Tab 1	**SB 16** by **Steube**; (Similar to H 06511) Relief of Charles Pandrea by the North Broward Hospital District

Tab 2	**SB 34** by **Montford**; Relief of Shuler Limited Partnership by the Department of Agriculture and Consumer Services

Tab 3	**SB 38** by **Simmons**; Relief of Erin Joynt by Volusia County

Tab 4	**SB 140** by **Benacquisto (CO-INTRODUCERS) Simpson, Book, Hutson, Perry, Bracy**; (Identical to H 00335) Marriage of Minors

765610 D S RCS JU, Benacquisto Delete everything after 10/24 05:52 PM

Tab 5	**SB 146** by **Bean (CO-INTRODUCERS) Bradley**; (Identical to H 00057) Appointment of Attorneys for Dependent Children with Special Needs

Tab 6	**SB 186** by **Hutson**; (Identical to H 00105) Resign-to-run Law

Tab 7	**SPB 7004** by **JU**; OGSR/Petitioner Information/Notification of Service of an Injunction for Protection

Tab 8	**SPB 7006** by **JU**; OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, October 24, 2017
TIME: 3:00—5:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 16** Steube (Similar H 6511)	Relief of Charles Pandrea by the North Broward Hospital District; Providing for the relief of Charles Pandrea by the North Broward Hospital District; providing for an appropriation to compensate Charles Pandrea, husband of Janet Pandrea, for the death of Janet Pandrea as a result of the negligence of the North Broward Hospital District, etc. SM JU 10/24/2017 Unfavorable GO RC	Unfavorable Yeas 2 Nays 5
2	**SB 34** Montford	Relief of Shuler Limited Partnership by the Department of Agriculture and Consumer Services; Providing for the relief of Shuler Limited Partnership by the Florida Forest Service of the Department of Agriculture and Consumer Services, formerly known as the Division of Forestry, and the Board of Trustees of the Internal Improvement Trust Fund; providing for an appropriation to compensate Shuler Limited Partnership for costs and fees and for damages sustained to 835 acres of its timber as a result of the negligence, negligence per se, and gross negligence of employees of the Florida Forest Service and their violation of ch. 590, F.S., etc. SM JU 10/24/2017 Favorable AEN AP	Favorable Yeas 7 Nays 1
3	**SB 38** Simmons	Relief of Erin Joynt by Volusia County; Providing for an appropriation to compensate Erin Joynt for injuries sustained as a result of the negligence of an employee of Volusia County; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc. SM JU 10/24/2017 Favorable GO RC	Favorable Yeas 6 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 140** Benacquisto (Identical H 335, Compare H 71, S 208)	Marriage of Minors; Prohibiting the issuance of a marriage license to any person under the age of 18 years, etc. JU 10/24/2017 Fav/CS CF RC	Fav/CS Yeas 8 Nays 0
5	**SB 146** Bean (Identical H 57)	Appointment of Attorneys for Dependent Children with Special Needs; Designating this act as the “Pro Bono Matters Act of 2018”; requiring the payment of due process costs of litigation of all pro bono attorneys appointed to represent dependent children with certain special needs, subject to appropriations and review for reasonableness, etc. JU 09/13/2017 JU 10/24/2017 Favorable ACJ AP	Favorable Yeas 8 Nays 0
6	**SB 186** Hutson (Identical H 105)	Resign-to-run Law; Requiring an officer who qualifies for federal public office to resign from the office he or she presently holds if the terms, or any part thereof, run concurrently; prescribing requirements for the written resignation; providing for an automatic irrevocable resignation in the event of noncompliance, etc. EE 10/10/2017 Favorable JU 10/24/2017 Favorable RC	Favorable Yeas 5 Nays 3
	Consideration of proposed bill:		
7	**SPB 7004**	OGSR/Petitioner Information/Notification of Service of an Injunction for Protection; Amending provisions relating to the exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and for other court actions related to the injunction which are held by clerks of the court and law enforcement agencies; removing the scheduled repeal of the exemptions, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
	Consideration of proposed bill:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SPB 7006**	OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs; Amending provisions relating to an exemption from public record requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the Florida False Claims Act; abrogating the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 0
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

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

DATE	COMM	ACTION
10/12/17	SM	**Unfavorable**
10/24/17	JU	**Unfavorable**
	GO	
	RC	

October 12, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16** – Senator Greg Steube
Relief of Charles Pandrea

SPECIAL MASTER'S FINAL REPORT

BASED ON A JURY AWARD OF $808,554.78 AGAINST THE NORTH BROWARD HOSPITAL DISTRICT, THIS CONTESTED CLAIM FOR LOCAL FUNDS ARISES FROM THE DEATH OF JANET PANDREA, WHO RECEIVED NEGLIGENT MEDICAL TREATMENT FOR CANCER, WHICH DISEASE (A POSTMORTEM EXAM REVEALED) SHE DID NOT HAVE.

CURRENT STATUS:

On November 21, 2008, John G. Van Laningham, 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 50 (2009). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported UNFAVORABLY. The 2009 report was reissued for SB 28 (2012), the most recent version of the claim bill for which a report is available. 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, Thomas C. Cibula. 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 parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report. Additionally, the prior claim bills on which the attached special master report is based, is effectively identical to claim bill filed for the 2018 Legislative Session.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

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	Unfavorable

December 2, 2011

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

Re: **SB 28 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Charles Pandrea

SPECIAL MASTER'S FINAL REPORT

BASED ON A JURY AWARD OF $808,554.78 AGAINST THE NORTH BROWARD HOSPITAL DISTRICT, THIS CONTESTED CLAIM FOR LOCAL FUNDS ARISES FROM THE DEATH OF JANET PANDREA, WHO RECEIVED NEGLIGENT MEDICAL TREATMENT FOR CANCER, WHICH DISEASE (A POSTMORTEM EXAM REVEALED) SHE DID NOT HAVE.

FINDINGS OF FACT:

On January 7, 2002, Janet Pandrea, 65, saw her primary care physician, Dr. Martin Stone, because she had been coughing for two weeks. Dr. Stone prescribed an antibiotic and some cough medicine and instructed Mrs. Pandrea to return for a follow-up visit in three months. Her symptoms did not improve, however, and so she saw Dr. Stone again one week later. This time, the doctor ordered a chest X-ray.

The X-ray, taken on January 14, 2002, revealed a mass in Mrs. Pandrea's chest, which the radiologist suspected was cancerous. Based on the abnormal chest X-ray, Dr. Stone ordered a computed tomography (CAT) chest scan with contrast. The CAT scan was performed on January 17, 2002. The study showed an encapsulated anterior mediastinal mass, measuring six centimeters by four centimeters, with signs of calcification. Upon learning this, Dr. Stone ordered a

fine-needle biopsy, which was performed on January 24, 2002. The specimen, consisting of three "cores," plus three tiny tissue fragments, was fixed in formalin (preserved in a formaldehyde solution) and sent to the pathologist for interpretation.

Dr. Peter A. Tsivis is a pathologist who was, at all relevant times, an employee of the North Broward Hospital District (District). (The District operates the Coral Springs Medical Center, a public facility where Dr. Tsivis worked.) Dr. Tsivis received Mrs. Pandrea's tissue specimen on January 24, 2002. After examining the specimen, Dr. Tsivis prepared a Surgical Pathology Report, which contained the following findings:

> SPECIMEN DEMONSTRATE[S]
> MALIGNANT NEOPLASM CONSISTENT
> WITH MALIGNANT NON-HODGKIN'S
> LYMPHOMA (SEE MICROSCOPIC).

To explain, "malignant neoplasm" is the medical term of art for cancer. Non-Hodgkin's lymphoma (NHL) is a categorical description which denotes a variety of different cancers, approximately 30 in number, that originate in the lymphatic system. (In other words, NHL is not a particular cancer, but a particular spectrum of cancers.) Thus, Dr. Tsivis interpreted the specimen (unconditionally) as being positive for cancer, and he found that the cancer he had seen was "consistent with" diseases falling under the category NHL. But Dr. Tsivis pointedly did not state that Mrs. Pandrea's cancer *was* NHL, nor did he attempt to classify the type of NHL that he believed the disease might be.

Dr. Tsivis further qualified his "pathology diagnosis" with a "microscopic description" providing, in pertinent part, as follows:

> The microscopic features [of the specimen] are interpreted as consistent with a malignant non-Hodgkin's lymphoma. *However, the material in this specimen is insufficient for any confirmatory studies* such as immunohistochemistry.

> Additional tissue for further light microscopy possible immunoperoxidase and for flow cytometry studies is suggested for further evaluation if clinically indicated.

(Emphasis added.)

In view of Dr. Tsivis's findings, Dr. Stone referred Mrs. Pandrea to Dr. Abraham Rosenberg, an oncologist, whom she first saw on January 30, 2002. On Dr. Rosenberg's orders, an abdominal CAT scan and a positron emission tomography (PET) scan were performed on February 2, 2002. The CAT scan showed no evidence that the cancer had spread into Mrs. Pandrea's abdominal organs. The PET scan, however, produced a less encouraging result.

The doctor who interpreted Mrs. Pandrea's PET scan corroborated Dr. Tsivis's finding of an abnormality "consistent with" a malignant lymphoma. The PET scan added a new datum, namely that the tumor's metabolic characteristics suggested the cancer was a relatively non-aggressive one.

The PET scan prompted Dr. Rosenberg to move forward with his treatment plan. He saw Mrs. Pandrea on February 6, 2002, and performed a bone marrow test, which was negative for cancer. Also on that date, Dr. Rosenberg called Dr. Tsivis and requested that immunohistochemistries (or "stains") be made on the existing biopsy specimen, to look for certain proteins in the tissue which could help differentiate the type of cancer involved.

Despite having requested that Dr. Tsivis perform these "stains," Dr. Rosenberg decided on February 6, 2002, to begin giving Mrs. Pandrea chemotherapy. He chose a regimen appropriate for treating "B-cell" lymphomas. Dr. Rosenberg believed (and hoped) that Mrs. Rosenberg had B-cell lymphoma because that particular cancer is more common than T-cell lymphoma (the next likeliest possibility in his opinion) and is more responsive to treatment than the T-cell disease.

Mrs. Pandrea had her first round of chemotherapy on February 7, 2002. Mrs. Pandrea did not tolerate the treatment well. She became nauseous, began vomiting, and had a

seizure, all of which ultimately sent her to the hospital on February 10, 2002. It was determined that she probably had developed an adverse reaction to one of the chemotherapy agents. Dr. Rosenberg decided to discontinue the use of that drug and substitute another agent.

Meantime, on February 14, 2002, Dr. Tsivis performed the immunostaining that Dr. Rosenberg had requested. The result was *inconsistent* with a B-cell lymphoma, the putative condition for which Mrs. Pandrea was being treated. But the findings, Dr. Tsivis wrote in his Surgical Pathology Addendum Report, were "insufficient for further diagnostic evaluation of [the] specimen." Dr. Tsivis's bottom line remained the same as before: malignant neoplasm (cancer) consistent with malignant NHL.

Dr. Rosenberg should have changed his treatment plan based on Dr. Tsivis's Addendum Report, which at a minimum cast doubt on Dr. Rosenberg's working assumption that Mrs. Pandrea had a B-cell lymphoma. Dr. Rosenberg did *not* make any adjustments, however, because *he never saw the addendum*, which for reasons unknown was not delivered to Dr. Rosenberg, though Dr. Tsivis had sent it to him in the usual manner according to his routine practice. Despite having not received, within a reasonable time, the results of the pathology tests he had ordered, Dr. Rosenberg never followed up to find out what the "stains" had shown, which was his responsibility.

On February 27, 2002, Mrs. Pandrea underwent a second round of chemotherapy. She soon began having more medical problems, including muscle weakness and pain, secondary to the chemotherapy. On March 6, 2002, Dr. Rosenberg prescribed an antibiotic because Mrs. Pandrea's white blood cell count was low. The antibiotic triggered a serious side effect: rhabdomyolysis, which is characterized by the rapid breakdown of muscle tissue. On March 18, 2002, Mrs. Pandrea was admitted into the hospital, where her condition worsened dramatically over the next two weeks. She experienced respiratory failure on March 21, 2002, which led to emergency abdominal surgery on March 27. Following the surgery, Mrs. Pandrea developed an infection, and then sepsis. She died on April 2, 2002.

A postmortem examination revealed that Mrs. Pandrea did not have cancer after all. The mediastinal mass was actually a benign thymoma, which in all likelihood could have been removed without endangering Mrs. Pandrea's life, had an accurate and timely diagnosis of her condition been made.

* * *

The issues of ultimate fact in dispute here are (1) whether Dr. Tsivis was negligent in interpreting the biopsy specimen as he did, and (2) whether Dr. Tsivis's negligence (if he were negligent) was the *proximate cause* of Mrs. Pandrea's injury (death). If it is determined that Dr. Tsivis's negligence was the proximate cause of Mrs. Pandrea's death, then a third issue arises, namely: What percentage of the fault should be assigned to Dr. Tsivis (and through him, to the District)?

The question of whether Dr. Tsivis was negligent is a close one, and the evidence is in conflict. To review, he interpreted the biopsy specimen as positive for cancer, suspicious for NHL, but insufficient as a basis for confirming the existence of NHL, much less the specific type of NHL. The autopsy proved that Dr. Tsivis was wrong in finding "cancer," and it is undisputed that he was mistaken in this regard. This does not mean, however, that his interpretation fell below the standard of care.

Claimant's expert pathologist (Dr. Harris) testified that, in her opinion, the standard of care required Dr. Tsivis to state that there was not enough tissue in the specimen to conclude whether the mass was benign or malignant. In other words, according to *Claimant's* expert, Dr. Tsivis was not required to diagnose a benign thymoma, but rather he should have said that the specimen was inconclusive, and left it at that.

The difference between Dr. Tsivis's actual report and the "reasonable report" described by Dr. Harris is largely a matter of degree, not of kind. Dr. Tsivis's report committed (erroneously) to a diagnosis of "cancer," and offered a tentative diagnosis of NHL, but made clear that additional information would be needed to make and confirm a definitive diagnosis. In Dr. Harris's "reasonable report," the suspected cancer (based on the chest X-ray) would be neither confirmed nor ruled out. Hence both reports, at bottom, are of the same

kind (inconclusive). One (Dr. Tsivis's) is merely less so than the other.

It is determined, therefore, that although Dr. Tsivis was mistaken in finding that Mrs. Pandrea had cancer, he was not negligent in doing so. That said, however, even if Dr. Tsivis were found to have been negligent, the outcome would be the same, based on the additional (and alternative) findings that follow.

Claimant contends that but for Dr. Tsivis's negligence, Mrs. Pandrea would not have been treated for a cancer she didn't have, and thus would not have developed the complications secondary to such treatment which ultimately led to her death. Whether this is true, as a matter of fact, is far from clear, however. Conceivably, the outcome would have been the same *regardless* of Dr. Tsivis's negligence, due to the actions of others that would have taken place anyway. The undersigned nevertheless gives the benefit of the doubt to Claimant on this issue, and finds that Dr. Tsivis's negligence was *a* cause-in-fact of the injury.

For legal liability to attach to negligent conduct, it is necessary, but not sufficient, that the negligent conduct have been a cause-in-fact of the plaintiff's injury. In addition to this necessary "but for" causal connection, the negligence must also be regarded as the legal or "proximate" cause of the injury. The outcome determinative question here thus becomes whether Mrs. Pandrea's death was the foreseeable consequence of Dr. Tsivis's negligence, foreseeability being the touchstone of proximate cause.

With this question in view, the undersigned does not see much, if any, *operational* difference between what Dr. Tsivis wrote in his report, on the one hand, and what Dr. Harris (Claimant's expert) testified he should have written, on the other. That is, in terms of the reasonably foreseeable practical effects of one pathologic interpretation versus the other, nothing really distinguishes between them. This is because the evidence overwhelmingly establishes (and it is found) that Dr. Tsivis's report was not "diagnostic," meaning that it was neither specific enough nor definitive enough to support a reasonable decision to commence treatment. His report reasonably required that further diagnostic tests be run—just

as Dr. Harris's hypothetical "reasonable report" would have done.[1]

Thus, even assuming Dr. Tsivis were negligent, the fact is, it was *not* reasonably foreseeable that his pathology report would form the basis for a decision to start treating Mrs. Pandrea for NHL. What *was* foreseeable, rather, was that the physician responsible for Mrs. Pandrea's diagnosis and treatment would order another biopsy so that a definitive pathologic diagnosis could be obtained. This is what Dr. Rosenberg should have done on receipt of Dr. Tsivis's report, according to the applicable standard of care. But instead Dr. Rosenberg breached the standard of care by starting Mrs. Pandrea on chemotherapy before confirming that she had a specific type of NHL. Dr. Tsivis could not reasonably have foreseen that such negligence would occur based on his (Dr. Tsivis's) pathology report.

To elaborate on this finding, it is the undersigned's determination, based on the evidence presented, that Dr. Tsivis's negligence did not set in motion a chain of events leading to Mrs. Pandrea's death. In a broad sense, the "ball was rolling" before Dr. Tsivis became involved. After all, prior to the biopsy and Dr. Tsivis's interpretation of the specimen, Mrs. Pandrea had sought medical treatment, and a chest X-ray had been taken, which the radiologist had found was suspicious for cancer. It was not Dr. Tsivis's report, therefore, that started Mrs. Pandrea down the road to medical care.

In a narrower sense, it is fair to say that, in fact, by the time Dr. Tsivis came into the case, the *diagnostic* ball was rolling along due to the previous actions of others. Put another way, the diagnostic chain of events was already in play. Dr. Tsivis's negligence neither started this chain *nor stopped it*. The latter finding is crucial. If Dr. Tsivis had made a diagnosis that was "actionable" vis-à-vis treatment, he would have (negligently) stopped the diagnostic ball and started the *treatment* ball rolling, initiating a new chain of events. Instead, however, he kept the diagnostic ball rolling, which is exactly what, the undersigned finds (based largely on Claimant's expert's testimony), he should have done.

When Dr. Rosenberg prematurely and negligently started Mrs. Pandrea on chemotherapy, he broke the diagnostic chain of events and started the *treatment* ball rolling. Dr.

Tsivis's negligence did not start this chain of events which led to Mrs. Pandrea's death; it merely provided the occasion for Dr. Rosenberg's *intervening and superseding* negligence, which led to Mrs. Pandrea's untimely death.

Dr. Tsivis's negligence thus can be regarded as the proximate cause of Mrs. Pandrea's death only if Dr. Rosenberg's negligence was itself a reasonably foreseeable (i.e. a probable, and not merely possible) consequence of Dr. Tsivis's conduct.

On the question of foreseeability, there is no evidence establishing that Dr. Tsivis had actual knowledge that patients have died (or suffered serious injury) as a result of negligence similar to his in this instance. Nor is there any proof that the type of harm which Mrs. Pandrea suffered has so frequently resulted from negligence such as Dr. Tsivis's that the same type of harm may be expected again. On the contrary, Mrs. Pandrea's death under the instant circumstances strikes the undersigned as highly unusual and far outside the scope of any fair assessment of the "danger" created by Dr. Tsivis's negligence.

It is the undersigned's determination, therefore, that, as a matter of fact, Dr. Tsivis's negligence was not the proximate cause of Mrs. Pandrea's death. That being the case, he was not at fault here, and therefore neither was the District.

LEGAL PROCEEDINGS:

In December 2002, Charles Pandrea, as the personal representative of his late wife's estate, brought a wrongful death action against the District and a host of others, including Drs. Stone and Rosenberg. The action was filed in the Broward County Circuit Court.

The case was tried before a jury in May 2005 against the following defendants, who remained parties to the suit: The District, Drs. Stone and Rosenberg, and University Hospital Medical Center ("Hospital"). The jury returned a verdict awarding Mr. Pandrea, who was 75 years old at the time, a total of $8,072,498.08 in damages, broken down as follows: (a) $3 million for past pain and suffering; (b) $5 million for future pain and suffering; and (c) $72,498.08 for funeral expenses. The jury apportioned the fault for Mrs. Pandrea's death as follows: Dr. Rosenberg, 50 percent; the Hospital, 28 percent; Dr. Stone, 12 percent; and the District, 10 percent.

The District paid Mr. Pandrea $200,000 under the sovereign immunity cap, leaving unpaid the sum of $608,554.78, which represents the excess portion of the judgment against the District. Mr. Pandrea has settled with all of the private defendants, some of whom paid and were released from further liability before the civil trial, recovering a total of $4.77 million from them. Thus, Mr. Pandrea has collected, to date, nearly $5 million on the wrongful death claim.

CLAIMANT'S ARGUMENTS: The District is vicariously liable for the negligence of its employee, Dr. Tsivis, who misinterpreted the biopsy specimen, rendering a "false positive" diagnosis of cancer, which set in motion the chain of events leading to Mrs. Pandrea's untimely death. Mr. Pandrea is entitled to recover from the District the entire portion of damages for which the jury found the District responsible, namely $808,554.78.

RESPONDENT'S ARGUMENTS: It was not reasonable for Dr. Rosenberg to start Mrs. Pandrea on chemotherapy based on Dr. Tsivis's "non-diagnostic" pathology report—and such negligence on Dr. Rosenberg's part was not a reasonably foreseeable consequence of Dr. Tsivis's conduct. Thus, Dr. Tsivis's negligence, if any, was not the proximate cause of Mrs. Pandrea's death. Further, in the alternative, the award of $8 million was excessive and probably reflected a desire to punish the defendants, sympathy for Mr. Pandrea, or a combination of these, none of which is a proper consideration. There is no compelling reason to enact the instant claim bill.

