LEGISLATIVE CLAIM BILL MANUAL

POLICIES, PROCEDURES, AND INFORMATION CONCERNING INTRODUCTION AND PASSAGE

THE FLORIDA SENATE
OFFICE OF THE PRESIDENT

THE FLORIDA HOUSE OF REPRESENTATIVES
CIVIL JUSTICE & CLAIMS SUBCOMMITTEE

Revised 2016

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INTRODUCTION

The claim bill process is unique and often thought to be complex and confusing. This manual is designed to assist in navigating through the claim process.

House and Senate staff are available to answer questions about the claim bill process. House staff of the Civil Justice & Claims Subcommittee can be reached at (850) 717-4850; Senate General Counsel staff can be reached at (850) 487-5237.

Suggested Procedures for Legislators

- ✓ Advise the claimant or attorney of the sequence of events in the filing of a claim bill.
- ✓ All Senate claim bills, whether companions or those filed only in the Senate, must be filed by August 1 in order to be considered by the Senate in the following regular session, except that members elected to the Senate during a general election may have sixty-two (62) days from the date of that election to file a claim bill(s).
- ✓ A House claim bill that does not have a Senate companion bill timely filed in the Senate will not be considered by the Senate.
- ✓ Make sure that the claim is ready to be heard by the Special Master when the Special Master schedules the hearing.
- ✓ Check with the staff of either chamber to determine whether the claim has been filed in a prior year, and if so, obtain a copy of any available previous reports.
- ✓ Ask the claimant or attorney to provide you with an information packet containing the major documentation and a summary of the highlights of the claim. Submit the information to the bill drafting office for preparation of the claim bill.
- ✓ Each chamber will have its own Special Master assigned to review and report on specific claim bills; however, to minimize travel and to avoid unnecessary repetition, the Special Masters usually hold joint hearings. You are invited to attend the Special Masters' hearing if you care to. Attendance by the bill's sponsor is not required.
- ✓ Follow the bill through the regular committee process once the Special Master's report is published. Generally, the Special Master will be available to present his or her report to the committees of reference, but each bill's sponsor should also be present and available to answer questions from committee members.

I. DEFINITIONS AND PROCESS

A. What is a Claim Bill?

A claim bill, sometimes called a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency. It is a means by which an injured party may recover damages even though the public officer or agency involved may be immune from suit. Majority approval in both chambers of the Legislature is required for passage.

B. What is Sovereign Immunity?

Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. The Florida Constitution addresses sovereign immunity in Article X, Section 13. This provision allows the state to waive its immunity through an enactment of general law. Sovereign immunity extends to all subdivisions of the state, including counties, municipalities, local constitutional officers, and school boards.

In 1973, the Florida Legislature enacted section 768.28, Florida Statutes. This section allows individuals to sue the state government, subdivisions of the state, counties, municipalities and political subdivisions under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of the state. . . ."

C. Is there a Statute of Limitations?

Pursuant to section 11.065, Florida Statutes, no claims against the state shall be presented to the Legislature more than 4 years after the cause for relief accrued. Further, all relief acts of the Legislature shall be for payment in full. No further claims for relief may be submitted to the Legislature for a previously compensated claim.

D. Are there Monetary Limits on Recovery?

Section 768.28(5), Florida Statutes, imposes a $200,000 limit per person and a $300,000 limit per incident on the collectability of any tort judgment based on the government's liability.[1] These limits do not preclude plaintiffs from obtaining judgments in excess of the statutory cap; however, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Section 11.066, Florida Statutes, requires a claimant to petition the Legislature, in accordance with its rules, to seek an appropriation to pay a judgment against the state or state agency or subdivision thereof.

E. Must All Alternative Remedies be Exhausted?

House Rule 5.6(c) and Senate Rule 4.81(6) provide that the Legislature will not process a contested claim bill until the claimant has exhausted all available administrative and judicial remedies. However, both bodies may consider a bill in which the parties have executed a written settlement agreement. Under Senate Rule 4.81(6), this policy does not apply to a bill addressing a claim based on wrongful incarceration.

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[1] Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), Florida Statutes, effective October 1, 2011, applicable to claims arising on or after that date, to the current levels.

F. How does the Special Master Process Work?

Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master, as well as to one or more committees, for review. The Special Masters of each house conduct a joint hearing to determine liability, proximate cause, and damages. Senate Rule 4.81(3) provides a Special Master may request the President to issue subpoenas, subpoenas duces tecum, and other necessary process to compel the attendance of witnesses and the production of any books, letters, or other documentary evidence which the Special Master deems relevant to the evaluation of a claim. The Special Master will administer an oath to all witnesses, accept relevant documentary and tangible evidence properly offered, record the proceedings, and prepare a final report containing findings of fact, conclusions of law, and recommendations. Special Masters are not bound by jury verdicts or stipulations entered into by the parties; further, once filed, claim bills are subject to the amendatory process of each house as provided by rule. Though not bound by the Senate Rule, House Special Masters generally follow the same process; however, a House Special Master may file a summary report regarding a settled claim. The House must have a settlement agreement signed by all parties before the claim is considered "settled."

G. General or Local?

A general law is an act intended to have statewide application. For claim bill purposes, if the respondent of the claim is a state agency, which would require an appropriation from the state's general revenue or from an executive agency's budget, then the claim is a general bill.

A local or special law is any legislative act that:

1) applies to an area or entity that is less than the total area or population of the state; and
2) contains subject matter that entitles those to whom it is applicable to the publication or referendum required by Article III, Section 10, State Constitution.

Generally, if the respondent is a county, municipality, school board, district, local constitutional officer, or other subdivision of the state, then the claim is a local bill.

Article III, Section 10, State Constitution, prohibits passage of a special law unless notice of intention to seek enactment thereof has been published in the manner provided by general law.

Sections 11.02, 11.021, and 11.03, Florida Statutes, provide the requirements for publication of the required notice. The notice must contain the name of the claimant, the nature of the injury or loss, and the amount of the claim. A sample notice is in the Examples Section of this manual.

House Rule 5.5(c) requires that all local claim bills be accompanied by an affidavit of proper advertisement, securely attached to the original bill ahead of its first page. Similarly, Senate Rule 3.3 requires that all local bills be accompanied by an affidavit of proper advertisement. Language requirements can be found in section 11.03, Florida Statutes. Furthermore, the Senate requires that all local bills requiring publication have proof of

publication securely attached to the original copy of the bill, when introduced, and the words "Proof of Publication Attached" clearly typed or stamped on the Senate side of the bill jacket.

