) The street address of the company's principal office and its mailing address.

(c) The jurisdiction of the company's formation and the date on which it became qualified to transact business in this state.

(d) The company's federal employer identification number or, if none, whether one has been applied for.

(e) The name, title or capacity, and address of at least one person who has authority to manage the company.

(f) Additional information that is necessary or appropriate to enable the department to carry out this chapter.

(2) In lieu of the requirement to file an application for reinstatement as described in subsection (1), a foreign limited liability company whose certificate of authority has been revoked may submit all fees and penalties owed by the company at the rates provided by law at the time the company applies for reinstatement, together with a current annual report, signed by both the registered agent and an authorized representative of


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the company, which contains the information described in subsection (1).

(3)~~(2)~~ If the department determines that an application for reinstatement contains the information required under subsection (1) or subsection (2) and that the information is correct, upon payment of all required fees and penalties, the department shall reinstate the foreign limited liability company's certificate of authority.

(4)~~(3)~~ When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the revocation of authority and the foreign limited liability company may resume its activities in this state as if the revocation of authority had not occurred.

(5)~~(4)~~ The name of the foreign limited liability company whose certificate of authority has been revoked is not available for assumption or use by another business entity until 1 year after the effective date of revocation of authority unless the limited liability company provides the department with a record executed pursuant to s. 605.0203 which authorizes the immediate assumption or use of its name by another limited liability company.

(6)~~(5)~~ If the name of the foreign limited liability company applying for reinstatement has been lawfully assumed in this state by another business entity, the department shall require the foreign limited liability company to comply with s. 605.0906 before accepting its application for reinstatement.

Section 7. Paragraph (c) of subsection (2) of section 605.1072, Florida Statutes, is amended to read:

605.1072 Other remedies limited.—


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(2) Subsection (1) does not apply to an appraisal event that:

~~(c) Is an interested transaction, unless it has been approved in the same manner as is provided in s. 605.04092 or is fair to the limited liability company as defined in s. 605.04092(1)(c).~~

Section 8. Subsection (3) of section 605.1108, Florida Statutes, is amended to read:

605.1108 Application to limited liability company formed under the Florida Limited Liability Company Act.—

(3) For the purpose of applying this chapter to a limited liability company formed before January 1, 2014, under the Florida Limited Liability Company Act, former ss. 608.401-608.705,~~:~~

~~(a)~~ the company's articles of organization are deemed to be the company's articles of organization under this chapter~~; and~~

~~(b) For the purpose of applying s. 605.0102(39), the language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement~~.

Section 9. Effective upon this act becoming a law, chapter 608, Florida Statutes, consisting of sections 608.401, 608.402, 608.403, 608.404, 608.405, 608.406, 608.407, 608.408, 608.4081, 608.4082, 608.409, 608.4101, 608.411, 608.4115, 608.415, 608.416, 608.4211, 608.422, 608.4225, 608.4226, 608.4227, 608.4228, 608.4229, 608.423, 608.4231, 608.4232, 608.4235, 608.4236, 608.4237, 608.4238, 608.425, 608.426, 608.4261, 608.427, 608.428, 608.431, 608.432, 608.433, 608.434, 608.4351, 608.4352, 608.4353, 608.4354, 608.4355, 608.4356, 608.4357,

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608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.438, 608.4381, 608.4382, 608.4383, 608.439, 608.4401, 608.4402, 608.4403, 608.4404, 608.441, 608.4411, 608.4421, 608.4431, 608.444, 608.445, 608.446, 608.447, 608.448, 608.4481, 608.4482, 608.4483, 608.449, 608.4491, 608.4492, 608.4493, 608.4511, 608.452, 608.455, 608.461, 608.462, 608.463, 608.471, 608.501, 608.502, 608.503, 608.504, 608.505, 608.506, 608.507, 608.508, 608.509, 608.5101, 608.511, 608.512, 608.513, 608.5135, 608.514, 608.601, 608.701, 608.702, 608.703, 608.704, and 608.705, is repealed.

Section 10. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (3) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) The Department of State may cause to be received electronically any records that are required to be filed with it pursuant to chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, ~~chapter 608,~~ chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5)(b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 55, 117, 118, 495, 605, 606, 607, ~~608,~~ 610, 617, 620, 621, 679, and

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713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

Section 11. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsections (1) and (2) of section 48.062, Florida Statutes, are amended to read:

48.062 Service on a limited liability company.—

(1) Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by the limited liability company under chapter 605 ~~or chapter 608~~. A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

(2) If service cannot be made on a registered agent of the limited liability company because of failure to comply with chapter 605 ~~or chapter 608~~ or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, may be served:

(a) On a member of a member-managed limited liability company;

(b) On a manager of a manager-managed limited liability company; or

(c) If a member or manager is not available during regular


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business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.

Section 12. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (1) of section 213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

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

(c) "Insider" means:

1. Any person included within the meaning of insider as used in s. 726.102; or

2. A manager of, ~~a managing member of,~~ or a person who controls a transferor that is, a limited liability company~~,~~ or a relative as defined in s. 726.102 of any such persons.

Section 13. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(1) It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. It is


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intended that any limited liability company that is classified as a partnership for federal income tax purposes and is defined in and organized pursuant to ~~formed under~~ chapter 605 ~~608~~ or qualified to do business in this state as a foreign limited liability company not be subject to the tax imposed by this code. It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within this state. This code is not intended to tax, and shall not be construed so as to tax, any natural person who engages in a trade, business, or profession in this state under his or her own or any fictitious name, whether individually as a proprietorship or in partnership with others, or as a member or a manager of a limited liability company classified as a partnership for federal income tax purposes; any estate of a decedent or incompetent; or any testamentary trust. However, a corporation or other taxable entity which is or which becomes partners with one or more natural persons shall not, merely by reason of being a partner, exclude from its net income subject to tax its respective share of partnership net income. This statement of intent shall be given preeminent consideration in any construction or interpretation of this code in order to avoid any conflict between this code and the mandate in s. 5, Art. VII of the State Constitution that no income tax be levied upon natural persons who are residents and citizens of this state.

Section 14. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (e) of subsection (1) of section 220.03, Florida Statutes, is amended


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to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(e) "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; limited liability companies, under chapter 605 ~~608~~; common-law declarations of trust, under chapter 609; corporations not for profit, under chapter 617; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under chapter 621; foreign unincorporated associations, under chapter 622; private school corporations, under chapter 623; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" does not include proprietorships, even if using a fictitious name; partnerships of any type, as such; limited liability companies that are taxable as partnerships for federal income tax purposes; state or public fairs or expositions, under chapter 616; estates of decedents or incompetents; testamentary trusts; or private trusts.

Section 15. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (j) of


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subsection (2) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(2) For purposes of this section, a taxpayer's taxable income for the taxable year means taxable income as defined in s. 63 of the Internal Revenue Code and properly reportable for federal income tax purposes for the taxable year, but subject to the limitations set forth in paragraph (1)(b) with respect to the deductions provided by ss. 172 (relating to net operating losses), 170(d)(2) (relating to excess charitable contributions), 404(a)(1)(D) (relating to excess pension trust contributions), 404(a)(3)(A) and (B) (to the extent relating to excess stock bonus and profit-sharing trust contributions), and 1212 (relating to capital losses) of the Internal Revenue Code, except that, subject to the same limitations, the term:

(j) "Taxable income," in the case of a limited liability company, other than a limited liability company classified as a partnership for federal income tax purposes, as defined in and organized pursuant to chapter 605 ~~608~~ or qualified to do business in this state as a foreign limited liability company or other than a similar limited liability company classified as a partnership for federal income tax purposes and created as an artificial entity pursuant to the statutes of the United States or any other state, territory, possession, or jurisdiction, if such limited liability company or similar entity is taxable as a corporation for federal income tax purposes, means taxable income determined as if such limited liability company were required to file or had filed a federal corporate income tax return under the Internal Revenue Code;

Section 16. Effective upon this act becoming a law and operating retroactively to January 1, 2015, section 310.181, Florida Statutes, is amended to read:

310.181 Corporate powers.—All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under part I of chapter 607 or under former chapter 608 before January 1, 1976, or to corporations organized under chapter 621 apply to corporations organized pursuant to s. 310.171.

Section 17. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (9) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(9) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as authorized or required under part I of chapter 607. The term "officer of a corporation" includes a member owning at least 10 percent of a limited liability company as defined in and organized pursuant to ~~created and approved under~~ chapter 605 ~~608~~.

Section 18. Subsection (37) of section 605.0102, Florida Statutes, is amended to read:

605.0102 Definitions.—As used in this chapter, the term:

(37) "Majority-in-interest" means those members who hold more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company owned


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by all of its members ~~and who have the right to vote~~; however, as used in ss. 605.1001-605.1072, the term means:

(a) In the case of a limited liability company with only one class or series of members, the holders of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of its members who have the right to approve the ~~a~~ merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company; and

(b) In the case of a limited liability company having more than one class or series of members, the holders in each class or series of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of the members of that class or series who have the right to approve the ~~a~~ merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company, unless the company's organic rules provide for the approval of the transaction in a different manner.

Section 19. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (3) of section 605.0401, Florida Statutes, is amended to read:

605.0401 Becoming a member.—

(3) After formation of a limited liability company, a person becomes a member:

(a) As provided in the operating agreement;

(b) As the result of a merger, interest exchange, conversion, or domestication under ss. 605.1001-605.1072, as applicable;

(c) With the consent of all the members; or

(d) As provided in s. 605.0701(3).

Section 20. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (a) of subsection (1) of section 605.04074, Florida Statutes, is amended to read:

605.04074 Agency rights of members and managers.—

(1) In a member-managed limited liability company, the following rules apply:

(a) Except as provided in subsection (3), each member is an agent of the limited liability company for the purpose of its activities and affairs, and~~.~~ an act of a member, including signing an agreement or instrument of transfer in the name of the company for apparently carrying on in the ordinary course of the company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

Section 21. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (b) of subsection (2) of section 605.04091, Florida Statutes, is amended to read:

605.04091 Standards of conduct for members and managers.—

(2) The duty of loyalty is limited to:

(b) Refraining from dealing with the company in the conduct or winding up of the company's activities and affairs as, or on behalf of, a person having an interest adverse to the company, except to the extent that a transaction satisfies the requirements of s. 605.04092 ~~this section~~; and

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Section 22. Subsection (3) of section 605.0712, Florida Statutes, is amended to read:

605.0712 Other claims against a dissolved limited liability company.—

(3) A claim that is not barred by this section~~, s. 608.0711,~~ or another statute limiting actions~~,~~ may be enforced:

(a) Against a dissolved limited liability company, to the extent of its undistributed assets; and

(b) Except as otherwise provided in s. 605.0713, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

Section 23. Subsection (2) of section 605.0717, Florida Statutes, is amended to read:

605.0717 Effect of dissolution.—

(2) Except as provided in s. 605.0715(5) ~~605.0715(4)~~, the name of the dissolved limited liability company is not available for assumption or use by another business entity until 120 days after the effective date of dissolution or filing of a statement of termination, if earlier.

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

And the title is amended as follows:

Delete lines 20 - 36

and insert:


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demand; amending s. 605.0715, F.S.; revising which materials and information a specified limited liability company must submit to the Department of State as part of an application for reinstatement after administrative dissolution; amending s. 605.0909, F.S.; revising which materials and information a specified limited liability company must submit to the Department of State as part of an application for reinstatement after revocation of certificate of authority; amending s. 605.1072, F.S.; deleting a provision providing an exception to the limitation of remedies for appraisal events under specified circumstances; amending s. 605.1108, F.S.; deleting a provision requiring that, for a limited liability company formed before a specified date, certain language in the company's articles of organization operates as if it were in the operating agreement; repealing chapter 608, F.S., relating to the Florida Limited Liability Company Act; amending ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074, 605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S.; conforming provisions to the repeal of the Florida Limited Liability Company Act; providing retroactive applicability; amending ss. 605.0102, 605.0712, 605.0717, and

By the Committee on Commerce and Tourism; and Senator Simmons

577-01818-15 2015554c1

A bill to be entitled

An act relating to limited liability companies; amending s. 605.0103, F.S.; specifying that persons who are not members of a limited liability company are not deemed to have notice of a provision of the company's articles of organization which limits a person's authority to transfer real property held in the company's name unless such limitation appears in an affidavit, certificate, or other instrument that is recorded in a specified manner; amending s. 605.0105, F.S.; removing the prohibition that an operating agreement may not vary the power of a person to dissociate; amending s. 605.04073, F.S.; requiring certain conditions for members of a limited liability company, without a meeting, to take certain actions requiring the vote or consent of the members; amending s. 605.0410, F.S.; requiring a limited liability company to provide a record of certain information within a specified period to a member who makes a demand; amending s. 605.1072, F.S.; deleting a provision providing an exception to the limitation of remedies for appraisal events under specified circumstances; amending s. 605.1108, F.S.; deleting a provision requiring that, for a limited liability company formed before a specified date, certain language in the company's articles of organization operates as if it were in the operating agreement; repealing ch. 608, F.S., relating to the Florida Limited Liability Company Act; amending ss. 15.16,

577-01818-15 2015554c1

48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074, 605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S.; conforming provisions to the repeal of the Florida Limited Liability Company Act; providing retroactive applicability; amending ss. 605.0102, 605.0712, and 605.0805, F.S.; revising a definition; conforming cross-references; providing effective dates.

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

Section 1. Subsection (4) of section 605.0103, Florida Statutes, is amended to read:

605.0103 Knowledge and~~;~~ notice.—

(4) A person who is not a member is deemed to:

(a) Know of a limitation on authority to transfer real property as provided in s. 605.0302(7); and

(b) Have notice of a limited liability company's:

1. Dissolution, 90 days after the articles of dissolution filed under s. 605.0707 become effective;

2. Termination, 90 days after a statement of termination filed under s. 605.0709(7) becomes effective;

3. Participation in a merger, interest exchange, conversion, or domestication, 90 days after the articles of merger, articles of interest exchange, articles of conversion, or articles of domestication under s. 605.1025, s. 605.1035, s. 605.1045, or s. 605.1055, respectively, become effective;

4. Declaration in its articles of organization that it is

manager-managed in accordance with s. 605.0201(3)(a); however, if such a declaration has been added or changed by an amendment or amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement; and

5. Grant of authority to or limitation imposed on the authority of a person holding a position or having a specified status in a company, or grant of authority to or limitation imposed on the authority of a specific person, if the grant of authority or limitation imposed on the authority is described in the articles of organization in accordance with s. 605.0201(3)(d); however, if that description has been added or changed by an amendment or an amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement. A provision of the articles of organization limiting the authority of a person to transfer real property held in the name of the limited liability company is not notice of such limitation to a person who is not a member or manager of the company, unless the limitation appears in an affidavit, certificate, or other instrument that bears the name of the limited liability company and is recorded in the office for recording transfers of such real property.

Section 2. Paragraph (i) of subsection (3) of section 605.0105, Florida Statutes, is amended to read:

605.0105 Operating agreement; scope, function, and limitations.—

(3) An operating agreement may not do any of the following:

~~(i) Vary the power of a person to dissociate under s. 605.0601, except to require that the notice under s. 605.0602(1) be in a record.~~

Section 3. Subsection (4) of section 605.04073, Florida Statutes, is amended to read:

605.04073 Voting rights of members and managers.—

(4) An action requiring the vote or consent of members under this chapter may be taken without a meeting if the action is approved by the members with at least the minimum number of votes that would be necessary to authorize or take the action at a meeting of the members and made in a record.~~, and~~ A member may appoint a proxy or other agent to vote or consent for the member by signing an appointing record, personally or by the member's agent. On an action taken by fewer than all of the members without a meeting, notice of the action must be given to those members who did not consent in writing to the action or who were not entitled to vote on the action within 10 days after the action was taken.

Section 4. Subsection (2), paragraph (a) of subsection (3), and subsection (4) of section 605.0410, Florida Statutes, are amended to read:

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(2) In a member-managed limited liability company, the following rules apply:

(a) Upon reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company:

1. The records described in subsection (1); and

2. Each other record maintained by the company regarding the company's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The company shall furnish to each member:

1. Without demand, any information concerning the company's activities, affairs, financial condition, and other circumstances that the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

2. On demand, other information concerning the company's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) Within 10 days after receiving a demand pursuant to subparagraph (b)2., the company shall provide to the member who made the demand a record of:

1. The information that the company will provide in response to the demand and when and where the company will provide such information.

2. For any demanded information that the company is not providing, the reasons that the company will not provide the information.

(d) ~~(c)~~ The duty to furnish information under this subsection also applies to each member to the extent the member

knows any of the information described in this subsection.

(3) In a manager-managed limited liability company, the following rules apply:

(a) The informational rights stated in subsection (2) and the duty stated in paragraph (2)(d) ~~(2)(c)~~ apply to the managers and not to the members.

(4) Subject to subsection (10) ~~(9)~~, on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(a) The information pertains to the period during which the person was a member;

(b) The person seeks the information in good faith; and

(c) The person satisfies the requirements imposed on a member by paragraph (3)(b).

Section 5. Paragraph (c) of subsection (2) of section 605.1072, Florida Statutes, is amended to read:

605.1072 Other remedies limited.—

(2) Subsection (1) does not apply to an appraisal event that:

~~(c) Is an interested transaction, unless it has been approved in the same manner as is provided in s. 605.04092 or is fair to the limited liability company as defined in s. 605.04092(1)(c).~~

Section 6. Subsection (3) of section 605.1108, Florida Statutes, is amended to read:

605.1108 Application to limited liability company formed under the Florida Limited Liability Company Act.—

(3) For the purpose of applying this chapter to a limited

liability company formed before January 1, 2014, under the Florida Limited Liability Company Act, former ss. 608.401-608.705, ~~:~~

~~(a)~~ The company's articles of organization are deemed to be the company's articles of organization under this chapter~~; and~~

~~(b) For the purpose of applying s. 605.0102(39), the language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement~~.

Section 7. Effective upon this act becoming a law, chapter 608, Florida Statutes, consisting of sections 608.401, 608.402, 608.403, 608.404, 608.405, 608.406, 608.407, 608.408, 608.4081, 608.4082, 608.409, 608.4101, 608.411, 608.4115, 608.415, 608.416, 608.4211, 608.422, 608.4225, 608.4226, 608.4227, 608.4228, 608.4229, 608.423, 608.4231, 608.4232, 608.4235, 608.4236, 608.4237, 608.4238, 608.425, 608.426, 608.4261, 608.427, 608.428, 608.431, 608.432, 608.433, 608.434, 608.4351, 608.4352, 608.4353, 608.4354, 608.4355, 608.4356, 608.4357, 608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.438, 608.4381, 608.4382, 608.4383, 608.439, 608.4401, 608.4402, 608.4403, 608.4404, 608.441, 608.4411, 608.4421, 608.4431, 608.444, 608.445, 608.446, 608.447, 608.448, 608.4481, 608.4482, 608.4483, 608.449, 608.4491, 608.4492, 608.4493, 608.4511, 608.452, 608.455, 608.461, 608.462, 608.463, 608.471, 608.501, 608.502, 608.503, 608.504, 608.505, 608.506, 608.507, 608.508, 608.509, 608.5101, 608.511, 608.512, 608.513, 608.5135, 608.514, 608.601, 608.701, 608.702, 608.703, 608.704, and 608.705, is repealed.

Section 8. Effective upon this act becoming a law and

operating retroactively to January 1, 2015, subsection (3) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) The Department of State may cause to be received electronically any records that are required to be filed with it pursuant to chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, ~~chapter 608,~~ chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5)(b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 55, 117, 118, 495, 605, 606, 607, ~~608,~~ 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

Section 9. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsections (1) and (2) of section 48.062, Florida Statutes, are amended to read:

48.062 Service on a limited liability company.—

(1) Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by

the limited liability company under chapter 605 ~~or chapter 608~~. A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

(2) If service cannot be made on a registered agent of the limited liability company because of failure to comply with chapter 605 ~~or chapter 608~~ or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, may be served:

(a) On a member of a member-managed limited liability company;

(b) On a manager of a manager-managed limited liability company; or

(c) If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.

Section 10. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (1) of section 213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

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

(c) "Insider" means:

1. Any person included within the meaning of insider as used in s. 726.102; or

2. A manager of, ~~a managing member of,~~ or a person who controls a transferor that is, a limited liability company, or a relative as defined in s. 726.102 of any such persons.

Section 11. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(1) It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. It is intended that any limited liability company that is classified as a partnership for federal income tax purposes and is defined in and organized pursuant to ~~formed under~~ chapter 605 ~~608~~ or qualified to do business in this state as a foreign limited liability company not be subject to the tax imposed by this code. It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within this state. This code is not intended to tax, and shall not be construed so as to tax, any natural person who engages in a trade, business, or profession in this state under his or her

own or any fictitious name, whether individually as a proprietorship or in partnership with others, or as a member or a manager of a limited liability company classified as a partnership for federal income tax purposes; any estate of a decedent or incompetent; or any testamentary trust. However, a corporation or other taxable entity which is or which becomes partners with one or more natural persons shall not, merely by reason of being a partner, exclude from its net income subject to tax its respective share of partnership net income. This statement of intent shall be given preeminent consideration in any construction or interpretation of this code in order to avoid any conflict between this code and the mandate in s. 5, Art. VII of the State Constitution that no income tax be levied upon natural persons who are residents and citizens of this state.

Section 12. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (e) of subsection (1) of section 220.03, Florida Statutes, is amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(e) "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; limited liability companies, under chapter 605 ~~608~~; common-law declarations of trust, under chapter 609; corporations not for

profit, under chapter 617; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under chapter 621; foreign unincorporated associations, under chapter 622; private school corporations, under chapter 623; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" does not include proprietorships, even if using a fictitious name; partnerships of any type, as such; limited liability companies that are taxable as partnerships for federal income tax purposes; state or public fairs or expositions, under chapter 616; estates of decedents or incompetents; testamentary trusts; or private trusts.