CONCLUSIONS OF LAW: As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the District against tort liability in excess of $200,000 per occurrence. See Eldred v. North Broward Hospital District, 498 So. 2d 911, 914 (Fla. 1986)(§ 768.28 applies to special hospital taxing districts); Paushter v. South Broward Hospital District, 664 So. 2d 1032, 1033 (Fla. 4th DCA 1995).

Under the doctrine of respondeat superior, the District 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). Dr. Tsivis was an employee of the District and was acting in the course and scope of his employment when interpreting Mrs. Pandrea's biopsy specimen. Accordingly, Dr. Tsivis's negligence in

connection with the interpretation of this specimen, if any, is attributable to the District.

The fundamental elements of an action for negligence, which the plaintiff must establish in order to recover money damages, are the following:

> (1) The existence of a duty recognized by law requiring the defendant to conform to a certain standard of conduct for the protection of others including the plaintiff;
>
> (2) A failure on the part of the defendant to perform that duty; and
>
> (3) An injury or damage to the plaintiff proximately caused by such failure.

Stahl v. Metro. Dade Cnty., 438 So. 2d 14, 17 (Fla. 3d DCA 1983).

There is no question that Dr. Tsivis owed Mrs. Pandrea a legal duty to exercise reasonable care in interpreting the biopsy specimen. The first element of the claim, therefore, is satisfied.

As for the second element, however, it is the undersigned's primary determination of ultimate fact that Dr. Tsivis's conduct did not fall below the applicable standard of care. To repeat for emphasis, the undersigned finds, as a matter of fact, that Dr. Tsivis did not fail to perform the legal duty he owed Mrs. Pandrea. The second element of this claim, therefore, is not met.

Additionally, however, and in the alternative, even if Dr. Tsivis did breach the duty of reasonable care he owed Mrs. Pandrea, his negligence, the undersigned finds, was not, as a matter of fact, the proximate cause of Mrs. Pandrea's death. The third element of this claim, therefore, is not met in any event.

"Proximate cause" is an involved legal concept. The "proximate cause" element of a negligence action embraces not only the "but for," causation-in-fact test, but also fairness and policy considerations, usually focusing on whether the consequences of the negligent act were foreseeable in the

exercise of reasonable prudence. See, e.g., Stahl, 438 So. 2d at 17-21.

The issue of causation is complicated in this case by the involvement of multiple defendants, each of whose negligence allegedly combined to produce the sole injury (death) for which Claimant sought (and seeks) to recover (and for which he has recovered a substantial sum). In situations such as this, where there were several wrongs but one injury, the negligent actors are referred to as "joint tortfeasors." See, e.g., D'Amario v. Ford Motor Co., 806 So. 2d 424, 435 n.12 (Fla. 2001).

Generally speaking, each joint tortfeasor whose negligence was a proximate cause of the plaintiff's injury is liable for his or her share of the damages, under comparative fault principles. In this case, for instance, the jury apportioned the fault between the four defendants who remained in the suit at trial, assigning to each a percentage of responsibility for Mrs. Pandrea's death. (The District, recall, was found by the jury to have been 10 percent at fault, due to the actions of Dr. Tsivis.)

A negligent party is *not* liable for someone else's injury, however, if a separate force or action was "the active and efficient intervening cause, the sole proximate cause or an independent cause." Dep't of Transp. v. Anglin, 502 So. 2d 896, 898 (Fla. 1987). Such a supervening act of negligence so completely disrupts the chain of events set in train by the original tortfeasor's conduct that any negligence which occurred before the supervening act is considered too remote to be the proximate cause of any injury resulting from the supervening act. On the other hand, if the intervening cause were foreseeable, which is a question of fact for the trier to decide, then the original negligent party may be held liable. Id. In circumstances involving a foreseeable intervening cause, the original tortfeasor sometimes is said to have "set in motion" the "chain of events" that resulted in the plaintiff's injury. See Gibson v. Avis Rent-a-Car System, Inc., 386 So. 2d 520, 522 (Fla. 1980).[2]

In this case, the question arises whether the negligence of Dr. Rosenberg was an unforeseeable intervening cause which so profoundly and unexpectedly changed the course of events as to sever any reasonable causal connection between Dr. Tsivis's negligence and Mrs. Pandrea's death. Concerning the

question of foreseeability as it arises in the context of an "intervening cause" case, the Florida Supreme Court has explained:

> [T]he question of whether to absolve a negligent actor of liability is more a question of responsibility [than physical causation]. W. Prosser, Law of Torts, § 44 (4th Ed. 1971); L. Green, Rationale of Proximate Cause, 14270 (1927); Comment, 1960 Duke L.J. 88 (1960). If an intervening cause is foreseeable the original negligent actor may still be held liable. The question of whether an intervening cause is foreseeable is for the trier of fact.
>
> * * *
>
> Another way of stating the question whether the intervening cause was foreseeable is to ask whether the harm that occurred was within the scope of the danger attributable to the defendant's negligent conduct. A person who creates a dangerous situation may be deemed negligent because he violates a duty of care. The dangerous situation so created may result in a particular type of harm. The question whether the harm that occurs was within the scope of the risk created by the defendant's conduct may be answered in a number of ways.
>
> First, the legislature may specify the type of harm for which a tortfeasor is liable. See Vining v. Avis Rent-A-Car, above; Concord Florida, Inc. v. Lewin, 341 So.2d 242 (Fla. 3d DCA 1976) cert. denied 348 So.2d 946 (Fla. 1977). Second, it may be shown that the particular defendant had actual knowledge that the same type of harm has resulted in the past from the same type of negligent conduct. See Homan v. County of Dade, 248 So.2d

> 235 (Fla. 3d DCA 1971). Finally, there is the type of harm that has so frequently resulted from the same type of negligence that "'in the field of human experience' the same *type* of result may be expected again." Pinkerton-Hays Lumber Co. v. Pope, 127 So.2d 441, 443 (emphasis in original).

Gibson, 386 So. 2d at 522-23 (citations omitted).

As the trier of fact, the undersigned finds that the negligence of Dr. Rosenberg in prematurely commencing to treat Mrs. Pandrea with chemotherapy was not within the "scope of the risk" created by Dr. Tsivis's negligence in issuing a pathology report that was less inconclusive than it should have been. Dr. Rosenberg's negligence was, as a matter of fact, an unforeseeable, active, and efficient intervening cause; as such, it relieved Dr. Tsivis of liability.

Claimant makes an argument concerning foreseeability that is clever and plausible on its face, but ultimately unpersuasive. The argument invokes the "rule of complete liability of initial tortfeasors." This rule holds that a tortfeasor is responsible for all of the reasonably foreseeable consequences of his actions—even injuries caused downstream by a subsequent tortfeasor (provided the subsequent negligence was reasonably foreseeable). D'Amario, 806 So. 2d at 435-36. Thus, in a multi-wrong, multi-injury scenario, the *initial* tortfeasor can potentially be held responsible for *all* of the plaintiff's damages.

Before going forward with this discussion, an important distinction must be made between *joint* tortfeasors, on the one hand, and *initial/subsequent* tortfeasors, on the other. When several wrongs combine to cause a single injury, the plaintiff can sue the joint tortfeasors together; the fact-finder will apportion the fault among the negligent parties, who will be liable for their respective shares of the damages. In contrast, when several wrongs independently cause *several* separate injuries, the plaintiff can either sue the independent tortfeasors separately and attempt to recover damages from each for the distinct injury caused by the particular negligent party named in each suit, or he can sue the *initial* tortfeasor alone and potentially recover, exclusively from that original

negligent party, all of his damages in the one suit; in that case, however, the negligence of the initial tortfeasor is not compared to that of the subsequent tortfeasor because, unlike a case involving joint tortfeasors, each one's actions were independent of the other and caused separate injuries. Id. at 435.

To make this clearer, consider a common initial/subsequent tortfeasor scenario, which starts with an accident (a car crash, say) in which the plaintiff, in consequence of another's negligence, suffers bodily injuries requiring medical attention, and ends with the plaintiff suffering additional injuries at the hands of his negligent doctor. The person whose negligence caused the initial accident and the doctor who later committed medical malpractice are not *joint* tortfeasors; they are *initial* and *subsequent* tortfeasors. Thus, they cannot be sued together (and have their negligent acts compared). Instead, they must be sued separately in independent actions wherein each might be held responsible for the injuries caused by his own acts of negligence.

Alternatively, under the complete-liability rule, the plaintiff in the above described scenario could sue the initial tortfeasor and seek to recover for *all* of his injuries, even the ones caused by his negligent doctor. Moreover, although "[t]ypically, the question of whether an intervening cause [wa]s reasonably foreseeable is for the jury, . . . an exception exists when subsequent medical negligence in treating the initial injury is involved." Letzter v. Cephas, 792 So. 2d 481, 485 (Fla. 4th DCA 2001). Under this exception, which applies "when one who is negligent injures another causing him to seek medical treatment," id., "negligence in the administration of that medical treatment *is* foreseeable [i.e. is deemed foreseeable as a matter of law] and will not serve to break the chain of causation," id. (Emphasis added). As the Letzter court explained further,

> Where one who has suffered personal injuries by reason of the negligence of another exercises reasonable care in securing the services of a competent physician or surgeon, and in following his advice and instructions, and his injuries are thereafter aggravated or increased by the negligence, mistake, or lack of skill

> of such physician or surgeon, the law regards the negligence of the wrongdoer in causing the original injury as the proximate cause of the damages flowing from the subsequent negligent or unskillful treatment thereof, and holds him liable therefor.

Id. (quoting Stuart v. Hertz Corp., 351 So. 2d 703, 707 (Fla. 1977)). The court added, finally, that:

> When the rule in Stuart v. Hertz applies, the initial tortfeasor's remedy against the succeeding negligent health care provider lies in an action for subrogation. See Underwriters at Lloyds v. City of Lauderdale Lakes, 382 So. 2d 702, 704 (Fla. 1980). The foreseeability rule of Stuart v. Hertz has expressly been held to apply even when the initial tortfeasor is a physician as well. See Davidson v. Gaillard, 584 So. 2d 71, 73-74 (Fla. 1st DCA 1991), disapproved on other grounds by Barth v. Khubani, 748 So. 2d 260 (Fla. 1999).

Id.

To summarize, then, when an initial tortfeasor injures the plaintiff, causing him to seek medical treatment during which a subsequent tortfeasor further injures the plaintiff, the plaintiff can seek to recover damages for all of his injuries from the initial tortfeasor, under the complete-liability rule; in such an action, moreover, the plaintiff need not prove that the medical negligence was foreseeable because the law regards the first injury as the proximate cause of the second.

Pointing to the foregoing principles, Claimant contends that Dr. Rosenberg's negligence was, as a matter of law, the foreseeable consequence of Dr. Tsivis's negligence. For this to be true, Dr. Tsivis would need to be regarded, not as a *joint* tortfeasor whose negligence combined with that of Dr. Rosenberg and others to cause Mrs. Pandrea's death, but as an *initial* tortfeasor whose negligence injured Mrs. Pandrea in some distinct way, causing her to seek medical treatment,

during which, due to the negligence of *subsequent* tortfeasors, she died.

In trying to fit this case into the initial/subsequent tortfeasor mold, Claimant relies on Davidson v. Gaillard, 584 So. 2d 71 (Fla. 1st DCA 1991). In that case, the decedent, Mrs. Davidson, had been treated in 1981 for Hodgkin's Disease, which as a result had gone into remission. Mrs. Davidson began having worrisome symptoms in the summer of 1983, however, and consequently her doctor ordered a CAT scan, which was performed by a radiologist named Dr. Gaillard. Reviewing the results, Dr. Gaillard saw no abnormal mass or tumor and concluded that Mrs. Davidson's cancer had not returned. Based on Dr. Gaillard's diagnosis that the CAT study was negative for cancer, Mrs. Davidson did not immediately receive treatment. Id. at 72.

Mrs. Davidson continued to experience symptoms and returned to her doctor a few months later. It was eventually determined that Mrs. Davidson's cancer had indeed come back and, worse, had spread to her stomach. In April 1984, much of her stomach and some of her pancreas were removed. A second surgery was then performed to remove a tumor that was obstructing Mrs. Davidson's bowel. During this surgery, her bowel was perforated, causing a massive infection which proved fatal. Id.

Mrs. Davidson's husband brought separate lawsuits for negligence against, respectively, Dr. Gaillard for his failure to diagnose Mrs. Davidson in October 1983, and the physicians who treated her in 1984, after the cancer was belatedly found. (The Davidson case under discussion deals solely with the claim against Dr. Gaillard.) At trial, the parties' experts generally agreed that, if Mrs. Davidson had been diagnosed correctly in October 1983, her prognosis would have been reasonably good; with immediate treatment, the cancer likely would have gone into remission. The defense maintained, however, that the primary cause of Mrs. Davidson's death was not Dr. Gaillard's initial, negligent failure to detect the tumor, but rather the subsequent malpractice of the doctors who treated her for cancer. The jury agreed with the defense, finding that Dr. Gaillard's negligence was not a legal cause of Mrs. Davidson's death. Id. at 72-73.

On appeal, the plaintiff argued that the trial court had erred in denying the plaintiff's motion for directed verdict on proximate causation. The plaintiff relied on the complete-liability rule (discussed at length above), which holds that an initial tortfeasor is liable not only for the injuries he, himself, negligently caused, but also, as a matter of law, for the additional injuries resulting from the negligent medical treatment of the initial injuries. The appellate court agreed with the plaintiff and reversed. Id. at 73-74.

While Davidson might appear at first blush to be analogous to the instant case, closer study shows that it is distinguishable. Unlike this case, Davidson plainly involved a multi-injury situation. Indeed, the plaintiff there (unlike Claimant here) brought two lawsuits, one against the "initial" tortfeasor (Dr. Gaillard) and another against the "subsequent" tortfeasors (the treating physicians). To cut to the chase, it is simply incorrect to assert, as Claimant does, that just as Dr. Gaillard's negligence was held to be the proximate cause of Mrs. Davidson's death, *even though (so Claimant contends) Dr. Gaillard's negligence did not physically injure Mrs. Davidson*, so too should Dr. Tsivis's negligence be regarded as the proximate cause of Mrs. Pandrea's death, though he caused her no physical harm. This assertion is incorrect because, in fact, Dr. Gaillard's negligence *did* cause a physical injury: his negligence delayed an accurate diagnosis and treatment for about six months, during which time Mrs. Davidson's cancer spread into her stomach and other organs. Thus, the radiologist's negligence (in giving a false negative diagnosis) *aggravated* Mrs. Davidson's disease, causing her (probably treatable, not imminently fatal) lymphoma to become a metastatic cancer of the stomach, pancreas, and bowels—the separate (and obviously much worse) bodily injury that caused her to seek medical treatment, which was (allegedly) negligently provided.

In this case, it is Claimant's theory that Dr. Tsivis negligently rendered a false *positive* diagnosis, causing Mrs. Pandrea to seek treatment for a disease that she did not actually have. Unlike the situation in Davidson, however, where the radiologist's false *negative* diagnosis *itself* led to an aggravation of the patient's condition (i.e., a separate injury), here Dr. Tsivis's negligence (assuming he were negligent) did not *itself* cause any cognizable injury (emotional distress from a wrong diagnosis not being an issue in this case), but rather

caused an injury (if at all) only in combination with the negligence of Dr. Rosenberg, without which negligence Mrs. Pandrea would not have been treated for a nonexistent cancer. In short, Dr. Tsivis (unlike Dr. Gaillard in Davidson) cannot be considered an "initial" tortfeasor under any reasonable view of the allegations or facts; at best (from Claimant's standpoint) he was a *joint* tortfeasor. (*That*, i.e. as a joint tortfeasor, is how the District was sued, and how the plaintiff's case was presented to the jury, in the civil action that preceded this legislative proceeding.) Thus, the medical negligence of Dr. Rosenberg was not, as a matter of law, the foreseeable consequence of Dr. Tsivis's negligence.

The bottom line is that Dr. Tsivis's negligence was not the proximate cause of Mrs. Pandrea's death, as a matter of fact. The District, therefore, is not legally responsible for this tragic occurrence.

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." "Claimant's law firm, Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A., has agreed to limit its fees to the "maximum amount permitted under the law." Claimant's attorneys represent that they have incurred approximately $480,000 in litigation costs. The undersigned presumes that most (or all) of the expenses have been paid out of the nearly $5 million Claimant already has received. Information concerning the amount of attorney's fees paid to date is unavailable.

Claimant has retained Lance J. Block to lobby in favor of this bill. The contract between Claimant and Mr. Block calls for a contingency fee of six percent. Mr. Block has attested via affidavit, however, that his fee will be in compliance with any limitations that the bill places on fees and costs.

In its current form, the instant claim bill provides that the "total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to the adoption of this act may not exceed 25 percent of the total amount awarded under this

act." Claimant and his attorneys appear to be willing to abide by this limitation.

GENERAL CONCLUSIONS: Mrs. Pandrea's death should not have happened and would not have occurred but for the medical negligence of Dr. Rosenberg and others besides the District. These other responsible parties have paid substantial sums in damages as a result of their negligent actions—nearly $5 million in gross. Indeed, the District itself has paid $200,000, even though, in the undersigned's judgment (based solely on the evidence presented in this proceeding and made in obedience to the applicable law), the District was not at fault. Thus, Claimant has received substantial compensation for his profound loss.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 28 (2012) be reported UNFAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

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[1] Indeed, ironically, Dr. Tsivis's "negligent" report, which was ultimately right (more tests are needed) for reasons that were not entirely correct (the patient has cancer of some kind), would tend to increase the likelihood that further testing would be done, as compared to Dr. Harris's "reasonable report," which appears to pose a greater risk (than Dr. Tsivis's report) of causing the patient or her doctor to *forego* further testing or treatment in the near term. Cf. Sunderman v. Agarwal, 750 N.E.2d 1280 (Ill.App. 2001)(pathology report stating that specimen was "inconclusive for malignancy" allegedly caused delay in diagnosis and treatment of decedent's lung cancer; summary judgment in pathologist's favor affirmed because, despite inconclusive pathology report, treating physician believed patient had cancer and recommended treatment accordingly, and thus pathology report not proximate cause of delay).

[2] In contrast, where the intervening cause was not the foreseeable consequence of the original negligent party's conduct, the latter, who is not liable for the resulting injury to the plaintiff (because his negligence was not the proximate cause thereof), may be found to have "provided the occasion" for the later negligence which harmed the plaintiff—but not to have set in motion the injurious chain of events. Anglin, 502 So. 2d at 899.

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/24/2017
Meeting Date

16
Bill Number (if applicable)

Topic Pandrea Claims Bill

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone 681-0024

Email jorge@flapartners.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

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

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

DATE	COMM	ACTION
10/12/17	SM	Unfavorable
10/24/17	JU	**Favorable**
	AEN	
	AP	

October 12, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 34** – Senator Bill Montford
Relief of Shuler Limited Partnership

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $670,493. THE SUIT SEEKS COMPENSATION FROM THE GENERAL REVENUE FUND FOR THE ALLEGED NEGLIGENCE OF THE DIVISION OF FORESTRY IN DESTROYING THE SHULER LIMITED PARTNERSHIP'S TIMBER AFTER CONDUCTING A PRESCRIBED BURN IN TATE'S HELL STATE FOREST.

BACKGROUND INFORMATION:

1998 Florida Wildfires

An unprecedented number of wildfires burned in Florida between May and July, 1998, destroying approximately 500,000 acres of land, 150 structures, and 86 vehicles. The economic impact of the fires was estimated to exceed $1 billion[i] and the costs of fighting the fires surpassed $130 million.[ii]

1999 Legislative Response

In response to the devastating 1998 fires, the Legislature enacted significant statutory changes in 1999 to encourage the use of prescribed burns and thereby reduce wildfires.[iii] A prescribed burn is described as the controlled application of fire under specified environmental conditions while following precautionary measures that confine the fire to a predetermined area.[iv] The burn destroys vegetation, which is

a naturally occurring fuel source, and reduces the potential and severity of wildfires. The prescription is the written plan for starting and controlling the prescribed burn.[v]

In the 1999 legislation,[vi] the Legislature found that "prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state." The legislation also found that the application of periodic fire benefitted natural wildlife and when used in the state's parks and preserves, was essential to maintain the resources "for which these lands were acquired."[vii]

The Liability Standard is Changed from Negligence to Gross Negligence: To further its policy of encouraging prescribed burns, the Legislature reduced the risk of lawsuits to those conducting the burns. Specifically, the 1999 legislation, which remains current law, provides that a person who conducts a controlled burn is not liable for damages or injuries caused by smoke or fire unless the person is grossly negligent. Gross negligence means that a person's conduct is "so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct."[viii] Under the prior law, a person conducting a controlled burn could be held liable for negligence. Thus, the 1999 Legislature apparently decided that the benefits of controlled burns generally outweighed the associated risks of controlled burns.