There are two important characteristics that distinguish a local claim bill from a general claim bill: the "relating to" clause in the title of the bill and the appropriation sections that follow the enacting clause.

The "relating to" clause in the title of a local claim bill should always cite the name of the county or the local governmental entity from which compensation is being sought. In other words, the "relating to" clause of a local relief act always indicates that the bill is local in nature, as in the following examples:

"An act for the relief of James Simpson by Seminole County";
"An act for the relief of Danielle Simms and Corey Simms by the Palm Beach County Sheriff's Department";
"An act for the relief of Hunter Wright by the West Volusia Hospital District."

The "relating to" clause for a general claim bill should always name the claimant or claimants seeking relief under the act, as in:

"An act for the relief of John Smith and Mary Smith."

H. What are the Filing Deadlines?

Senate Rule 4.81 requires that all claim bills be filed with the Secretary of the Senate on or before August 1 to be considered by the Senate during the next regular session. Newly elected Senators have 62 days from the date of election to file a claim bill. House Rule 5.2 requires that general and local bills be filed with the House Clerk by noon of the first day of the regular session.

I. Is there a Limit on the Number of Bills a Member Can File?

House Rule 5.3 prohibits members from filing more than six bills for a regular session. However, House Rule 5.3(b)(10) provides that claim bills, whether general or local, do not count toward a member's six bills. Senate Rule 4.81(2) prohibits consideration of a House claim bill that lacks a Senate companion.

J. Can a Claimant Collect in Excess of the $200,000/$300,000 Limit Without Filing a Claim Bill?

Section 768.28(5), Florida Statutes, provides that the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to pay a claim made or an excess judgment rendered against it without further action by the Legislature.

K. Are there any Limitations or Restrictions on Fees?

Section 768.28(8), Florida Statutes, provides that no attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement. The Florida Supreme Court has held that the Legislature has the authority to limit attorneys' fees in a claim bill, even if an attorney had contracted for a higher amount. *Gamble v. Wells*, 450 So.2d 850 (Fla. 1984), (refer to section *IV. EXAMPLES* of this manual).

Furthermore, the Florida Supreme Court has determined that the statutory 25 percent limitation on attorneys' fees applies to all situations involving waiver of sovereign immunity, whether it be the underlying $200,000/$300,000, the excess part awarded by the claim bill, or the result of a settlement and voluntary payment in any amount made by a governmental respondent or by its insurance carriers. *Ingraham v. Dade County School Board,* 450 So.2d 847 (Fla. 1984).

Fees contingent upon the outcome of any specific legislative action are generally prohibited by section 11.047(2), Florida Statutes, except in the case of claim bills. It is considered a conflict of interest for a legislator to file a claim bill if that member, or the member's law partner, would receive a fee for services. Commission on Ethics, *House Opinion 69-009 and 71-016* (refer to section *IV. EXAMPLES* of this manual).

II. CITATIONS: STATE CONSTITUTION, LEGISLATIVE RULES, FLORIDA STATUTES

A. State Constitution

Article III, Section 10, State Constitution—Special Laws

Article X, Section 13, State Constitution—Suits against the state

B. Senate Rules

Senate Rule 3.3—Form of local bills

Senate Rule 4.81—Claim bills

C. House Rules

House Rule 5.2—Member Bill Filing Deadline

House Rule 5.3—Limitation on Member Bills Filed

House Rule 5.5—Local Bills

House Rule 5.6—Claim Bills

D. Florida Statutes

Section 11.02, F.S.—Notice of special or local legislation or certain relief acts.

Section 11.021, F.S.—Evidence of publication of notice.

Section 11.03, F.S.—Proof of publication of notice.

Section 11.047, F.S.—Contingency fees; prohibitions; penalties.

Section 11.065, F.S.—Claims against state; limitations; notice.

Section 11.066, F.S.—Suits seeking monetary damages against the state or its agencies; payment of judgments; appropriations required.

Section 768.28, F.S.—Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.

III. DRAFTING A CLAIM BILL

A. Payment of Statutory Limits of Liability

One of the most common omissions in the submission of proposed claim bills is an indication of whether the governmental entity from whom relief is sought has paid the claimant or claimants the requisite amounts due under section 768.28, Florida Statutes, Florida's sovereign immunity statute, which sets the limits of liability of the state and its political subdivisions. To avoid confusion, a clause stating whether the respondent has already paid the underlying amount should be included at or near the end of the "WHEREAS" clauses, followed by a statement of the remaining amount of the claim.

B. Apportionment of Claim Among Multiple Claimants

Another omission that sometimes occurs in the submission of proposed claim bills is the apportionment of the amount of a claim when there are multiple claimants. The Legislature requires specification of the exact amount each claimant is to receive.

Claim bills with multiple claimants may require a separate appropriation section for each claimant and are usually apportioned in direct proportion to the jury award or settlement amounts.

C. Medicaid Reimbursement Provisions

Where Medicaid reimbursement is owed, use the following language:

Section __. The governmental entity responsible for payment of the warrant shall pay to the Florida Agency for Health Care Administration the amount due under section 409.910, Florida Statutes, prior to disbursing any funds to the claimant. The amount due the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date upon which this bill becomes a law.

Should this language be the subject of an amendment to a claim bill, an accompanying title provision is needed. "Providing for repayment of Medicaid liens" would be a sufficient title proviso for such a section.

D. Award of Claim to Minors and Incompetents—Establishment of Trust or Guardianship

Essential pieces of information are whether the claimant is currently a ward and whether the claimant was a ward at the time of the incident that gave rise to the cause of action upon which the claim is based. If the claimant is a ward and will be a ward at the time of the prospective passage of the claim bill, it is essential to disclose whether a trust or guardianship account has been established for the ward.

E. Effective Dates

Effective dates of claim bills should adhere to the following guidelines:

1.) If the Legislature intends funds for payment of a claim to be appropriated from the current fiscal year's budget, use an effective date of no later than June 30.
2.) If the Legislature intends funds for payment of a claim to be appropriated from the upcoming fiscal year's budget, an effective date later than July 15 should be used.
3.) If the bill is a local claim bill, the bill may have an effective date upon becoming a law, an effective date that is a specific date necessitated by the facts, or the effective date may coincide with the beginning of a local government's fiscal year—October 1.

IV. EXAMPLES

A. Sample Funding Language

SOURCE

LOCAL GOVERNMENT DEFENDANT
(city, county, sheriff, school board, special districts)

The (identify the city, county, sheriff, school board, or special district) is authorized and directed to appropriate from funds not otherwise appropriated and to draw a warrant payable to _____ for the total amount of $_____ for injuries and damages sustained due to _____ on _____ (claimant).

