

SB 2130 by **CM**; (Identical to H 7121) Ratification of Rules

SB 44 by **Fasano**; (Similar to H 7131) Relief of Irving Hoffman and Marjorie Weiss by the City of Tallahassee

755778 D S RCS RC, Jones Delete everything after 02/27 07:14 PM

SB 10 by **Flores**; (Compare to CS/CS/H 0965) Relief/Aaron Edwards, Mitzi Roden, and Mark Edwards/Lee Memorial Health System/Lee County

387752 A S L RCS RC, Flores Delete L.176 - 194: 02/27 08:04 PM

279324 SD S L UNFAV RC, Richter Delete everything after 02/27 08:04 PM

SB 6 by **Negron**; (Similar to CS/H 0457) Relief of Denise Gordon Brown and David Brown/North Broward Hospital District

SB 16 by **Braynon**; (Similar to CS/H 0579) Relief/Lopez, Guzman, Lopez, Jr., Lopez-Velasquez, and Guzman/Miami-Dade County

816710 A S RCS RC, Smith Delete L.77: 02/27 07:19 PM

SB 22 by **Smith**; (Identical to H 1353) Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office

SB 38 by **Garcia**; (Similar to CS/H 0697) Relief of Donald Brown by the District School Board of Sumter County

371176 A S RCS RC, Flores Delete L.104: 02/27 07:24 PM

SB 40 by **Norman**; (Identical to H 0805) Relief of Yvonne Morton by the Department of Health

SB 42 by **Flores**; (Similar to CS/H 1039) Relief of James D. Feurtado, III, by Miami-Dade County

SB 48 by **Montford**; (Similar to CS/H 0877) Relief of Odette Acanda and Alexis Rodriguez/Public Health Trust of Miami-Dade County

763994 A S RCS RC, Siplin Delete L.59: 02/27 07:40 PM

SB 50 by **Bogdanoff**; (Similar to CS/H 1485) Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta/Miami-Dade County

556648 A S L RCS RC, Negron Delete L.55 - 62: 02/27 08:07 PM

SB 52 by **Negron**; (Similar to CS/H 0293) Relief of Matute, Torres, De Mayne, Torres, and Barahona/Palm Beach County Sheriff's Office

SB 54 by **Negron**; (Similar to CS/H 0855) Relief of Carl Abbott by the Palm Beach County School Board

SB 58 by **Flores**; (Identical to H 0985) Relief of Maricelly Lopez by the City of North Miami

SB 70 by **Storms**; (Similar to CS/H 0967) Relief of Kristi Mellen by the North Broward Hospital District

SB 1076 by **Gibson**; (Similar to CS/H 0909) Relief of Anais Cruz Peinado by the School Board of Miami-Dade County

CS/SB 1208 by **GO, BI**; (Compare to H 7111) OGSR/Unclaimed Property/Department of Financial Services

103184 A S RCS RC, Richter Delete L.26 - 39: 02/27 07:54 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Alexander, Vice Chair

MEETING DATE: Monday, February 27, 2012

TIME: 2:00 —4:30 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Thrasher, Chair; Senator Alexander, Vice Chair; Senators Bullard, Flores, Gaetz, Gardiner, Jones, Lynn, Margolis, Negron, Richter, Siplin, Smith, and Wise

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|----------------------------|
| 1 | SB 2130 Commerce and Tourism (Identical H 7121) | Ratification of Rules; Ratifying a specified rule for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any of specified thresholds for likely adverse impact or increase in regulatory costs, etc. RC 02/27/2012 Favorable | Favorable Yeas 9 Nays 0 |
| 2 | SB 44 Fasano (Similar H 7131) | Relief of Irving Hoffman and Marjorie Weiss by the City of Tallahassee; Providing for the relief of Irving Hoffman and Marjorie Weiss, parents of Rachel Hoffman, deceased, individually and as co-personal representatives of the Estate of Rachel Hoffman, by the City of Tallahassee; providing an appropriation to compensate them for the wrongful death of their daughter, Rachel Hoffman, as a result of negligence by employees of the Tallahassee Police Department; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Unfavorable RC 02/27/2012 Fav/CS | Fav/CS Yeas 10 Nays 1 |
| 3 | SB 10 Flores (Compare CS/CS/H 965) | Relief/Aaron Edwards, Mitzi Roden, and Mark Edwards/Lee Memorial Health System/Lee County; Providing for the relief of Aaron Edwards, a minor, and his parents, Mitzi Roden and Mark Edwards, by Lee Memorial Health System of Lee County; providing for an appropriation to compensate Aaron Edwards and his parents for damages sustained as a result of the medical negligence by employees of Lee Memorial Health System of Lee County; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Unfavorable RC 02/27/2012 Fav/CS | Fav/CS Yeas 7 Nays 4 |

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, February 27, 2012, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|---|-----------------------------|
| 4 | SB 6 Negrón (Similar CS/H 457) | Relief of Denise Gordon Brown and David Brown/North Broward Hospital District; Providing for the relief of Denise Gordon Brown and David Brown by the North Broward Hospital District; providing for an appropriation to compensate Denise Gordon Brown and David Brown, parents of Darian Brown, for injuries and damages sustained by Darian Brown as result of the negligence of Broward General Medical Center; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Favorable | Favorable Yeas 9 Nays 2 |
| 5 | SB 16 Braynon (Similar CS/H 579) | Relief/Lopez, Guzman, Lopez, Jr., Lopez-Velasquez, and Guzman/Miami-Dade County; Providing for the relief of Ronnie Lopez and Robert Guzman, individually and as co-personal representatives of the Estate of Ana-Yency Velasquez, deceased, and for Ronnie Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven Robert Guzman, minor children of Ana-Yency Velasquez, by Miami-Dade County; providing for an appropriation to compensate the estate and the minor children for the death of Ana-Yency Velasquez as a result of the negligence of an employee of Miami-Dade County; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Fav/CS | Fav/CS Yeas 9 Nays 2 |
| 6 | SB 22 Smith (Identical H 1353) | Relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; Providing for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate Jennifer Wohlgemuth, whose injuries were due to the negligence of an employee of the Pasco County Sheriff's Office; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Fav/1 Amendment RC 02/27/2012 Favorable | Favorable Yeas 10 Nays 0 |
| 7 | SB 38 Garcia (Similar CS/H 697) | Relief of Donald Brown by the District School Board of Sumter County; Providing for the relief of Donald Brown by the District School Board of Sumter County; providing for an appropriation to compensate Donald Brown for injuries sustained as a result of the negligence of an employee of the District School Board of Sumter County; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Fav/1 Amendment RC 02/27/2012 Fav/CS | Fav/CS Yeas 7 Nays 1 |

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, February 27, 2012, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|----------------------------|
| 8 | SB 40 Norman (Identical H 805) | Relief of Yvonne Morton by the Department of Health; Providing for the relief of Yvonne Morton; providing an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Department of Health; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Favorable | Favorable Yeas 8 Nays 1 |
| 9 | SB 42 Flores (Similar CS/H 1039) | Relief of James D. Feurtado, III, by Miami-Dade County; Providing for the relief of James D. Feurtado, III, by Miami-Dade County; providing for an appropriation to compensate him for injuries he sustained as a result of the negligence of an employee of Miami-Dade County; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Favorable | Favorable Yeas 9 Nays 1 |
| 10 | SB 48 Montford (Similar CS/H 877) | Relief of Odette Acanda and Alexis Rodriguez/Public Health Trust of Miami-Dade County; Providing for the relief of Odette Acanda and Alexis Rodriguez by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; providing for an appropriation to compensate Odette Acanda and Alexis Rodriguez for the death of their son, Ryan Rodriguez, as a result of the negligence of employees of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Fav/1 Amendment RC 02/27/2012 Fav/CS | Fav/CS Yeas 9 Nays 1 |
| 11 | SB 50 Bogdanoff (Similar CS/H 1485) | Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta/Miami-Dade County; Providing for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Nhora Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Unfavorable RC 02/27/2012 Fav/CS | Fav/CS Yeas 8 Nays 1 |

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, February 27, 2012, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 12 | SB 52 Negrón (Similar CS/H 293) | Relief of Matute, Torres, De Mayne, Torres, and Barahona/Palm Beach County Sheriff's Office; Providing for the relief of Criss Matute, Christian Manuel Torres, Eddna Torres De Mayne, Lansky Torres, and Nasdry Yamileth Torres Barahona by the Palm Beach County Sheriff's Office; providing for an appropriation to compensate them for injuries sustained as a result of the negligence of the Palm Beach County Sheriff's Office for the wrongful death of their father, Manuel Antonio Matute; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Favorable | Favorable Yeas 7 Nays 1 |
| 13 | SB 54 Negrón (Similar CS/H 855) | Relief of Carl Abbott by the Palm Beach County School Board; Providing for the relief of Carl Abbott by the Palm Beach County School Board; providing for an appropriation to compensate Carl Abbott for injuries sustained as a result of the negligence of the Palm Beach County School District; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Favorable | Favorable Yeas 8 Nays 1 |
| 14 | SB 58 Flores (Identical H 985) | Relief of Maricelly Lopez by the City of North Miami; Providing for the relief of Maricelly Lopez by the City of North Miami; providing for an appropriation to compensate Maricelly Lopez, individually and as personal representative of the Estate of Omar Miele, for the wrongful death of her son, Omar Miele, which was due to the negligence of a police officer of the City of North Miami; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Temporarily Postponed | Temporarily Postponed |
| 15 | SB 70 Storms (Similar CS/H 967) | Relief of Kristi Mellen by the North Broward Hospital District; Providing for the relief of Kristi Mellen as personal representative of the Estate of Michael Munson, deceased, by the North Broward Hospital District; providing for an appropriation to compensate the estate and the statutory survivors, Kristi Mellen, surviving spouse, and Michael Conner Munson and Corinne Keller Munson, surviving minor son and surviving minor daughter, for the wrongful death of Michael Munson as a result of the negligence of the North Broward Hospital District; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Favorable RC 02/27/2012 Favorable | Favorable Yeas 8 Nays 1 |

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, February 27, 2012, 2:00 —4:30 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 16 | SB 1076 Gibson (Similar CS/H 909) | Relief of Anais Cruz Peinado by the School Board of Miami-Dade County; Providing for the relief of Anais Cruz Peinado, mother of Juan Carlos Rivera, deceased, for the death of Juan Carlos Rivera as a result of the negligence of the School Board of Miami-Dade County; providing a limitation on the payment of fees and costs, etc. SM 02/23/2012 Recommendation: Unfavorable RC 02/27/2012 Favorable | Favorable Yeas 8 Nays 3 |
| 17 | CS/SB 1208 Governmental Oversight and Accountability / Banking and Insurance (Compare H 7111) | OGSR/Unclaimed Property/Department of Financial Services; Revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; allowing the release of the first five digits of the number for certain purposes; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO 02/07/2012 Temporarily Postponed GO 02/16/2012 GO 02/17/2012 GO 02/22/2012 Fav/CS RC 02/27/2012 Fav/CS | Fav/CS Yeas 9 Nays 0 |

Other Related Meeting Documents

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 Rules Committee

BILL: SB 2130

INTRODUCER: Commerce and Tourism Committee

SUBJECT: Ratification of Rules

DATE: February 23, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Juliachs | Phelps | RC | Favorable |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 2130 ratifies a rule adopted by the Department of Agriculture and Consumer Services that updates the minimum standards for the storage and handling of liquefied petroleum gases pursuant to s. 527.06, F.S. As evidenced by the Department of Agriculture and Consumer Services' Legislative Ratification Request, Rule 5F-11.002, F.A.C., *Standards of National Fire Protection Association Adopted*, would have a specific, adverse economic effect or would increase regulatory costs exceeding \$1 million over the first 5 years the rule was in effect. Accordingly, the rule must be ratified by the Legislature before it may enter into effect.

This bill creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Overview

The Department of Agriculture and Consumer Service (department) is the primary agency charged with the regulation of liquefied petroleum gas (LP gas) wherever the product is stored, distributed, transported, and used in Florida. The department also has statutory authority over the licensing, inspection, enforcement, accident investigation, and training of persons and firms

involved in the LP gas industry in the state.¹ As of December 7, 2011, there were 13,558 LP gas licensees in Florida.²

Accordingly, the department is required to promulgate and enforce rules that establish minimum standards for numerous issues pertaining to the safe handling of LP gas, including the design, construction, location, installation, and operation of storage of LP gas. The rules must substantially conform to generally accepted standards of safety.³ Rules that substantially conform to the published standards of the National Fire Protection Association (NFPA) are deemed to meet this standard.⁴ The department implements this requirement by adopting and periodically updating Rule 5F-11.002, F.A.C., incorporating by reference the applicable NFPA codes with certain exclusions.

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.⁵ Rulemaking authority is delegated by the Legislature⁶ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create” a rule.⁷ Agencies do not have discretion whether to engage in rulemaking.⁸ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁹ The grant of rulemaking authority itself need not be detailed.¹⁰ However, the specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹¹

An agency begins the formal rulemaking process by filing a notice of the proposed rule.¹² The notice is published by the Department of State in the Florida Administrative Weekly¹³ and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC), if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting

¹ Chapter 527, F.S.

² The information derives from the December 7, 2011, request submitted by the Florida Department of Agriculture and Consumer Services for Legislative Ratification of Adopted Rule 5F-11.002, F.A.C., filed July 7, 2011 (on file with Senate Committee on Commerce and Tourism).

³ Section 527.06(2), F.S.

⁴ Section 527.06(3)(a), F.S.

⁵ Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

⁶ See *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁷ Section 120.52(17), F.S.

⁸ Section 120.54(1)(a), F.S.

⁹ Sections 120.52(8) and 120.536(1), F.S.

¹⁰ See *Save the Manatee Club, Inc.*, 773 So. 2d at 599; See also *Florida Dep’t Bus. and Prof’l Regulation, Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 384 (Fla. 1999).

¹¹ See *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (citing *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So. 2d 763, 770 (Fla. 2005)).

¹² Section 120.54(3)(a), F.S.

¹³ Section 120.55, F.S.

a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.¹⁴

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. As such, the following must be determined: a rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment;¹⁵ the likely adverse impact on business competitiveness,¹⁶ productivity, or innovation; and any likely increase in regulatory costs, including any transactional costs.^{17, 18} If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million, in the aggregate, for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."¹⁹ A rule must be filed for adoption before it may go into effect and cannot be filed for adoption until completion of the rulemaking process.²⁰ A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years must be ratified by the Legislature before going into effect. A rule submitted under s. 120.541(3), F.S., becomes effective when ratified by the Legislature.

Storage and Handling of LP Gas²¹

On July 7, 2011, the department adopted a rule that updated the minimum standards required for the storage and handling of LP gas, pursuant to s. 527.06, F.S., by stipulating that the *LP Gas Code Handbook*, NFPA 58, 2011 edition (NFPA 58), and the *National Fuel Gas Code Handbook*, NFPA 54, 2006 edition (NFPA 54), are to be utilized by the department as a guide in interpreting the provisions of ch. 527, F.S. This rule was submitted by the department for ratification on December 7, 2011.

Accordingly, the code change with the most substantial economic impact on industry licensees is found in NFPA 58, which requires the installation of a cathodic protection system²² for

¹⁴ Section 120.541(2)(a), F.S.

¹⁵ Section 120.541(2)(a)1., F.S.

¹⁶ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets. *See* s. 120.541(2)(a)2., F.S.

¹⁷ Section 120.541(2)(a) 3., F.S.

¹⁸ Transactional costs are direct costs that are readily ascertainable based upon standard business practices and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting. *See* s. 120.541(2)(d).

¹⁹ Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State. *See* s. 120.54(3)(e)6., F.S.

²⁰ Section 120.54(3)(e), F.S.

²¹ *See supra*, note 2.

²² A cathodic protection system consists of a sacrificial anode(s) or an impressed current anode. The anode is installed in the same hole dug for the container installation (although located away from the container) and involves no additional labor other than attaching the anode to the container via a wire nut and ensuring that dirt covering the anode is tamped-down. The only other cost to be incurred by businesses installing underground containers is the purchase of a voltmeter and a ½ cell that will be used to conduct mandatory testing of the cathodic protection system. The voltmeter and ½ cell are typically sold as a kit. One kit will last several years and perform testing of thousands of installations. Note that the cost of the kits is not reoccurring and will not be carried over to subsequent years.

underground steel LP gas containers. Provisions in the updated code now require that all new underground installations be protected from corrosion damage by use of a cathodic protection system.²³ The department projects this enhanced protection will increase the useful life of underground tanks by approximately 300 percent, prolonging the need to purchase replacements. However, because the projected impact in transactional costs for businesses will exceed \$1 million in the aggregate for a 5 year period, ratification by the Legislature is required for this rule to become effective.

Presently, there are 13,558 licensed LP gas entities that are required to comply with NFPA 58. However, of that number, only 525 of the current licensees install underground tanks and would be subject to the additional code requirements. This number takes into account both LP gas dealers and LP gas installers.

The SERC prepared by the department projects that the revised standards found in NFPA 58 will result in increased transaction costs for these licensees, in the aggregate, of \$2,731,154 in the first year and approximately \$2,464,200 in each subsequent year.²⁴ This is a conservative estimate using the projected cost of a larger anode and initial costs for required voltage testers. The department notes many licensees already install cathodic protection systems in order to comply with the requirements of tank manufacturers.

III. Effect of Proposed Changes:

Section 1 ratifies Rule 5F-11.002, F.A.C., relating to the implementation of the most recent version of the NFPA's LP gas code. This act solely and exclusively exists for the purpose of ratifying the above referenced rule and shall not be codified in the Florida Statutes.

Section 2 provides that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ A cathodic protection system prevents corrosion by reversing the outflow of electrons from the object being protected. This is done by attaching a separate anode by wire to the underground tank, making the tank a *cathode* and, thus, protected from corrosion. Mississippi Department of Environmental Quality, *Guidelines for the Evaluation of Underground Storage Tank Cathodic Protection Systems* (July, 2002), available at http://www.deq.state.ms.us/MDEQ.nsf/page/UST_Publications?OpenDocument (last visited February 16, 2012).

²⁴ Note that the estimated total first-year cost increase for an individual dealer that installs an average 100 LP gas containers annually is \$9,975.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

According to the Department of Agriculture and Consumer Services, state revenue will increase related to standard sales tax imposed on all sales of anodes and test kits purchased within the state. Additionally, the amount of revenue generated from sales tax on underground container installed packages will also increase by way of increased item cost. Lastly, any county taxes assessed related to these sales would generate additional revenues to the assessing county.²⁵

B. Private Sector Impact:

According to the Department of Agriculture and Consumer Services, the proposed rule is likely to increase transactional costs borne by all licensed businesses that are required to comply with the changes to NFPA 58.²⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ See *supra*, note 2.

²⁶ *Id.*

By the Committee on Commerce and Tourism

577-03764-12

20122130__

A bill to be entitled

An act relating to ratification of rules; ratifying a specified rule for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any of specified thresholds for likely adverse impact or increase in regulatory costs; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 5F-11.002, Florida Administrative Code, entitled "Standards of National Fire Protection Association Adopted," relating to adopting the standards of the National Fire Protection Association for the storage and handling of liquefied petroleum gas and standards for gas appliances and gas piping.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Weekly or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any

Page 1 of 2

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

577-03764-12

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rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect upon becoming a law.

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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)

2-27-12
Meeting Date

Topic LP Gas Rule

Bill Number 2130
(if applicable)

Name Grace Lovett

Amendment Barcode _____
(if applicable)

Job Title Dir of Leg. Affairs

Address PL 10 The Capitol
Street

Phone 488-3072

Tallahassee FL 32361
City State Zip

E-mail grace.lovett@freshfromflorida.com

Speaking: For Against Information

Representing Dept. of Agriculture + Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



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 |
|----------|------|-------------|
| 02/20/12 | SM | Unfavorable |
| 2/27/12 | RC | Fav/CS |
| | | |
| | | |

February 20, 2012

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

Re: **CS/SB 44 (2012)** – Rules Committee and Senator Mike Fasano
Relief of Irving Hoffman and Marjorie Weiss

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$2.4 MILLION AGAINST THE CITY OF TALLAHASSEE FOR WRONGFUL DEATH IN CONNECTION WITH THE MURDER OF RACHEL HOFFMAN, WHO WAS SHOT TO DEATH WHILE ASSISTING THE TALLAHASSEE POLICE DEPARTMENT AS A CONFIDENTIAL INFORMANT.

PREFACE:

At approximately 7:00 p.m. on May 7, 2008, Rachel Hoffman, 23, was murdered on a lonely stretch of Gardner Road north of Tallahassee in Leon County, Florida. Her killers were Andrea Green ("Green") and Deneilo Bradshaw ("Bradshaw"); these criminals were the targets of an investigation by the Tallahassee Police Department ("TPD") in which Ms. Hoffman, during the days leading up to her death, had been providing assistance as a confidential informant ("CI").

In December 2008, Ms. Hoffman's parents, Irving Hoffman and Marjorie Weiss (the "Claimants"), brought a wrongful death suit against the City of Tallahassee ("City"), alleging that the negligence of TPD's officers had caused Ms. Hoffman's death. On January 6, 2012, after selecting a jury

for the trial, the parties agreed to settle the wrongful death action for \$2.6 million. As part of the settlement, the City paid \$200,000 to the Claimants and agreed to support a claim bill for the remaining amount of \$2.4 million.

As it happened, Senate Bill 44, which seeks relief for the Claimants, had already been filed ahead of the 2012 legislative session and referred to the undersigned Special Master. On November 28, 2011, an order had been entered placing the claim bill proceeding in abeyance pursuant to Senate Rule 4.81(6), which requires that all available legal and administrative remedies be exhausted before a claim bill can be heard. On February 8, 2012, based on the settlement of the civil action, the Claimants filed a motion urging the Special Master to take the case out of abeyance and schedule a hearing. After conferring with the parties' counsel, the undersigned issued a Notice of Hearing on February 9, 2012, which announced that the hearing would occur on Monday, February 13, 2012. The hearing took place as scheduled on February 13. Many documents were presented, as was an audio recording of the relevant TPD radio transmissions. No witnesses testified.

The ultimate issue presented in this case is whether TPD's negligence, if any, caused the brutal murder of Ms. Hoffman, thereby making the City legally liable to her parents for damages in a wrongful death suit. As explained in the Conclusions of Law below, I conclude that TPD's actions, even if negligent, were not the proximate cause of Ms. Hoffman's deplorable death. Therefore, I must recommend that this claim bill be reported unfavorably.

FINDINGS OF FACT:

In March 2008, Officer Chris Pate of TPD received a tip that Ms. Hoffman was selling a large amount of marijuana from her apartment in Tallahassee. Following that, Officer Pate and Investigator Ryan Pender ("Pender") placed Ms. Hoffman's apartment under surveillance. (Investigator Pender knew Ms. Hoffman's name, having been told by a CI in 2007 that she was a person who sold drugs in town.) The officers gathered evidence of criminal activity, including ledgers of drug sales pulled from the garbage, which was presented to a judge, who found probable cause and issued a warrant to search Ms. Hoffman's apartment. Pender and other officers executed the search warrant on April 17, 2008.

The officers found felony amounts of marijuana in Ms. Hoffman's apartment, plus a half-dozen ecstasy (MDMA) pills, some Valium, and multiple items of drug paraphernalia. This was not Ms. Hoffman's first encounter with law enforcement. She had been arrested in February 2007 for possession of marijuana (a felony charge) and consequently was, at the time of the search in April 2008, participating in a pretrial intervention program known as Drug Court. Her possession of marijuana on April 17, 2008, was—in addition to being a felony—a clear violation of the Drug Court agreement she had signed on April 20, 2007. (This was not Ms. Hoffman's only violation of the agreement. Earlier in April 2008, she had left Tallahassee and failed to show up for a random drug test, which resulted in her having to spend a weekend in jail.)

Pender interviewed Ms. Hoffman in her apartment. She did not want to get into more legal trouble and asked if she could be an informant. Ms. Hoffman told Pender that selling cannabis was her job (she was not otherwise gainfully employed) and that she had been selling five to 10 pounds of marijuana per week, worth between \$4,800 and \$5,200 per pound. (To put this in perspective, sales at this rate would annualize at between \$1.2 and \$2.7 million gross. The Claimants disagree with the notion that Ms. Hoffman did anything other than sell small amounts of marijuana to her friends. There is insufficient evidence for the undersigned to determine whether Ms. Hoffman actually did as much illegal business as she led Pender to believe, and she certainly would have had reasons to exaggerate, e.g., to increase the chances of being accepted as a CI. Regardless of the quantities involved, however, the likelihood is that Ms. Hoffman was making her living selling marijuana—she was an experienced dealer, in other words, small-time perhaps, but nevertheless not an amateur.) Ms. Hoffman impressed Pender with her knowledge of the drug trade; she was quite fluent in the street language in which drug deals are transacted. Pender offered to let Ms. Hoffman assist TPD as a CI, and as a result she was not immediately arrested. Instead, Pender instructed her to meet with him the next day, April 18, at his office.

Ms. Hoffman appeared for the meeting with Pender, as planned. She was told that if she provided substantial assistance to TPD as a CI, she could work off the potential

charges stemming from the search of her apartment, which were not insignificant: possession of cannabis with intent to sell; possession of ecstasy; maintaining a drug house; possession of a controlled substance with intent to sell; and possession of paraphernalia. She was offered, but declined, the opportunity to call her criminal defense attorney; according to multiple sources, Ms. Hoffman neither liked nor trusted him. The evidence does *not* show that the police threatened, bullied, coerced, or lied to Ms. Hoffman to induce her to become a CI; to the contrary, the evidence persuasively establishes that she was eager to cooperate, and did so freely and voluntarily. Ms. Hoffman signed the documents in the "CI packet," including a Confidential Informant Code of Conduct, which provided in part as follows:

I, Rachel Hoffman, the undersigned, understand that while I am cooperating and assisting the [TPD], agree to the following:

14. I agree to cooperate with the [TPD] on my own free will, and not as a result of any intimidation or threats.

* * *

20. I hereby release the City of Tallahassee, the State of Florida, the [TPD], its officers, agents, affiliates and any other cooperating law enforcement agency, from any liability or injury that may arise as a result of this agreement.

Ms. Hoffman separately initialed each of the 20 numbered paragraphs of the "Code," including the two quoted above.

Ms. Hoffman made her first controlled call as a CI that day (April 18, 2008) to an individual named D.S. whom she knew sold drugs in Tallahassee. The intent was to arrange a purchase of ecstasy from D.S., but a deal was not made, and Pender advised that they would try again later.

That night, however, D.S. confronted Ms. Hoffman after having learned that her apartment recently had been raided by the police. She confessed to him that she was serving as a CI, which effectively ended the attempt to set D.S. up for a

buy-bust operation. Somewhat surprisingly, however, D.S. was willing to work as a CI to help Ms. Hoffman avoid her potential charges. Ms. Hoffman promptly reported this to Pender, and he arranged to meet with them on April 21, 2008.

At the meeting on April 21, D.S. signed up as a CI; his assistance led to a successful buy-bust operation on April 24, 2008, which was credited toward Ms. Hoffman's substantial assistance. Of greater interest to this case, though, is that it was D.S. who identified Green as a potential target. D.S. told Pender that Green—who worked at a carwash/tint shop on Tennessee Street—and another man whose name he didn't know (it was Bradshaw) were big dealers in drugs and other illegal items, including guns.

After leaving the police station on April 21, D.S. and Ms. Hoffman ran into Green at the carwash. D.S. introduced Ms. Hoffman to Green; in the course of the conversation, D.S. informed Green that Ms. Hoffman was looking to buy drugs, and Green gave Ms. Hoffman his phone number.

On April 22, 2008, Ms. Hoffman reported the contact with Green to Pender. This led to Ms. Hoffman's second operation as a CI, in which she made a controlled call to Green to arrange a purchase of 1,500 ecstasy pills. This was supposed to lead to a buy-bust at the carwash, but the operation was aborted because Green did not have the drugs on hand and his supplier failed to deliver the pills in time to complete the transaction without unreasonable delay. Although this operation was not successful, Ms. Hoffman performed her role exactly as expected, without incident.

Ms. Hoffman's next operation took place on May 5, 2008. The goal was for Ms. Hoffman to go to the carwash wearing a wire and meet with Green to discuss purchasing drugs. She followed instructions and the operation went according to plan—except that instead of meeting Green, Ms. Hoffman met Bradshaw. Bradshaw informed her that he and Green worked as a team, and that they could do the deal she sought the following day. Ms. Hoffman later reported that she was comfortable with Bradshaw.

On Pender's instructions Ms. Hoffman arranged for the transaction to take place on May 7, 2008. The plan was to

purchase 1,500 ecstasy pills, some cocaine, and a handgun, for \$13,000 in a buy-bust operation; this meant that upon receiving a prearranged signal from Ms. Hoffman—who, after being "wired" to surreptitiously transmit and record communications, would be making the buy in her capacity as a CI—the police would move in and arrest the suspects. As originally conceived and planned, the deal was to occur at a residence in the Summerbrooke neighborhood, located in north Tallahassee on the east side of North Meridian Road. This was the home of the parents of one of the suspects. A Walmart store on Thomasville Road was identified as an alternative location. While the operation was still in the planning stage, the suspects told Ms. Hoffman during a controlled call that they preferred to complete the transaction in the parking lot near the tennis courts at Forest Meadows, a park located on the west side of North Meridian Road, several miles south of Summerbrooke. Because this location was suitable for law enforcement purposes, Ms. Hoffman was told to agree to meet the suspects at Forest Meadows.

Shortly before the operation was to commence, a briefing was held at the police station, during which all of the participating personnel and supervisors were informed of the details, including the newly chosen location, Forest Meadows. After the briefing, the officers left to set up inside and around the park. The personnel inside the park included two arrest teams, one of which comprised current and former TAC (Tactical Apprehension & Control) team members, and a block vehicle whose assignment was to block the suspects' escape from the park once the arrest teams approached to detain the suspects. Four officers in individual vehicles were dispatched to patrol north and south of the park, to locate the suspects. Another surveillance vehicle and a DEA airplane were assigned to monitor the house in Summerbrooke.

At 6:28 p.m., Ms. Hoffman received a phone call from Green, who advised that he and Bradford were at Forest Meadows. At 6:30 p.m., Pender, Ms. Hoffman (who was wearing a wire and carrying a separate recording device in her purse, together with \$13,000 in cash), another TPD officer, and DEA Special Agent Lou Andris left the police station. Ms. Hoffman and Pender would communicate with each other during the operation via cell phone.

At 6:40 p.m., Pender pulled in to the parking lot at the Maclay School, south of Forest Meadows. His plan was to monitor Ms. Hoffman's wire from that location. At 6:41 p.m., Pender spoke with Ms. Hoffman on the phone for about one and one-half minutes. She reported that the suspects had told her to meet them at Royalty Plant Nursery—which is located about 1.5 miles north of Forest Meadows, on the west side of North Meridian Road—and get into their car. Ms. Hoffman told Pender that she would not enter the suspects' car. At about this time (6:41 p.m.), Ms. Hoffman turned left, entering the Meridian Park, which is a separate park containing baseball and soccer fields; it is located a bit more than a half-mile south of Forest Meadows. Agent Andris promptly advised the units that Ms. Hoffman had made a wrong turn.

Pender proceeded immediately to Meridian Park. Upon arrival, he saw Ms. Hoffman's car facing North Meridian Road, waiting to pull out. At 6:43 p.m., Pender spoke with Ms. Hoffman on the phone for 20 seconds. Pender slowed down to allow Ms. Hoffman to make a left turn onto North Meridian Road, so that she could continue northbound toward Forest Meadows. Pender instructed Ms. Hoffman to proceed to the flashing yellow light and enter Forest Meadows at that spot. He then pulled in to Meridian Park, to monitor the wire from that location.

Ms. Hoffman drove north toward Forest Meadows. At 6:44:26 p.m., she began a phone conversation with Green which lasted two minutes and 49 seconds (to 6:47:15 p.m.). She stated that she was pulling in to the park with the tennis courts, i.e., Forest Meadows, "right now." Given that she had left Meridian Park at around 6:44 p.m., it is reasonable to infer that Ms. Hoffman reached the flashing yellow light at close to 6:45 p.m., and it was at this time that she made the remark about entering the park. In fact, however, Ms. Hoffman did *not* turn left and head in to Forest Meadows. Instead, she drove through the yellow light and continued traveling north on North Meridian Road. At 6:45 p.m., Pender—having just learned that Ms. Hoffman had not arrived in the park, and that none of the officers had his eyes on her—made the first of several calls to Ms. Hoffman, attempting to determine where she was. She did not answer.

Meantime, Agent Andris, who had continued driving north on North Meridian Road after reporting Ms. Hoffman's wrong turn, observed the suspects at the Royalty Plant Nursery, sitting in a BMW that was parked with its nose out by the road. Agent Andris alerted the units to this fact at 6:46 p.m. Pender responded by notifying the units at 6:46 p.m. that he had lost wire contact with Ms. Hoffman and had been attempting without success to communicate with her by phone. Pender asked that the suspects' vehicle at the nursery be watched.

Because Agent Andris was traveling northbound at the time, he needed to reverse course to return to the nursery. At around 6:47 p.m., he pulled in to Hawks Rise Elementary School to turn around. As he executed this maneuver, he was unable to watch the traffic on North Meridian Road.

It would have taken Ms. Hoffman about two minutes, more or less, to drive the distance between Forest Meadows (which she passed at 6:45 p.m.) and the Royalty Plant Nursery, where the suspects were waiting for her. She was on the phone to Green during this time. Green and Bradshaw, looking southward down North Meridian Road, would easily have been able to see her coming from their vantage point at the edge of the nursery's parking lot, where Agent Andris had spotted them. It is my inference that Ms. Hoffman approached the nursery at around 6:47 p.m., and that as she did, she slowed to allow the suspects to pull out in front of her, so that she could follow them northbound on North Meridian Road. The two cars then proceeded to travel north together, passing Hawks Rise Elementary at just the moment when Agent Andris was turning around—and, unfortunately, unable to see them. By the time Agent Andris got back to the nursery, the suspects were gone. He continued driving south, to Forest Meadows, assuming incorrectly that the suspects had headed that way.