The Two Properties Involved in the Lawsuit

Tate's Hell State Forest and Prescribed Burns: Tate's Hell State Forest is situated between the Apalachicola and Ochlockonee rivers in Franklin County. The expansive tract of land consists of more than 202,000 acres, which the state began purchasing in 1994. The forest supports a variety of ecosystems, wildlife, rare species of animals and plants, and serves to protect the Apalachicola Bay from freshwater runoff.[ix]

The Division of Forestry, as manager of Tate's Hell, endeavors to conduct prescribed burns on approximately 40,000 to 50,000 acres of the forest annually to reduce the vegetation fuels on the ground that feed forest fires. By burning this predetermined amount of acreage each year on a rotating cycle, the entire forest experiences a prescribed burn every 3 to 5 years. The prescribed burn managers and

firefighters conduct a planning meeting in advance of the next year's burns, often in October, to determine which areas will be burned and plan and schedule the burns.

Shuler Limited Partnership[x] and Shuler's Pasture: Shuler Limited Partnership owns a tract of land west of the Tate's Hell State Forest in Franklin County which consists of approximately 2,182 acres. The property is known as Shuler's Pasture and is separated from Tate's Hell by Cash Creek on its easternmost boundary. The property has been owned by the Shuler family since the 1950s and was passed down to the Shuler brothers who acquired it in 1997. Before the wildfire giving rise to this claim, Shuler's Pasture was described as being made up equally of pine flatwoods and bog or marsh.

LITIGATION HISTORY:

Litigation

On February 28, 2011, the Shuler Limited Partnership filed a Complaint in the Circuit Court of Franklin County alleging that an ember escaped from a 2008 prescribed burn conducted by the Division of Forestry in Tate's Hell State Forest and destroyed 835 acres of its timber. The Shulers' Amended Complaint named the Department of Agriculture and Consumer Services, Division of Forestry, State of Florida, and the Board of Trustees of the Internal Improvement Trust Fund, State of Florida, as Defendants. The lawsuit ultimately alleged negligence, statutory violations, negligence per se, and gross negligence.

Mediation: The parties attempted to mediate the claim in Tallahassee on September 24, 2012, 1 month in advance of the trial. After approximately 3 and one-half hours of mediation, the parties were unable to resolve the claim and the mediator declared an impasse.

Circuit Court: A 7-day jury trial was held between October 24, 2012, and November 1, 2012, at the Franklin County Courthouse in Apalachicola. The jury found in favor of the Shuler Limited Partnership on each count and rendered a verdict for $741,496 in damages and an additional $28,997 in costs. The Division of Forestry appealed.

Court of Appeal: On May 12, 2014, the First District Court of Appeal issued a succinct three paragraph, 2-1 per curiam decision upholding the lower court. Of the several arguments raised on appeal, the court addressed only the issue of

whether the evidence was insufficient to support the jury finding of gross negligence. Concluding that the jury could reasonably have found that the Division was grossly negligent and that the issue of whether negligence is ordinary or gross is a question rightfully resolved by the jury, the court affirmed the trial court. The court noted that its resolution of the negligence issue made it unnecessary to consider the other arguments on appeal.

A detailed dissenting 13-page opinion was filed by the third judge. In his dissent, the judge concluded that, due to "highly prejudicial legal errors" which were analyzed in depth in the dissent, the trial was unfair and a new trial should be held.

The Division of Forestry has stated that, while it had hoped to pursue an appeal after the Motion for Rehearing was denied, it discussed its options with the Solicitor General and concluded that the appellate rules did not provide it any basis for an appeal to the Florida Supreme Court.

Claim Bill Hearing
A day-long hearing was held on November 13, 2014, before the House and Senate special masters. Each side presented its case and was afforded the opportunity to question the opposing side's witnesses.

FINDINGS OF FACT:

The Division of Forestry conducted a certified prescribed burn on April 9 and April 10, 2008, in Tate's Hell State Forest. After the 2-day burn was complete, the Division of Forestry continued inspecting and monitoring the smoldering area to make certain that the burn was contained and that there were no spreading flames.

On May 13, 2008, a fire broke out on Shuler's Pasture. No one observed how the fire started. However, the Division stipulated that the fire probably was a spotover from the smoldering remains of a certified prescribed burn in Tate's Hell State Forest which was extinguished 33 days earlier. A spotover is a secondary fire that is ignited by an ember that is somehow lifted from the initial burn area and carried on the wind to a nearby property. For this spotover to have occurred, an ember would have apparently been picked up and carried westward by the wind over Cash Creek to the Shuler property where it ignited. Cash Creek is estimated to be between 800 and 1,300 feet wide.

The Division of Forestry personnel were the first to observe the fire. They responded to the fire and requested and received additional firefighting equipment and personnel from nearby counties to contain the fire. However, due to several complicating factors discussed later in this report, the Division was unable to contain the growing flames. Ultimately, 835 acres of the Shuler's timber was destroyed by the fire.

The Prescription or Written Prescribed Burn Plan

According to the Tallahassee District Prescribed Burn Packet that was introduced into evidence at trial, the preliminary burn plan for the prescribed burn at Tate's Hell was developed on October 19, 2007, almost 6 months in advance of the burn. Testimony elicited at trial demonstrated that approximately 10 foresters and certified prescribed burn managers were involved in developing the written plan, referred to as the prescription. According to the burn packet, the Division was approved to burn a specific tract of 3,267 acres in the High Bluff area of Tate's Hell State Forest which was previously burned in 2005.

Before initiating the burn, the Division developed a detailed burn plan prescription describing precisely the area to be burned, the dates and hours for the burn operation, the purpose and objectives of the burn, the preferred weather factors, firing techniques and ignition methods, flame length, and equipment and personnel to be used. Certified prescribed burn manager Joseph Taranto reviewed and checked boxes on the prescription form indicating that he complied with the pre-burn checklist requirements and briefed the crew members before conducting the burn. Mr. Taranto, a certified prescribed burn manager since 2004, worked with the Division since 1999 and previously conducted 71 prescribed burns in Tate's Hell State Forest. He testified at trial through a pre-recorded video deposition because he would be deployed to Afghanistan during the trial. His check marks in the necessary boxes on the prescription form indicated, that among other things, all prescription requisites were met, the necessary authorization was obtained, all equipment that was required for the burn was at the scene and fully operational, and the crew members were properly briefed and assigned their responsibilities.

Testimony at trial showed that before the burn began, the foresters and burn managers surveyed the tract of land and

determined that the burn area contained adequate firebreaks around the burn area.

Conducting the Prescribed Plan

Authorization: On the morning of April 9, 2008, Mr. Taranto called the Division's dispatch office in Tallahassee to request authorization to conduct the burn. The weather forecast for this particular day provided a wind blowing from the east which would blow the smoke from the prescribed burn away from residents in Eastpoint and away from Highway 65. Upon receiving data from Mr. Taranto, which was entered into a computer program, the dispatch office determined that the weather conditions were acceptable and authorized the burn. The employees met together and Mr. Taranto briefed them on how the burn was to be conducted, weather conditions, what each person's responsibilities were, which radio channels they would operate under, and conditions for which they should be watchful.

Ignition of the Burn and the Presence of the Prescribed Burn Manager: Mr. Taranto then lit a test fire that was favorable and instructed a helicopter crew to begin laying a baseline on the westernmost boundary of the property near Cash Creek. The purpose of the baseline was to create a burn area that increased the containment line to about 30 feet and provided a larger buffer zone next to Cash Creek. This practice is known as a backing fire that has the effect of reducing the wind's ability to move a fire beyond the containment line because the fuel it would feed upon has already been consumed and because it moves against the wind, unlike a head fire that moves with the wind. If the fire had been ignited on the easternmost boundary of the property with an east wind, it would have become a wildfire blowing with the wind.

The helicopter proceeded to drop small chemical balls that ignited upon impact on the ground along a predetermined grid pattern. The small fires eventually grew into a single fire that was more manageable than igniting one extremely large fire that burns much hotter. Mr. Taranto called in his ignition reports to headquarters throughout the day letting them know what percentage of the ignition phase was complete.

The fire developed as planned throughout the day, and the fire's progress was stopped at the end of the day. When Mr.

Taranto determined that no flames were spreading, the fire was no longer consuming vegetation, and remained within the containment lines, he dismissed the work crew for the day at approximately 7:00 p.m. or slightly later. According to Mr. Taranto, he was the first person on the scene that morning and the last to leave at the end of the day. No escaping fires were reported and no trees were being burned, only the undergrowth around the trees.

On April 10, the second day authorized for the prescribed burn, Mr. Taranto again called the dispatch office in Tallahassee and received the necessary authorization to conduct the burn. The same methods and procedures were followed. Once Mr. Taranto determined that the flames were stopped and not spreading, and the burn was confined within the containment lines, the crew was released. No spotovers were reported on either day of the burn.

Mopping Up: On the days following the 2-day prescribed burn, the fire continued to smolder as planned. The crews monitored the burn area and "mopped up" which means the crews worked the outer perimeter of the fire and reduced the heat along the edges by using water, shovels, and rakes to increase the buffer area and cool it. The goal is to ensure that the burn and its continued smoldering remain contained to protect nearby property from the chances of an escaped fire. Mr. Taranto established in his deposition that the fire was checked once or twice each day by one to three firefighters who rode around in trucks or fire engines until no smoke, heat, or embers were observed in the burn area.

Mr. Taranto further testified that he saw no error in how the prescribed burn plan was prepared or implemented and that he had all of the resources that he needed to conduct the prescribed burn.

Firebreaks: The four firebreaks surrounding the prescribed burn area consisted of Highway 65 on the eastern boundary, the water bodies of Cash Creek and East Bay on the northern and western boundaries, and another road that ran along the southern boundary. Additional firebreaks consisted of interior roads in Tate's Hell State Forest which previously were created by loggers or by the Division.

Mr. Taranto demonstrated that because of the large number of interior roads in the prescribed burn area, he was able to stop the fire at any point he felt necessary to prevent its spread should the weather change with a strong wind.

Personnel: Mr. Taranto established in his deposition that seven forestry personnel were present for the prescribed burn. Six of those seven were certified prescribed burn managers. He believed that he had sufficient personnel to conduct the operation and did not need to call in any additional people.

Equipment: According to Mr. Taranto's testimony, two employees were on the scene in bulldozers that were used to suppress the fire. Two employees were present in fire engines that held 350 to 500 gallons of water each. The remaining three employees served as ground patrol and used pickup trucks equipped with 50 gallons of water or more which were used for fire suppression. The employees had radios in their vehicles to communicate with each other during the prescribed burn. If additional resources were needed, the Division had access to a few tractors in nearby Carrabelle and could request assistance from the U.S. Forest Service, local fire departments, and other agencies such as the Florida Fish and Wildlife Conservation Commission, which also had fire engines. These additional resources were not needed during the 2-day prescribed burn.

Spotovers after the Controlled Burn

As mentioned earlier, a spotover is a separate fire that is ignited by an ember that is somehow lifted from the immediate burn area and carried on the wind to a nearby area outside of the initial burn area. According to testimony at trial elicited from different workers in the Division of Forestry, these occur as often as in 10 to 20 percent of fires. A spotover may occur when an area did not burn or was not consumed during the initial ignition phase because the conditions might have been too wet or the humidity was too high, but the weather conditions change, something dries out and is rekindled by a smoldering object, and an ember travels and ignites in a second location.

On April 21, 2008, 11 days after the prescribed burn was extinguished, a spotover occurred east of the prescribed burn area. The fire was referred to as the High Bluff fire. An ember

was picked up and traveled across Highway 65 and landed on state owned property. The fire was soon contained after burning approximately 10 acres of land.

Similarly, on May 6, 2008, 26 days after the prescribed burn was extinguished, a second spotover occurred east of the burn area. This fire was referred to as the High Bluff 2 fire. The ember also traveled across Highway 65 and landed on state owned property. The fire was also contained.

Difficulties of Extinguishing The Shuler Pasture Fire

The fire on Shuler's Pasture occurred 33 days after the prescribed burn was extinguished. According to trial testimony from several forestry workers, the Division had difficulty containing the fire, unlike the other spotovers, because of the conditions on the Shuler land. The firebreaks on the property were not wide enough for the Division's equipment to progress through, much of the land was boggy and would not support the large firefighting equipment, the land contained thick undergrowth that could not be traveled through, and no prescribed burns had been conducted to eliminate the inhibiting undergrowth.

CLAIMANT'S ARGUMENTS:

The Shulers alleged that the prescribed burn conducted by the Division of Forestry on April 9 and 10, 2008, which smoldered for weeks, caused the wildfire on Shuler's Pasture on May 13, 2008. The four counts alleged in the original Complaint were:

Count I – The respondents were negligent in their decision to ignite the prescribed controlled burn and negligent in the method of conducting the burn.

Count II – The prescribed burn violated section 590.13, F.S. (2007), which regulates controlled burns.

Count III – The respondents were negligent per se.

Count IV – The respondents were strictly liable.

When the jury was asked to evaluate counts II and IV, they were instructed to consider whether the Shuler fire was foreseeable by a reasonably careful person. Later, the trial court permitted the Shulers to amend Count IV to delete a

claim for strict liability and replace it with one for gross negligence.

In an effort to demonstrate the Division of Forestry's alleged negligence, the Shulers offered testimony that:

- The prescribed burn manager received a notice of violation[xi] for the manner in which the prescribed burn was conducted, thereby demonstrating negligence on his part;
- The burn was not completed in accordance with the 2-day prescription but extended for 45 days;
- Experts believed that the burn was not conducted correctly;
- The Division of Forestry personnel who fought to extinguish the fire at Shuler's Pasture were not adequately equipped to combat the fire.

RESPONDENT'S ARGUMENTS: The Division filed a Motion to Dismiss the Complaint and argued that any claim other than gross negligence was not permitted under the law as written. At trial, the Division offered testimony from the prescribed burn manager that the burn was conducted in conformance with its standard procedures and that all other needed personnel and equipment were on the scene for the prescribed burn. Forestry officials also testified that the prescribed burn was properly conducted.

Additional forestry personnel testified about the adequacy of personnel and equipment on site to extinguish the Shuler property fire, such that no negligence was committed in trying to contain and extinguish the fire.

On appeal, the Division argued that the jury trial was unfair, that the jury was misled about the proper legal standards that applied, that evidence was improperly admitted, and that conclusions were improperly drawn from that evidence. The Division also argued that it did not commit gross negligence and that the escaped ember that started the Shuler fire was not foreseeable, due to the wide expanse of the Cash Creek firebreak.

JURY VERDICT AND DAMAGES: The jury found that the Division violated the prescribed burn statute during the time between April 10 and May 23 while the burn smoldered and was, therefore, liable for negligence, a statutory violation, negligence per se, and gross negligence.

The jury awarded damages in the amount of $741,496 and costs were taxed for an additional amount of $28,997.

CONCLUSIONS OF LAW:

Summary Statement

Under section 590.125(3), F.S. (2007), the Division is legally responsible for the Shulers' damages only if the Shulers prove that the Division was grossly negligent.

The Shulers' theory of this claim is that the ember that started the fire on Shuler's Pasture was foreseeable and the Division, when conducting the prescribed burn, should have acted in such a manner as to have prevented their loss. The Shulers focus not on the 2-day prescribed burn period, but on the activities after the 2-day prescribed burn, from April 11 through May 23, when the Division was mopping up. The Shulers' theory, however, is not persuasive because it requires the Division to be responsible for weather conditions that occurred 6 weeks after the conditions under which the burn was authorized. Moreover, the manner in which the Division planned and conducted the fire and subsequently monitored the smoldering phase demonstrate that it was not grossly negligent.

The Statute and Legal Standard Involved in this Case

The primary certified prescribed burn statute in question, s. 590.125(3)(b), F.S. (2007), requires, among other things, that:

- A written prescription be prepared before authorization from the Division of Forestry is given;
- A certified prescribed burn manager be present on site with a copy of the prescription from ignition of the burn to its completion;
- An authorization to burn be obtained from the Division of Forestry before the burn is ignited; and
- Adequate firebreaks and sufficient personnel and firefighting equipment be present to control the fire.

Section 590.125(3)(c), F.S. (2007), provides that a property owner or his or her agent is not liable for damage or injury caused by the fire … for burns conducted in accordance with the subsection unless gross negligence is proven.

Gross negligence was defined as conduct that was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of

persons exposed to such conduct. Section 768.72(2)(b), F.S. (2007).

Trial Court Errors

The trial court issued several rulings that the dissenting appellate opinion characterized as "highly prejudicial legal errors in the interpretation of the open burn statute" and concluded that the jury trial in Franklin County was "unfair and a new one warranted."[xii] After reviewing the extensive trial and appellate records that exceeded 2,000 pages, the undersigned finds the dissenting opinion to be very persuasive and accurate. The errors prohibited the Division from presenting accurate testimony and evidence to the jury. As a result of these errors, the jury was misled and the Division did not receive a fair trial.

These three errors in the trial were intertwined and involved:

- The interpretation of the gross negligence standard;
- The statutory interpretation of when the controlled burn was extinguished; and
- The interpretation of "completion" as to how long the prescribed burn manager was required to be on the site of the burn.

The Gross Negligence Standard

The trial court committed error by allowing the jury to consider any standard of negligence other than gross negligence: The Shulers argued in the trial court that the Division could be held liable for negligence, statutory violations of the prescribed burn statute, and negligence per se if the burn was not conducted in accordance with the prescribed burn statute until the burn was completely extinguished 45 days later. However, this position, which the trial court accepted, is inconsistent with the prescribed burn statute, s. 590.125(3)(c), F.S. (2007), which entitles a person to damages caused by a controlled burn only if "gross negligence is proven." The position also eviscerates the legislative policy of encouraging controlled burns in s. 590.125, F.S. (2007).

Even if the statute could be read to allow causes of action other than actions for gross negligence, the evidence shows that the Division complied with the statute. The Shulers' arguments that the Division violated the statute, making the protections of gross negligence standard inapplicable, are

based on several misinterpretations of the statute. According to the dissenting judge in the appellate decision, "the cumulative effect of [these] statutory interpretation errors resulted in the Division being denied a fair opportunity to defend itself under the correct legal standards."

Specifically, the errors by the trial court prevented the Division from showing the jury that the controlled burn was extinguished, as required by the prescription, within the 2-day period of the prescription. The errors also prevented the Division from showing that the certified prescribed burn manager was present at the controlled burn as required by statute from its ignition to completion.

The fire was "extinguished" at the end of the 2-day burn period: The Shulers argued that because the Division violated the controlled burn statute, it was not protected by the gross negligence standard. Instead, according to the Shulers, the Division was responsible for the Shulers' losses because the prescribed burn was not extinguished during the 2-day period of the prescription. The Shulers' position, however, seems based on a layman's interpretation of the term "extinguished," instead of its statutory definition. Under s. 590.125(1)(d), F.S. (2007), a fire is extinguished when the visible flames, smoke, or emissions from a certified prescribed burn cease. The evidence in this matter showed that the prescribed burn was extinguished per the statutory definition by the end of the 2-day prescribed burn period. Thus, the fact that the fire continued to smolder does not show that the Division violated the statute.

Nevertheless, the Division, before it was aware of all of the facts of the case, stipulated in the trial court proceeding that the fire was not extinguished within the 2-day prescribed burn period. When the Division became aware of its mistake, it sought to amend its pleadings. The trial court denied the request on the grounds that the proposed amendment coming so close to trial was prejudicial to the Shulers.[xiii] At that same time, October 9, 2012[xiv], the trial court permitted the Shulers to amend their complaint to add a count for gross negligence. As a result, the jury was incorrectly told to believe that the Division was continuously in violation of the controlled burn statute for 45 days.[xv] Even if the trial court's decision preventing the Division from amending its stipulation was fair under the circumstances, the stipulation is not

binding in a special master proceeding. Under Senate Rule 4.81(5), a special master hearing is a *de novo* proceeding in which stipulations are not binding on the special master or the Senate. Thus, based on the evidence and the law, I find that the prescribed burn was extinguished within the 2-day prescribed burn period.

The certified prescribed burn manager was present from the ignition of the prescribed burn until its "completion:" Under s. 590.125(3)(b)1. F.S., (2007), a certified prescribed burn manager must be present at the site of a controlled burn "from ignition of the burn to its completion." The Shulers argue that the Division violated the controlled burn statute because the certified prescribed burn manager was not present at the site of the controlled burn until its completion. The Shulers' argument, however, is based on its misinterpretation of the word "completion" which the trial court accepted during a pretrial ruling.

Under the Shulers' interpretation, the statute requires a controlled burn manager be on the site of a controlled burn continuously from the ignition of the fire until it is completely extinguished. Under this interpretation, the Division should have had a certified burn manager on site 24 hours a day for 45 days.

According to the Division, the statute requires a certified burn manager to be on the site of a controlled burn from ignition until the completion of the ignition phase of the burn. Under this interpretation, the statute required that the Division's controlled burn manager be on site only during the 2-day prescribed burn period.

In resolving the dispute over the meaning of "completion," which was not defined in the statute, the trial court heard testimony during a pre-trial hearing. In support of its position, the Division offered the expert testimony of the Director of the Florida Forest Service, who among other relevant credentials such as serving as a certified prescribed burn manager for more than 25 years, helped rewrite the controlled burn statute in 1999. The Division also offered the expert testimony of a district manager of field operation of the Florida Forest Service who served as a certified prescribed burn manager for 25 years and who had supervised several hundred controlled burns each year. In support of its position,

the Shulers presented one of its partners, an attorney who was seeking more than $800,000 in the lawsuit. He opined that the statute clearly requires that a certified controlled burn manager be onsite until a controlled burn is completely extinguished.