STATE AGENCY DEFENDANT

General Revenue Source

There is appropriated from the General Revenue Fund to the Department of _____ the sum of $_____ for the relief of _____ for injuries and damages sustained.

The Chief Financial Officer is directed to draw a warrant in favor of _____ in the sum of $_____ upon the funds of the Department of _____ in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Trust Fund Source

There is appropriated from the _____ Trust Fund to the Department of _____ the sum of $_____ for the relief of _____ for injuries and damages sustained.

The Chief Financial Officer is directed to draw a warrant in favor of _____ in the sum of $_____ upon the funds of the _____ Trust Fund within the Department of _____ in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Chapter 216 Transfer (Requires Legislative Budget Commission approval for any General Revenue transfer and for any Trust Fund transfer over $1 million.)

Pursuant to the provisions of section 216.292, Florida Statutes, the Department of _____ shall request transfer of existing spending authority in the amount of $_____ from existing operating categories of the Department of _____ to a new category titled "Relief: _____" in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

The Chief Financial Officer is directed to draw a warrant in favor of _____ in the sum of $_____ upon the funds of the _____ Trust Fund within the Department of _____ within the category titled "Relief: _____" in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

B. Restrictive Language

RESTRICTIONS ON PAYMENT

DISTRIBUTION TO GUARDIAN*

Payment to the guardian of the claimant, including a reversion to the source of payment upon the death of the claimant. (This language should be used if the claimant is a minor or is incompetent. It is intended to protect payments to claimants who are otherwise unable to protect their own interests).

"… payable to {guardian of claimant} as legal guardian of {claimant}, to be placed in the guardianship account of {claimant}, to compensate him/her for injuries and damages sustained as a result of the negligence of {respondent}. Upon the death of {claimant}, any balance of the ${amount} remaining in the guardianship account shall revert to the {payor}. It is the intent of the Legislature that no funds exceeding {$ amount} appropriated herein subsequently be spent, or any obligation thereof incurred by the guardian, without prior order of the circuit court."

STRUCTURED PAYMENT—DIRECT*

Payment through a structured payout. (This language is typically used when the parties have agreed to a settlement requiring payment over a period of years while ensuring compensation to the claimant for a period of years.)

"…upon passage of this bill, the {payor} shall pay {claimant} {$ amount}. One year from the first payment, the {payor} shall pay {claimant} {$ amount}; and one year from the second payment, the {payor} shall pay {claimant} {$ amount}, for a total of {total amount}."

STRUCTURED PAYMENT—BY ANNUITY*

Payment through an annuity plan purchased by the claimant, including a reversion to the source of payment upon the death of the claimant. (This language is typically used when the claimant has suffered serious or permanent injuries and is likely to require substantial or long-term medical care. It is often used in conjunction with a special needs trust and/or payment to a guardian.)

"…payable to the {guardian of claimant} to be placed in a Special Needs Trust created for the exclusive use and benefit of {claimant}. After payment of statutory attorney's fees and costs, the balance shall be used to purchase an appropriate structured financial plan, the proceeds of which shall be deposited into a Special Needs Trust created for the exclusive use and benefit of {claimant}. It is the further intent of the Legislature that upon {claimant's} death, any funds remaining in the Special Needs Trust after payment of any outstanding Medicaid funds shall revert to the {payor}."

SPECIAL NEEDS TRUST*

Payment to a special needs trust, including a reversion to the source of payment upon the death of the claimant. (This language can be used in conjunction with payment to a guardian, and ensures that the award will adequately compensate the claimant's future needs over a period of years while protecting the claimant's eligibility for Medicaid services.)

"… payable to {guardians of claimant}, parents and legal guardians of {claimant}, to be placed in the Special Needs Trust created for the exclusive use and benefit of {claimant}, a minor, to compensate {claimant} for injuries and damages sustained. Upon the death of {claimant}, the Trust balance shall revert to the {payor}."

***Add Medicaid reimbursement provision from bottom of page 7, if applicable.**

C. Senate Local Claim Bill

An act for the relief of Eric Brody by the Broward County Sheriff's Office; providing for an appropriation to compensate Eric Brody for injuries sustained as a result of the negligence of the Broward County Sheriff's Office; providing a limitation on the payment of fees and costs related to the claim against the Broward County Sheriff's Office; providing legislative intent regarding lien interests held by the state; providing an effective date.

WHEREAS, on March 3, 1998, Eric Brody was driving home in his 1982 AMC Concord eastbound on Oakland Park Boulevard in Sunrise, Florida, and

WHEREAS, that same evening, Broward County Sheriff's Deputy Christopher Thieman was driving his Broward County Sheriff's Office cruiser on his way to work, and

WHEREAS, Deputy Thieman struck Eric Brody's car, leaving Eric profoundly injured, and

WHEREAS, the case was tried to a jury and the court rendered a final judgment of $30,879,670.30, and

WHEREAS, the parties have reached a settlement in the amount of $10,750,000, with other terms of value, and $200,000 has been paid pursuant to the limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. <u>The facts stated in the preamble to this act are</u>

found and declared to be true.

Section 2. The insurer of the Sheriff of Broward County has agreed to pay, and is authorized and directed to pay, $10,750,000 on behalf of the Broward County Sheriff's Office to the Guardianship of Eric Brody to be placed in a special needs trust created for the exclusive use and benefit of Eric Brody as compensation by the Broward County Sheriff's Office and its insurer, Fairmont Specialty Insurance Company, f/k/a Ranger Insurance Company, for injuries brought about by the facts set forth in the preamble of this act.

Section 3. The amount awarded under this act is intended to provide the sole compensation for all present and future claims, including all attorney fees, lobbying fees, and related costs, arising out of the factual situation described in this act which resulted in the injuries to Eric Brody, and hereby releases the Broward County Sheriff's Office and Fairmont Specialty Insurance Company, f/k/a Ranger Insurance Company, the Broward County Board of County Commissioners, Broward County, and Christopher Thieman from any further liability. No part of the amount awarded under this act may be used toward the payment of attorney fees, lobbying fees, costs, or other similar expenses incurred on behalf of the Guardianship of Eric Brody in pursuit of this claim or the related underlying litigation.

Section 4. It is the intent of the Legislature that the lien interests relating to the claim of the Guardianship of Eric Brody for the treatment and care of Eric Brody, including Medicaid liens, are hereby waived or extinguished.