The suspects were moving in the opposite direction, leading Ms. Hoffman to Gardner Road, a dead-end street situated on the west side of North Meridian Road, just shy of one mile north of the Royalty Plant Nursery. The trip from the nursery to Gardner Road probably took about 90 seconds. I infer that the suspects and Ms. Hoffman reached Gardner road at around 6:48 p.m. The BMW made a left-hand turn onto Gardner. Ms. Hoffman followed.

At 6:48:11 p.m., Pender finally connected with Ms. Hoffman by phone. She told him that she had followed the suspects from the nursery to Gardner Road, that they were on the dead-end street, and that the deal would go down there. Pender instructed Ms. Hoffman to stop following the suspects and turn around. Ms. Hoffman did not respond and the call ended, having lasted 42 seconds. At 6:48:20 p.m., apparently while still on the phone with Ms. Hoffman, Pender radioed the units that Ms. Hoffman was on Gardner Road, "all the way at the end," and was "following [the]m right now." At 6:48:32 p.m., Pender told the units: "Alright guys, we're gonna have to run on the fly now. She pulled out and followed them all the way down where the nursery is, and got, followed them down the back street . . . and now she's down at the back end of where that nursery is. You turn off Gardner where the nursery is and go all the way to the end of the street—that's where she's at."

It is most likely that Ms. Hoffman reached the end of Gardner Road (which is at least a mile or so west of North Meridian Road) at around 6:49 p.m., shortly after terminating the conversation with Pender. She parked and met the suspects at the dead-end, which was remote and isolated. That this was obviously not a residential neighborhood would have been readily apparent: surrounding Gardner Road on all sides was undeveloped or rural land. No one else was nearby.

At 6:49:22 p.m. Pender advised: "She's probably with [the]m right now in the car so we need to move, move." The two arrest teams arrived on Gardner Road at 6:52:34 p.m. They were approximately four and one-half minutes behind Ms. Hoffman and the suspects.

Tragically, that brief window of time afforded the suspects sufficient opportunity to murder Ms. Hoffman. Probably sometime between 6:50 p.m. and 6:52 p.m., one of them shot her to death in her own car with the handgun that she had intended to purchase, apparently after discovering the wire and recording devices hidden on her person. The killers then escaped, one driving Ms. Hoffman's Volvo, the other driving the BMW. (There is a dirt road that provides an exit from the dead-end of Gardner Road. Presumably the killers used that unpaved track to make their getaway.) By

the time the police arrived, at around 6:53 p.m., the cars, the killers, and Ms. Hoffman were gone. At 6:54:35 p.m., Green made a phone call to his wife. By that time, he and Bradshaw were on the run. They would be caught the next day, in Orlando.

LEGAL PROCEEDINGS:

In December 2008, Irving Hoffman and Marjorie Weiss, as co-personal representatives of Ms. Hoffman's estate, brought suit against the City of Tallahassee. The action was filed in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. As mentioned earlier, the case was headed to trial in January 2012 when, after picking a jury, the parties reached a settlement during a mediation conference. The City agreed to pay the Claimants \$2.6 million, with \$200,000 (the sovereign immunity limit of the City's liability) payable immediately and \$2.4 million to be paid, if ever, after the enactment of a claim bill. The City agreed to support the passage of a claim bill in the amount of \$2.4 million. The claimants agreed to execute a general release and dismiss the civil suit with prejudice.

CLAIMANTS' ARGUMENTS:

The City is vicariously liable for the negligent acts of the TPD officers who participated in the May 7, 2008, operation, including but not limited to:

- Unreasonably selecting Ms. Hoffman to work as a CI, and thereafter failing to deactivate her when her unsuitability for such service became apparent.
- Failing to make reasonable preparations for the May 7, 2008, operation.
- Failing to provide reasonable supervision of the officers before and during the operation.
- Failing to reasonably implement and execute the operation.

RESPONDENT'S POSITION:

The City supports the bill. If the bill is enacted, the City, which is self-insured, will use funds set aside for contingent liabilities to satisfy the claim. Payment of the claim will not adversely affect the City's ability to perform its operations.

CONCLUSIONS OF LAW:

As provided in section 768.28, Florida Statutes (2012), sovereign immunity shields the City against tort liability in excess of \$200,000 per person and \$300,000 per occurrence.

Under the doctrine of respondeat superior, the City is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).). TPD's officers are employees of the City, and each of them who participated in the May 7, 2008, operation was acting in the course and scope of his employment. Accordingly, the negligence of TPD's officers in connection with the failed buy-bust operation, if any, is attributable to the City.

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)(footnote omitted).

In this case there are serious legal questions regarding whether the City owed Ms. Hoffman a duty of care, for as a general rule tort liability does not attach to the conduct of public employees carrying out such essential governmental functions as law enforcement. In certain circumstances, the police might be held to owe an individual a duty of care, such as where a "special relationship" has been created with that individual. It is not clear, however, that such a legal relationship existed between TPD and Ms. Hoffman or, if it did, that the harm which befell her was within the "zone of risk" created by TPD's conduct. It would not be

unreasonable to conclude that no duty existed in this instance; such a conclusion, without more, would defeat the Claimants' case.

There are, as well, serious legal questions regarding whether TPD's actions are immune from suit due to sovereign immunity, which shields governments from tort liability for "discretionary" governmental functions, as opposed to those which are "operational" in nature. Here, many (maybe most) of the actions forming the basis of the Claimants' complaint were arguably discretionary in nature, e.g., the decision to use Ms. Hoffman as a CI. Discretionary decisions are not actionable where the plaintiffs seek to impose tort liability on a governmental entity.

Assuming TPD owed Ms. Hoffman a duty of care, and that the City is not immune from suit in this instance, serious questions of fact exist regarding the applicable standards of care against which the police conduct should be measured. What should a reasonable law enforcement officer have done under the same or similar circumstances? This is a question that must be answered by evidence, typically adduced in the form of expert testimony. Reasonable people could disagree about whether TPD's officers violated any cognizable standards of care in connection with the May 7, 2008, operation. If they did not, there could be no liability.

A thorough analysis of this case would require a careful examination of the questions relating to duty, immunity, and standards of care mentioned briefly above. For the sake of brevity, however, I will focus solely on the matter of proximate cause because that element, in my opinion, is not met here; thus, the claim is legally insufficient for that reason alone.

"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, with the question of whether the consequences of the negligent act were foreseeable in the exercise of reasonable prudence being of great importance. See, e.g., Stahl, 438 So. 2d at 17-21.

In Stahl, the district court undertook comprehensively to elucidate the doctrine of proximate cause. The following, from the court's thorough opinion, is instructive:

It seems clear at the outset that the "proximate cause" element of a negligence action embraces, at the very least, a causation-in-fact test, that is, the defendant's negligence must be a cause-in-fact of the plaintiff's claimed injuries. In this respect, a negligence action is no different from any other tort action as clearly there can be no liability for any tort unless it be shown that the defendant's act or omission was a cause-in-fact of the plaintiff's claimed injuries. To be sure, such a showing, without more, is insufficient to establish the "proximate cause" element of a negligence action, but it is plainly [an indispensable] ingredient thereof. See e.g., W. Prosser, *Handbook of the Law of Torts* § 41 (4th ed. 1971).

The Florida courts, in accord with most other jurisdictions, have historically followed the so-called "but for" causation-in-fact test, that is, "to constitute proximate cause there must be such a natural, direct, and continuous sequence between the negligent act [or omission] and the [plaintiff's] injury that it can reasonably be said that *but for* the [negligent] act [or omission] the injury would not have occurred." Pope v. Pinkerton-Hays Lumber Co., 120 So.2d 227, 230 (Fla. 1st DCA 1960), cert. denied, 127 So.2d 441 (Fla. 1961), relying on Seaboard Air Line Ry. v. Mullin, 70 Fla. 450, 70 So. 467, 470 (1915). This has proven to be a fair, easily understood and serviceable test of actual causation in negligence actions, which test is currently in use as part of the Florida Standard Jury charges on this subject in the trial of negligence cases. Fla. Std. Jury Instr. (Civil) 5.1a.

* * *

The "proximate cause" element of a negligence action embraces more, however, than the aforesaid "but for" causation-in-fact test Florida courts, in accord with courts throughout the country, have for good reason been most reluctant to attach tort liability

for results which, although caused-in-fact by the defendant's negligent act or omission, seem to the judicial mind highly unusual, extraordinary, bizarre, or, stated differently, seem beyond the scope of any fair assessment of the danger created by the defendant's negligence. Plainly, the courts here have found no proximate cause in such cases based solely on fairness and policy considerations, rather than actual causation grounds.

In this connection, no single test fitting all cases has yet been adopted, see generally Pope v. Pinkerton-Hays Lumber Co., 120 So.2d 227 (Fla. 1st DCA 1960), cert. denied, 127 So.2d 441 (Fla. 1961), but the test most often employed by the courts is the so-called "foreseeability" test. Indeed, it has been said that "the key to proximate cause is foreseeability." Vining v. Avis Rent-A-Car Systems, Inc., 354 So.2d 54, 56 (Fla. 1977). . . . The following leading Florida cases, however, appear to summarize in substance the test as understood under our established law.

"Not every negligent act of omission or commission gives rise to a cause of action for injuries sustained by another. It is only when injury to a person . . . has resulted directly and in ordinary natural sequence from a negligent act without the intervention of any independent efficient cause, or is such as ordinarily and naturally should have been regarded as a probable, not a mere possible, result of the negligent act, that such injured person is entitled to recover damages as compensation for his loss. Conversely, when the loss is not a direct result of the negligent act complained of, or does not follow in natural ordinary sequence from such act but is merely a possible, as distinguished from a natural and probable, result of the negligence, recovery will not be allowed. Seaboard Air Line Ry. Co. v. Mullin, 70 Fla. 450, 70 So. 467, L.R.A.1916D, 982, Ann.Cas.1918A, 576. 'Natural and probable' consequences are those which a person by prudent human foresight can be expected to anticipate as likely to result from an

act, because they happen so frequently from the commission of such act that in the field of human experience they may be expected to happen again. 'Possible' consequences are those which happen so infrequently from the commission of a particular act, that in the field of human experience they are not expected as likely to happen again from the commission of the same act. See 38 Am.Jur. 712, Negligence, Sec. 61."

Cone v. Inter County Telephone & Telegraph Co., 40 So.2d 148, 149 (Fla. 1949).

"The Florida courts, as well as a great majority of other jurisdictions, have incorporated into their definitions of proximate cause certain modifying factors or tests which have been formulated to help determine whether proximate cause or legal cause is present in a particular case. The principal tests are the following: (a) 'Foreseeability', by which, even though the defendant has been negligent there can be no recovery for an injury that was not a reasonably foreseeable consequence of his negligence, although . . . the particular injury or the manner in which the hazard operated need not have been clearly foreseeable. . . ."

Pope v. Pinkerton-Hays Lumber Co., 120 So.2d 227, 229 (Fla. 1st DCA 1960), cert. denied, 127 So.2d 441 (Fla. 1961)(footnotes omitted).

Stahl, 438 So. 2d at 17-21 (footnotes omitted).

Due to the element of proximate cause, a negligent party is not liable for someone else's injury 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 ordinarily 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). 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.

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

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).

In this case, the question arises whether Ms. Hoffman's unilateral decision to abandon the planned buy-bust operation—for which some twenty police officers had staged at Forest Meadows—and embark on the far more dangerous mission of following the suspects to a secluded and remote location (outside City limits) to meet them alone, with no police protection, was an unforeseeable intervening cause which so profoundly and unexpectedly changed the course of events as to sever any reasonable causal connection between TPD's alleged negligence and the murder. The undersigned concludes that Ms. Hoffman's actions constituted an unforeseeable, supervening cause which relieved the City of liability for her death, for the reasons that follow.

But first, consider this hypothetical situation, as an aid to conceptualizing the distinction between causation-in-fact (which is necessary but not sufficient to establish liability for an injurious result) and proximate cause. Suppose that at 6:46 p.m. a tree had fallen on Ms. Hoffman's car and killed her while she was en route to the nursery. (The odds of such an occurrence are infinitesimally small, to be sure, yet freakish accidents of the sort do happen in human experience.) By 6:46 p.m. on May 8, 2008, the police had committed all or most of the negligent acts on which the present case is based, and the potentially dangerous buy-bust operation was well underway. Just as in the actual case, TPD's actions (whether negligent or not) were a cause-in-fact of the injury inasmuch as but for proceeding with the operation and negligently allowing (as the Claimants would have it) Ms. Hoffman to overshoot the park, she would not have been struck by the tree. (Indeed, just as in the actual case, Ms. Hoffman's own actions, e.g., her decision to bypass the park and head to the nursery, were a cause-in-fact of the injury.) In the hypothetical scenario, however, no one blames TPD for the death, for the good reason that the fatal accident was not foreseeable and, in any event, was outside the zone of danger created by police negligence, if any. The falling tree was a supervening cause of the death,

relieving TPD of liability for any prior negligence, which was not the proximate cause of the injury.

What actually happened was, like the fictional falling tree, not reasonably foreseeable either. To begin, although Ms. Hoffman has been described by some as immature, inexperienced, unreliable, and "demonstrably incapable" of conducting an undercover drug purchase, the evidence presented paints a different picture. Ms. Hoffman was a college graduate (FSU '07) whose intelligence seems clearly to have been above average. At the time of her death she was, in effect, an entrepreneur running her own small business, albeit an illegal one. Ms. Hoffman was apparently worldly, streetwise, and clever. Certainly the police thought so, and the evidence does not show otherwise. She was fully capable of understanding and adhering to the major elements of the operation, the most important of which—and probably the easiest to comply with—was that she would meet the suspects inside Forest Meadows Park.

On May 7, 2008, at around 6:45 p.m., Ms. Hoffman decided not to turn in to Forest Meadows Park at the flashing yellow light as instructed and as the police reasonably expected, but to proceed instead to the Royalty Plant Nursery to rendezvous with the suspects. This was not an accident on her part; it was a deliberate, willful decision, for which she undoubtedly had her reasons. When she made this decision, she was not in imminent danger, nor was she acting under duress or coercion. The bad guys were not in her car, and as long as she remained at the wheel and on the move, she was safe from them.

As Ms. Hoffman drove toward the nursery, she had time to reflect on what she was doing, probably about two minutes. Her unilateral decision to improvise, to abandon the plan—which she did not communicate to the police—was not a split-second, impulsive choice. Her rationale for acting as she did is unknowable, but her actions were undeniably free, voluntary, and purposeful. And, again, at any point along the way to the nursery, Ms. Hoffman could have reconsidered and returned to the relative safety of Forest Meadows Park.

After reaching the nursery, Ms. Hoffman still had time to change her mind and go back to the park. She did not get into the suspects' car at that point, nor did she let one of

them get into her car. Therefore, at 6:47 p.m., when she began following the two men toward Gardner Road, she was not yet in immediate danger. When Ms. Hoffman turned her vehicle onto Gardner Road and began traveling west down that desolate and narrow street, she would have known that the police were not nearby because she could have seen that there was nowhere for them to be, except on the road itself, and they obviously were not following her. At any point until reaching the end of Gardner Road, she could have stopped and sped away, yet she chose not to do so. At 6:48 p.m. Pender pleaded with Ms. Hoffman to turn around. She went ahead anyway.

There is no question that being a CI in an undercover buy-bust operation is dangerous. As planned, the operation in Forest Meadows would have entailed a degree of risk notwithstanding that the venue—a public place with plenty of people around—was crawling with police ready to pounce at the first sign of trouble. Meeting the suspects alone, however, as Ms. Hoffman did without warning, at the end of a rural road, in the middle of nowhere, surrounded by undeveloped and unpopulated land with no police nearby, created an exponentially more dangerous situation—one that was beyond the scope of danger attributable to TPD's actions.

To be very clear, I realize that the police could have foreseen the possibility that the suspects might try to rob or harm Ms. Hoffman; in fact, they were prepared for this. Of course they knew that something could go wrong which might put their CI at risk: a miscue on her part, the suspects' evil plans, or some combination thereof could foreseeably produce a high-risk situation. That is why the transaction was supposed to take place in the park under the watchful eyes of twenty-some police officers on high alert. But just because the planned operation posed foreseeable risks does not mean that the police should reasonably have foreseen every conceivable risk, no matter how remote or unlikely. In my judgment, TPD could not reasonably have anticipated that Ms. Hoffman would purposefully slip off the carefully set stage and freelance an improvisational, extraordinarily dangerous operation at a remote location with no one watching.

Clearly, Ms. Hoffman's conduct—at least as much as that of the police—was a cause-in-fact of the tragic outcome, in that but for her deliberate decision to meet the suspects alone in an isolated location, which she acted upon despite having had ample opportunity to reflect, reconsider, and retreat, Ms. Hoffman likely would not have been murdered. The police could not reasonably have foreseen that Ms. Hoffman, acting on her own, would take such an inordinate risk. Indeed, even with the benefit of hindsight, it is practically inexplicable that she voluntarily placed herself in extreme peril the way she did. Why she didn't flee from a situation that must have seemed increasingly ominous as she approached that deserted dead-end on Gardner Road? This is a mystery. No one could reasonably have anticipated such a strange, sad turn of events.

Ms. Hoffman, it must be stressed, is not to blame for what happened in the sense of legal liability or moral culpability. Green and Bradshaw are exclusively responsible for her death. Their despicable act of murdering Ms. Hoffman was a supervening cause vis-à-vis both Ms. Hoffman's conduct and TPD's. Thus, Ms. Hoffman's actions, no less than TPD's, all of which comprised the sequence of events leading to disaster, nevertheless did not proximately cause the crime. But from TPD's standpoint, Ms. Hoffman's actions were an independent, efficient, unforeseeable, and ultimately supervening cause, which decisively changed the reasonably expected outcome. In sum, TPD might have been negligent, but if so the particular horror that transpired was far beyond the scope of danger fairly attributable to such negligence. Consequently, the City is not legally liable for Ms. Hoffman's death.

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." The Claimants' attorneys, therefore, would receive \$600,000 from the proceeds of this claim bill, if enacted.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 44 (2012) be reported UNFAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Mike Fasano
Debbie Brown, Secretary of the Senate
Counsel of Record

CS by Rules (2/27/12):

Deletes everything and directs the City of Tallahassee to pay \$2.4 million to the parents of Rachel Hoffman.



755778

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

Section 2. The City of Tallahassee is authorized and directed to appropriate from funds of the city not otherwise encumbered and to draw a warrant in the sum of \$2.4 million, payable to Irving Hoffman and Marjorie Weiss, as compensation for injuries and damages sustained due to the murder of their daughter, Rachel Hoffman.



14 Section 3. The amount awarded under this act is intended to
15 provide the sole compensation for all present and future claims
16 arising out of the factual situation described in this act which
17 resulted in the death of Rachel Hoffman.

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

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22
23 Delete everything before the enacting clause
24 and insert:

25 A bill to be entitled
26 An act for the relief of Irving Hoffman and Marjorie
27 Weiss, parents of Rachel Hoffman, deceased,
28 individually and as co-personal representatives of the
29 Estate of Rachel Hoffman, by the City of Tallahassee;
30 providing for an appropriation to compensate them for
31 the wrongful death of their daughter, Rachel Hoffman,
32 who was murdered while serving as a confidential
33 informant for the Tallahassee Police Department;
34 providing an effective date.

35
36 WHEREAS, Rachel Hoffman served as a confidential informant
37 for the Tallahassee Police Department in May 2008, and

38 WHEREAS, Rachel Hoffman was murdered by Andrea Green and
39 Deneilo Bradshaw during a drug sting operation, and

40 WHEREAS, Andrea Green and Deneilo Bradshaw are both serving
41 life sentences for the murder of Rachel Hoffman, and

42 WHEREAS, the City of Tallahassee recognizes that it must



755778

43 always be accountable for its conduct, and acknowledges that
44 mistakes were made and policies were violated in this case and
45 that the life of Rachel Hoffman was tragically lost, and

46 WHEREAS, the City of Tallahassee expresses its deepest
47 sorrow for the loss of Rachel Hoffman, and

48 WHEREAS, the City of Tallahassee offers its most sincere
49 condolences to the parents of Rachel Hoffman, Marjorie Weiss and
50 Irving Hoffman, and

51 WHEREAS, the City of Tallahassee has agreed to pay Irving
52 Hoffman and Marjorie Weiss a total of \$2.6 million, and

53 WHEREAS, the City of Tallahassee has already paid a total
54 of \$200,000 to Irving Hoffman and Marjorie Weiss, NOW,

55 THEREFORE,

By Senator Fasano

11-00098-12

201244__

1 A bill to be entitled
 2 An act for the relief of Irving Hoffman and Marjorie
 3 Weiss, parents of Rachel Hoffman, deceased,
 4 individually and as co-personal representatives of the
 5 Estate of Rachel Hoffman, by the City of Tallahassee;
 6 providing an appropriation to compensate them for the
 7 wrongful death of their daughter, Rachel Hoffman, as a
 8 result of negligence by employees of the Tallahassee
 9 Police Department; providing a limitation on the
 10 payment of fees and costs; providing an effective
 11 date.
 12
 13 WHEREAS, Rachel Hoffman was the only child of Irving
 14 Hoffman and Margie Weiss, born on December 17, 2004, and
 15 WHEREAS, Rachel Hoffman was 23 years old, a recent graduate
 16 of Florida State University, and living in Tallahassee, Florida,
 17 and
 18 WHEREAS, Rachel Hoffman was in a drug court intervention
 19 program for possession of less than 1 ounce of marijuana and was
 20 represented by counsel, and
 21 WHEREAS, on April 17, 2008, the Tallahassee Police
 22 Department conducted a search of Rachel Hoffman's apartment and
 23 found less than 5 ounces of marijuana and six nonprescribed
 24 pills, and at that time advised her that she was facing serious
 25 felony charges and prison time or she could "make all of the
 26 charges go away" by serving as a confidential informant, and
 27 WHEREAS, Rachel Hoffman agreed to become a confidential
 28 informant for the Tallahassee Police Department without advice
 29 of counsel because she was told not to tell anyone, and

Page 1 of 9

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

11-00098-12

201244__

30 WHEREAS, in spite of its duties as a branch of the court
 31 system, the Tallahassee Police Department violated its own
 32 policies and procedures and secretly concealed from personnel of
 33 the supervising drug court and the office of the state attorney
 34 the fact that Rachel Hoffman was not in compliance with orders
 35 of the drug court, and
 36 WHEREAS, if the Tallahassee Police Department had advised
 37 the state attorney's office of its findings, Rachel Hoffman
 38 would not have been allowed to participate in the Tallahassee
 39 Police Department's confidential informant program because such
 40 participation would violate the terms of the order of the drug
 41 court, and
 42 WHEREAS, Rachel Hoffman repeatedly demonstrated a lack of
 43 maturity and experience in serving as a confidential informant
 44 so that the supervising case manager should have terminated her
 45 use as a confidential informant according to the Chief of the
 46 Tallahassee Police Department, Dennis Jones, and
 47 WHEREAS, the supervising case manager for the Tallahassee
 48 Police Department and Rachel Hoffman developed a plan whereby
 49 Rachel Hoffman would purchase 1,500 MDMA pills, also known as
 50 Ecstasy, 2 to 3 ounces of cocaine, and a weapon from Andrea
 51 Green and Deneilo Bradshaw, with whom Rachel Hoffman had no
 52 previous contact or dealings, and
 53 WHEREAS, the Tallahassee Police Department knew or should
 54 have known that Andrea Green had a history of violence, had been
 55 convicted of violent crimes, and was dangerous, and
 56 WHEREAS, the Tallahassee Police Department knew or should
 57 have known that on May 5, 2008, 2 days prior to the controlled
 58 buy-bust transaction, Deneilo Bradshaw was the prime suspect in

Page 2 of 9

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

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59 the theft of a .25 caliber handgun from the car of a customer at
60 a Tallahassee car wash at which Bradshaw was employed, and

61 WHEREAS, Rachel Hoffman had never purchased cocaine and did
62 not have a history of dealing in cocaine or MDMA (Ecstasy), and

63 WHEREAS, Rachel Hoffman had no experience with a firearm,
64 and

65 WHEREAS, Rachel Hoffman had never been involved as a
66 confidential informant and had never been involved in a
67 controlled buy-bust operation, and

68 WHEREAS, the Tallahassee Police Department provided no
69 training to Rachel Hoffman to prepare her for the buy-bust
70 operation, and

71 WHEREAS, the Tallahassee Police Department failed to
72 conduct a dry run of the area of the operation before it
73 occurred, so Rachel Hoffman was unfamiliar with the geographical
74 area that had been designated for this particular transaction,
75 and

76 WHEREAS, Rachel Hoffman was assured by the Tallahassee
77 Police Department that she would be watched and listened to at
78 all times, and that when the buy was made, the police would
79 immediately respond and arrest the targets and rescue her from
80 danger, and

81 WHEREAS, on May 7, 2008, the Tallahassee Police Department
82 conducted a briefing with the law enforcement officers who would
83 participate in the operation, but they were not briefed that a
84 gun would be present, in violation of policies and procedures of
85 the Tallahassee Police Department, and

86 WHEREAS, the ill-conceived plan provided that a controlled
87 buy would take place at a designated location at a private home

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88 in a large subdivision off North Meridian Road, but after the
89 briefing and just prior to leaving the police station, the
90 location was changed by the targets, Greene and Bradshaw, to
91 Forestmeadows Park, on North Meridian Road, in violation of
92 policies and procedures of the Tallahassee Police Department,
93 and

94 WHEREAS, Forestmeadows Park is a popular, highly frequented
95 public park where families and children congregate and was not a
96 suitable and safe location to conduct a dangerous operation
97 involving a known violent criminal who was expected to be in
98 possession of a loaded firearm, and

99 WHEREAS, the Tallahassee Police Department chose to engage
100 the assistance of the United States Drug Enforcement Agency but
101 not the Leon County Sheriff's Office, which was more familiar
102 with the street locations in that geographical area, and

103 WHEREAS, as Rachel Hoffman approached Forestmeadows Park in
104 her vehicle at approximately 6:40 p.m., the targets again
105 changed the meeting location from the park to a nearby plant
106 nursery parking lot north of the park on Meridian Road and
107 outside the city limits, which was permitted by the supervising
108 case manager and other law enforcement officers involved in the
109 operation in violation of policies and procedures of the
110 Tallahassee Police Department, and

111 WHEREAS, after Rachel Hoffman drove toward Forestmeadows
112 Park, the Tallahassee Police Department lost visual sight of her
113 and the listening device in her car ceased to function, and

114 WHEREAS, Rachel Hoffman had no way of knowing that none of
115 the law enforcement officers she entrusted to monitor her safety
116 were watching or listening to her, and

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117 WHEREAS, the targets, Green and Bradshaw, kept Rachel
 118 Hoffman on her cellular phone, directing her to another
 119 location, Gardner Road, which was north of the plant nursery and
 120 outside the city limits, and

121 WHEREAS, of the 19 law enforcement officers who were
 122 involved in the operation, only one knew where Gardner Road was
 123 located, and

124 WHEREAS, after completely losing all monitoring
 125 capabilities, the Tallahassee Police Department incompetently
 126 and negligently failed to timely search and intervene on behalf
 127 of its confidential informant even though the surveillance team
 128 was only 2 minutes from the Gardner Road location, and

129 WHEREAS, Rachel Hoffman was shot five times to death at
 130 close range with the .25 caliber handgun she was to have
 131 purchased from Green and Bradshaw, and

132 WHEREAS, the Tallahassee Police Department was so slow to
 133 respond that by the time law enforcement personnel arrived at
 134 the Gardner Road location, Rachel Hoffman, Andrea Green, and
 135 Deneilo Bradshaw were no longer there, and the only recorded
 136 evidence were one flip-flop sandal, two live .25 caliber rounds,
 137 one spent .25 caliber round, and tire marks, and

138 WHEREAS, hours later, Rachel Hoffman's cellular phone was
 139 found in a ditch miles away from the Gardner Road location, and

140 WHEREAS, at approximately 2 a.m. on May 8, 2008, Sgt. Odom
 141 of the Tallahassee Police Department called Margie Weiss, the
 142 mother of Rachel Hoffman, and Irving Hoffman, the father, and
 143 advised them that their daughter was missing, but provided no
 144 further information, and

145 WHEREAS, when Irving Hoffman and Margie Weiss arrived later

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146 that afternoon at the Tallahassee police station after driving
 147 from their homes in Pinellas County, Florida, they were met by
 148 the Chief of the Tallahassee Police Department and other police
 149 department officials and told simply that their daughter was
 150 missing but that no other information was available about why
 151 their daughter was missing, and

152 WHEREAS, it was not until 2 days later, on May 9, 2008,
 153 that Rachel Hoffman's body was found near Perry, Florida,
 154 approximately 50 miles away, shot multiple times by the gun the
 155 Tallahassee Police Department required her to purchase, and

156 WHEREAS, upon the discovery of Rachel Hoffman's body, the
 157 Chief and Public Information Officer of the Tallahassee Police
 158 Department appeared before the media and blamed Rachel Hoffman
 159 for her death, stating that she had failed to follow
 160 "established protocols," but refused to explain what those
 161 protocols were and admitted no negligence or wrongdoing on the
 162 part of the Tallahassee Police Department, and

163 WHEREAS, it was while watching television that Irving
 164 Hoffman and Margie Weiss learned that their daughter who had
 165 been missing was murdered while serving the Tallahassee Police
 166 Department in an undercover capacity, and

167 WHEREAS, through an Internal Affairs Investigation the
 168 Tallahassee Police Department admitted that it committed
 169 multiple acts of negligence in recruiting Rachel Hoffman as a
 170 confidential informant, in planning the controlled buy, in
 171 executing the controlled buy, and in supervising the plan and
 172 execution of the operation, and

173 WHEREAS, on August 1, 2008, a Leon County Grand Jury
 174 returned indictments against Andrea Green and Deneilo Bradshaw

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175 for the murder of Rachel Hoffman and issued an ancillary report
 176 known as a "Presentment," and found that "During the course of
 177 our review of the facts, it became apparent that negligent
 178 conduct on the part of Tallahassee Department and D.E.A.
 179 attributed to Ms. Hoffman's death," and

180 WHEREAS, the Grand Jury found that the transaction
 181 requiring the purchase of 1,500 Ecstasy pills, 2 1/2 ounces of
 182 cocaine, and a firearm from individuals she had never before
 183 dealt with placed Rachel Hoffman "in a position way over her
 184 head," and

185 WHEREAS, the Grand Jury found that the command staff of the
 186 Tallahassee Police Department were negligent in supervising,
 187 reviewing, and executing the planned controlled drug and weapons
 188 buy, and stated that "letting a young, immature woman get into a
 189 car by herself with \$13,000 to go off and meet two convicted
 190 felons that they knew were bringing at least one firearm with
 191 them was an unconscionable decision that cost Ms. Hoffman her
 192 life," and

193 WHEREAS, the Grand Jury determined, based on the evidence
 194 and testimony of police officers who participated in the
 195 surveillance operation, that Rachel Hoffman believed that she
 196 was being closely watched, followed, and listened to, and she
 197 remained on the phone with the targets, Green and Bradshaw, as
 198 they directed her down Gardner Road, and that "When she finally
 199 spoke to a T.P.D. officer on the phone and told them where she
 200 was, she was told by the officer to turn around and not follow
 201 the targets. The officer heard no response and the phone went
 202 dead, and by that time it was too late anyway. With the
 203 exception of one officer, nobody else participating in the

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204 transaction even knew where Gardner Road was," and

205 WHEREAS, the Grand Jury determined that "through poor
 206 planning and supervision, and a series of mistakes throughout
 207 the transaction, T.P.D. handed Ms. Hoffman to Bradshaw and Green
 208 to rob and kill her as they saw fit," and

209 WHEREAS, the Grand Jury determined that, based on Rachel
 210 Hoffman's immaturity and judgment, she should never have been
 211 used as a confidential informant, "but if [T.P.D.] were going to
 212 use her, [T.P.D.] certainly had a responsibility to protect her
 213 as they assured her they would," and

214 WHEREAS, an investigation by the Florida Attorney General
 215 determined that the Tallahassee Police Department had
 216 insufficient policies and procedures and had committed numerous
 217 violations of its own policies and procedures, and

218 WHEREAS, an internal investigation by the Tallahassee
 219 Police Department determined that numerous violations of its
 220 policies and procedures had occurred in the planning,
 221 supervision, and execution of the operation which led to the
 222 murder of Rachel Hoffman, and

223 WHEREAS, the internal investigation conducted by the
 224 Tallahassee Police Department cited 14 acts of negligence on the
 225 part of the law enforcement officers involved, and

226 WHEREAS, the City of Tallahassee Police Chief, Dennis
 227 Jones, stated that the investigator responsible for managing the
 228 operation should have terminated Rachel Hoffman's confidential
 229 informant service well before she participated in the botched
 230 operation, and

231 WHEREAS, if the case-management investigator had exercised
 232 reasonable care and followed policies and procedures and

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233 terminated Rachel Hoffman's service as a confidential informant,
234 she would never have been involved in the tragic drug operation
235 of May 7, 2008, and

236 WHEREAS, Rachel Hoffman's murder has been a shocking and
237 devastating loss to her parents, who are in states of intense
238 unresolved grief as a result of the death of their only child,
239 NOW, THEREFORE,

240

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

242

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

245 Section 2. The City of Tallahassee is authorized and
246 directed to appropriate from funds of the city not otherwise
247 encumbered and to draw a warrant in the sum of \$....., payable
248 to Irving Hoffman and Marjorie Weiss, as compensation for
249 injuries and damages sustained due to the murder of their
250 daughter, Rachel Hoffman.