Section 13. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (j) of subsection (2) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(2) For purposes of this section, a taxpayer's taxable income for the taxable year means taxable income as defined in s. 63 of the Internal Revenue Code and properly reportable for federal income tax purposes for the taxable year, but subject to the limitations set forth in paragraph (1)(b) with respect to the deductions provided by ss. 172 (relating to net operating losses), 170(d)(2) (relating to excess charitable contributions), 404(a)(1)(D) (relating to excess pension trust

contributions), 404(a)(3)(A) and (B) (to the extent relating to excess stock bonus and profit-sharing trust contributions), and 1212 (relating to capital losses) of the Internal Revenue Code, except that, subject to the same limitations, the term:

(j) "Taxable income," in the case of a limited liability company, other than a limited liability company classified as a partnership for federal income tax purposes, as defined in and organized pursuant to chapter 605 ~~608~~ or qualified to do business in this state as a foreign limited liability company or other than a similar limited liability company classified as a partnership for federal income tax purposes and created as an artificial entity pursuant to the statutes of the United States or any other state, territory, possession, or jurisdiction, if such limited liability company or similar entity is taxable as a corporation for federal income tax purposes, means taxable income determined as if such limited liability company were required to file or had filed a federal corporate income tax return under the Internal Revenue Code;

Section 14. Effective upon this act becoming a law and operating retroactively to January 1, 2015, section 310.181, Florida Statutes, is amended to read:

310.181 Corporate powers.—All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under part I of chapter 607 or under former chapter 608 before January 1, 1976, or to corporations organized under chapter 621 apply to corporations organized pursuant to s. 310.171.

Section 15. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (9) of

section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(9) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as authorized or required under part I of chapter 607. The term "officer of a corporation" includes a member owning at least 10 percent of a limited liability company as defined in and organized pursuant to ~~created and approved under~~ chapter 605 ~~608~~.

Section 16. Subsection (37) of section 605.0102, Florida Statutes, is amended to read:

605.0102 Definitions.—As used in this chapter, the term:

(37) "Majority-in-interest" means those members who hold more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company owned by all of its members ~~and who have the right to vote~~; however, as used in ss. 605.1001-605.1072, the term means:

(a) In the case of a limited liability company with only one class or series of members, the holders of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of its members who have the right to approve the ~~a~~ merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company; and

(b) In the case of a limited liability company having more than one class or series of members, the holders in each class

or series of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of the members of that class or series who have the right to approve a merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company, unless the company's organic rules provide for the approval of the transaction in a different manner.

Section 17. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (3) of section 605.0401, Florida Statutes, is amended to read:

605.0401 Becoming a member.—

(3) After formation of a limited liability company, a person becomes a member:

(a) As provided in the operating agreement;

(b) As the result of a merger, interest exchange, conversion, or domestication under ss. 605.1001-605.1072, as applicable;

(c) With the consent of all the members; or

(d) As provided in s. 605.0701(3).

Section 18. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (a) of subsection (1) of section 605.04074, Florida Statutes, is amended to read:

605.04074 Agency rights of members and managers.—

(1) In a member-managed limited liability company, the following rules apply:

(a) Except as provided in subsection (3), each member is an agent of the limited liability company for the purpose of its activities and affairs, and~~.~~ an act of a member, including

signing an agreement or instrument of transfer in the name of the company for apparently carrying on in the ordinary course of the company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

Section 19. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (b) of subsection (2) of section 605.04091, Florida Statutes, is amended to read:

605.04091 Standards of conduct for members and managers.—

(2) The duty of loyalty is limited to:

(b) Refraining from dealing with the company in the conduct or winding up of the company's activities and affairs as, or on behalf of, a person having an interest adverse to the company, except to the extent that a transaction satisfies the requirements of s. 605.04092 ~~this section~~; and

Section 20. Subsection (3) of section 605.0712, Florida Statutes, is amended to read:

605.0712 Other claims against a dissolved limited liability company.—

(3) A claim that is not barred by this section~~, s. 608.0711,~~ or another statute limiting actions~~,~~ may be enforced:

(a) Against a dissolved limited liability company, to the extent of its undistributed assets; and

(b) Except as otherwise provided in s. 605.0713, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of

that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

Section 21. Subsection (2) of section 605.0805, Florida Statutes, is amended to read:

605.0805 Proceeds and expenses.—

(2) If a derivative action ~~under s. 608.0802~~ is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

Section 22. Effective upon this act becoming a law and operating retroactively to January 1, 2015 subsection (2) of section 606.06, Florida Statutes, is amended to read:

606.06 Uniform business report.—The department may use the uniform business report:

(2) As a substitute for any annual report or renewal filing required by chapters 495, 605, 607, ~~608,~~ 609, 617, 620, 621, and 865.

Section 23. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (2) of section 607.1108, Florida Statutes, is amended to read:

607.1108 Merger of domestic corporation and other business entity.—

(2) Pursuant to a plan of merger complying and approved in accordance with this section, one or more domestic corporations may merge with or into one or more other business entities

formed, organized, or incorporated under the laws of this state or any other state, the United States, foreign country, or other foreign jurisdiction, if:

(c) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of chapter 605 ~~608~~.

Section 24. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (d) of subsection (1) of section 607.1109, Florida Statutes, is amended to read:

607.1109 Articles of merger.—

(1) After a plan of merger is approved by each domestic corporation and other business entity that is a party to the merger, the surviving entity shall deliver to the Department of State for filing articles of merger, which shall be executed by each domestic corporation as required by s. 607.0120 and by each other business entity as required by applicable law, and which shall set forth:

(d) A statement that the plan of merger was approved by each domestic limited liability company that is a party to the merger in accordance with the applicable provisions of chapter 605 ~~608~~.

Section 25. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (7) of section 607.11101, Florida Statutes, is amended to read:

607.11101 Effect of merger of domestic corporation and other business entity.—When a merger becomes effective:

(7) The shares, partnership interests, interests, obligations, or other securities, and the rights to acquire

shares, partnership interests, interests, obligations, or other securities, of each domestic corporation and other business entity that is a party to the merger shall be converted into shares, partnership interests, interests, obligations, or other securities, or rights to such securities, of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property as provided in the plan of merger, and the former holders of shares, partnership interests, interests, obligations, or other securities, or rights to such securities, shall be entitled only to the rights provided in the plan of merger and to their appraisal rights, if any, under s. 605.1006, ss. 605.1061-605.1072, ss. 607.1301-607.1333, ~~ss. 608.4351-608.43595,~~ ss. 620.2114-620.2124, or other applicable law.

Section 26. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (b) of subsection (2) of section 621.12, Florida Statutes, is amended to read:

621.12 Identification with individual shareholders or individual members.—

(2) The name shall also contain:

(b)1. In the case of a professional corporation, the words "professional association" or the abbreviation "P.A."; or

2. In the case of a professional limited liability company formed before January 1, 2014, the words "professional limited company" or "professional limited liability company," the abbreviation "P.L." or "P.L.L.C." or the designation "PL" or "PLLC," in lieu of the words "limited company" or "limited liability company," or the abbreviation "L.C." or "L.L.C." or

the designation "LC" or "LLC" as otherwise required under s. 605.0112 or former s. 608.406.

3. In the case of a professional limited liability company formed on or after January 1, 2014, the words "professional limited liability company," the abbreviation "P.L.L.C." or the designation "PLLC," in lieu of the words "limited liability company," or the abbreviation "L.L.C." or the designation "LLC" as otherwise required under s. 605.0112.

Section 27. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 636.204, Florida Statutes, is amended to read:

636.204 License required.—

(1) Before doing business in this state as a discount medical plan organization, an entity must be a corporation, a limited liability company, or a limited partnership, incorporated, organized, formed, or registered under the laws of this state or authorized to transact business in this state in accordance with chapter 605, part I of chapter 607, ~~chapter 608,~~ chapter 617, chapter 620, or chapter 865, and must be licensed by the office as a discount medical plan organization or be licensed by the office pursuant to chapter 624, part I of this chapter, or chapter 641.

Section 28. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 655.0201, Florida Statutes, is amended to read:

655.0201 Service of process, notice, or demand on financial institutions.—

(1) Process against any financial institution authorized by federal or state law to transact business in this state may be

served in accordance with chapter 48, chapter 49, chapter 605, or part I of chapter 607, ~~or chapter 608,~~ as appropriate.

Section 29. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (11) of section 658.2953, Florida Statutes, is amended to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(c) An out-of-state bank may establish and maintain a de novo branch or acquire a branch in this state upon compliance with chapter 605 or part I of chapter 607 ~~or chapter 608~~ relating to doing business in this state as a foreign business entity, including maintaining a registered agent for service of process and other legal notice pursuant to s. 655.0201.

Section 30. Effective upon this act becoming a law and operating retroactively to January 1, 2015, section 694.16, Florida Statutes, is amended to read:

694.16 Conveyances by merger or conversion of business entities.—As to any merger or conversion of business entities prior to June 15, 2000, the title to all real estate, or any interest therein, owned by a business entity that was a party to a merger or a conversion is vested in the surviving entity without reversion or impairment, notwithstanding the requirement of a deed which was previously required by s. 607.11101, former s. 608.4383, former s. 620.204, former s. 620.8904, or former s. 620.8906.

Section 31. Section 31. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (f) of subsection (2) of section 1002.395, Florida Statutes, is

amended to read:

1002.395 Florida Tax Credit Scholarship Program.—

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

(f) "Eligible nonprofit scholarship-funding organization" means a state university; or an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; or is a charitable organization that:

1. Is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code;

2. Is a Florida entity formed under chapter 605, chapter 607, ~~chapter 608,~~ or chapter 617 and whose principal office is located in the state; and

3. Complies with subsections (6) and (16).

Section 32. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 554
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 447026 Simmons					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 3, 2015

I respectfully request that **Senate Bill 554**, relating to Limited Liability Companies, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24
Meeting Date

554
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic LLC Bill

Name Jim Daughton

Job Title Mgr. Husband + Daughton

Address 215 S. Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 205-9000

Email jim.daughton@mhdlaw.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Business Law Section of Florida Bar

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1146
INTRODUCER:	Health Policy Committee and Senator Simmons
SUBJECT:	Agency Relationships with Governmental Health Care Contractors
DATE:	March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1146 revises the description of volunteer, uncompensated services under the Access to Health Care Act (the act) that is established in s. 766.1115, F.S. Under the act, sovereign immunity applies for services provided by a health care provider that has entered into a contractual relationship to provide health care services to low-income recipients as an agent of the governmental contractor.

Specifically, the bill authorizes a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of the contracted services by volunteer health care providers, which may include employing providers to supplement, coordinate, or support the volunteers. The monies do not constitute compensation under this act from the governmental contractor for services provided under the contract.

The bill also authorizes a free clinic, while acting as an agent of the governmental contractor to allow a patient, or a parent or guardian of the patient, to pay a nominal fee per visit, not to exceed $10, for administrative costs related to the services provided under the contract.

The bill also clarifies that employees and agents of a health care provider fall within the sovereign immunity protections of the contracted health care provider when providing health care services pursuant to the contract. Section 768.28, F.S., is likewise amended to specifically include a health care provider's employees or agents to avoid any potential ambiguity between the provisions in that section of law and the act.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the governmental contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons.

The bill has no fiscal impact on governmental entities.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.[1] The act is administered by the Department of Health (department) through the Volunteer Health Services Program.[2]

This section of law extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.[3]

Health care providers under the act include:[4]

- A birth center licensed under ch. 383, F.S.[5]
- An ambulatory surgical center licensed under ch. 395, F.S.[6]
- A hospital licensed under ch. 395, F.S.[7]

---

[1] Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $23,540 is at 200 percent of the federal poverty level using Medicaid data. *See 2015 Poverty Guidelines, Annual Guidelines* at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2015-Federal-Poverty-level-charts.pdf (last visited Mar. 7, 2015).

[2] *See* Florida Department of Health, *Volunteerism Volunteer Opportunities,* (last visited Mar. 7, 2015) http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html; Rule Chapter 64I-2, F.A.C.

[3] Section 766.1115(3)(a), F.S.

[4] Section 766.1115(3)(d), F.S.

[5] Section 766.1115(3)(d)1., F.S.

[6] Section 766.1115(3)(d)2., F.S.

[7] Section 766.1115(3)(d)3., F.S.

- A physician or physician assistant licensed under ch. 458, F.S.[8]
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.[9]
- A chiropractic physician licensed under ch. 460, F.S.[10]
- A podiatric physician licensed under ch. 461, F.S.[11]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the act.[12]
- A dentist or dental hygienist licensed under ch. 466, F.S.[13]
- A midwife licensed under ch. 467, F.S.[14]
- A health maintenance organization certificated under part I of ch. 641, F.S.[15]
- A health care professional association and its employees or a corporate medical group and its employees.[16]
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.[17]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.[18]
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.[19]
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.[20]

The act further specifies additional contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.

[8] Section 766.1115(3)(d)4., F.S.
[9] Section 766.1115(3)(d)5., F.S.
[10] Section 766.1115(3)(d)6., F.S.
[11] Section 766.1115(3)(d)7., F.S.
[12] Section 766.1115(3)(d)8., F.S.
[13] Section 766.1115(3)(d)13., F.S.
[14] Section 766.1115(3)(d)9., F.S.
[15] Section 766.1115(3)(d)10., F.S.
[16] Section 766.1115(3)(d)11., F.S.
[17] Section 766.1115(3)(d)12., F.S.
[18] Section 766.1115(3)(d)14., F.S.
[19] Section 766.1115(3)(d)15., F.S.
[20] Section 766.1115(3)(c), F.S.

- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.[21]
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.[22]

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.[23]

The individual accepting services through this contracted provider may not have medical or dental care insurance coverage for the illness, injury, or condition for which medical or dental care is sought.[24] Services not covered under the act include experimental procedures and clinically unproven procedures. The governmental contractor must determine whether a procedure is covered.

The health care provider may not subcontract for the provision of services under this chapter.[25]

In 2014, the Legislature amended the act to authorize dentists providing services as an agent of the governmental contractor to allow a patient to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided under the contract to the patient.[26]

According to the department, from July 1, 2012, through June 30, 2013, 13,543 licensed health care volunteers (plus an additional 26,002 clinic staff volunteers) provided 427,731 health care patient visits with a total value of donated goods and services of $294,427,678 under the act.[27] The Florida Department of Financial Services, Division of Risk Management, reported on February 14, 2014, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.[28]

[21] Section 766.1115(4), F.S.
[22] Rule 64I-2.003(2), F.A.C.
[23] Section 766.1115(5), F.S.
[24] Rule 64I-2.002(2), F.A.C.
[25] Rule 64I-2.004(2), F.A.C.
[26] Chapter 2014-108, s. 1, Laws of Fla.
[27] Department of Health, *Volunteer Health Services 2012-2013 Annual Report*, available at: http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/vhs1213annualreport2.pdf, (last visited Mar. 7, 2015).
[28] Correspondence from Lewis R. Williams, Chief of State Liability and Property Claims, to Duane A. Ashe, Department of Health (Feb. 14, 2014) (on file with the Senate Committee on Health Policy).

Legislative Appropriation to Free and Charitable Clinics

The Florida Association of Free and Charitable Clinics received a $4.5 million appropriation in the 2014-2015 General Appropriations Act through the department.[29] The department restricted the use of these funds by free and charitable clinics that were health care providers under the act to clinic capacity building purposes in the contract which distributed this appropriation. The clinic capacity building was limited to products or processes that increase skills, infrastructure and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel. The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract. Accordingly, the department's interpretation precluded the use of the appropriation for this purpose.

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[30] The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[31]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[32] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

[29] Chapter 2014-51, Laws of Fla., line item 461.
[30] Section 768.28(5), F.S.
[31] *Id.*
[32] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[33]

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[34] The court explained:

> Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[35] Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[36]

III. Effect of Proposed Changes:

Access to Health Care Act (Section 1)

The bill authorizes a free clinic[37] to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act (the act) without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The bill states that the receipt and use of the

[33] *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).
[34] *Id.* at 703.
[35] Florida Department of Health and Rehabilitative Services.
[36] *Stoll,* 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).
[37] A free clinic for purposes of this provision is a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

appropriation or grant does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill also authorizes a free clinic to allow a patient, or a parent or guardian of the patient, to pay a nominal fee for administrative costs related to the services provided to the patient under the contract without jeopardizing the sovereign immunity protections afforded in the act. The fee may not exceed $10 per visit and is a voluntary payment.

The bill inserts the phrase "employees or agents" in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract. Subsection (5) of the act currently recognizes employees and agents of a health care provider. This subsection requires the governmental contractor to provide written notice to each patient, or the patient's legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider *or any employee or agent thereof* acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous to all persons.

Sovereign Immunity (Section 2)

Section 768.28, F.S., is likewise amended to specifically include a health care provider's employees or agents so as to avoid any potential ambiguity between the provisions in that section of law and the act.

Additional Provisions and Effective Date

The bill removes obsolete language and makes technical and grammatical changes.

The effective date of the bill is July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, it does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Free clinics may receive up to $10 per visit from patients who choose to pay the fee to cover administrative costs. The amount that may be collected is indeterminate. Likewise, some patients or recipients may voluntarily pay up to $10 per visit to cover administrative costs.

Contracted free clinics may receive or continue to receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the act. The receipt of any such funding is speculative at this point and therefor the amount is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 766.1115 and 768.28.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 10, 2015:
The CS reinstates current law that in order to qualify as volunteer, uncompensated services, the health care provider may not receive compensation from the governmental contractor for any services provided under the contract. It adds authorization for a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit

corporation to support the delivery of the contracted services by volunteer health care providers, which may include employing providers to supplement, coordinate, or support the volunteers. Additionally, it limits the administrative fee to free clinics and couches it in terms of "allowing" the patient to pay as opposed to the clinic "charging" the fee. The administrative fee is authorized per visit.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Simmons

588-02134-15 20151146c1

A bill to be entitled

An act relating to agency relationships with governmental health care contractors; amending s. 766.1115, F.S.; redefining terms; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; authorizing such health care provider to collect from a patient, or the parent or guardian of a patient, a nominal fee for administrative costs under certain circumstances; limiting the nominal fee; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; redefining the term "officer, employee, or agent" to include employees or agents of a health care provider; providing an effective date.

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

Section 1. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance

588-02134-15 20151146c1

with this section between a health care provider and a governmental contractor which allows the health care provider, or any employee or agent of the health care provider, to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services~~, except as provided in paragraph (4)(g)~~. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraphs (4)(g) and (h). A free clinic as described in subparagraph (3)(d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of such contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. Such an appropriation or grant does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt and use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association ~~and its employees~~ or a corporate medical group ~~and its employees~~.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients, except as provided in paragraph (4)(h).

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services ~~on or after April 17, 1992,~~ as an agent of the governmental contractor, or any employee or agent of such health care provider, is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider, or any employee or agent of the health care provider, shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under contract with the state, or any employee or agent of such health care provider, may not be named

as a defendant in any action arising out of medical care or treatment ~~provided on or after April 17, 1992,~~ under contracts entered into under this section. The contract must provide that:

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made by the governmental contractor or the provider. Patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act

of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) The provider is subject to supervision and regular inspection by the governmental contractor.

(g) ~~As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract,~~ A health care provider licensed under chapter 466, as an agent of the governmental contractor for purposes of s. 768.28(9), may allow a patient, or a parent or guardian of the patient, to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided to the patient within the scope of duties under the contract. This contribution may not exceed the actual cost of the dental laboratory charges.

(h) A health care provider that is a free clinic under subparagraph (3)(d)14., as an agent of the governmental contractor for purposes of s. 768.28(9), may allow a patient, or a parent or guardian of the patient, to pay a nominal fee for administrative costs related to the services provided to the patient under the contract. For purposes of this paragraph, a nominal fee may not exceed $10 per visit.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with

respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.—The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing at the initial visit, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28. Thereafter, and with respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the health care provider ~~federally funded community health center~~ is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28.

Section 2. Paragraph (b) of subsection (9) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider, and its employees or agents, when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

Section 3. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 1146
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 10, 2015

I respectfully request that **Senate Bill 1146**, relating to Agency Relationships with Governmental Health Care Contractors, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

SB 1146
Bill Number (if applicable)

Topic AGENCY RELATIONSHIPS WITH GOVERNMENTAL HEALTH CARE CONTRACTORS
Amendment Barcode (if applicable)

Name MARK CRUISE

Job Title EXECUTIVE DIRECTOR

Address ~~7E~~ P.O. BOX 977
Street

Phone 727-434-8506

ST. PETERSBURG FL 33731
City *State* *Zip*

Email mark@fafcc.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOC. OF FREE AND CHARITABLE CLINICS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 1146 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1248
INTRODUCER:	Judiciary Committee and Senator Stargel
SUBJECT:	Family Law
DATE:	March 26, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1248 makes various changes to laws relating to the amount and duration of alimony awards, grounds, and procedures for modifying an alimony award due to a substantial change in circumstances, and timesharing with children.

Regarding alimony awarded to assist a party with legal fees and costs in a dissolution of marriage case, this bill requires the court to consider need and ability to pay, and the same bases for alimony required of all alimony determinations in dissolution cases.

With respect to alimony amounts, the bill establishes presumptive alimony ranges, for courts to use in determining the amount and duration of alimony awards. The presumptive amounts are determined by formulas based in part on the difference between the parties' gross incomes and the duration of their marriage. However, the combination of alimony and child support may not exceed 55 percent of the obligor's income. The bill also generally limits the duration of an alimony award to 25 to 75 percent of the duration of the parties' marriage.

The bill specifies events that constitute a substantial change in circumstances which are grounds for modifying or terminating an alimony award. These grounds include increases in the recipient's income, the involuntary underemployment or unemployment of the obligor, and the obligor's retirement. This bill authorizes an obligor to request that the court preapprove the customary retirement date for the obligor's profession 1 year in advance of retirement.

The bill also lessens the proof required to show the existence of a supportive relationship between an alimony recipient and another person.

To protect an award of alimony, the court may order an obligor to purchase a security, such as a life insurance policy or a bond. Security is modifiable if the underlying alimony award is modified.

With respect to timesharing with a child, the bill establishes a presumption that approximately equal timesharing with a child by both parents is in the child's best interest. However, a court may establish an unequal timesharing arrangement if after the consideration of a number of factors, unequal timesharing is supported by written findings of fact.

The bill provides that it does not affect the duration of existing alimony awards.

The bill applies to:
- All initial alimony determinations and all alimony modification actions pending as of its October 1, 2015 effective date; and
- All future initial determinations of alimony and alimony modification actions.

The effective date of the bill is October 1, 2015. However, for the court to consider modifying a preexisting alimony obligation based on a provision of the bill, the petition must be before the court for a reason other than the enactment of the bill.