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

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

D. House Local Claim Bill

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

ENROLLED

CS/HB 3511 2015 Legislature

1

2 An act for the relief of Carl Abbott by the Palm Beach
3 County School Board; providing for an appropriation to
4 compensate Carl Abbott for injuries sustained as a
5 result of the negligence of an employee of the Palm
6 Beach County School District; providing a limitation
7 on the payment of fees and costs; providing an
8 effective date.
9
10 WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was
11 struck by a school bus driven by an employee of the Palm Beach
12 County School District while Mr. Abbott was crossing the street
13 in a designated crosswalk at the intersection of South Anchorage
14 Drive and U.S. 1 in Palm Beach County, and
15 WHEREAS, as a result of the accident, Carl Abbott suffered
16 a closed head injury, traumatic brain injury, subdural hematoma,
17 and subarachnoid hemorrhage, and
18 WHEREAS, as a result of his injuries, Carl Abbott had to
19 reside in a nursing home, suffered from loss of cognitive
20 function, right-sided paralysis, immobility, urinary
21 incontinence, bowel incontinence, delirium, and an inability to
22 speak, and had to obtain nutrition through a feeding tube, and
23 WHEREAS, the Palm Beach County School Board unanimously
24 passed a resolution in support of settling the lawsuit that was
25 filed in this case, tendered payment of $100,000 to Carl Abbott
26 in accordance with the statutory limits of liability set forth

Page 1 of 3

27 in s. 768.28, Florida Statutes, and does not oppose the passage
28 of this claim bill in favor of Carl Abbott in the amount of $1.9
29 million, as structured, and
30 WHEREAS, Carl Abbott passed away in June 2014, NOW,
31 THEREFORE,
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. The facts stated in the preamble to this act
36 are found and declared to be true.
37 Section 2. The Palm Beach County School Board is
38 authorized and directed to appropriate from funds of the school
39 board not otherwise appropriated and to draw warrants in the
40 amount of $211,111.11 each fiscal year beginning in 2015 through
41 2022, inclusive, and $211,111.12 in the 2023-2024 fiscal year
42 for a total of $1.9 million, payable to David Abbott, as
43 guardian of Carl Abbott, as compensation for injuries and
44 damages sustained as a result of the negligence of an employee
45 of the Palm Beach County School District. The payments were
46 scheduled to cease upon the death of Carl Abbott if he died
47 before the last payment was made. However, David Abbott, as
48 guardian of Carl Abbott, is guaranteed a total payment amount of
49 $633,333.33 since Carl Abbott died before or within 3 years
50 after the effective date of this act. This amount represents
51 three annual payments and shall be payable on the annual due
52 dates.

53 Section 3. The amount paid by the Palm Beach County School
54 Board pursuant to s. 768.28, Florida Statutes, and the amount
55 awarded under this act are intended to provide the sole
56 compensation for all present and future claims against the Palm
57 Beach County School District arising out of the factual
58 situation that resulted in the injuries to Carl Abbott as
59 described in the preamble to this act. The total amount paid for
60 attorney fees, lobbying fees, costs, and other similar expenses
61 relating to this claim may not exceed 25 percent of the total
62 amount awarded under this act.
63 Section 4. This act shall take effect upon becoming a law.

E. Proof of Publication for a Local Claim Bill

MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
Miami, Miami-Dade County, Florida

STATE OF FLORIDA
COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared O.V. FERBEYRE, who on oath says that he or she is the VICE PRESIDENT, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

NOTICE OF PUBLICATION
RELIEF OF THE ESTATE OF ANDREA NICOLE CASTILLO

in the XXXX Court,
was published in said newspaper in the issues of

09/16/2015

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida, each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

16 day of SEPTEMBER , A.D. 2015

(SEAL)

O.V. FERBEYRE personally known to me

B. THOMAS
MY COMMISSION EXPIRES
November 2, 2017
#FF 034747
NOTARY PUBLIC, STATE OF FLORIDA

NOTICE OF PUBLICATION

TO WHOM IT MAY CONCERN

Notice is hereby given of intention to apply to the 2015 Regular Legislative Session or subsequent sessions held in 2015 (or after) of the State of Florida Legislature for passage of a bill to provide for the **relief of the Estate of Andrea Nicole Castillo** for fatal injuries sustained by Andrea Nicole Castillo and damages sustained by her survivors; and the death of Andrea Nicole Castillo arising out of a wrongful death lawsuit arising from a motor vehicle accident that occurred on October 19, 2012 in Miami-Dade County, Florida and involving CITY OF HIALEAH as a result of the negligence of its employee, Raul Somarriba, and providing an effective date. The name of the claimant is Susana Vicaria Castillo, as the natural parent and personal representative of the Estate of Andrea Nicole Castillo. The total amount of the claim sought through the claims bill process is $455,000.00 (Four Hundred and Fifty Five Thousand Dollars) plus interest. Counsel for Plaintiff, **ELISABETH CULMO, ESQ.**, Florida Bar Number 016705, **SILVA & SILVA, P.A.** 236 Valencia Avenue, Coral Gables, FL 33134.

A bill to be entitled

An act for the relief of Susana Castillo, as personal representative of the Estate of Andrea Castillo; providing for an appropriation to compensate the Estate of Andrea Castillo for her death as a result of the negligence of the City of Hialeah; providing a limitation on the payment of fees and costs; providing that the amounts awarded are intended to provide the sole compensation for all present and future claims related to the wrongful death of Andrea Castillo; providing an effective date.

WHEREAS, on October 19, 2012, at about 9:45 p.m., 21-year-old Andrea Castillo was traveling as a passenger in a 2012 Jeep Compass being op-

F. Summary House Special Master's Report for a Settled Claim

Bill #: HB 3523; Relief/Mark T. Sawicki & Sharon L. Sawicki/City of Tallahasssee
Sponsor: Beshears
Companion Bill: SB 54 by Montford
Special Master: Parker Aziz

Basic Information:

Claimants:	Mark T. Sawicki and Sharon L. Sawicki
Respondent:	City of Tallahassee
Amount Requested:	$700,000.00
Type of Claim:	Local equitable claim; Result of a Settlement Agreement
Respondent's Position:	City of Tallahassee will not oppose, obstruct or delay the passage of the claim bill or direct its representatives, agents or lobbyists to oppose, obstruct or delay the passage of said claim bill in the amount of $700,000.00.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap. Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.
Prior Legislative History:	House Bill 3501 by Representative Beshears and Senate Bill 14 by Senator Montford were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee. House Bill 243 by Representative Beshears and Senate Bill 12 by Senator Montford were filed during the 2013 Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: On June 7, 2010, Mark and Sharon Sawicki filed suit against the City of Tallahassee, [Case No. 2010-CA-1984], in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. Prior to trial, the case was settled in mediation in the amount of $900,000.00. Pursuant to the settlement, the City paid the sovereign immunity limit of $200,000.00 and the parties agreed that the plaintiff could seek an additional $700,000.00 through an uncontested claim bill.