251 Section 3. The amount awarded under this act is intended to
252 provide the sole compensation for all present and future claims
253 arising out of the factual situation described in this act which
254 resulted in the death of Rachel Hoffman. The total amount paid
255 for attorney's fees, lobbying fees, costs, and other similar
256 expenses relating to this claim may not exceed 25 percent of the
257 amount awarded under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2/2/12

Meeting Date

Topic Rachel Hoffmann Claims

Bill Number SB 44
(if applicable)

Name Ron Book

Amendment Barcode _____
(if applicable)

Job Title _____

Address 104 West Jefferson St

Phone _____

Street

TLH

32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing City of Tallahassee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27/12
Meeting Date

Topic Hoffman Claim Bill Bill Number SB 44
Name Lewis Shelley Amendment Barcode 755778
Job Title Depty City Attorney, City of Tallahassee (if applicable)
Address 300 S. Adams Phone 850-891-8554
Tallahassee FL 32302 E-mail Lewis.Shelley@Tal.gov.com
City State Zip (if applicable)

Speaking: For Against Information

Representing City of Tallahassee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD



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

2/27/12

Meeting Date

Topic Relief of I. Hoffman and M. Weiss

Bill Number SB 44
(if applicable)

Name Miriam Coles

Amendment Barcode 755 778
(if applicable)

Job Title litigation attorney City of Tallahassee

Address 2508 Barrington Circle

Phone 850-222-2920

Street

Tallahassee

FL

State

32317

Zip

E-mail mcoles@henryblaw.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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



2/27/2012

Meeting Date

Topic Claim Bill - H₀ARMW

Bill Number SB-44
(if applicable)

Name Steve Carter

Amendment Barcode 755778
(if applicable)

Job Title Litigation attorney - City of Tallahassee

Address 2508 Barrington Circle

Phone 222-2920

Street

TAL FL 32308

City

State

Zip

E-mail scarter@henryb.com

Speaking: For Against Information

Representing CITY OF TALLAHASSEE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

Meeting Date _____

Topic _____

Bill Number 44
(if applicable)

Name IRVING HOFFMAN

Amendment Barcode _____
(if applicable)

Job Title FATHER OF RACHEL HOFFMAN

Address 2699 CHALLENGER DR

Phone 727-3654289

Street
PALM HARBOR FLA 34683
City *State* *Zip*

E-mail IRVHOFFMAN@MAC.COM.

Speaking: For Against Information

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27/12
Meeting Date

Topic Claim Bill re Rachel Hoffman Bill Number 44
(if applicable)

Name Lance Block Amendment Barcode _____
(if applicable)

Job Title Attorney

Address P O Box 840 Phone 850-599-1980
Street

Tallahassee FL 32307 E-mail lance
City State Zip

Speaking: For Against Information

Representing Parents of Rachel Hoffman

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

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

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



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

| DATE | COMM | ACTION |
|---------|------|-------------|
| 12/1/11 | SM | Unfavorable |
| 2/27/12 | RC | Fav/CS |
| | | |
| | | |

December 1, 2011

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

Re: **CS/SB 10 (2012)** – Rules Committee and Senator Anitere Flores
Relief of Aaron Edwards, and his parents, Mitzi Roden and Mark
Edwards

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$30,792,936.13 OF LOCAL MONEY BASED ON A JURY VERDICT FOR CLAIMANTS AND AGAINST LEE MEMORIAL HEALTH SYSTEM TO COMPENSATE CLAIMANTS FOR AARON EDWARD'S CEREBRAL PALSY, WHICH WAS CAUSED AT BIRTH BY THE NEGLIGENT ADMINISTRATION OF PITOCIN TO HIS MOTHER TO INDUCE LABOR.

FINDINGS OF FACT:

On the morning of September 5, 1997, Mitzi Roden was scheduled to deliver her first child at HealthPark Medical Center, a hospital owned and operated by Lee Memorial Health System ("Lee Memorial"). Mitzi was accompanied by her husband, Mark Edwards. Mitzi had enjoyed a healthy pregnancy, free of complications.

Mitzi's labor and delivery were managed by her nurse-midwife, Patricia Hunsucker, who was assisted by the obstetric nurses whose work shifts covered the time that Mitzi was at the hospital. From 9:00 a.m. until 12:30 p.m., Mitzi made little progress in her labor. At 12:30 p.m., Ms. Hunsucker ordered that Pitocin be given to Mitzi, by IV drip, to stimulate Mitzi's labor.

The use of Pitocin to assist labor is a very common practice, but its effect on the mother and child must be closely monitored. In a normal childbirth, the mother's contractions cause some stress to the baby because the contractions compress the placenta, reducing blood flow to the baby. Because blood flow is the baby's source of oxygen, contractions require the baby to, in effect, hold his or her breath until the contraction stops. The contractions in a normal labor do not reduce oxygen to the baby to such a degree that the baby's life is endangered. However, the overuse of Pitocin can cause contractions that come too fast, too strong, and last too long, which can cause the baby to become severely stressed and even asphyxiated.

The initial amount of Pitocin given to Mitzi was 3 milliunits and was to be increased periodically until Mitzi's labor had progressed to the point that she was having contractions every 2 or 3 minutes. Although Mitzi's contractions soon reached the point of being 2 or 3 minutes apart, the nurses evidently believed that her contractions were not strong enough.

For the next several hours, the dosage of Pitocin was increased by the obstetric nurses. At 6:00 p.m., Mitzi's contractions were closer than two minutes, but the Pitocin was increased again at 6:20 p.m. The dosage was up to 13 milliunits. Mitzi's obstetrician, who was never present during these events, testified later that the Pitocin should not have been further increased. Nevertheless, a new obstetric nurse, Elizabeth Kelly-Jencks, started her shift at 7:00 p.m. and increased the Pitocin to 14 milliunits at 7:15 p.m.

The more persuasive evidence shows that Ms. Hunsucker and Ms. Kelly-Jencks were not giving appropriate attention to the fetal monitoring machine and the frequency and duration of the contractions. The monitors indicated that Mitzi's contractions were becoming too frequent, too intense, and were lasting too long, and that they were causing the baby's heart rate to decelerate after the contractions. In the majority of cases when Pitocin is used, babies are delivered after less than 8 milliunits of Pitocin. Claimants' expert medical witnesses testified persuasively that there were multiple indications that increasing the Pitocin to 14 milliunits was neither sensible nor safe. Mitzi's uterus was being over-stimulated.

At 8:30 p.m., Mitzi experienced a contraction lasting longer than 90 seconds, showing clearly that the Pitocin level was too high. Even though reasonable obstetric practice and the standing policy of the hospital regarding the use of Pitocin required that the Pitocin drip be reduced or stopped at that point, the Pitocin dosage was increased again, to 15 milliunits. At 9:00 p.m., Ms. Hunsucker looked in on Mitzi, but was unaware of the Pitocin dosage she was receiving and failed to recognize that Mitzi was having excessive contractions.

Certainly, by this point, it should have been recognized that Mitzi's labor was not going well. There had been almost no progress toward a safe vaginal delivery. Ms. Hunsucker should have contacted Dr. Devall to consult about the situation, but she did not.

At 9:30 p.m., the Pitocin was increased to 16 milliunits. Ten minutes later, alone in the room, Mitzi and Mark noticed that the fetal heart monitor showed their baby's heart rate had dropped to 40 beats per minutes. A normal fetal heart rate is 120 to 160 beats per minute. A low fetal heart rate for over ten minutes is referred to as "bradycardia." When no one responded to the emergency call button, Mark ran out of the room to get help. The obstetric staff realized the gravity of the situation, but the Pitocin drip was not turned off while the nurses spent about 10 minutes trying to resuscitate the baby by turning Mitzi in the bed and by other means. Finally the Pitocin was turned off and an immediate cesarean section was ordered.

Aaron was delivered by cesarean 25 minutes later, but oxygen starvation to his brain left him with permanent damage to the parts of the brain that control muscle movement. The result is that Aaron has cerebral palsy. Aaron exhibits primarily dystonia, a lack of control of the direction and force of muscle movement, and some spasticity, which is involuntary contractions of the muscles.

A major issue at trial was whether Mitzi objected to receiving Pitocin, but her wishes were ignored. The evidence on this point was ambiguous. Mitzi says that she told Ms. Hunsucker that she did not want Pitocin, but did not mention it to the other obstetric nurses who were periodically increasing the dosage. Mitzi says that Ms. Hunsucker

called Dr. DeVall and then told Mitzi that Dr. DeVall approved the use of Pitocin. Ms. Hunsucker testified at trial that she did not remember Mitzi objecting to the Pitocin and that she would not have administered the Pitocin if Mitzi had objected to it. I am not persuaded that Mitzi clearly communicated a strong objection about the Pitocin. That claim cannot be reconciled with the evidence that the Pitocin drip was started and was then administered for hours, but Mitzi made no mention of her objection to the obstetric nurses, and her husband apparently took no steps on her behalf to have the Pitocin stopped.

Aaron's brain damage did not affect his higher cognitive functioning. He is now an extremely bright and creative 13-year old. Unfortunately, he is trapped inside a body that he can barely control. He cannot feed, bathe, or dress himself. He cannot walk and uses a wheelchair. He cannot speak so as to be understood by anyone other than his mother. He uses a computer touch screen device to communicate. Still, it takes him a long time to compose simple sentences.

Aaron's limbs, especially his legs, are becoming rigid. He said at the claim bill hearing that he felt like Pinocchio, a wooden boy who wants to be a real boy. His mother uses various physical therapies and Aaron also takes medication to reduce the contraction of the muscles.

The principal needs that Aaron currently has are regular speech and physical therapies and a better wheelchair. The wheelchair he has now is uncomfortable and difficult to operate. There are also more advanced communication devices becoming available that could help Aaron to communicate more quickly.

Mitzi Roden and Mark Edwards are now divorced. Aaron lives with his mother in Canyon City, Colorado. Aaron is home-schooled by his mother and, because she cannot afford to hire someone to care for him during the day, she brings him to the dog grooming shop where she works. Mitzi earns \$14,000 annually as a dog groomer. She receives monthly Social Security disability payments of \$674.

Lee Memorial is a special district that operates four acute care hospitals, a rehabilitation hospital, and some other health care facilities in Lee County. It does not have taxing

authority. It is a not-for-profit entity. Lee Memorial is a "Safety Net Provider," meaning that it is a member of a group of hospital operators in Florida that provide access to medical services by Medicaid-eligible, Medicare-eligible, and uninsured patients far beyond the average for other hospitals in Florida. In 2010, Lee Memorial had about \$170 million of losses attributable to these patients. With income from commercially-insured patients and from its investments, Lee Memorial had about \$65 million in overall net income in 2010. However, it projects a \$10 million loss in 2012.

LITIGATION HISTORY:

In 1999, a negligence lawsuit was filed in the circuit court for Lee County by Mitzi Roden and Mark Edwards, on behalf of themselves and as the guardians of Aaron Edwards, against Lee Memorial. Following a six-week trial in 2007, the jury found that Lee Memorial was negligent and that its negligence was the sole cause of Aaron's injuries. The jury awarded damages of \$28,477,966.48 to the guardianship of Aaron. They also awarded \$1.34 million to Mitzi Roden and \$1 million to Mark Edwards, for their damages as parents. The court entered a cost judgment of \$174,969.65. The sum of these figures is \$30,992,936.13.

The trial court ordered that the damage award and cost judgment would accrue interest at the rate of 11 percent per year. An excess judgment cannot be required because the only amount owed and due is the sovereign immunity limit. Any amount paid by the Legislature on a claim bill is a matter of legislative grace. It is not "owed" to the claimant.

Lee Memorial paid the \$200,000 sovereign immunity limit. All of this payment was applied to legal fees. Aaron and his parents received nothing.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether Lee Memorial is liable in negligence for the injuries suffered by Aaron Edwards and his parents, and, if so, whether the amount of the claim is reasonable.

Ms. Hunsucker and Ms. Kelly-Jencks failed to recognize and respond appropriately to the risks to the baby that were indicated by the monitoring devices. Their actions failed to meet the standard of care applicable to the use of Pitocin

and the management of Mitzi's labor. Their negligence was the proximate cause of the injuries suffered by Aaron and the related damages suffered by his parents. Because these individuals were acting within the course and scope of their employment when their negligent acts occurred, Lee Memorial is liable for their negligence.

Because the "lack of consent" issue was raised for the first time at trial, the trial judge would have been justified in not allowing the issue to be presented to the jury. However, the jury's verdict of liability was not based solely on lack of consent. The preponderance of the evidence presented at trial and at the claim bill hearing establishes that Ms. Hunsucker and Ms. Kelly-Jencks were negligent in their management of the Pitocin and their care for Mitzi during her labor.

ATTORNEY'S FEES:

Claimants' attorneys have agreed to limit attorney's fees and lobbyist's fees to 25 percent of the claim paid. However, they request that the fee for the attorneys who handled the appeal of the trial court judgment (5 percent of the claim bill award) not be included in the 25 percent. In other words, they request that 30 percent of the claim bill award go to attorneys fees and costs. I believe paying more than 25 percent of the claim in attorney fees would violate section 768.28(8), F.S. and would create a precedent for many similar requests. Therefore, I recommend that all attorneys fees be limited to 25 percent of the award.

SPECIAL ISSUES:

Aaron Edwards and his parents deserve to be compensated for their losses. However, the unusual size of this claim bill should be addressed. Claims bills for more than \$4 million are rare. This claim bill for almost \$31 million is the largest ever presented to the Legislature. The Eric Brody claim bill (SB 42 in the 2012 Session) was nearly as large, but was reduced to \$15.6 million for the 2012 Session (SB 4).

Lee Memorial contends that the average claim paid for similar infant brain injuries is less than \$1 million. Because no two cases are exactly alike, jury verdict data for cases involving infant brain injuries do not provide a precise average, but it is certainly well below \$31 million.

The Senate would be striking a reasonable balance between the purposes served by the doctrine of sovereign immunity

and the goal to provide reasonable compensation to these claimants by reducing the amount awarded. I believe the compensation paid should be an amount that, when paid into an annuity, will provide Aaron with monthly payments that will meet his health care and other needs for his lifetime. The amount needed to fund such an annuity must be determined by the parties, but it would be far less than \$31 million. It might be less than \$10 million. Some additional amount could be paid immediately to Mitzi Roden and Mark Edwards.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 10 (2012) be reported UNFAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

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

CS by Rules (2/27/12):

Amends the amount provided to Aaron Edwards to \$15 million payable to the guardianship of Aaron Edwards. Deletes amounts payable to Mitzi Roden and Mark Edwards.



387752

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 176 - 194
and insert:

Section 2. Lee Memorial Health System, formerly known as the Hospital Board of Directors of Lee County, is authorized and directed to appropriate from funds not otherwise appropriated and to draw a warrant as compensation for the injuries suffered by Aaron Edwards in the sum of \$15 million payable to the Guardianship of Aaron Edwards to be placed in a special needs trust created for the exclusive use and benefit of Aaron Edwards, a minor.

Section 3. The amount paid by Lee Memorial Health System



387752

14 pursuant to s. 768.28, Florida Statutes, and the amount awarded
15 under this act are intended to provide the sole compensation for
16 all present and future claims arising out of the factual
17 situation described in this act which resulted in the injuries
18 suffered by Aaron Edwards. The total amount paid for attorney
19 fees, lobbying fees, costs, and other similar expenses relating
20 to this claim may not exceed 25 percent of the amount awarded
21 under this act.

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete lines 2 - 6

26 and insert:

27 An act for the relief of Aaron Edwards, a minor, by
28 Lee Memorial Health System of Lee County; providing
29 for an appropriation to compensate Aaron Edwards for
30 damages sustained as a result of the



279324

LEGISLATIVE ACTION

| | | |
|-------------|---|-------|
| Senate | . | House |
| Comm: UNFAV | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Richter) recommended the following:

1 **Senate Substitute for Amendment (387752) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

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

8 Section 2. Lee Memorial Health System, formerly known as
9 the Hospital Board of Directors of Lee County, is authorized and
10 directed to appropriate from its funds and to draw the following
11 warrants as compensation for the medical malpractice committed
12 against Aaron Edwards:

13 (1) The sum of \$5 million, payable to the Guardianship of



279324

14 Aaron Edwards;

15 (2) This sum shall be payable in five equal payments of \$1
16 million made annually over 5 years.

17 Section 3. The amount paid by Lee Memorial Health System
18 pursuant to s. 768.28, Florida Statutes, and the amount awarded
19 under this act are intended to provide the sole compensation for
20 all present and future claims arising out of the factual
21 situation described in this act which resulted in the injuries
22 suffered by Aaron Edwards. The total amount paid for attorney
23 fees, lobbying fees, costs, and other similar expenses relating
24 to this claim may not exceed 25 percent of the total amount
25 awarded under this act.

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

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause
31 and insert:

32 A bill to be entitled
33 An act for the relief of Aaron Edwards, a minor, by
34 Lee Memorial Health System of Lee County; providing
35 for an appropriation to compensate Aaron Edwards for
36 damages sustained as a result of the medical
37 negligence by employees of Lee Memorial Health System
38 of Lee County; providing a limitation on the payment
39 of fees and costs; providing an effective date.

40
41 WHEREAS, Aaron Edwards was born on September 5, 2007, at
42 Lee Memorial Hospital, and



279324

43 WHEREAS, Aaron Edwards suffered permanent injuries to his
44 brain as a consequence of an acute hypoxic ischemic episode at
45 birth, and

46 WHEREAS, after a 6-week trial, a jury in Lee County
47 returned a verdict in favor of Aaron Edwards, finding Lee
48 Memorial Health System 100 percent responsible for Aaron
49 Edwards' preventable injuries and awarded a total of
50 \$28,477,966.48 to the Guardianship of Aaron Edwards, and

51 WHEREAS, the court also awarded \$174,969.65 in taxable
52 costs, and

53 WHEREAS, Lee Memorial Health System tendered \$200,000
54 toward payment of this claim, in accordance with the statutory
55 limits of liability set forth in s. 768.28, Florida Statutes,
56 NOW, THEREFORE,

By Senator Flores

38-00123A-12

201210__

A bill to be entitled

An act for the relief of Aaron Edwards, a minor, and his parents, Mitzi Roden and Mark Edwards, by Lee Memorial Health System of Lee County; providing for an appropriation to compensate Aaron Edwards and his parents for damages sustained as a result of the medical negligence by employees of Lee Memorial Health System of Lee County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Mitzi Roden and Mark Edwards' only child, Aaron Edwards, was born on September 5, 2007, at Lee Memorial Hospital, and

WHEREAS, during Mitzi Roden's pregnancy, Mitzi Roden and Mark Edwards attended childbirth classes through Lee Memorial Health System and learned of the potentially devastating effect that the administration of Pitocin to augment labor may have on a mother and her unborn child when not carefully and competently monitored, and

WHEREAS, Mitzi Roden and Mark Edwards communicated directly to Nurse Midwife Patricia Hunsucker of Lee Memorial Health System of their desire to have a natural childbirth, and

WHEREAS, Mitzi Roden enjoyed an uneventful full-term pregnancy with Aaron Edwards, free from any complications, and

WHEREAS, on September 5, 2007, at 5:29 a.m., Mitzi Roden, at 41 and 5/7 weeks' gestation awoke to find that her membranes had ruptured, and

WHEREAS, when Mitzi Roden presented to the hospital on the

Page 1 of 7

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

38-00123A-12

201210__

morning of September 5, she was placed on a fetal monitoring machine that confirmed that Aaron Edwards was doing well and in very good condition, and

WHEREAS, Mitzi Roden tolerated well a period of labor from 9 a.m. until 12:30 p.m., but failed to progress in her labor to the point of being in active labor. At that time, Nurse Midwife Patricia Hunsucker informed Mitzi Roden and Mark Edwards that she would administer Pitocin to Mitzi in an attempt to speed up the labor, but both Mitzi Roden and Mark Edwards strenuously objected to the administration of Pitocin because of their knowledge about the potentially devastating effects it can have on a mother and child, including fetal distress and even death. Mitzi Roden and Mark Edwards informed Nurse Midwife Patricia Hunsucker that they would rather undergo a cesarean section than be administered Pitocin, but in spite of their objections, Nurse Midwife Patricia Hunsucker ordered that a Pitocin drip be administered to Mitzi Roden at an initial dose of 3 milliunits, to be increased by 3 milliunits every 30 minutes, and

WHEREAS, there was universal agreement by the experts called to testify at the trial in this matter that the administration of Pitocin over the express objections of Mitzi Roden and Mark Edwards was a violation of the standard of care, and

WHEREAS, for several hours during the afternoon of September 5, 2007, the dosage of Pitocin was consistently increased and Mitzi Roden began to experience contractions closer than every 2 minutes at 4:50 p.m., and began to experience excessive uterine contractility shortly before 6 p.m., which should have been recognized by any reasonably

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

38-00123A-12 201210__

59 competent obstetric care provider, and

60 WHEREAS, in spite of Mitzi Roden's excessive uterine
61 contractility, the administration of Pitocin was inappropriately
62 increased to 13 milliunits at 6:20 p.m. by Labor and Delivery
63 Nurse Beth Jencks, which was a deviation from the acceptable
64 standard of care for obstetric health care providers because, in
65 fact, it should have been discontinued, and

66 WHEREAS, reasonable obstetric care required that Dr.
67 Duvall, the obstetrician who was ultimately responsible for
68 Mitzi Roden's labor and delivery, be notified of Mitzi Roden's
69 excessive uterine contractility and that she was not adequately
70 progressing in her labor, but the health care providers
71 overseeing Mitzi Roden's labor unreasonably failed to do so, and

72 WHEREAS, in spite of Mitzi Roden's excessive uterine
73 contractility, the administration of Pitocin was increased to 14
74 milliunits at 7:15 p.m., when reasonable obstetric practices
75 required that it be discontinued, and a knowledgeable obstetric
76 care provider should have known that the continued use of
77 Pitocin in the face of excessive uterine contractility posed an
78 unreasonable risk to both Mitzi Roden and Aaron Edwards, and

79 WHEREAS, Lee Memorial's own obstetrical expert, Jeffrey
80 Phelan, M.D., testified that Mitzi Roden experienced a tetanic
81 contraction lasting longer than 90 seconds at 8:30 p.m., and Lee
82 Memorial's own nurse midwife expert, Lynne Dollar, testified
83 that she herself would have discontinued Pitocin at 8:30 p.m.,
84 and

85 WHEREAS, at 8:30 p.m., the administration of Pitocin was
86 unreasonably and inappropriately increased to 15 milliunits when
87 reasonable obstetric practices required that it be discontinued,

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88 and

89 WHEREAS, at 9 p.m., Nurse Midwife Hunsucker visited Mitzi
90 Roden at bedside, but mistakenly believed that the level of
91 Pitocin remained at 9 milliunits, when, in fact, it had been
92 increased to 15 milliunits, and further, she failed to
93 appreciate and correct Mitzi Roden's excessive uterine
94 contractility, and

95 WHEREAS, Lynne Dollar acknowledged that it is below the
96 standard of care for Nurse Midwife Patricia Hunsucker to not
97 know the correct level of Pitocin being administered to her
98 patient, Mitzi Roden, and

99 WHEREAS, at 9:30 p.m., the administration of Pitocin was
100 again unreasonably and inappropriately increased to 16
101 milliunits, when reasonable obstetric practice required that it
102 be discontinued in light of Mitzi Roden's excessive uterine
103 contractility and intrauterine pressure, and

104 WHEREAS, as 9:40 p.m., Aaron Edwards could no longer
105 compensate for the increasingly intense periods of
106 hypercontractility and excessive intrauterine pressure brought
107 on by the overuse and poor management of Pitocin administration,
108 and suffered a reasonably foreseeable and predictable severe
109 episode of bradycardia, where his heart rate plummeted to life-
110 endangering levels, which necessitated an emergency cesarean
111 section. Not until Aaron Edwards' heart rate crashed at 9:40
112 p.m. did Nurse Midwife Patricia Hunsucker consult with her
113 supervising obstetrician, Diana Duvall, M.D., having not
114 discussed with Dr. Duvall her care and treatment of Mitzi
115 Roden's labor since 12:30 p.m. Because Dr. Duvall had not been
116 kept informed about the status of Mitzi Roden's labor, she was

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117 not on the hospital grounds at the time Aaron Edwards' heart
118 rate crashed, and another obstetrician who was unfamiliar with
119 Mitzi Roden's labor performed the emergency cesarean section to
120 save Aaron Edwards' life, and

121 WHEREAS, there existed at the time of Mitzi Roden's labor
122 and delivery a compensation system whereby a nurse midwife such
123 as Patricia Hunsucker had a financial disincentive to consult
124 with her supervising obstetrician during the period of labor,
125 and

126 WHEREAS, Lee Memorial Health System had in place at the
127 time of Mitzi Roden's labor and delivery rules regulating the
128 use of Pitocin for the augmentation of labor which required that
129 Pitocin be discontinued immediately upon the occurrence of
130 tetanic contractions, nonreassuring fetal heart-rate patterns,
131 or contractions closer than every 2 minutes, and

132 WHEREAS, in violation of rules regulating the use of
133 Pitocin for the augmentation of labor, Labor and Delivery Nurse
134 Beth Jencks and Nurse Midwife Patricia Hunsucker failed to
135 immediately discontinue the administration of Pitocin in the
136 face of hyperstimulated uterine contractions and excessive
137 intrauterine pressure and increased the amount of Pitocin being
138 administered to Mitzi Roden or remained completely unaware that
139 the levels of Pitocin were being repeatedly increased, and

140 WHEREAS, Aaron Edwards suffered permanent and catastrophic
141 injuries to his brain as a consequence of the acute hypoxic
142 ischemic episode at birth, and

143 WHEREAS, Aaron Edwards currently and for the remainder of
144 his life will suffer from spastic and dystonic cerebral palsy
145 and quadriplegia, rendering him totally and permanently

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146 disabled, and

147 WHEREAS, Aaron Edwards currently and for the remainder of
148 his life will not be able to orally communicate other than to
149 his closest caregivers, and is entirely dependent on a computer
150 tablet communication board for speech, and

151 WHEREAS, Aaron Edwards suffers from profound physical
152 limitations affecting all four of his limbs such that he
153 requires supervision 24 hours a day and cannot feed, bathe,
154 dress, or protect himself, and

155 WHEREAS, Aaron Edwards will never be able to enter the
156 competitive job market and will require a lifetime of medical,
157 therapeutic, rehabilitation, and nursing care, and

158 WHEREAS, after a 6-week trial, a jury in Lee County
159 returned a verdict in favor of Aaron Edwards, Mitzi Roden, and
160 Mark Edwards, finding Lee Memorial Health System 100 percent
161 responsible for Aaron Edwards' catastrophic and entirely
162 preventable injuries and awarded a total of \$28,477,966.48 to
163 the Guardianship of Aaron Edwards, \$1,340,000 to Mitzi Roden,
164 and \$1 million to Mark Edwards, and

165 WHEREAS, the court also awarded Aaron Edwards, Mitzi Roden,
166 and Mark Edwards \$174,969.65 in taxable costs, and

167 WHEREAS, Lee Memorial Health System tendered \$200,000
168 toward payment of this claim, in accordance with the statutory
169 limits of liability set forth in s. 768.28, Florida Statutes,
170 NOW, THEREFORE,

171

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

173

174 Section 1. The facts stated in the preamble to this act are

38-00123A-12 201210__

175 found and declared to be true.

176 Section 2. Lee Memorial Health System, formerly known as
177 the Hospital Board of Directors of Lee County, is authorized and
178 directed to appropriate from funds of the county not otherwise
179 appropriated and to draw the following warrants as compensation
180 for the medical malpractice committed against Aaron Edwards and
181 Mitzi Roden:

182 (1) The sum of \$28,454,838.43, payable to the Guardianship
183 of Aaron Edwards;

184 (2) The sum of \$1,338,989.67, payable to Mitzi Roden; and

185 (3) The sum of \$999,199.03, payable to Mark Edwards.

186 Section 3. The amount paid by Lee Memorial Health System
187 pursuant to s. 768.28, Florida Statutes, and the amount awarded
188 under this act are intended to provide the sole compensation for
189 all present and future claims arising out of the factual
190 situation described in this act which resulted in the injuries
191 suffered by Aaron Edwards. The total amount paid for attorney's
192 fees, lobbying fees, costs, and other similar expenses relating
193 to this claim may not exceed 25 percent of the total amount
194 awarded under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2-27-12
Meeting Date

Topic _____

Bill Number 10
(if applicable)

Name MAC STIPANOVICH

Amendment Barcode _____
(if applicable)

Job Title _____

Address Tallahassee FL
Street

Phone 850 545 8141

City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

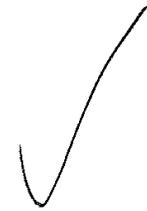
Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2.27.12

Meeting Date

Topic Aaron Edwards Claim Bill

Bill Number SB - 10
(if applicable)

Name Mitzi Roden

Amendment Barcode _____
(if applicable)

Job Title _____

Address 509 Collier Ave

Phone 719.275.1151

Street

Canyon City, CO 81212

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

| DATE | COMM | ACTION |
|---------|------|-----------|
| 12/1/11 | SM | Favorable |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

December 1, 2011

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

Re: **SB 6 (2012)** – Senator Joe Negron
Relief of Denise Brown and David Brown, for the benefit of their son,
Darian Brown

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED EQUITABLE CLAIM AGAINST THE NORTH BROWARD HOSPITAL DISTRICT, WHICH IS FOR \$2 MILLION IN LOCAL FUNDS, ARISES FROM THE BIRTH OF DARIAN BROWN, A CHILD WHO SUFFERED A CATASTROPHIC BRAIN INJURY IN UTERO DUE TO THE HOSPITAL STAFF'S NEGLIGENT DELAY IN RECOGNIZING THE SIGNS OF FETAL DISTRESS, WHICH RESULTED IN AN UNTIMELY DELIVERY BY C-SECTION.

FINDINGS OF FACT:

On January 10, 2000, Denise Brown's obstetrician, Dr. Danoff, discovered that the fetal heart rate of the baby Mrs. Brown was carrying was elevated. Because Mrs. Brown, who was then about 33 weeks pregnant, had delivered prematurely in the past, Dr. Danoff sent her to Broward General Hospital for observation and to rule out preterm labor. Mrs. Brown was admitted to the hospital at 11:30 a.m. Dr. Danoff directed that Mrs. Brown have continuous fetal heart monitoring and gave standing orders that the nurse on duty was to notify the obstetrician if the baby's heart rate ever exceeded 160 beats per minute.

From January 10 through January 14, 2000, Mrs. Brown remained stable, and her baby's heart rate stayed within normal limits. At about 5:00 p.m. on January 14, 2000, however, the fetal monitoring strips (printed graph paper showing displaying "tracings" of both the fetal heart rate and uterine contractions) began disclosing an accelerated heart rate (a condition known as tachycardia). The nursing staff did not notify the obstetrician of this development, despite the standing order to do so.

Over the next few hours, the fetal monitoring strips showed increasingly worrisome signs, namely consistent fetal tachycardia and loss of fetal heart rate variability. (A healthy fetal heart beats at varying rates, creating a tracing that looks like a jagged line. Loss of fetal heart rate variability produces a smooth line.) Variability indicates fetal wellbeing. The absence of variability may indicate fetal distress. At 11:00 p.m., the baby's heart rate started to slow periodically after uterine contractions. When this occurs, it is called a "late deceleration." Late decelerations are an ominous sign, especially in conjunction with tachycardia and loss of variability. The nursing staff, however, did not notify the obstetrician, or any other physician, that Mrs. Brown's baby might be in trouble.

The fetal tachycardia, loss of variability, and late decelerations continued throughout the night. At about 5:15 a.m., the attending nurse finally called an obstetrician, Dr. Vasanti Puranik, who was an employee of North Broward Hospital District. At Dr. Puranik's request, the fetal monitoring strips were faxed to her for review. Upon receipt, the doctor discovered that the graph paper had been fed into the electronic fetal monitor upside down. The strips, therefore, were not readily interpretable, although it could be seen that the baby's heart rate lacked variability.

Dr. Puranik consulted by telephone with another obstetrician, Laurie Scott, M.D., and they agreed that it was time to deliver Mrs. Brown's baby. Neither doctor rushed to the hospital, however. Dr. Puranik arrived on the obstetrical unit at 6:27 a.m., where she ordered a routine Caesarian section. Mrs. Brown was prepared for surgery. Dr. Puranik began the C-section at 7:24 a.m., and Darian was born at 7:27 a.m.

Darian had been oxygen-deprived in his mother's womb for hours before his birth. As a result, he was born with numerous complications, including respiratory distress syndrome, cystic kidney disease, neonatal jaundice, neonatal hypoglycemia, and newborn intraventricular hemorrhage. He required aggressive resuscitation. Eventually, Mrs. Brown and Darian were discharged from the hospital. The Browns were not told, however, that Darian might have suffered a serious brain injury.

In October 2000, Mrs. Brown became concerned that her son was not meeting developmental milestones. Her inquiries to the pediatrician resulted in a computed tomography (CT) scan of Darian's brain being ordered. The CT scan showed that Darian's brain had been seriously and irreversibly damaged by partial prolonged hypoxia (oxygen deprivation) in the hours before his birth.

The insult to Darian's brain has left him suffering from cerebral palsy, spastic quadriplegia, and developmental delay. He is unable to talk but smiles at family members and communicates basic needs by gesturing (e.g., pointing to his stomach when hungry or to his head when he has a headache). Darian has no bladder or bowel control, cannot feed himself, and is unable to perform any activities of daily living. He will be totally dependent on others for care and treatment for the rest of his life.

Paul M. Deutsch, Ph.D., performed a comprehensive evaluation of Darian and prepared Life Care Plan, which quantifies the future medical expenses that will be incurred over the course of Darian's lifetime. The report prepared by the plaintiffs' economist, Raffa Consulting Economists, Inc., which takes into account Dr. Deutsch's Life Care Plan, concludes that the present value of Darian's future medical needs is between \$11.5 and \$13.6 million, and that his estimated lost earning capacity, reduced to present value, is approximately \$0.68 million.

LEGAL PROCEEDINGS:

In 2003, Mr. and Mrs. Brown brought suit on their son's behalf, and in their respective individual capacities, against the North Broward Hospital District and others. The action was filed in the Circuit Court in and for Broward County, Florida.

While the lawsuit was pending, the Browns settled with Dr. Scott and Parinatal Associates, P. A. for a confidential amount. The case proceeded to trial in 2008 against the North Broward Hospital District as the sole remaining defendant. On June 13, 2008, after four weeks of trial, the jury rendered a verdict in favor of the plaintiffs and against the district, awarding a total of \$35.2 million in damages. The resulting judgment was appealed. In June 2010, the Florida Fourth District Court of Appeal affirmed.