II. Present Situation:

Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.[1] Florida law stipulates that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.[2]

Bases for Alimony

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on both financial need and the ability to pay.[3] After making an initial determination to award alimony, the court must consider:
- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.

[1] 24A AM. JR. 2D *Divorce and Separation* §615.
[2] Section 61.071, F.S.
[3] Section 61.08(2), F.S.

- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.[4]

The court may consider adultery by either spouse in a decision to award alimony.[5]

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.[6]

Determination of Alimony Based on Length of Marriage

Limitations on Alimony in Florida

In determining the duration or form of an alimony award, the court applies presumptions based on the duration of the marriage. The length of marriage runs from the date of marriage until the date of the filing for dissolution of marriage.[7]

Florida law categorizes marriage lengths as follows:
- A short-term marriage is a marriage of less than 7 years.
- A moderate-term marriage is a marriage of more than 7 but less than 17 years.
- A long-term marriage is a marriage of 17 years or more.[8]

Florida law appears to create a presumption in favor of permanent periodic alimony following a long-term marriage.[9] A similar presumption appears to exist in favor of durational alimony following a moderate-term marriage or following a long-term marriage if permanent alimony is not appropriate. Durational alimony generally may not exceed the length of the marriage.[10]

The law appears to disfavor permanent alimony following a moderate-term marriage by requiring clear and convincing evidence for an award of permanent alimony. Permanent alimony for a short-term marriage is reserved for exceptional circumstances.

Limitations on Alimony in Other States

Some states have limited alimony based on the duration of the marriage:
- Colorado: Provides a table that calculates the term of support for marriages of at least 3 years and up to 20 years in length. After 20 years of marriage, the court may award an indefinite term of alimony.[11]

[4] Section 61.08(2)(a) through (j), F.S.
[5] Section 61.08(1), F.S.
[6] Section 61.08(3), F.S.
[7] *Id*.
[8] Section 61.08(4), F.S.
[9] Section 61.08(8), F.S.
[10] Section 61.08(4), F.S.
[11] Colo. Rev. Stat. Ann. s. 14-10-114.

- Delaware: Permits alimony for a period of up to 50 percent of the length of marriage, except that if a party is married for 20 years or longer, alimony may be indefinite.[12]
- Maine: Provides a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the petition.[13]
- Texas: Disfavors alimony for marriages of less than 10 years unless the obligee meets certain conditions and if so, caps the duration of alimony at 5 years. Alimony is capped at 20 percent of the payor's gross income, or $2,500 a month, whichever is less.[14]
- Massachusetts: No longer authorizes permanent alimony in most dissolution of marriage cases. Limits permanent alimony awards to marriages of 20 years or longer if the award is otherwise appropriate. Reserves the possibility of permanent alimony for shorter marriages if an award is in the interests of justice.[15]
- Utah: Prohibits alimony awards for a duration longer than the length of the marriage, unless the court finds extenuating circumstances.[16]

Forms of Alimony

Florida Law

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[17] See the table on the next page for additional information on the various types of alimony authorized under current law.

Types of Alimony

	Bridge-the-gap	***Rehabilitative***	***Durational***	***Permanent***
Purpose	Allows a party to transition from being married to being single upon showing legitimate short-term need.	Assists a party in becoming self-sufficient through skills training, education, or work experience.	Provides a party with economic assistance for a set period of time after a marriage of short or moderate duration, or a marriage of long duration if no need exists for a permanent award.	Provides for the needs and necessities of life as established during the marriage for a party who lacks the financial ability to maintain needs.
Length of Time	Up to 2 years.	Temporary.	Set period of time but not to exceed length of marriage.	Permanent.

[12] Del. Code Ann. title 14, s. 1512
[13] Me. Rev. Stat. Ann. title 19-A, s. 951A.
[14] Tex. Fam. Code Ann. Sections 8.054 and 8.055.
[15] Mass. Gen. Laws Chapter 208, Section 49.
[16] Utah Code Ann. s. 30-3-5.
[17] Section 61.08(1), F.S.

Types of Alimony (Cont.)				
Modifiable/ Termination	Not modifiable in amount or duration. Can terminate upon death or remarriage of recipient.	Modifiable upon a showing of a substantial change in circumstances, including cohabitation. Can be terminated upon noncompliance or completion of the rehabilitative plan.	Modifiable or terminated based on a substantial change in circumstances, including cohabitation. Length of award may not change unless exceptional circumstances are shown. Terminates upon death or remarriage of recipient.	Modifiable upon a substantial change in circumstances, including cohabitation. Terminates upon death or remarriage of recipient.
How Established		Requires inclusion of a specific and defined rehabilitative plan.		Awardable if appropriate for a marriage of long duration, upon a showing of clear and convincing evidence for a marriage of moderate duration, and with written findings of exceptional circumstances for a marriage of short duration.

Modification and Termination of Alimony

Four bases exist for a court to reconsider an alimony award, including whether to terminate alimony:

- A substantial change in circumstances of either party;
- Cohabitation by the obligee;
- Remarriage by the obligee; or
- Death of either party.[18]

[18] Section 61.08(8), F.S.

Substantial Change of Circumstance

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.[19] If the court modifies support on this basis, the court may modify support retroactively to the date of the filing of the action.[20]

Cohabitation

To modify alimony on an assertion of cohabitation between the alimony obligee and a third party, the court must find:

- The existence of a supportive relationship between the recipient and a third party; and
- That the recipient lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.[21]

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[22]

Parenting and Time-sharing

Florida Law

The public policy of the state is for each minor child to have "frequent and continuing contact with both parents."[23] Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[24] In determining timesharing with each parent, a court must evaluate the relative fitness of each parent on 19 specific statutory factors plus "any other factor that is relevant" to the court's determination.

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[19] Section 61.14(1)(a), F.S. Courts have found a substantial change in circumstance where an obligor's health deteriorated due to two heart attacks. He was unable to continue gainful employment and received social security disability income as his full income (*Scott v. Scott*, 2012 WL 5621672, 1 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that the obligee's income jumped from $1,710 to $4,867 a month, making her income higher than the obligor's income of $3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

[20] Section 61.14(1)(a), F.S.

[21] Section 61.14(b), F.S.

[22] Section 61.14(1)(b)1., F.S.

[23] Section 61.13(2)(c)1., F.S.

[24] Section 61.13 (2)(c)2., F.S.

Equal Time-sharing in other States

No state has required the court to order equal time-sharing or joint custody of minor children. A number of states, in addition to Florida, provide in law a presumption that joint custody is in the best interest of the child. These states are the District of Columbia, Idaho, Minnesota, New Mexico, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin. Other states provide the presumption only if the parents agree. These states are Alabama, California, Connecticut, Maine, Michigan, Mississippi, Nevada, New Hampshire, and Vermont.[25]

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody. [26] The South Dakota Legislature passed a law that permits the court to order joint physical custody when the court has awarded joint legal custody if it is in the best interest of the child.[27] The Utah Legislature enacted a rebuttable presumption for joint legal custody. Grounds for rebutting the presumption include domestic violence and physical or mental needs of a parent or child.[28]

Child Support Enforcement

Congress passed into law Title IV-D of the Social Security Act[29] to require states to provide specific child support enforcement services to receive federal funding under the Aid for Dependent Children (AFDC) Program.[30] Services are available to single-parent families on public assistance who are entitled to child support from the other parent.

Florida established the Child Support Enforcement Application and Program Revenue Trust Fund to provide a trust fund for deposits of Title IV-D program income.[31] The trust fund is administered by the state Department of Revenue.[32] The clerk of the court of each circuit operates a depository for alimony transactions, support, maintenance, and support payments.[33] A fee is collected for payments made in non-Title IV-D cases to fund the depository.[34]

III. Effect of Proposed Changes:

This bill makes various changes to laws applicable to dissolution of marriage cases in the areas of alimony, support, and time-sharing with children.

[25] National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).
[26] AR s. 901.
[27] South Dakota House Bill 1055 (Chapter 141).
[28] Utah HB 88 (Chapter 269); HB 107 (Chapter 271).
[29] 42 USC §§ 651-669 (1988)
[30] Ashish Prasad, *Rights Without Remedies: Section 1983 Enforcement of Title IV-D of the Social Security Act*, 60 U.CHI. L. REV. 197, 197 (1993).
[31] Section 61.1814(1), F.S.
[32] *Id*.
[33] Section 61.181(1)(a), F.S.
[34] Section 61.181(2)(a) and (b), F.S.

Alimony Awarded During a Pending Suit—Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The bill requires the court to consider the bases for alimony (without the formula) after determining a need for alimony pendente lite and an ability to pay.

Alimony Awarded through a Final Court Order

Under the bill, a court must determine the amount of an alimony award in a multi-step process, from making initial findings, applying guidelines, and considering other factors, including factors which might justify a deviation from guidelines. The bill also establishes presumptive alimony duration ranges which range from 25 to 75 percent of the length of the marriage. The bill does not maintain the distinctions in current law relating to the duration or purposes of bridge-the-gap, rehabilitative, durational, or permanent alimony.

Initial Findings

In determining alimony, a court must make initial written findings based on:

- The amount of each party's monthly gross income, including potential income and actual or potential income from nonmarital property distributed to each party; and
- The years of marriage.

The courts must look at net income, rather than gross income, in calculating alimony and support. In instances in which trial courts have erroneously used a party's gross income, the appellate courts have routinely reversed those decisions.[35] In instances in which an obligor is self-employed, the court may start with gross income and subtract from it ordinary business expenses to arrive at net income.

This bill specifies that income considered in alimony calculations is gross income. Gross income is recurring income from any source and includes:

- Income from salaries, overtime pay, and wages, including tips declared to the IRS or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater, commissions, bonuses; and dividends, and severance pay;
- Pension pay and retirement benefits actually received;
- Spousal support received from a previous marriage;
- Trust income and distributions regularly received, relied upon, or readily available to the beneficiary, royalties, income from estates, annuity payments, capital gains, recurring gains derived from dealings in property, rental income (gross receipts minus ordinary and necessary expenses required to produce the income), interest, and continuing monetary gifts;
- Payments received as an independent contractor for labor or services, which must be considered income from self-employment; money drawn by a self-employed person for personal use that is deducted as a business expense, and expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses;

[35] *Kingsbury v. Kingsbury*, 116 So. 3d 473, 474(Fla. 1st DCA 2013); *Vanzant v. Vanzant*, 82 So. 3d 991, 993 (Fla. 1st DCA 2011); *Vega v. Vega*, 877 So. 2d 882, 883 (Fla. 3d DCA 2004).

- Workers' compensation; unemployment benefits, social security benefits, including those actually received based on disability, disability insurance benefits and funds paid from health, accident, disability, or casualty insurance if the insurance replaces wages; and
- Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies, except that if the party is a passive investor with a minority interest in the company, income is limited to actual cash distributions received.

Gross income does not include:
- Child support payments received;
- Public assistance benefits;
- Social security benefits received by a parent on behalf of a minor child due to death or disability of a parent or stepparent; and
- Earnings or gains on retirement accounts, including individual retirement accounts, except that the earnings or gains are income if a party takes a distribution from the account, and if a party is able to take a distribution tax-free and chooses not to, the court may consider as income the distribution that could have been taken.

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income equals gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

The bill defines "potential income" as income which could be earned by a party using best efforts, and includes potential income from employment, investment of assets, or use of property in a financially prudent manner. Potential income from employment is income a party could reasonably expect to earn working at a locally available, full-time job based on the person's education, training, and experience. A person is considered to be underemployed if he or she is not working full-time in a position which is appropriate based on his or her education, training, and experience, and which is available in the local area. A person is not underemployed if he or she is enrolled in an educational program that can reasonably expect to result in a degree or certification and higher income within the foreseeable future. A court generally must impute income to a party who is voluntarily unemployed or underemployed.

The court must consider years of marriage based on whole years, calculated from the date of marriage until the date of the filing for dissolution.

This bill creates a rebuttable presumption against alimony for marriages of 2 years or less. The party seeking alimony may rebut the presumption by showing:
- The party seeking alimony has a clear and convincing need for alimony;
- The party from whom alimony is sought has an ability to pay alimony; and
- An inequity would result if the court does not award alimony.

If the court finds that the party rebuts the presumption, the court must provide written findings. Alimony will then be awarded under the formula.

Alimony Guidelines

This bill establishes formulas for use by the court after making its initial findings in alimony determinations, unless the parties agree to an amount otherwise. After making initial findings, the court will calculate the presumptive alimony ranges based upon two formulas. The formulas provide a presumptive range for alimony as follows:

- At the low end of the range: 0.015 x the years of marriage x the difference between the monthly gross income of the parties; and
- At the high end of the range: 0.020 x the years of marriage x the difference between the monthly gross income of the parties.

The formula bases the years of marriage at 20 for both the low and the high end of the range. However, if a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court is required to use the actual years of marriage, up to 25 years to calculate the high end of a presumptive alimony amount range.

Difference in the Parties' Monthly Incomes	**Presumptive Alimony Amount Ranges**							
$20,000	High	$1,200	$2,000	$4,000	$4,800	$6,000	$8,000	$8,000
	Low	$900	$1,500	$3,000	$3,600	$4,500	$6,000	$6,000
$15,000	High	$900	$1,500	$3,000	$3,600	$4,500	$6,000	$6,000
	Low	$675	$1,125	$2,250	$2,700	$3,375	$4,500	$4,500
$10,000	High	$600	$1,000	$2,000	$2,400	$3,000	$4,000	$4,000
	Low	$450	$750	$1,500	$1,800	$2,250	$3,000	$3,000
$8,000	High	$480	$800	$1,600	$1,920	$2,400	$3,200	$3,200
	Low	$360	$600	$1,200	$1,440	$1,800	$2,400	$2,400
$7,000	High	$420	$700	$1,400	$1,680	$2,100	$2,800	$2,800
	Low	$315	$525	$1,050	$1,260	$1,575	$2,100	$2,100
$6,000	High	$360	$600	$1,200	$1,440	$1,800	$2,400	$2,400
	Low	$270	$450	$900	$1,080	$1,350	$1,800	$1,800
$5,000	High	$300	$500	$1,000	$1,200	$1,500	$2,000	$2,000
	Low	$225	$375	$750	$900	$1,125	$1,500	$1,500
$4,000	High	$240	$400	$800	$960	$1,200	$1,600	$1,600
	Low	$180	$300	$600	$720	$900	$1,200	$1,200
$3,000	High	$180	$300	$600	$720	$900	$1,200	$1,200
	Low	$135	$225	$450	$540	$675	$900	$900
$2,000	High	$120	$200	$400	$480	$600	$800	$800
	Low	$90	$150	$300	$360	$450	$600	$600
Length of Marriage		**3 Years**	**5 Years**	**10 Years**	**12 Years**	**15 Years**	**20 Years**	**25 Years**

The court retains flexibility to determine alimony within the presumptive alimony ranges.

Bases for Alimony (Considered by the Court after Presumptive Alimony is Calculated):

Presumptive alimony may then be established by the court within the presumptive ranges, based on the following:

- The financial resources of the obligee and the obligor, including the actual or potential income from nonmarital or marital property or any other source and the ability of each spouse to meet his or her reasonable needs;
- The standard of living of the parties during the marriage considering that there will be two households to maintain after the dissolution of marriage and that neither party may be able to maintain the same standard of living they had while married;
- The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony;
- Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, and any necessary reduction in employment due to parenting or circumstances of the parties;
- Whether a party could reduce the need for alimony by pursuing additional educational or vocational training, including the length of time required and anticipated costs of training;
- Whether one party has historically earned higher or lower income than that at the time of trial;
- Whether a party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage;
- Whether either party has caused the unreasonable depletion or dissipation of marital assets;
- The amount of temporary alimony and the number of months temporary alimony was paid to the recipient spouse;
- The age, health, and physical and mental condition of the parties, including health care needs and costs;
- Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property;
- The tax consequence of the alimony award; and
- Any other factor necessary to provide equity and justice between the parties.

If the court awards alimony, the court must include in written findings that the obligor has the financial ability to pay alimony.

Under no circumstance may a court order alimony and child support that, when combined, constitutes more than 55 percent of the obligor's net income. This change appears to codify case law, as appellate courts have reversed awards of trial courts where the percent of income awarded as support is considered unreasonable. The Fourth District Court of Appeal found that the trial court committed an abuse of discretion in awarding combined alimony and child support totaling 58 percent of the obligor's net income.[36] The appellate court noted that the trial court had legitimate grounds on which to order permanent alimony. The former wife earned only a

[36] *Thomas v. Thomas*, 418 So. 2d 316, (Fla. 4th DCA 1982).

two-year college degree and supported her husband as a teacher's aide while he secured a law school education. She then became a homemaker. However, the court noted that the excessive award left the obligor with just $330 a month on which to live after paying for rent and a car loan.[37]

In *Casella v. Casella*, the same appellate court ruled clearly excessive an award of combined alimony and child support that approached 70 percent of the husband's net income.[38] A 1990 case, the court reversed the trial court on the basis that the award left the obligor with just $800 a month on which to live.

To protect an award of alimony, the court may require an obligor to purchase or maintain a decreasing term life insurance policy or a bond, or provide other security to protect the alimony award. To award security, a court must find the existence of special circumstances and make specific evidentiary findings about the availability, cost, and financial impact on the obligor. Security is modifiable if the underlying alimony award is reduced.

Deviation from Guidelines

The court may determine an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court makes specific written findings that the application of the ranges is inappropriate or inequitable after considering all the factors used as the bases of alimony.

Even if the court does not intend to award alimony at the time, the court may reserve the issue of alimony by awarding alimony of $1.00 a year under the durational guidelines if:

- A party who has traditionally been the breadwinner temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay in the future; or
- A party is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit the ability to pay in the future.

The courts routinely award nominal alimony to reserve the issue of alimony at a later date.[39]

Tax and Alimony

Unless otherwise stated in the agreement between the parties or by the court through judgment or order, alimony is deductible from income by the obligor and included in the income of the obligee for tax purposes.

The agreement between the parties may provide or the court, after considering equities and tax efficiencies, may order alimony to be nondeductible from income by the obligor and not includable in the income of the obligee.

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[37] *Id*. at 316-317.

[38] *Casella v. Casella*, 569 So. 2d 848, 849 (Fla. 4th DCA 1990). The court stopped short of ruling that a particular percentage constitutes a bright-line rule, and instead, ruled that each case must be determined individually.

[39] *Lightcap v. Lightcap*, 14 So. 3d 259, 260 (Fla. 3d DCA 2009). "Here the trial court did not abuse its discretion when it granted the former wife nominal alimony. Nominal alimony would permit her to apply for modification upon a proper showing if and when the former husband achieves his full earning potential in the future."

Payment of Alimony in Depository

Under the bill, for orders on alimony entered into on or after January 1, 1985, the court must order that payments of alimony be made through a depository. For orders on alimony entered before January 1, 1985, upon appearance by one or both parties before the court to modify or enforce the order, the court must modify the order require that alimony payments to be made through the depository.

Alimony payments do not need to be directed through the depository:
- If there is no minor child; or
- If there is a minor child and both parties agree to payment without the depository.

However, a payee may subsequently file an affidavit with the clerk of the court a verified motion that an obligor has been in default or arrearages in payment. No later than 15 days after receiving the motion, the court must:
- Hold an evidentiary hearing establishing the default and arrearages;
- Issue an order that the clerk establish or amend an existing family law case history account; and
- Advise the parties that future payments must be directed through the depository.

A Title IV-D agency, currently the Department of Revenue, can also request payments to be made through the depository.

Timesharing with Children

This bill creates a rebuttable presumption that approximately equal timesharing with a minor child by both parents is in the best interest of the child. A party may overcome the presumption by providing evidence based on factors that affect the welfare and interests of the child and the circumstance of the family.

In addition to the factors currently in law, this bill adds the following:
- The amount of timesharing requested by each parent; and
- The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

If the initial permanent timesharing schedule does not provide for approximately equal time-sharing the court order must include written findings of fact justifying its order for unequal timesharing.

Substantial Change in Circumstance Justifying the Modification of Alimony

Existing law authorizes the court to modify alimony upon a showing of a substantial change in circumstances. However, a court may not decrease or increase the duration of alimony provided for in the agreement or order.

Under the bill, upon the filing of a petition by the obligor, the court may temporarily reduce or suspend the obligor's payment of alimony while the petition is pending. However, if either party unreasonably pursues or defends an action, the other party is entitled to pay reasonable attorney fees and costs of the prevailing party.

Rebuttable Presumption

This bill creates a rebuttable presumption that alimony must be modified or terminated if the courts finds that the obligor's retirement is a substantial change in circumstance.

The presumption can be rebutted by the following factors:
- The age of the parties;
- The health of the parties;
- Assets and liabilities of the parties;
- Earned or imputed income of the parties;
- The ability of the parties to maintain part-time or full-time employment; and
- Any other factor deemed relevant by the court.

New Grounds for a Substantial Change in Circumstance

This bill establishes new substantial changes in circumstance:
- If the actual income of a party exceeds by at least 10 percent the amount the court imputed to the party when the court initially determined alimony, the other party may seek an immediate modification of alimony. An increase in an obligor's income alone does not constitute a basis for modification unless at the time the court established alimony, the court determined that the obligor was underemployed or unemployed but did not impute income at his or her maximum potential income.
- If an obligor becomes involuntarily underemployed or unemployed for 6 months after the court enters its final order for alimony, the obligor is entitled to pursue an immediate modification of alimony.
- Retirement is a substantial change in circumstance if:
  - The obligor has reached the age for eligibility to receive full retirement benefits under the Social Security Act and has retired;
  - The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation; or
  - The obligor retires early and the court determines that the retirement is reasonable based upon the obligor's age, health, motivation for retirement, and impact on the obligee.

At least one court has refused modification of alimony on the basis that an obligor voluntarily retired early. Here the court held that the obligor did not establish voluntary retirement as a circumstance beyond his control.[40] In this case, the obligor retired early at the age of 63, after 40 years of steady employment.[41]

[40] *Ward v. Ward*, 502 So. 2d 477, 478 (FLA. 3D DCA 1987).
[41] *Id*.

An obligor may file an action within a year of his or her anticipated retirement date for the court to determine the customary retirement date for the obligor's profession. Allowing the obligor to file in advance of retirement helps the obligor to plan.