Although the Shulers' attorney had no previous experience with the controlled burn statute, the court accepted the Shulers' interpretation of the statute and prohibited the Division from offering testimony at trial to the contrary.[xvi]

I find that the Division's interpretation of the meaning of completion is the correct interpretation for several reasons. First, the Division administers the statute and regularly conducts prescribed burns, and courts are typically deferential to a state agency's interpretation of the statutes it administers.[xvii]

Second, the Shulers' interpretation of the statute would severely limit the ability of the Division to conduct controlled burns that reduce the risk of wildfires throughout the state. The Division's personnel would be stretched too thin. Highly qualified certified controlled burn managers would be relegated to spending most of their time dealing with smoldering burns instead of the more critical tasks of planning controlled burns and managing the ignition phase of controlled burns. After the Tate's Hell prescribed burn was extinguished or completed, the burn area was checked once or twice a day by other personnel, which was reasonable, not unreasonable or grossly negligent, under the circumstances.

Third, the wording of a related statutory provision indicates that the word "completion" is synonymous with "extinguished." In other words, a certified prescribed burn manager must be on the site of a controlled burn until no spreading flames exist. Under s. 590.125(2)(a)5., F.S. (2007), when a noncertified person conducts a controlled burn, "Someone must [be] present until the fire is extinguished." If a noncertified person, who does not have the training or experience of a certified controlled burn manager, can leave the site of a controlled burn when no spreading flames exist, certainly a certified prescribed burn manager, who is in a better position to assess the risks of spreading flames, may leave a prescribed burn when it is extinguished.

The evidence in this matter showed that the Division's prescribed burn manager was on the site of the Tate's Hell prescribed burn from ignition to the completion of the ignition phase. As a result, the Division's conduct was consistent with the prescribed burn statute.

DAMAGES

Because the Division did not commit an act of gross negligence, the Division is not legally liable to the Shulers. However, even though no one observed the origin of this fire, the Division of Forestry stipulated that the Shuler fire must have been ignited by an ember from the smoldering prescribed burn conducted in Tate's Hell State Forest. Therefore, if the Legislature believes that the state is morally responsible, though not legally culpable, for this substantial property loss of 835 acres of timber, the Legislature could award some measure of compensation to the Shulers as an act of legislative grace.

Determining the Shulers' loss is not possible based upon the evidence submitted at trial or at the special master hearing.

In closing arguments to the jury, the Shulers asked the jury to award damages of $834,018, a figure calculated by the Shulers' expert, Mr. Michael Dooner. The jury, however, apparently disagreed with Mr. Dooner's estimate because it awarded $741,496, nearly $100,000 less.

The undersigned did not find the damage estimates of Mr. Dooner as persuasive as the opinions of Mr. Leonard Wood, the expert representing the Division of Forestry. Mr. Wood noted that the Shulers, in order to arrive at accurate damages, had a responsibility to salvage the damaged trees as quickly as possible before they began to degrade and lose value. This did not occur. The better practice would have been to bring in multiple buyers to move the timber to market as quickly as possible, which also did not occur. Mr. Wood also found it unacceptable that the Shuler expert did not conduct a timber cruise to assess damages until January, 2011, more than 30 months after the fire, thereby rendering his methodology questionable and statistically unsound for assessing damages.

Mr. Wood expressed no confidence in several categories of damages put forth by the Shulers' expert including value assignments of:

- $334,846 for standing dead timber, a category that is affected by how quickly the trees are salvaged;
- $111,615 as an additional value of standing dead timber for non-forced sale;
- $91,644 for growth loss because no growth study was performed; and
- $85,342 for "downgrading" the marketability of timber to a lower, less desirable category due to the fire because the claim was not substantiated.

Mr. Wood also questioned assessments of:

- $60,747 for "forced sale" damages because he did not agree with Mr. Dooner's definition of "forced sale" damages;
- $5,985 for cut trees that were not actually hauled from the land because those would become the property of the logging company;
- $32,160 for a weight loss claim of 15 percent of the timber's weight due to a loss of moisture caused by the fire;
- $57,250 for reforestation for preparing and planting trees because it is a separate business decision which would be a form of giving them double damages since they were already being awarded the profits from the trees being removed and sold due to the fire;
- $30,249 for fees and commissions to Mr. Dooner which he felt should have been borne by the Shulers; and
- $24,180 for roadwork because it is a capital cost of the landowner who would enjoy the benefits of having a road after the cutting and removal of the timber.

To further complicate computing the actual loss, Mr. Wood did not offer any counter estimate at trial. He stated that it would be very difficult to accurately develop projections based upon the findings provided by Mr. Dooner because so much time had elapsed between the initial fire and Mr. Dooner's assessment of the land. When asked at the claim bill hearing if the Division of Forestry would like to offer an estimate for damages if there were an act of legislative grace,

the Division responded that "it respectfully declines to make such an offer."

In addition to the $100,000 award that was paid to the Shulers and their legal counsel, the Shulers also received $202,489 for selling timber from their land which was damaged in the fire.

ATTORNEYS FEES: Section 768.28, F. S., limits the claimant's attorney fees to 25 percent of the claimant's total recovery by way of any judgment or settlement obtained pursuant to s. 768.28, F.S. The claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney fees.

RECOMMENDATIONS: Based upon the foregoing, the undersigned recommends that Senate Bill 34 be reported UNFAVORABLY.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Secretary of the Senate

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[i] U.S. FIRE ADMIN., USFA-TR-126, WILDLAND FIRES, FLORIDA - 1998 (1998). http://www.usfa.fema.gov/downloads/pdf/publications/tr-126.pdf (last visited October 12, 2017).
[ii] Fla. H.R. Comm on Agric., CS for HB 1535 (1999) Staff Analysis (June 15, 1999).
[iii] *Id*.
[iv] Section 590.026(3)(a), F.S. (1997).
[v] Rule 5I-2.003(21), F.A.C.
[vi] Chapter 99-292, s. 9, Laws of Fla.
[vii] *Id.*
[viii] Section 768.72, F.S. (2007).
[ix] Fla. Dep't of Agric. & Consumer Servs., http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Tate-s-Hell-State-Forest/Tate-s-Hell-State-Forest (last visited October 12, 2017).
[x] The Shuler Limited Partnership consists of Michael Shuler, Gordon Shuler, and two trusts. For simplicity, this report will refer to the Claimants as either the Shuler Limited Partnership or the Shulers.
[xi] The special master did not find this testimony to be persuasive because the Division presented testimony from multiple witnesses that the notice of violation was improperly issued, the notice of violation was rescinded soon after it was issued well in advance of the filing of the lawsuit, and that other similar notices of violation were also rescinded when the general counsel pointed out that their initial interpretation of the statute for issuing notices of violation was flawed.

[xii] *Department of Agriculture and Consumer Services, Division of Forestry, State of Florida, and the Board of Trustees of the Internal Improvement Trust Fund, State of Florida v. Shuler Limited Partnership*, 139 So. 3d 914, 915 (Fla. 1st DCA 2014)(Makar, J., dissenting).
[xiii] *Id*. at 919.
[xiv] *See* Initial Brief of Defendant-Appellant, p.42.
[xv] *Department of Agriculture and Consumer Services*, *supra* note xii, at 919.
[xvi] The court's error in accepting the Shulers' interpretation, was compounded by the Shulers' closing statement to the jury. The jury was told that the Division stipulated to being in violation of the controlled burn statute for 45 days because the certified controlled burn manager was not present after the burn was extinguished.
[xvii]The dissenting opinion cited in *Department of Agriculture and Consumer Services, supra* at 927, notes that "the entire case centered on the Division's regulatory functions, requiring deference to the Division's interpretation." *See Health Options, Inc. v. Agency for Health Care Admin*., 889 So. 2d 849, 851 n. 2 (Fla. 1st DCA 2004) and *Chiles v. Dep't of State, Div. of Elec*., 711 So. 2d 151, 155 (Fla. 1st DCA 1998).

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Pre-K - 12 Education
Health Policy
Rules

SENATOR BILL MONTFORD
3rd District

October 12, 2017

Senator Greg Steube, Chair
Senate Committee on Judiciary
515 Knott Building
Tallahassee Florida 32399-1100

Dear Senator Steube:

I respectfully request that the following Claim Bills be placed on the agenda for a hearing before the next Judiciary Committee Meeting:

SB 34 – Relief of Shuler Limited Partnership

Your consideration is greatly appreciated.

Sincerely,

William "Bill" Montford
Senate District 3

MD/WM

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/24/17
Meeting Date

SB 34
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300
Street

Phone 850-222-7500

Tallahassee FL 32301
City *State* *Zip*

Email garyh@hgslaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Shuler Limited Partnership

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 The Capitol

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

DATE	COMM	ACTION
10/12/17	SM	**Favorable**
10/24/17	JU	**Favorable**
	GO	
	RC	

October 12, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 38** – Senator David Simmons
Relief of Erin Joynt by Volusia County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM IN THE AMOUNT OF $1,895,000 BASED ON A JURY TRIAL AWARD TO COMPENSATE ERIN JOYNT FOR INJURIES SUSTAINED WHEN SHE WAS RUN OVER WHILE SUNBATHING BY A VOLUSIA COUNTY BEACH PATROL VEHICLE.

FINDINGS OF FACT:

The Accident

On July 31, 2011, the Claimant, Erin Joynt, her husband, and two children were vacationing beachgoers at Atlantic Ocean Beach in Daytona Beach Shores. They traveled from their home of Wichita, Kansas and stopped at Daytona Beach Shores. They were planning to go to Walt Disney World afterwards.

At the time of the accident, the Claimant was lying face down on a towel sunbathing on the beach while her husband and two children were frolicking in the surf . At the same time, in the regular course of his employment duties, Thomas Moderie, an employee of the Volusia County Beach Patrol, was driving a 2005 Ford F-150 pickup truck owned by Volusia County northbound in the designated travel lanes along the beach in the vicinity of the Claimant.

Moderie was flagged down by a pedestrian who informed Moderie that there was broken glass on the beach sand in an area south of their location. Moderie then decided to turn his vehicle around but did not exit his vehicle to check the turnaround area for tourists as he was taught.

As Moderie made the right hand U-turn, he ran over the Claimant as she lay sunbathing on the beach. The truck's tire rolled over the Claimant's head, neck, and torso.

The right hand U-turn was against Volusia County's policies and procedures. These procedures required beach patrol employees to make U-turns to the left while remaining within the designated travel lanes.

Injuries
The Claimant was severely injured as a result of the accident. Her injuries included including multiple cranial and facial fractures, rib fractures, permanent facial injuries, memory loss, back pain, and damage to her left ear and additional hearing loss in this ear.

Medical Care
The Claimant was hospitalized from July 31, 2011, through August 5, 2011, at the Halifax Medical Center in Daytona Beach. Thereafter, the Claimant returned home to Wichita, Kansas. However, she continued to receive medical treatment for her injuries.

In September 2011, the Claimant had a gold weight surgically inserted into her left eyelid to help her blink/close her eyes. She has undergone multiple left ear pressure equalization tube placements and removals to assist with fluid drainage. In 2012, the Claimant had a left ear tympanoplasty with ossicular chain reconstruction surgery. Her left eardrum has a permanent perforation, along with hearing loss.

Education and Employment
In 2013, the Claimant completed her college degree in education at Southwestern College in Wichita, Kansas. The Claimant is currently employed as a paraprofessional at an elementary school in Wichita where she assists children who are struggling to read.

Impact of Accident on Daily Living
The injuries the Claimant sustained during the accident have been life-changing.

Prior to the accident, the Claimant led an active lifestyle with her family, including riding and racing motorcycles, boating, swimming, and playing softball. She was also proud of her diction and eloquence. Since the accident, it is too painful for her to enjoy the aforementioned activities. Additionally, the Claimant is unable to make certain sounds and sometimes has difficulty in finding the right word to express herself.

At the time of the claim bill hearing (January 5, 2017), the Claimant continued to suffer as a result of the impact of the truck operated by Moderie. The Claimant is unable to blink her right eye without the assistance of the gold weight that was sewn into her eyelid. The Claimant has a perforated eardrum and resulting hearing loss in her left ear. When listening to someone talk, she must turn in the direction of the speaker and rely on her right ear.

The Claimant has permanent facial paralysis on the left side of her face, has speech and neurological deficits, and chronic pain. The Claimant has an inability to enunciate certain sounds; she cannot eat with a spoon or rinse out her mouth without holding it closed. The Claimant cannot drink out of a bottle of water; she must have a cup or straw. The Claimant can only feel half of her husband's kiss, and she continues to have daily pain associated with her injury. Sitting or standing too long hurts.

The Claimant takes the following medications as a result of the accident: Trazadone (anti-depressant), Duloxtrine (anti-depressant and nerve pain reliever), Tramadol (pain medication), Meloxicam (anti-inflammatory and pain medication), and Lidocaine (pain medication).

In addition to the physical changes and changes to her lifestyle resulting from the accident, the accident has affected the Claimant's personality. She is not as outgoing as she used to be and has become moody and irritable. When the Claimant is upset, she is not able to produce tears. The Claimant is very self-conscious about smiling or laughing; she is unable to smile as half her face is partially paralyzed.

PROCEDURAL HISTORY:

On April 5, 2012, the Claimant filed suit for negligence against Volusia County in the Circuit Court, Seventh Judicial Circuit, In and For Volusia County, Florida.

In June 2014, a 4-day trial was held. Volusia County admitted negligence, and the jury determined damages. On June 27, 2014, the jury found Volusia County liable for the Claimant's injuries and awarded her $2.6 million in compensatory damages. The compensatory damages consisted of:

- $100,000 for Future Medical Costs;
- $500,000 for Future Lost Earnings;
- $500,000 for Past Pain and Suffering; and
- $1.5 million for Future Pain and Suffering.

On July 14, 2014, the Claimant filed a Motion for Attorneys' Fees and Costs. To date, the trial court has not ruled on this motion.

On August 18, 2014, judgment was entered pursuant to the jury's verdict. Thereafter, an Amended Final Judgment was entered on August 19, 2014.

On September 17, 2014, Volusia County appealed the Amended Final Judgment challenging the portions of the judgment awarding damages for lost earning capacity ($500,000) and future medical expenses ($100,000) to the District Court of Appeals of Florida, Fifth District. Volusia County did not challenge the portion of the judgment awarding damages for past pain and suffering ($500,000) and future pain and suffering ($1.5 million).

On November 13, 2015, the Fifth District Court of Appeal concluded there was no reasonable evidence submitted on which the jury could predicate a verdict in favor of the Claimant on the claims of lost earning capacity and future medical expenses. The Fifth District Court of Appeal reversed the jury's award for these claims and remanded the case to the trial court to strike same from the final judgment. See *Volusia Cty. v. Joynt*, 179 So. 3d 448 (Fla. 5th DCA 2015).

On January 12, 2016, The Second Amended Final Judgment for Plaintiff (Joynt) in the amount of $2 million was entered against Volusia County by the trial court in accordance with the mandate from the Fifth District Court of Appeal. The Second Amended Final Judgment noted that the trial court

retained jurisdiction to determine and award taxable costs, and to determine entitlement, and if necessary, the amount of attorney's fees.

In accordance with s. 768.28, F.S., Volusia County paid the sovereign immunity limit amount of $200,000 for this accident. Of the $200,000 sovereign immunity limit, $100,000 was paid to the Claimant's husband for loss of consortium, and $15,000 was paid to Joynt's two children ($7,500 per child) for loss of consortium prior to trial pursuant to a settlement agreement. The remaining $85,000 was paid to the Claimant following entry of final judgment.

After the accident, Moderie's personal automobile insurance carrier, Allstate Insurance, paid the Claimant $20,000. Star Insurance Company, Volusia County's excess insurer, paid $34,000 to the Claimant's husband pursuant to a settlement agreement prior to trial.

To the extent Claimant's damages caused by Volusia County total $2 million as reflected in the Second Amended Final Judgment, the Claimant has received a total amount of $105,000, including $85,000 from Volusia County and $20,000 from Moderie. Volusia County is entitled to a setoff of the settlement amount paid by Moderie. See s. 768.041(2), F.S.; *Honeywell Int'l, Inc. v. Guilder*, 23 So. 3d 867, 871 (Fla. 3d DCA 2009). The remaining balance for the claim bill is $1,895,000.

On April 20, 2016, the Claimant filed a Complaint for Declaratory Judgment against Volusia County and Star Insurance Company in the Circuit Court, Seventh Judicial Circuit, In and For Volusia County, Florida. The issue is whether Star Insurance Company is obligated to pay the judgment for the Claimant without the passage of a claim bill under s. 768.28(5), F.S. On May 27, 2016, the case was removed to the U.S. District Court, Middle District of Florida, Orlando Division. The Claimant filed a Motion for Stay of Proceedings Until Legislative Session Is Complete on January 18, 2017. The Declaratory Judgment case remains pending.

CLAIMANT'S POSITION: The Claimant maintains the claim bill should be approved to uphold the reduced jury verdict of $2 million, less $105,000 already received by the Claimant.

Volusia County did not challenge the jury award of past pain and suffering ($500,000) and future pain and suffering ($1.5 million) in its appeal to Florida Fifth District Court of Appeal.

No funds from Volusia County will be used to pay the claim bill. Volusia County previously purchased insurance coverage from Star Insurance Company. Payment of the claims bill will come from this insurance coverage.

THE COUNTY'S POSITION: Volusia County maintains that the claim bill is not ripe for consideration by the Legislature since the Claimant has not exhausted all available administrative and judicial remedies pursuant to Senate Rule 4.81(6). Plaintiff's Motion for Attorney's Fees and Costs is still pending in the underlying civil action and the Complaint for Declaratory Judgment filed against Volusia County and Star Insurance Company is pending in U.S. District Court, Middle District of Florida.

Volusia County further maintains that the amount of the claim bill is excessive under the facts and circumstances of the underlying claim.

Although Volusia County recognizes that the Claimant suffered real and substantial injuries, including partial facial paralysis, the county contends that the $2 million jury verdict for non-economic damages ($500,000 for past pain and suffering and $1.5 million for future pain and suffering) is excessive.

CONCLUSIONS OF LAW: The claim bill hearing was a *de novo* proceeding to determine whether Volusia County is liable in negligence for damages suffered by the Claimant and, if so, whether the amount of the claim is reasonable. This report is based on the evidence presented to the Special Master prior to, during, and after the hearing.

The duty to use care in driving a motor vehicle has been established by statute and case law. Section 316.1925(1), F.S., provides:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

Although this statute is limited on its face to streets and highways, the same duty of care should apply to persons who drive on a beach where sunbathers are present.

According to case law, motor vehicle drivers have a duty to avoid pedestrians on and off roadways. See, e.g., *City of Tallahassee v. Kaufman*, 87 Fla. 119 (1924) (imposing liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian).

Moderie had a duty to operate the Volusia County beach patrol vehicle in consideration of the safety of sunbathers and other patrons of the beach and in compliance with Volusia County Beach Patrol policies and procedures. It was entirely foreseeable that severe injuries to sunbathers, such as the Claimant, could occur when Moderie violated these duties.

By failing to look for and avoid sunbathers as he drove on the soft sand area of the beach and by failing to turn the vehicle around in the direction away from sunbathers in violation of county policies and procedures, Moderie breached his duty of care, and the breach was the proximate cause of the severe injuries to the Claimant.

Moderie was acting within the course and scope of his employment with Volusia County at the time he ran over the Claimant. Volusia County, as Moderie's employer, is liable for the damages caused by its employee's negligent act. *Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *Stinson v. Prevatt*, 84 Fla. 416 (1922).

In its Post-Hearing Memorandum, Volusia County cites to Senate Rule 4.81(6) and maintains that the instant claim bill should proceed no further. Senate Rule 4.81(6) provides, in part, that a claim bill is not ripe for hearing until all "available administrative and judicial remedies have been exhausted." The Complaint for Declaratory Judgment that is pending in U.S. District Court, Middle District of Florida, should be considered a collateral appeal. However, the declaratory judgment action is not appealing the validity nor the amount of the reduced jury verdict that has been finalized on appeal to the Florida Fifth District Court of Appeal, but rather the issue is whether Volusia County's insurer, Star Insurance Company, is obligated to pay the judgment for the Claimant without the passage of a claim bill by the Legislature. Further, the outstanding Motion for Attorney's Fees and Costs will be moot, if this claim bill is passed by the Legislature. Therefore, I conclude that Senate Rule 4.81(6) does not prevent the claim bill from proceeding forward.

After considering all of the factors in this case, I conclude that the $1,895,000 amount of this claim bill is appropriate.

FISCAL IMPACT:

Volusia County has insurance coverage through Star Insurance Company for the period of October 1, 2010 to October 1, 2011. The policy provided excess automobile coverage for vehicles insured under the policy owned by Volusia County, including the vehicle driven by Moderie and involved in the July 31, 2011 accident. This policy provides coverage of $5 million per accident or occurrence (with a $15 million policy aggregate limit) and includes a self-insured retention of $100,000 per person for liability for claims pursuant to s. 768.28, F.S. Volusia County previously paid an advanced premium of $520,000 for this policy. No county funds will be required to pay the claim bill.