The hospital district sued its insurers seeking a declaration of coverage for the damages awarded to the Browns. The coverage lawsuit led to a global settlement under which the district's insurers paid the Browns \$10.35 million, the district paid its sovereign immunity limit of \$200,000, and the parties agreed that the plaintiffs could seek an additional \$2 million through an uncontested claim bill in that amount.

Under the settlement agreements, the plaintiffs' net recovery to date (after satisfying medical and legal expenses and attorneys' fees) is approximately \$8.5 million. They have paid roughly \$3.3 million to their attorneys.

CLAIMANTS' ARGUMENTS:

The North Broward Hospital District is vicariously liable for the negligent acts of its employees and agents, including but not limited to:

- Failing timely to alert Mrs. Brown's obstetrician, or any medical doctor, of the onset of fetal tachycardia, despite a standing order to do just that.
- Failing timely to notify a physician of the loss of fetal heart rate variability and subsequent onset of late decelerations, which (the nurses should have known) indicated that the baby was likely in distress.
- Failing to notice, for hours, that the graph paper in the electronic fetal monitor had been inserted upside down, producing tracings that were not readily interpretable.
- Failing to order an emergency C-section immediately upon discovery that the baby's fetal heart signals were non-reassuring.

RESPONDENT'S POSITION: The North Broward Hospital District does not oppose the bill. The Chief Executive Officer of the district has attested that if the claim bill were enacted, the \$2 million award would be paid out of the district's general operating account, and that the payment of this sum would not in any way detrimentally impact the district's ability to provide medical services to the people of Broward County.

CONCLUSIONS OF LAW: As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields the North Broward Hospital 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). Unless a claim bill is enacted, therefore, Darian and his parents will not realize the full benefit of the settlement agreement they have made with the district.

Under the doctrine of respondeat superior, the North Broward Hospital 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).

The nurses and obstetrician who were involved in Mrs. Brown's treatment were employees of the district acting within the scope of their employment. Accordingly, the negligence of these actors is attributable to the district.

The district's employees each had a duty to provide Mrs. Brown and Darian with competent medical care. Such duty was breached, with tragic consequences: Had Darian been delivered shortly after his fetal heart signals became ominous late in the evening on January 14, 2000, as he reasonably should have been, rather than 8 or 9 hours later, as in fact he was, Darian likely would not have suffered a catastrophic brain injury before birth. The negligence of the district's employees and agents was a direct and proximate cause of Darian's substantial damages.

The sum that the North Florida Hospital District has agreed to pay Darian (\$2.2 million in the aggregate) is a relatively small percentage of Darian's total economic losses. If this

claim bill is enacted, the Brown family's recovery, including the funds previously received from other sources, should be adequate to cover Darian's future medical needs. The undersigned concludes that the settlement at hand is both reasonable and responsible.

ATTORNEY'S 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." The law firm that the Harris family retained, Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, LLP, has submitted the affidavit of Nancy La Vista, Esquire, attesting that, if the claimants were awarded \$2 million under the claim bill at issue, the attorneys' fees would be limited to \$500,000, or 25 percent of the compensation being sought.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 6 (2012) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Joe Negron
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Negrón

28-00084-12

20126__

A bill to be entitled

An act for the relief of Denise Gordon Brown and David Brown by the North Broward Hospital District; providing for an appropriation to compensate Denise Gordon Brown and David Brown, parents of Darian Brown, for injuries and damages sustained by Darian Brown as result of the negligence of Broward General Medical Center; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on January 10, 2000, Denise Gordon Brown was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida, and

WHEREAS, Denise Gordon Brown's physicians at Broward General Medical Center ordered continuous fetal monitoring, and

WHEREAS, on the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus, and

WHEREAS, on January 15, 2000, the monitoring indicated continued fetal tachycardia and loss of reactivity, necessitating immediate delivery, and

WHEREAS, Denise Gordon Brown's unborn child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay, and

WHEREAS, Denise Gordon Brown and David Brown, the parents of Darian Brown, sought medical care and treatment that determined that Darian Brown's condition is permanent, has resulted in severe neurological damage, and requires a lifetime of round-the-clock care and treatment, and

WHEREAS, after a trial, a jury returned a verdict in favor

Page 1 of 3

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

28-00084-12

20126__

of Denise Gordon Brown and David Brown, as parents and guardians of Darian Brown, in the amount of \$35,236,000, for the cost of care for Darian Brown, resulting in a final judgment, less setoffs and costs, in the amount of \$34,418,577, and

WHEREAS, the jury's verdict was affirmed on appeal, and

WHEREAS, pursuant to an agreement between the parties to the lawsuit, the judgment has been partially satisfied in the amount of \$10,550,000, and

WHEREAS, pursuant to the agreement, the claim shall be considered fully satisfied by the stipulation that the North Broward Hospital District will seek its self-insured retention in the amount of \$2 million as authorized by the Florida Legislature through a claim bill, NOW, THEREFORE,

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

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

Section 2. The sum of \$2 million is appropriated out of funds not otherwise encumbered for payment by the North Broward Hospital District for the relief of Denise Gordon Brown and David Brown, as guardians of Darian Brown, for injuries and damages sustained by Darian Brown due to the negligence of Broward General Medical Center.

Section 3. A warrant shall be drawn in favor of Denise Gordon Brown and David Brown, as guardians of Darian Brown, in the amount of \$2 million.

Section 4. The amount paid pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to

Page 2 of 3

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

28-00084-12

20126__

59 provide the sole compensation for all present and future claims
60 arising out of the factual situation described in this act which
61 resulted in injuries sustained by Darian Brown. The total amount
62 paid for attorney's fees, lobbying fees, costs, and other
63 similar expenses relating to this claim may not exceed 25
64 percent of the total amount awarded under this act.

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



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

| DATE | COMM | ACTION |
|---------|------|-----------|
| 12/1/11 | SM | Favorable |
| 2/27/12 | RC | Fav/CS |
| | | |
| | | |

December 1, 2011

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

Re: **CS/SB 16 (2012)** – Rules Committee and Senator Oscar Braynon
Relief of Ronnie Lopez and Robert Guzman

SPECIAL MASTER'S FINAL REPORT

THIS IS A UNCONTESTED CLAIM FOR \$1,010,000 FROM MIAMI-DADE COUNTY BASED ON A COURT-APPROVED SETTLEMENT AGREEMENT TO COMPENSATE THE ESTATE OF ANAYENCY VELASQUEZ FOR HER DEATH, WHICH WAS CAUSED WHEN HER CAR WAS STRUCK BY A MIAMI-DADE COUNTY POLICE CRUISER.

FINDINGS OF FACT:

At about 5:15 a.m. on February 28, 2009, Anayency Velasquez, 23 years old, was returning from her job at the Latino Sport Bar when her car was struck at the driver-side front wheel by a Miami-Dade County police cruiser driven by Frank Rivera, who had run a stop sign and collided with Ms. Velasquez' car in the intersection of NW 11th Avenue and NW 112th Street in Miami.

It is estimated that Officer Rivera was traveling at 32 miles per hour when the collision occurred. Officer Rivera declined to give a statement, but the other officer in the cruiser said that they were engaged in a pursuit. The more persuasive evidence does not support this statement. For example, the cruiser's emergency lights and siren were not turned on, which police policy requires for a pursuit.

The collision caused Ms. Velasquez' car to be forced diagonally across the intersection, through a fence, and into a house where it caused extensive damage. She was killed in the collision from "blunt force trauma."

Blood samples taken from Ms. Velasquez showed a blood-alcohol level of .25, which is more than three times the legal limit, and there was cocaine in her system. However, the evidence does not show that these drugs contributed to her death. It was not shown that Ms. Velasquez could have avoided the collision if she had not been drunk. She was not speeding. The Office of the State Attorney considered Ms. Velasquez not at fault.

Officer Rivera was prosecuted for careless driving and running a stop sign, but was found not guilty based on the qualified immunity provided in section 316.072(5)(b)2, F.S., for drivers of emergency vehicles who proceed past a stop sign. He received a "record of counseling" from the Police Department.

Ms. Velasquez is survived by her three minor children, whose fathers are the co-representatives of her estate. Ronnie Lopez is the father of Ronnie Lopez, Jr., age 5 and Ashley Lopez-Velasquez, age 4. Robert Guzman is the father of Steven Guzman, age 9.

LITIGATION HISTORY:

In September 2010, a demand letter was served on Miami-Dade County on behalf of the estate of Ms. Velasquez. The parties then entered into pre-suit mediation, which resulted in a Mediation Agreement. The agreement provided that Miami-Dade County would pay \$150,000 to the co-representatives of the estate and would support a claim bill for an additional \$1,010,000.

A Petition to Approve Apportionment of Wrongful Death Settlement Proceeds recommended equal apportionment (one third shares) to the three surviving children of all monies received. The petition was approved by the circuit court in August 2011.

Miami-Dade County paid \$150,000 to the co-representatives of the estate. After attorney fees and costs were deducted, they received \$90,599. These funds were divided in three equal shares and deposited in three separate bank accounts

for the children. The use of these funds and any funds received from passage of the claim bill are subject to guardianship law for the care and benefit of Ms. Velasquez' three children.

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 Department is liable in negligence for the damages suffered by the Claimant and, if so, whether the amount of the claim is reasonable.

Officer Rivera had a duty to exercise reasonable care in operating his cruiser and, specifically, to exercise care when approaching the intersection and yield to Ms. Velasquez who had the right of way. The collision that occurred was a foreseeable consequence of failure to stop or otherwise exercise care.

Although, in the criminal action, Officer Rivera's guilt was not proved beyond a reasonable doubt, the preponderance of the evidence establishes that he drove carelessly and without due regard for the safety of other persons. Therefore, the qualified immunity provided by section 316.072(5)(b)2, F.S., is inapplicable.

Officer Rivera was acting within the course and scope of his employment at the time of the crash. As a result, his negligence is attributable to Miami-Dade County.

ATTORNEYS FEES:

The Claimants' attorney has agreed to limit attorney's fees to 25 percent of the claim in accordance with s. 768.28(8), F.S.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 16 (2012) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Oscar Braynon
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

CS by Rules (2/27/12):

Amends line 77 to provide that Ronnie Lopez and Robert Guzman are co-personal representatives of the Estate of Ana-Yency Velasquez.



816710

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete line 77

and insert:

Ronnie Lopez and Roberto Guzman as co-personal

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

And the title is amended as follows:

Delete lines 2 - 61

and insert:

An act for the relief of Ronnie Lopez and Roberto Guzman as co-personal representatives of the Estate of Ana-Yency Velasquez, deceased, and for Ronnie Lopez,



816710

14 Jr., Ashley Lorena Lopez-Velasquez, and Steven Robert
15 Guzman, minor children of Ana-Yency Velasquez, by
16 Miami-Dade County; providing for an appropriation to
17 compensate the estate and the minor children for the
18 death of Ana-Yency Velasquez as a result of the
19 negligence of an employee of Miami-Dade County;
20 providing a limitation on the payment of fees and
21 costs; providing an effective date.

22
23 WHEREAS, Ronnie Lopez, co-personal representative of the
24 Estate of Ana-Yency Velasquez, deceased, is the father of Ronnie
25 Lopez, Jr., age 5, and Ashley Lorena Lopez-Velasquez, age 4, and
26 Ana-Yency Velasquez, deceased, was the mother of Ronnie Lopez,
27 Jr., and Ashley Lorena Lopez-Velasquez, and

28 WHEREAS, Roberto Guzman, co-personal representative of the
29 Estate of Ana-Yency Velasquez, deceased, is the father of minor
30 child, Steven Robert Guzman, age 9, and Ana-Yency Velasquez,
31 deceased, was the mother of Steven Robert Guzman, and

32 WHEREAS, on February 23, 2009, a Miami-Dade County Police
33 Officer, when driving his marked police unit through an
34 intersection, failed to obey a posted stop sign and also did not
35 engage his lights or sirens, and

36 WHEREAS, protocol for the Miami-Dade County Police
37 Department requires that lights and sirens be engaged whenever
38 any police vehicle is in pursuit of another vehicle, and

39 WHEREAS, s. 316.271, Florida Statutes, requires that sirens
40 be engaged whenever an authorized emergency vehicle is
41 responding to an emergency or in immediate pursuit of an actual
42 or suspected violator of the law, and



816710

43 WHEREAS, the vehicle driven by the Miami-Dade County police
44 unit was in pursuit of a phantom speeding vehicle at the time of
45 the collision, and

46 WHEREAS, the Miami-Dade County police cruiser crashed into
47 and broadsided the vehicle operated by Ana-Yency Velasquez, then
48 23 years of age and the mother of three minor children, at the
49 intersection of N.W. 112th St. and N.W. 12th Ave., and

50 WHEREAS, the Miami-Dade County police cruiser operated by
51 the officer struck the vehicle driven by Ana-Yency Velasquez
52 with such force that her automobile crashed into the bedroom of
53 a nearby residence, throwing debris from the automobile onto the
54 roof of the residence, and

55 WHEREAS, Ana-Yency Velasquez was killed as a result of the
56 negligence of an employee of Miami-Dade County, Florida, and

57 WHEREAS, mediation of the claims of this matter was held on
58 November 17, 2010, and

59 WHEREAS, at mediation, Miami-Dade County acknowledged that
60 the damages far exceeded the statutory limit of \$200,000
61 established under s. 768.28, Florida Statutes, and the
62 representatives of Miami-Dade County agreed and entered into a
63 Mediation Settlement Agreement, and

By Senator Braynon

33-00126-12

201216__

1 A bill to be entitled
 2 An act for the relief of Ronnie Lopez and Robert
 3 Guzman, individually and as co-personal
 4 representatives of the Estate of Ana-Yency Velasquez,
 5 deceased, and for Ronnie Lopez, Jr., Ashley Lorena
 6 Lopez-Velasquez, and Steven Robert Guzman, minor
 7 children of Ana-Yency Velasquez, by Miami-Dade County;
 8 providing for an appropriation to compensate the
 9 estate and the minor children for the death of Ana-
 10 Yency Velasquez as a result of the negligence of an
 11 employee of Miami-Dade County; providing a limitation
 12 on the payment of fees and costs; providing an
 13 effective date.

14

15 WHEREAS, Ronnie Lopez, co-personal representative of the
 16 Estate of Ana-Yency Velasquez, deceased, is the father of Ronnie
 17 Lopez, Jr., age 4, and Ashley Lorena Lopez-Velasquez, age 3, and
 18 Ana-Yency Velasquez, deceased, was the mother of Ronnie Lopez,
 19 Jr., and Ashley Lorena Lopez-Velasquez, and

20 WHEREAS, Robert Guzman, co-personal representative of the
 21 Estate of Ana-Yency Velasquez, deceased, is the father of minor
 22 child, Steven Robert Guzman, age 8, and Ana-Yency Velasquez,
 23 deceased, was the mother of Steven Robert Guzman, and

24 WHEREAS, on February 23, 2009, a Miami-Dade County Police
 25 Officer, when driving his marked police unit through an
 26 intersection, failed to obey a posted stop sign and also did not
 27 engage his lights or sirens, and

28 WHEREAS, protocol for the Miami-Dade County Police
 29 Department requires that lights and sirens be engaged whenever

Page 1 of 4

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

33-00126-12

201216__

30 any police vehicle is in pursuit of another vehicle, and
 31 WHEREAS, s. 316.271, Florida Statutes, requires that sirens
 32 be engaged whenever an authorized emergency vehicle is
 33 responding to an emergency or in immediate pursuit of an actual
 34 or suspected violator of the law, and

35 WHEREAS, the vehicle driven by the Miami-Dade County police
 36 unit was in pursuit of a phantom speeding vehicle at the time of
 37 the collision, and

38 WHEREAS, the Miami-Dade County police cruiser crashed into
 39 and broadsided the vehicle operated by Ana-Yency Velasquez, then
 40 23 years of age and the mother of three minor children, at the
 41 intersection of N.W. 112th St. and N.W. 12th Ave., and

42 WHEREAS, the Miami-Dade County police cruiser operated by
 43 the officer struck the vehicle driven by Ana-Yency Velasquez
 44 with such force that her automobile crashed into the bedroom of
 45 a nearby residence, throwing debris from the automobile onto the
 46 roof of the residence, and

47 WHEREAS, Ana-Yency Velasquez was killed as a result of the
 48 negligence of an employee of Miami-Dade County, Florida, and

49 WHEREAS, mediation of the claims of this matter was held on
 50 November 17, 2010, and

51 WHEREAS, at mediation, Miami-Dade County acknowledged that
 52 the damages far exceeded the statutory limit of \$200,000
 53 established under s. 768.28, Florida Statutes, and the
 54 representatives of Miami-Dade County agreed and entered into a
 55 Mediation Settlement Agreement, and

56 WHEREAS, in the Mediation Settlement Agreement, Miami-Dade
 57 County agreed to pay \$150,000 to the plaintiffs under the
 58 statutory limits on damages, and the remaining \$50,000 was paid

Page 2 of 4

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

33-00126-12 201216__

59 to the co-personal representatives of the Estate of Ana-Yency
60 Velasquez and to the owner of the house that incurred damage as
61 a result of the crash, and

62 WHEREAS, Miami-Dade County has paid \$150,000 to the co-
63 personal representatives of the Estate of Ana-Yency Velasquez
64 under the statutory limits of liability set forth in s. 768.28,
65 Florida Statutes, and

66 WHEREAS, Miami-Dade County has agreed in the Mediation
67 Settlement Agreement to actively support the passage of a claim
68 bill in the amount of \$1,010,000, NOW, THEREFORE,

69

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

71

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

74 Section 2. Miami-Dade County is authorized and directed to
75 appropriate from funds of the county not otherwise appropriated
76 and to draw a warrant in the sum of \$1,010,000, payable to
77 Ronnie Lopez and Robert Guzman, individually and as co-personal
78 representatives of the Estate of Ana-Yency Velasquez, deceased,
79 for the benefit of Ronnie Lopez, Jr., Ashley Lorena Lopez-
80 Velasquez, and Steven Robert Guzman, minor children of Ana-Yency
81 Velasquez, as compensation for the death of Ana-Yency Velasquez
82 as a result of the negligence of an employee of Miami-Dade
83 County.

84 Section 3. The amount paid by Miami-Dade County pursuant to
85 s. 768.28, Florida Statutes, and the amount awarded under this
86 act are intended to provide the sole compensation for all
87 present and future claims arising out of the factual situation

33-00126-12 201216__

88 described in the preamble to this act which resulted in the
89 death of Ana-Yency Velasquez. The total amount paid for
90 attorney's fees, lobbying fees, costs, and similar expenses
91 relating to this claim may not exceed 25 percent of the total
92 amount awarded under section 2 of this act.

93

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27/12
Meeting Date

Topic _____

Bill Number SB 16
(if applicable)

Name Marlon Moffett

Amendment Barcode _____
(if applicable)

Job Title Assistant County Attorney

Address Miami-Dade County Atty. Office

Phone 305-375-5151

Street

Miami
City

FL
State

33128
Zip

E-mail mdm2@miamidadegov

Speaking: For Against Information

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27

Meeting Date

Topic Guzman v. Miami-Dade Bill Number SB 16
Name Evan Grob Amendment Barcode _____ (if applicable)
Job Title Assistant County Attorney (if applicable)
Address 111 NW 1st Street Phone 305-375-5151
Miami, FL E-mail grob@mi-dade.gov
City State Zip

Speaking: For Against Information

Representing Miami-Dade

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

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

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



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

| DATE | COMM | ACTION |
|---------|------|-----------------|
| 12/2/11 | SM | Fav/1 amendment |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

December 2, 2011

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

Re: **SB 22 (2012)** – Senator Christopher L. Smith
Relief of Jennifer Wohlgemuth

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$8,624,754.40 BASED ON A BENCH TRIAL AWARD FOR JENNIFER WOHLGEMUTH AGAINST THE PASCO COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT FOR INJURIES SUSTAINED IN A MOTOR VEHICLE CRASH RESULTING FROM THE NEGLIGENT OPERATION OF A POLICE VEHICLE.

FINDINGS OF FACT:

On January 3, 2005, at approximately 1:35 a.m., the Claimant, Jennifer Wohlgemuth, was operating her Honda Accord southbound on Regency Park Boulevard in New Port Richey, Florida. The Claimant, who was not wearing her seatbelt, was in the process of dropping off several passengers with whom she had been socializing earlier that evening.

As the Claimant headed southbound on Regency Park Boulevard, she approached the intersection of Ridge Road, which is controlled by a traffic light in all four directions. Unbeknownst to the Claimant, a fleeing motorist, Scott Eddins, had proceeded through the intersection a short time earlier headed eastbound on Ridge Road. Closely pursuing Mr. Eddins were three police vehicles with the Port Richey and New Port Richey Police Departments. A fourth law

enforcement vehicle, operated by Pasco County Sheriff's Deputy Kenneth Petrillo, was well behind the pursuit and trailed the other patrol cars by 10 to 30 seconds.

Although the traffic signal at the intersection was red for vehicles traveling eastbound on Ridge Road, Deputy Petrillo entered the intersection against the light, without slowing, at a rate of travel that substantially exceeded the 45 MPH speed limit. Although Deputy Petrillo's patrol vehicle was equipped with a siren, he neglected to activate it. Almost immediately upon entering the intersection, Deputy Petrillo struck the front right portion of the Claimant's Honda Accord, which had lawfully proceeded into the intersection several seconds earlier.

As a result of the impact, which was devastating, the Claimant's vehicle traveled approximately 15 feet across a grass shoulder and sidewalk, at which point it struck a metal railing and came to rest. The front right of the Claimant's vehicle was demolished, and the entire right side was dented with inward intrusion. In addition, the front windshield, rear windshield, and right side windows were shattered and broken away.

The Claimant exited her vehicle following the collision, but collapsed in the roadway moments later due to the serious nature of her injuries. The Claimant was subsequently transported to Bayfront Medical Center for treatment.

Shortly after the accident, Florida Highway Patrol Corporal Erik W. Bromiley initiated an investigation to determine the cause of the collision. During his investigation, Corporal Bromiley learned that three Alprazolam (an anti-depressant) tablets, totaling 1.8 grams, had been discovered in the Claimant's wallet. In addition, several witnesses advised Corporal Bromiley that the Claimant had consumed alcoholic beverages at a bar earlier in the evening. Ultimately, however, Corporal Bromiley could not conclude that the Claimant was impaired by drugs or alcohol at the time of the accident.

While Corporal Bromiley remained at the scene to question witnesses and inspect the crash site, a second trooper responded to Bayfront Medical Center and obtained blood samples from the Claimant. Testing of the blood, which was

drawn approximately two and one-half hours after the accident, revealed that the Claimant's blood alcohol level was .021 and .022, which is below the legal limit of .08. In addition, cocaine metabolites and Alprazolam were detected.

Jeffrey Hayes, a toxicologist employed with the Pinellas County Forensic Laboratory, estimated that at the time of the accident, the Claimant's blood alcohol level could have ranged from .047 (a level in which the driver is presumed not to be impaired pursuant to Florida law) to .097, which would exceed the legal limit. Significantly, Mr. Hayes conceded that any conclusion that the Claimant was impaired when the collision occurred would be purely speculative.

Accident reconstruction established that Deputy Petrillo was travelling between 64 MPH (with a margin of error of plus or minus 5 MPH) in a 45 MPH zone. It was further estimated that the Claimant was travelling 34 MPH, in excess of the posted 30 MPH limit for Regency Park Boulevard. However, with the margin of error of plus or minus 5 MPH, the accident reconstruction findings do not preclude a determination that the Claimant was observing the speed limit.

Although it is clear that Deputy Petrillo's siren was not activated prior to the collision, the evidence is inconclusive regarding the use of the patrol vehicle's emergency lights.

An additional investigation of the accident was conducted by Inspector Art Fremer with the Pasco County Sheriff's Office Professional Standards Unit. The purpose of Inspector Fremer's investigation was to ascertain if Deputy Petrillo had committed any statutory violations or failed to observe the policies of the Pasco County Sheriff's Office. At the conclusion of his investigation, Investigator Fremer determined that Deputy Petrillo violated General Order 41.3 of the Pasco County Sheriff's Office in the following respects: (1) failing to activate and continuously use a siren while engaged in emergency operations; (2) entering the intersection against a red light without slowing or stopping, which was necessary for safe operation; (3) entering the intersection at a speed greater than reasonable; and (4) failing to ensure that cross-traffic flow had yielded. In addition, Investigator Fremer concluded that Deputy Petrillo had violated s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the

maximum speed limit "as long as the driver does not endanger life or property." As a result of his misconduct, Deputy Petrillo was suspended for 30 days without pay.

With respect to the Claimant's driving, the undersigned credits the testimony of Amanda Dunn, an eyewitness driving three to four car lengths behind the Claimant, who noticed no unusual driving and testified that the "coast was clear" when the Claimant entered the intersection. Accordingly, the undersigned finds that she operated her vehicle in accordance with the law and did not contribute to the accident.

As a result of the collision, the Claimant suffered severe closed head trauma, which included a subdural hematoma of the right frontal lobe and a subarachnoid hemorrhage. As a result of significant swelling to her brain, a portion of the Claimant's skull was removed. The Claimant remained in a coma for approximately three weeks following the accident, and did not return home until August of 2005.

At the time of the final hearing in this matter, the Claimant continues to suffer from severe impairment to her memory, a partial loss of vision, poor balance, urinary problems, anxiety, dysarthric speech, and weight fluctuations. Further, the damage to the Claimant's frontal lobe has left her with the behavior, judgment, and impulses similar to those of a seven-year-old child. As a consequence, the Claimant requires constant supervision and is unable to hold a job, drive, or live independently.

LITIGATION HISTORY:

On March 17, 2007, the Claimant filed an Amended Complaint for Negligence and Demand for Jury Trial in the Sixth Judicial Circuit, in and for Pasco County. In her Amended Complaint, the Claimant sued Robert White, as Sheriff of Pasco County, for injuries she sustained as a result of Deputy Petrillo's negligence. On March 9-11, Circuit Judge Stanley R. Mills conducted a bench trial of the Claimant's negligence claim.

On March 12, 2009, Judge Mills rendered a verdict in favor of the Claimant and awarded:

- \$299,284.32 for past medical expenses.

- \$5,786,983.00 for future medical expenses.
- \$1,055,000.00 for future lost earnings.
- \$500,000.00 for past pain and suffering.
- \$1,500,000 for future pain and suffering.

The trial judge further determined that Deputy Petrillo was 95 percent responsible for the Claimant's injuries, and that the Claimant was 5 percent responsible due to her failure to wear a seatbelt. With the allocation of 5 percent responsibility to the Claimant, the final judgment for the Claimant totaled \$8,724,754.50.

The Respondent appealed the final judgment to the Second District Court of Appeal. In its initial brief, the Respondent argued that the trial court erred by: (1) failing to allocate any responsibility to the Claimant based upon her blood alcohol level; (2) awarding lost wages that were not supported by competent substantial evidence; (3) failing to allocate any responsibility to the Claimant based upon her driving in excess of the speed limit; and (4) failing to allocate any responsibility to the Scott Eddins, the fleeing motorist. Oral argument was granted, and on March 10, 2010, the Second District Court of Appeal affirmed the trial court without a written opinion.

CLAIMANT'S ARGUMENTS:

- Deputy Petrillo's negligent operation of his patrol vehicle was the proximate cause of the Claimant's injuries.
- The trial court's findings as to damages and the apportionment of liability were appropriate.

RESPONDENT'S ARGUMENTS:

- The Pasco County Sheriff's Office objects to any payment to the Claimant through a claim bill.
- At the time of the collision, the Claimant was not wearing her seat belt and was impaired by alcohol, drugs, or a combination of the two, and as such, more than 5 percent of the fault should be allocated to her.
- Some responsibility should be apportioned to Scott Eddins, who was being pursued by multiple law

enforcement vehicles at the time Deputy Petrillo collided with the Claimant's vehicle.

CONCLUSIONS OF LAW:

Deputy Petrillo had a duty to operate his vehicle at all times with consideration for the safety of other drivers. See City of Pinellas Park v. Brown, 604 So. 2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); Brown v. Miami-Dade Cnty., 837 So. 2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders . . . when their law enforcement activities create a foreseeable zone of risk"); Creamer v. Sampson, 700 So. 2d 711 (Fla. 2d DCA 1997) (holding police owed duty to innocent motorist during high speed pursuit of traffic offender). It was entirely foreseeable that injuries to motorists such as the Claimant could occur where Deputy Petrillo entered an intersection at a high rate of speed, without slowing, against a red light, and without his siren activated. Further, Deputy Petrillo failed to comply with s. 316.072(5), Florida Statutes, which provides that the operator of an emergency vehicle may exceed the maximum speed limit "as long as the driver does not endanger life or property." Deputy Petrillo breached his duty of care and the breach was the proximate cause of the Claimant's injuries.

The Pasco County Sheriff's Office, as Deputy Petrillo's employer, is liable for his 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).

The circuit judge's allocation of 95 percent liability to the Pasco County Sheriff's Office is reasonable and should not be disturbed. The evidence failed to establish that the Claimant was impaired or that her operation of the vehicle contributed to the accident. Further, as Deputy Petrillo was well behind the pursuit, the zone of risk created by Scott Eddins (the fleeing motorist) had moved beyond the intersection of Regency Park Boulevard and Ridge Road at the time of the collision. Accordingly, the trial court correctly determined that no fault should be apportioned to Mr. Eddins.

The undersigned further concludes that the damages awarded to the Claimant were appropriate. This includes the \$1,055,000.00 for future lost earnings, which was based on the reasonable and conservative assumption that the Claimant did not possess a high school diploma, when in fact she had graduated from high school and planned to attend community college.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 50) was indefinitely postponed and withdrawn from consideration on May 7, 2011.

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.

FISCAL IMPACT:

The Respondent has already paid the statutory maximum of \$100,000.00, leaving \$8,624,754.40 unpaid. Pursuant to the Sheriff's Automobile Risk Program (a self-insurance pool), an additional \$332,000 is at the Respondent's disposal. The remaining balance would be paid by Pasco County funds. Respondent's General Counsel, Jeremiah Hawkes, advises that the Pasco County Sheriff's Office is in the midst of a significant budget crisis that would be exacerbated by the passage of the instant claim bill.

Notwithstanding the Respondent's budgetary woes, the undersigned concludes that the Claimant is presently entitled to the full amount sought. In the alternative, it would not be inappropriate to amend Senate Bill 22 to direct Respondent to pay the balance of \$8,624,754.40 over a period of years.

COLLATERAL SOURCES:

The Claimant receives \$221 per month in Social Security Disability Insurance.

SPECIAL ISSUES:

Senate Bill 22, as it is presently drafted, provides that Deputy Petrillo failed to activate his patrol vehicle's emergency lights. In light of the undersigned's finding that the evidenced is inconclusive regarding the use of emergency lights, Senate Bill 22 should be amended accordingly.

The Respondent introduced evidence that that the Claimant began using marijuana at the age of 16, as well as cocaine

several years later. Although the Claimant sought help for her addictions, she voluntarily terminated treatment roughly two weeks prior to the collision with Deputy Petrillo's vehicle. As there was no evidence that the Claimant was impaired at the time of the accident, the undersigned concludes that the Claimant's history of drug addiction should not militate against the passage of the instant claim bill.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Christopher L. Smith
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Smith

29-00154-12

201222__

A bill to be entitled

An act for the relief of Jennifer Wohlgemuth by the Pasco County Sheriff's Office; providing for an appropriation to compensate Jennifer Wohlgemuth, whose injuries were due to the negligence of an employee of the Pasco County Sheriff's Office; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, in the early morning of January 3, 2005, 21-year-old Jennifer Wohlgemuth was driving her vehicle southbound on Regency Park Boulevard in Pasco County, observing the speed limit, and driving appropriately, and

WHEREAS, as Jennifer approached the intersection at Ridge Road, she slowed down as she entered the intersection on a green light. As Jennifer's vehicle proceeded through the intersection, it was suddenly and violently struck by a vehicle from the Pasco County Sheriff's Office which was driven by Deputy Kenneth Petrillo, and

WHEREAS, Deputy Petrillo was driving one of four law enforcement vehicles engaged in a high-speed pursuit. However, Deputy Petrillo's vehicle was well behind the other vehicles, which had already cleared the intersection. Deputy Petrillo had not activated his siren or flashing lights and drove through a red light as he traveled eastbound on Ridge Road at a speed of more than 20 miles per hour faster than the posted speed limit, striking the passenger side of Jennifer's vehicle, and

WHEREAS, none of the numerous witnesses to the crash heard Deputy Petrillo's siren or saw flashing lights, and after the

Page 1 of 4

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

29-00154-12

201222__

crash Deputy Petrillo's siren switch was in the "radio" mode, which indicates that the siren was not activated at the time of the crash, and

WHEREAS, an internal affairs investigation into the accident found that Deputy Petrillo violated the policies of the Pasco County Sheriff's Office, and he was suspended for 30 days without pay and subjected to other disciplinary measures, and

WHEREAS, Jennifer suffered profound brain injuries, including a subdural hematoma of the right frontal lobe and subarachnoid hemorrhage. Due to her brain swelling, part of Jennifer's skull was removed. Jennifer was in a coma for 3 weeks and could not speak for several months thereafter, and

WHEREAS, Jennifer was unable to return home until August 2005. As a result of the accident, she currently suffers from severe memory loss, partial loss of vision, lack of balance, urinary problems, anxiety, depression, dysarthric speech, acne, and weight fluctuations. Due to damage to her frontal lobe, Jennifer's behavior and impulse control are similar to those of a 7-year-old child. She requires supervision 24 hours a day, 7 days a week. Because of her significant memory impairment and lack of judgment, Jennifer is unable to drive, work at a job, or live independently, and

WHEREAS, a 3-day bench trial was held in the Sixth Judicial Circuit, and on March 12, 2009, the trial court rendered a verdict in Jennifer's favor, awarding total damages of \$9,141,267.32, and

WHEREAS, the court found that Deputy Petrillo was 95 percent responsible for Jennifer's injuries and that Jennifer was responsible for the remaining 5 percent due to her alleged

Page 2 of 4

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

29-00154-12 201222__
 59 failure to wear a seat belt. On August 4, 2009, the trial court
 60 entered its amended final judgment in the amount of
 61 \$8,724,754.40, and

62 WHEREAS, the Pasco County Sheriff's Office appealed the
 63 amended final judgment to the Second District Court of Appeal.
 64 Both sides filed appellate briefs and oral arguments were heard
 65 on March 2, 2010. On March 10, 2010, the Second District Court
 66 of Appeal affirmed the trial court's final judgment, and

67 WHEREAS, according to s. 768.28, Florida Statutes, the
 68 Pasco County Sheriff's Office paid the statutory limit of
 69 \$100,000, and \$8,624,754.40 remains unpaid, NOW, THEREFORE,

70
 71 Be It Enacted by the Legislature of the State of Florida:

72
 73 Section 1. The facts stated in the preamble to this act are
 74 found and declared to be true.