Remarriage of Obligor is not a Substantial Change in Circumstance

The bill clarifies that remarriage of the obligor is not a substantial change in circumstance.

Financial information of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If the party makes this claim, financial information is admissible for a limited purpose.

Supportive Relationship

Regarding the change in circumstance that is the presence of a supportive relationship between an obligee and another person, this bill expands the requirement that the relationship currently exist, to one which existed within the previous year before the date of the filing of the petition for modification or termination of alimony.

The bill adds as a factor for the court to use in determining to modify alimony based on a supportive relationship whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations contributed to the need to have a supportive relationship.

This bill requires the obligor to demonstrate by a preponderance of the evidence that a supportive relationship exists or has existed within the previous year before the filing date of the petition for modification. The obligor is not required to prove the cohabitation of the obligee. These changes reduce the burden on an obligor to show a supportive relationship.

If an obligor prevails in a showing of a supportive relationship, reduction or termination of alimony is retroactive to the date of the filing of the petition.

Advancing Trial

The court must give priority to cases that have remained pending for more than 2 years from the initial date a party files a petition if a party requests that the case advance to trial.

Application of the Bill

A court may not modify the duration of an award of alimony initially established under the provisions of this bill. However, the formulas, factors, and other provisions of the bill will apply to the resolution of a petition for modification.

This bill applies to:

- All initial alimony determinations and all alimony modification actions pending as of the bill's October 1, 2015, effective date; and
- All future initial determinations of alimony and alimony modification actions.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Most alimony awards are based on marital settlement agreements (MSAs), which are incorporated into final judgments in dissolution of marriage cases. Courts consider these MSAs as contracts. Courts interpret challenges to MSAs on the same basis as other forms of contract.[42] "A marital settlement agreement entered into by the parties and ratified by a final judgment is a contract, subject to the laws of contract."[43]

Although, existing s. 61.14, F.S., gives courts broad authority to modify MSAs, the power of the legislature to reach back to existing contracts is restricted by Article I, s. 10, of the Florida Constitution which provides, in part: "No … ex post facto law or law impairing the obligation of contracts shall be passed." As such, the extent to which the Legislature may authorize the provisions of the bill to apply to preexisting alimony awards is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill more clearly defines gross income, provides guidelines for alimony, and establishes new bases for a substantial change in circumstance justifying a

[42] The First District Court of Appeal applied contract law in determining whether to admit parol evidence, or evidence outside the contract (MSA), on the basis that the contract language contains a latent ambiguity (*Toussaint v. Toussaint*, 107 So. 3d 474, 477-478 (Fla. 1st DCA 2013). A latent ambiguity, requiring extrinsic evidence, existed where an MSA failed to address financing of college education and the contract otherwise provided for equal payments for education costs (*Riera v. Riera*, 86 So. 3d 1163, 1166—67 (Fla. 3d DCA 2012)). The court found no breach of contract from the plain language of the MSA. (*McCord v. McCord*, 94 So. 3d 719 (Fla. 2nd DCA 2012).

[43] *Ferguson v. Ferguson*, 54 So. 3d 553, 556 (Fla. 3d DCA 2011).

modification of alimony, this bill may reduce time spent in litigation which will reduce costs.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the bill would have an indeterminate impact on judicial workload, due to the substantial revisions in determining alimony.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The child support guidelines in section 61.30, F.S., define gross income differently than the way gross income is defined in the bill. The reason for the different definitions is not apparent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.071, 61.08, 61.13, 61.14, and 61.30.

This bill creates section 61.192, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 24, 2015:
The CS:

- Revises the formula to increase the minimum amounts of the presumptive alimony range;
- Provides for larger monthly award of alimony for marriages exceeding 20 years if the duration of the award is limited to no more than half of the marriage's length.;
- Authorizes the court to require an obligor to purchase a security, such as a life insurance policy or a bond to protect an award of alimony, subject to modification if alimony is reduced or terminated;
- Regarding imputation of income, requires actual income to exceed 10 percent the amount imputed to that party before the other party can request an immediate modification of alimony;
- Regarding alimony awarded to assist a party with legal fees and costs in a dissolution of marriage case, requires the court to consider need and ability to pay and the same bases for alimony required of all alimony determinations in dissolution cases; and

[44] Office of the State Courts Administrator (OSCA), *2015 Judicial Impact Statement* (March 20, 2015).

- Authorizes an obligor to request that the court preapprove the customary retirement date for the obligor's profession 1 year in advance of retirement.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
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The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of

marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor. After determining there is a need for alimony and that there is an ability pay alimony, the court shall consider the alimony factors in s. 61.08(4)(b)1.-14. and make specific written findings of fact regarding the relevant factors that justify an award of alimony under this section. The court may not use the presumptive alimony guidelines in s. 61.08 to calculate alimony under this section.

Section 2. Section 61.08, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 61.08, F.S., for present text.)

61.08 Alimony.—

(1) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a)1. "Gross income" means recurring income from any source and includes, but is not limited to:

a. Income from salaries.

b. Wages, including tips declared by the individual for purposes of reporting to the Internal Revenue Service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.

c. Commissions.

d. Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment.

e. Bonuses.

f. Dividends.

g. Severance pay.

h. Pension payments and retirement benefits actually received.

i. Royalties.

j. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.

k. Interest.

l. Trust income and distributions which are regularly received, relied upon, or readily available to the beneficiary.

m. Annuity payments.

n. Capital gains.

o. Any money drawn by a self-employed individual for personal use that is deducted as a business expense, which moneys must be considered income from self-employment.

p. Social security benefits, including social security benefits actually received by a party as a result of the disability of that party.

q. Workers' compensation benefits.

r. Unemployment insurance benefits.

s. Disability insurance benefits.

t. Funds payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages.

u. Continuing monetary gifts.

v. Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies; except that if a party is a passive investor, has a minority interest in the company, and does not have any managerial duties

or input, the income to be recognized may be limited to actual cash distributions received.

w. Expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses.

x. Overtime pay.

y. Income from royalties, trusts, or estates.

z. Spousal support received from a previous marriage.

aa. Gains derived from dealings in property, unless the gain is nonrecurring.

2. "Gross income" does not include:

a. Child support payments received.

b. Benefits received from public assistance programs.

c. Social security benefits received by a parent on behalf of a minor child as a result of the death or disability of a parent or stepparent.

d. Earnings or gains on retirement accounts, including individual retirement accounts; except that such earnings or gains shall be included as income if a party takes a distribution from the account. If a party is able to take a distribution from the account without being subject to a federal tax penalty for early distribution and the party chooses not to take such a distribution, the court may consider the distribution that could have been taken in determining the party's gross income.

3.a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, the term "gross income"

equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph b., which are required to produce such income.

b. "Ordinary and necessary expenses," as used in sub-subparagraph a., does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

(b) "Potential income" means income which could be earned by a party using his or her best efforts and includes potential income from employment and potential income from the investment of assets or use of property. Potential income from employment is the income which a party could reasonably expect to earn by working at a locally available, full-time job commensurate with his or her education, training, and experience. Potential income from the investment of assets or use of property is the income which a party could reasonably expect to earn from the investment of his or her assets or the use of his or her property in a financially prudent manner.

(c)1. "Underemployed" means a party is not working full-time in a position which is appropriate, based upon his or her educational training and experience, and available in the geographical area of his or her residence.

2. A party is not considered "underemployed" if he or she is enrolled in an educational program that can be reasonably expected to result in a degree or certification within a reasonable period, so long as the educational program is:

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a. Expected to result in higher income within the foreseeable future.

b. A good faith educational choice based upon the previous education, training, skills, and experience of the party and the availability of immediate employment based upon the educational program being pursued.

(d) "Years of marriage" means the number of whole years, beginning from the date of the parties' marriage until the date of the filing of the action for dissolution of marriage.

(2) INITIAL FINDINGS.—When a party has requested alimony in a dissolution of marriage proceeding, before granting or denying an award of alimony, the court shall make initial written findings as to:

(a) The amount of each party's monthly gross income, including, but not limited to, the actual or potential income, and also including actual or potential income from nonmarital or marital property distributed to each party.

(b) The years of marriage as determined from the date of marriage through the date of the filing of the action for dissolution of marriage.

(3) ALIMONY GUIDELINES.—After making the initial findings described in subsection (2), the court shall calculate the presumptive alimony amount range and the presumptive alimony duration range. The court shall make written findings as to the presumptive alimony amount range and presumptive alimony duration range.

(a) Presumptive alimony amount range.—The low end of the presumptive alimony amount range shall be calculated by using the following formula:

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(0.015 x the years of marriage) x the difference between the monthly gross incomes of the parties

The high end of the presumptive alimony amount range shall be calculated by using the following formula:

(0.020 x the years of marriage) x the difference between the monthly gross incomes of the parties

For purposes of calculating the presumptive alimony amount range, 20 years of marriage shall be used in calculating the low end and high end for marriages of 20 years or more. In calculating the difference between the parties' monthly gross income, the income of the party seeking alimony shall be subtracted from the income of the other party. If the application of the formulas to establish a guideline range results in a negative number, the presumptive alimony amount shall be $0. If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court shall use the actual years of the marriage, up to a maximum of 25 years, to calculate the high end of the presumptive alimony amount range.

(b) Presumptive alimony duration range.—The low end of the presumptive alimony duration range shall be calculated by using the following formula:

0.25 x the years of marriage

The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage.

(4) ALIMONY AWARD.—

(a) Marriages of 2 years or less.—For marriages of 2 years or less, there is a rebuttable presumption that no alimony shall be awarded. The court may award alimony for a marriage with a duration of 2 years or less only if the court makes written findings that there is a clear and convincing need for alimony, there is an ability to pay alimony, and that the failure to award alimony would be inequitable. The court shall then establish the alimony award in accordance with paragraph (b).

(b) Marriages of more than 2 years.—Absent an agreement of the parties, alimony shall presumptively be awarded in an amount within the alimony amount range calculated in paragraph (3)(a). Absent an agreement of the parties, alimony shall presumptively be awarded for a duration within the alimony duration range calculated in paragraph (3)(b). In determining the amount and duration of the alimony award, the court shall consider all of the following factors upon which evidence was presented:

1. The financial resources of the recipient spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the recipient spouse to meet his or her reasonable needs independently.

2. The financial resources of the payor spouse, including the actual or potential income from nonmarital or marital

property or any other source and the ability of the payor spouse to meet his or her reasonable needs while paying alimony.

3. The standard of living of the parties during the marriage with consideration that there will be two households to maintain after the dissolution of the marriage and that neither party may be able to maintain the same standard of living after the dissolution of the marriage.

4. The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony.

5. Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, if necessary, and any necessary reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties.

6. Whether a party could become better able to support himself or herself and reduce the need for ongoing alimony by pursuing additional educational or vocational training along with all of the details of such educational or vocational plan, including, but not limited to, the length of time required and the anticipated costs of such educational or vocational training.

7. Whether one party has historically earned higher or lower income than the income reflected at the time of trial and the duration and consistency of income from overtime or secondary employment.

8. Whether either party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage.

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9. Whether either party has caused the unreasonable depletion or dissipation of marital assets.

10. The amount of temporary alimony and the number of months that temporary alimony was paid to the recipient spouse.

11. The age, health, and physical and mental condition of the parties, including consideration of significant health care needs or uninsured or unreimbursed health care expenses.

12. Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property.

13. The tax consequence of the alimony award.

14. Any other factor necessary to do equity and justice between the parties.

(c) Deviation from guidelines.—The court may establish an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court considers all of the factors in paragraph (b) and makes specific written findings concerning the relevant factors justifying that the application of the presumptive alimony amount or alimony duration ranges, as applicable, is inappropriate or inequitable.

(d) Order establishing alimony award.—After consideration of the presumptive alimony amount and duration ranges in accordance with paragraphs (3)(a) and (b) and the factors upon which evidence was presented in accordance with paragraph (b), the court may establish an alimony award. An order establishing

an alimony award must clearly set forth both the amount and the duration of the award. The court shall also make a written finding that the payor has the financial ability to pay the award.

(5) IMPUTATION OF INCOME.—If a party is voluntarily unemployed or underemployed, alimony shall be calculated based on a determination of potential income unless the court makes specific written findings regarding the circumstances that make it inequitable to impute income.

(6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3), and (4), the court may make an award of nominal alimony in the amount of $1 per year if, at the time of trial, a party who has traditionally provided the primary source of financial support to the family temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay support in the future. The court may also award nominal alimony for an alimony recipient who is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit or prevent his or her ability to work during the duration of the alimony period. The duration of the nominal alimony shall be established within the presumptive durational range based upon the length of the marriage subject to the alimony factors in paragraph (4)(b). Before the expiration of the durational period, nominal alimony may be modified in accordance with s. 61.14 as to amount to a full alimony award using the alimony guidelines and factors in accordance with s. 61.08.

(7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

(a) Unless otherwise stated in the judgment or order for

alimony or in an agreement incorporated thereby, alimony shall be deductible from income by the payor under s. 215 of the Internal Revenue Code and includable in the income of the payee under s. 71 of the Internal Revenue Code.

(b) When making a judgment or order for alimony, the court may, in its discretion after weighing the equities and tax efficiencies, order alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(c) The parties may, in a marital settlement agreement, separation agreement, or related agreement, specifically agree in writing that alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(8) MAXIMUM COMBINED AWARD.—In no event shall a combined award of alimony and child support constitute more than 55 percent of the payor’s net income, calculated without any consideration of alimony or child support obligations.

(9) SECURITY OF AWARD.—To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a decreasing term life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the

alimony award.

(10) TERMINATION OF AWARD.—An alimony award shall terminate upon the death of either party or the remarriage of the obligee.

(11) MODIFICATION OF AWARD.—A court may subsequently modify or terminate the amount of an award of alimony initially established under this section in accordance with s. 61.14. However, a court may not modify the duration of an award of alimony initially established under this section.

(12) PAYMENT OF AWARD.—

(a) With respect to an order requiring the payment of alimony entered on or after January 1, 1985, unless paragraph (c) or paragraph (d) applies, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to an order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless paragraph (c) or paragraph (d) applies, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments do not need to be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments do not need to be directed through the depository. In this case,

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the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If subparagraph 1. applies, either party may subsequently file with the clerk of the court a verified motion alleging a default or arrearages in payment stating that the party wishes to initiate participation in the depository program. The moving party shall copy the other party with the motion. No later than 15 days after filing the motion, the court shall conduct an evidentiary hearing establishing the default and arrearages, if any, and issue an order directing the clerk of the circuit court to establish, or amend an existing, family law case history account, and further advising the parties that future payments must thereafter be directed through the depository.

3. In IV-D cases, the Title IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

Section 3. Subsection (3) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the

primary consideration.

(a) Approximately equal time-sharing with a minor child by both parents is presumed to be in the best interest of the child. In determining whether the presumption is overcome, the court shall evaluate the evidence based on ~~A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating~~ all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including~~, but not limited to~~:

1.~~(a)~~ The demonstrated capacity or ~~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.

2.~~(b)~~ The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

3.~~(c)~~ 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.

4.~~(d)~~ The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

5.~~(e)~~ The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to carry out ~~effectuate~~

the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

6.~~(f)~~ The moral fitness of the parents.

7.~~(g)~~ The mental and physical health of the parents.

8.~~(h)~~ The home, school, and community record of the child.

9.~~(i)~~ The reasonable preference of the child~~,~~ if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

10.~~(j)~~ The demonstrated knowledge, capacity, or ~~and~~ disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

11.~~(k)~~ The demonstrated capacity or ~~and~~ disposition of each parent to provide a consistent routine for the child, such as discipline~~,~~ and daily schedules for homework, meals, and bedtime.

12.~~(l)~~ The demonstrated capacity of each parent to communicate with the other parent and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

13.~~(m)~~ Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was

considered when evaluating the best interests of the child.

14. ~~(n)~~ Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

15. ~~(o)~~ The demonstrated capacity or disposition of each parent to perform or ensure the performance of particular parenting tasks customarily performed by the other ~~each~~ parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

16. ~~(p)~~ The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

17. ~~(q)~~ The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

18. ~~(r)~~ The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

19. ~~(s)~~ The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

20. The amount of time-sharing requested by each parent.

21. The frequency that a parent would likely leave the

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child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

22.~~(t)~~ Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

(b) A court order must be supported by written findings of fact if the order establishes an initial permanent time-sharing schedule that does not provide for approximately equal time-sharing.

(c) A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a determination that such modification is in the best interest of the child and upon a showing of a substantial, material, and unanticipated change in circumstances.

Section 4. Subsection (1) of section 61.14, Florida Statutes, is amended to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution

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of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. However, a court may not decrease or increase the duration of alimony provided for in the agreement or order. A party is entitled to pursue an immediate modification of alimony if the actual income earned by the other party exceeds by at least 10 percent the amount imputed to that party at the time the existing alimony award was determined and such circumstance shall constitute a substantial change in circumstances sufficient to support a modification of alimony. However, an increase in an alimony obligor's income alone does not constitute a basis for a modification to increase alimony unless at the time the alimony award was established it was determined that the obligor was underemployed or unemployed and the court did not impute income to that party at his or her maximum potential income. If an alimony obligor becomes involuntarily underemployed or unemployed for a period of 6 months following the entry of the last order requiring the payment of alimony, the obligor is entitled to pursue an immediate modification of his or her existing alimony obligations and such circumstance shall constitute a substantial change in circumstance sufficient to support a modification of alimony. A finding that medical insurance is reasonably

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available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by increasing or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. The court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship exists or has existed within the previous year before the date of the filing of the petition for modification or termination between the obligee and another ~~a~~ person ~~with whom the obligee resides~~. ~~On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.~~

2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person

have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other ~~in terms such~~ as ~~"my husband" or "my wife,"~~ "my spouse" or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

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1. Whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations to the obligee constituted a significant factor in the establishment of the supportive relationship.

3. In any proceeding to modify an alimony award based upon a supportive relationship, the obligor has the burden of proof to establish, by a preponderance of the evidence, that a supportive relationship exists or has existed within the previous year before the date of the filing of the petition for modification or termination. The obligor is not required to prove cohabitation of the obligee and the third party.

4. Notwithstanding paragraph (f), if a reduction or termination is granted under this paragraph, the reduction or termination is retroactive to the date of filing of the petition for reduction or termination.

5.~~3.~~ This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(c)1. For purposes of this section, the remarriage of an alimony obligor does not constitute a substantial change in

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circumstance or a basis for a modification of alimony.

2. The financial information, including, but not limited to, information related to assets and income, of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as a part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If a party makes such a claim, the financial information of the subsequent spouse is discoverable and admissible only to the extent necessary to establish whether the party claiming that his or her income has decreased is diverting income or assets to the subsequent spouse that might otherwise be available for the payment of alimony. However, this subparagraph may not be used to prevent the discovery of or admissibility in evidence of the income or assets of a party when those assets are held jointly with a subsequent spouse. This subparagraph is not intended to prohibit the discovery or admissibility of a joint tax return filed by a party and his or her subsequent spouse in connection with a modification of alimony.

(d)1. An obligor may file a petition for modification or termination of an alimony award based upon his or her actual retirement.

a. A substantial change in circumstance is deemed to exist if:

(I) The obligor has reached the age for eligibility to receive full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, and has retired; or

(II) The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation.

An obligor may file an action within 1 year of his or her anticipated retirement date and the court shall determine the customary retirement date for the obligor's profession. However, a determination of the customary retirement age is not an adjudication of a petition for a modification of an alimony award.

b. If an obligor voluntarily retires before reaching any of the ages described in sub-subparagraph a., the court shall determine whether the obligor's retirement is reasonable upon consideration of the obligor's age, health, and motivation for retirement and the financial impact on the obligee. A finding of reasonableness by the court shall constitute a substantial change in circumstance.

2. Upon a finding of a substantial change in circumstance, there is a rebuttable presumption that an obligor's existing alimony obligation shall be modified or terminated. The court shall modify or terminate the alimony obligation, or make a determination regarding whether the rebuttable presumption has been overcome, based upon the following factors applied to the current circumstances of the obligor and obligee:

a. The age of the parties.

b. The health of the parties.

c. The assets and liabilities of the parties.

d. The earned or imputed income of the parties as provided in s. 61.08(1)(a) and (5).

e. The ability of the parties to maintain part-time or full-time employment.

f. Any other factor deemed relevant by the court.

3. The court may temporarily reduce or suspend the

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obligor's payment of alimony while his or her petition for modification or termination under this paragraph is pending.

(e) A party who unreasonably pursues or defends an action for modification of alimony shall be required to pay the reasonable attorney fees and costs of the prevailing party. Further, a party obligated to pay prevailing party attorney fees and costs in connection with unreasonably pursuing or defending an action for modification is not entitled to an award of attorney fees and cost in accordance with s. 61.16.

(f) There is a rebuttable presumption that a modification or termination of an alimony award is retroactive to the date of the filing of the petition, unless the obligee demonstrates that the result is inequitable.

(g) ~~(e)~~ For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(h) ~~(d)~~ The department may ~~shall have authority to~~ adopt rules to implement this section.

Section 5. Paragraph (d) is added to subsection (11) of section 61.30, Florida Statutes, to read:

61.30 Child support guidelines; retroactive child support.—

(11)

(d) Whenever a combined alimony and child support award constitutes more than 55 percent of the payor's net income, calculated without any consideration of alimony or child support

obligations, the court shall adjust the award of child support to ensure that the 55 percent cap is not exceeded.

Section 6. Section 61.192, Florida Statutes, is created to read:

61.192 Advancing trial.—In an action brought pursuant to this chapter, if more than 2 years have passed since the initial petition was served on the respondent, either party may move the court to advance the trial of their action on the docket. This motion may be made at any time after 2 years have passed since the petition was served, and once made the court must give the case priority on the court's calendar.

Section 7. The amendments made by this act to chapter 61, Florida Statutes, apply to all initial determinations of alimony and all alimony modification actions that are pending as of the effective date of this act, and to all initial determinations of alimony and all alimony modification actions brought on or after the effective date of this act. The enacting of this act may not serve as the sole basis for a party to seek a modification of an alimony award existing before the effective date of this act.