Facts of Case: On October 2, 2009, Mark Sawicki, 51 years old, was riding his bicycle on his way to work at Florida State University. Mr. Sawicki stopped at a red-light at the intersection of Call Street and North Monroe Street. A solid waste collection truck, owned by the City and operated by Paul Hudson, a City employee, made a right hand turn. During the process of the turn, the truck ran over Mr. Sawicki. The tire of the truck crossed over Mr. Sawicki's midsection causing significant injuries. After feeling his

truck run over Mr. Sawicki, Mr. Hudson immediately stopped his truck. Hudson called 911 and Mr. Sawicki's wife Sharon. Mr. Sawicki was transferred via ambulance to Tallahassee Memorial Hospital ("TMH"). Mr. Sawicki was hospitalized for 32 days following the accident, followed by six weeks in a wheelchair, followed by four months on a walker, followed by four months walking with a cane. Sawicki sustained multiple fractures, including fractures to his right and left pelvic region, right femur, right acetabulum pubic ramus, and sacrum. Sawicki also sustained a torn urethra, multiple abrasions and lacerations to his right thigh and upper and lower extremities, and neurological damage to his right lower extremities resulting in a "dropped foot".

On October 12, 2009, an open reduction internal fixation was performed on Sawicki's pelvic and hip region, which required the placement of metal plates and screws to secure the structure of the bones. At this time the doctors at TMH attempted to repair the damage to his urethra, but were unsuccessful, requiring them to leave in Foley and super pubic catheters. Mr. Sawicki had six MRSA infections during the nine months of catheterization. On October 16, 2009, Sawicki was transferred to the TMH rehabilitation center for two and half weeks of inpatient physical therapy. Sawicki continued with outpatient physical therapy for several more months. He progressed from walking with a walker, to a cane, and eventually being able to walk without assistance. In May, 2010, Mr. Sawicki received surgery by Dr. Ordorica in Tampa who repaired the damage to his urethra.

Mr. Sawicki's medical expenses total $251,315.29. Mr. Sawicki's claim also includes damages for lost wages, loss of consortium with his wife and family, and pain and suffering damages. Mr. Sawicki has received $122,880.99 of the $200,000.00 paid by the City, with payments to his attorneys' of $57,500.00 and $6,733.34 to Capitol Health Plan ("CHP"). CHP had a medical lien of $101,018.06 which has been reduced to $30,300.00. CHP is still owed $23,566.66 and will be paid upon approval of this claims bill.

Mr. Sawicki's preliminary life care plan indicates that he has recovered well from his injuries. Mr. Sawicki will likely continue to have limited follow-up physician care, including an annual appointment with his urologist, David Burday, M.D. and an annual visit with an orthopedist. Mr. Sawicki will likely require continual physical therapy. His life care plan estimates 16 visits a year. Dr. Hutchinson indicates that it is probable that Mr. Sawicki will require a total hip replacement between two and twenty years. This procedure is estimated to cost roughly $62,000.00. Mr. Sawicki has returned to his job as an engineer at Florida State University. During his recovery Mr. Sawicki used up his 710 hours of sick and leave time. His life care plan indicates that his work life may be shortened by his injuries from retiring at 66 to 63.

The City of Tallahassee supports this claim bill in the amount of $700,000.00. The City is self-insured and there are no applicable insurance policies. The funds to pay this claim bill will be from the City's self-insurance fund. The claim amount is fully funded and reserved.

Recommendation: I respectfully recommend that House Bill 3523 be reported **FAVORABLY**.

_____

Parker Aziz, Special Master Date: April 3, 2015

cc: Representative Beshears, House Sponsor
Senator Montford, Senate Sponsor
Cindy Brown, Senate Special Master

G. General Claim Bill

An act for the relief of Stephen Hall; providing an appropriation to compensate Stephen Hall for injuries sustained as a result of the negligence of an employee of the Department of Transportation; providing a limitation of the payment of fees and costs; providing an effective date.

WHEREAS, on June 30, 1997, Stephen Hall was a passenger in a vehicle driven by his father, Edward Hall, traveling westbound on State Road 500 in Brevard County, Florida, and

WHEREAS, David Eaker, an employee of the Department of Transportation, was stopped on the north shoulder of State Road 500, headed in the same direction as the Hall vehicle, and

WHEREAS, as the Hall vehicle approached his vehicle, David Eaker pulled into the path of the Hall vehicle, resulting in a collision between the two vehicles, and

WHEREAS, Stephen Hall was injured and was transported by ambulance to Holmes Regional Medical Center in Melbourne, where he was treated for multiple traumatic injuries, including multiple facial fractures and lacerations; multiple intra-oral mucosal lacerations; and orthopedic injuries to his right arm and shoulder, neck, and both knees, and

WHEREAS, as a result of the injuries, Stephen Hall was subjected to multiple surgeries and physical therapy, will likely need additional surgery for the injuries in the future, missed 2 years of school, has suffered from mood swings and depression, and has permanent facial disfigurement and continuing problems as a result of the injuries, and

WHEREAS, Stephen Hall's medical expenses total $51,586.81 to date, and

WHEREAS, David Eaker was determined to be at fault and was charged with failure to yield the right-of-way, and

WHEREAS, the Halls filed suit in the Eighteenth Judicial Circuit, in and for Brevard County, against the Department of Transportation in case number 05-2001-CA-006293, and

WHEREAS, the parties mediated the case and reached a settlement of all claims, and

WHEREAS, the parties entered into a settlement agreement in which the Department of Transportation admitted liability and agreed to the entry of a consent judgment in the amount of $500,000, and

WHEREAS, the Department of Transportation has previously paid $112,000 to the claimant and agreed to affirmatively support a claim bill in the amount of $388,000, NOW, THEREFORE,

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

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

Section 2. The Executive Office of the Governor is directed to establish spending authority from unappropriated trust fund balances in the Department of Transportation in the amount of $388,000 to a new category titled "Relief: Stephen Hall" as relief for injuries and damages sustained, which amount includes attorney's fees and costs.