75 Section 2. The Pasco County Sheriff's Office is authorized
 76 and directed to appropriate from funds of the sheriff's office
 77 not otherwise appropriated and to draw a warrant, payable to
 78 Jennifer Wohlgemuth, for the amount of \$8,624,754.40 for
 79 injuries and damages sustained due to the negligence of an
 80 employee of the sheriff's office.

81 Section 3. The amount paid by the Pasco County Sheriff's
 82 Office pursuant to s. 768.28, Florida Statutes, and the amount
 83 awarded under this act are intended to provide the sole
 84 compensation for all present and future claims arising out of
 85 the factual situation described in this act which resulted in
 86 the injuries to Jennifer Wohlgemuth. The total amount paid for
 87 attorney's fees, lobbying fees, costs, and other similar

29-00154-12 201222__
 88 expenses relating to this claim may not exceed 25 percent of the
 89 amount awarded under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/2012
Meeting Date

Topic WOHL GEMUTH CLAIMS BRC Bill Number SB 22
Name HOWARD E. "GENE" ADAMS Amendment Barcode _____
Job Title ATTORNEY (if applicable)

Address 215 SOUTH MONROE ST., 2ND FLOOR Phone 850-222-3533
TALLAHASSEE FLA. 32301-1839 E-mail GENE@PENNINGTONLAW.COM.
Street City State Zip

Speaking: For Against Information
Representing FLORIDA SHERIFFS SELF INSURANCE FUNDS.

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27/12

Meeting Date

Topic Wohlgemuth

Bill Number 22
(if applicable)

Name Robert Stoler

Amendment Barcode _____
(if applicable)

Job Title attorney

Address 1 Tampa City Center, Suite 3200

Phone (813) 221-2626

Tampa FL 33606
City State Zip

E-mail rstoler@wsmslaw.com

Speaking: For Against Information

Representing Pasco County Sheriff

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

✓

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic _____ Bill Number 5022
(if applicable)

Name Jeremiah Hawkes Amendment Barcode _____
(if applicable)

Job Title Attorney Pasco Sheriff's Office

Address 8700 Citizen Dr Phone 827-844-7777

Street
New Port Richey FL 34654 E-mail jhawkes@pascosheriff.com
City State Zip *0-3*

Speaking: For Against Information

Representing Pasco Sheriff's Office

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

SB22
✓

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

2/27/12
Meeting Date

Topic Relig - Jennifer Wohlgenoth

Bill Number 29-00154-12
(if applicable)

Name Traci Wohlgenoth

Amendment Barcode _____
(if applicable)

Job Title Mother

Address 7629 Duck Lane
Street

Phone 727-858-9488

NPR FL 34653
City State Zip

E-mail TraciBennora@
Yahoo

Speaking: For Against Information

Representing Jennifer Wohlgenoth

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

SB 22 ✓

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

2/27/12
Meeting Date

Topic Relief - Jenniter Wohlgemuth Bill Number 29-00154 -12
(if applicable)

Name Frank Winkles Amendment Barcode _____
(if applicable)

Job Title attorney

Address 707 N. Franklin St. 2d Floor Phone 813 226 3090
Street

Tampa FL 33613
City State Zip

E-mail frank@WinklesLaw.com

Speaking: For Against Information

Representing Jenniter Wohlgemuth

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE
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 |
|----------|------|-----------------|
| 12/02/11 | SM | Fav/1 amendment |
| 2/27/12 | RC | Fav/CS |
| | | |
| | | |

December 2, 2011

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

Re: **CS/SB 38 (2012)** – Rules Committee and Senator Rene Garcia
Relief of Donald Brown

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$2,551,375.83 OF LOCAL MONEY BASED ON A JURY AWARD FOR DONALD BROWN AGAINST THE SUMTER COUNTY SCHOOL BOARD TO COMPENSATE CLAIMANT FOR PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A SCHOOL BUS OWNED AND OPERATED BY THE SUMTER COUNTY SCHOOL BOARD.

FINDINGS OF FACT:

In the early morning of October 18, 2004, Donald Brown was driving his motorcycle to work, traveling east on County Road 470. He had his headlight on, and was not speeding. Directly in front of him was a Lincoln Town Car. As they approached the intersection with County Road 475, the Lincoln Town Car turned right, onto County Road 475. Mr. Brown next saw a school bus, driven by Patsy Foxworth, pull out in front of him. Ms. Foxworth had been stopped at a stop sign on County Road 475, preparing to turn left onto County Road 470. When she pulled the bus out onto County Road 470, Mr. Brown had just enough time to lay his motorcycle down, and slide into the front of the school bus. He suffered a traumatic, below-the-knee amputation of his right leg.

In order to save Mr. Brown's knee, tend to his injury, perform skin grafts, and treat ulcers, the doctors operated multiple times on Mr. Brown. One such procedure transplanted muscle from Mr. Brown's back to his right leg, in order to provide skin coverage for the prosthetic leg he had to learn to use.

After the jury trial, Mr. Brown underwent two more surgeries, ultimately resulting in an above-the-knee amputation. He will continue to need constant medical monitoring, as well as adjustment and replacement of his prosthesis. At the time of the trial, the jury was presented with evidence as to the cost of a prosthetic leg for a below-the-knee amputation, but his prosthetic device is now more expensive, as it involves an above the knee amputation.

At the time of the collision, Mr. Brown was 38 years old, and employed as a federal corrections officer, earning \$40,788 annually. As a result of his injury, he was awarded federal retirement disability benefits and health insurance. He received 60 percent of his income for the first year, and will receive 40 percent of his income until he reaches retirement age. Mr. Brown is currently 45 years old. Since the collision, Mr. Brown has been employed as a marketing representative, landscaper, a clerk at Wal-Mart, and a fingerprint analyst for the State of Kentucky. His current earnings, combined with his federal disability benefits, are higher than his pre-injury earnings.

All of Mr. Brown's medical bills have been paid by his federal health insurance, through Blue Cross and Blue Shield. His yearly deductible is \$5,000. He will continue to receive this health insurance benefit until he reaches retirement age, at which point he will be eligible for Medicare.

LITIGATION HISTORY:

In 2005, Mr. Brown brought a lawsuit against the Sumter County School Board. In November, 2008, after a trial, the jury found the School Board liable for Mr. Brown's injuries and awarded him damages in the amount of \$2,941,240.60. The jury found that the School Board was 100 percent negligent in causing Mr. Brown's injuries, and awarded the following in damages:

Past medical expenses: \$421,963
Past lost earnings: \$92,690
Future medical expenses: \$972,730
Future lost earnings: \$554,000
Past pain and suffering: \$630,00
Future pain and suffering: \$270,000

The jury was unaware of Mr. Brown's health insurance, and of his federal disability benefits. The circuit judge entered a final judgment reducing the final verdict to \$2,651,375.83 (offsetting the amount of medical bills that had been paid by the time of the trial, \$229,613.77, and the federal disability benefits that had been paid at the time of trial, \$60,251.00) plus taxable costs of \$31,674.12. The School Board appealed the final judgment in March 2009. The Fifth District Court of Appeal affirmed the judgment in February 2011. In August 2011, the School Board paid Mr. Brown \$100,000.

CLAIMANT'S POSITION:

Ms. Foxworth was 100 percent negligent in failing to yield to oncoming traffic. The School Board is vicariously liable for the negligence of its employee. At the claim bill hearing, Mr. Brown's attorneys reduced the amount they are seeking through this claim bill to \$2,000,000.

SCHOOL BOARD'S POSITION:

Mr. Brown failed to exercise due care for his own safety by riding his motorcycle too closely to the rear of the Lincoln Town Car, and therefore contributed to the collision and to his injury. The School Board is opposed to this claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the Sumter County School Board was liable in negligence for the injuries suffered by Mr. Brown, and, if so, whether the amount of the claim is reasonable.

Ms. Foxworth had a duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, it was Ms. Foxworth's duty to observe and yield to Mr. Brown's motorcycle as it approached the intersection. See § 316.123(2)(a), Fla. Stat. (2004) ("[E]very driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line. After having

stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway"). Ms. Foxworth breached this duty of care, and the breach was the proximate cause of Mr. Brown's injuries.

The Sumter County School Board, as Ms. Foxworth's employer, is liable for her negligent act. Hollis v. Sch. Bd. of Leon Cnty., 384 So. 2d 661, 665 (Fla. 1st DCA 1980) (holding that a school board is liable for any negligent act committed by a public school bus driver whom it employs, provided the act is within the scope of the driver's employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

The jury's allocation of 100 percent liability to the School Board is a reasonable allocation and should not be disturbed. However, the payment of a claim bill is a matter of legislative grace. Since Mr. Brown's medical bills have all been paid, and will continue to be paid through his federal health insurance, it is unreasonable for the Legislature to compensate Mr. Brown for any medical costs. The evidence also establishes Mr. Brown's employability, and his entitlement, until retirement age, to federal disability benefits. His current income is more than his pre-injury income. Accordingly, it is unreasonable for the Legislature to compensate Mr. Brown for future lost wages.

Given the traumatic nature of the injury, and the change to his lifestyle, Mr. Brown has endured significant pain and suffering. The jury's award of past and future pain and suffering is reasonable and fair. Adding the amount of past lost wages, which is \$32,439, to the amounts awarded for past and future pain and suffering, which total \$900,000, results in a figure of \$932,439. Reducing this amount by the \$100,000 already paid to Mr. Brown, would leave a balance of \$832,439. This is the amount that I recommend be paid. I also recommend that the claim bill be amended to reflect that the amount paid to Mr. Brown is to compensate him only for lost wages and for pain and suffering.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES AND LOBBYIST FEES:

The Claimant's attorneys have agreed to limit their fees and lobbyist fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes.

SOURCE OF FUNDS:

If Senate Bill 38 is approved, the Sumter County School Board will pay the claim from local funds. Sumter County School Board is a member of Preferred Governmental Insurance Trust, a governmental self-insured trust.

SPECIAL ISSUES:

Senate Bill 38 (2012) is no longer accurate, as it states that the School Board has not paid \$100,000 pursuant to sovereign immunity limits set forth in s. 768.28, Florida Statutes. The School Board has paid that amount to Mr. Brown.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 38 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Jessica Enciso Varn
Senate Special Master

cc: Senator Rene Garcia
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

CS by Rules (2/27/12):

Amends the amount provided to Donald Brown to \$2,551,375.83.



371176

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

1 Delete line 104
2
3 and insert:
4 to Donald Brown, in the amount of \$2,551,375.83, plus the
5

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

8 And the title is amended as follows:

9 Delete lines 33 - 41
10 and insert:

11 WHEREAS, Donald Brown seeks to recover damages for his
12 bodily injury, including a permanent injury to the body as a
13 whole, past and future pain and suffering of both a physical and



371176

14 mental nature, disability, physical impairment, disfigurement,
15 mental anguish, inconvenience, loss of capacity for the
16 enjoyment of life, loss of earnings, and loss of ability to lead
17 and enjoy a normal life, and

18

19 Delete lines 91 - 95

20 and insert:

21 WHEREAS, the District School Board of Sumter County has
22 paid \$100,000 pursuant to the statutory limits of liability set
23 forth in s. 768.28, Florida Statutes, and

24 WHEREAS, the \$2,551,375.83 judgment is sought through the
25 submission of a claim bill to the Legislature, NOW, THEREFORE,

By Senator Garcia

40-00121-12

201238__

A bill to be entitled

An act for the relief of Donald Brown by the District School Board of Sumter County; providing for an appropriation to compensate Donald Brown for injuries sustained as a result of the negligence of an employee of the District School Board of Sumter County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on October 18, 2004, at approximately 6:45 a.m., Donald Brown was driving his Harley-Davidson motorcycle eastbound on County Road 470 and was approaching the

intersection with County Road 475 in Bushnell, Florida, and

WHEREAS, Patsy C. Foxworth was operating a school bus, owned by the District School Board of Sumter County, on County Road 475 in Bushnell, Florida, and

WHEREAS, Patsy C. Foxworth was operating and driving the motor vehicle with the permission and consent of its owner, the District School Board of Sumter County, and

WHEREAS, at that time and place, Patsy C. Foxworth negligently operated the Sumter County school bus by pulling in front of Donald Brown in an attempt to make a left turn, which caused a collision with his motorcycle, and

WHEREAS, the District School Board of Sumter County is vicariously liable for the negligence of Patsy C. Foxworth under the doctrine of *respondeat superior*, s. 768.28(9)(a), Florida Statutes, and

WHEREAS, upon the impact with the Sumter County school bus, Donald Brown sustained a life-changing injury, and his right

Page 1 of 4

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

40-00121-12

201238__

lower leg was amputated instantly below the knee as his leg and foot were pinned between the bumper of the bus and motorcycle, and

WHEREAS, Donald Brown seeks to recover damages for his bodily injury, including a permanent injury to the body as a whole, past and future pain and suffering of both a physical and mental nature, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and loss of ability to lead and enjoy a normal life, and

WHEREAS, Donald Brown was airlifted to Orlando Regional Medical Center and was hospitalized from October 18, 2004, to October 27, 2004, where he was taken to surgery on October 18, 2004, to complete a below-the-knee amputation of his right leg, and

WHEREAS, Donald Brown underwent additional surgeries on October 25, 2004, and October 28, 2004, to care for the wound and to do skin grafts from his left thigh to cover an area of approximately 45 by 30 cm on his right leg, and

WHEREAS, Donald Brown was transferred to Shands Hospital in Gainesville, Florida, for rehabilitation from November 2, 2004, to November 12, 2004, and

WHEREAS, as a result of the injuries incurred on October 18, 2004, Donald Brown required the use of a prosthetic leg, which resulted in ulcers requiring additional surgery on January 17, 2006, and

WHEREAS, the effects of the injuries have been devastating,

Page 2 of 4

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

40-00121-12 201238__

59 restricting Donald Brown's ability to work and enjoy life, and

60 WHEREAS, Donald Brown incurred medical expenses in the
61 amount of \$421,693.60 and was medically retired from his federal
62 employment at the Federal Bureau of Prisons in Coleman, Florida,
63 where he was earning \$42,000 a year, and

64 WHEREAS, Donald Brown lived a full life before his accident
65 on October 18, 2004, had a zest and vigor for life, and was very
66 active in recreational, social, and sporting activities, and

67 WHEREAS, a lawsuit was brought against the District School
68 Board of Sumter County by Donald Brown, and, after a lengthy
69 jury trial, the jury found the school board liable for Donald
70 Brown's injuries and awarded him damages in the amount of
71 \$2,941,240.60, and

72 WHEREAS, the Honorable Michelle T. Morley, Circuit Court
73 Judge from the Fifth Judicial Circuit in Sumter County, entered
74 a final judgment on March 2, 2009, reducing the final verdict to
75 \$2,651,375.83, plus taxable costs in the amount of \$31,674.12
76 and interest to accrue on the amount of the judgment at a rate
77 of 11 percent per annum from the date that the judgment was
78 rendered until payment, and

79 WHEREAS, the District School Board of Sumter County filed a
80 notice of appeal of the judgment on March 30, 2009, which was
81 affirmed by the Fifth District Court of Appeal on February 18,
82 2011, and

83 WHEREAS, Donald Brown is receiving continuous medical care
84 for his injuries, including two surgeries after the trial, the
85 first surgery occurring on September 16 and 17, 2009, at Orlando
86 Regional Medical Center due to a bone infection on his right
87 leg, and the second surgery occurring on August 27, 2010, at the

40-00121-12 201238__

88 Jewish Hospital in Louisville, Kentucky, due to complications
89 with his right leg resulting in an above-the-knee amputation,
90 and

91 WHEREAS, the District School Board of Sumter County has not
92 paid \$100,000 pursuant to the statutory limits of liability set
93 forth in s. 768.28, Florida Statutes, and

94 WHEREAS, the \$2,651,375.83 judgment is sought through the
95 submission of a claim bill to the Legislature, NOW, THEREFORE,

96
97 Be It Enacted by the Legislature of the State of Florida:
98

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

101 Section 2. The District School Board of Sumter County is
102 authorized and directed to appropriate from funds of the school
103 board not otherwise appropriated and to draw a warrant payable
104 to Donald Brown, in the amount of \$2,651,375.83, plus the
105 taxable costs of \$31,674.12 and interest as provided in the
106 final judgment dated March 2, 2009.

107 Section 3. The compensation awarded under this act is
108 intended to provide the sole compensation for all present and
109 future claims arising out of the factual situation described in
110 this act which resulted in the injuries to Donald Brown. The
111 total amount paid for attorney's fees, lobbying fees, costs, and
112 other similar expenses relating to this claim may not exceed 25
113 percent of the amount awarded under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2-27-12

Meeting Date

Topic Claims - Donald Brown

Bill Number 38
(if applicable)

Name Lec Killinger

Amendment Barcode _____
(if applicable)

Job Title _____

Address 324 E. Virginia St.
Street
Tallahassee FL 32308
City State Zip

Phone 850-322-8907

E-mail lec@anfieldflorida.com

Speaking: For Against Information

Representing claimant - Brown

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



2/22/12

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

Meeting Date

Topic Brown Claim

Bill Number SB 38
(if applicable)

Name Peter Antonacci

Amendment Barcode _____
(if applicable)

Job Title Counsel

Address 301 S. Bronough 5600

Phone 222-7717

Street

J/H
City

FL
State

61
Zip

E-mail PVA@GRAY ROBINSON LLP

Speaking: For Against Information

Representing Meadowbrook

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2/27/12

Meeting Date

Topic SB 38 - Garcia Claims Bill

Bill Number 38
(if applicable)

Name Rick Shirley

Amendment Barcode _____
(if applicable)

Job Title Sumter School Superintendent

Address 2680 WCR 476
Street

Phone (352) 793-2315 x 216

Bushnell FL 33513
City State Zip

E-mail ~~rick~~ richard.shirley@
sumter.k12.fl.us

Speaking: For Against Information

Representing Sumter Schools

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

| DATE | COMM | ACTION |
|---------|------|-----------|
| 12/1/11 | SM | Favorable |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

December 1, 2011

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

Re: **SB 40 (2012)** – Senator Jim Norman
Relief of Yvonne Morton

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$650,000 FROM GENERAL REVENUE BASED ON A COURT-APPROVED SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT, YVONNE MORTON, AND THE DEPARTMENT OF HEALTH FOR THE PERMANENT INJURIES SUFFERED BY MS. MORTON AS A RESULT OF AN AUTOMOBILE COLLISION CAUSED BY A DEPARTMENT EMPLOYEE.

FINDINGS OF FACT:

On January 2, 2007, Yvonne Morton, then 85 years old, was driving home from a gym in Tarpon Springs when William Herbert, a Department of Health pharmacy inspector, pulled out from a side street in front of Ms. Morton's car. Herbert failed to yield after stopping at a stop sign. Ms. Morton was driving at the posted speed limit and was unable to avoid the collision that occurred. The collision totaled both vehicles.

Ms. Morton was taken to Helen Ellis Hospital, and then airlifted to the trauma unit at Bayfront Medical Center in St. Petersburg. She was diagnosed with spine and spinal cord injuries, as well as multiple rib fractures and a collapsed right lung. Treatment of the spinal injury required surgical installation of metal hardware, including screws, rods, and a crosslink at her neck. She needed breathing machines for a time because of her collapsed lung. She suffered from

quadriplegia, an inability to move her arms and her legs, but eventually was able to regain some strength and mobility in her arms. However, since the accident, Ms. Morton has been wheelchair-bound, as well as incontinent.

Ms. Morton was moved to ManorCare in Palm Harbor for skilled nursing care. Within a week, however, she had trouble breathing and other complications and had to be taken to Mease Countryside Hospital for eleven days. She later moved to Orchard Ridge. In April 2007, she was hospitalized again for a few days due to blood clots caused by her immobility. In August 2007, she moved from the nursing home to an assisted living facility called La Casa Grande in New Port Richey, where she still lives, requiring assistance with many day-to-day activities. Her average monthly expenses are \$3,532.

Prior to the accident, Ms. Morton led an independent and active lifestyle. She lived alone and was able to completely care for herself. She would regularly travel to visit her family. Two or three times per week she drove to a health club where she was both a participant and an instructor. Her neighbors described her as an inspiration because she was fit and active, with "the energy level of a 30-year old", and always staying busy. Ms. Morton has lost her physical fitness and independence and is prone to depression since the accident.

Ms. Morton's medical expenses were approximately \$570,000. Medicare and private insurance company liens apply to these expenses.

Ms. Morton's automobile insurance paid \$10,000 toward medical costs and \$100,000 for uninsured/underinsured motorist coverage. After deducting attorney's fees and costs, she received \$65,756, which has been expended on her medical expenses, medical supplies, and care.

LITIGATION HISTORY:

A lawsuit was filed in September 2007 in the circuit court for Pinellas County. In March 2010, the case was dismissed when the parties entered into a settlement agreement in which the Department of Health agreed to pay the \$100,000 sovereignty immunity limit and to not oppose a claim bill for an additional \$650,000.

After deducting attorney's fees and costs and paying medical liens totaling about \$67,000, Ms. Morton received \$1,871 from the \$100,000 sovereign immunity limit paid by the Department of Health.

CONCLUSIONS OF LAW:

The claim bill hearing was a de novo proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the Department of Health is liable in negligence for the injuries Ms. Morton suffered, and, if so, whether the amount of the claim is reasonable.

Herbert had a duty to operate his vehicle with reasonable care to avoid injury to other motorists, including the specific duty to yield to vehicles before proceeding from a stop sign. His failure to do so was the direct and proximate cause of the collision that injured Ms. Morton. Herbert was an employee of Department of Health, acting in the course and scope of his employment at the time of the collision. His negligence is therefore attributable to the Department.

The amount of the claim is fair and reasonable.

ATTORNEYS FEES:

In compliance with s. 768.28(8), F.S., Yvonne Morton's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that the Senate Bill 40 (2012) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Jim Norman
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Norman

12-00184-12

201240__

A bill to be entitled

An act for the relief of Yvonne Morton; providing an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of the Department of Health; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on January 2, 2007, Yvonne Morton was driving her automobile on Pinellas Avenue South in Tarpon Springs, Pinellas County, when she was struck by William Herbert, a pharmacy inspector for the Division of Medical Quality Assurance in the Department of Health. Mr. Herbert was driving an automobile owned by the Department of Health in the course and scope of his employment, and

WHEREAS, Mr. Herbert failed to yield at a stop sign and pulled out in front of Ms. Morton's vehicle, causing a substantial collision. Mr. Herbert was issued a traffic citation for failure to yield at a stop sign and violating Ms. Morton's right of way, and

WHEREAS, Ms. Morton was transported by air to the Bayfront Medical Center in St. Petersburg and remained a patient at Bayfront until January 31, 2007. Ms. Morton, who was 85 years old at the time of the collision, was determined to have sustained multiple injuries, including multiple fractured ribs, a scalp hematoma, and neck injuries later diagnosed as central cord syndrome. During her hospital stay, her neurosurgeon, David M. McKalip, M.D., performed surgery on her neck. During the surgical procedure, described as a C5-C6 lateral mass

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12-00184-12

201240__

instrumentation and fusion, metal hardware, including screws, rods, and a crosslink, were implanted, and

WHEREAS, upon discharge, Ms. Morton was transported by ambulance to Manor Care of Palm Harbor, a nursing facility in Palm Harbor, Florida. Ms. Morton resided at Manor Care until February 6, 2007, when she was transported by ambulance to Mease Countryside Hospital for dyspnea with the suspected cause being a pulmonary embolus due to lengthy bed rest. She remained at Mease until February 17, 2007, when she was discharged to a new nursing facility, Orchard Ridge Rehabilitation in New Port Richey, for continued rehabilitation of her injuries, and

WHEREAS, Ms. Morton resided at Orchard Ridge until August 9, 2007, when she was transported to La Casa Grande, an assisted living facility also located in New Port Richey, where she continues to reside. Her average monthly living expenses at the facility are currently \$3,531.60, and

WHEREAS, prior to the accident, Ms. Morton was independent and self-sufficient, living on her own in her own home, driving her own car, and exercising regularly. Following the accident, she has been confined to hospitals, nursing homes, and, now, an assisted living facility. The injuries she sustained have caused her to depend on others for the performance of most of the activities of daily living, and have caused such difficulty and inability to ambulate that she now is confined to a wheelchair, and

WHEREAS, Ms. Morton's total medical expenses incurred as a result of the accident, including hospitalizations, physician services, surgical services, diagnostic imaging studies, air and ambulance transportation, nursing home residency fees, and

Page 2 of 4

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12-00184-12 201240
 59 assisted living facility fees, through July 31, 2009, amount to
 60 approximately \$570,000, and

61 WHEREAS, Ms. Morton's personal automobile insurer, State
 62 Farm Mutual Automobile Insurance Company, has paid \$10,000
 63 toward her medical bills in personal injury protection benefits
 64 and \$100,000 in uninsured/underinsured motorist benefits.
 65 Humana, the American Association of Retired Persons, and
 66 Medicare have also paid portions of her bills and these
 67 organizations retain subrogation interests on any recovery made
 68 by Ms. Morton, and

69 WHEREAS, a lawsuit was filed by the law firm of Lucas,
 70 Green, and Magazine on behalf of Ms. Morton in the Circuit Court
 71 of Pinellas County, Case No. 07-9114-C-13, against the State of
 72 Florida, Department of Health. In that lawsuit, the department
 73 admitted liability and took the position that its employee,
 74 William Hebert, was solely at fault for the accident. The
 75 parties entered into a settlement under which the department
 76 will pay its statutory limit of liability of \$100,000 pursuant
 77 to s. 768.28, Florida Statutes, and the department agreed not to
 78 contest or oppose any claim bill on behalf of Ms. Morton as long
 79 as the claim bill did not seek compensation in excess of an
 80 additional \$650,000, NOW, THEREFORE,

81
 82 Be It Enacted by the Legislature of the State of Florida:

83
 84 Section 1. The facts stated in the preamble to this act are
 85 found and declared to be true.

86 Section 2. The sum of \$650,000 is appropriated from the
 87 General Revenue Fund to the Department of Health for the relief

12-00184-12 201240
 88 of Yvonne Morton for injuries and damages sustained as a result
 89 of the negligence of an employee of the Department of Health.

90 Section 3. The Chief Financial Officer is directed to draw
 91 a warrant in favor of Yvonne Morton in the sum of \$650,000 upon
 92 funds of the Department of Health in the State Treasury, and to
 93 pay the same out of such funds in the State Treasury.

94 Section 4. The amount paid by the Department of Health
 95 pursuant to s. 768.28, Florida Statutes, and the amount awarded
 96 under this act are intended to provide the sole compensation for
 97 all present and future claims arising out of the factual
 98 situation described in this act which resulted in the injuries
 99 and damages to Yvonne Morton. The total amount paid for
 100 attorney's fees, lobbying fees, costs, and other expenses
 101 relating to this claim may not exceed 25 percent of the total
 102 amount awarded under this act.

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



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 | Favorable |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

December 2, 2011

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

Re: **SB 42 (2012)** – Senator Anitere Flores
Relief of James D. Feurtado

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1,150,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR THE NEGLIGENCE OF A BUS DRIVER WHO STRUCK AND SERIOUSLY INJURED JAMES FEURTADO AS HE WAS CROSSING A ROADWAY.

FINDINGS OF FACT:

On February 12, 2009, at approximately 7:50 p.m., the Claimant, James D. Feurtado, was jogging along Pisano Avenue in Coral Gables, Florida. The Claimant, a 37-year-old pharmaceutical sales representative who was in excellent health, was proceeding eastbound toward University Drive, which runs from north to south and intersects Pisano Avenue at a right angle. The intersection of Pisano Avenue and University Drive is a four-way stop controlled by posted stop signs.

When he reached the intersection described above, the Claimant used appropriate caution and began to lawfully cross University Drive. At the same time, a Miami-Dade County bus operated by Mr. Donnell Rollins approached the intersection headed westbound on Pisano Avenue at a rate of speed between 16 and 24 MPH. Although Mr. Rollins slowed the bus to approximately 6.6 MPH, he ignored the posted stop sign and failed to bring the vehicle to rest. As

Mr. Rollins made a right turn onto University Drive, the bus accelerated to 10.1 MPH and struck the Claimant, who was slightly more than halfway through the intersection (footage from the bus' onboard video system reveals that Mr. Rollins' attention was diverted to the left as he made the right turn).

Shortly thereafter, Officer Eduardo Cabral of the Coral Gables Police Department arrived at the scene and initiated an accident investigation. Officer Cabral determined that Mr. Rollins had violated s. 316.123(2)(a), Florida Statutes, by running the stop sign, and was therefore solely at fault.

The Claimant, whose face and skull had been crushed by the impact with the bus, was rushed to the Jackson Memorial Hospital Ryder Trauma Unit. Upon the Claimant's arrival at the hospital, an examination revealed multiple injuries to his brain, which included a large hematoma in the left hemisphere, a subarachnoid hemorrhage, and several hemorrhagic contusions. In addition, the Claimant sustained a right maxillary sinus fracture.

During surgery, the Claimant underwent a left frontoparietal craniectomy (i.e., a portion of the Claimant's skull was removed) and the placement of a drain. Unfortunately, the Claimant developed hydrocephalus following his first surgery, which required the placement of a shunt during a later surgical procedure. Although the Claimant's physicians were able to replace a portion of the Claimant's skull approximately eight months after the accident (the skull was kept frozen), a visible defect is still present.

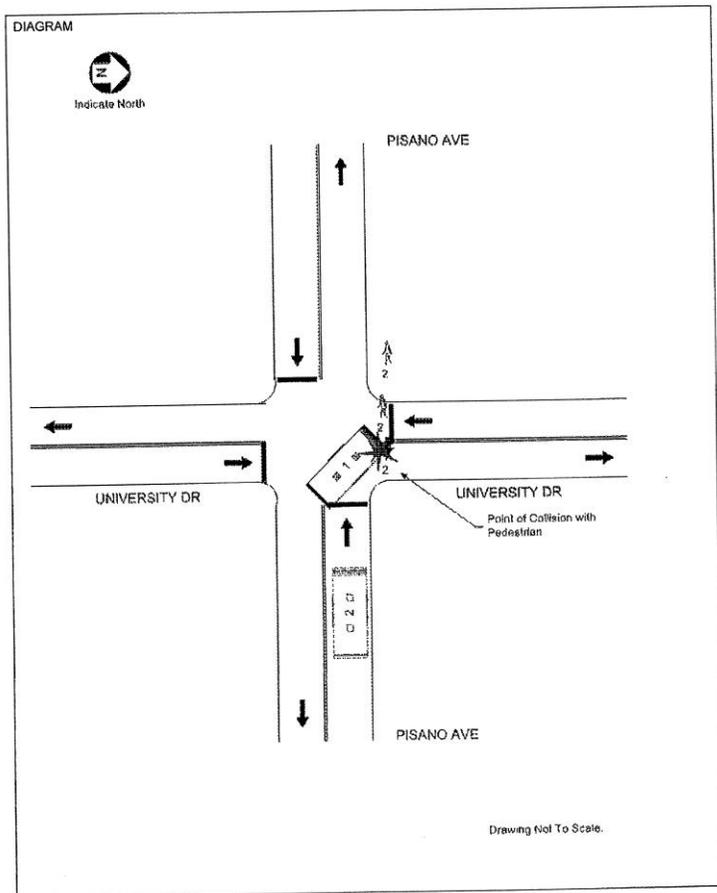
At present, the Claimant remains with permanent mild to moderate traumatic brain damage as a result of the collision. In addition, the Claimant continues to suffer from deafness in one ear, vertigo, headaches, scarring, and mild psychiatric issues.

Although the Claimant recently transitioned back to work (in the same pharmaceutical sales position he held prior to the accident), he is finding it difficult to perform his duties as efficiently as he did prior to his brain injury. In particular, the Claimant's ability to remember pertinent information has been impaired, and he often loses his train of thought when speaking with customers. In addition, the Claimant is much less able to learn new product information and keep himself

organized. Further, the Claimant's deafness in one ear makes it nearly impossible for him to successfully interact in social situations with physicians and other customers, which is an essential component of pharmaceutical sales.

The total present value of the Claimant's economic damages from the collision is \$1,823,468. This amount is comprised of future and past lost earning capacity of \$508,083, anticipated future medical expenses of \$1,176,840, and past medical expenses of \$138,545.

DIAGRAM:



LITIGATION HISTORY:

On November 13, 2009, in the circuit court for the Eleventh Judicial Circuit, the Claimant filed a complaint for damages against Miami-Dade County. The complaint alleged that Miami-Dade County was vicariously liable for the injuries the Claimant sustained as a result of Mr. Rollins' negligent operation of a city bus.

On November 3, 2010, the parties successfully reached a mediated settlement in the amount of \$1,250,000. Pursuant to the terms of the settlement, Miami-Dade County agreed to tender \$100,000 to the Claimant upon the approval of the settlement by the Board of County Commissioners. Miami-Dade County further agreed not to oppose a claim bill in the amount of \$1,150,000.

Following the approval of the settlement agreement by the Board of County Commissioners, Miami-Dade County tendered \$100,000 to the Claimant. After the deduction of attorney's fees, costs, and the partial satisfaction of a medical lien, the Claimant's net proceeds totaled \$32,305.29.

CLAIMANT'S POSITION:

Miami-Dade County is vicariously liable for the negligence of its employee, who breached the duty of a motorist to use reasonable care toward a pedestrian by running a stop sign and striking the Claimant.

RESPONDENT'S POSITION:

Miami-Dade County supports this claim bill.

CONCLUSIONS OF LAW:

Mr. Rollins had a duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). While "the rights of motorists and pedestrians are reciprocal," the motorist "must exercise ordinary reasonable and due care toward a pedestrian." Edwards v. Donaldson, 103 So. 2d 256, 259 (Fla. 2d DCA 1958).