Section 8. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to family law; amending s. 61.071, F.S.; requiring a court to consider certain alimony factors and make specific written findings of fact

after making specified determinations; prohibiting a court from using certain presumptive alimony guidelines in calculating alimony pendente lite; amending s. 61.08, F.S.; defining terms; requiring a court to make specified initial written findings in a dissolution of marriage proceeding where a party has requested alimony; requiring a court to make specified findings before ruling on a request for alimony; providing for determinations of presumptive alimony amount range and duration range; providing presumptions concerning alimony awards depending on the duration of marriages; providing for imputation of income in certain circumstances; providing for awards of nominal alimony in certain circumstances; providing for taxability and deductibility of alimony awards; prohibiting a combined award of alimony and child support from constituting more than a specified percentage of a payor's net income; authorizing the court to order a party to protect an alimony award by specified means; providing for termination of an award; authorizing a court to modify or terminate the amount of an initial alimony award; prohibiting a court from modifying the duration of an alimony award; providing for payment of awards; amending s. 61.13, F.S.; creating a presumption that approximately equal time-sharing by both parents is in the best interests of the child; revising a finite list of factors that a court must evaluate when determining whether the presumption of approximately equal time-sharing is

overcome; requiring a court order to be supported by written findings of fact under certain circumstances; amending s. 61.14, F.S.; providing that a party may pursue an immediate modification of alimony in certain circumstances; revising factors to be considered in determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship; providing for burden of proof for claims concerning the existence of supportive relationships; providing for the effective date of a reduction or termination of an alimony award; providing that the remarriage of an alimony obligor is not a substantial change in circumstance; providing that the financial information of a spouse of a party paying or receiving alimony is inadmissible and undiscoverable; providing an exception; providing for modification or termination of an award based on a party's retirement; providing a presumption upon a finding of a substantial change in circumstance; specifying factors to be considered in determining whether to modify or terminate an award based on a substantial change in circumstance; providing for a temporary suspension of an obligor's payment of alimony while his or her petition for modification or termination is pending; providing for an effective date of a modification or termination of an award; providing for an award of attorney fees and costs for unreasonably pursuing or defending a modification of an award; amending s. 61.30, F.S.; providing that

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whenever a combined alimony and child support award constitutes more than a specified percentage of a payor's net income, the child support award be adjusted to reduce the combined total; creating s. 61.192, F.S.; providing for motions to advance the trial of certain actions if a specified period has passed since the initial service on the respondent; providing applicability; providing an effective date.

By Senator Stargel

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A bill to be entitled

An act relating to family law; amending s. 61.071, F.S.; prohibiting a court from using certain presumptive alimony guidelines in calculating alimony pendente lite; amending s. 61.08, F.S.; defining terms; requiring a court to make specified initial written findings in a dissolution of marriage proceeding where a party has requested alimony; requiring a court to make specified findings before ruling on a request for alimony; providing for determination of presumptive alimony amount range and duration range; providing presumptions concerning alimony awards depending on the duration of marriages; providing for imputation of income in certain circumstances; providing for awards of nominal alimony in certain circumstances; providing for taxability and deductibility of alimony awards; prohibiting a combined award of alimony and child support from constituting more than a specified percentage of a payor's net income; providing for termination and payment of awards; amending s. 61.13, F.S.; creating a presumption that approximately equal time-sharing by both parents is in the best interests of the child; revising a finite list of factors that a court must evaluate when determining whether the presumption of approximately equal time-sharing is overcome; requiring a court order to be supported by written findings of fact under certain circumstances; amending s. 61.14, F.S.; providing that a party may pursue an

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immediate modification of alimony in certain circumstances; revising factors to be considered in determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship; providing for burden of proof for claims concerning the existence of supportive relationships; providing for the effective date of a reduction or termination of an alimony award; providing that the remarriage of an alimony obligor is not a substantial change in circumstance; providing that the financial information of a spouse of a party paying or receiving alimony is inadmissible and undiscoverable; providing an exception; providing for modification or termination of an award based on a party's retirement; providing a presumption upon a finding of a substantial change in circumstance; specifying factors to be considered in determining whether to modify or terminate an award based on a substantial change in circumstance; providing for a temporary suspension of an obligor's payment of alimony while his or her petition for modification or termination is pending; providing for an effective date of a modification or termination of an award; providing for an award of attorney fees and costs for unreasonably pursuing or defending a modification of an award; amending s. 61.30, F.S.; providing that whenever a combined alimony and child support award constitutes more than a specified percentage of a payor's net income, the child support award be

adjusted to reduce the combined total; creating s. 61.192, F.S.; providing for motions to advance the trial of certain actions if a specified period has passed since the initial service on the respondent; providing applicability; providing an effective date.

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

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor. The court may not use the presumptive alimony guidelines in s. 61.08 to calculate alimony under this section.

Section 2. Section 61.08, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 61.08, F.S., for present text.)

61.08 Alimony.—

(1) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a)1. "Gross income" means recurring income from any source and includes, but is not limited to:

a. Income from salaries.

b. Wages, including tips declared by the individual for purposes of reporting to the Internal Revenue Service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.

c. Commissions.

d. Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment.

e. Bonuses.

f. Dividends.

g. Severance pay.

h. Pension payments and retirement benefits actually received.

i. Royalties.

j. Rents.

k. Interest.

l. Trust income and distributions which are regularly received, relied upon, or readily available to the beneficiary.

m. Annuity payments.

n. Capital gains.

o. Any money drawn by a self-employed individual for personal use that is deducted as a business expense, which moneys must be considered income from self-employment.

p. Social security benefits, including social security benefits actually received by a party as a result of the disability of that party.

q. Workers' compensation benefits.

r. Unemployment insurance benefits.

s. Disability insurance benefits.

t. Funds payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages.

u. Continuing monetary gifts.

v. Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies; except that if a party is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, the income to be recognized may be limited to actual cash distributions received.

w. Expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses.

x. Overtime pay.

2. "Gross income" does not include:

a. Child support payments received.

b. Benefits received from public assistance programs.

c. Social security benefits received by a parent on behalf of a minor child as a result of the death or disability of a parent or stepparent.

d. Earnings or gains on retirement accounts, including individual retirement accounts; except that such earnings or gains shall be included as income if a party takes a distribution from the account. If a party is able to take a distribution from the account without being subject to a federal tax penalty for early distribution and the party chooses not to take such a distribution, the court may consider the

distribution that could have been taken in determining the party's gross income.

3.a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, the term "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph b., which are required to produce such income.

b. "Ordinary and necessary expenses," as used in sub-subparagraph a., does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

(b) "Potential income" means income which could be earned by a party using his or her best efforts and includes potential income from employment and potential income from the investment of assets or use of property. Potential income from employment is the income which a party could reasonably expect to earn by working at a locally available, full-time job commensurate with his or her education, training, and experience. Potential income from the investment of assets or use of property is the income which a party could reasonably expect to earn from the investment of his or her assets or the use of his or her property in a financially prudent manner.

(c)1. "Underemployed" means a party is not working full-time in a position which is appropriate, based upon his or her educational training and experience, and available in the

geographical area of his or her residence.

2. A party is not considered "underemployed" if he or she is enrolled in an educational program that can be reasonably expected to result in a degree or certification within a reasonable period and that will result in a higher income, so long as the educational program is:

a. Temporary and is reasonably expected to result in higher income within the foreseeable future.

b. A good faith educational choice based upon the previous education, training, skills, and experience of the party and the availability of immediate employment based upon the educational program being pursued.

(d) "Years of marriage" means the number of whole years, beginning from the date of the parties' marriage until the date of the filing of the action for dissolution of marriage.

(2) INITIAL FINDINGS.—When a party has requested alimony in a dissolution of marriage proceeding, before granting or denying an award of alimony, the court shall make initial written findings as to:

(a) The amount of each party's monthly gross income, including, but not limited to, the actual or potential income, and also including actual or potential income from nonmarital or marital property distributed to each party.

(b) The years of marriage as determined from the date of marriage through the date of the filing of the action for dissolution of marriage.

(3) ALIMONY GUIDELINES.—After making the initial findings described in subsection (2), the court shall calculate the presumptive alimony amount range and the presumptive alimony

duration range. The court shall make written findings as to the presumptive alimony amount range and presumptive alimony duration range.

(a) *Presumptive alimony amount range.*—The low end of the presumptive alimony amount range shall be calculated by using the following formula:

(0.0125 x the years of marriage) x the difference between the monthly gross incomes of the parties

The high end of the presumptive alimony amount range shall be calculated by using the following formula:

(0.020 x the years of marriage) x the difference between the monthly gross incomes of the parties

For purposes of calculating the presumptive alimony amount range, 20 years of marriage shall be used in calculating the low end and high end for marriages of 20 years or more. In calculating the difference between the parties' monthly gross income, the income of the party seeking alimony shall be subtracted from the income of the other party. If the application of the formulas to establish a guideline range results in a negative number, the presumptive alimony amount shall be $0.

(b) *Presumptive alimony duration range.*—The low end of the presumptive alimony duration range shall be calculated by using the following formula:

0.25 x the years of marriage

The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage

(c) *Actual years of marriage calculation.*—If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, then notwithstanding paragraph (a), the court may use the actual years of the marriage to calculate the high end of the presumptive alimony amount range.

(4) ALIMONY AWARD.—

(a) *Marriages of 2 years or less.*—For marriages of 2 years or less, there is a rebuttable presumption that no alimony shall be awarded. The court may award alimony for a marriage with a duration of 2 years or less only if the court makes written findings that there is a clear and convincing need for alimony, there is an ability to pay alimony, and that the failure to award alimony would be inequitable. The court shall then establish the alimony award in accordance with paragraph (b).

(b) *Marriages of more than 2 years.*—Absent an agreement of the parties, alimony shall presumptively be awarded in an amount within the alimony amount range calculated in paragraph (3)(a). Absent an agreement of the parties, alimony shall presumptively be awarded for a duration within the alimony duration range calculated in paragraph (3)(b). In determining the amount and duration of the alimony award, the court shall consider all of

the following factors upon which evidence was presented:

1. The financial resources of the recipient spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the recipient spouse to meet his or her reasonable needs independently.

2. The financial resources of the payor spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the payor spouse to meet his or her reasonable needs while paying alimony.

3. The standard of living of the parties during the marriage with consideration that there will be two households to maintain after the dissolution of the marriage and that neither party may be able to maintain the same standard of living after the dissolution of the marriage.

4. The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony.

5. Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, if necessary, and any necessary reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties.

6. Whether a party could become better able to support himself or herself and reduce the need for ongoing alimony by pursuing additional educational or vocational training along with all of the details of such educational or vocational plan, including, but not limited to, the length of time required and the anticipated costs of such educational or vocational

training.

7. Whether one party has historically earned higher or lower income than the income reflected at the time of trial and the duration and consistency of income from overtime or secondary employment.

8. Whether either party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage.

9. Whether either party has caused the unreasonable depletion or dissipation of marital assets.

10. The amount of temporary alimony and the number of months that temporary alimony was paid to the recipient spouse.

11. The age, health, and physical and mental condition of the parties, including consideration of significant health care needs or uninsured or unreimbursed health care expenses.

12. Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property.

13. The tax consequence of the alimony award.

14. Any other factor necessary to do equity and justice between the parties.

(c) *Deviation from guidelines.*—The court may establish an award of alimony that is outside either or both of the presumptive alimony amount and alimony duration ranges only if the court makes specific written findings that the application

of the presumptive alimony amount and alimony duration ranges is inappropriate or inequitable after considering all of the factors in paragraph (b).

(d) *Order establishing alimony award.*—After consideration of the presumptive alimony amount and duration ranges in accordance with paragraphs (3)(a), (b), and (c) and the factors upon which evidence was presented in accordance with paragraph (b), the court may establish an alimony award. An order establishing an alimony award must clearly set forth both the amount and the duration of the award. The court shall also make a written finding that the payor has the financial ability to pay the award.

(5) IMPUTATION OF INCOME.—If a party is voluntarily unemployed or underemployed, alimony shall be calculated based on a determination of potential income unless there are circumstances that make it inequitable to impute income.

(6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3), and (4), the court may make an award of nominal alimony in the amount of $1 per year if, at the time of trial, a party who has traditionally provided the primary source of financial support to the family temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay support in the future. The court may also award nominal alimony for an alimony recipient who is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit or prevent his or her ability to work during the duration of the alimony period. The duration of the nominal alimony shall be established within the presumptive durational range based upon the length of the marriage subject to the

alimony factors in paragraph (4)(b). Before the expiration of the durational period, nominal alimony may be modified in accordance with s. 61.14 as to amount to a full alimony award using the alimony guidelines and factors in accordance with s. 61.08.

(7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

(a) Unless otherwise stated in the judgment or order for alimony or in an agreement incorporated thereby, alimony shall be deductible from income by the payor under s. 215 of the Internal Revenue Code and includable in the income of the payee under s. 71 of the Internal Revenue Code.

(b) When making a judgment or order for alimony, the court may, in its discretion, order alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(c) The parties may, in a marital settlement agreement, separation agreement, or related agreement, specifically agree in writing that alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(8) MAXIMUM COMBINED AWARD.—In no event shall a combined award of alimony and child support constitute more than 55 percent of the payor's net income.

(9) TERMINATION OF AWARD.—An alimony award shall terminate upon the death of either party or the remarriage of the obligee.

(10) PAYMENT OF AWARD.—

(a) With respect to an order requiring the payment of alimony entered on or after January 1, 1985, unless paragraph (c) or paragraph (d) applies, the court shall direct in the order that the payments of alimony be made through the

appropriate depository as provided in s. 61.181.

(b) With respect to an order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless paragraph (c) or paragraph (d) applies, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments do not need to be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments do not need to be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If subparagraph 1. applies, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the Title IV-D agency shall have the same

rights as the obligee in requesting that payments be made through the depository.

Section 3. Subsection (3) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the primary consideration.

(a) Approximately equal time-sharing with a minor child by both parents is presumed to be in the best interest of the child. In determining whether the presumption is overcome, the court shall evaluate the evidence based on ~~A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating~~ all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including~~, but not limited to~~:

1.~~(a)~~ The demonstrated capacity or ~~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.

2.~~(b)~~ The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

3.~~(c)~~ 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.

4.~~(d)~~ The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

5.~~(e)~~ The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to carry out ~~effectuate~~ the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

6.~~(f)~~ The moral fitness of the parents.

7.~~(g)~~ The mental and physical health of the parents.

8.~~(h)~~ The home, school, and community record of the child.

9.~~(i)~~ The reasonable preference of the child~~,~~ if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

10.~~(j)~~ The demonstrated knowledge, capacity, or ~~and~~ disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

11.~~(k)~~ The demonstrated capacity or ~~and~~ disposition of each parent to provide a consistent routine for the child, such as discipline~~,~~ and daily schedules for homework, meals, and bedtime.

12.~~(l)~~ The demonstrated capacity of each parent to communicate with the other parent and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

13.~~(m)~~ Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

14.~~(n)~~ Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

15.~~(o)~~ The demonstrated capacity or disposition of each parent to perform or ensure the performance of particular parenting tasks customarily performed by the other ~~each~~ parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

16.~~(p)~~ The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

17.~~(q)~~ The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free

from substance abuse.

18.~~(r)~~ The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

19.~~(s)~~ The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

20. The amount of time-sharing requested by each parent.

21. The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

22.~~(t)~~ Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

(b) A court order must be supported by written findings of fact if the order establishes an initial permanent time-sharing schedule that does not provide for approximately equal time-sharing.

(c) A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a determination that such modification is in the best interest of the child and upon a showing of a substantial, material, and unanticipated change in circumstances.

Section 4. Subsection (1) of section 61.14, Florida Statutes, is amended to read:

61.14 Enforcement and modification of support, maintenance,

or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. A party is entitled to pursue an immediate modification of alimony if the actual income earned by the other party exceeds the amount imputed to that party at the time the existing alimony award was determined and such circumstance shall constitute a substantial change in circumstances sufficient to support a modification of alimony. However, an increase in an alimony obligor's income does not constitute a basis for a modification to increase alimony unless at the time the alimony award was established it was determined that the

obligor was underemployed or unemployed and the court did not impute income to that party at his or her maximum potential income. If an alimony obligor becomes involuntarily underemployed or unemployed for a period of 6 months following the entry of the last order requiring the payment of alimony, the obligor is entitled to an immediate modification of his or her existing alimony obligations, and such circumstance shall constitute a substantial change in circumstance sufficient to support a modification of alimony. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by increasing or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. The court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship exists or has existed within the previous year before the date of the filing of the petition for modification or termination between the obligee and another ~~a~~ person ~~with whom the obligee resides~~. ~~On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.~~

2. In determining whether an existing award of alimony

should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other ~~in terms such~~ as ~~"my husband" or "my wife,"~~ "my spouse" or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

l. Whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations to the obligee constituted a significant factor in the establishment of the supportive relationship.

m. The need and extent to which an obligee provides caretaking assistance to a person related by consanguinity with whom the obligee resides, or receives caretaking assistance from that person.

3. In any proceeding to modify an alimony award based upon a supportive relationship, the obligor has the burden of proof to establish, by a preponderance of the evidence, that a supportive relationship exists or has existed within the previous year before the date of the filing of the petition for modification or termination. Once the supportive relationship is demonstrated by a preponderance of the evidence, the burden of proof is on the obligee to disprove the supportive nature of the relationship. The obligor is not required to prove cohabitation of the obligee and the third party.

4. Notwithstanding paragraph (f), if a reduction or termination is granted under this paragraph, the reduction or

termination is retroactive to the date of filing of the petition for reduction or termination.

5.~~3.~~ This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(c)1. For purposes of this section, the remarriage of an alimony obligor does not constitute a substantial change in circumstance or a basis for a modification of alimony.

2. The financial information, including, but not limited to, information related to assets and income, of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as a part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If a party makes such a claim, the financial information of the subsequent spouse is discoverable and admissible only to the extent necessary to establish whether the party claiming that his or her income has decreased is diverting income or assets to the subsequent spouse that might otherwise be available for the payment of alimony. However, this subparagraph may not be used to prevent the discovery of or

admissibility in evidence of the income or assets of a party when those assets are held jointly with a subsequent spouse. This subparagraph is not intended to prohibit the discovery or admissibility of a joint tax return filed by a party and his or her subsequent spouse in connection with a modification of alimony.

(d)1. An obligor may file a petition for modification or termination of an alimony award based upon his or her actual retirement.

a. A substantial change in circumstance is deemed to exist if:

(I) The obligor has reached the age for eligibility to receive full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, and has retired; or

(II) The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation.

b. If an obligor voluntarily retires before reaching any of the ages described in sub-subparagraph a., the court shall determine whether the obligor's retirement is reasonable upon consideration of the obligor's age, health, and motivation for retirement and the financial impact on the obligee. A finding of reasonableness by the court shall constitute a substantial change in circumstance.

2. Upon a finding of a substantial change in circumstance, there is a rebuttable presumption that an obligor's existing alimony obligation shall be modified or terminated. The court shall modify or terminate the alimony obligation, or make a determination regarding whether the rebuttable presumption has been overcome, based upon the following factors applied to the

current circumstances of the obligor and obligee:

a. The age of the parties.

b. The health of the parties.

c. The assets and liabilities of the parties.

d. The earned or imputed income of the parties as provided in s. 61.08(1)(a) and (5).

e. The ability of the parties to maintain part-time or full-time employment.

f. Any other factor deemed relevant by the court.

3. The court shall temporarily suspend the obligor's payment of alimony while his or her petition for modification or termination under this paragraph is pending.

(e) A party who unreasonably pursues or defends an action for modification of alimony shall be required to pay the reasonable attorney fees and costs of the prevailing party. Further, a party obligated to pay prevailing party attorney fees and costs in connection with unreasonably pursuing or defending an action for modification is not entitled to an award of attorney fees and cost in accordance with s. 61.16.

(f) There is a rebuttable presumption that a modification or termination of an alimony award is retroactive to the date of the filing of the petition, unless the obligee demonstrates that the result is inequitable.

(g) ~~(c)~~ For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof

or showing of a change in circumstances.

(h) ~~(d)~~ The department may ~~shall have authority to~~ adopt rules to implement this section.

Section 5. Paragraph (d) is added to subsection (11) of section 61.30, Florida Statutes, to read:

61.30 Child support guidelines; retroactive child support.—

(11)

(d) Whenever a combined alimony and child support award constitutes more than 55 percent of the payor's net income, the court shall adjust the award of child support to ensure that the 55 percent cap is not exceeded.

Section 6. Section 61.192, Florida Statutes, is created to read:

61.192 Advancing trial.—In an action brought pursuant to this chapter, if more than 2 years have passed since the initial petition was served on the respondent, either party may move the court to advance the trial of their action on the docket. This motion may be made at any time after 2 years have passed since the petition was served, and once made the court must give the case priority on the court's calendar.

Section 7. The amendments made by this act to chapter 61, Florida Statutes, with the exception of amendments relating to the calculation of the duration of an alimony award, apply to all alimony modification petitions pending as of the effective date of this act and to all alimony modification petitions filed on or after the effective date of this act. The enacting of this act may not serve as the sole basis for a party to seek a modification of an alimony award existing before the effective date of this act.

Section 8. This act shall take effect October 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 1248
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 112800 Stargel					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 5, 2015

The Honorable Miguel Diaz de la Portilla
Senate Judiciary Committee, Chair
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

I am respectfully requesting that SB 1248, related to *Family Law*, be placed on the next committee agenda.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 15

Cc: Tom Cibula/ Staff Director
Shirley Proctor/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 1248 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-24-15
Meeting Date

1248
Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Tarie MacMillan

Job Title Sales Vice Pres.

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Family Law Reform

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1248

Meeting Date *Bill Number (if applicable)*

Amendment Barcode (if applicable)

Topic Alimony/Timesharing

Name Elisha Roy

Job Title Past Chair Family Law Section

Address 250 Australian Ave #1102 Phone 5616898625

Street

WPB FL 33401 Email eroyceroylawpa.com

City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Family Law Section

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-24-15
Meeting Date

1248
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Barbara A Devane

Job Title Ms

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Phone 850-322-3969

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Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL NOW (National Organization for Women)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/5/14	SM	Favorable
03/24/15	JU	Favorable
	CA	
	FP	

December 5, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26** – Senator Miguel Diaz de la Portilla
Relief of Thomas and Karen Brandi

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $825,094 AGAINST THE CITY OF HAINES CITY FOR THE RELIEF OF THOMAS AND KAREN BRANDI FOR THE INJURIES AND DAMAGES SUFFERED BY THOMAS BRANDI WHEN HIS VEHICLE WAS STRUCK BY A HAINES CITY POLICE OFFICER'S VEHICLE ON MARCH 26, 2005.