RELATED ISSUES:

An amendment to the instant claim bill is needed to clarify that Volusia County has already paid $200,000 for the accident and that those funds were apportioned among Ms. Joynt, her husband, and her children.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. No lobbyist fees will be paid.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 38 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

John Ashley Peacock
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 12, 2017

I respectfully request that **Senate Bill 38**, relating to Relief of Erin Joynt by Volusia County, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

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)

10/2-/17
Meeting Date

SB-38
Bill Number (if applicable)

Topic SB 38 - Claims Bill of Erin Joynt

Amendment Barcode (if applicable)

Name John Phillips, Esq

Job Title Attorney for the Joynt Family

Address 4230 Ortega Blvd
Street

Phone 904-444-4444

Jacksonville FL 32210
City *State* *Zip*

Email JmP@FloridaJustice.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Erin Joynt

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)

10/24/17
Meeting Date

SB 38
Bill Number (if applicable)

Topic Relief of Erin Joynt v. Volusia County

Amendment Barcode (if applicable)

Name Joseph Salzverg ("Saul's - verg")

Job Title Attorney/Lobbyist

Address 301 S. Bronough St., Suite 600
Street

Phone

TLH, FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Meadowbrook Insurance

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)

10/24
Meeting Date

SB 38
Bill Number (if applicable)

Topic Relief of Erin Joyce

Amendment Barcode (if applicable)

Name Chris Dawson

Job Title Attorney

Address 301 E. Pine Street, Suite 1400
Street

Phone 407.843.8880

Orlando FL 32801
City *State* *Zip*

Email chris.dawson@gray-robinson.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Volusia 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)

16-24-17	SB 38
Meeting Date	*Bill Number (if applicable)*

Topic SB 38 Erin Joynt

Amendment Barcode (if applicable)

Name Patrick Bell

Job Title Lobbyist

Address P. O. Box 10242 Phone 850-544-0784

Street

Tallahassee FL 32302 Email pebell@southlaw.net

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

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

Representing Erin Joynt

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 140
INTRODUCER:	Senator Benacquisto and others
SUBJECT:	Marriage of Minors
DATE:	October 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 140 prohibits a county court judge or clerk of the circuit court from issuing a marriage license to any person under the age of 18. Accordingly, a minor is not permitted to marry in the state. The current exceptions that permit a minor to marry, such as parental consent, the fact that a couple already has a child, or a physician's written verification of a pregnancy, are repealed. Under this bill, only a person 18 years of age or older is permitted to marry.

II. Present Situation:

According to the Bureau of Vital Statistics,[1] 1,828 marriage licenses were issued in the last 5 years to a couple in which at least one party was a minor. Of this total, 132 licenses were issued to a couple in which both parties were minors. In that same time period, 1 license was issued in which one party was 13 years old, 7 licenses were issued in which one party was 14 years old, 29 licenses were issued in which one party was 15 years old, and 1,807 licenses were issued in which one party was 16 or 17 years old.[2] A complete chart of data from the Bureau of Vital Statistics is located in the appendix to this analysis.

[1] *Marriages Under 18, Years 2012-2016*, Email attachment supplied by Gary Sammet, Bureau of Vital Statistics, Department of Health (Oct. 25, 2017) (on file with the Senate Committee on Judiciary). The Bureau of Vital Statistics is the state repository for all marriage records filed in the state. The licenses are filed with the clerks of courts who are legally bound to report them to the Bureau.

[2] The sum of these four categories, 1,844, exceeds the total number of licenses issued, 1828, because 16 minors are represented in more than one category.

Marriage Licenses

The authority to issue a marriage license in this state is vested solely in a county court judge or clerk of the circuit court.[3] No one may marry without a validly issued license.[4] In order to obtain a license, the single individuals must appear together in person, bring their valid government issued identification and social security numbers, and complete a marriage license application.

Applicants must generally be at least 18 years of age to obtain a marriage license. However, there are exceptions under which a minor may be issued a license to marry.

Applicants Who are 16 or 17 May Marry With Parental Consent

If an applicant for a marriage license is 16 or 17 years of age, he or she is entitled to a marriage license if both of his or her parents or a guardian provide consent to the marriage. However, the minor does not need parental consent if his or her parents are deceased or if the minor was married previously. The written consent must be acknowledged before a person authorized to take acknowledgments and administer oaths.[5]

Judicial Bypass in Cases of Pregnancy or Parentage

A minor applicant may receive a marriage license without parental consent in limited circumstances that depend upon the discretion of a county court judge. A county court judge may, in his or her discretion, issue a marriage license to a minor if both parties swear under oath that they are the parents of a child.[6] Additionally, if a pregnancy is verified in writing by a licensed physician, a county court judge may issue a marriage license to:

- Any male or female younger than 18 years of age and the parties swear under oath that they are expecting a child; or
- Any female younger than 18 years of age and a male older than 18 years of age if the female provides a sworn application that she is expecting a child.[7]

The statutes do not set a minimum age requirement for a marriage license when the applicants for a license have a child together or are expecting a child.[8] In these circumstances, the statutes permit a county court judge, in the exercise of his or her discretion, to issue a marriage license when one or both applicants for a license are younger than 16.

III. Effect of Proposed Changes:

Under this bill, a person, without exception, must be at least 18 years of age to marry or receive a marriage license in this state. The current exceptions that allow a minor to marry with parental consent or without parental consent when the couple has a child or is expecting a child are repealed.

[3] Section 741.01, F.S.
[4] Section 741.08, F.S.
[5] Section 741.0405(1), F.S.
[6] Section 741.0405(2), F.S
[7] Section 741.0405(3), F.S.
[8] *See* s. 741.0405(4), F.S.

The bill takes effect July 1, 2018.

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:

If marriage licenses are not issued to minors, the clerks of court might receive less revenue than in the years in which licenses were issued to minors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.04 of the Florida Statutes and repeals section 741.0405 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 Judiciary on October 25, 2017:
The committee substitute reorganizes the current bill structure but does not make substantive changes to the bill or to the current law. The committee substitute removes from s. 741.0405(4), F.S., the new language in the underlying bill which prohibits anyone younger than 18 years of age from marrying, and places it as new subsection (1) in s. 741.04, F.S. Current s. 741.0405, F.S. is then repealed. Section 741.04, F.S., is substantially reworded to modernize the language and break the existing language into shorter paragraphs.

B. Amendments:

None.

Appendix:

Marriage Licenses Issued to a Minor, Years 2012-2016

Number of Marriages by Year by Spouse-Age by Spouse-Age		2012	2013	2014	2015	2016
Party 1	**Party 2**					
13 years	**16-17 Years**		1			
14 years	**15 Years**		1			
	18-19 years			1		
	20-24 years	3				
15 Years	**16-17 years**	4	2	2		1
	18-19 years					3
	20-24 years	2	1		1	
	25-29 years			1		
	35-39 years				1	
16-17 Years	**15 Years**	3	2			
	16-17 Years	30	21	21	19	25
	18-19 years	195	145	136	128	113
	20-24 years	163	135	118	124	85
	25-29 years	28	25	26	38	18
	30-34 years	7	2	2	3	4
	35-39 years	2	1	2	1	1
	40-44 years					1
	90-94 years			1		
18-19 years	**15 Years**	1	1			
	16-17 Years	19	16	18	21	35
20-24 years	**14 years**		1			
	15 Years		1			
	16-17 Years	5	7	5	8	21
25-29 years	**15 Years**	1				
	16-17 Years	2	1	2	2	4
30-34 years	**14 years**	1				
	15 Years				1	
	16-17 Years	1	1		1	
35-39 years	**16-17 Years**			1	1	
40-44 years	**16-17 Years**				1	
Totals		**467**	**364**	**336**	**350**	**311**

Source: Bureau of Vital Statistics, Florida Department of Health

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/24/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 741.04, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 741.04, F.S., for present text.)

741.04 Issuance of marriage license.—

(1) A county court judge or clerk of the circuit court may

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not issue a license to marry to any person younger than 18 years of age.

(2) A county court judge or clerk of the circuit court may not issue a license to marry until the parties to the marriage file with the county court judge or clerk of the court a written and signed affidavit, made and subscribed before a person authorized by law to administer an oath, which provides:

(a) The social security number or any other available identification number for each person.

(b) The respective ages of the parties.

(3) The submission of social security numbers as provided in this section is intended to support the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The state has a compelling interest in promoting not only marriage, but also responsible parenting, which may include the payment of child support. Any person who has been issued a social security number shall provide that number in satisfying the requirement in subsection (2). Social security numbers or other identification numbers obtained under this section may be used only for the purposes of administration in Title IV-D child support enforcement cases.

(a) Any person who is not a citizen of the United States may provide either a social security number or an alien registration number issued by the United States Bureau of Citizenship and Immigration Services.

(b) Any person who is not a citizen of the United States and who has not been issued a social security number or an alien registration number is encouraged to provide another form of identification.

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This subsection does not prohibit a county court judge or clerk of the circuit court from issuing a marriage license to individuals who are not citizens of the United States if one or both of them are unable to provide a social security number, an alien registration number, or another identification number.

(4) A county court judge or clerk of the circuit court may not issue a license for the marriage of any person unless the county court judge or clerk of the circuit court is first presented with both of the following:

(a) A written statement, signed by both parties, which specifies whether the parties, individually or together, have completed a premarital preparation course.

(b) A written statement that verifies that both parties have obtained and read or otherwise accessed the information contained in the handbook or other electronic media presentation of the rights and responsibilities of parties to a marriage specified in s. 741.0306.

(5) If a couple does not submit to the clerk of the circuit court valid certificates of completion of a premarital preparation course, the clerk shall delay the effective date of the marriage license by 3 days from the date of application, and the effective date must be printed on the marriage license in bold type. If a couple submits valid certificates of completion of a premarital preparation course, the effective date of the marriage license may not be delayed. The clerk shall grant exceptions to the delayed effective date requirement to non-Florida residents and to couples asserting hardship. Marriage license fee waivers are available to all eligible couples. A

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county court judge issuing a marriage license may waive the delayed effective date requirement for Florida residents who demonstrate good cause.

Section 2. Section 741.0405, Florida Statutes, is repealed.

Section 3. Section 741.05, Florida Statutes, is amended to read:

741.05 Penalty for violation of ss. 741.03, 741.04(2) ~~741.04(1)~~.—Any county court judge, clerk of the circuit court, or other person who violates ~~shall violate~~ any provision of ss. 741.03 and 741.04(2) commits ~~741.04(1) shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. This act shall take effect July 1, 2018.

================ 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 marriage licenses; amending s. 741.04, F.S.; providing that a marriage license may not be issued to a person under the age of 18 years; requiring parties to a marriage to file a written and signed affidavit with the county court judge or clerk of the circuit court before the judge or clerk may issue a marriage license; requiring such affidavit to include certain information; providing legislative intent; requiring each party to a marriage to provide his or her social security number or an alien

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registration number for purposes of child support enforcement; prohibiting a judge or clerk from issuing a marriage license unless he or she is presented with certain written statements; providing that the effective date of a marriage license must be delayed by 3 days if the parties to the marriage have not submitted valid certificates of completion of a premarital preparation course; providing exceptions; repealing s. 741.0405, F.S., relating to the issuance of marriage licenses to persons under 18 years of age; amending s. 741.05, F.S.; conforming cross-references; providing an effective date.

By Senator Benacquisto

27-00129A-18 2018140__

A bill to be entitled

An act relating to marriage of minors; amending s. 741.0405, F.S.; prohibiting the issuance of a marriage license to any person under the age of 18 years; amending s. 741.04, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 741.0405, Florida Statutes, is amended to read:

741.0405 ~~When~~ Marriage license may not be issued to persons under 18 years.—

~~(1) If either of the parties shall be under the age of 18 years but at least 16 years of age, the county court judge or clerk of the circuit court shall issue a license for the marriage of such party only if there is first presented and filed with him or her the written consent of the parents or guardian of such minor to such marriage, acknowledged before some officer authorized by law to take acknowledgments and administer oaths. However, the license shall be issued without parental consent when both parents of such minor are deceased at the time of making application or when such minor has been married previously.~~

~~(2) The county court judge of any county in the state may, in the exercise of his or her discretion, issue a license to marry to any male or female under the age of 18 years, upon application of both parties sworn under oath that they are the parents of a child.~~

27-00129A-18 2018140__

~~(3) When the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state may, in his or her discretion, issue a license to marry:~~

~~(a) To any male or female under the age of 18 years upon application of both parties sworn under oath that they are the expectant parents of a child; or~~

~~(b) To any female under the age of 18 years and male over the age of 18 years upon the female's application sworn under oath that she is an expectant parent.~~

~~(4)~~ A ~~No~~ license to marry may not ~~shall~~ be issued ~~granted~~ to any person under the age of 18 ~~16~~ years~~, with or without the consent of the parents, except as provided in subsections (2) and (3)~~.

Section 2. Subsection (1) of section 741.04, Florida Statutes, is amended to read:

741.04 Marriage license issued.—

(1) A ~~No~~ county court judge or clerk of the circuit court in this state may not ~~shall~~ issue a license for the marriage of any person unless there is ~~shall be~~ first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers or any other available identification numbers of each party, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both ~~such~~ parties shall be over the age of 18 years~~, except as provided in s. 741.0405;~~ and unless one party is a male and the other party is a female. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996,

each party is required to provide his or her social security number in accordance with this section. The state has a compelling interest in promoting not only marriage but also responsible parenting, which may include the payment of child support. Any person who has been issued a social security number shall provide that number. Disclosure of social security numbers or other identification numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement. Any person who is not a citizen of the United States may provide either a social security number or an alien registration number if one has been issued by the United States Bureau of Citizenship and Immigration Services. Any person who is not a citizen of the United States and who has not been issued a social security number or an alien registration number is encouraged to provide another form of identification. Nothing in this subsection shall be construed to mean that a county court judge or clerk of the circuit court in this state shall not issue a marriage license to individuals who are not citizens of the United States if one or both of the parties are unable to provide a social security number, alien registration number, or other identification number.

Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR LIZBETH BENACQUISTO
27th District

September 27, 2017

The Honorable Greg Stuebe
Senate Judiciary, Chair
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 140- An act relating to marriage of minors

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 140, Relating to marriage of minors, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 27

Cc: Tom Cibula

REPLY TO:
☐ 2310 First Street, Unit 305, Fort Myers, Florida 33901 (239) 338-2570
☐ 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/24/17
Meeting Date

SB 140
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Child marriage

Name Jeanne Smoot

Job Title Senior Counsel for Policy - Tahirih (Tah-hooray) Justice Ctr

Address 6402 Arlington Blvd. Ste 300
Street

Falls Church VA 22042
City *State* *Zip*

Phone 571-282-6196

Email jeanne@tahirih.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Tahirih (Tah-hooray) Justice Center

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

10-24-17
Meeting Date

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

140
Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 625 E. Brevard St
Street

Phone 850-251-4280

Tallahassee FL 32308
City *State* *Zip*

Email barbaradevane1@Yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL NOW

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)

10.9.17
Meeting Date

SB # 140
Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name Sherrie Von Johnson

Job Title Teacher / Healthcare Provider

Address 400 Capital Circle SE
Street

Phone (850) 320-7867

Tall FL 32301
City *State* *Zip*

Email [illegible]

Speaking: ☑ For ☐ Against ☐ Information

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

Representing S Von Foundation

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

10/24/17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 140

Meeting Date *Bill Number (if applicable)*

Topic Underage Marriage *Amendment Barcode (if applicable)*

Name Bonnie Sockel-Stone

Job Title Attorney

Address 150 West Flagler Street Phone 305 577 0950

Street

Miami FL 33130 Email BonnieS@stermanlaw.com

City *State* *Zip*

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

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

Representing Family Law Section 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)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/24/17
Meeting Date

SB 140
Bill Number (if applicable)

Topic Child marriage

Amendment Barcode (if applicable)

Name Jeanne Smoot

Job Title Senior Counsel for Policy - Tahirih (Tah-hooray) Justice Ctr

Address 6402 Arlington Blvd. Ste 300
Street

Phone 571-282-6196

Falls Church VA 22042
City *State* *Zip*

Email jeanne@tahirih.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Tahirih (Tah-hooray) Justice Center

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ 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)

10/24/17
Meeting Date

SB 140
Bill Number (if applicable)

Topic Child marriage

Amendment Barcode (if applicable)

Name Sandy Skelaney

Job Title Program Manager, Initiative for Gender Violence Prevention

Address Florida Int'l Univ 11200 SW 8th street
Street

Phone (786) 390-7322

Miami FL 33199
City *State* *Zip*

Email SSkelane@fiu.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Int'l University

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ 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)

10/24/2017
Meeting Date

SB 140
Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name Fraidy Reiss

Job Title Exec. Dir., Unchained At Last

Address 208 Lenox Ave #189
Street

Phone 908 481 4673

Westfield, NJ 07090
City *State* *Zip*

Email fraidy@unchainedatlast.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Unchained At Last

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

10/14/17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB140

Meeting Date *Bill Number (if applicable)*

Topic Child Marriage in Florida *Amendment Barcode (if applicable)*

Name Allison Sardinas

Job Title Assistant @ the Center For Women's & Gender Studies

Address Florida International University Phone 7863760676

Street 11200 SW 8th St

Miami FL 33199 Email agard037@fiu.edu

City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information Waive Speaking: [ ] In Support [ ] Against

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

Representing Florida International University

Appearing at request of Chair: [ ] Yes [X] 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.

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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)

10/24/2017
Meeting Date

SB 1410
Bill Number (if applicable)

Topic End Child Marriage

Amendment Barcode (if applicable)

Name Kelly Flannery

Job Title Fellow

Address 350 5th Ave. 34th Floor
Street

Phone 610 322 1249

New York NY 10118
City *State* *Zip*

Email FlanneK@HRW.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Human Rights Watch

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ 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)

10/24/17
Meeting Date

SB 140
Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name Amanda Parker

Job Title Senior Director, AHA Foundation

Address 90 Alton Rd
Street

Miami Beach FL 33139
City *State* *Zip*

Phone 917-821-5542

Email amanda@theahafoundation.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AHA Foundation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ 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)

24 OCT 2017
Meeting Date

SB 140
Bill Number (if applicable)

Topic CHILD MARRIAGE

Amendment Barcode (if applicable)

Name HEATHER BARR

Job Title SR RESEARCHER

Address 350 5TH AVE, 34TH FL
Street

Phone 646-479-2703

NEW YORK, NY 10118
City *State* *Zip*

Email BARRH@HRW.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.

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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)

10/24/2017
Meeting Date

Topic _____ Bill Number 140 *(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.

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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)

10/24/17
Meeting Date

140
Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name Terry Sanders

Job Title President, Florida NOW

Address 181 Sand Dollar Rd.
Street

Phone 321-615-1334

Indialantic FL 32903
City *State* *Zip*

Email TerrySand1@yahoo.com

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

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

Representing Florida Nat'l Organization for Women

Appearing at request of Chair: [ ] Yes [X] 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.

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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)

10/24/17
Meeting Date

140
Bill Number (if applicable)

Topic CHILD MARRIAGE (MINORS)

Amendment Barcode (if applicable)

Name ROY MILLER

Job Title PRESIDENT

Address 111 S. MAGNOLIA
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-425-2600

Email RMILLER@IAMFORKIDS.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing THE CHILDREN'S CAMPAIGN

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 146
INTRODUCER:	Senator Bean
SUBJECT:	Appointment of Attorneys for Dependent Children with Special Needs
DATE:	October 23, 2017
REVISED:	

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

I. Summary:

SB 146 authorizes the payment of certain due process costs when a court-appointed pro bono[1] attorney represents a dependent child with special needs. These due process costs are the costs of court reporting and transcriptions, expert witnesses, mental health professionals, reasonable pretrial consultation fees and costs, and certain travel expenses.

Currently, a court-appointed pro bono attorney is not entitled to funds for due process costs. In contrast, a private court-appointed attorney who is paid for his or her services in these cases is permitted to access due process costs. Under the bill, the Justice Administrative Commission will review and pay due process costs for pro bono attorneys as it does for compensated attorneys under current law.

II. Present Situation:

Legal Representation for Dependent Children With Special Needs

In 2014, the Legislature determined that a dependent child with certain special needs is entitled to legal representation during all phases of a dependency case. This legal representation begins as early as when the child is removed from the home or the initial appointment is made and continues through any appellate proceedings. The continuous legal representation permits the attorney to address the child's medical and related needs and ensures that the appropriate services and supports are obtained for the child to live successfully in the community.[2]

[1] Pro bono is from the Latin phrase *pro bono publico* meaning "for the public good" and has come to mean uncompensated legal services performed for the public good. BLACK'S LAW DICTIONARY 1220 (10th ed. 2014).
[2] Section 39.01305(1)(a)2., F.S.

Dependent Children with Special Needs[3]

Section 39.01305(3), F.S., requires the court to appoint an attorney to represent a dependent child with certain special needs. A child has a qualifying special need if the child:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed, but does not take, a psychotropic medication;
- Is diagnosed with a developmental disability;[4]
- Is being placed or considered for placement in a residential treatment center; or
- Is a victim of human trafficking.[5]

Procedure for Appointing an Attorney

The statutes establish priorities for selecting a court-appointed attorney to represent a dependent special needs child. In an effort to minimize expenses to the state, a pro bono attorney must first be sought to represent the child before a paid attorney or organization may be requested.