In this case, Mr. Rollins was required to bring the bus to a complete stop in at the intersection of University Drive and Pisano Avenue, in accordance with the posted stop sign. See § 316.123(2)(a), Fla. Stat. (2009) ("[E]very driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line"); see also § 316.130(15), Fla. Stat. (2009) ("[E]very driver of a vehicle shall exercise due care to avoid colliding with any

pedestrian"). By failing to come to a complete stop, Mr. Rollins breached the duty to use reasonable care for the safety of the Claimant. Mr. Rollins' negligence was the direct and proximate cause of the Claimant's injuries.

Miami-Dade County, as Mr. Rollins' employer, is liable for his 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); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

Finally, the undersigned concludes that given the nature of the Claimant's injuries and his continuing medical needs, the sum Miami-Dade County has agreed to pay the Claimant (\$1.25 million, minus the \$100,000 already tendered) is both reasonable and responsible.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 324) died on Calendar.

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. Lobbyist's fees are included with the attorney's fees.

SOURCE OF FUNDS:

If Senate Bill 42 is approved, Miami-Dade Transit operating funds will be used to satisfy the claim.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 42 (2012) be reported FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 42 (2012)

December 2, 2011

Page 6

Respectfully submitted,

Edward T. Bauer
Senate Special Master

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

By Senator Flores

38-00191-12

201242__

A bill to be entitled

An act for the relief of James D. Feurtado, III, by Miami-Dade County; providing for an appropriation to compensate him for injuries he sustained as a result of the negligence of an employee of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on February 12, 2009, James D. Feurtado, III, age 37 at the time of the accident, sustained serious and permanent neurologic and orthopedic injuries in a bus accident at approximately 7 p.m. at the intersection of Pisano Avenue and University Drive in Coral Gables, and

WHEREAS, the Miami-Dade County bus operator failed to stop at the stop sign at this intersection before making a right-hand turn and collided into James D. Feurtado, III, a pedestrian, thereby causing him severe orthopedic and neurological injuries, and

WHEREAS, the bus operator was found guilty of violating s. 316.123(2)(a), Florida Statutes, for failing to obey the stop sign and was disciplined by Miami-Dade County for various violations of safety policies and procedures, and

WHEREAS, Mr. Feurtado was transported to the Ryder Trauma Center, where he was found to have sustained a large extra-axial hematoma in the left hemisphere of the brain with mass effect and mid-line shift, a large left hemispheric subarachnoid hemorrhage, as well as left temporal, parietal, and bi-frontal hemorrhagic contusions. He also sustained a right maxillary sinus fracture involving the anterior and lateral wall extending

Page 1 of 3

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

38-00191-12

201242__

into the floor and lateral wall of the orbit, and fracture to the right zygomatic arch and temporal bone, and

WHEREAS, Mr. Feurtado underwent a left frontoparietal craniotomy with evacuation of the subdural hematoma and placement of a drain. He developed post-traumatic communicating hydrocephalus, ultimately requiring further surgery to place a ventriculoperitoneal shunt in order to reduce the brain swelling to a point where a cranioplasty was performed, and

WHEREAS, Mr. Feurtado has profound sensorineural hearing loss to the right and has been evaluated for a BAHA implant procedure in the future, and

WHEREAS, Mr. Feurtado underwent extensive neuropsychological and psychological evaluation, and

WHEREAS, Mr. Feurtado has permanent brain damage, unilateral deafness, vertigo, headaches, psychiatric sequelae, a shunt, scarring, and skull defect, and

WHEREAS, Mr. Feurtado underwent assessment by a vocational rehabilitation and life-care planner, and

WHEREAS, the total present value of Mr. Feurtado's economic damages from this incident is calculated to be \$1,823,468, which consists of his future and past lost earning capacity of \$508,083, anticipated future medical expenses of \$1,176,840, and past medical expenses of \$138,545, and

WHEREAS, Miami-Dade County and Mr. Feurtado reached a settlement agreement by mediation in the amount of \$1.25 million, of which \$100,000 has been paid to Mr. Feurtado pursuant to the limits of liability set forth in s. 768.28, Florida Statutes, and the remainder is conditioned upon the passage of a claim bill, which is unopposed, in the amount of

Page 2 of 3

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

38-00191-12

201242__

59 \$1.15 million, NOW, THEREFORE,

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. The facts stated in the preamble to this act are
64 found and declared to be true.

65 Section 2. Miami-Dade County is authorized and directed to
66 appropriate from funds of the county not otherwise appropriated
67 and to draw a warrant in the sum of \$1.15 million, payable to
68 James D. Feurtado, III, as compensation for injuries and damages
69 sustained as a result of the negligence of an employee of Miami-
70 Dade County.

71 Section 3. The amount paid by Miami-Dade County pursuant to
72 s. 768.28, Florida Statutes, and the amount awarded under this
73 act are intended to provide the sole compensation for all
74 present and future claims arising out of the factual situation
75 described in this act which resulted in injuries to James D.
76 Feurtado, III. The total amount paid for attorney's fees,
77 lobbying fees, costs, and other similar expenses relating to
78 this claim may not exceed 25 percent of the total amount awarded
79 under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD

2/27

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

Meeting Date

Topic Floros v. Miami-Dade County

Bill Number SB 42
(if applicable)

Name Evan Grub

Amendment Barcode _____
(if applicable)

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305-375-5057

Street Miami FL 33128

E-mail grub@miamidade.gov

City State Zip

Speaking: For Against Information

Representing Miami-Dade

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

| DATE | COMM | ACTION |
|----------|------|-----------------|
| 12/02/11 | SM | Fav/1 amendment |
| 2/27/12 | RC | Fav/CS |
| | | |
| | | |

December 2, 2011

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

Re: **CS/SB 48 (2012)** – Senator Bill Montford
Relief of Odette Acanda and Alexis Rodriguez

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$799,000 AGAINST THE PUBLIC HEALTH TRUST OF MIAMI-DADE COUNTY FOR MEDICAL MALPRACTICE IN CONNECTION WITH THE POSTNATAL TREATMENT OF RYAN RODRIGUEZ, WHO DIED IN JACKSON MEMORIAL HOSPITAL ON FEBRUARY 10, 2005, WHICH WAS FIVE DAYS AFTER HIS BIRTH, FROM A NOSOCOMIAL INFECTION.

FINDINGS OF FACT:

On February 5, 2005, Ryan Rodriguez was delivered by Caesarean section at Jackson Memorial Hospital ("Jackson"), a public facility located in Miami, Florida, which the Public Health Trust of Miami-Dade County ("Trust") owns and operates. Ryan's parents are Odette Acanda (mother) and Alexis Rodriguez (father), an unmarried couple whose only child together was this one.

Ryan was born prematurely, at approximately 28 weeks, due to Ms. Acanda's medical condition; she had developed a complication of pregnancy known as the HELLP syndrome, a life-threatening variant of pre-eclampsia, the treatment for which is prompt delivery of the baby. Although Ryan's postnatal condition was complicated by his premature birth, he was relatively healthy upon delivery, with normal Apgar

scores and an absence of birth trauma or defects. In the ordinary course of events, his prospects for survival were 90 percent or better, according to expert testimony which the undersigned credits.

Because Ryan was premature, the standard of care required that he be placed in a self-contained incubator often referred to as an Isolette™. The purpose of the incubator is to keep the infant in a controlled environment, so that heat, humidity, and oxygen levels will be maintained within ranges ideal for the infant's survival and protective against infection. Unaccountably, however, no Isolette™ was available at Jackson for Ryan. As a result, the nurses placed Ryan in a basinet, which was then covered in plastic wrap to create a makeshift incubator. Use of such a crude substitute for an Isolette™ was plainly a violation of the standard of care.

Ryan's attending physician was Dr. Gerhardt, a professor of pediatrics at the University of Miami School Medicine. The infant was also seen by several doctors who were in the medical school's residency and fellowship programs, which are operated through Jackson. When they are working at Jackson, the residents and fellows are regarded as employees and agents of the Trust.

Ryan's blood was drawn regularly for testing. Initially, the lab values which returned were within normal limits. As time passed, however, critical lab values began to worsen, indicating the possibility of infection. For example, Ryan's white blood cell count and absolute neutrophil count were normal on February 6. By February 8, 2005, each had dropped considerably, reflecting a high risk of infection. On February 9, these values were so low that the risk was severe. Similarly, the level of C-reactive protein ("CRP") in Ryan's blood—which rises in response to inflammation—was at the upper end of normal on February 6 and became elevated on February 7, 2005. This elevation suggested the possibility of infection. One of the doctors gave an order to repeat the CRP test on February 8, but the order was not followed—and Ryan's CRP was never tested again.

Ryan had other clinical signs of infection. On February 7 he started having low oxygen saturation (meaning that there was too little dissolved oxygen in his blood) and episodes of apnea, i.e., suspension of breathing. This resulted in the

use of continuous positive airway pressure ("CPAP") ventilation to assist Ryan's breathing. Such ventilation is accomplished by placing a mask over the infant's face to deliver a constant airstream against the nose and mouth.

On February 8, Ryan continued to have low oxygen saturation and apnea, and his heart rate dropped to an abnormally slow pace, a condition referred to as bradycardia. A doctor ordered that he be weaned off the CPAP mask and placed in an oxy hood, which would cover his entire head and allow him to breathe in an oxygen-enriched environment. For some reason, this order was not followed; the nursing staff inexplicably weaned Ryan off the CPAP mask to room air.

On February 8, a culture was taken from Ryan's nasopharynx. Upon testing, this culture revealed a growth of *pseudomonas aeruginosa*, a common bacterium that thrives on many surfaces, including medical equipment. Based on credible expert testimony, the undersigned finds that the standard of care required the administration of antibiotics at this point. Antibiotic therapy was not initiated on or before February 8, 2005, however, and this omission constituted negligence.

After February 8, Ryan's condition steadily worsened. On February 9, the nurses began "bagging" Ryan, meaning that they used a handheld device known as a bag valve mask (or Ambu bag) to manually ventilate the infant. The next day, his color was gray, and he began to bleed heavily from the nose and mouth because his lungs were hemorrhaging due to acute infection. Finally, at 1:00 p.m. on February 10, 2005, antibiotics were given to Ryan for the first time. By then it was much too late, as the *P. aeruginosa* infection had already spread throughout his body, leading to a condition known as sepsis. At about that time, Ryan went into septic shock, and his organs began to fail. Efforts to revive him were not successful. He passed away on the afternoon of February 10, around 5:00 p.m.

Ryan died from a *P. aeruginosa* infection, which he acquired in the hospital after birth, most likely from contaminated medical equipment. Ryan's death was preventable. Had the doctors and staff at Jackson timely administered antibiotics on or before February 8, 2005, as the standard of care

clearly required given the many signs pointing to the likelihood of infection, Ryan likely would have survived.

LEGAL PROCEEDINGS:

In 2006, Ms. Acanda, as personal representative of Ryan's estate, brought suit against the Trust. The action was filed in the Circuit Court in and for Miami-Dade County, Florida.

The case proceeded to trial in 2007. On August 10, 2007, the jury rendered a verdict in favor of the plaintiff and against the Trust, awarding a total of \$2 million in damages. This award consisted of compensation for past and future pain and suffering by Ms. Acanda in the amount \$600,000 for each component; Ryan's father, Alexis Rodriguez, was awarded \$400,000 for past suffering and \$400,000 for future suffering. The resulting judgment was affirmed by the Florida Fourth District Court of Appeal. See Public Health Trust of Miami-Dade Cnty. v. Acanda, 23 So. 3d 1200 (Fla. 3d DCA 2009). In June 2011, the Florida Supreme Court affirmed the district court's decision. See Public Health Trust of Miami-Dade Cnty. v. Acanda, 6 Fla. L. Weekly S 289 (Fla. June 23, 2011).

In December 2010, while the appeal was pending before the Florida Supreme Court, the parties agreed to settle the case for \$999,000, of which the Trust has paid \$200,000. The Trust further agreed to support a claim bill in the amount of \$799,000. Out of the \$200,000 recovery, \$50,000 was applied to attorneys' fees and \$61,088.48 to costs. The parents received \$78,411.52, which was split 60% (mother)/40%(father) in accordance with the jury's allocation of the damages.

A Satisfaction of Judgment has been filed in the civil action.

Ryan's parents reached a separate agreement with the University of Miami, pursuant to which the latter settled the claims against it for \$462,500. From this amount, the claimants paid their attorneys \$185,000. In addition, they paid (or put funds in trust for) costs totaling \$17,500. Thus, the claimants' net recovery from this settlement was \$260,000, which they divided equally between themselves.

CLAIMANTS' ARGUMENTS:

The Trust is vicariously liable for the negligent acts of its employees and agents, including but not limited to:

- Failing timely and accurately to discover Ryan's *P. aeruginosa* infection, despite numerous warning signs.
- Failing to promptly initiate antibiotic therapy once it became apparent—no later than February 8, 2005—that Ryan was likely suffering from an infection.
- Failing to follow physician's orders, including the directives that Ryan's CRP level be re-tested, and that he be weaned from the CPAP mask to an oxy hood.
- Failing to put Ryan in an actual incubator, instead of using a shabby substitute made by covering a basinet with plastic wrap.

RESPONDENT'S POSITION:

The Trust supports the bill. If the bill is enacted, the Trust, which is self-insured, will use Jackson's funds to satisfy the claim.

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the Trust against tort liability in excess of \$200,000 per occurrence. See Eldred v. N. Broward Hosp. Dist., 498 So. 2d 911, 914 (Fla. 1986)(§ 768.28 applies to special hospital taxing districts); Paushter v. S. Broward Hosp. Distr., 664 So. 2d 1032, 1033 (Fla. 4th DCA 1995).

Under the doctrine of respondeat superior, the Trust 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).

The nurses who were involved in Ryan's treatment were employees of the Trust acting within the scope of their employment, as were the residents and fellowship physicians. Accordingly, the negligence of these actors is attributable to the Trust.

Each of the referenced individuals had a duty to provide Ryan with competent medical care. Such duty was breached. The negligence of the Trust's employees and agents was a direct and proximate cause of Ryan's death.

The sum that the Trust has agreed to pay, which is half the judgment, both reasonable and responsible and fully supported by the evidence in the record.

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." The law firm that the claimants have retained, Diez-Arguelles & Tejedor, P.A., would receive \$199,750 in fees if this bill were enacted.

SPECIAL ISSUES:

The claim bill requires a technical amendment to conform to the parties' settlement agreement. On page 3, at line 59, the amount of the claim should be \$799,000, rather than \$799,999.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 48 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Bill Montford
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

CS by Rules (2/27/12):

Amends the amount provided to Odette Acanda to \$799,000.



763994

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Siplin) recommended the following:

Senate Amendment

Delete line 59
and insert:
warrant in the sum of \$799,000, payable to Odette Acanda and

By Senator Montford

6-00150A-12

201248__

A bill to be entitled

An act for the relief of Odette Acanda and Alexis Rodriguez by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; providing for an appropriation to compensate Odette Acanda and Alexis Rodriguez for the death of their son, Ryan Rodriguez, as a result of the negligence of employees of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Ryan Rodriguez, the son of Odette Acanda and Alexis Rodriguez, was born prematurely on February 5, 2005, to Odette Acanda at Jackson Memorial Hospital, and

WHEREAS, after delivery, Ryan Rodriguez was provided with oxygen through respiratory equipment that was contaminated with *Pseudomonas* bacteria, due to improper infection control measures by employees of the hospital, and

WHEREAS, on February 8, 2005, a positive nasopharyngeal culture revealed that Ryan Rodriguez suffered from a *Pseudomonas* infection, and

WHEREAS, physicians and other hospital employees failed to review the lab report, failed to recognize the signs and symptoms of the infection, and failed to follow physician orders, and

WHEREAS, an order for antibiotics was not written until February 10, 2005, and antibiotics were not provided until after Ryan Rodriguez went into distress, and

WHEREAS, as a result of the failure of employees to timely

Page 1 of 3

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

6-00150A-12

201248__

identify and treat the infection, Ryan Rodriguez died on February 10, 2005, and

WHEREAS, an autopsy report indicated that Ryan Rodriguez died as a result of the bacterial infection he acquired at the hospital, and

WHEREAS, suit was filed in the Eleventh Judicial Circuit in and for Miami-Dade County and a jury returned a verdict in favor of the plaintiffs, finding that the hospital was 100 percent responsible for the death of Ryan Rodriguez, and awarded damages in the amount of \$2 million, and

WHEREAS, the defendant appealed the jury verdict, and the final judgment entered in the plaintiff's favor was upheld by the Third District Court of Appeal, and

WHEREAS, the defendant appealed the ruling of the Third District Court of Appeal, and the Supreme Court of Florida affirmed the ruling, and

WHEREAS, the parties entered into a settlement agreement wherein they agreed to settle the case for \$999,999, of which \$200,000 has been paid in accordance with the statutory limits of liability in s. 768.28, Florida Statutes, and \$799,999 remains to be paid, 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 Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital, is authorized and directed to appropriate from funds not otherwise encumbered and to draw a

Page 2 of 3

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

6-00150A-12 201248__

59 warrant in the sum of \$799,999, payable to Odette Acanda and
60 Alexis Rodriguez, parents of decedent Ryan Rodriguez, as
61 compensation for the death of Ryan Rodriguez as a result of the
62 negligence of employees of the Public Health Trust of Miami-Dade
63 County.

64 Section 3. The amount paid by the Public Health Trust of
65 Miami-Dade County, d/b/a Jackson Memorial Hospital, pursuant to
66 s. 768.28, Florida Statutes, and the amount awarded under this
67 act are intended to provide the sole compensation for all
68 present and future claims arising out of the factual situation
69 described in the preamble to this act which resulted in the
70 death of Ryan Rodriguez. The total amount paid for attorney's
71 fees, lobbying fees, costs, and similar expenses relating to
72 this claim may not exceed 25 percent of the total amount awarded
73 under section 2 of this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/27/2012
Meeting Date

Topic Acanda v. Duval County

Bill Number 48
(if applicable)

Name Marla Tejedor

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address _____
Street

Phone 907 705 2880

City

State

Zip

Speaking: For Against Information

Representing Acanda family

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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



2/27

Meeting Date

Topic Acenda v, Public Health Trust Bill Number SB 48
(if applicable)

Name Evon Grob Amendment Barcode _____
(if applicable)

Job Title Assistant County Attorney

Address suite 2800
111 NW 1st Street Phone 305-375-5151

City Miami State FL Zip 33128 E-mail grob@univision.com

Speaking: For Against Information

Representing Public Health Trust

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE
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 |
| 2/27/12 | RC | Fav/CS |
| | | |
| | | |

December 2, 2011

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

Re: **CS/SB 50 (2012)** – Rules Committee and Senator Ellyn Setnor
Bogdanoff
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR \$940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

FINDINGS OF FACT:

On November 12, 2004, at 2:28 p.m., Nhora Acosta, 53, and her friend Zunilda Vargas boarded a bus operated by the Miami-Dade Transit Authority (MTA). The bus was eastbound on SW 8th Street in Miami. Ms. Acosta was returning to work after having lunched with Ms. Vargas. Neither woman was elderly, handicapped, infirm, or burdened with packages; both were able-bodied and apparently healthy.

The bus was crowded, and there were no seats for the women near the front. They began walking down the center aisle to the rear of the bus, where seats were available in an elevated seating area. To access this raised seating platform, a passenger must climb two steps, which are incorporated into the center aisle. As Ms. Acosta and Ms.

Vargas headed to the back of the bus, the driver, Fernando Arrieta, pulled away from the bus stop and proceeded to drive eastward on SW 8th Street, in the right lane.

About 11 seconds after the bus began moving, an SUV traveling in the left eastbound lane began pulling into the right lane, in front of the bus. This maneuver took nearly 4 seconds to complete. Immediately upon changing lanes, however, the SUV began breaking. Mr. Arrieta simultaneously stepped on the bus's breaks, to avoid a rear-end collision with the SUV.

The SUV needed to stop suddenly because a jaywalker was standing in the middle of the road, in between the two eastbound lanes. Two vehicles in the left eastbound lane had come to a complete stop. (The SUV had changed lanes, moving left-to-right in front of the bus, to pass these vehicles on the right.) It is reasonable to infer, and the undersigned finds, that the jaywalker had not anticipated that the SUV would cut in front of the bus when he began to cross the eastbound lanes on SW 8th Street. When the SUV suddenly appeared in the right lane, ahead of, and moving faster than, the bus, the jaywalker froze, calculating that he might not beat the SUV if it failed to slow down. Once the SUV began to break, however, the jaywalker dashed in front of it, safely reaching the sidewalk 2 seconds later. The SUV continued forward, and the two vehicles in the left lane, which had stopped, now took off. The bus came to a complete stop in the right lane, at the curb. Twenty seconds had elapsed from the time the bus pulled away after picking up Ms. Acosta and Ms. Vargas.

Inside the bus, a tragic accident had occurred. At about the moment the SUV began to change lanes, Ms. Acosta stepped up onto the rear seating platform. Ms. Vargas, who was right behind her, did the same about 2 seconds later. When the bus stopped to avoid running into the SUV, both Ms. Acosta and Ms. Vargas lost balance. Ms. Acosta tripped over Ms. Vargas's leg and fell off the elevated platform, striking her head on the lower center aisle. The injury proved to be fatal. Ms. Acosta died the next day in the hospital, having never regained consciousness.

The foregoing findings are based not only on the testimony presented, but also on the undersigned's independent review

of the videos that the bus's onboard cameras recorded. Based on a careful review of the videos, the following chronology of the material events has been created:

| Hour | Minute | Second(s) | Event |
|-------------|---------------|------------------|---|
| 2PM | 28 | 44 | Front doors are open |
| | | 46 | Acosta steps onto bus |
| | | 47 | Vargas boards |
| | | 48-53 | Acosta pays fare; begins walking to back of crowded bus |
| | | 53-56 | Vargas pays fare; begins walking to back of crowded bus |
| | | 57 | Bus starts moving forward |
| | | 57-59 | Acosta and Vargas walking to back of moving bus |
| | 29 | 00-06 | Acosta and Vargas still walking to back of moving bus |
| | | 06-08 | Acosta steps up onto rear seating platform; Vargas approaching her from behind |
| | | 08-12 | SUV, moving left to right, pulls into the right eastbound lane, in front of bus |
| | | 09-10 | Vargas steps up onto rear seating platform, behind Acosta |
| | | 09-16 | Two vehicles have stopped moving in the left eastbound lane, one behind the other |
| | | 11-13 | Drives applies the breaks |
| | | 12-13 | Pedestrian stands between the left and right eastbound lanes; two vehicles are parked in the left lane, having stopped for the pedestrian |
| | | 12 | SUV is breaking |
| | | 13-14 | Vargas loses balance, begins to fall |

| | | | |
|--|--|-------|---|
| | | 14-15 | Acosta begins to trip on Vargas's outstretched leg, falls |
| | | 14-16 | Pedestrian dashes, left to right, toward sidewalk, directly in front of the SUV in the right eastbound lane |
| | | 16-18 | Acosta is down; Vargas recovers balance, stands without having fallen |
| | | 17 | Bus is at complete stop; SUV proceeds eastbound |
| | | 17-21 | Two vehicles in left lane drive off, eastbound |
| | | 29-33 | Front doors open |
| | | 36 | Driver gets up from seat |
| | | 40 | Driver begins walking back |

At the conclusion of the trial in the civil action that Ms. Acosta's daughter Monica and son Luis brought against Miami-Dade County, which will be discussed below, the jury returned a verdict in favor of the plaintiffs, awarding each of them \$3 million for non-economic damages, i.e., "pain and suffering." No award for economic damages, e.g., lost earnings, was made because Ms. Acosta, a Venezuelan citizen, was in the U.S. illegally, having overstayed her tourist visa, and hence her children could not prove earnings from lawful employment.

The jury in the civil trial was asked to compare the negligence, if any, of Ms. Acosta; the unnamed pedestrian; the unnamed driver of the SUV; and Mr. Arrieta, and to apportion the fault between them by percentages. The jury determined that Mr. Arrieta's negligence was the sole cause of Ms. Acosta's fatal injury.

The undersigned considers the jury's apportionment of 100 percent of the fault to the bus driver to be inexplicable (except as the product of sympathy and emotion) and, ultimately, indefensible. Clearly, the unnamed pedestrian, who decided to cross a busy road outside of a marked crosswalk, acted recklessly and endangered himself and others. This jaywalker therefore owned the lion's share of the blame for this unfortunate accident, and the undersigned charges him with 90 percent of the fault. The unnamed

driver of the SUV was partially responsible for the accident; had he remained in the left lane and slowed to a stop, as the two vehicles in front of him did, it is likely that this accident would not have occurred. The undersigned places 10 percent of the blame on this driver. Mr. Arrieta's conduct in bringing the bus to a controlled, nonviolent stop to avoid rear-ending the SUV, which had stopped suddenly to avoid hitting the jaywalker standing the middle of the busy road, was reasonable under the circumstances.

The claimants argue that Mr. Arrieta was negligent in failing to wait for Ms. Acosta and her friend to sit down or grab a handrail. As will be discussed below, the standard of care does not generally require a bus driver to wait for a boarding passenger to sit down before pulling away, unless the passenger is elderly, infirm, disabled, etc., or the driver knows or reasonably should know of some reason (besides ordinary traffic conditions) that might cause him to make a sudden stop. Based on the evidence presented in this case, the undersigned finds that (a) both Ms. Acosta Ms. Vargas were able-bodied and apparently healthy; and (b) Mr. Arrieta had no reason to anticipate that a jaywalker soon would cross his bus's path and disrupt traffic. Thus, it is determined that Mr. Arrieta did not breach the duty of care by driving the bus while Ms. Acosta and Ms. Vargas were still in the process of finding seats.

Even if Mr. Arrieta were negligent in failing to wait for Ms. Acosta to take her seat before driving off, however, which the undersigned (based on the law and the evidence presented here) does not believe was the case, he was certainly not more responsible for the accident than the unnamed driver of the SUV. At most, therefore, Mr. Arrieta was 5 percent at fault, the SUV driver 5 percent responsible, and the jaywalker 90 percent to blame.

LEGAL PROCEEDINGS:

In 2005, the Monica and Luis Acosta, Ms. Acosta's children, brought a wrongful death action against Miami-Dade County based on the alleged negligence of the MTA employee, Mr. Arrieta. The action was filed in the circuit court in Miami-Dade County.

The case was tried before a jury in or around November 2007. The jury returned a verdict awarding Monica and Luis \$3 million each for pain and suffering. As mentioned above,

the jury apportioned 100 percent the fault for Ms. Acosta's death to the bus driver, finding specifically that neither the jaywalker, the SUV driver, nor Ms. Acosta herself were in any way negligent in causing Ms. Acosta's death. On November 8, 2007, trial court entered a judgment against Miami-Dade County in accordance with the jury's verdict.

The county appealed the judgment. In April 2010, while the appeal was pending before the Third District Court, the parties agreed to a settlement of the case, under which the county, in exchange for a release of liability, would: (a) pay \$200,000 to the claimants (which it since has done); (b) dismiss the appeal; and (c) support a claim bill in the amount of \$940,000.

Upon the county's payment of \$200,000, the claimants received net proceeds of \$98,237.30, after deductions for attorneys' fees (\$50,000) and costs (\$51,762.70).

CLAIMANTS' ARGUMENTS:

Miami-Dade County is vicariously liable for the negligence of its employee, Mr. Arrieta, who breached the duty of a common carrier to exercise the highest degree of care consistent with the practical operation of the bus by:

- Failing to wait for Ms. Acosta to take a seat before pulling away from the bus stop;
- Failing to pay attention to his surroundings while driving; and
- Slamming the brakes and making a sudden, violent stop.

RESPONDENT'S POSITION:

The county supports a claim bill in the amount of \$940,000. If the claim bill were enacted, the county would satisfy the award using the operating funds of the MTA.

CONCLUSIONS OF LAW:

As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields Miami-Dade County against tort liability in excess of \$200,000 per occurrence.

The operator of a bus system is vicariously liable for any negligent act committed by a driver whom it employs, provided the act is within the scope of the driver's employment. See, e.g., Metro. Dade Cnty. v. Asusta, 359

So. 2d 58, 59 (Fla. 3d DCA 1978); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA 1964). Mr. Arrieta was the county's employee and was clearly acting within the scope of his employment at the time of the accident in question. Accordingly, the negligence of Mr. Arrieta, if any, is attributable to the county.

As a general rule, the duty of a common carrier is "to exercise the highest degree of care consistent with the practical operation of the bus." Jacksonville Coach Co. v. Rivers, 144 So. 2d 308, 310 (Fla. 1962). That the bus stopped suddenly, however, is insufficient, without more, to establish negligence on the part of the driver, as the Florida Supreme Court announced in Rivers:

Ruling out stops of extraordinary violence, not incidental to ordinary travel, as inapplicable to the stop which occurred here, the sudden stopping of the bus was not a basis for a finding that the bus was negligently operated, in the absence of other evidence, relating to the stop, of some act of commission or omission by the driver which together with the 'sudden' stop would suffice to show a violation of the carrier's duty. This is so because a sudden or abrupt stop, which could be the result of negligent operation, could as well result from conditions and circumstances making it entirely proper and free of any negligence.

Id. (emphasis added; reinstating directed verdict in favor of defense; quoting Blackman v. Miami Transit Co., 125 So. 2d 128, 130 (Fla. 3d DCA 1960)).

Here, the evidence establishes that the stop in question, while sudden and unexpected, was not extraordinarily violent and was incidental to ordinary travel, inasmuch as making a sudden stop in traffic, unexpectedly, is commonly understood to be one of the recurring inconveniences (and risks) of driving a motor vehicle. The evidence, moreover, does not establish that the driver failed to pay attention to his surroundings; rather, as the videos show, Mr. Arrieta reacted prudently and reasonably to an unexpected situation, namely the slowing of the SUV (which had just pulled ahead of the

bus) to avoid hitting a jaywalker who was standing in the middle of the road, in traffic.

The question whether the driver should have waited for Ms. Acosta to take a seat before putting the bus in motion is somewhat closer. Florida law, however, does not generally require that a driver wait for passengers to be seated before proceeding, although such a duty might arise where the driver prevents the passenger from taking a seat, Ginn v. Broward Cnty. Transit, 396 So. 2d 804, 806 (Fla. 4th DCA 1981), or reasonably could have anticipated the need to make a sudden stop, Metro. Dade Cnty. V. Asusta, 359 So. 2d 58, 60 (Fla. 3d DCA 1978). Indeed, courts have entered judgments as a matter of law against plaintiffs who have fallen on moving buses while on their way to a seat. See, e.g., Peterson v. Cent. Fla. Reg'l Transp., 769 So. 2d 418, 421 (Fla. 5th DCA 2000)(affirming directed verdict in favor of bus operator, where plaintiff, who was carrying a large, rain-soaked bag, was injured in fall on bus while walking down a wet aisle to take a seat in the back); Artigas v. Allstate Ins. Co., 541 So. 2d 739, 740(Fla. 3d DCA 1989)(affirming summary judgment in favor of bus operator because, although plaintiff had fallen after boarding bus while on her way to seat, standard of care was not violated); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA 1964)(bus operator entitled to JNOV where plaintiff, who had been proceeding to a seat, fell when bus made a sudden, but nonviolent, stop).

Claimants argue that the MTA's Procedures Manual required the driver to wait for Ms. Acosta to take a seat before starting to move, but this is not accurate. The manual requires the driver to wait only when the passenger is "an elderly person, customer with a disability, a person holding a child, or a person with arms full of packages." Ms. Acosta was none of these. Otherwise, the driver is instructed to "be careful not to make a sudden start or stop" when passengers are standing in the aisle or walking to a seat. Here, the evidence fails to prove that the driver was not being careful; rather, Mr. Arrieta was required to stop suddenly because of an unexpected situation over which he had no control and could not reasonably have anticipated. In any event, the Procedures Manual does not fix the standard of care. See Artigas, 541 So. 2d at 740 n.1.

Based on the foregoing legal principles, as applied to the evidence presented in the case, the undersigned makes the ultimate determination that the driver was not negligent, in that he did not breach the standard of care owed to a passenger when he stopped his bus to avoid rear-ending an SUV, which had slowed suddenly to avoid striking a jaywalker who was standing in the middle of traffic.

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." Claimants' attorney, Judd G. Rosen, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

SPECIAL ISSUES:

If enacted in its current form, the claim bill would direct that the entire judgment amount of \$6 million be paid to Ms. Acosta's children. Thus, the bill needs to be amended to conform to the parties' settlement agreement, pursuant to which claimants have agreed to accept the smaller sum of \$940,000.

At the time of her death in November 2004, Ms. Acosta was a citizen of Venezuela. She had come into the U.S. in July 2003 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which expired on January 22, 2004.

Monica and Luis Acosta are citizens of Venezuela. Monica Cantillo Acosta, who was in the U.S. on a Non-Immigrant B2 (Visitor for Pleasure) Visa for some period of time, had returned to Venezuela to attend school before her mother's death, apparently without having overstayed her visa. Luis Acosta, who was a teenager at the time of his mother's death, was in the U.S. in November 2004 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which had expired on June 18, 2004.

GENERAL CONCLUSIONS:

This sad case arises out of a freak accident, which tragically cost Ms. Acosta her life. Clearly her children have suffered a grievous loss—one for which, in a perfect world, they would be richly compensated. The problem here is that the party who is mostly to blame for Ms. Acosta's death, the negligent jaywalker, was not identified. Nor was the driver of the SUV

identified; yet that person, too, rightfully bears a smaller, but nontrivial, share of the fault. Although the bus driver's (and through him the county's) fair share of the blame falls in the range from 0 percent to 5 percent (and at the bottom end of the range, in the undersigned's estimation), the jury decided to make the county pay the entire loss, assigning 100 percent of the fault to the bus driver. This was unfair and unsupportable based on the facts and law. The county's financial responsibility to the plaintiffs should not exceed \$300,000 (5 percent of \$6 million). Having paid \$200,000, the county, at a minimum, already has satisfied two-thirds of its maximum liability—and probably has overpaid.