FINDINGS OF FACT:

Liability

At approximately 8:50 PM on March 26, 2005, Thomas Brandi was travelling west on Southern Dunes Boulevard through the intersection of Southern Dunes Boulevard and U.S. 27. Mr. Brandi was in the center lane of three lanes. The right-hand lane was a "right turn only" lane, the left lane was a "left-turn only" lane and Mr. Brandi's lane could either turn right onto U.S. 27 north with the flow of the right-hand lane or proceed straight through the intersection.

Mr. Brandi was well into the intersection when a Haines City Police car being driven by Haines City Police Officer Pamela Graham northbound on U.S. 27 struck Mr. Brandi's vehicle broad-side at the driver door. Officer Graham was employed by the City of Haines City (the City) at the time of the crash.

The northbound lanes of U.S. 27 at Southern Dunes Boulevard consist of two northbound lanes, a left-turn lane and a right-turn lane. The police car was in the northbound lane closest to the left-turn lane.

The traffic lights at the intersection were working at the time of the crash. The posted speed limit was 45 MPH. The police car's emergency lights and sirens were activated. Both Mr. Brandi and Officer Graham were wearing seatbelts. There was construction occurring at the intersection but it was not an active construction site at the time of the crash.

Mr. Brandi was seriously injured in the traffic crash and was transported by helicopter to the trauma center at Lakeland Regional Medical Center. (Mr. Brandi's injuries and the damages from the crash will be discussed below in the **Damages** section.)

At a deposition taken in preparation for the jury trial of the negligence claim brought by Mr. Brandi against Haines City, Officer Graham testified that she believed she had heard a fellow officer request emergency help over the radio. Officer Graham then proceeded quickly from the jail to the point of impact with Mr. Brandi's vehicle, as she mistakenly responded to the call she thought she had heard. Officer Graham testified that she entered the intersection on a yellow light.

No other witnesses to the traffic crash gave sworn statements or testified at the trial of this matter, however three additional witness statements have been presented for review during the claim bill process.

One eyewitness reported that as she (the witness) approached the intersection heading east on Southern Dunes Boulevard the traffic light turned yellow. The witness judged that she could have made the light but decided to stop due to not being familiar with the area. As the witness stopped a police car came through the intersection "very fast" and collided with a car that came from directly across the intersection from the witness. The witness perceived that the car across from her, in the westbound flow of traffic, turned left at the intersection. The witness confirmed that the police car had its emergency lights on but she was unable to verify that the siren was on because the witness was listening to

music. The police car was heading from the witness' right to left.

The other two eyewitness statements were provided by a couple who observed the traffic crash from their semi-truck cab in the southbound lane of U.S. 27. He was driving while she was in the sleeping quarters, looking straight ahead. He was inching the semi forward so that he "wouldn't have to stop." There was one car ahead of the semi.

Both witnesses said that the police car had its emergency lights and sirens on. The police car "did not slow very much" and came on through the intersection, striking Mr. Brandi's vehicle that "had the light," heading westbound. One witness described the police officer as driving erratically. The other witness estimated the police car's speed to be about 35-40 MPH.

One witness explained that it looked like there was a van or SUV in the left turn lane on Mr. Brandi's side of the intersection which was quite likely to have blocked his view of the police car approaching the intersection from Mr. Brandi's left. This eyewitness stated that there was "no way" Mr. Brandi could have seen the police car coming.

The Florida Highway Patrol trooper who investigated the crash listed witnesses in his report but did not include any detailed witness statements. The report noted that "witnesses stated that the police vehicle proceeded through the intersection on a red light with blue lights and siren."

The trooper cited Officer Graham for violating s. 316.126(5), F.S., by not operating her emergency vehicle with due regard for the safety of all persons using the highway. The trooper also cited Mr. Brandi for failure to yield to an emergency vehicle in violation of s. 316.126, F.S.

The Haines City Emergency Vehicle Operation Policy, adopted in accordance with s. 316.072, F.S., requires that an officer will not "enter controlled intersections against the directional flow of traffic at a speed greater than 15 MPH and will be sure that cross-traffic has yielded in each lane before attempting to cross that lane." Officer Graham testified that she looked both ways before entering the intersection.

The Haines City Police Department conducted its own investigation and found Officer Graham to have violated the Emergency Vehicle Operation Policy and that she had committed the traffic violation cited by the investigating FHP Trooper. Accordingly, Officer Graham was disciplined by the Department.

An accident reconstructionist, hired by Mr. Brandi's attorneys prior to the negligence trial in this matter, studied and reported on the traffic light sequence at the Southern Dunes Boulevard and U.S. 27 intersection where the crash occurred. He testified that, heading northbound like Officer Graham was driving, there was a 4.3 second yellow light followed by an "all-red." All-red is the period of time when all four sides of an intersection have a red light, in this case, a full second. This full second of all-red is designed to give traffic that may have entered an intersection late on a yellow light time to clear the intersection before the adjacent lanes get a green light.

Both at the scene and at the trauma center Mr. Brandi said that he had consumed 4 beers earlier in the day. Two hours after the traffic crash no alcohol or drugs were in his system according to blood and urine tests performed at the Lakeland Regional Medical Center trauma center.

On the Issue of Damages
Before March 26, 2005
A careful reading of the many reports and expert opinions about Mr. Brandi's psychological and emotional conditions, as well as his history with alcohol, indicate depression and alcohol abuse dating back to 2001. There are indications that he experienced issues with job dissatisfaction both before and after the traffic crash.

It appears that Mr. Brandi feels that his alcohol abuse is something he needs to control because the reports indicate that he has sought counseling and attended A.A. intermittently since at least 2003.

Prior to the traffic crash in March of 2005, Mr. Brandi's last employment was as a maintenance technician for Owens Illinois Plastics. This employment ended in May of 2003.

During this period of time in 2003 Mr. Brandi was suffering with depression and alcohol abuse. He sought treatment with

his family doctor who eventually referred him to a psychiatrist who treated Mr. Brandi's depression. Mr. Brandi seemed to be making good progress with the combination of medication and counseling.

Mr. Brandi began taking college courses but stopped taking those classes during the summer of 2004. Beginning that summer he assisted family members with post-hurricane housing issues. He did repairs on his own home and other projects around the house. Mr. Brandi also paid the household bills and did most of the cooking as his wife was employed full-time.

Mr. and Mrs. Brandi were pursuing the adoption of a child just prior to the traffic crash in 2005. They were undergoing a home-study as part of the adoption process. Both felt Mr. Brandi was doing much better with the depression and alcohol issues. In addition to pursuing the adoption of a child, Mr. Brandi had begun looking for work.

March 26, 2005 – Trial
The trauma center doctor testified at trial that witnesses at the scene indicated that Mr. Brandi was initially unresponsive after the crash. He was awake and talking when EMS arrived.

Mr. Brandi could not remember what happened before, during, or after the crash. He repeated the same questions over and over with the EMS personnel and the trauma room doctor.

The Life Flight crew suspected that Mr. Brandi was suffering from a closed head injury with altered mental status. The trauma center doctor suspected a concussion but Mr. Brandi's CAT scan came back normal.

The medical reports, and deposition and trial testimony presented for review in the claim bill process, show that as a result of the traffic crash Mr. Brandi suffered a potentially life-threatening aortic tear and numerous bone fractures. The aortic tear was repaired early in Mr. Brandi's ten day hospital stay at Lakeland Regional Medical Center.

Mr. Brandi's orthopedic injuries included a fractured sternum, rib, fibula, and multiple pelvic fractures.

He was discharged to Florida Hospital in Orlando for rehabilitation, both physical and cognitive. At the time of discharge from Florida Hospital one of Mr. Brandi's diagnoses was listed as "mild traumatic brain injury secondary to motor vehicle collision."

According to discharge reports from Florida Hospital, after the ten-day rehabilitation he continued to exhibit "mild cognitive communicative disorder with decreased insight, decreased executive functioning, and decreased concentration."

Prior to discharge from Florida Hospital, Mr. and Mrs. Brandi advised the neuropsychologist on the case about Mr. Brandi's "pretty significant depression over the past two years." While he noted that Mr. Brandi's adjustment after the traffic crash was going extremely well, the neuropsychologist counseled Mr. and Mrs. Brandi about how "adjustment reactions can become more problematic in concussion with a history of depression prior to an incident."

The neuropsychologist's discharge orders recommended outpatient follow-up for occupational, physical, and speech therapy.

The many medical and specialist reports submitted for consideration in this matter indicate that Mr. Brandi was diligent in his follow-up treatment and was progressing well.

In fact, through the Fall of 2005 he participated in vocational rehabilitation, reporting no physical limitations. He was motivated at that time to pursue a two-year degree with an emphasis on biomedical engineering. Mr. Brandi's vocational rehabilitation counselor believed that Mr. Brandi could enter the job market in that field upon completion of the coursework.

The counselor recommended that Mr. Brandi continue on medication management for depression, with short-term counseling related to adjustment depression issues.

Mr. Brandi made some attempts to go back to work after the traffic crash. The first reported job was at an automotive garage where he was expected to perform tasks he had reportedly been good at and enjoyed doing prior to the crash. Mr. Brandi reported, however, that he was unable to figure out how to do more than simple tire and lube work. It seems to

have been during this period of time when he began to struggle with alcohol again.

Mr. Brandi started out strong with his outpatient therapy regimen after the crash and he seemed to be somewhat optimistic and enthusiastic about the future.

At some point, however, it is clear that things took a turn for the worse. Mr. Brandi began to report or exhibit anxiety, depression, confusion, forgetfulness, irritability, withdrawal, frustration, obsessive-compulsive behavior and even violence toward his wife.

There was a time when the Brandis separated about two years after the traffic crash. Mrs. Brandi reports that Mr. Brandi's personality has changed significantly since the traffic crash. He underwent in-patient intensive alcohol treatment from March through July of 2008.

Mr. Brandi has experienced aches and pains and some physical limitations in the last several years, most likely related to the physical injuries he received in the traffic crash.

Mr. Brandi has undergone neuropsychological, medical, and psychiatric testing and evaluations since the traffic crash in March of 2005.

The opinions of the experts vary largely as follows:

- Mr. Brandi's MRI shows damage to the brain and it was caused by the traffic crash;
- Mr. Brandi's brain injury is of a permanent nature and will require life-long coping skills to overcome the resulting cognitive impairment;
- Mr. Brandi did not suffer a closed head injury resulting from the traffic crash;
- If Mr. Brandi suffered such a trauma it was minor and did not cause any residual cognitive impairment;
- If Mr. Brandi suffers on-going cognitive impairment resulting from the crash, his ability to cope (or inability, at times) is exacerbated by his depressive disorder and occasional alcohol abuse;
- If Mr. Brandi suffers cognitive impairment it was not caused by the traffic crash but is the result of depression and alcohol abuse.

Mr. Brandi seems to have been able to find some joy and satisfaction in his work and hobbies from time to time. He has reported that he particularly enjoys fishing, being with family, and riding his motorcycle.

The monetary damages related to the traffic crash will be discussed below.

Litigation History

Thomas and Karen Brandi filed suit against the City of Haines City for damages they suffered as a result of the negligent actions of the City's employee, Officer Graham, on March 26, 2005. The trial lasted nearly a week.

In addition to the fact-issues that were in contention, the trial jury also heard evidence suggesting a continuation of care plan for Mr. Brandi's future.

Evidence was also presented on the matters of Mr. Brandi's loss of earning capacity, the cost of future medical care, lost wages from the date of the traffic crash to the date of the trial, medical costs incurred by the Brandis as a result of the crash, and past and future pain and suffering.

The trial jury rendered its verdict on November 17, 2009. The jury assigned 60% negligence to the City and 40% to Mr. Brandi. It should be noted that the jury did not have the benefit of the three impartial eyewitness's testimony at trial.

The jury found that Mr. Brandi suffered permanent injury in the crash. It awarded Mrs. Brandi $175,000 for loss of Mr. Brandi's comfort, society and attentions, and services.

For Mr. Brandi's medical expenses and past lost earnings, the jury awarded $279,330 in damages. Future medical expenses and lost earning ability for the next 25 years (Mr. Brandi was 39 years old at the time of the crash) were compensated in the amount of $903,000. The jury awarded past and future pain and suffering in the amount of $450,000. The verdict total is $1,807,330.

CONCLUSIONS OF LAW:

On The Merits

The testimony of three impartial eyewitnesses to the crash, none of whom the jury heard from at trial, shows that Officer Graham did not have the right of way nor did she proceed with

sufficient caution approaching and coming into the intersection of U.S. 27 and Southern Dunes Boulevard.

Officer Graham was employed by the City of Haines City and acting within the scope of her employment at the time of the traffic crash. Officer Graham was operating a city vehicle in an unsafe manner, her actions amounted to negligence on the part of the City and were the cause of the traffic crash that injured Thomas Brandi as described in this report.

Although Mr. Brandi has abused alcohol for years, the undersigned finds that there is insufficient evidence to conclude that he was impaired by alcohol or drugs at the time of the vehicle crash. This finding is based upon two primary factors: the toxicology results which were obtained so soon after the crash and eyewitness testimony that Brandi did not run a red light as an impaired person might do.

Additionally, eyewitness testimony leads one to conclude that Mr. Brandi did not see or hear the police car before he entered the intersection. A van or SUV was blocking his view in the "left turn only" lane, therefore even if Mr. Brandi entered the intersection on a yellow light, that decision would not indicate impaired or even abnormal driving behavior.

At the trial of this matter the judge ruled that the City had not presented sufficient evidence on the matter of whether Mr. Brandi was wearing his seat belt at the time of the crash. Having reviewed the trooper's crash report, the crash scene photographs, and the testimony of the Trooper, as well as considering the trial court's ruling, the undersigned finds that Mr. Brandi was wearing his seat belt.

Out of respect for the sanctity of the trial jury's verdict, the undersigned will not suggest a reallocation of comparative negligence between the parties although one wonders what the verdict might have been if the impartial eyewitnesses had been heard from at trial.

The damages awarded by the jury are based on sufficient evidence and will not be disturbed.

The City of Haines City, as a municipality, is covered by the provisions of s. 768.28, Florida Statutes. The statute waives the City's sovereign immunity from tort actions with monetary

limits within which the City is liable to pay a claim or a judgment, not to exceed the sum of $200,000.

On January 14, 2010, the trial court entered a Final Judgment in the case allowing Thomas and Karen Brandi to recover a total of $200,000 from the City. This sum has been paid by the City's insurance carrier, Preferred Governmental Insurance Trust (PGIT).

The court stated as follows in the Final Judgment: "This judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full jury verdict."

The full outstanding amount of the verdict and the amount of the claim bill is $825,094. The Claimants have provided the undersigned with the computation that supports this amount. The Claimants have also provided the required Proof of Publication in order to lawfully proceed with the claim bill.

On May 17, 2010, the court entered its Order granting the Brandi's January 26th Motion to Tax Costs against the City in the amount of $94,049.84. The costs were clearly enumerated and attached as Exhibit D to the Motion.

Also attached to the Motion, as Exhibit F, was a form entitled "Common Agreement Declarations" in which PGIT names the City of Haines City as a "covered party" during the time of the traffic crash. Under "Supplementary Payments – Coverages A and B" the form also appears to indicate that the insurance trust will "pay, with respect to any claim or suit we defend...[a]ll costs taxed against the covered party in the suit…[t]hese payments will not reduce the limits of coverage." The costs of litigation set forth in the court's Order have not been paid to date.

The Brandi's Motion also asked the court for the joinder of the City's liability insurance carrier (PGIT) as a party defendant for the purpose of including the insurance carrier in the judgment for costs. The record before the undersigned does not show how the court ruled on that part of the Brandi's Motion.

The Claimant suggests that the City is a named insured of an excess policy issued by State National Insurance Company.

The City characterizes the relationship as "excess indemnity coverage" at $2,000,000 per occurrence.

No matter the nomenclature the amount of the claim bill, if passed by Legislature, should not have a direct effect on the coffers of the City. It appears that the amount of the claim bill should be paid by the City's insurer.

Finality for Purposes of a Claim Bill

The City argues that the claim bill is not ripe for consideration by the Legislature because the Claimants do not have an enforceable excess judgment. The City's position seems to be based upon the fact that the court's Final Judgment in the trial of the matter does not complete the computations for reaching an outstanding net Judgment amount.

From a litigation standpoint, the case has been fully litigated through the jury trial process and the jury has spoken.

For reasons unknown to the undersigned the trial court did not perform the reduction in the total verdict amount to allocate 40% negligence to Mr. Brandi. Likewise the court did not assign credit to the City for collateral sources of payment to the Brandis.

The trial court entered a simplified Final Judgment in the case allowing Thomas and Karen Brandi to recover a total of $200,000 from the City. The court also stated as follows in the Final Judgment: *"This judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full jury verdict."*(emphasis added)

The City argues that absent a request from the Brandis for the court to reduce the verdict amount by 40% that the court was "unable to apply any reduction based on comparative negligence." While it is true that the court did not make the reduction and was evidently not asked to do so by the Claimant, nor did the City make the request.

The City further argues that Mr. Brandi's failure to ask the court to clarify its Final Judgment "prevented the trial court from considering collateral sources" or setoffs of funds Mr. Brandi received from sources besides the City. The Claimant did not seek such clarification from the trial court, however neither did the City.

In this Special Master's view the City's argument affixes "blame" solely upon the Claimant for a lack of clarity in the Final Judgment, but the City had the ability to request further clarity from the court as well.

The undersigned finds nothing in the Florida Rules of Civil Procedure that prevents either party from seeking clarification from the trial court in these matters.

The Senate Rule related to claim bills (Rule 4.81) states that "[t]he hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted."

The question of whether "all available…judicial remedies have been exhausted" is the heart of the City's argument that the claim bill is not ripe for consideration by the Senate.

While it is the view of the undersigned that the court's Final Judgment in the trial of this matter lacks clarity as to the specific amount of damages (above the $200,000 waiver of sovereign immunity limits) due Mr. Brandi, the judgment is a Final Judgment nonetheless. The case was fully litigated and a jury reached a verdict.

This Special Master finds that the computations submitted by the Claimant, which reduce the verdict ($1,807,330) by collateral source payments ($88,922) then further reduce that amount by the 40% comparative negligence assigned to Mr. Brandi, the $100,000 paid by Claimant's auto insurance and the $200,000 paid by the City, and then adds the taxable costs ($94,049) as ordered by the court, are accurate. Therefore, the resulting amount of the claim bill is $825,094.

The Senate's interpretation of the Senate Rule's application to the claim bill can only be determined by the members of Senate. The undersigned believes that the Senate can find that all judicial remedies have been exhausted in this matter without violating the Rule 4.81.

ATTORNEYS FEES:

Counsel for the Claimants has submitted an affidavit stating: "I have complied with Florida Statute s. 768.28(a) and all lobbying fees related to this claims bill will be included as part

of the above statutory cap on attorney's fees." Although the affidavit incorrectly cites the statute, it appears that Counsel's intent is to comply with s. 768.28(8), Florida Statutes and that Counsel will not "charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement."

The undersigned suggests that a corrected affidavit be submitted prior to the consideration of the claim bill.

RECOMMENDATIONS: For the reasons set forth herein, the undersigned recommends that Senate Bill 26 be reported FAVORABLY in the amount of $825,094.

Respectfully submitted,

Connie Cellon
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

By Senator Diaz de la Portilla

40-00051-15 201526__

A bill to be entitled

An act for the relief of Thomas and Karen Brandi by Haines City; providing an appropriation to compensate them for injuries and damages sustained as a result of the negligence of an employee of Haines City; providing that the appropriation settles all present and future claims relating to the injuries and damages sustained by Thomas and Karen Brandi; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Thomas Brandi was involved in a two-vehicle accident that occurred on March 26, 2005, on U.S. Highway 27 in Haines City, Florida, and

WHEREAS, Thomas Brandi was traveling alone and turning onto U.S. Highway 27 from Southern Dunes Boulevard on a green arrow when his vehicle was broadsided on the driver's side by a Haines City Police Department car operated by Officer Pamela Graham, and

WHEREAS, Officer Graham entered the intersection despite a red light and struck the driver's side door of Mr. Brandi's vehicle at a speed in excess of 45 miles per hour, and

WHEREAS, Officer Graham failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of procedures of the Haines City Police Department, and

WHEREAS, although Officer Graham claimed that she was responding to a distress call, there was no evidence to support this claim, and the internal investigation conducted by the Haines City Police Department concluded that she was neither

40-00051-15 201526__

called nor dispatched to the location where she was headed, and

WHEREAS, the internal investigation also found Officer Graham to be at fault in the accident, and

WHEREAS, as a result of the crash, Thomas Brandi sustained life-threatening injuries, including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and severe traumatic brain injury resulting in cognitive disorder, complex personality change, depressive disorder, pain disorder, post-traumatic stress disorder, and panic disorder, and

WHEREAS, Thomas Brandi's medical expenses at the time of trial exceeded $156,000, and

WHEREAS, after a trial, a jury entered a verdict assessing Haines City 60 percent liability for the injuries sustained by Mr. Brandi in the accident and assessing Thomas Brandi 40 percent liability for the accident, and

WHEREAS, future medical expenses and lost earning ability in the future totaled $903,000, and the verdict included an award for past medical expenses and lost wages in the amount of $279,330, and

WHEREAS, Thomas Brandi was awarded $450,000 in damages for past and future pain and suffering, and his wife, Karen Brandi, was awarded $175,000 in damages for past and future loss of consortium, and

WHEREAS, after reduction for comparative negligence, the net award to Thomas and Karen Brandi was $1,084,396, and

WHEREAS, a stipulated cost judgment in the amount of

$94,049 was entered by the trial court against Haines City, and

WHEREAS, Thomas Brandi's medical expenses as of August 1, 2011, are $167,330, and, as a result of those expenses, Aetna Health, Inc., has a lien on any recovery in this matter in the amount of $78,109, and

WHEREAS, the city of Haines City paid $200,000 to Thomas and Karen Brandi in satisfaction of sovereign immunity limits under s. 768.28, Florida Statutes, and

WHEREAS, Thomas Brandi received a payment of $100,000 from his uninsured motorist insurance coverage, NOW, THEREFORE,

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

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

Section 2. Haines City is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant in the sum of $825,094, payable to Thomas Brandi and his wife, Karen Brandi, as compensation for injuries and damages sustained as a result of the negligence of an employee of Haines City.