Section 3. The Chief Financial Officer is directed to draw a warrant, pursuant to the Stipulated Settlement Agreement

59 executed by the Department of Transportation and Stephen Hall,
60 in the sum of $388,000, upon funds of the Department of
61 Transportation in the State Treasury, and the Chief Financial
62 Officer is directed to pay the same out of funds in the State
63 Treasury.
64 Section 4. Any amount awarded under this act pursuant to
65 the waiver of sovereign immunity permitted under s. 768.28,
66 Florida Statutes, and this award are intended to provide the
67 sole compensation for all present and future claims arising out
68 of the factual situation described in the preamble to this act
69 which resulted in the injury to Stephen Hall. The total amount
70 paid for attorney's fees, lobbying fees, costs, and other
71 similar expenses relating to this claim may not exceed 25
72 percent of the amount awarded under section 2.
73 Section 5. This act shall take effect upon becoming a law.

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

H. Special Master's Report on a Contested Claim

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
11/1/11	SM	Fav/1 amendment
	RC	

November 1, 2011

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

Re: **SB 4 (2012)** – Senator Lizbeth Benacquisto
Relief of Eric Brody

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $15,575,021.30 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE BROWARD COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT ERIC BRODY FOR THE PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A DEPUTY SHERIFF'S CRUISER.

FINDINGS OF FACT:

On the evening of March 3, 1998, in Sunrise, Florida, 18-year-old Eric Brody was on his way home from his part-time job. He was making a left turn from Oakland Park Boulevard into his neighborhood when his AMC Concord was struck near the passenger door by a Sheriff's Office cruiser driven by Deputy Sheriff Christopher Thieman.

Deputy Thieman was on his way to a mandatory roll call at the Sheriff's district station in Weston. One estimate of his speed was 70 MPH. Even the lowest credible estimate of his speed was in excess of the 45 MPH speed limit. It is estimated that the cruiser, after braking, struck Eric's vehicle at about 53 MPH. The impact caused Eric to be violently thrown toward the passenger door, where he struck his head. He suffered broken ribs and a skull fracture. Eric was airlifted to Broward General Hospital where he underwent an

emergency craniotomy to reduce brain swelling. However, he suffered a severe brain injury that left him with permanent disabilities.

Eric was in the hospital intensive care unit for four weeks and then was transferred to a rehabilitation center. He was later transferred to a nursing home. He remained in an induced coma for about six months. After the coma, Eric had to learn to walk and talk again. Eric is now 32 years old and lives with his parents. He has difficulty walking and usually uses a wheelchair or a walker. His balance is diminished and he will often fall. Eric has some paralysis on the left side of his body and has no control of his left hand. He must be helped to do some simple personal tasks. He tires easily. The extent of his cognitive disabilities is not clear. His processing speed and short-term memory are impaired. Eric's mother believes his judgment has also been affected.

At the time of the collision, Eric had been accepted at two universities and was interested in pursuing a career in radio broadcasting. However, his speech was substantially affected by his injuries and it is now difficult for anyone other than his mother to understand him.

One of the main issues in the trial was whether Eric was comparatively negligent. The Broward County Sheriff's Office (BCSO) contends that Eric was not wearing his seatbelt and that, if he had been wearing his seatbelt, his injuries would have been substantially reduced. Eric has no memory of the accident because of his head injury, but testified at trial that he always wore his seatbelt. The paramedics who arrived at the scene of the crash testified that Eric's seatbelt was not fastened. However, the seatbelt was spooled out and there was evidence presented that the seatbelt could have become disconnected in the crash.

The jury saw a crash re-enactment that was conducted with similar vehicles, using a belted test dummy. The results of the reenactment supported the proposition that the collision would have caused a belted driver to strike his or her head on the passenger door. The seatbelt shoulder harness has little or no effect in stopping the movement of the upper body in a side impact like the one involved in this case. The head injury that Eric sustained is consistent with injuries sustained

by belted drivers in side impact collisions. Therefore, Eric's injury is consistent with the claim that he was wearing his seatbelt at the time of the collision. I conclude from the evidence presented that Eric was more likely than not wearing his seat belt.

Deputy Thieman's account of the incident was conspicuously lacking in detail. Deputy Thieman did not recall how fast he was going before the collision. He could not recall how close he was to Eric's vehicle when he first saw it. He could not recall whether Eric's turn signal was on.

A curious aspect of the incident was that Deputy Thieman had been traveling in the left lane of Oakland Park Boulevard, which has three westbound lanes, but collided with Eric's vehicle in the far right lane. If Deputy Thieman had stayed in the left lane, the collision would not have occurred. At trial, Deputy Thieman testified that he did not turn to the left because that was in the direction of oncoming traffic. However, there was no oncoming traffic at the time and, in any event, Thieman could have avoided the collision by continuing straight ahead. The manner in which Deputy Thieman maneuvered his vehicle was unreasonable under the circumstances and that it was a contributing cause of the collision.

Deputy Thieman was fired by the Broward County Sheriff's Office in 2006 for misconduct not related to the collision with Eric Brody.

Eric received $10,000 from Personal Injury Protection coverage on his automobile insurance. He receives Social Security disabilities payments of approximately $560 each month. He also received some vocational rehabilitation assistance which paid for a wheelchair ramp and some other modifications at his home.

Eric has a normal life expectancy. One life care plan developed for Eric estimated the cost of his care will be $10,151,619. There was other evidence that his future care would cost $5 to $7 million.

LITIGATION HISTORY:

In 2002, a negligence lawsuit was filed in the circuit court for Broward County by Charles and Sharon Brody, as Eric's parents and guardians, against the BCSO. In December

2005, after a lengthy trial, the jury found that Deputy Thieman was negligent and that his negligence was the sole cause of Eric's damages. The jury awarded damages of $30,609,298. The court entered a cost judgment of $270,372.30. The sum of these two figures is $30,879,670.30. Post-trial motions for new trial and remittitur were denied. The verdict was upheld on appeal.

The BCSO paid the $200,000 sovereign immunity limit under s. 768.28, Florida Statutes. The payment was placed in a trust account and none of it has been disbursed. Attorney's fees and costs have not been deducted. Eric Brody has received nothing to date.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether the BCSO is liable in negligence for the damages suffered by Eric Brody and, if so, whether the amount of the claim is reasonable.

Deputy Thieman had a duty to operate his vehicle in conformance with the posted speed limit and with reasonable care for the safety of other drivers. His speeding and failure to operate his vehicle with reasonable care caused the collision and the injuries that Eric Brody sustained. The BCSO is liable as Deputy Thieman's employer.

Although Eric Brody was required to yield before turning left, the evidence does not show that a failure to yield was a contributing cause of the collision. Eric reasonably judged that he could safely make the left turn. He was well past the lane in which Deputy Thieman was traveling. The collision appears to have been caused solely by Deputy Thieman's unreasonable actions in speeding and swerving to the right. I believe the jury acted reasonably in assigning no fault to Eric.