That said, the county did agree to support a claim bill in the amount of \$940,000. This, in itself, is a compelling reason to support the bill, and should be given great weight. Nevertheless, the undersigned concludes that, on balance, the present settlement, if consummated via approval of this claim bill, would not be a responsible use of taxpayer money.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 50 (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

CS by Rules (2/27/12):

Amends the amount payable to Monica Cantillo Acosta to \$470,000. Amends the amount payable to Luis Alberto Cantillo Acosta to \$470,000.



556648

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 62
and insert:

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

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of \$470,000, payable to Monica Cantillo Acosta, and a warrant in the sum of \$470,000, payable to Luis Alberto Cantillo Acosta, as compensation for the wrongful death of their mother, Nhora Acosta.



556648

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

15 And the title is amended as follows:

16

17 Delete line 51

18 and insert:

19 and,

20 WHEREAS, the parties have subsequently settled this matter
21 for \$1,140,000, and Miami-Dade County has paid the claimants
22 \$200,000 under the statutory limits of liability set forth in s.
23 768.28, Florida Statutes, NOW, THEREFORE,

By Senator Bogdanoff

25-00199-12

201250__

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Nhora Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m. in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the driver, and was trying to find a seat on the crowded bus, and

WHEREAS, while Nhora Acosta walked toward the rear of the bus in search of a seat, the bus driver ignored her safety and failed to appropriately anticipate the stop-and-go traffic patterns on the busy street. As a result, the bus driver accelerated so quickly that in order to avoid a collision with another vehicle, he suddenly slammed on the brakes, which caused Nhora Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, because of the sudden change in velocity and the violent force upon which Nhora Acosta struck her head within the bus interior, she suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations, and

Page 1 of 3

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

25-00199-12

201250__

WHEREAS, Nhora Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day, and

WHEREAS, Nhora Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who were raised exclusively by their mother, and because of her death, her children were left orphaned, and

WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta loved their mother and only parent dearly, and they have suffered enormous, intense mental pain and suffering due to their mother's untimely death, and have further lost the support, love, guidance, and consortium of their only parent, Nhora Acosta, as a result of the negligence of the Miami-Dade bus driver, and

WHEREAS, on November 5, 2007, a Miami-Dade County jury rendered a verdict and found the Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be \$3 million each, 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. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated

Page 2 of 3

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

25-00199-12

201250__

59 and to draw a warrant in the sum of \$3 million, payable to
60 Monica Cantillo Acosta, and a warrant in the sum of \$3 million,
61 payable to Luis Alberto Cantillo Acosta, as compensation for the
62 wrongful death of their mother, Nhora Acosta.

63 Section 3. The amounts awarded under this act are intended
64 to provide the sole compensation for all present and future
65 claims arising out of the factual situation described in this
66 act which resulted in the death of Nhora Acosta. The total
67 amount paid for attorney's fees, lobbying fees, costs, and other
68 similar expenses relating to this claim may not exceed 25
69 percent of the total amount awarded under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2/27/12

Meeting Date

Topic Claim Bill; Norah Acosta

Bill Number 50

(if applicable)

Name Lance Block

Amendment Barcode _____
(if applicable)

Job Title Attorney - Lobbyist

Address PO Box 840

Phone 850-599-1980

Street

Tallahassee, FL

E-mail lance@lanceblock.com

City

State

Zip

Speaking: For Against Information

Representing Family of Norah Acosta

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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



2-27-12

Meeting Date

Topic Acosta v. Miami-Dade County

Bill Number SB 50
(if applicable)

Name Jason Bloch

Amendment Barcode _____
(if applicable)

Job Title Asst. County Attorney

Address 111 NW 1st St., Suite 2800
Street

Phone 305 395-5455

Miami, FL 33128
City State Zip

E-mail jbloch@miamidade.gov

Speaking: For ^{\$6 million} Against Information

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

2-27

Meeting Date

Topic Acosta v. Miami-Dade

Bill Number SB 50
(if applicable)

Name Evgen Grob

Amendment Barcode _____
(if applicable)

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305-375-5151

Street Miami, FL
City State Zip

E-mail grob@miamidade.gov

Speaking: For ^{\$6 million} Against Information

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



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 |
|---------|------|-----------|
| 11/9/11 | SM | Favorable |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

November 9, 2011

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

Re: **SB 52 (2012)** – Senator Joe Negrón
Relief of Chriss Matute, Christian Manuel Torres, Eddna Torres De
Mayne, Lansky Torres, and Nasdry Yamileth Torres Barahona

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$371,850.98 IN LOCAL FUNDS BY EDDNA TORRES DE MAYNE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HER FATHER, MANUEL A. MATUTE. THE CLAIM IS BASED ON A COURT-APPROVED SETTLEMENT AGREEMENT BETWEEN DE MAYNE AND THE PALM BEACH SHERIFF'S OFFICE TO COMPENSATE THE ESTATE FOR MR. MATUTE'S DEATH, WHICH OCCURRED IN A CAR ACCIDENT CAUSED BY A PALM BEACH DEPUTY SHERIFF.

FINDINGS OF FACT:

On October 29, 2008, just before sunrise, Deputy Sheriff Geral Ramirez was returning home after his shift, driving northbound on US highway 441. At the same time, travelling southbound on the same highway, Mr. Matute, age 60, was on his way to work as a maintenance man at a golf club. Deputy Ramirez fell asleep at the wheel and lost control of his police cruiser, allowing it to cross the raised concrete median, and crash head-on into Mr. Matute's van.

Mr. Matute was wearing his seatbelt at the time of the crash, but was killed in the collision. The collision caused Mr. Matute's van to hit a third vehicle driven by Orlando

Cordova. Mr. Cordova and his passenger, Dhalid Johnson, were injured in the collision. Mr. Matute's van also hit a fourth vehicle driven by Robert Morgan, who was not injured. All four vehicles were totaled or damaged.

Deputy Ramirez admitted to Fire Rescue and a Sergeant at the scene of the accident that he had fallen asleep while driving. He suffered minor injuries from the collision, and was ultimately disciplined. He remains employed with the Palm Beach Sheriff's Office.

Mr. Matute was the father of five children. Two adult daughters live in Honduras with their children. Two adult sons live in Palm Beach County, as well as a minor son, Chriss, age 15, who is a high school student.

LITIGATION HISTORY:

On July 21, 2009, in the circuit court for the Fifteenth Judicial Circuit, Claimant brought a wrongful death action against the Palm Beach Sheriff's Office. The complaint alleged that Palm Beach County was vicariously liable for Mr. Matute's fatal injuries sustained as a result of Deputy Ramirez's negligent operation of a Palm Beach Sheriff's Office vehicle.

On January 4, 2011, the parties successfully reached a mediated settlement in the amount of \$500,000.00. The Palm Beach Sheriff's Office admitted liability, and admitted that Mr. Matute was in no way responsible or comparatively negligent. Pursuant to the terms of the settlement, the Palm Beach Sheriff's Office agreed to tender \$128,149.02 to the Claimant upon the approval of the court. Palm Beach Sheriff's Office further agreed not to oppose a claim bill in the amount of \$371,850.98.

The Palm Beach Sheriff's Office also settled claims that had been filed by Mr. Cordova, Mr. Johnson, and Mr. Morgan. Mr. Cordova received \$40,000.00, Mr. Johnson received \$22,000.00, and Mr. Morgan received \$9,850.98.

Following the approval of the settlement agreement by the circuit court, Palm Beach Sheriff's Office tendered \$128,149.02 to Claimant. Twenty-five percent of the amount paid was deducted for attorney's fees and costs.

CLAIMANT'S POSITION:

The Palm Beach Sheriff's Office is vicariously liable for the negligence of its employee, who negligently operated a Palm Beach Sheriff's Office vehicle.

RESPONDENT'S POSITION:

The Palm Beach Sheriff's Office accepts full responsibility for the fatal crash. Palm Beach Sheriff's Office does not support or object to the passage of this claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the Palm Beach Sheriff's Office was liable in negligence for the death of Mr. Matute and, if so, whether the amount of the claim is reasonable.

The evidence clearly demonstrates that Deputy Ramirez lost control of his police cruiser, crashed head-on into Mr. Matute's van, and caused Mr. Matute's fatal injuries.

The Palm Beach Sheriff's Office, as Deputy Ramirez's employer, is liable for his 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); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

The undersigned concludes that the sum the Palm Beach Sheriff's Office has agreed to pay the Claimant is both reasonable and fair.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

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.

SOURCE OF FUNDS:

If Senate Bill 52 is approved, the Palm Beach County Sheriff's Office will pay the claim from a liability reserve funded from the Sheriff's annual budget.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 52 (2012) be reported FAVORABLY.

Respectfully submitted,

Jessica Enciso Varn
Senate Special Master

cc: Senator Joe Negron
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Negrón

28-00179A-12

201252__

A bill to be entitled

An act for the relief of Criss Matute, Christian Manuel Torres, Eddna Torres De Mayne, Lansky Torres, and Nasdry Yamileth Torres Barahona by the Palm Beach County Sheriff's Office; providing for an appropriation to compensate them for injuries sustained as a result of the negligence of the Palm Beach County Sheriff's Office for the wrongful death of their father, Manuel Antonio Matute; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, Manuel Antonio Matute, age 60, was killed on October 29, 2008, when he was hit head-on by a sheriff's office vehicle whose driver, a Palm Beach County Deputy Sheriff, lost control of the vehicle on South Military Trail in West Palm Beach, Palm Beach County, and

WHEREAS, Manuel A. Matute's surviving child, Eddna Torres De Mayne, brought a wrongful-death action against the Palm Beach County Sheriff's Office seeking damages for her siblings, Criss Matute, Christian Manuel Torres, Lansky Torres, and Nasdry Yamileth Torres Barahona, and herself for their anguish and mental pain and suffering due to the tragic death of their father, and

WHEREAS, on January 4, 2011, the Palm Beach County Sheriff's Office agreed to settle the claim in the amount of \$500,000, and

WHEREAS, in May 2011, the Palm Beach County Sheriff's Office tendered to Eddna Torres De Mayne, as personal

Page 1 of 2

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

28-00179A-12

201252__

representative of the Estate of Manuel A. Matute, a payment of \$128,149.02 in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, seeks satisfaction of the balance of the settlement agreement which is \$371,850.98, NOW, THEREFORE,

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

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

Section 2. The Palm Beach County Sheriff's Office is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of \$371,850.98, payable to Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, as compensation for injuries and damages sustained due to the wrongful death of Manuel Antonio Matute.

Section 3. The amount paid by the Palm Beach County Sheriff's Office pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Manuel Antonio Matute. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

Page 2 of 2

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



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 | Favorable |
| 2/23/12 | RC | Favorable |
| | | |

December 2, 2011

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

Re: **SB 54 (2012)** – Senator Joe Negron
Relief of Carl Abbott

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$1.9 MILLION, IN LOCAL FUNDS, AGAINST THE PALM BEACH COUNTY SCHOOL BOARD FOR THE NEGLIGENCE OF A BUS DRIVER WHO STRUCK AND SERIOUSLY INJURED CARL ABBOTT AS HE WAS ATTEMPTING TO WALK ACROSS A ROADWAY WITHIN A MARKED PEDESTRIAN CROSSWALK.

FINDINGS OF FACT:

On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk. (See diagram below.)

At the time Mr. Abbott began to cross U. S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed

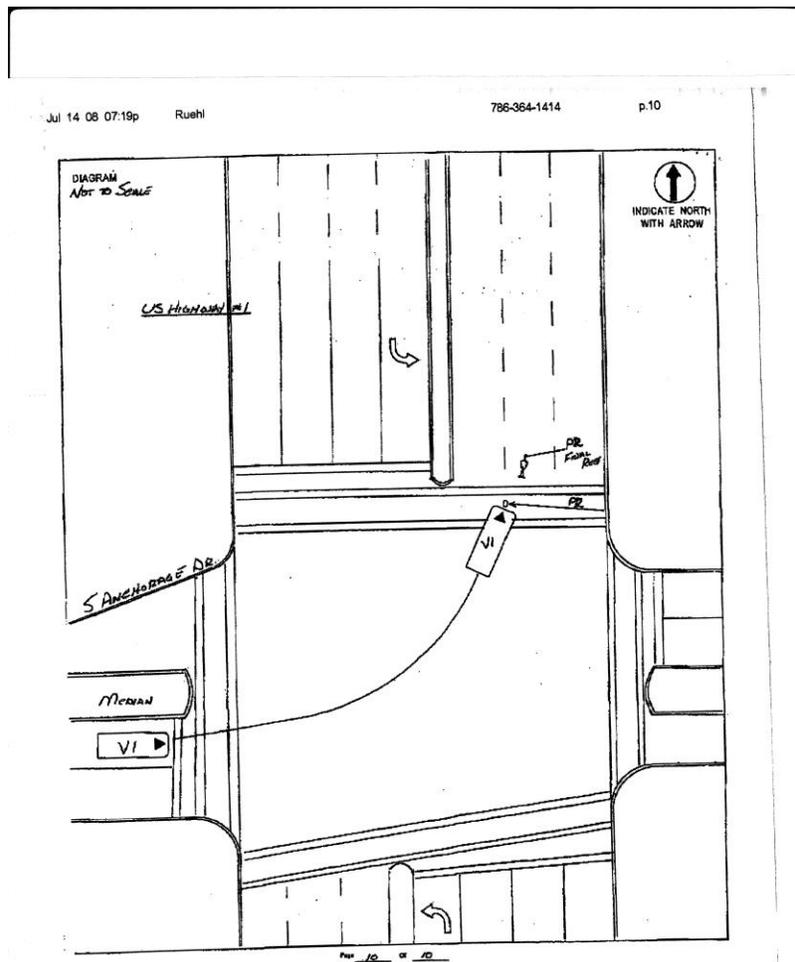
north on U. S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U. S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation (CPR) at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbott presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbott has neurogenic bladder and bowel and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about \$4 million, before a reduction to present value. Based on the evidence presented, the undersigned is unable to determine the approximate amount of Mr. Abbott's past medical expenses, but it appears to be a sum between, very roughly, \$200,000 and \$775,000.

DIAGRAM:



LEGAL PROCEEDINGS:

In 2008, Mr. Abbott's son David, as guardian, brought suit on Mr. Abbott's behalf against the School Board of Palm Beach County. The action was filed in the Circuit Court in and for Palm Beach County, Florida.

Before trial the parties attended a mediation conference and agreed to settle the case for \$2 million, \$100,000 of which the School Board paid immediately. Pursuant to the settlement agreement, the \$1.9 million balance will be paid, if this claim bill is enacted, in eight yearly installments of \$211,111.11, plus a ninth and final annual payment of \$211,111.12. These yearly payments will commence, if at all, on the effective date of the claim bill, should it become law, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments,

guaranteeing a minimum payout of \$633,333.33 (if this claim bill passes).

Out of the \$100,000 settlement proceeds he has already received, Mr. Abbott paid \$25,000 in attorney's fees and, after paying some expenses, netted \$51,905.65. This amount was paid to Mr. Abbott's guardian, David Abbott.

CLAIMANT'S ARGUMENTS:

The Palm Beach County School Board is vicariously liable for the negligence of its employee, who breached the duty of a motorist to use reasonable care toward a pedestrian by failing to yield the right-of-way to Mr. Abbott as he crossed U. S. Highway #1 on foot within a marked crosswalk.

RESPONDENT'S POSITION:

The Palm Beach County School Board does not oppose the enactment of this claim bill. It is self-insured, however, and would pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of \$100,000. The School Board notes that payment of the \$1.9 million sought in this bill would be difficult, given budgetary constraints, but it stops short of urging that the bill be rejected on this basis.

CONCLUSIONS OF LAW:

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

A school board is liable for any negligent act committed by a public school bus driver whom it employs, provided the act is within the scope of the driver's employment. Hollis v. School Board of Leon Cnty., 384 So. 2d 661, 665 (Fla. 1st DCA 1980). Ms. Bedford was the School Board's employee and was clearly acting within the scope of her employment at the time of the accident in question. Accordingly, the negligence of Ms. Bedford is attributable to the School Board.

Like any motorist, a school bus driver has a duty to look out for pedestrians and to avoid creating hazardous situations. See Resnick v. National Car Rental Systems, Inc., 266 So. 2d 74, 75 (Fla. 3d DCA 1972). While "the rights of motorists and pedestrians on highways are reciprocal," the motorist "must exercise ordinary reasonable and due care toward a pedestrian." Edwards v. Donaldson, 103 So. 2d 256, 259 (Fla. 2d DCA 1958).

Here, the applicable traffic regulations required that Ms. Bedford yield to Mr. Abbott because he was crossing the road within a marked crosswalk. See § 316.130(7), Fla. Stat.; see also, § 316.075(1)(a)1., Fla. Stat. ("[V]ehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such [green] signal is exhibited.") Ms. Bedford breached the duty to use reasonable care for the safety of Mr. Abbott. Her negligence was the direct and proximate cause of Mr. Abbott's serious and irreversible brain injury.

The sum that the School District has agreed to pay Mr. Abbott (\$2 million) is both reasonable and responsible, given the nature and permanence of the injury and the Mr. Abbott's substantial and continuing medical needs.

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." Mr. Abbott's attorney, Joseph R. Johnson, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 54 (2012) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Joe Negron
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Negrón

28-00178A-12

201254__

A bill to be entitled

An act for the relief of Carl Abbott by the Palm Beach County School Board; providing for an appropriation to compensate Carl Abbott for injuries sustained as a result of the negligence of the Palm Beach County School District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was struck by a school bus driven by an employee of the Palm Beach County School District while Mr. Abbott was crossing the street in a designated crosswalk at the intersection of South Anchorage Drive and U.S. 1 in Palm Beach County, and

WHEREAS, as a result of the accident, Carl Abbott suffered a closed-head injury, traumatic brain injury, subdural hematoma, and subarachnoid hemorrhage, and

WHEREAS, as a result of his injuries, Carl Abbott must now reside in a nursing home, suffers from loss of cognitive function, right-sided paralysis, immobility, urinary incontinence, bowel incontinence, delirium, and an inability to speak, and must obtain nutrition through a feeding tube, and

WHEREAS, the Palm Beach County School Board unanimously passed a resolution in support of settling the lawsuit that was filed in this case, tendered payment of \$100,000 to Carl Abbott, in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and does not oppose the passage of this claim bill in favor of Carl Abbott in the amount of \$1,900,000, as structured, NOW, THEREFORE,

Page 1 of 2

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

28-00178A-12

201254__

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

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

Section 2. The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw warrants in the amount of \$211,111.11 each fiscal year beginning in 2012 through 2019, inclusive, and \$211,111.12 in the 2020 fiscal year for a total of \$1,900,000, payable to David Abbott, guardian of Carl Abbott, as compensation for injuries and damages sustained as a result of the negligence of an employee of the Palm Beach County School District. The payments shall cease upon the death of Carl Abbott if he dies prior to the last payment being made. However, David Abbott, as guardian of Carl Abbott, shall be guaranteed a minimum payment amount of \$633,333.33 if Carl Abbott dies within 3 years after the effective date of this act. The amount represents three annual payments and shall be payable on the annual due dates.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and this award are intended to provide the sole compensation for all present and future claims against the Palm Beach County School District arising out of the factual situation that resulted in the injuries to Carl Abbott as described in this act. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

Page 2 of 2

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



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 | Favorable |
| 2/23/12 | RC | Pre-meeting |
| | | |
| | | |

December 2, 2011

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

Re: **SB 58 (2012)** – Senator Anitere Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Mieles

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDINGS OF FACT:

The instant claim arises out of a traffic accident that occurred in Miami on November 11, 2007, at the intersection of Northwest 7th Avenue and Northwest 46th Street. Northwest 46th Street runs from east to west, and intersects Northwest 7th Avenue (which runs from north to south) at a right angle. At the time of the accident, the intersection was controlled by four traffic signals: two blinking red lights that directed vehicles traveling east and west on Northwest 46th Street to stop, and two blinking yellow lights for vehicles proceeding north and south on Northwest 7th Avenue.

At approximately 4:10 a.m., 19-year-old Omar Mieles was traveling east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by Madelayne Ibarra. The

vehicle was owned by Ms. Ibarra's mother, who was not present. Mr. Mieles' girlfriend, Raiza Areas, was positioned in the front passenger's seat. Although Ms. Ibarra and Ms. Areas were both wearing seatbelts, Mr. Mieles was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mieles, Ms. Areas, and Ms. Ibarra had spent the evening eating dinner in Coconut Grove and socializing with friends in South Beach.

Although Ms. Ibarra was not under the influence of alcohol or controlled substances, she was unfamiliar with the area and fatigued due to the late hour. As a consequence, Ms. Ibarra failed to come to a complete stop at the red traffic signal prior to entering the Northwest 7th Avenue intersection. At the same time, a City of North Miami police cruiser traveling north on Northwest 7th Avenue entered the intersection through the yellow caution light. The police vehicle, which was on routine patrol and not operating in emergency mode (i.e., the siren and emergency lights were not activated), was substantially exceeding the 30 MPH limit.

Tragically, the police cruiser, which was being operated by Officer James Thompson, struck the right rear passenger door of Ms. Ibarra's Ford Focus. Mr. Mieles, who was ejected through a rear window due to the force and location of the impact, landed approximately 35 feet from the final resting position of Ms. Ibarra's vehicle. Although Mr. Mieles sustained catastrophic head injuries as a result of the accident, neither Ms. Ibarra nor Ms. Areas was seriously injured.

Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mieles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieles was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Mieles' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mieles' heart, liver, and kidneys for donation, and he expired.

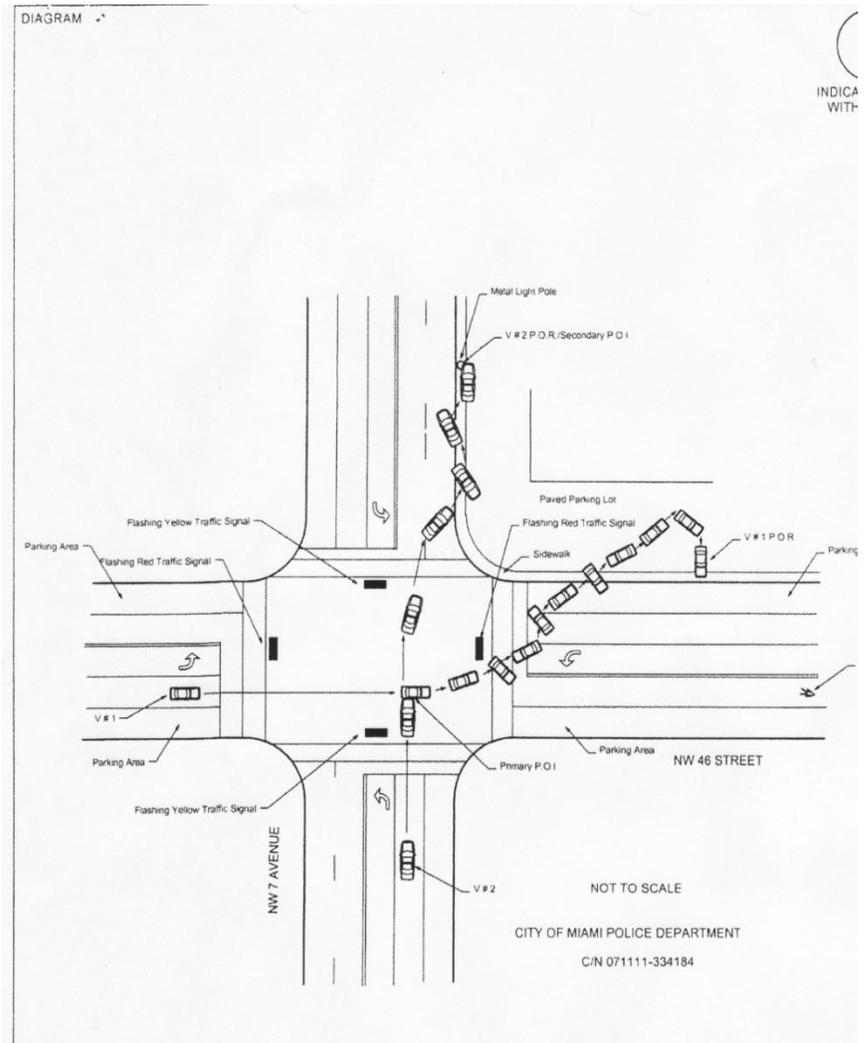
Approximately 90 minutes after the collision, K. Andrews, a detective employed with the City of Miami Police Department, arrived at the scene of the crash and initiated an accident investigation. During the investigation, Officer

Thompson advised Detective Andrews that Ms. Ibarra had failed to stop at the red light and that he was unable to avoid the accident. However, Officer Thompson failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

During the ensuing litigation between Mr. Mieles' estate and the City of North Miami, it was determined (based upon data from the patrol vehicle's "black box") that one second prior to the crash, Officer Thompson was traveling 61 MPH. As noted above, the speed limit on Northwest 7th Street at the accident location was 30 MPH.

At the time of his death, Mr. Mieles had recently graduated from high school and was working two jobs. In addition, he had been accepted to Valencia Community College and was scheduled to begin classes in January 2008. Mr. Mieles, who is survived by his mother, stepfather, and two siblings, was by all accounts a hard-working and well-liked young man.

DIAGRAM:



LITIGATION HISTORY:

On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieles, filed a complaint for damages in Miami-Dade County circuit court against the City of North Miami. The complaint alleged that Officer Thompson's operation of his police vehicle on November 11, 2007, was negligent, and that such negligence was the direct and proximate cause of Mr. Mieles' death. In addition, the complaint alleged that Mr. Mieles' estate sustained various damages, which included medical and funeral expenses, as well as lost earnings. The complaint further asserted that Ms. Lopez sustained damages in her individual capacity, such as the loss of past and future support and services, past and future mental pain and suffering, and loss of companionship.

The matter subsequently proceeded to a jury trial, during which the parties presented conflicting theories regarding the cause of the accident. Specifically, the plaintiff contended that Ms. Ibarra had properly stopped at the intersection and that Officer Thompson was solely responsible for the collision, while the City of North Miami argued that Ms. Ibarra had run the red light and was entirely at fault. In addition, both sides presented conflicting expert testimony regarding whether Mr. Mieles would have sustained fatal injuries had been wearing a seatbelt. In particular, the plaintiff's expert opined that due to the location of the collision (the right rear passenger's door of the Ford Focus) and its force, Mr. Mieles would have been killed even if he had been properly restrained. In contrast, the City of Miami presented expert testimony indicating that the use of a seatbelt would have saved Mr. Mieles' life.

On March 19, 2010, the jury returned a verdict, in which it determined that the City of North Miami and Ms. Ibarra were negligent, and that each was 50 percent responsible for Mr. Mieles' death. The jury apportioned no fault to Mr. Mieles. The jury further concluded that Mr. Mieles' estate and Ms. Lopez sustained the following damages:

Damages to the Estate

- \$163,950.15 for medical expenses.
- \$1,630 for funeral expenses.

Damages to Maricelly Lopez

- \$2,000 for loss of past support.
- \$40,000 for loss of future support.
- \$1,750,000 for past pain and suffering.
- \$1,750,000 for future pain and suffering.

Based on the jury's finding that the City of North Miami was 50 percent responsible, final judgment was entered against it in the amount of \$1,719,808.63 (this figure is comprised of \$1,688,195.10, which represents fifty percent of the total damages outlined above, minus various setoffs, plus costs of \$31,613.53).

No appeal of the final judgment was taken to the Third District Court of Appeal.

The City of North Miami has tendered \$108,571.30 against the final judgment, leaving \$1,611,237.33 unpaid.

CLAIMANT'S POSITION:

The City of North Miami is vicariously liable for the negligence of Officer Thompson, which was the direct and proximate cause of Omar Miele's death. The Claimant further argues that Mr. Miles did nothing to contribute to his death.

RESPONDENT'S POSITION:

The City of North Miami objects to any payment to the Claimant through a claim bill. The City of Miami also contends that Mr. Miele's catastrophic head injuries would have been avoided had he been properly restrained by a seat belt, and that the jury should not have apportioned any fault to Officer Thompson.

CONCLUSIONS OF LAW:

Like any motorist, Officer Thompson had a duty to operate his patrol vehicle with consideration for the safety of other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, Officer Thompson owed a duty to observe the 30 MPH posted speed limit and to use caution (as directed by the yellow flashing light) as he entered the intersection. See § 316.076(1)(b), Fla. Stat. (2007) ("When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution."); § 316.183(2), Fla. Stat. (2007) ("On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business . . . districts"). By entering the intersection at 61 MPH, Officer Thompson breached his duty of care, which was a direct and proximate cause of Mr. Miele's death.

The City of North Miami, as Officer Thompson's employer, is liable for his 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); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

As discussed above, the jury determined that Officer Thompson and Ms. Ibarra, based upon the negligent operation of their respective vehicles, were equally at fault in this tragic event. Further, in apportioning no fault to Mr. Mieles, the jury presumably found that Mr. Mieles would have been killed in the collision even if he had been properly restrained. These conclusions are reasonable and will not be disturbed by the undersigned. The undersigned also concludes that the damages awarded by the jury were appropriate.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 342) died in Committee.

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 section 768.28(8), Florida Statutes. Lobbyist's fees are included with the attorney's fees.

FISCAL IMPACT:

As the City of North Miami is self-insured, its general funds would be used to satisfy the instant claim bill. In February 2011, the City of North Miami reported that it had \$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account.

COLLATERAL SOURCES:

Prior to the litigation against the City of North Miami, the Claimant recovered the bodily injury limits from Ms. Ibarra's GEICO policy in the amount of \$10,000, as well as \$10,000 from the Claimant's underinsured motorist coverage.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 58 (2012) be reported FAVORABLY.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

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

By Senator Flores

38-00192B-12

201258__

1 A bill to be entitled
 2 An act for the relief of Maricelly Lopez by the City
 3 of North Miami; providing for an appropriation to
 4 compensate Maricelly Lopez, individually and as
 5 personal representative of the Estate of Omar Mieleles,
 6 for the wrongful death of her son, Omar Mieleles, which
 7 was due to the negligence of a police officer of the
 8 City of North Miami; providing a limitation on the
 9 payment of fees and costs; providing an effective
 10 date.

11
 12 WHEREAS, on November 11, 2007, 18-year-old Omar Mieleles was
 13 a passenger in the backseat of a vehicle traveling eastbound on
 14 NW 46th Street in North Miami, and

15 WHEREAS, Officer James Ray Thompson, a police officer
 16 employed by the City of North Miami Police Department, while in
 17 the course and scope of his duties as a police officer,
 18 negligently drove a North Miami police vehicle at a high rate of
 19 speed and collided with the vehicle in which Omar Mieleles was a
 20 passenger at the intersection of NW 46th Street and 7th Avenue,
 21 and

22 WHEREAS, Omar Mieleles was thrown from the rear window of the
 23 vehicle in which he was traveling, landed 35 feet from the
 24 vehicle, and died shortly thereafter from the injuries sustained
 25 as a direct result of the incident and Officer Thompson's
 26 negligence, and

27 WHEREAS, the mother of Omar Mieleles, Maricelly Lopez, seeks
 28 to recover damages, individually, for the loss of support,
 29 services, and companionship due to the death of her son, and

Page 1 of 3

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

38-00192B-12

201258__

30 WHEREAS, Maricelly Lopez has endured mental pain and
 31 suffering since the date of her son's death and will continue to
 32 suffer such losses in the future, and

33 WHEREAS, the Estate of Omar Mieleles seeks to recover damages
 34 for medical expenses, funeral expenses, loss of earnings, and
 35 net accumulation of earnings, and

36 WHEREAS, on March 19, 2010, this case was tried before a
 37 jury that returned a verdict for damages against the City of
 38 North Miami and in favor of Maricelly Lopez, as personal
 39 representative of the Estate of Omar Mieleles and in her
 40 individual capacity as mother of Omar Mieleles, in the amount of
 41 \$3,542,000, and

42 WHEREAS, the jury apportioned 50 percent of the
 43 responsibility for the death of Omar Mieleles to the City of North
 44 Miami, and the remaining 50 percent to the driver of the vehicle
 45 in which Omar Mieleles was traveling as a passenger, and

46 WHEREAS, a final judgment was entered against the City of
 47 North Miami for \$1,719,808.63, against which the city has paid
 48 \$108,571.30, leaving a balance of \$1,611,237.33 for which
 49 Maricelly Lopez seeks satisfaction, NOW, THEREFORE,

50
 51 Be It Enacted by the Legislature of the State of Florida:

52
 53 Section 1. The facts stated in the preamble to this act are
 54 found and declared to be true.

55 Section 2. The City of North Miami is authorized and
 56 directed to appropriate from funds of the city not otherwise
 57 appropriated and to draw a warrant in the amount of
 58 \$1,611,237.33, payable to Maricelly Lopez, individually and as

Page 2 of 3

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

38-00192B-12

201258__

59 personal representative of the Estate of Omar Mieles, as
60 compensation for the death of her son due to the negligence of a
61 police officer of the City of North Miami.

62 Section 3. The amount paid by the City of North Miami
63 pursuant to s. 768.28, Florida Statutes, and this award are
64 intended to provide the sole compensation for all present and
65 future claims arising out of the factual situation described in
66 this act which resulted in the death of Omar Mieles. The total
67 amount paid for attorney's fees, lobbying fees, costs, and other
68 similar expenses relating to this claim may not exceed 25
69 percent of the amount awarded under this act.

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



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 | Favorable |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

December 2, 2011

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

Re: **SB 70 (2012)** – Senator Ronda Storms
Relief of Kristi Mellen, as personal representative of the estate of
Michael Munson

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$2,800,0000, BASED ON A CONSENT FINAL JUDGMENT BETWEEN THE ESTATE OF MICHAEL MUNSON AND THE NORTH BROWARD HOSPITAL DISTRICT, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENCE PROVISION OF EMERGENCY MEDICAL SERVICES AT CORAL SPRINGS MEDICAL CENTER THAT RESULTED IN THE DEATH OF MR. MUNSON, WHO WAS EXPERIENCING TREATABLE CARDIAC DYSRHYTHMIA.