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

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 26
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
	X	Brandes						
		Joyner						
X		Simmons						
X		Simpson						
	X	Soto						
	X	Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
6	3	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

26
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name NICHOLAS DONALD SEIDULE

Job Title ATTORNEY

Address 719 VASSAR ST.
Street

ORLANDO, FL 32801
City *State* *Zip*

Phone 407-244-3000

Email NSEIDULE@DWKLAW.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing THOMAS AND KAREN BRANDT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 24, 2015
Meeting Date

26
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Thomas Brandi claim bill

Name Jason Unger

Job Title

Address 301 S. Bronough Street
Street

Phone 577-9090

Tallahassee FL 32301
City *State* *Zip*

Email junger@gray-robinson.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Meadowbrook

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 286
INTRODUCER:	Community Affairs Committee and Senator Diaz de la Portilla
SUBJECT:	Classified Advertisement Websites
DATE:	March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.			AGG	
4.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 286 encourages the Department of Management Services and local governmental bodies to designate safe-haven facilities in each county, which will provide a safe place to conduct sales transactions for items advertised on classified advertisement websites, such as Craigslist.

The bill provides that the state and local governmental entities who provide safe-haven facilities are generally immune from tort claims related to sales transactions at the facility.

II. Present Situation:

Online Transaction Safe-Haven Laws

In response to a continuing trend of crimes stemming from transactions related to online classified advertisement websites, such as Craigslist, a number of police departments have opened their lobbies and parking lots to citizens to complete the sales transactions. Conducting transactions in police lobbies or parking lots deters crime for obvious reasons, including the proximity of police officers and the likelihood of surveillance by security cameras.

In May 2014, after a series of robberies related to Craigslist transactions, the East Chicago Police Department began "Operation Safe Sale," and offered the use of its headquarters parking lot and

lobby to conduct transactions.[1] The police department even offered supervision during certain hours.[2] If supervision is not requested, the parking lot and police lobby are available for use for transactions any time.[3]

In January 2015, the Virginia Beach, Virginia, Police Department launched the "Find a Safe Place" initiative, in which it offered the use of the police department's lobby for transactions arranged through classified advertisement websites.[4] Police lobbies are available for use daily during certain times.[5] However, the police department prohibited transactions involving "large, cumbersome household items, appliances and landscape care equipment," or "the sale of any contraband, stolen property, or other illegal items."[6]

In February 2015, the Toledo, Ohio, Police Department announced it would be making designated parking spots in front of one of its stations available for anyone to complete an online sales transaction.[7]

Florida police departments have also created safe havens at their facilities. In July 2014, the Boca Raton Police Department, in response to "at least three cases in June where people were ripped off by buyers when trying to sell something off Craigslist," offered the Department's lobby and parking lot for transactions.[8] Police in Delray Beach and Boynton Beach are also considering a similar program.

On February 3, 2015, the Miami-Dade Board of County Commissioners (BOCC) adopted a resolution directing the mayor to research and document the feasibility and advisability of providing locations such as Miami-Dade police stations to serve as safe havens for Craigslist transactions. The commissioners envisioned at least 4 locations in different areas of the county to serve as safe houses. The resolution requires the Mayor to provide a report to the BOCC within 60 after the date of the resolution.[9]

III. Effect of Proposed Changes:

This bill encourages the Department of Management Services (DMS) and local governments to establish state safe-haven facilities to conduct sales transactions related to classified advertisement websites similar to Craigslist.

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[1] Juan Perez Jr., *East Chicago Police Offer Up Their Lobby, Parking Lot for Craigslist Transactions*, CHICAGO TRIBUNE, (May 01, 2014) *available at* http://articles.chicagotribune.com/2014-05-01/news/chi-east-chicago-police-offer-up-their-lobby-parking-lot-for-craigslist-transactions-20140501_1_craigslist-transactions-becker-lobby.
[2] *Id.*
[3] *Id.*
[4] Becca Mitchell and Todd Corillo, *Virginia Beach Police Offering Precinct Lobbies as a Safe Place for Craigslist Transactions*, WTKR NEWS CHANNEL 3, (January 27, 2015) *available at* http://wtkr.com/2015/01/27/virginia-beach-police-offering-precinct-lobby-as-a-safe-place-for-craigslist-transactions/.
[5] *Id.*
[6] *Id.*
[7] Angi Gonzalez, *Toledo Police to Offer Safe Haven to Craigslist Users*, WNWO NBC 24, (February 24, 2015), *available at* http://www.nbc24.com/news/story.aspx?id=1168859#.VQCK-_nF91A.
[8] Kate Jacobsen, *Boca Raton Police Ask Craigslist Sellers to Use Station Lobby*, THE SUN-SENTINEL, (July 5, 2014), *available at* http://articles.sun-sentinel.com/2014-07-05/news/fl-boca-raton-craigslist-lobby-20140701_1_boca-raton-police-station-lobby-craigslist-sellers.
[9] Miami-Dade Board of County Commissioners, Res. No. R-126-15 (February 3, 2015).

The bill refers to a classified advertisement website as a web-based advertisement site that lists items for sale or items wanted for purchase or acquisition. Safe-haven facilities are those designated by state or local government as places where persons can effect sales transactions safely.

The DMS is encouraged to designate at least:
- One state safe-haven facility in each county having a population of less than 250,000.
- Two state safe-haven facilities in each county having a population from 250,000 to less than 800,000.
- Four state safe-haven facilities in each county having a population of 800,000 and greater.

Based on the 2010 census, six counties would require four state safe-haven facilities, 15 counties would require two facilities, and 46 counties would require one safe-haven facility.[10]

The suggested options for state safe-haven facilities are a state college or university, a Florida Highway Patrol station, or another kind of public state office building. The bill encourages the DMS to designate at least one indoor and one outdoor area for use during regular hours of operation at each state safe-haven facility.

The suggested options for local safe-haven facilities include sheriff's offices and county courthouses.

State and local governmental entities are not responsible for supervising, intervening in, or facilitating a sales transaction at a safe-haven facility.

This bill makes state and local governments and their officers, employees, and agents immune from tort claims arising from a sales transaction, unless the governmental officer or employee:
- Acts out of the scope of employment; or
- Acts in bad faith; or
- Acts with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill encourages, rather than requires local governments to establish safe-haven facilities. Therefore, the bill is not a mandate.

B. Public Records/Open Meetings Issues:

None.

[10] Department of Management Services, *2015 Legislative Bill Analysis* (July 1, 2015).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Sovereign immunity originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents unless the public entity expressly waives immunity.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a broad waiver of sovereign immunity. But by law, liability to pay a claim or judgment is limited to $200,000 per plaintiff or $300,000 per incident.[11]

This bill appears to provide absolute immunity, but only to the extent that an injury or damages arise out of a sales transaction at a designated safe-haven. Accordingly, this bill creates an exception to the broad waiver of sovereign immunity under s. 768.28, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may encourage more private buyers and sellers to engage in sales transactions through websites such as Craigslist if a safe location exists for the actual exchange of goods for money.

C. Government Sector Impact:

The Department of Management Services (DMS) and state and local government could incur a fiscal impact due to the provisions of this bill relating to the designation and operation of safe-haven facilities for sales transactions from classified advertising websites. However, DMS and local governments are in complete control of the costs because the creation of safe-haven facilities is voluntary.

VI. Technical Deficiencies:

None.

[11] Section 768.28(5), F.S.

VII. Related Issues:

An unintended consequence of the bill could be that a seller who advertises extensively on a classified advertising website sets up shop daily in the designated safe-haven facility to conduct business.[12]

The Board of Governors of the State University System indicates that making buildings on campus available to the public for these transactions may prove difficult. Parking on most campuses is extremely limited, and not provided on a free basis.[13]

VIII. Statutes Affected:

This bill creates section 501.181 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 17, 2015:

- Provides definitions for the following terms: "building," "classified advertisement website," "department," "local safe-haven facility," "sales transaction" or "transaction," and "state safe-haven facility."
- Encourages the Department of Management Services to designate a certain number of state safe-haven facilities in each county depending on the population of the county.
- Encourages local governments to designate local safe-haven facilities.
- Provides that government actors are not responsible for facilitating sales transactions and provides governments are not liable for the actions of the parties involved in the transaction.
- Provides that governments and their employees or agents are immune from liability for injuries arising out of sales transactions. Government employees may be liable if they acted in bad faith, outside the scope of employment, or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.

B. Amendments:

None.

[12] Florida Department of Transportation, *2015 Legislative Bill Analysis* (July 1, 2015).
[13] Board of Governors of the State University System of Florida, *2015 Legislative Bill Analysis.*

By the Committee on Community Affairs; and Senator Diaz de la Portilla

578-02386-15 2015286c1

A bill to be entitled

An act relating to classified advertisement websites; creating s. 501.181, F.S.; defining terms; encouraging the Department of Management Services to designate a specified number of state safe-haven facilities in each county based upon population; authorizing public state buildings to serve as state safe-haven facilities; encouraging local governments to approve the use of public local governmental buildings as local safe-haven facilities; limiting the liability of the state and any local government, and of the officers, employees, or agents of the state or any local government, that provides a state safe-haven facility or local safe-haven facility; limiting actions for injury or damages against the state or any local government, or of the officers, employees, or agents of the state or any local government, arising from a sales transaction; providing an effective date.

WHEREAS, there have been a number of cases throughout this state in which people selling cellular phones, computers, or other goods through classified advertisement websites have been targeted by criminals who intend to rob them when they meet to exchange goods for cash, and

WHEREAS, even when the victims of these crimes select public and populated locations that they feel are safe, such as shopping centers or parks, to execute the transactions, they still fall prey to these criminals, and

WHEREAS, identifying locations to serve as safe havens for

578-02386-15 2015286c1

transactions related to classified advertisement websites will likely deter these crimes and provide for greater safety throughout the state, NOW, THEREFORE,

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

Section 1. Section 501.181, Florida Statutes, is created to read:

501.181 Safe-haven facilities.—

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

(a) "Building" means a structure with a roof and walls and any area surrounding the structure that is on the same property as the structure or on property that is owned, maintained, or occupied by the same entity that owns, maintains, or occupies the structure; that is open to the public; and which includes, but is not limited to, courtyards, parking lots, and lawns.

(b) "Classified advertisement website" means a web-based advertisement site that lists items for sale or items wanted for purchase or acquisition.

(c) "Department" means the Department of Management Services.

(d) "Local safe-haven facility" means a public local governmental building approved by the local governmental body to be used by the public to execute sales transactions, or as otherwise determined and approved by the local governmental body.

(e) "Sales transaction" or "transaction" means an in-person sale or purchase of an item that was offered for sale or listed as wanted for purchase on a classified advertisement website and

the parties to the sale or purchase arrange to meet at a state safe-haven facility or local safe-haven facility for the purpose of executing the sale or purchase, or the sale or purchase was executed at a state safe-haven facility or local safe-haven facility. The exchange of money for goods is not a necessary element of such a transaction.

(f) "State safe-haven facility" means a public state governmental building that has a designated area where individuals may execute sales transactions.

(2) The department is encouraged to designate at least:

(a) One state safe-haven facility in each county having a population of less than 250,000;

(b) Two state safe-haven facilities in each county having a population of at least 250,000, but less than 800,000; and

(c) Four state safe-haven facilities in each county having a population of 800,000 or more.

(3) A state safe-haven facility should be easily accessible so an individual is not discouraged from using the location. A public state building, including, but not limited to, a state college or university, Florida Highway Patrol station, or other public state office building, may serve as a state safe-haven facility.

(4) The department should designate at least one indoor and one outdoor area at each state safe-haven facility that may be used by individuals to execute sales transactions during the hours that the state safe-haven facility is open to the public.

(5) Other than as provided for in this section, the department is not responsible for regulating sales transactions at state safe-haven facilities.

(6) Local governmental bodies are encouraged, but not required, to approve the use of public local governmental buildings, such as sheriff's offices, county courthouses, and other public local governmental office buildings, to serve as local safe-haven facilities. This section does not preempt a local governmental body from regulating or otherwise governing the use and functions of local safe-haven facilities. Local governmental bodies may adopt different definitions of the terms in subsection (1) as applicable to local safe-haven facilities.

(7) The state or a local government and its officers, employees, or agents are not responsible for supervising, intervening in, or facilitating a sales transaction or otherwise responsible for providing security to supervise or intervene in the transaction and are not otherwise liable for the actions of the parties or nonparties involved in the transaction.

(8) The state and local governments and their respective agencies and subdivisions may not be held liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any incident arising from a sales transaction. An officer, employee, or agent of the state or local government or any of their agencies or subdivisions may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any incident arising from a sales transaction unless such officer, employee, or agent acted outside the scope of her or his employment or in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.

(9) Subject to and as provided in s. 768.28, this section

does not reduce or limit the liability or rights of the state or any local government, or any of their agencies or subdivisions, or of the officers, employees, or agents of the state or local government, in tort based on an incident that did not arise from, or was caused by, a sales transaction.

Section 2. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 286
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
9	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

3-24-15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

286
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810
Street

MIAMI 33128
City *State* *Zip*

Phone 305-979-7110

Email JMM2@MIAMI DADE.GOV

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/2015
Meeting Date

Topic _____ Bill Number 286 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/31/14	SM	Fav/1 amendment
03/24/15	JU	Fav/CS
	ATD	
	AP	

December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 84** – Senator Soto
Relief of Sharon Robinson and Mark Robinson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED PERSONAL INJURY CLAIM FOR $3 MILLION IN GENERAL REVENUE FUNDS ARISING OUT OF AN COLLISION IN KISSIMMEE, FLORIDA IN WHICH A BUS STRUCK TWO PEDESTRIANS, MATTHEW ROBINSON AND MARK ROBINSON. MATTHEW ROBINSON WAS KILLED IN THE COLLISION.

FINDINGS OF FACT:

This claims bill arises from an incident that took place on November 4, 2010, at the intersection of Dyer Boulevard and Columbia Avenue in Kissimmee, Florida. Between approximately 6 P.M. and 7 P.M. a Lynx public transportation bus traveling north on Dyer Boulevard stopped in the left turn lane at the intersection of Columbia Avenue. Upon the light turning green the bus, driven by Fernando Vega, began turning left onto Columbia Avenue.

Concurrently, brothers Matthew Robinson and Mark Robinson arrived at the crosswalk at the southwest corner of the intersection of Dyer Boulevard and Columbia Avenue. Upon receiving a signal at the crosswalk indicating that pedestrians may walk, Matthew and Mark Robinson entered the crosswalk and began walking north to cross Columbia Avenue. As Matthew and Mark Robinson were walking in the crosswalk,

the Lynx bus struck them. Matthew Robinson was killed, coming to rest near the left rear tires of the bus. Mark Robinson survived the collision, coming to rest on the curb at the north end of the crosswalk, just past Columbia Avenue.

Mark Robinson began calling for help after the collision. A pedestrian, Harold Perez, allowed Mark to use his cell phone to call his mother, Sharon Robinson. Mr. Perez then called 911 emergency services to report the accident. Sharon Robinson left her nearby apartment and began walking to the accident scene.

The Kissimmee Police Department and Kissimmee Fire Department arrived at the accident scene shortly before 7 P.M. Matthew Robinson was pronounced dead at 6:55 P.M. by paramedic Eric Gentry of the Kissimmee Fire Department. Officer Charles Conrad of the Kissimmee Police Department responded at the accident scene and created the accident report. Officer Conrad's report found that a contributing cause of the accident was the failure of bus driver Fernando Vega to yield right-of-way.

An autopsy of Matthew Robinson was performed by Associate Medical Examiner Joshua D. Stephany, MD, of the Office of the Medical Examiner, District Nine in Orlando, Florida. The autopsy results indicate that Matthew Robinson died due to blunt force trauma injuries, primarily to his head, neck, and torso. His injuries included severe cranial and facial fractures.

Mark Robinson was immediately taken from the accident scene to the emergency room at the Arnold Palmer Hospital For Children in Orlando, Florida. Mark Robinson was treated for lower back pain that was identified as a spondylolisthesis (forward displacement) of the lumbar spine at L5-S1. The lumbar spine injury was treated without an operation. Mark Robinson was also treated for a right knee sprain. Medical records reviewed by the undersigned indicate that the forward displacement of Mark Robinson's lumbar spine has remained stable as of January 2014 and that his right knee has no injuries related to the accident.

Both Sharon Robinson and Mark Robinson have been diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD). Sharon Robinson testified at the Special Master Hearing on November 7, 2014, that both she and her son

Mark have struggled emotionally since the death of Mark. Neither is currently receiving regular treatment for PTSD. Documentation provided by the Claimant indicates that Sharon Robinson and Mark Robinson have incurred $27,137.90 in medical bills.

The undersigned reviewed an earning capacity assessment of Matthew Robinson performed by Jerry Adato of Adato Vocational Services, Inc. Mr. Adato opined that Matthew Robinson's lifetime lost earnings would be $2,167,514.80 over the course of 40 years of work.

On July 16, 2014, a Consent Judgment was entered between Sharon Robinson and the Central Florida Regional Transit Authority. The Consent Judgment awarded $3.2 million to the Sharon Robinson, individually and as the personal representative of the estate of Matthew Robinson, and as the Guardian of Mark Robinson. The Consent Judgment findings of fact included that Fernando Vega operated the Lynx bus in a negligent manner, violating s. 316.1925, F.S., while in the course and scope of his employment.

The Central Florida Regional Transit Authority paid $200,000 in damages, which is the limit of the sovereign immunity exception in s. 768.28(5), F.S. Sharon Robinson agreed to seek the remaining $3 million through the legislative claims process. Lynx also agreed to support the payment of $3 million via a claims bill. Counsel for Lynx represented to the Special Master that the Central Florida Regional Transit Authority has sufficient reserves to pay the claim, if SB 84 is passed by the Legislature.

CLAIMANT'S ARGUMENTS: Claimant asserts that the Central Florida Regional Transit Authority is responsible for the negligence of its bus driver, Fernando Vega, whose negligent operation of a Lynx bus was the sole cause of the death of Matthew Robinson and permanent injury to Mark Robinson.

RESPONDENT'S ARGUMENTS: Respondent agrees that the Central Florida Regional Transit Authority is responsible for the negligence of its bus driver, Fernando Vega, whose negligent operation of a Lynx bus was the sole cause of the death of Matthew Robinson and permanent injury to Mark Robinson.

Respondent also supports the payment of $3,000,000 to the claimants pursuant to the passage of a claim bill.

CONCLUSIONS OF LAW:

As provided in s. 768.28, F.S., sovereign immunity shields the Central Florida Regional Transit Authority against tort liability in excess of $200,000 per occurrence. Unless a claim bill is enacted, Sharon Robinson and Mark Robinson will not realize the full benefit of the settlement agreement they have made with the Central Florida Regional Transit Authority.

Fernando Vega breached his duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So.2d 615, 616 (Fla. 5th DCA 1981). Mr. Vega violated s. 316.130(7)(a), F.S., which requires the driver of a vehicle at an intersection that has a traffic control signal in place to stop before entering a crosswalk and allow a pedestrian with a permitted signal to cross a roadway. This negligent act was the direct cause of the accident that resulted in the death of Matthew Robinson.

The Central Florida Regional Transit Authority, as the employer of Fernando Vega, is liable for his negligent act. An employer is vicariously liable for an employee's negligent acts if the employee was acting to further the employer's interests within the course and scope of his employment. See Mercury Motors Express v. Smith, 393 So.2d 545, 549 (Fla. 1981). Florida's dangerous instrumentality imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." Aurbach v. Gallina, 753 So.2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for nearly a century. See Anderson v. S. Cotton Oil Co., 74 So. 975, 978 (Fla.1917).

ATTORNEYS FEES:

The Claimants' attorneys executed an affidavit stating that the Claimant retained their firm on a contingent fee based upon 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), F.S.

SPECIAL ISSUES:

The father of Matthew Robinson is Warren Robinson, who is not named in the claim bill. Warren Robinson was not a named party to the litigation between the Claimants and Respondent, but did receive a disbursement of a portion of the $200,000 settlement payment from the Respondent.

Sharon Robinson and Claimant's counsel state that Warren Robinson was estranged from Matthew and Mark and does not regularly interact with Mark. The 4-year statute of limitations for Warren Robinson to bring a negligence based claim based on the accident has passed.

The claim bill contemplates a single lump sum payment to Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson. Both Mark Robinson and Sharon Robinson suffered from the loss of Matthew Robinson. Accordingly, I recommend that the claim bill specifically apportion part of the recovery to Mark Robinson, to be held in trust because he is a minor. Counsel for the Claimant recommends an amendment that will apportion the $3,000,000 claim award as follows:

Sharon Robinson as the Personal Representative of the estate of Matthew Robinson	$58,529.34
Sharon Robinson individually as mother	$821,838.99
Warren Robinson individually as father	$61,250.00
Mark Robinson (to be placed in a trust account, guardianship, or structure to provide income)	$1,308,481.67
Attorney fees and lobbying costs	$749,900.00

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 84 (2015) be reported FAVORABLY, with amendment.

Respectfully submitted,

James Knudson
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on March 24, 2015:
The committee substitute provides for the payment of the claim from the funds of the Central Florida Regional Transportation Authority instead of the State General Revenue Fund as

provided in the underlying bill. The committee substitute also allocates specific amounts of the claim among the claimants and provides for the payment of additional attorney fees to the claimants' attorneys for their services to the Estate of Matthew Robinson.

642402

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 67 - 80

and insert:

Section 2. The Central Florida Regional Transportation Authority is authorized and directed to appropriate from funds of the authority not otherwise appropriated and to draw a warrant, payable to Sharon Robinson, individually, as guardian of Mark Robinson and as personal representative for the Estate of Matthew Robinson, for the total amount of $3 million as compensation for injuries and damages sustained as a result of

642402

the negligence of an employee of the Central Florida Regional Transportation Authority.