At the claim bill hearing, Claimant's counsel urged the Special Master to determine that the liability insurer for the BCSO, Ranger Insurance Company acted in bad faith by failing to timely tender its $3 million coverage in this matter and, therefore, the insurer is liable for the entire judgment against the BCSO. However, because the insurer was not a party to the Senate claim bill proceeding, and because the

bad faith claim is not a proper subject for determination in a claim bill hearing under the rules of the Senate, I did not take evidence nor make a determination regarding the bad faith claim.

Modification of the Claim

SB 42 (2011), which passed the Senate, but not the House of Representatives, required the BCSO to pay the $31 million claim, but stated that, in lieu of payment, the BCSO could assign its bad faith claim against its insurer to the Brodys and, if it assigned its claim, the BCSO was not required to pay the $31 million. The BCSO and the Brodys entered into an agreement in which the BSCO agreed to assign its bad faith claim against its insurer to Brody in exchange for the Brodys' release of liability against the BCSO, but the Brodys have not yet executed the release of liability.

This year, SB 4 reduces the claim amount to about $15.6 million. The bill makes no mention of an option for the BCSO to avoid payment of the $15.6 million by assigning its bad faith claim to the Brodys, but that option appears to be presumed.

Ranger Insurance Company objects to SB 4, claiming that it is "an unconstitutional bad faith litigation authorization bill" masquerading as a claim bill. I do not agree that SB 4 authorizes the bad faith litigation. The authority for the bad faith claim and for the assignment of the claim exists independent of Senate action. There is no legal precedent which assists in analyzing this issue. However, I do not see a constitutional bar to the Senate's passage of a claim bill that orders a respondent to pay a claim that might be (or is even expected to be) resolved by a release of the respondent's liability by the claimant for valuable consideration. If Ranger Insurance Company is right, that the BCSO cannot avoid paying the claim via its agreement with the Brodys, then Eric Brody will be paid by the BCSO as provided by SB 4.

ATTORNEYS FEES: In compliance with s. 768.28(8), Florida Statutes, the Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature.

SPECIAL ISSUES:

In my report for SB 42 (2011), I urged the Senate to consider the unusual size of the claim bill (about $31 million) and the substantial fiscal burden that would be associated with the Legislature's regular passage of $10, $20, and $30 million claim bills, especially for claims that will be paid by local governments. I suggested that a balance should be struck between the principle of sovereign immunity and the principle of fair compensation, and recommended that the award be reduced to $15 million. It is still my recommendation that the award should not exceed $15 million, to avoid a precedent for the escalation of claims.

On page 5 of SB 4 is a whereas clause setting forth allegations related to the bad faith claim. Because the bad faith claim was outside the scope of the claim bill hearing and no findings of fact or conclusions of law were made regarding that claim, SB 4 should be amended to delete the whereas clause.

Section 4 of SB 4 directs that half of the State's lien interests will not be waived and that the Claimant's guardianship shall reimburse the state for half of the expenses of Medicaid, Medicare, or the Agency for Health Care Administration. The settlement of lien interests can be a complex matter and is normally not addressed in a claim bill. The settlement of lien interests is negotiable, but is subject to the requirements of federal law. The outcome cannot be dictated by a state. SB 4 should be amended to delete Section 4.

RECOMMENDATION:

For the reasons set forth above, I recommend that Senate Bill 4 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Lizbeth Benacquisto
Debbie Brown, Secretary of the Senate
Counsel of Record

Attachment

I. Text of Ethics Opinion 69-009

Opinion 9

ATTORNEY-LEGISLATOR---FILING OF CLAIM BILL

The question presented to the Committee was whether a legislator would be in conflict with his duties when he filed a claim bill when he or his partner would receive a fee from the claimant.

Chapter 67-469, Florida Statutes, provides in its Declaration of Policy: "…no member of the legislature…shall have any interest financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity… which is in substantial conflict with the proper discharge of his duties in the public interest…"

Under Rule 5.9—A member of the House of Representatives shall not directly or indirectly receive or appear to receive any compensation for any service rendered or to be rendered by him or others where such activity is in conflict with his duty as a Member of the House of Representatives.

It is the opinion of the Committee that it is a conflict of interest for a member, his law partner or his firm to receive a fee or to participate in sharing any fee derived from claimant cases.

The Committee believes that the test is whether or not the legislator or his law partner or his law firm would receive a fee and that if a fee is to be received by a legislator, his law partner or his law firm it would be improper for the legislator to file a claim bill.

John J. Savage
Chairman

(Journal, House of Representatives, 1969, May 2, page 317)

J. Text of Ethics Opinion 71-016

Opinion 16

ATTORNEY-LEGISLATOR---PARTNER FILING CLAIM BILL

The question presented to the Committee on House Administration and Conduct by a Member of the House of Representatives was whether or not it would constitute a conflict of interest if the law partner of the Member caused to be introduced a claim bill on behalf of a client.

It was the Opinion of the Committee that the introduction of a claim bill by the law partner of a Member, particularly if a fee was involved, would constitute a conflict of interest on the part of the Member. It is well settled that every member of the law firm is the agent of all other members of the firm. The introduction of a claim bill would necessarily require lobbying on behalf of the bill. The Florida Bar Association in two Opinions, 67-5 and 67-5 Supplement, has ruled that a Member of the Legislature would violate Canon 6 if a legislator was a member of a firm active in lobbying in the Legislature even though the legislator did not participate in the lobbying fee, and even though the legislator disqualified himself in voting on the proposal for which the lobbying service was rendered, in this matter, the claim bill.

The Committee on Standards and Conduct of the House of Representatives rendered an Opinion during the 1967 session of the House under Rule 5.9 that it was a conflict of interest for a Member, his law partner, or his law firm, to receive a fee and to participate in sharing any fee derived from claimant cases.

Therefore, in view of the ruling of the Florida Bar Association, and the previous ruling of this Committee, it appears that there would be a conflict on the part of the Member if there was introduced, or caused to be introduced, a claim bill by his law partner.

George Firestone
Chairman

(Journal, House of Representatives, 1971, February 4, Page 119)

K. Text of *Gamble v. Wells*, 450 So.2d 850 (Fla. 1984)

Judges: Alderman, C.J. Boyd, Overton, McDonald and Ehrlich, JJ., concur. Shaw, J., concurs in result only.