The court must initially request the Statewide Guardian Ad Litem Office to recommend an attorney who is willing to serve without compensation. If a pro bono attorney is available to serve within 15 days after the court's request, the court must appoint that attorney, thereby avoiding costs.[6] However, if the Statewide Guardian Ad Litem office is unable to recommend an attorney within the 15-day period, the court may appoint a compensated attorney within that time period.[7] Once the court appoints an attorney, the appointment continues until the attorney is permitted to withdraw, is discharged by the court, or the case is dismissed.[8]

An attorney or legal aid organization that is willing to serve for compensation is selected from a registry of names maintained by the chief judge in the circuit. These attorneys and organizations must be adequately compensated and also provided with access to funding for expert witnesses, depositions, and other costs of litigation. The legal fees and compensation for litigation costs are subject to appropriations and subject to review by the Justice Administrative Commission[9] for

[3] Staff attempted to determine the current number of children who are classified as a "dependent child with disabilities." The information is not available from the Department of Children and Families. This number fluctuates regularly as children come in and out of care. However, recent data, collected at various times, has stated that approximately 12 children were in skilled nursing facilities, 265 children were diagnosed with developmental disabilities, and 130 children were in residential treatment centers. Staff was unable to discern how many children were not taking prescribed psychotropic medication or were victims of human trafficking.

[4] A developmental disability is a disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. s. 393.063(12), F.S.

[5] Section 787.06(2)(d), F.S., defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person to exploit that person.

[6] Section 39.01305(4)(a), F.S.

[7] *Id*.

[8] Section 39.01305(4)(b), F.S.

[9] The Justice Administrative Commission administratively serves the offices of the state attorneys, public defenders, and other judicial-related offices. The commission processes accounting, budget, financial, and human resource transactions for these offices. The commission also processes bills for services provided by private court-appointed attorneys who represent indigent defendants as well as for associated due process service vendors such as court reporters, investigators, and expert

reasonableness. The attorney fees may not exceed $1,000 per year per child.[10] There is no statutory cap on the amount of due process costs that may be expended, but their availability along with attorney fees is subject to appropriations expressly made for those purposes.[11]

Due Process Costs

These litigation costs are often referred to as "due process costs" and are defined to include the costs of court reporting and transcripts, witnesses, mental health professionals, reasonable pretrial consultation fees and costs, and certain travel expenses.[12] The attorney who serves for compensation is paid for his or her legal services and the accompanying due process costs are reviewed and paid by the Justice Administrative Commission. In contrast, there is no statutory authority to pay the due process costs incurred when a pro bono attorney is involved. Accordingly, the pro bono attorney is not paid for his or her legal service and the attendant costs are not paid by the Justice Administrative Commission.

The Justice Administrative Commission[13] reports the following fiscal year payments for due process costs and attorney fees for dependent children with special needs:

Fiscal Year	Due Process Costs	Attorney Fees
2014-2015	$6,402	$761,024
2015-2016	$3,606	$1,133,682
2016-2017	$16,998	$1,642,510
Total	$27,006	$3,537,216

III. Effect of Proposed Changes:

SB 146 authorizes a court-appointed pro bono attorney who represents a dependent child with special needs to receive funding for due process costs. Currently, payment of these expenses is not authorized by statute. In contrast, payment of due process costs is authorized when the costs are incurred by a court-appointed private attorney whose legal fees are paid by the state. Payment of the case-related due process costs is subject to appropriations and review by the Justice Administration Commission.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

witnesses. According to commission staff, due process costs in private court-appointed cases may either be paid directly to the due process service provider or paid by the attorney and then reimbursed by the commission.

[10] Section 39.01305(5), F.S.

[11] Section 39.01305(9), F.S.

[12] Section 29.007(3)-(7), F.S.

[13] Justice Administration Commission, *Children With Special Needs - Cases Appointed and Payment by Fiscal Year as of September 8, 2017* (on file with the Senate Committee on Judiciary).

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 pro bono attorneys are currently paying due process costs from their own resources, this measure could result in savings to them because the due process costs will now be paid by the Justice Administrative Commission.

C. Government Sector Impact:

According to the Justice Administrative Commission, this bill has an indeterminate fiscal impact on the Commission.[14] However, by making funding for due process costs available to pro bono attorneys, more attorneys may volunteer to represent children with special needs. An increased availability of pro bono attorneys may reduce expenditures on compensated attorneys.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.01305 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.

[14] Justice Administrative Commission, *Bill Analysis for Senate Bill 146* (Sept. 5, 2017) (on file with the Senate Committee on Judiciary).

B. Amendments:

None.

By Senator Bean

4-00234-18 2018146__

A bill to be entitled

An act relating to appointment of attorneys for dependent children with special needs; providing a short title; amending s. 39.01305, F.S.; requiring the payment of due process costs of litigation of all pro bono attorneys appointed to represent dependent children with certain special needs, subject to appropriations and review for reasonableness; providing an effective date.

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

Section 1. This act shall be called the "Pro Bono Matters Act of 2018."

Section 2. Subsection (5) of section 39.01305, Florida Statutes, is amended to read:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

(5) Unless ~~Except if~~ the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payment of attorney fees and case-related due process costs are ~~to an attorney is~~ subject to appropriations and ~~subject to~~ review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per

Florida Senate - 2018 **SB 146**

4-00234-18 2018146__

child per year.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: August 30, 2017

I respectfully request that **Senate Bill # 146**, relating to Appointment of Attorneys for Dependent Children with Special Needs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

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)

10/24/17
Meeting Date

SB 146
Bill Number (if applicable)

Topic Attorney for Dep. Children

Amendment Barcode (if applicable)

Name Nikki Fried

Job Title Attorney

Address 3980 W. Broward blvd
Street

Phone 954-734-3799

Ft. Fl 33312
City *State* *Zip*

Email nikki@gunnyflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida's Children First

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ 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)

10.24.17
Meeting Date

SPB 146
Bill Number (if applicable)

Topic Pro Bono Matters

Amendment Barcode (if applicable)

Name Alan Abramowitz

Job Title Executive Director

Address 600 S. Calhoun St.
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 922 7213

Email alan.abramowitz@gal.fl.gov

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

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

Representing Guardian ad Litem Program

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

Lobbyist registered with Legislature: [X] Yes [ ] 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)

10/24/2017
Meeting Date

Topic _____ Bill Number 146 *(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.

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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 186
INTRODUCER:	Senator Hutson
SUBJECT:	Resign-to-run Law
DATE:	October 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 186 requires a state or local officer who seeks a federal public office to submit his or her resignation at least 10 days before the first day of qualifying for the federal office if the terms of the two offices overlap. A state officer's qualifying for a federal office while not submitting this resignation constitutes an automatic, immediately-effective resignation from his or her office. A similar "resign-to-run" law already applies to state or local officers who seek another state, district, county, or municipal public office.

The only substantive difference between the current bill language and a pre-2008 resign-to-run law applicable to state or local officers seeking federal office is that under the bill the resignation deadline is 10 days before qualifying.[1] Under the pre-2008 law, an officer had until the time of qualifying to submit his or her resignation.

II. Present Situation:

The resign-to-run law requires a state or local officer to submit his or her resignation before qualifying for another state, district, county, or municipal public office if the terms of the offices overlap.[2] However, a state or local officer seeking a *federal* office is not required to resign before qualifying for a federal office having a term that overlaps that of his or her current office.

The resignation required of a state or local officer who seeks a state, district, county, or municipal public office having an overlapping term is irrevocable and must be submitted at least 10 days before the first day of the qualifying period for the office he or she intends to seek.[3] The

[1] This is the same deadline that is in the current resign-to-run law.

[2] Section 99.012(3), F.S.

[3] A candidate must "qualify" for federal, state, or multi-county public office by filing the necessary paperwork with, and paying the qualifying fee to, the Florida Secretary of State. This must be done within the qualifying period. For a candidate seeking federal office, this period begins on at the moment after noon on the 120th day before the primary election and ends

resignation need not be effective upon its submission, but it must be effective by the earlier of two dates: the date on which the officer would take the other office, if elected, or the date the officer's successor is required to take office.

A Resign-to-Run Law Formerly Applied to State Officers Seeking Federal Office

Through the end of 2007, state or local officers seeking an overlapping-term *federal* office were subject to a resign-to-run law that was similar to the current resign-to-run law.[4] However, effective January 1, 2008, the Legislature repealed the provision.

The 2008 change allows state senators and other state or local officers to qualify and run for a congressional office (U.S. Representative or U.S. Senator) without resigning from their current offices, regardless of whether the terms of the two offices would overlap. A run by a state officer seeking an overlapping-term federal office occurs most often in the case of an open congressional seat that is to be filled by a special election. If the officer wins the federal seat, a "domino effect" can result in multiple vacancies to be filled at historically low-turnout, special elections.[5] The multiple special elections drain state resources because the state must reimburse the affected counties for the expenses of conducting the special elections in many instances.[6]

Examples Demonstrating Issues Stemming from the Lack of a Federal-Office Provision

A plausible hypothetical example and past elections demonstrate how the lack of a resign-to-run law for state or local officeholders seeking federal offices may result in multiple special elections.

A Hypothetical Example

Assume, for example, that an incumbent U.S. Representative decides not to seek re-election, leaving an open seat at the upcoming 2018 general election and a state senator whose 4-year term ends in 2020 runs for the congressional seat. Under current law, this senator does not have an incentive to resign from his or her Senate seat unless he or she wins the election. And if he or she wins, the Governor must call a special election after the general election to fill the vacant Senate seat.[7] Then, one or more members of the Florida House of Representatives will likely resign and qualify to run for the Senate seat. As a result, the Governor must call another special election to

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at noon on the 116th day before the primary election. For a candidate seeking state or multicounty district office, the qualifying period begins at noon of the 71st day before the primary election and ends at noon on the 67th day before the primary election. Section 99.061, F.S. And primary elections occur on the Tuesday 10 weeks before a general election. Section 100.061, F.S. However, the dates of special primary elections and special general elections are set by the Governor, after consultation with the Secretary of State. Section 100.111(2), F.S.

[4] Chapter 2007-30, s. 14, Laws of Fla. The timeframe for submitting a resignation was slightly different than the one in current law; the resignation had to be submitted before qualifying (instead of 10 days before qualifying).

[5] Sometimes these special elections can be set to coincide with other elections, such as primaries and general elections; other times, they cannot.

[6] Section 100.102, F.S., requires the state to reimburse counties whenever "any special election or special primary election is held as required in s. 100.101 . . . ." Section 100.101, F.S., requires a special election for certain vacancies, such as a state legislative office or a congressional office, but not, for example, a U.S. Senate office. As to the costs themselves, if the special election can be run on another election date like a primary, then the additional costs are likely to be minimal, if any.

[7] Section 100.101(2), F.S.

fill any vacant *House* seat.[8] This cascade of vacant offices and special elections to fill the offices could continue down to the local level.

Examples from the Recent Past

Depending on the timing of a U.S. Senate or U.S. House vacancy, a state legislator who wins a federal election could have to resign during a legislative session, leaving constituents unrepresented in Tallahassee. This happened on April 13, 2010, when State Sen. Ted Deutch won a special election to fill the Florida 19th Congressional District seat vacated by former Rep. Robert Wexler. Sen. Deutch not only missed the last 2 weeks of the 2010 Regular Session, but his constituents remained unrepresented for the subsequent July 20 Special Session called by Governor Charlie Crist to propose a constitutional amendment to ban offshore drilling in state waters.[9] The office remained vacant until it was filled by Maria Lorts Sachs, who prevailed in the regular election in November, 2010.

Following the 2008 repeal of the resign-to-run law applying to state or local officers seeking federal office, staff was able to find one series of elections which occurred as a result of a state officer resigning only after winning a federal office.[10] This occurred when State Sen. Fredrica Wilson won a U.S. House seat in the 2010 general election.

III. Effect of Proposed Changes:

SB 186 requires a state or local officer who seeks a federal public office to submit his or her resignation before qualifying for the federal office if the terms of the two offices overlap. Thus, as to these candidates, the bill imposes the same "resign-to-run" requirement that already applies to state or local officers who seek another state, district, county, or municipal public office.

Specifically, a state or local officer seeking to run for federal office must submit an irrevocable resignation at least 10 days before the beginning of the qualifying period for the office sought. However, the resignation need not be effective until the earlier of the date the resigning officer would take office or the date the resigning officer's successor is required to take office. The bill further provides that the failure of a state officer to timely submit the resignation "constitutes an automatic, irrevocable resignation, effective immediately," from his or her current office.[11]

Regarding the bill's technical and mechanical provisions, they closely track those of the current resign-to-run law—e.g., to whom resignations are submitted, when the current offices are deemed vacant for purposes of subsequent elections, and who must send and receive notice of the resignation.

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[8] *Id.*

[9] Governor Crist called the special session for July 20, 2010, but the House of Representatives adjourned in less than 45 minutes after it convened. Associated Press, *Florida House quickly adjourns special session without voting on offshore drilling ban*, (July 20, 2010), FOX NEWS, http://www.foxnews.com/us/2010/07/20/florida-house-quickly-adjourns-special-session-voting-offshore-drilling-ban.html (last visited Oct. 17, 2017). Therefore, in this instance, Sen. Deutch's constituents did not appear to have been affected.

[10] The series of special elections included the Democratic Special Primary (Feb. 8, 2011) and Special General Election in State Senate District 33 (March 1, 2011) and the Democratic Special Primary in House District 103 (Feb. 8, 2011).

[11] Current law does not expressly state this is as consequence for a state officer who fails to resign before qualifying for another state, district, county, or municipal public office.

Lastly, the bill makes a conforming change to clarify that a state or local officer seeking to run for the office of U.S. President or Vice President must resign his or her office if the terms of the offices overlap.

Likely Impact of the Bill

It appears likely that the bill will decrease the occurrence of resignations by state officers, and thus the occurrence of special elections required to fill their offices and the offices of those who seek their offices—the "domino effect."

Effective Date

The bill takes effect upon becoming a law.

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:

Reducing the number of special elections for federal and state legislative races will reduce the need for campaign contributions and could adversely impact businesses that derive revenue from elections, such as campaign consultants, media outlets, and direct-mail operations. The fiscal impact is unknown but is expected to be minimal, given the relatively small number of special elections since a similar resign-to-run law was repealed in 2008.

C. Government Sector Impact:

The bill may reduce the need for the state to reimburse counties for the costs of conducting special elections resulting from the early departure of a current state officeholder who successfully runs for federal office. However, since the law took effect

in 2008, the state has reimbursed counties just over $1.7 million dollars for three special elections.[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 99.012 and 121.121.

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.

[12] E-mail to Jonathan Fox, Chief Attorney, Senate Ethics and Elections Comm. from Rebecca Grissom, Budget and Legislative Analyst, Florida Department of State (Feb, 24, 2011).

By Senator Hutson

7-00236B-18 2018186__

A bill to be entitled

An act relating to the resign-to-run law; amending s. 99.012, F.S.; requiring an officer who qualifies for federal public office to resign from the office he or she presently holds if the terms, or any part thereof, run concurrently; prescribing requirements for the written resignation; providing for an automatic irrevocable resignation in the event of noncompliance; specifying that a resignation creates a vacancy in office; revising an exception to the resign-to-run law; amending s. 121.121, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (4) through (7) of section 99.012, Florida Statutes, are renumbered as subsections (5) through (8), respectively, a new subsection (4) is added to that section, and present subsection (7) of that section is amended, to read:

99.012 Restrictions on individuals qualifying for public office.—

(4)(a) Any officer who qualifies for federal public office must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted at least 10 days before the first day of qualifying for the office he or she intends to seek.

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(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer shall submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer shall submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers shall submit their resignations to the Governor with a copy to the Department of State.

(f)1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

a. The officer before whom he or she qualified if the officer held an elective office; or

b. The officer or authority who appointed him or her if the officer held an appointive office.

(g) Notwithstanding the provisions of any special act to the contrary, with regard to an elective office, the resignation

creates a vacancy in office to be filled by election, thereby authorizing persons to qualify as candidates for nomination and election as if the officer's term were otherwise scheduled to expire. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(8) ~~(7)~~ Nothing contained in subsection (3) or subsection (4) relates to persons holding any federal office ~~or seeking the office of President or Vice President~~.

Section 2. Subsection (2) of section 121.121, Florida Statutes, is amended to read:

121.121 Authorized leaves of absence.—

(2) A member who is required to resign his or her office as a subordinate officer, deputy sheriff, or police officer because he or she is a candidate for a public office which is currently held by his or her superior officer who is also a candidate for reelection to the same office, in accordance with s. 99.012(5) ~~s. 99.012(4)~~, shall, upon return to covered employment, be eligible to purchase retirement credit for the period between his or her date of resignation and the beginning of the term of office for which he or she was a candidate as a leave of absence without pay, as provided in subsection (1).

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 12, 2017

I respectfully request that **Senate Bill #186**, relating to Resign-to-run Law, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

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)

10/24/2017
Meeting Date

Topic _____ Bill Number 186 *(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.

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:	SPB 7004
INTRODUCER:	Judiciary Committee
SUBJECT:	OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence
DATE:	October 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula		**JU Submitted as Committee Bill**

I. Summary:

SPB 7004 is based on an Open Government Sunset Review of two similar public records exemptions. These exemptions prohibit the disclosure of contact information maintained on a database by the Florida Association of Court Clerks and Comptrollers for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. The exemptions are scheduled for repeal on October 2, 2018.

The clerks are currently updating their database. Once completed, the database will include a process by which a petitioner is automatically notified that an injunction has been served. Although the automatic notification process is not yet in operation, the justification for the original exemption remains valid. Additionally, other public records exemptions protect this contact information. For these reasons, the bill repeals the automatic repeal of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

Accordingly, the Open Government Sunset Review Act does not require another review of the exemptions unless they are broadened or expanded.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included within this right of access.[2]

[1] FLA. CONST., Art. I, s. 24(a).
[2] *Id*.

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after the Legislature creates or substantially amends it. In order to save an exemption from repeal, the Legislature must reenact the exemption.[11]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[12] An exemption serves an identifiable purpose if it meets one of the following purposes and the

[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., Art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., Art. I, s. 24(c).
[10] Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.
[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[13]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety;[14] or
- It protects trade or business secrets.[15]

The OGSR also requires specified questions to be considered during the review process.[16] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[17] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[18]

Injunction for Protection

A person may file a petition for an injunction for protection against domestic violence,[19] or repeat, sexual, or dating violence.[20]

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[13] Section 119.15(6)(b)1., F.S.

[14] If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt. Section 119.15(6)(b)2., F.S.

[15] Section 119.15(6)(b)3., F.S.

[16] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[17] FLA. CONST., Art. I, s. 24(c).

[18] Section 119.15(7), F.S.

[19] Section 741.30(1), F.S., creates a cause of action for an injunction for protection against domestic violence. Section 741.30(1)(a), F.S., requires a petitioner to either be the victim of domestic violence or reasonably believe he or she is in imminent danger of becoming a victim.

[20] Section 784.046(2), F.S., creates a cause of action for an injunction for protection individually against repeat violence, dating violence, and sexual violence. Section 784.046(2)(a), F.S., requires a petitioner to either be the victim or the parent or guardian of a minor child who is a victim of repeat violence. Section 784.046(2)(b), F.S., requires a petitioner to either have reasonable cause to believe he or she is in imminent danger to another act of dating violence, whether or not he or she has previously been the victim of dating violence, or if a minor, be the parent or guardian of the minor. Section 784.046(2)(c), F.S., requires the petitioner to either be the victim of sexual violence, or a parent or legal guardian of a child victim living at home provided that the petitioner reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding against the respondent or that the respondent was sentenced to prison for the sexual violence and the term of imprisonment has, or is about to expire within 90 days after the filing of the petition.