Section 3. The warrant shall be drawn to Sharon and Mark Robinson's attorneys to be placed in the Florida Bar Interest on Trust Accounts (IOTA) program for the benefit of Sharon Robinson, as the personal representative of the Estate of Matthew Robinson, for a reduced statutory fee after attorney fees and costs pursuant to s. 733.617(2), Florida Statutes, in the amount of 3 percent of the first $1 million and 2.5 percent of the remainder, reducing the fee to $58,529.34. The payment to Sharon Robinson, as mother individually, will be 37.5 percent of the remainder or $821,838.99; to Warren Robinson, as father individually, 2.8 percent of the remainder or $61,250.00; and for Mark Robinson in the amount of 59.7 percent of the remainder or $1,308,481.67, to be placed in a trust account, guardianship, or structure to provide income, protect from wasteful dissipation, and provide protection of the assets for the benefit of Mark Robinson; for a total in the sum of $3 million. The Central Florida Regional Transportation Authority is directed to pay the same out of funds not otherwise appropriated. The remainder of the total shall be paid to reimburse for taxable costs and fees. Lobbying and attorney fees shall be prorated and may not exceed 25 percent.

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

And the title is amended as follows:

Delete line 5

and insert:

Robinson; authorizing the Central Florida Regional

642402

Transportation Authority to make an appropriation from funds of the authority not otherwise appropriated to compensate her

By Senator Soto

14-00037-15 201584__

A bill to be entitled

An act for the relief of Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson; providing an appropriation to compensate her and her son for the death of Matthew Robinson and for injuries and damages they sustained as a result of the negligence of the Central Florida Regional Transportation Authority as operator of Lynx buses; providing that the amount already paid by the authority and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 4, 2010, Matthew Robinson, 10, and Mark Robinson, 12, both children of Sharon Robinson, were crossing the street at the intersection of Columbia Avenue and Dyer Street in Kissimmee, and

WHEREAS, Matthew Robinson and Mark Robinson were struck by the front bike rack of a Lynx bus while in the crosswalk and dragged underneath the bus when the driver of the bus failed to yield to pedestrians in the crosswalk, and

WHEREAS, while the bus was still moving, Mark Robinson was able to crawl out to safety, but Matthew Robinson's belt loop was caught in the undercarriage of the bus, and

WHEREAS, Matthew Robinson was dragged underneath the bus until the rear tire crushed his head, and

WHEREAS, Matthew Robinson was pronounced dead at the scene,

14-00037-15 201584__

and

WHEREAS, Mark Robinson was transported to the hospital via ambulance and diagnosed with a stress fracture of the vertebrae with spondolysthesis, and

WHEREAS, Mark Robinson wore a brace until he recovered from his physical injuries, but has permanent injury due to the spondolysthesis, and

WHEREAS, Mark Robinson's medical bills total $27,137.90, and

WHEREAS, Sharon Robinson and Mark Robinson both suffer from posttraumatic stress disorder, and Ms. Robinson suffers from symptoms placing her in the range of severe depression, and

WHEREAS, the driver of the bus that struck Matthew Robinson and Mark Robinson had been previously involved in six preventable accidents, and

WHEREAS, the driver was found guilty of violating s. 316.075, Florida Statutes, and was terminated by Lynx for violation of safety policies and procedures after a finding that the accident was preventable, and

WHEREAS, Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson, filed a lawsuit against Central Florida Regional Transportation Authority, which operates Lynx, in the Ninth Judicial Circuit in Osceola County, and

WHEREAS, before trial, the respondent admitted liability, and the parties reached a settlement agreement totaling $3.2 million, of which the Central Florida Regional Transportation Authority has paid $200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the Central Florida Regional Transportation Authority fully supports the passage of this claim bill for the unpaid portion of the settlement amount, NOW, THEREFORE,

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

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

Section 2. There is appropriated from the General Revenue Fund to the Central Florida Regional Transportation Authority the sum of $3 million for the relief of Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson for injuries and damages sustained by Mark Robinson and Sharon Robinson and the death of Matthew Robinson.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Sharon Robinson, individually, as guardian of Mark Robinson, and as personal representative of the Estate of Matthew Robinson in the sum of $3 million upon funds of the Central Florida Regional Transportation Authority in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Central Florida Regional Transportation Authority pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Matthew Robinson and the injuries and damages sustained by Mark and Sharon Robinson.

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

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 84
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			3/24/2015 1 Amendment 642402 Soto					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
		Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO
Democratic Caucus Rules Chair
14th District

February 10, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Diaz de la Portilla,

I respectively request that Senate Bill 84, Relief of Sharon Robinson by the Central Florida Regional Transportation Authority, be placed on the agenda as soon as possible. Senate Bill 84 provides an appropriation to compensate Sharon Robinson and her son for the death of Matthew Robinson and for injuries and damages they sustained as a result of the negligence of the Central Florida Regional Transportation Authority as operator of Lynx buses.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

Darren M. Soto

Darren M. Soto
State Senator, District 14

Cc: Tom Cibula, Staff Director
Shirley Proctor, Committee Administrative Assistant

REPLY TO:
❒ Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
❒ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-24-15
Meeting Date

SB-84
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tyrone A. King

Job Title ATTORNEY

Address 941 Lake Baldwin Lane, Ste 101 Phone 407.447.0848
Street

Orlando FL 32814 Email king@kingmarkman
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sharon Robinson + the Estate of Matthew Robinson

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 524
INTRODUCER:	Senator Soto
SUBJECT:	Rental Agreements
DATE:	March 16, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.			BI	
3.			RC	

I. Summary:

SB 524 applies in situations in which a tenant occupies a residence that is the subject of a foreclosure action. The bill provides the new purchaser of a foreclosed property to take title as a landlord if the tenant is occupying the premises at the same time the foreclosure sale is finalized.

This bill contains the substance of the Federal Protecting Tenants at Foreclosure Act, which recently expired. The bill, like the expired act, allows a tenant to occupy a foreclosed premises after a foreclosure sale by requiring purchasers of foreclosed property to provide at least 90-days notice before requiring the tenant to leave the premises. A purchaser of foreclosed property occupied by a tenant may provide the required notice to a tenant by mail, in person, or by leaving a copy at the residence if the tenant is not there. The bill applies to bona fide tenants, not to a tenant who is the mortgagor in the foreclosure action or a relative of the mortgagor.

II. Present Situation:

Foreclosure Crisis

Starting in 2007, the Great Recession fueled a multiple-year foreclosure crisis in the United States. Between 2007 and 2009, lenders initiated approximately 6.4 million home foreclosures.[1] By the end of 2010, more than 5 million homes had been foreclosed upon, representing about 10 percent of all homes having a mortgage.[2]

The foreclosure crisis took place in three waves. The first wave was triggered by the Great Recession along with defaults on subprime loans.[3] The second wave of properties foreclosed

[1] Lauren E. Willis, *Introduction: Why didn't the Courts Stop the Mortgage Crisis?*, 43 LOY. L.A. L. REV. 1195, 1195 (2010).
[2] Tony S. Guo, *Tenants at Foreclosure: Mitigating Harm to Innocent Victims of the Foreclosure Crisis*, 4 DEPAUL J. FOR SOC. JUST. 215, 216 (2011).
[3] Subprime mortgages are mortgages offered to borrowers with less than optimal credit at higher interest rates. *Id*. at 222.

upon were due to the increase in interest rates on adjustable-rate mortgages. And the third phase is was caused by homeowners who had been keeping current on payments simply walking away from the property due to sustained loss in property values.[4]

Throughout the national foreclosure crisis, Florida consistently remained at the top of the states in numbers of foreclosed properties. As of 2009, Florida had the third highest mortgage delinquency rate, the greatest inventory of foreclosed properties, and the most foreclosure starts of any state.[5] By 2011, at 23 percent, Florida led the nation in the highest rate of homes either in foreclosure or delinquent on mortgage payments.[6]

Foreclosure cases flooded the courts. In response, the Florida Supreme Court created the "Task Force on Residential Mortgage Foreclosure Cases."[7] One of the recommendations of the task force was to require mediation for foreclosure or residential properties.[8] The Florida Supreme Court ended the mediation program in 2011.[9] Still, the number of foreclosure cases in the state continue to outpace the nation in both actual number of properties and the highest percentage of mortgages in foreclosure.[10]

Protecting Tenants at Foreclosure Act[11]

In the early years of the foreclosure crisis, tenants were routinely evicted with little or no notice or recourse. In foreclosure proceedings, all subordinate leases and interests, including rental agreements, are extinguished when the court issues a certificate of title in a foreclosure action.[12] The interests in property are extinguished in foreclosure actions because both possession and title to property are at issue and the tenants can be joined as parties.[13] Thus, after a foreclosure sale, the relationship between the new property owner and the tenant is that of owner and trespasser.[14]

In 2009, Congress passed the Protecting Tenants at Foreclosure Act (PTFA), which expired December 31, 2014. The PTFA gave protection to tenants during foreclosure. The PTFA required the successor in interest of the foreclosed property (typically the purchaser) to give tenants a notice to vacate the residence at least 90 days before the purchaser intends to occupy the residence. In situations in which a lease existed and the purchaser did not intend to occupy the residence, the tenant could stay until the end of the lease.

The Act required notice to be given only to bona fide tenants, which meant:

- The tenant could not be the mortgagor or the child, spouse, or parent of the mortgagor;

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[4] Kevin F. Jursinski, *The Mortgage Foreclosure Crisis in Florida: a 21st Century Solution*, 84 FLA. B.J. 91, 91 (June 2010).
[5] *In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, 2009 WL 5227471 (Fla. 2009).
[6] Tony S. Guo, *supra* note 2, at 216.
[7] *In re: Task Force on Residential Mortgage Foreclosure Cases*, AOSC09-8 (March 27, 2009).
[8] *In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, AOSC09-54 (December 28, 2009).
[9] "After the date of this order, no new cases may be referred to mediation pursuant to the statewide managed mediation program." *In re: Managed Mediation Program for Residential Mortgage Foreclosure Cases*, AOSC11-44 (December 19, 2011).
[10] *Years to Go Before Foreclosures Return to 'Normal',* THE FLA. BAR NEWS pg. 11 (March 1, 2015).
[11] 12 U.S.C. s. 5220
[12] Tony S. Guo, *supra* note 2, at 217.
[13] *Redding v. Stockton, Whatley, Davin & Co.* 488 So. 2d 548, 549 (Fla. 5th DCA 1986).
[14] *Id.*

- The lease resulted from an arms-length transaction; and
- The rent was not substantially less than the fair market rent for the property unless it was reduced by a federal, state, or local subsidy.

The party seeking foreclosure must join a tenant as a party to extinguish a tenant's lease.[15] Serving tenants is advantageous to the party seeking foreclosure as the writ of possession is granted at the same proceeding, and the purchaser does not need to pursue separate legal action against the tenant.[16] At the foreclosure proceeding in which a lessee is named as a party, courts issue a writ of possession upon a simple showing by the purchaser of ownership in the property.[17]

However, sometimes a tenant rents a property subsequent to the start of foreclosure proceedings. In these instances, the tenant may not have advanced notice that the property is under foreclosure. Also, the purchaser of the foreclosed property may not have notice of the tenant's occupancy or rental agreement.

The PTFA ensures that an unaware tenant receives notice that the property in which they reside is a foreclosed property. In 2010, the Florida Supreme Court amended Form 1.996(a) to ensure that courts complied with the PTFA:

> in order to ensure that the provisions of the form are not contrary to the Protecting Tenants at Foreclosure Act of 2009 … we delete the sentence from paragraph six of the form stating, "If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title."[18]

At least one circuit court in Florida adopted by administrative order language required of the petitioner in a motion for writ of possession to conform to the PTFA:

> I HEREBY CERTIFY that there are no tenants in possession of the subject property or, if there are tenants in possession, such tenants have been provided with notice as required by the Federal Protecting Tenants at Foreclosure Act … and this motion does not seek an order that violates the tenants' right to continued occupancy under the Federal Protecting Tenants at Foreclosure Act.[19]

The PTFA expired December 31, 2014.

---

[15] *Dundee Naval Stores Co. v. McDowell*, 61 So. 108 (Fla. 1913); *Commercial Laundries of West Florida, Inc. v. Tiffany Square Investors Ltd. Partnership*, 605 So. 2d 116 (Fla. 5th DCA 1992); *Commercial Laundries, Inc., v. Golf Course Towers Associates*, 568 So. 2d 501 (Fla. 3d DCA 1990).
[16] *Redding v. Stockton, Whatley, Davin,& Co.*, 488 So. 2d 548, 549 (Fla. 5th DCA 1986). (Foreclosure is a case in equity, and a writ of possession is ancillary to it.).
[17] *Id*.
[18] *In re: Amendments to Fla.R.Civ.P. Form 1.996*, 51 So. 3d 1140 (Fla. 2010).
[19] Administrative Order 3.307 – 7/09 (Fla. 15th Circ. Ct. 2009).

III. Effect of Proposed Changes:

SB 524 applies to situations in which a tenant occupies a residence that is the subject of a foreclosure action. This bill provides for a purchaser of a residential property at a foreclosure sale to take title as a landlord if a tenant is occupying the premises at the same time a foreclosure sale of the property is finalized.

This bill contains the substance of the expired Federal Protecting Tenants at Foreclosure Act.

Assuming a 90-day notice is provided to a tenant at the earliest possible time, the bill authorizes the tenant to occupy a foreclosed property for:

- The longer of 90 days or the remaining term of the lease, if a written lease existed before the certificate of title was issued.
- 90 days after the purchaser at a foreclosure sale sells the property to a subsequent purchaser who intends to occupy the property, if a written lease existed before the certificate of title was issued.
- 90 days, if a written lease did not exist before the certificate of title was issued.

The bill provides a form for the 90-day notice of termination which notifies the tenant that:

- The rental agreement terminates 90 days after the date the notice is delivered or the end of the date provided in the written rental agreement, whichever occurs later; and
- The tenant must send the payment of rent to a contact and address specified, during the 90-day period or remainder of the rental agreement at the same amount paid up to that point.

The notice of termination must be delivered by mail, in person, or if the tenant is absent from the premises by leaving a copy at the residence.

The authorization for a tenant to remain in a foreclosed residence does not apply if:

- The tenant is not a bona fide tenant (as the mortgagor in the foreclosure or the child, spouse, or parent of the mortgagor, unless the property is a multiunit residential structure with other tenants).
- The rental agreement is not the result of an arm's length transaction.[20]
- The rental agreement allows payment of rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

[20] An arm's length transaction is a transaction between two unrelated and unaffiliated parties. BLACK'S LAW DICTIONARY (2014).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If a tenant does not receive notice of foreclosure proceedings, the bill may help a tenant avoid unexpected moving costs. However, case law seems to require that tenants be named as parties to a foreclosure proceeding and receive notices of the proceedings.

The lack of information about lessees who occupy a property before the issuance of a certificate of title after a foreclosure sale may create uncertainty that affects the selling price at a foreclosure sale. If this lack of information depresses the price of a property at a foreclosure sale, the mortgagor may potentially face a larger deficiency judgment. This uncertainty may also affect the ability of a foreclosing lender to resell a property it acquires at a foreclosure sale. However, a purchaser may be willing to pay more for a property that is occupied by a tenant who has a history of making rental payments on-time.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the guidance provided by the bill will increase the efficiency of the courts. However, OSCA is not able to accurately determine the fiscal impact of the bill because of the unavailability of necessary data.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.561, Florida Statutes.

[21] Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 13, 2015).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Soto

14-00703-15 2015524__

A bill to be entitled

An act relating to rental agreements; creating s. 83.561, F.S.; providing that a purchaser taking title to a tenant-occupied residential property following a foreclosure sale takes title to the property as a landlord; specifying conditions under which the tenant may remain in possession of the premises; prescribing the form for a 90-day notice of termination of the rental agreement; establishing requirements for delivery of the notice; providing exceptions; providing an effective date.

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

Section 1. Section 83.561, Florida Statutes, is created to read:

83.561 Termination of rental agreement upon foreclosure.—

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises as a landlord, subject to the rights of the tenant under paragraph (a).

(a)1. If a written rental agreement was entered into before the issuance of the certificate of title, the tenant may remain in possession of the premises until the end of the term specified in the rental agreement or at least 90 days following the date of the purchaser's delivery of a written notice of termination of the tenancy to the tenant, whichever occurs later.

14-00703-15 2015524__

2. If a written rental agreement was entered into before the issuance of the certificate of title, but the purchaser named in the certificate of title sells the premises to a subsequent purchaser who intends to occupy the premises as a primary residence, the subsequent purchaser may terminate the rental agreement by delivering a written 90-day notice of termination to the tenant.

3. If a written rental agreement was not entered into before the issuance of the certificate of title, the tenant may remain in possession of the premises for 90 days following delivery of the written 90-day notice of termination.

(b) The 90-day notice of termination must be in substantially the following form:

You are hereby notified that your rental agreement is terminated effective 90 days following the date of the delivery of this notice or the end of the term specified in your written rental agreement, whichever occurs later, and that I demand possession of the premises on that date. You are still obligated to pay rent during the 90-day period or the remainder of the term of your rental agreement, in the same amount that you have been paying. Your rent must be delivered to ...(landlord's name and address)....

(c) The 90-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4).

(2) Subsection (1) does not apply if:

(a) The tenant is the mortgagor in the subject foreclosure

or the child, spouse, or parent of the mortgagor in the subject foreclosure, unless the property is a multiunit residential structure and other tenants occupy units of the structure.

(b) The tenant's rental agreement is not the result of an arm's-length transaction.

(c) The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 524
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 24, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bean						
X		Benacquisto						
X		Brandes						
		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
	X	Stargel						
X		Ring, VICE CHAIR						
X		Diaz de la Portilla, CHAIR						
8	1	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO
Democratic Caucus Rules Chair
14th District

March 4, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Diaz de la Portilla,

I respectively request that Senate Bill 524, Rental Agreements, be placed on the agenda as soon as possible. Senate Bill 524 provides that a tenant who is occupying a property that is sold as a foreclosure has the right to occupy the property until the end of the term of the rental agreement or at least 90 days after the purchaser delivers written notice of the termination of the tenancy to the tenant.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

Darren M. Soto

Darren M. Soto
State Senator, District 14

Cc: Tom Cibula, Staff Director
Shirley Proctor, Committee Administrative Assistant

REPLY TO:
❒ Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
❒ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

524
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Rental Agreement

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850 556 3121

Email alicevickers@flacp.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/15
Meeting Date

524
Bill Number (if applicable)

Topic Rental Agreements

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne BLVD, #102
Street

Phone 850-509-2085

Miami FL 33137
City *State* *Zip*

Email arthur@floridalegal.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Legal Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/2015
Meeting Date

Topic _____ Bill Number 529 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 794
INTRODUCER:	Senator Ring
SUBJECT:	Prejudgment Interest
DATE:	March 9, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			AP	

I. Summary:

SB 794 requires a court, in its final judgment, to include prejudgment interest on the amount of money damages, including court costs and attorney fees, awarded to a plaintiff. Prejudgment interest accrues from the date of the plaintiff's injury or loss. As provided in current law, the applicable interest rate is based on the discount rate of the Federal Reserve Bank of New York plus 400 basis points.

The bill provides that it applies retroactively to all actions that are pending on the effective date of the act and any actions that are initiated on or after that date.

II. Present Situation:

Prejudgment interest is the interest on a judgment that is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is interest on a judgment that is calculated from the date of the final judgment until the plaintiff collects the award from the defendant.

Under English common law, prejudgment interest was permitted for claims that were "liquidated" but not for claims that were "unliquidated." A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount. In personal injury law, examples of these types of damages include pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.[1]

Florida does not generally allow the award of prejudgment interest for plaintiffs in personal injury[2] and wrongful death claims, but does allow it in some tort areas.[3] The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule is when a plaintiff can establish that he or she suffered the loss of a vested property right.[4]

One theory of prejudgment interest is that it is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.[5] Proponents of prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation was protracted because the defendant had no incentive to settle the case.[6]

III. Effect of Proposed Changes:

This bill requires a court, in its final judgment, to include prejudgment interest on the amount of money damages, including court costs and attorney fees, awarded to a plaintiff.

The rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S., and accrues from the date of the plaintiff's injury or loss. Pursuant to s. 55.03, F.S., the Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current quarterly interest rate is 4.75 percent.[7]

The bill also applies retroactively to all actions that are pending on the effective date of the act and any actions that are initiated on or after that date.

This bill takes effect upon becoming law.

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[1] *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.,* 474 So. 2d 212 (Fla. 1985).
[2] *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (1955).
[3] *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.
[4] *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).
[5] *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.
[6] According to the Florida Justice Association, 32 states and the District of Columbia now allow for prejudgment interest in personal injury and wrongful death cases. Florida Justice Association, *Prejudgment Interest, (2015) (on file with the Senate Committee on Judiciary).*
[7] Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates,* http://www.myfloridacfo.com/division/AA/Vendors/#.VPtaBk0cSUl (last visited March 7, 2015).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill is retroactive to the extent that it increases the amount of damages that may be recoverable for personal injuries that occur before the effective date of the bill. Although the Legislature may enact statutory changes that are procedural or remedial, a statute may not apply retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.[8] By increasing the amount of damages authorized for causes of action that accrue before the effective date of the bill, this bill potentially could be construed as an unconstitutional penalty.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by being permitted to receive prejudgment interest from the date of their loss or injury.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[8] *State Farm Mutual Automobile Insurance Co. v Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

VIII. Statutes Affected:

This bill creates s. 55.031, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

874734

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 16
and insert:
compensatory damages awarded at the rate established pursuant to s.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 4
and insert:

874734

interest on the amount of compensatory damages awarded to a

785410

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 22

and insert:

Section 2. This act applies to causes of action which accrue on or after the effective date of the act.

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

And the title is amended as follows:

Delete lines 5 - 6

and insert:

785410

plaintiff in a final judgment; providing for applicability; providing an effective date.

By Senator Ring

29-00635-15 2015794__

A bill to be entitled

An act relating to prejudgment interest; creating s. 55.031, F.S.; requiring a court to include prejudgment interest on the amount of money damages awarded to a plaintiff in a final judgment; providing for retroactive application; providing an effective date.

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

Section 1. Section 55.031, Florida Statutes, is created to read:

55.031 Prejudgment interest.—In an action in which a plaintiff is entitled to recover money damages, including, but not limited to, court costs or attorney fees, the court shall, in the final judgment, include interest on the amount of the money damages awarded at the rate established pursuant to s. 55.03, with such interest accruing from the date of injury or loss.

Section 2. Section 55.031, Florida Statutes, as created by this act, shall apply retroactively to all actions pending on the effective date of this act and any action initiated on or after such date.

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