Opinion by: ALDERMAN

Opinion

[*851] Charlotte Gamble, as guardian of the property of Cynthia Gamble, appeals and Ted Wells cross-appeals the decision of the District Court of Appeal, Second District, in *Gamble v. Wells*, 436 So.2d 173 (Fla. 2d DCA 1983). The Second District declared invalid the portion of chapter 80-448, Laws of Florida, which placed a $10,000 limitation on the attorney's fee for Cynthia Gamble's attorney. We have jurisdiction pursuant to article V, section 3(b)(1), Florida Constitution.

We reverse the district court and hold that the attorney's fee limitation in chapter 80-448 is a constitutionally permissible exercise of legislative authority and does not constitute an impairment of contractual obligations proscribed by article I, section 10 of the Florida Constitution. [1]

The facts are stated at length in the district court's decision. Briefly the pertinent facts are that commencing in 1967, while in the custody of the State Department of Public Welfare, now known as the Department of Health and Rehabilitative Services, due to the negligence of the department, Cynthia Gamble sustained crippling and disfiguring injuries. In 1975, Charlotte Gamble, who had been granted legal custody of Cynthia, contacted Ted Wells, a personal injury trial lawyer, and told him that the child had been abused and injured while in the previous legal custody of HRS. She signed a standard contingent fee contract giving Wells authority to represent Cynthia. This contract provided, among other things, that as compensation for his services Wells would be paid 33 1/3 **[*852]** percent of the proceeds of recovery if the matter was settled without suit, 40 percent if suit was filed, and 50 percent if an appeal was taken from the lower court.

In 1977 Wells decided that the only possible means available for recovery would be a private relief act. He represented Cynthia before the legislature during the deliberations over the claims bill. In 1980, the legislature enacted chapter 80-448, Laws of Florida. [2] Section 3 of this act specifically limits the attorney's

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[1] Gamble, in her brief, also contended that she was entitled to trial by jury as a matter of right. We need not resolve that issue since Gamble's counsel at oral argument advised the Court that, if he prevailed on the first issue and the legislative limitation was upheld, he had no problem with the amount set by the legislature.

[2] An act for the relief of Cynthia Leigh Gamble, a minor; providing an appropriation to compensate her for personal injuries due to the negligence of the Department of Health and Rehabilitative Services; providing an effective date.

WHEREAS, on May 24, 1967, Cynthia Leigh Gamble, then 3 months old, was taken into the custody of the juvenile court of Hillsborough County and because she had no living parent was placed in the custody of the State Department of Public Welfare, and

WHEREAS, on August 6, 1967, Cynthia Gamble was admitted to Tampa General Hospital where it was discovered that she had several injuries, and

WHEREAS, on July 29, 1969, while still in the custody of the department, Cynthia Gamble was readmitted to the hospital suffering from a variety of illnesses and injuries, and

WHEREAS, on August 4, 1969, it was concluded that the child's skeletal deficiencies and changes were the result of vitamin deficiency and trauma, and

WHEREAS, the child was placed in the home of a new foster mother and has since received adequate medical care at the Crippled Children's Clinic to overcome the crippling and disfiguring injuries carelessly and negligently inflicted upon her while she was in the custody of the now Department of Health and Rehabilitative Services, and

WHEREAS, due to the negligence of the department, Cynthia Gamble has required plastic surgery and orthopedic operations and remains crippled and disfigured, NOW, THEREFORE,

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

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

fee to Cynthia's counsel to $10,000.

Wells advised Gamble that he would not accept only $10,000 and that he believed the fee limitation to be unconstitutional. Gamble refused to pay Wells more than $10,000.

Wells then filed in probate court for attorney's fees, under the terms of the contingent fee contract for costs and for a charging lien. The probate court awarded Wells attorney's fees of $50,000 pursuant to the contingent fee contract clause which provided for a fee of 33 1/3 percent in the event the case was settled without suit, allowed $710.24 in costs, impressed a charging lien, and denied prejudgment interest. Declining to hold the attorney's fee limitation of the act unconstitutional, the probate court held that this language of chapter 80-448 was mere surplusage.

Upon appeal, the district court held that the attorney's fee limitation amounted to an unconstitutional impairment of a contractual obligation but that this limitation was severable from the remainder of the private relief act. It further determined, however, that Wells waived his contractual rights during his conversation with Representative Upchurch to a qualified extent by holding out for 25 percent of whatever amount the legislature awarded the child. Accordingly, the Second District directed the trial court to reduce the fee award to $37,500, without prejudgment interest.

We disagree and hold that no contract rights were impaired by section 3 of chapter 80-448. By enacting chapter 80-448, the legislature found that a moral **[*853]** obligation existed on its part to redress the physical and emotional injuries of Cynthia Gamble sustained as a result of the negligence of a state agency. This voluntary recognition of its moral obligation by the legislature in this instance was based on its view of justice and fair treatment of one who had suffered at the hands of the state but who was legally remediless to seek damages. Chapter 80-448 is an act of grace to redress a wrong suffered by Cynthia at the hands of the state which is not otherwise legally compensable. In seeking to obtain relief for Cynthia by means of a private relief act, Ted Wells was not in a position to demand that the legislature grant compensation to Cynthia. He could only request that the legislature grant the compensation sought. The legislature then, as a matter of grace, could allow compensation, decide the amount of compensation, and determine the conditions, if any, to be placed on the appropriation.

Parties cannot enter into a contract to bind the state in the exercise of its sovereign power. The legislature had the power to place the attorney's fee limitation in chapter 80-448. Wells, by the terms of his contingent fee contract with Gamble, could not deprive the legislature of this power. The legislature was in no way bound to pass legislation conforming with the provisions of the prior contingent fee contract.

Accordingly, we hold that chapter 80-448 is constitutional and reverse the decision of the district court. We remand with directions that the fee award be reduced to $10,000.

It is so ordered.

BOYD, OVERTON, McDONALD and EHRLICH, JJ., Concur.

SHAW, J., Concurs in result only.

Section 2. The sum of $150,000 is appropriated from funds in the State Treasury to the credit of the Department of Health and Rehabilitative Services, not otherwise appropriated, to compensate Cynthia Leigh Gamble for personal injuries.

Section 3. The Comptroller is directed to draw his warrant in favor of Cynthia Leigh Gamble to be applied to a trust fund to be administered and accounted for by her legal guardian in the sum of $150,000 upon funds in the State Treasury to the credit of the Department of Health and Rehabilitative Services, and the State Treasurer is directed to pay the same out of such funds in the State Treasury not otherwise appropriated. The attorney's fee for counsel of Cynthia Leigh Gamble shall be limited to $10,000.

Section 4. This act shall take effect July 1, 1980.

Approved by the Governor July 2, 1980.

Filed in Office Secretary of State July 3, 1980.