Filing a petition for a protective injunction is a civil cause of action.[21]

Process for Injunction for Petition

Filing of the Petition

A person wishing to initiate an injunction for protection against domestic violence must file a sworn petition for the injunction at the clerk's office for the circuit court.[22] Clerks' offices must provide a simplified petition form for the injunction for protection, including instructions for the petitioner to follow.[23] A sample form for a petition for injunction for protection against domestic violence is provided in statute and requires:

- A detailed description of the respondent;
- The residential and employment address of the respondent;
- The relationship between the respondent and the petitioner;
- A detailed description of the violence or threat of violence;
- An indication of prior or pending attempts by the petitioner to obtain an injunction;
- An indication that minor children reside with the petitioner or that the petitioner needs the exclusive use and possession of the dwelling that is shared with the respondent; and
- The address of the petitioner.[24]

The form addresses whether the petitioner seeks an injunction providing a temporary parenting plan, including a temporary time-sharing schedule and temporary support for minor children.[25]

The form for the petition for injunction provides language authorizing a petitioner to provide his or her address to the court in a separate confidential filing, if necessary for safety reasons.[26] The clerk of the court must, to the extent possible, ensure the petitioner's privacy while completing the form for injunction for protection against domestic violence.[27]

A similar form, though more streamlined, is authorized for a petition for injunction for protection against repeat violence, sexual violence, or dating violence.[28] A petitioner may file a separate confidential filing of his or her address, just as for petitions based on domestic violence.[29]

Service of the Petition

The clerk of the court must furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or law enforcement agency of the county where the respondent

[21] *H.K. by & Through Colton v. Vocelle*, 667 So. 2d 892 (Fla. 4th DCA 1996).
[22] Sections 741.30(1) and 784.046(2), F.S.
[23] Sections 741.30(2)(c)2, and 784.046(3)(a), F.S.
[24] Section 741.30(3)(b), F.S.
[25] *Id*.
[26] *Id*.
[27] Section 741.30(2)(c)4., F.S.
[28] Section 784.046(4)(b), F.S., requires the petition to include the residential address of the respondent, a description of the violence perpetrated by the respondent, and an affirmation that the petitioner genuinely fears repeat violence by the respondent.
[29] *Id*.

resides or can be found.[30] The sheriff or other law enforcement agency must then personally serve the respondent the petition and other documents as soon as possible.[31]

The Court Process

Upon the filing of the petition, the court must hold a hearing as soon as possible.[32] If the court determines that an immediate and present danger of violence exists, the court may grant a temporary injunction. The temporary injunction may be granted in an ex parte hearing, pending a full hearing.[33] A temporary injunction is effective only for a period of up to 15 days, during which time the court generally must hold a full hearing.[34]

Service of the Injunction for Petition

Within 24 hours after the court issues an injunction for protection, the clerk of the court must forward a copy of the injunction to the sheriff to serve the petitioner.[35] Within 24 hours after the injunction is served on the respondent, the law enforcement officer must forward the written proof of service of process to the sheriff who has jurisdiction over the residence of the petitioner.[36]

Public Records Exemptions and Protections from Disclosure of Contact Information

A general public records exemption protects from disclosure any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime.[37] In addition to this general exemption, other public records exemptions protect the contact information of a petitioner who files a petition for an injunction for protection.

Separate Confidential Filing of Address with Injunction for Protective

The exemption that protects the contact information of a petitioner seeking an injunction applies if the person, for safety reasons, submits his or her address to the court in a separate confidential filing.[38]

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[30] Sections 741.30(8)(a)1., and 784.046(8)(a)1., F.S.
[31] Section 741.30(4), F.S.
[32] Sections 741.30(4) and 784.046(5), F.S.
[33] Sections 741.30(5)(a) and 784.046(6)(a), F.S. A temporary injunction is authorized in instances in which it appears to the court that an immediate and present danger of violence exists. If so, the court, may grant a temporary injunction at an ex parte hearing. Sections 741.30(5)(a) and 784.046(6)(a), F.S.
[34] Sections 741.30(5)(c) and 784.046(5)(c), F.S.
[35] Sections 741.30(8)(c)1., and 784.046(8)(c)1., F.S. The Legislature created both a Domestic and Repeat Violence Injunction Statewide Verification System and a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide System (Systems) within the Florida Department of Law Enforcement (FDLE). The Systems require the FDLE to maintain a statewide communication system to electronically transmit information on protective injunctions to and between criminal justice agencies. Sections 741.30(8)(b), and 784.046(80(b), F.S.
[36] Sections 741.30(8)(c)2., and 784.046(8)(c)2., F.S.
[37] Section 119.071(2)(j)1., F.S.
[38] The language authorizing a petitioner to submit his or her address in a separate confidential filing is contained in the actual petition form provided in sections 741.30(3)(b) and 784.046(4)(b), F.S.

Address Confidentiality Program

The Legislature enacted the Address Confidentiality Program (Program) to protect a victim of domestic violence by keeping his or her address confidential.[39] The program allows:

> [a]n adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated [to] apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.[40]

An application must include all of the following:

- A sworn statement by the applicant that the applicant has good reason to believe that the applicant, minor, or incapacitated person is a victim of domestic violence in fear of his or her safety.
- A designation of the Attorney General as agent for purposes of service of process and receipt of mail.
- The mailing address where the applicant can be contacted by the Attorney General and the phone number or numbers where the applicant can be called by the Attorney General.
- A statement that the new address that the applicant requests must not be disclosed as disclosure will increase the risk of domestic violence.
- The signature of the applicant and any person who assisted with the application, including the date of signature.[41]

A public records exemption for the Address Confidentiality Program makes exempt from disclosure addresses, telephone numbers, and social security numbers of program participants.[42] A limited exception authorizes disclosure of the information:

- To a law enforcement agency to assist in executing a valid arrest warrant;
- If directed by a court order, including to a person identified in the order; or
- After the exemption has been cancelled.[43]

The public records exemption under the Program also protects contact information for participants maintained by the supervisor of elections in voter registration and voting records. An exception is provided for disclosure to:

- A law enforcement agency to assist in serving an arrest warrant; or
- A person identified in a court order, if directed by the court order.[44]

[39] Section 741.403, F.S. Victims of stalking or aggravated stalking are also eligible to receive the benefit of the Address Confidentiality Program (s. 741.4651, F.S.).
[40] Section 741.403(1), F.S.
[41] Section 741.403(1)(a) through (e), F.S.
[42] Section 741.465(1), F.S.
[43] *Id*.
[44] Section 741.465(2), F.S.

The Office of the Attorney General provides training on the availability of the Address Confidentiality Program to local governments and non-profit organizations. The office estimates that it has trained individuals from approximately 100 local entities or organizations.[45]

Automated Process for the Clerk of the Court

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers to establish, subject to available funding, an automated process to provide notice to a petitioner that the injunction for protection has been served on the respondent.[46] Once the automated process is established, the petitioner may request an automated notice that the protective injunction has been served on the respondent. The notice will be sent within 12 hours after service and will include the date, time, and location where the officer served the injunction.

In 2012, the Legislature created a public records exemption relating to the automated process to protect the petitioner's contact information listed on the request to receive an automated notice.[47] The specific information protected from disclosure includes the petitioner's:

- Home or telephone number;
- Home or employment address;
- Electronic mail address; or
- Other electronic means of identification.[48]

The exemption protects the contact information from disclosure for 5 years.

In its statement of public necessity justifying the exemption, the Legislature explained that the contact information,

> if publicly available, could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally … it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.[49]

[45] The Office of the Attorney General notes that 1,176 victims of domestic violence, stalking, or aggravated stalking are currently participating in the Program. Under the Program, participants may use a mailing address established by the office. Mail received at the office for a participant is diverted to the Office of Victim Services, which then forwards the mail to an address of the participant. Once a person qualifies to participate, based on the office finding a reasonable belief that domestic violence, stalking, or aggravated stalking has occurred, the person may receive services for up to 4 years. After that time, the person may reapply for another 4-year eligibility. Email and phone conference with Andrew Fay, Office of the Attorney General (Aug. 16, 2017).
[46] Chapter 2011-187 (CS/CS HB 563); Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S.
[47] Chapter 2012-154, L.O.F. (HB 1193).
[48] Sections 741.30(8)(c)5.b., and 784.046(8)(c)5.b., F.S.
[49] Chapter 2012-154, L.O.F.

In 2017, the Legislature reviewed the exemptions in this bill pursuant to the Open Government Sunset Review Act.[50] As a result of the review, the Legislature delayed the automatic repeal of the exemption by 1 year to October 2, 2018.[51]

III. Effect of Proposed Changes:

This bill is based on a review by the staff of the Senate Judiciary Committee of two similar public records exemptions that are scheduled for repeal on October 2, 2018. The exemptions protect from public disclosure the contact information of a petitioner who requests an automated notice of the service of an injunction for protection against domestic violence, or repeat, sexual, or dating violence.

The Florida Association of Court Clerks and Comptrollers has not yet implemented the automated notification system.[52] Regardless, the justification for the exemption as is stated in the public necessity statement of the original public records bill remains valid. Additionally, other public records exemptions protect the contact information of a petitioner of an injunction for domestic violence, or repeat, sexual, or dating violence. For these reasons, the bill repeals the automatic repeal of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

By repealing the automatic repeal of the exemptions, the exemptions are no longer subject to a review under the Open Government Sunset Review Act, unless the exemptions are broadened or expanded.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This bill continues a current exemption but does not expand the scope of an existing public records exemption. Therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

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[50] See SPB 7028 (2017).
[51] Chapter 2017-65 L.O.F.
[52] The Florida Association of Court Clerks and Comptroller indicates that although planning for the development of the new system continues, the system has not yet been developed. E-mail from Melvin Cox, July 28, 2017.

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:

Current law requires automated notice to be provided to a petitioner who has requested notification within 12 hours after the law enforcement officer has served the injunction upon the respondent.[53] Representatives from the clerks of the court and the Sheriffs Association indicate that the 12-hour requirement may be impossible to meet, given that a delay exists between the time a law enforcement officer serves a respondent and delivers a copy of the served petition to the clerk. Moreover, if a law enforcement officer serves an injunction just before the weekend, a clerk may not be able to input the information on the Comprehensive Case Information System until the following week. These potential causes of delays in providing notifications may be resolved with the activation of the CCIS, particularly if law enforcement agencies are granted access to the system to upload notice that an injunction has been served, which will then cause an automated notice to be sent to the petitioner. If law enforcement agencies are not given access to CCIS, the Legislature may wish to revise the 12-hour requirement after the CCIS is implemented.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 741.30 and 784.046.

IX. Additional Information:

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

None.

[53] Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S., provide, "The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent."

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Judiciary

590-00603-18 20187004pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 741.30 and 784.046, F.S, relating to the exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and for other court actions related to the injunction which are held by clerks of the court and law enforcement agencies; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The

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injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing

that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original

notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Paragraph (c) of subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such

information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone

number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/24/2017
Meeting Date

Topic _____ Bill Number 7004 *(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.

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:	SPB 7006
INTRODUCER:	Judiciary Committee
SUBJECT:	OGSR/Florida False Claims Act
DATE:	October 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula		**JU Submitted as Committee Bill**

I. Summary:

SPB 7006 continues a public records exemption that is contained in the Florida False Claims Act. Maintaining the exemption encourages a private citizen to report fraud and facilitates the recovery of state funds and property that are taken by false claims or fraud.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the act has occurred.

It is necessary that the complaint and information held by the department remain confidential and exempt from public disclosure. In addition to helping the state recover monies and property, the broader reasons for maintaining the exemption are to:

- Protect the identity of a person who initiates a false claim action, often an employee of a defendant, while the claim is being investigated;
- Allow the department to privately investigate the merits of the claim to determine if the government will intervene, decline, or dismiss the case before any evidence is destroyed or any information becomes public that could unnecessarily harm the business reputation of the defendant; and
- Maintain the confidentiality of state information that is similarly shielded under a federal public records exemption, which, if disclosed in Florida, would compromise the confidentiality of the federal investigation.

The original exemption was enacted in 2013 and is scheduled for repeal on October 2, 2018, unless continued by the Legislature.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution

Under the Florida Constitution, the public is guaranteed the right of access to government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, unless the record is exempted or specifically made confidential.[1]

The public is also guaranteed the right to be notified and have access to meetings of any collegial public body of the executive branch of state government or of any local government.[2] The Legislature's meetings must also be open and noticed to the public, unless an exception is provided for in the Constitution.[3]

The Florida Statutes

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., contains the main body of public records laws and is known as the Public Records Act.[4] The Act deals with public records access and guarantees every person's right to inspect and copy any state or local government public record.[5] Section 286.011, F.S., which is often referred to as the state's sunshine law, requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[6] A violation of the Public Records Act may result in civil or criminal liability.[7]

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(b).
[3] *Id.*
[4] Additional public records laws are found throughout the Florida Statutes.
[5] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The public records chapter does not apply to legislative records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.
[6] Section 286.011(1) and (2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[7] Section 119.10, F.S.

Public Records Exemptions

Only the Legislature may create an exemption to public records or open meeting requirements.[8] An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law. The law must be passed by a two-thirds vote of each house of the Legislature.[9]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[10] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature.[11] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[12]

Open Government Sunset Review Act

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meeting exemptions.[13] The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. However, in order to save an exemption from repeal, the Legislature must reenact the exemption before it expires.[14]

The Sunset Review Act provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is written no broader than is necessary.[15] An exemption serves an identifiable purpose if it meets one of the stated requirements below *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. The exemption must:

- Allow the state or its political subdivisions to effectively and efficiently administer a program, which administration would be significantly impaired without the exemption;[16]

[8] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as exempt and confidential. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991). However, if the Legislature designates a record as confidential, the information is not subject to public inspection and may be released only to the organizations or persons designated in the statute. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[9] FLA. CONST., art. I, s. 24(c).

[10] If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[11] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

[12] *Id*.

[13] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[14] Section 119.15(3), F.S.

[15] Section 119.15(6)(b), F.S.

[16] Section 119.15(6)(b)1., F.S.

- Protect sensitive personal information that would be defamatory or damaging to someone's reputation or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[17] or
- Protect confidential information of entities including, but not limited to, trade or business secrets.[18]

The act also requires specified questions to be considered during the review process.[19] In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[20] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[21]

The Florida False Claims Act

Qui Tam Actions and the Relator

The Florida False Claims Act[22] authorizes two entities, either a private individual or the state,[23] to sue someone who allegedly files a false claim seeking payment or approval for payment from the state. The person who brings a false claims suit is referred to as the "relator." The action filed by the relator on behalf of the state is referred to as a "qui tam" proceeding.[24] Relators are entitled to a significant share of the settlement or proceeds when a recovery is made against a defendant.

The relator does not need to demonstrate that he or she has been harmed by the violator's actions to adequately state a cause of action. Quite often, the relator is aware of the false claim because

[17] Section 119.15(6)(b)2., F.S.
[18] Section 119.15(6)(b)3., F.S.
[19] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[20] FLA. CONST., art. I, s. 24(c).
[21] Section 119.15(7), F.S.
[22] Sections 68.081-68.092, F.S.
[23] For purposes of this act, the Department of Legal Affairs is authorized to bring an action, and in some limited circumstances, the Division of Financial Services may bring an action. See s. 68.083(1) and (4), F.S.
[24] "Qui tam" is an abbreviated phrase from the larger Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*." According to Black's Law Dictionary, it means "who as well for the king as for himself sues in this matter." It is a statutory action that permits a private individual to sue for a penalty, which will be divided between the government or some other public institution and the person who initiates the suit. BLACK'S LAW DICTIONARY (10th ed. 2014).

he or she was employed by the defendant or has knowledge of industry standards that were violated.

Once the department receives the complaint and accompanying information as discussed below, the department may intervene, decline to intervene, dismiss the action, or settle the case while the information is under seal without making a decision to intervene.

Filings

All qui tam actions must be filed in the Circuit Court of the Second Judicial Circuit, in and for Leon County, which is Tallahassee.[25] According to the clerk of court, 37 qui tam cases have been filed in Leon County since June 2013. There were 21 qui tam cases pending as of September 2017.[26]

Since the statute was rewritten in 2013, the Department of Legal Affairs estimates that it intervened in 10-20 cases, dismissed a small number of cases, and settled a number of cases before announcing a decision to intervene. The department's most common response is to decline to intervene in a case, which occurs in approximately 90 percent of the cases. The department estimates that more than 400 active qui tam cases have been filed on behalf of the state and are pending in either the Second Judicial Circuit of Leon County or any of the federal district courts across the nation. Medicaid fraud cases represent approximately 95 percent of the Florida False Claims Act cases.[27] In non-Medicaid cases, Florida received $38,087,788 under both the Florida and Federal False Claims Act between 2010 and 2016. This amount represents the total recovery before deductions were paid for the relator's share.[28]

History

The Legislature enacted the Florida False Claims Act in 1994 and modeled it after the Federal Civil False Claims Act.[29] The Florida act has been amended several times, most recently in 2013, to closely follow the Federal False Claims Act. The federal law was first enacted in 1863, partially because of bad mules and putrid provisions. While the Civil War was being fought, nascent defense contractors "sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunition, and rancid rations and provisions among other unscrupulous actions."[30] President Lincoln urged Congress to pass the earliest version of the federal false claim law, which became known as an "Informer's Law" or "Lincoln's Law" in an effort to prevent the Union Army from being defrauded.

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[25] Section 68.083(3), F.S.
[26] Email from John Mickler, Office of Gwen Marshall, Clerk of the Circuit Court and Comptroller for Leon County, Florida, (Sept. 6, 2017) (on file with the Senate Committee on Judiciary).
[27] Email from the Department of Legal Affairs (Sept. 7, 2017) (on file with the Senate Committee on Judiciary).
[28] Department of Legal Affairs, *Non-Medicaid FFCA Recoveries, Before Relator's Share* (Aug. 2017) (on file with the Senate Committee on Judiciary).
[29] 31 U.S.C. ss. 3729-3733. According to the Department of Justice, the statute has been amended by Congress several times and has been interpreted by federal courts on hundreds of occasions. U.S. Department of Justice, The False Claims Act: A Primer, https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf (last visited Oct. 16, 2017).
[30] Larry D. Lahman, "Bad Mules: A Primer on the Federal False Claims Act", 76 Okla. B. J. 901, 901 (2005), *available at* http://www.okbar.org/members/BarJournal/archive2005/Aprarchive05/obj7612fal.aspx (last visited Oct. 16, 2017).

Recoverable Awards, Costs, and Fees

At the core of the Florida Act is the relator's right to earn a substantial portion of the recovery against a defendant. This provides a relator tremendous financial incentive to report misconduct. It also provides the state an opportunity to be made whole when damaged by fraudulent actions it did not know were occurring.

An individual who successfully brings an action is entitled to receive a portion of the proceeds or settlement of the claim. The relator will receive at least 15 percent, but no more than 25 percent, of the proceeds of the action or a settlement of the claim if the department proceeds with the action.[31] A court may not award more than 10 percent of the proceeds if the action is based primarily upon publicly disclosed information.[32] If the department does not intervene and the relator proceeds alone, the relator may receive between 25 and 30 percent of the proceeds, as well as reasonable expenses incurred, plus reasonable attorney fees and costs. These amounts will be awarded against the defendant.[33] The awards might be substantial, but that is viewed as compensation to the relator who risks a job or possibly a career to bring a qui tam action.

In contrast, a violator is liable for a civil penalty of not less than $5,500 and not more than $11,000 and treble the amount of damages the state sustains because of the violator's actions.[34] Under limited circumstances, a court may reduce the damages to twice the amount of damages sustained by the state.[35] If the department does not intervene, the state files a notice of declination. At that point, the relator can then serve the complaint and proceed with an action and conduct discovery. If the defendant prevails, a court may award reasonable attorney fees and expenses if the court finds that the claim was "clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment."[36] The state is not liable for those costs if it does not prevail.

It is not essential that a relator be involved in a case in order for the state to proceed with an investigation and a lawsuit under the Florida act.[37] However, an action is characterized as a qui tam proceeding only when a private individual, and not the state, files the complaint. The department is not required to investigate a violation but "may" diligently investigate a violation.[38]

Pertinent Provisions

A person violates the Florida False Claims Act if he or she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made a false record or statement that is material to a false or fraudulent claim;

[31] Section 68.085(1)(a), F.S.
[32] Section 68.085(1)(b), F.S.
[33] Section 68.085(2), F.S.
[34] Section 68.082(2), F.S.
[35] Section 68.082(3), F.S.
[36] Section 68.086(2), F.S.
[37] Section 68.083(1), F.S.
[38] *Id*.

- Conspires to make a false claim;
- Possesses property or money to be used by the state and knowingly delivers or causes to be delivered less than the total property or money;
- Is authorized to make or deliver a document that certifies receipt of property for the state and with the intent to defraud the state, makes or delivers the receipt without knowledge that the information on the receipt is true;
- Knowingly buys or receives, as a pledge or obligation of a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly makes a false record or statement that is material to an obligation to pay the state or knowingly conceals or improperly avoids or decreases an obligation to pay or transmit money or property to the state.[39]

Relevant Portions for Sunset Review Purposes

This sunset review is prompted by the following statute:

> Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.[40]

Accordingly, and for purposes of this sunset review, it is necessary to focus on the two areas that involve the confidential and exempt provision: first, the complaint that is filed by a private individual who initiates the lawsuit; and second, the information, or supporting evidence, held by the department during an investigation.

Complaint

When the relator files a complaint, the statute requires that it be identified as a qui tam action and be filed in the Circuit Court of the Second Judicial Circuit, in and for Leon County.[41] The seal provision applies only to complaints filed by private citizens in qui tam actions. The seal does not apply to a complaint filed by the Department of Legal Affairs or the Department of Financial Services. Once the complaint is filed, a copy of the complaint and any written disclosure of substantially all material evidence and information the relator possesses must be immediately served on the Attorney General and on the Chief Financial Officer. The Department of Legal Affairs, or in limited circumstances, the Department of Financial Services,[42] may elect to intervene and proceed with the action on behalf of the state within 60 days after it receives both

[39] Section 68.082(2), F.S.
[40] Section 68.083(8)(a), F.S.
[41] Section 68.083(3), F.S.
[42] The Department of Financial Services is authorized to take over a case when a person brings an action based upon the facts of a pending investigation conducted by the Department of Financial Services. When that happens, the Department of Financial Services must notify the Department of Legal Affairs in writing that it is conducting the investigation and will take over the action. This does not happen often. The Department of Legal Affairs is generally the "department" mentioned in this statute.

the complaint and the material evidence and information.[43] The department also has the authority to voluntarily dismiss an action over the objections of the relator.[44]

While the Florida False Claims Act assumes that a complaint is filed under seal, there is no directive in the statute to do so. A later reference in the statute mentions a 60-day seal and assumes that a 60-day seal period has been authorized. In contrast, the federal act states that the complaint is filed in camera and will remain under seal for 60 days.[45] To remedy this situation, Judge Jonathan Sjostrum, Chief Judge of the Second Judicial Circuit, issued an administrative order in 2016 addressing and clarifying the initial state sealing. The administrative order provides that the clerk will seal the entire case file for 90 days. There is no need for an initial motion to seal the case file. If the Attorney General's Office does not request an extension of the seal within that 90 day period after the case is filed, the clerk will make public the entire case file unless the court has previously entered an order sealing all or part of the case file. If the Attorney General's Office files a timely motion to extend the seal period, the clerk will keep the entire file sealed pending the ruling on the motion. This complaint is placed under seal when it is filed.[46] If a false claim action is filed by the Attorney General or the Chief Financial Officer and no relator is involved, the complaint is not filed under seal.

Information

The "information held by the department pursuant to an investigation" refers to information held by the Department of Legal Affairs but not the Department of Financial Services.[47] The information is derived from two sources. The first source is the information or supporting documents that the relator's attorney serves on the department as proof of fraud. This is often referred to as a disclosure statement. The disclosure statement is a narrative detailing what the relator knows. In practical terms, it is a specific and particular road map full of information that the state may follow in establishing the government's case for fraud. Some examples include fraudulent billing records or inflated medical billing codes that are overstated in an effort to obtain a higher diagnosis code in order to receive greater reimbursement from Medicaid. The disclosure statement is not provided to the clerk when the complaint is filed.

The second source of material is the information discovered by the department during the course of its investigation. Only the Department of Legal Affairs may conduct discovery proceedings and the relator is not authorized to take discovery during the investigation by the department. Similarly, the authority to request an extension of the 90-day seal while pursuing an investigation is given to department, not the relator, although the relator may object.

[43] Section 68.083(3), F.S.
[44] Section 68.084(2)(a), F.S.
[45] 31 U.S.C. 3730(2).
[46] *In Re: Qui Tam Cases Under the Florida False Claims Act*, Admin. Order No. 2016-01 (Fla. 2nd Cir. Ct., Jan. 26, 2016) (on file with the Senate Committee on Judiciary).
[47] The Department of Financial Services relies on s. 17.0401, F.S., to maintain the confidentiality and exemptions for its work. When Medicaid fraud is being investigated, the Department of Legal Affairs relies on the confidential and exempt provisions found in s. 409.913(12), F.S.

Time Periods for Seal and Exemption

Qui tam actions are protected from public access as long as false claim violations are being investigated by the department to determine whether the state should intervene in the relator's case. During this period, the complaint is under seal and the information is confidential and exempt. At this point, the defendant should have no knowledge that it is being investigated for fraudulent behavior. As mentioned above, the Second Judicial Circuit administrative order provides that the complaint is initially under seal for 90 days. For good cause shown, the department may request the court to extend the seal period. Extensions of the seal period are often requested by the department and granted by the court. The extensions are generally requested to grant the department additional time to investigate possible fraud charges.

Either the Department of Legal Affairs or the Department of Financial Services, whichever is appropriate, may elect to intervene and proceed with a suit on behalf of the state within 60 days after it receives the complaint and the material evidence and information.[48] Before the 60-day period or any extensions expire, the department must proceed with an action, which is conducted by the department on behalf of the state or notify the court that it declines to take over the action which allows the relator to conduct the action on behalf of the state.[49] When the state chooses not to intervene, it is often because the evidence in the case is not strong enough, the existing workload and limited resources prevent it, or the amount of the recovery does not justify pursuing the case. As a practical matter, very few relators proceed of their own accord because the costs of conducting an investigation and underwriting an extensive lawsuit are prohibitive.

Information made confidential and exempt is no longer confidential and exempt after the investigation is complete unless the information is protected in some other way by a different statute. An investigation is considered complete and the information becomes public when the department files an action or closes its investigation without filing an action or the qui tam action is unsealed or voluntarily dismissed before it is unsealed.[50]

Jurisdiction and Subject Matter Areas

While a few cases arise solely under the Florida False Claims Act and are filed in Leon County, the majority of cases are filed in federal district court and the Florida claim is a state pendent claim.[51] By adding the Florida count in the federal complaint, the relator is allowed to access money awarded to the state if a recovery is made.

Many false claim cases arise in the healthcare industry and involve Medicare and Medicaid fraud[52] as well as in the pharmaceutical industry. Other fraudulent schemes involve fraudulent

[48] Section 68.083(3), F.S.
[49] Section 68.083(6), F.S.
[50] Section 68.083(8)(c) and (d), F.S.
[51] Black's Law Dictionary explains that "pendent jurisdiction" arises when a plaintiff brings a lawsuit in federal court and claims that the defendant, in a single transaction, violated both federal and state law. The federal court has jurisdiction over the federal claim but also has jurisdiction to hear the state claim that is pendent to the federal claim. But for the federal claim, the court would not have jurisdiction over the state claim. BLACK'S LAW DICTIONARY (10th edition, 2014).
[52] The Department of Legal Affairs has a Medicaid Fraud Control Unit that exclusively investigates violations of the Medicaid statutes. The public records exemption for those investigations are controlled by a separate statute, s. 409.913(12),

billing, issues involving durable medical equipment, illegally marketing prescription drugs and kickbacks, defective testing, misrepresenting the value of imported goods for tariff purposes, inflated billing for work performed, failing to report known product defects, winning a contract by using kickbacks or bribes, and forging signatures.[53]

Staff Research of Practitioners and Interested Parties

In an effort to survey people for this report who have experience with these confidential and exempt qui tam provisions, staff contacted 22 individuals and organizations. This included members of the Attorney General's office, the Chief Financial Officer's staff, Second Judicial Circuit judges, attorneys who litigate in this area and represent the relator or the defendant, a former U.S. Attorney, and several former assistant U.S. Attorneys who once litigated for the federal government but currently work in private practice representing relators and defendants.[54] Of that total, 14 supported continuing the exemption, 1 supported repeal, 1 judge was neutral due to a lack of experience, 1 organization was neutral, and 5 either expressed no opinion or did not respond.

Reasons Given for Continuing the Exemptions

The most common reasons given for continuing the exemption are that the exemption:

- Protects the identity of a person who reports a false claim, often an employee of a defendant, while the claim is being investigated.
- Encourages more relators to come forward with allegations of fraudulent conduct because they know that their identity is protected and their risk of retaliation from the defendant is reduced.
- Provides a financial incentive for people with unique inside knowledge of an industry to expose fraud and assist the state in recovering damages caused by a defendant.
- Delays service of process on a potential defendant during the seal period so that the defendant is not alerted to the allegations before a thorough investigation is conducted by the department.
- Avoids alerting the defendant that the department is conducting an investigation, thereby reducing the likelihood that the defendant will misplace or destroy incriminating evidence or flee the jurisdiction.
- Encourages witnesses to give full and accurate statements of their knowledge when given confidentiality.
- Allows the government to privately investigate the merits of a claim, without public pressure, before deciding whether to intervene or dismiss a case.
- Protects the reputation of a defendant while a claim is being investigated because there is no public accusation of wrongdoing and no public stigma that could negatively impact the

F.S. Similarly, when the Chief Financial Officer conducts an investigation of fraud allegations, the office also relies on a separate public records exemption to maintain the confidentiality of its work, s. 17.0401, F.S.

[53] Taxpayers Against Fraud, *What is the False Claims Act?* Available at https://taf.org/Resources_by_Topic/FAC__False_Claims_Act/Overview/Public/Resources_by_Topic/FCA__False_Claims_Act/Overview.aspx?hkey=661e1890-336d-42e9-bbb6-f4933a685435.

[54] It appears that the majority of Florida attorneys who represent relators in these actions reside in South Florida while a smaller number reside in central or north Florida.

defendant's business. Some have suggested that publicly disclosing that a defendant is being investigated often amounts to using the law as an economic weapon.
- Deters future misconduct by demonstrating that fraudulent behavior can be reported and cost the defendant thousands and even millions in fines and penalties.
- Maintains the reciprocal shield of federal and state public records exemptions which protects sensitive information from disclosure during an investigation.

According to several litigators, this last point is extremely important. If Florida's act did not have the two public records exemptions that the federal act contains, the federal government would not be inclined to permit the state to join in cases that involve violations of both federal and Florida law. While the federal exemptions would protect certain confidential information, the state would be compelled to turn over the state information if there were no seal or exemption. The information under federal seal would be breached and the investigation damaged. This would be harmful to a federal or multi-state investigation. Additionally, if Florida were not permitted to join in federal suits, Florida would not be allowed to share in the financial recovery, thereby potentially losing millions of dollars in revenue.

From a procedural standpoint, it is difficult to understand how the state statute would work in federal-state cases if only the federal information was protected but the state information was open for inspection. The disclosure of state information would negatively affect the federal claims. Repealing the Florida public records exemption would likely render state-federal cooperation impossible. The situation would be equally complicated if other states were joined in a lawsuit and those states had confidentiality provisions. To repeal the Florida public records exemption would make information that is confidential in other states available to the public in this state.

Reason Given for Repealing the Exemptions

The survey respondent who supports repealing the public records exemption stated that the exemption places the defendant at a distinct disadvantage. While the state may spend months secretly investigating a claim and gathering evidence, the defendant is unaware that a legal action is being prepared against it. This secrecy is disconcerting to a defense lawyer. It is then an uphill battle for the defendant to gather information and gain equal footing with the state.

The respondent said that it would seem a fair balance to allow the defendant to be made aware of the proceedings when the complaint is filed under seal and the claim is being investigated. This would put the parties on equal terms and allow an exchange of information while an investigation is occurring. The playing field would then be level.

Conclusion and Recommendation

Based upon a review of this public records exemption under the Open Government Sunset Review Act and discussions with interested parties and offices, the professional staff of the Judiciary Committee recommends that the Legislature retain the public records exemption established in s. 68.083(8)(a), F.S. It is in the state's best interests to continue the exemption to encourage private citizens to report fraud and facilitate the recovery of state funds or property. The exemption protects the identity of the relator and preserves the integrity of the false claims investigation while the facts are being reviewed by the department. Maintaining the exemption

also keeps Florida law consistent with the confidentiality provisions of the Federal False Claims Act.

If this exemption is not reenacted, information would be disclosed which would jeopardize the state's ability to investigate false claims against the state. The identities of both the relator who brings the suit and the defendant who is being investigated would be revealed.

Finally, this public records exemption is narrowly tailored and sufficiently limited in its duration to meet the state's interest. The seal period is not indefinite. Under the judicial administrative order mentioned earlier, the initial seal period is 90 days and can be extended only by an order of the court. When the Department of Legal Affairs notifies the court of its decision to intervene or decline, the clerk of the court will make the entire file public.

III. Effect of Proposed Changes:

This legislation continues a public records exemption that was created in 2013 and is subject to repeal on October 2, 2018. The exemption protects from disclosure the complaint and information held by the Department of Legal Affairs during an investigation into a violation of the Florida False Claims Act when initiated by a private individual in a qui tam proceeding.

Section 1 amends s. 68.083(8)(a), F.S. to remove the scheduled repeal of the public records exemption.

Section 2 provides that the bill takes effect October 1, 2018.

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:

The bill, by preserving the public records exemption, will continue to protect the identity of relators who seek to recover state funds or property under the Florida False Claims Act. This protection appears to be a key financial feature that encourages relators to file suits.

C. Government Sector Impact:

By preserving the public records exemption and protecting the identity of relators, the state will continue to recover funds or property under the Florida False Claims Act. If the exemption were not continued, the state might recover less money.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 68.083, 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.

FOR CONSIDERATION By the Committee on Judiciary

590-00557-18 20187006pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 68.083, F.S., relating to an exemption from public record requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the Florida False Claims Act; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 68.083, Florida Statutes, is amended to read:

68.083 Civil actions for false claims.—

(8)(a) Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/24/2017
Meeting Date

7006
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

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 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY
11th District

October 23, 2017

Senator Greg Steube, Chair
Banking and Insurance Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Steube:

Due to a scheduling conflict and traveling back to my district, I am respectfully requesting an excused absence from the Committee on Judiciary on Tuesday, October 24, 2017.

Thanks so very much for excusing my absence.

Sincerely,

Randolph Bracy
Florida Senate, District 11

REPLY TO:
☐ 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

COMMITTEES:
Education, Vice Chair
Government Oversight & Accountability, Vice Chair
Appropriations Subcommittee on the Environment and Natural Resources
Appropriations subcommittee on General Government
Agriculture
Judiciary

JOINT COMMITTEES:
Joint Legislative Auditing Committee, Alternating Chair

October 23, 2017

Chair Greg Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Judiciary

Dear Chair Steube,

I am respectfully requesting an excused absence from the Judiciary committee meeting on October 24, 2017, scheduled from 3:00pm to 5:00pm.

I appreciate your consideration of this request and I look forward to working with you and the Judiciary committee in the future. If you have any questions or concerns, please do not hesitate to call me directly.

Thank you,

Debbie Mayfield

Senator Debbie Mayfield
District 17

Cc: Tom Cibula, Joyce Butler, Libby Bolles, Alex Blair

REPLY TO:
☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Judiciary Committee **Judge:**

Started: **10/24/2017 3:02:37 PM**
Ends: **10/24/2017 4:16:21 PM** **Length: 01:13:45**

3:02:39 PM Meeting called to order by Chair Steube
3:02:39 PM Roll call by Administrative Assistant Joyce Butler
3:02:49 PM Quorum Present
3:03:01 PM Senators Bracy and Mayfield are excused
3:03:11 PM Comments from Chair Steube
3:03:23 PM Introduction of Tab 2 by Chair Steube
3:03:27 PM Explanation of SB 34. Relief of Shuler Limited Partnership by the Department of Agriculture and Consumer Services
3:05:18 PM Gary Hunter waives in support
3:05:24 PM Closure waived
3:05:27 PM Roll call on SB 34 by Administrative Assistant Joyce Butler
3:05:55 PM SB 34 reported favorably
3:06:03 PM Introduction of SB 38 by Chair Steube
3:06:06 PM Explanation of SB 38 by Senator Simmons, Relief of Erin Joynt by Volusia County
3:07:59 PM Question from Senator Garcia
3:08:06 PM Response from Senator Simmons
3:09:09 PM Question from Chair Steube
3:09:15 PM Response from Senator Simmons
3:09:44 PM Follow-up question from Chair Steube
3:09:50 PM Response from Senator Simmons
3:10:05 PM Question from Senator Powell
3:10:16 PM Response from Senator Simmons
3:11:19 PM Speaker John Phillips, Esq. Attorney for the Joynt Family
3:12:12 PM Question from Chair Steube
3:12:30 PM Response from Attorney Phillips
3:12:46 PM Speaker Joseph Salzverg, Attorney/Lobbyist, Meadowbrook Insurance
3:15:58 PM Question from Senator Thurston
3:16:11 PM Response from Attorney Salzverg
3:16:45 PM Question from Chair Steube
3:16:50 PM Response from Attorney Salzverg
3:17:12 PM Follow-up question from Chair Steube
3:17:19 PM Response from Attorney Salzverg
3:18:06 PM Additional question by Chair Steube
3:18:14 PM Response from Attorney Salzverg
3:18:30 PM Follow-up question from Senator Thurston
3:18:44 PM Response from Attorney Salzverg
3:19:20 PM Question from Senator Gibson
3:19:29 PM Response from Attorney Salzverg
3:20:28 PM Follow-up question from Senator Gibson
3:20:36 PM Response from Attorney Salzverg
3:20:45 PM Comments from Chair Steube
3:21:56 PM Chris Dawson, Attorney, Volusia County waives in opposition

3:22:03 PM Patrick Bell, Lobbyist waives in support
3:22:11 PM Closure by Senator Simmons
3:22:58 PM Roll call by Administrative Assistant Joyce Butler
3:24:03 PM SB 38 reported favorably
3:24:26 PM Introduction of Tab 6, SB 186
3:24:33 PM Explanation of SB 186 by Senator Hutson, Resign-to-run Law
3:24:58 PM Question by Senator Gibson
3:25:27 PM Response from Senator Hutson
3:26:17 PM Follow-up question from Senator Gibson
3:26:23 PM Response from Senator Hutson
3:26:40 PM Follow-up question from Senator Gibson
3:26:46 PM Response from Senator Hutson
3:26:52 PM Brian Pitts waives in support
3:27:00 PM Closure waived
3:27:05 PM Roll call on SB 186 by Administrative Assistant Joyce Butler
3:27:26 PM SB 186 reported favorably
3:27:38 PM Introduction of Tab 4, Marriage of Minors by Chair Steube
3:27:41 PM Explanation of SB 140 by Senator Benacquisto, Marriage of Minors
3:28:59 PM Amendment Barcode #765610 explained
3:29:19 PM Comments from Chair Steube
3:29:26 PM Amendment Barcode #765610 adopted
3:29:40 PM Barbara Devane waives in support
3:29:47 PM Speaker Sherrie Von Johnson, Teacher, Healthcare Provider in support
3:30:32 PM Bonnie Sockel-Stone, Family Law Section, Florida Bar waives in support
3:30:44 PM Jeanne Smoot, Senior Counsel for Policy -Tahirih Justice Center waives in support
3:30:57 PM Speaker Sandy Skelaney, Program Manager, Florida International University in support
3:32:29 PM Speaker Fraidy Reiss, Executive Director, Unchained At Last in support
3:36:03 PM Speaker Allison Sardinas, Assistant for the Center for Women's & Gender Studies in support
3:36:59 PM Kelly Flannery waives in support
3:37:59 PM Amanda Parker, Senior Director, AHA Foundation waives in support
3:38:04 PM Heather Barr, Sr. Researcher waives in support
3:38:10 PM Speaker Brian Pitts, Justice-2-Jesus
3:44:35 PM Speaker Terry Sanders, President, Florida NOW in support
3:45:17 PM Roy Miller, President, The Children's Campaign waives in support
3:45:30 PM Comments from Senator Thurston
3:45:50 PM Question from Senator Thurston
3:46:02 PM Response from Bonnie Sockel-Stone
3:47:48 PM Follow-up question from Senator Thurston
3:48:13 PM Response from Ms. Sockel-Stone
3:49:47 PM Closure by Senator Benacquisto
3:50:04 PM Roll call on CS/SB 140 by Administrative Assistant Joyce Butler
3:50:41 PM CS/SB 140 reported favorably
3:51:09 PM Introduction of Tab 5, SB 146 by Chair Steube
3:51:11 PM Explanation of SB 146 by Senator Bean, Appointment of Attorneys for Dependent Children with Special Needs
3:51:50 PM Nikki Fried, Attorney, Florida Children First waives in support
3:52:53 PM Alan Abramowitz, Executive Director, Guardian Ad Litem Program waives in support
3:53:10 PM Speaker Brian Pitts, Justice-2-Jesus
3:56:46 PM Comments from Senator Bradley
3:59:31 PM Comments/question from Senator Thurston
4:00:21 PM Closure by Senator Bean

4:01:45 PM Roll call on SB 146 by Administrative Assistant Joyce Butler
4:02:03 PM SB 146 reported favorably
4:02:13 PM Senator Garcia changed vote on SB 34 from Yea to Nay
4:02:36 PM Chair given to Senator Benacquisto
4:02:39 PM Introduction of Tab 1, SB 16 by Chair Benacquisto
4:02:44 PM Explanation of SB 16, Relief of Charles Pandrea by the North Broward Hospital District by Senator Steube
4:04:16 PM Speaker Jorge Chamizo, Attorney, North Broward Hospital District in opposition
4:05:59 PM Question from Senator Thurston
4:06:06 PM Response from Attorney Chamizo
4:06:49 PM Follow-up question from Senator Thurston
4:06:57 PM Response from Attorney Chamizo
4:07:30 PM Follow-up question from Senator Thurston
4:07:35 PM Response from Attorney Chamizo
4:08:00 PM Closure by Senator Steube
4:08:09 PM Roll call on SB 16 by Administrative Assistant Joyce Butler
4:08:32 PM SB 16 is not reported favorably
4:09:12 PM Introduction of SPB 7004 by Chair Benacquisto
4:09:15 PM Explanation of SPB 7004, Petitioner Information/Notification of Service of an Injunction for Protection by Senator Steube
4:09:59 PM Speaker Brian Pitts, Justice-2-Jesus
4:12:02 PM Senator Bradley moves that SPB 7004 be reported as a Committee Bill
4:12:11 PM Roll call on SB 7004 by Administrative Assistant Joyce Butler
4:12:19 PM SB 7004 reported favorably
4:12:33 PM Introduction of SPB 7008 by Chair Benacquisto
4:12:44 PM Explanation of SPB 7006, Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs by Senator Steube
4:14:02 PM Question from Senator Powell
4:14:25 PM Response from Senator Steube
4:14:31 PM Speaker Brian Pitts, Justice-2-Jesus
4:15:17 PM Comments from Chair Benacquisto
4:15:26 PM Sen. Bradley moves to have SPB 7006 reported as a Committee Bill
4:15:31 PM Roll call on SPB 7006 by Administrative Assistant Joyce Butler
4:15:43 PM CS 7006 reported favorably
4:15:51 PM Chair returned to Chair Steube
4:15:59 PM Senator Bradley moves to adjourn
4:16:08 PM Meeting adjourned