FINDINGS OF FACT:

On Sunday, September 21, 2008, Michael Munson, a married father of two minor children, was relaxing at home with his family. Shortly before 11:00 a.m, Mr. Munson complained to Kristi Mellen—his wife and the claimant in this proceeding—that he was experiencing chest pain, difficulty breathing, as well as nausea and vomiting. Mr. Munson further stated, "this is bad . . . we need to go to the hospital," at which point Ms. Mellen drove him to the emergency room at Coral Springs Medical Center ("Coral Springs"), a facility owned by the North Broward Hospital District.

Video surveillance footage demonstrates that at 11:11 a.m., Mr. Munson arrived at the emergency room—which was not

busy at that time—and was evaluated by a triage nurse one minute later. Mr. Munson informed the nurse, Ms. Lynn Parpard, that he was experiencing tingling in his arms, burning in his chest, and difficulty breathing. Pursuant to hospital policy, as well as the acceptable standard of medical care, each of the foregoing symptoms required Ms. Parpard to classify Mr. Munson as a high priority "code heart" patient and to ensure that he received immediate treatment (e.g., continuous EKG monitoring). Inexplicably, however, Ms. Parpard erroneously determined—after merely checking Mr. Munson's pulse rate and oxygen saturation level and speaking to him for roughly one minute—that he was suffering from a panic attack. As a result, Mr. Munson was not treated as a high priority patient, and Ms. Parpard directed him to the registration desk, which was located adjacent to the triage area.

At 11:13 a.m., Mr. Munson and Ms. Mellen began the registration process with Mr. Craig Blair, a clerical worker employed by the hospital. During the registration, Ms. Mellen referenced Mr. Munson's symptoms, the nature of which so concerned Mr. Blair that he tapped Ms. Parpard on the shoulder and repeated what Ms. Mellen had told him. Unfortunately, Ms. Parpard ignored Mr. Blair's concerns and stated that Mr. Munson had already been assessed. Mr. Blair continued with the registration, which concluded at 11:23 a.m.

At 11:26 a.m., while seated in the waiting area with his wife, Mr. Munson suffered a massive heart attack and lost consciousness. Ms. Mellen screamed for help, at which point several nurses—other than Ms. Parpard, who never got out of her chair—responded and discovered Mr. Munson in full cardiac and respiratory arrest. Moments later, a "code blue" was called, and at 11:29 a.m.—some 18 minutes after he arrived at the hospital—Mr. Munson was placed on a stretcher and removed to the treatment area.

During the treatment that ensued, Mr. Munson's EKG showed that he was suffering from ventricular fibrillation. Over the next 30 minutes, the emergency physician, Dr. Ingrid Carter, made aggressive efforts to resuscitate Mr. Munson, which included intubation, repeated attempts at defibrillation, and the administration of Amiodarone, Epinephrine, Atropine, and Sodium Bicarbonate. Tragically,

Mr. Munson could not be revived and was pronounced dead at approximately 12:10 p.m., leaving behind his two children, ages 14 and 17, and his wife of 20 years. Four days later, on September 25, 2008, the Coral Springs Medical Center terminated Ms. Parpard's employment.

An autopsy was subsequently performed, which revealed that the cardiac dysrhythmia that resulted in Mr. Munson's death was caused by three vessel coronary artery disease—a treatable condition. The autopsy report and Mr. Munson's hospital records were later reviewed by two physicians: Dr. Alen Gelb and Dr. Richard Gray, who specialize, respectively, in the fields of emergency medicine and cardiology. Collectively, the experts concluded that Mr. Munson's condition was manageable, that Ms. Parpard's failure to properly assess Mr. Munson and designate him as a high priority patient fell below the acceptable standard of care, and that Mr. Munson more likely than not would have survived had he received prompt treatment from the Coral Springs emergency staff.

The undersigned has reviewed a report prepared by Dr. David Williams, an economist retained by Mr. Munson's estate. Dr. Williams calculated that the economic damages (reduced to present value) from the death of Mr. Munson—a licensed attorney and certified public accountant at the time of the tragedy—totaled \$1,656,581.00. Dr. Williams' report, which the undersigned credits, has not been challenged.

Had the negligence action against the North Broward Hospital District proceeded to trial, it is likely that a jury would have returned an award substantially in excess of the amount sought through the instant claim bill. Accordingly, the undersigned concludes that the settlement is both reasonable and responsible.

LITIGATION HISTORY:

On June 30, 2009, in the circuit court for Broward County, Ms. Mellen, as the personal representative of the estate of Mr. Munson, filed a Complaint for Wrongful Death against the North Broward Hospital District, Phoenix Emergency Medicine of Broward, and Dr. Ingrid Carter. The matter subsequently proceeded to mediation, at the conclusion of which the parties elected to settle the matter for \$3,010,000.00. In particular, the North Broward Hospital District agreed to "use its best efforts and recommend to its

Board and its claims bill carrier to secure approval of payment of Three Million Dollars," and, if successful, to jointly support the passage of a claim bill in an amount above its self-insured retention "to reach a payment of Three Million Dollars." The mediation agreement further provided that the estate of Mr. Munson would accept \$10,000 in exchange for the dismissal of Dr. Carter as a party.

Subsequently, on July 15, 2011, a consent final judgment was entered against the North Broward Hospital District in the amount of \$3,000,000. Pursuant to the judgment, the North Broward Hospital District was directed to pay Mr. Munson's estate \$200,000 within 30 days, and further ordered to support the passage of a claim bill in the amount of \$2,800,000.

CLAIMANT'S POSITION:

The North Broward Hospital District is vicariously liable for the negligent acts of its employee, Ms. Lynn Parpard, which include, but are not limited to: the erroneous assessment of Mr. Munson's condition; the failure to designate Mr. Munson as a high priority patient and ensure that he received timely, appropriate treatment; and the failure to properly observe Mr. Munson while he was seated in the waiting room.

RESPONDENT'S POSITION:

The North Broward Hospital District supports the instant claim bill.

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2008), sovereign immunity shields the North Broward Hospital 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) (holding s. 768.28 applies to special hospital taxing districts); Paushter v. South Broward Hospital District, 664 So. 2d 1032, 1033 (Fla. 4th DCA 1995). Accordingly, unless a claim bill is enacted, Mr. Munson's family will not realize the full benefit of the settlement agreement reached with the district.

Under the doctrine of respondeat superior, the North Broward Hospital 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). Ms. Lynn Parpard, the triage nurse involved in Mr. Munson's treatment, was an employee of the North Broward

Hospital District acting within the scope of her employment. Accordingly, Ms. Parpard's negligence is attributable to the district.

Ms. Parpard had a duty to provide Mr. Munson with competent medical care—namely, the proper assessment of his condition, which required immediate medical treatment. Tragically, however, Ms. Parpard breached her duty to Mr. Munson by erroneously concluding that he was suffering from a panic attack and failing to classify him as a high priority cardiac patient. Ms. Parpard's negligence was a direct and proximate cause of Mr. Munson's death.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

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.

FISCAL IMPACT:

Should this bill be approved, a portion of the claim would be paid from the North Broward Hospital District's general operating fund up to the limits of its self-insured retention (\$1,000,000), less monies expended. The remaining funds necessary to satisfy the claim bill would be provided by Respondent's excess insurance coverage through CNA Insurance. The CEO of the North Broward Hospital District, Frank Nask, has attested that the payment of the instant claim will not adversely affect the provision of healthcare services to the residents of Broward County.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 70 (2012) be reported FAVORABLY.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Ronda Storms
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Storms

10-00194-12

201270__

1 A bill to be entitled
 2 An act for the relief of Kristi Mellen as personal
 3 representative of the Estate of Michael Munson,
 4 deceased, by the North Broward Hospital District;
 5 providing for an appropriation to compensate the
 6 estate and the statutory survivors, Kristi Mellen,
 7 surviving spouse, and Michael Conner Munson and
 8 Corinne Keller Munson, surviving minor son and
 9 surviving minor daughter, for the wrongful death of
 10 Michael Munson as a result of the negligence of the
 11 North Broward Hospital District; providing a
 12 limitation on the payment of fees and costs; providing
 13 an effective date.

14
 15 WHEREAS, on September 21, 2008, while spending the morning
 16 with his family, Michael Munson, a 49-year-old accountant and
 17 attorney, began to experience signs and symptoms of a heart
 18 attack including burning in his chest, indigestion, and
 19 radiating pain into his arms, along with severe shortness of
 20 breath, and

21 WHEREAS, Kristi Mellen, his wife, drove her husband
 22 immediately to Coral Springs Medical Center, which is a hospital
 23 owned and operated by the North Broward Hospital District, and
 24 dropped him off at the entrance to the emergency center, and

25 WHEREAS, Mr. Munson was evaluated by Lynn Parpard, the
 26 triage nurse, who was informed of the burning in his chest,
 27 indigestion, and radiating pain into his arms, along with severe
 28 shortness of breath, and

29 WHEREAS, Ms. Parpard took an initial set of vital signs and

Page 1 of 4

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

10-00194-12

201270__

30 misdiagnosed Mr. Munson as suffering from an anxiety attack and
 31 sent him into the waiting room, and

32 WHEREAS, Ms. Parpard violated the appropriate standards of
 33 care and breached the hospital's policies and procedures
 34 including its Chest Pain Protocol, and

35 WHEREAS, Mr. Munson was then processed by an administrative
 36 assistant who, upon hearing his symptoms, asked Ms. Parpard to
 37 address the patient's complaints, given the Chest Pain Protocol
 38 that existed, and

39 WHEREAS, Ms. Parpard once again dismissed Mr. Munson's
 40 complaints and asked him to return to the waiting room for a
 41 second time, and

42 WHEREAS, shortly thereafter, Mr. Munson suffered a massive
 43 heart attack as he collapsed in the waiting room and was taken
 44 back into the treatment area, and

45 WHEREAS, all of the facts and circumstances described in
 46 this preamble were recorded by one of the hospital's security
 47 cameras, and

48 WHEREAS, medical personnel were unable to resuscitate Mr.
 49 Munson, and he died on September 21, 2008, at 12:10 p.m.,
 50 leaving behind Kristi, his wife of 20 years, and their two minor
 51 children, who, at the time, were ages 14 and 17, and

52 WHEREAS, the hospital's investigation into this
 53 circumstance determined that Ms. Parpard's triage of the patient
 54 was inadequate and inappropriate, and, as a result, Ms. Parpard
 55 was terminated from her employment with Coral Springs Medical
 56 Center, and

57 WHEREAS, a tort claim was filed on behalf of Kristi Mellen,
 58 as personal representative of the Estate of Michael Munson, Case

Page 2 of 4

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

10-00194-12 201270__

59 No. 09-036106 (02) in the Circuit Court of the Seventeenth
60 Judicial Circuit of Florida, and

61 WHEREAS, Kristi Mellen, as personal representative of the
62 Estate of Michael Munson, and the North Broward Hospital
63 District did agree to amicably settle this matter, and

64 WHEREAS, a specific condition of the settlement was that
65 the North Broward Hospital District would permit the entry of a
66 consent judgment in the amount of \$3 million, and

67 WHEREAS, the North Broward Hospital District has paid the
68 statutory limit of \$200,000 to the Estate of Michael Munson,
69 pursuant to s. 768.28, Florida Statutes, and

70 WHEREAS, the North Broward Hospital District has agreed to
71 fully cooperate and promote the passage of this claim bill in
72 the amount of \$2.8 million, NOW, THEREFORE,

73

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

75

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

78 Section 2. The North Broward Hospital District is
79 authorized and directed to appropriate from funds of the
80 district not otherwise appropriated, including insurance, and to
81 draw a warrant payable to Kristi Mellen, as personal
82 representative of the Estate of Michael Munson, in the sum of
83 \$2.8 million as compensation for the death of Michael Munson.

84 Section 3. The amount paid by the North Broward Hospital
85 District pursuant to s. 768.28, Florida Statutes, and the amount
86 awarded under this act are intended to provide the sole
87 compensation for all present and future claims arising out of

10-00194-12 201270__

88 the factual situation described in this act which resulted in
89 the death of Michael Munson. The total amount paid for
90 attorney's fees, lobbying fees, costs, and other similar
91 expenses relating to this claim may not exceed 25 percent of the
92 amount awarded under this act.

93

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



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 |
|----------|------|-------------|
| 01/27/12 | SM | Unfavorable |
| 2/23/12 | RC | Favorable |
| | | |
| | | |

January 27, 2012

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

Re: **SB 1076 (2012)** – Senator Audrey Gibson
Relief of Anais Cruz Peinado by the School Board of Miami-Dade
County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$1,175,000 IN LOCAL FUNDS FOR THE RELIEF OF ANAIS CRUZ PEINADO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JUAN CARLOS RIVERA. THE CLAIM IS BASED ON A COURT-APPROVED SETTLEMENT. JUAN CARLOS RIVERA DIED AFTER HE WAS STABBED BY ANOTHER STUDENT WHILE ATTENDING SCHOOL.

FINDINGS OF FACT:

Juan Carlos Rivera was born in Cuba in 1992, and raised in Havana. When he was approaching the age of 16, which is the age for mandatory enlistment in the Cuban National Service, he left Cuba to live with his father in Spain. After a year in Spain, he moved to Miami, Florida.

Once he arrived in Miami, he was enrolled at Coral Gables High School, and began school in the Fall of 2009. On September 15, 2009, Juan Carlos was walking down a hallway, in the process of changing classes, when he encountered a fellow student named Andy Rodriguez, and a fist fight ensued. The fist fight started in the hallway (known as the "700 Hallway"), but within seconds, turned a corner and spilled out into a courtyard. Once in the courtyard, Andy Rodriguez pulled out a knife and stabbed Juan Carlos five

times. First Responders reported that Juan Carlos, just before dying, insisted that he was a victim in the incident, and that he had acted in self defense. He was 17 years old when he died.

The high school has security cameras throughout the premises, has hall monitors for almost all hallways and areas, and asks teachers to monitor change overs by standing in the doorway of their classrooms as students move from class to class. The school also has a School Police Officer present at the school every day. The 700 hallway, where the fight began, did not have a security camera. This particular hallway did not have any hall monitors or teachers monitoring the hallway while students changed classes because no classrooms were located in that hallway. In the courtyard, however, which is where Juan Carlos was stabbed, there were security cameras that did capture the incident. On the day of the stabbing, the School Police Officer assigned to the school was not present because he was on administrative leave.

Andy Rodriguez had been suspended from school seven times in three years, with a few of those suspensions resulting from fighting. He had never been found to carry a weapon to school. The school had no knowledge of arguments or tension between Juan Carlos and Andy Rodriguez, as Juan Carlos was a new student at Coral Gables High School. Andy Rodriguez was found guilty of second degree murder and was sentenced to 40 years in prison.

LITIGATION HISTORY:

A Complaint and Request for Jury Trial was filed in the 11th Judicial Circuit for Miami-Dade County on behalf of Juan Carlos's estate on April 25, 2010. The parties settled the case prior to going to trial, for \$1,875,000.

Following the approval of the settlement agreement by the circuit court, the Miami-Dade County School Board tendered \$200,000 to Claimant. The insurance carrier for the Miami-Dade County School Board tendered \$500,000 to Claimant. Twenty-five percent of the amount paid was deducted for attorney's fees and costs.

CLAIMANT'S POSITION:

The Miami-Dade County School Board has an absolute duty to keep its students safe based on the doctrine of *in loco parentis*. The School Board is liable for negligently securing Coral Gables High School, which caused Juan Carlos Rivera's death. It was foreseeable that Andy Rodriguez would act violently, and that a fight could break out which would include weapons. The School Board was negligent for (1) failing to have security monitors in the "700 Hallway"; (2) failing to monitor the security cameras; (3) failing to place hall monitors in the 700 hallway; and (4) failing to install metal detectors or conduct random wandering of students.

RESPONDENT'S POSITION:

The Miami-Dade County School Board does not admit liability in this case, and does not support or object to the passage of this claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the Miami-Dade County School Board was liable in negligence for the death of Juan Carlos Rivera, and, if so, whether the amount of the claim is reasonable.

Proximate cause is a cause which, in natural and continuous sequence, is unbroken by any intervening cause, produces the injury, and without which the injury would not have occurred. A willful, malicious, or criminal act as a general rule breaks the chain of causation, because of a lack of foreseeability. See Lingefelt v. Hanner, 125 So. 2d 325 (Fla. 3d DCA 1960). The School Board had taken reasonable measures to secure the school grounds at Coral Gables High School. It was not foreseeable that Andy Rodriguez would bring a weapon to school, that he would get into a fist fight with Juan Carlos, or that he would pull out a knife and kill him.

The failure of the School Board to install metal detectors, or install more security cameras, cannot be a basis for a finding of negligence. The legislative decision of a governmental entity to not appropriate funds to build, expand or modernize a facility is immune from liability for negligence. Trianon Park Condominium Ass'n v. City of Hialeah, 468 So. 2d 912 (Fla. 1985). Furthermore, had there been a security camera in the 700 hallway, it merely would have recorded the fight, not prevented it.

The payment of a claim bill is an act of legislative grace. In deciding whether this claim should be paid, the Senate should consider the fact that the legal liability of the School Board was not proven. The criminal act committed by Andy Rodriguez was not foreseeable, and it was an independent intervening cause of Juan Carlos's death. In addition, the estate has already received \$700,000 in compensation for Juan Carlos's tragic death.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

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.

SOURCE OF FUNDS:

If Senate Bill 1076 is approved, the Miami-Dade County School Board will pay the amount from its General Revenue Fund.

RECOMMENDATIONS:

For the reasons set forth above, Senate Bill 1076 (2012) should be reported UNFAVORABLY.

Respectfully submitted,

Jessica Enciso Varn
Senate Special Master

cc: Senator Audrey Gibson
Debbie Brown, Secretary of the Senate
Counsel of Record

By Senator Gibson

1-00952-12

20121076__

A bill to be entitled

An act for the relief of Anais Cruz Peinado by the School Board of Miami-Dade County; providing for an appropriation to compensate Anais Cruz Peinado, mother of Juan Carlos Rivera, deceased, for the death of Juan Carlos Rivera as a result of the negligence of the School Board of Miami-Dade County; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on September 15, 2009, Juan Carlos Rivera was a student at Coral Gables Senior High School in the care and custody of the School Board of Miami-Dade County, Florida, and

WHEREAS, on September 15, 2009, Juan Carlos Rivera was attacked, stabbed, and murdered on the grounds of Coral Gables Senior High School by another student, and

WHEREAS, the Estate of Juan Carlos Rivera has alleged, through a lawsuit filed April 28, 2010, in Miami-Dade County, that the negligence of the School Board of Miami-Dade County was the proximate cause of the death of Juan Carlos Rivera, and

WHEREAS, Anais Cruz Peinado has suffered extreme mental anguish and undergone great suffering as a result of the loss of her son, and

WHEREAS, the Estate of Juan Carlos Rivera and the School Board of Miami-Dade County, Florida have reached a compromise settlement in the amount of \$1,875,000, which was approved by the school board on October 17, 2011, and

WHEREAS, pursuant to the agreement between the parties, the settlement has been partially satisfied in the amount of

Page 1 of 2

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

1-00952-12

20121076__

\$700,000, and

WHEREAS, the claim shall be considered fully satisfied upon payment of an additional \$1,175,000 by the School Board of Miami-Dade County to Anais Cruz Peinado, as beneficiary of the Estate of Juan Carlos Rivera, pursuant to a claim bill authorized by the Florida Legislature, NOW, THEREFORE,

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

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

Section 2. The School Board of Miami-Dade County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of \$1,175,000, payable to Anais Cruz Peinado, mother of Juan Carlos Rivera, as compensation for the death of Juan Carlos Rivera due to the negligence of the School Board of Miami-Dade County.

Section 3. The amount paid by the School Board of Miami-Dade County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Juan Carlos Rivera. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

Page 2 of 2

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)

2-27-12

Meeting Date

Topic Claims- Peinado

Bill Number SB 1076
(if applicable)

Name Lee Killinger

Amendment Barcode _____
(if applicable)

Job Title _____

Address 324 E. Virginia St.
Street

Phone 850-322-8907

Tallahassee FL 32301
City State Zip

E-mail lee@anfieldflorida.com

Speaking: For Against Information

Representing Peinado- claimant

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Rules Committee

BILL: CS/CS/SB 1208

INTRODUCER: Rules Committee, Governmental Oversight and Accountability Committee and Banking and Insurance Committee

SUBJECT: OGSR/Unclaimed Property/Department of Financial Services

DATE: February 28, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Matiyow | Burgess | BI | Favorable |
| 2. | Seay | Roberts | GO | Fav/CS |
| 3. | Seay | Phelps | RC | Fav/CS |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review of the public records exemption for social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Property identifiers could include bank account numbers, credit card numbers, or insurance policy numbers.

This bill removes the scheduled repeal date of October 2, 2012, for this exemption. This bill expands the current public records exemption by removing language allowing social security numbers to be released to a person registered under Chapter 717, F.S. with DFS who is an attorney, Florida-certified public accountant, private investigator duly licensed in Florida, or a private investigative agency licensed under Chapter 493, F.S., for the limited purpose of locating owners of abandoned or unclaimed property. As this bill expands the current exemption, it is subject to the Open Government Sunset Review Act and will expire on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

This bill substantially amends section 717.117 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate,

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24, Fla. Constitution.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., 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 Florida Constitution also establishes a right of access to 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, except those records exempted by law or the state constitution.

⁵ Section 119.011(11), F.S.

communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁵

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c), Fla. Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c), Fla. Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(5)(a), F.S.

- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Act also requires consideration of the following:

- 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?

Public Records Exemption in Section 717.117(8), F.S.

The Department of Financial Services (DFS) Bureau of Unclaimed Property (Bureau) administers the Florida Disposition of Unclaimed Property Act (Ch. 717, F.S.), which establishes the statutory procedure for the reversion and disposition of presumed abandoned, real or personal, property to the state. Under s. 717.119, F.S., the holders, including banks and insurance companies, of property that has not been claimed for a certain period of time are required to submit the unclaimed property to DFS. The proceeds from property that remains unclaimed is then deposited into the Department of Education School Trust Fund, except for \$15 million that is retained in a separate account for the prompt payment of verified claims.¹⁷ The Bureau utilizes multiple means to fulfill the state's obligation under s. 717.118, F.S., to notify owners of unclaimed property accounts valued over \$250 in a cost-effective manner.

Section 717.1400, F.S., mandates attorneys, public accountants, private investigators, or private investigative agencies to be certified or licensed within Florida in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS. A claimant's representative will attempt to locate the owner of unclaimed property and, through a power-of-attorney agreement, offer assistance in recovering the property in exchange for a fee. In order to identify the owner of unclaimed property, claimants' representatives will utilize the information contained in the unclaimed property reports filed with the Bureau.

Under the exemption in s. 717.117(8)(b), F.S., social security numbers and property identifiers contained in unclaimed property reports are confidential and exempt from public disclosure. In 2007, legislation was enacted that replaced the phrase "financial account numbers" with "property identifiers," defined as a "descriptor used by the holder to identify the unclaimed

¹⁶ Section 119.15(4)(b), F.S.

¹⁷ Section 717.123, F.S.

property.”¹⁸ Property identifiers contained within property reports could include bank account numbers, credit card numbers, or insurance policy numbers. The parties affected by this exemption include owners of unclaimed property, registered claimants’ representatives, and other non-registered third parties. The purpose of the exemption is to protect owners of unclaimed property from identity theft and related crimes.

Section 717.117(8)(c), F.S., allows the disclosure of property reports, containing social security numbers of unclaimed property owners along with descriptions of the property, for the limited purpose of locating the owners. The property reports can be obtained by registered claimants’ representatives from the Bureau’s website or compact discs produced by the Bureau. Representatives of the Bureau indicate that social security numbers and property identifiers utilized within the unclaimed property reports are not readily available through other means. However, access to an individual’s social security number can result in exploitation of that individual’s financial, educational, medical, or familial records or forgery of documents.

The general exemption in s. 119.071, F.S., applies to each state agency and exempts from public records social security numbers, bank account numbers, debit or charge card numbers, and credit card numbers. The exemption in s. 717.117(8), F.S., for social security numbers contained in unclaimed property reports is meant to be stronger than the general exemption, since the reports are only released to registered claimants’ representatives for the sole purpose of locating the owners of the unclaimed property. However, there have been reports that unregistered persons have received the Bureau’s compact discs containing the social security numbers of unclaimed property owners, which are often listed as a Federal Employee Identification Number. This poses a significant threat to the personal and financial information of unclaimed property owners.

Banking and Insurance Committee’s Open Government Sunset Review

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Banking and Insurance Committee recommended that the Legislature retain the public records exemption established in s. 717.117(8), F.S., which makes social security numbers and property identifiers contained in unclaimed property reports confidential and exempt from public disclosure.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the confidential nature of social security numbers and property identifiers contained in unclaimed property reports. Additionally, the Sunset Review offered findings that the public records exemption be expanded due to unregistered persons’ access to the social security numbers of unclaimed property owners. Section 717.117(8)(c) currently restricts the release of social security numbers to persons registered with DFS as an attorney, a Florida-certified public accountant, private investigator, or a private investigative agency. Due to the risk of unclaimed property being fraudulently obtained and identity theft, the requisite public necessity exists to expand the public records exemption.

¹⁸ Section 717.117(8)(a), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 717.117, F.S., saving from repeal the public records exemption for social security numbers and other property identifiers in unclaimed property reports held by the Department of Financial Services; expanding the public records exemption to provide that *all* social security numbers and other property identifiers in unclaimed property reports are confidential and exempt; subjecting the expanded public records exemption to the Open Government Sunset Review Act.

Section 2 provides a public necessity statement as required by the State Constitution. It provides that expanding the public records exemption serves a public necessity as it guards against identity theft and unclaimed property being fraudulently obtained.

Section 3 provides an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill expands a public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands a public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption will protect individuals from potential identity theft, prevent fraudulent claims of unclaimed property, and other misuses of social security numbers and property identifiers related to personal finances and other private information.

Registered claimants' representatives' ability to locate owners may be impacted by no longer providing them with the social security numbers of those individuals who have unclaimed or abandoned property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules – February 27, 2012:

The CS removes language previously in the bill allowing the first five digits of social security numbers to be released to a person registered under Chapter 717, F.S. with DFS who is an attorney, Florida-certified public accountant, private investigator duly licensed in Florida, or a private investigative agency licensed under Chapter 493, F.S., for the limited purpose of locating owners of abandoned or unclaimed property.

CS by Governmental Oversight and Accountability – February 22, 2012:

The CS allows the first five digits of social security numbers to be released to a person registered under Chapter 717, F.S. with DFS who is an attorney, Florida-certified public accountant, private investigator duly licensed in Florida, or a private investigative agency licensed under Chapter 493, F.S., for the limited purpose of locating owners of abandoned or unclaimed property. The original bill did not allow for the release of social security numbers to those registered with DFS under Chapter 717, F.S.

B. Amendments:

None.



103184

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/27/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Rules (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 26 - 39
and insert:

~~(c) Social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, Florida-certified public accountant, private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.~~

(a)~~(d)~~ This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.



103184

14 (b) As used in this subsection, the term "property
15 identifier" means the descriptor used by the holder to identify
16 the unclaimed property.

17 (c)~~(e)~~ This subsection is subject to the Open Government
18

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

20 And the title is amended as follows:

21 Delete lines 7 - 8

22 and insert:

23 law; deleting the provision that requires the release
24 of social security numbers for certain purposes;
25 providing for future

By the Committees on Governmental Oversight and Accountability;
and Banking and Insurance

585-03769-12

20121208c1

A bill to be entitled

An act relating to public records; amending s.

717.117, F.S.; revising the public records exemption

for information held by the Department of Financial

Services relating to unclaimed property to permanently

exempt social security numbers from the public records

law; allowing the release of the first five digits of

the number for certain purposes; providing for future

legislative review and repeal of the exemption under

the Open Government Sunset Review Act; providing a

statement of public necessity; providing an effective

date.

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

Section 1. Subsection (8) of section 717.117, Florida Statutes, is amended to read:

717.117 Report of unclaimed property.—

(8) ~~(a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.~~

~~(b)~~ Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a)(c) The first five digits of social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, a Florida-

Page 1 of 2

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

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certified public accountant, a private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.

~~(b)(d)~~ This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

(c) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

~~(d)(e)~~ This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed October 2, ~~2017~~ 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that social security numbers contained in reports of unclaimed property remain confidential and exempt from public records requirements. Social security numbers, which are used by a holder of unclaimed property to identify such property, could be used to fraudulently obtain unclaimed property. The release of social security numbers could also place owners of unclaimed property at risk of identity theft. Therefore, the protection of social security numbers is a public necessity in order to prevent the fraudulent use of such information by creating falsified or forged documents that appear to demonstrate entitlement to unclaimed property and to prevent opportunities for identity theft. Such use defrauds the rightful owner or the State School Fund, which is the depository for all remaining unclaimed funds.

Section 3. This act shall take effect October 1, 2012.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD



2/27/2012
Meeting Date

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

Topic UNCLAIMED PROPERTY

Bill Number 1208
(if applicable)

Name TOM WEISKOTTEN

Amendment Barcode _____
(if applicable)

Job Title OWNER / G.R. ROBBINS + ASSOC.

Address 3375 - C CAPITAL CIR NE
Street
TALLAHASSEE FL 32312
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing G.R. ROBBINS + ASSOC PA, CPAs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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



02-27-12

Meeting Date

Topic UNCLAIMED PROPERTY BILL

Bill Number 1208
(if applicable)

Name HARRY CARSON

Amendment Barcode _____
(if applicable)

Job Title VICE PRESIDENT

Address 1815 MICCOSUKEE COMMINS DR STE 106

Phone 850-385-9627

Street

TALLAHASSEE FL 32308

City

State

Zip

E-mail CARSON PA @ COMCAST.NET

Speaking: For Against Information

Representing CARSON, CARSON & ASSOCIATES, PA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.27.12

Meeting Date

Topic unclaimed property SSNs

Bill Number 1208
(if applicable)

Name Ashley Mayer

Amendment Barcode 103184
(if applicable)

Job Title Dir. Policy & Legal Affairs

Address Capitol PL-4

Phone 413-2863

Street

Tallahassee FL
City State Zip

E-mail ashley.mayer@myfloridachamber.com

Speaking: For Against Information

Representing Dep't Financial Services, CTO's office

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Vice Chair*
Education Pre-K - 12, *Vice Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Military Affairs, Space, and Domestic Security
Reapportionment
Rules
Transportation

SENATOR LARCENIA J. BULLARD

39th District

February 27, 2012

Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100



Dear Senator Thrasher:

I am respectfully requesting excusal from the Rules Committee meeting scheduled on Monday, February 27, 2012.

Sincerely,



Senator Larcenia J. Bullard
District 39

CC: John Phelps, Staff Director

REPLY TO:

- 8603 South Dixie Highway, Suite 304, Miami, Florida 33143 (305) 668-7344
- 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5127

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR EVELYN J. LYNN
7th District

COMMITTEES:
Budget - Subcommittee on Higher Education
Appropriations, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Higher Education
Reapportionment
Rules

JOINT COMMITTEE:
Legislative Auditing Committee

February 21, 2012

The Honorable John Thrasher
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Thrasher:

I am requesting that you excuse me from Special Order Calendar Group and the Rules Committee meeting to be held on Monday, February 27, 2012. I have to attend a constituent event in my district and have been excused by the President.

Thank you and I shall look forward to your approval of this request.

Sincerely,

Evelyn J. Lynn
Florida State Senator
District 7

EJL/ct

cc: Mr. John Phelps – Staff Director

REPLY TO:

- 536 North Halifax Avenue, Suite 101, Daytona Beach, Florida 32118 (386) 238-3180
- 416 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

- Budget, *Chair*
- Rules, *Vice Chair*
- Agriculture
- Banking and Insurance
- Budget - Subcommittee on Finance and Tax
- Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
- Education Pre-K - 12
- Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:

Legislative Budget Commission, *Chair*

SENATOR JD ALEXANDER

17th District

February 27, 2012

Senator John Thrasher, Chair
 Committee on Rules
 400 Senate Office Building
 404 S. Monroe Street
 Tallahassee, FL 32399

*all
ms*

RECEIVED

FEB 27 2012

SENATE
RULES COMMITTEE

Dear Senator Thrasher,

I respectfully request permission to be absent from the Committee on Rules, today, February 27, 2012. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

JD Alexander
Senator, District 17

Xc: John B. Phelps

REPLY TO:

- 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Caption: Senate Rules Committee

Case:

Judge:

Type:

Started: 2/27/2012 2:05:36 PM

Ends: 2/27/2012 4:23:22 PM

Length: 02:17:47

2:05:39 PM Sen Thrasher calls the meeting to order
2:05:44 PM roll call
2:05:46 PM quorum present
2:06:09 PM Sen Thrasher explains meeting
2:06:35 PM Sen Detert on SB 2130
2:06:51 PM Sen Detert explains bill
2:07:37 PM Grace Lovett Dept of Legal Affairs waives in support
2:07:48 PM no debate
2:07:54 PM Sen Detert waives close
2:07:57 PM roll call on SB 2130
2:08:10 PM SB 2130 favorable
2:08:35 PM Sen Richter explains CS/SB 1208
2:09:02 PM Sen Richter on A 103184
2:09:35 PM without objection amendment adopted
2:09:39 PM Ashley Mayer Dept of Financial Services speaks
2:10:12 PM Sen Siplin ask question
2:10:23 PM Ms. Mayer responds
2:11:04 PM Harry Carson of Carson, Carson & Assoc speaks
2:12:05 PM Tom Weiskotten waives in opposition
2:12:26 PM Sen Richter closes on SB 1208
2:12:40 PM Sen Richter CS bill without objection adopted
2:12:48 PM roll call
2:12:52 PM CS/SB 1208 passes
2:13:33 PM Sen Fasano on SB 44
2:13:56 PM Sen Jones offers strike all
2:14:11 PM Sen Fasano explains strike all
2:18:29 PM A 755788 by Sen Jones
2:18:45 PM amendment adopted
2:19:10 PM Lance Block speaks on SB 44
2:22:19 PM Sen Margolis ask Mr Block a question
2:22:28 PM Mr. Block answers
2:23:34 PM Sen Gaetz questions Mr. Block
2:23:49 PM Mr. Block answers
2:24:50 PM Sen Gaetz ask question of Mr. Block
2:25:06 PM Mr. Block responds
2:25:39 PM Irving Hoffman Father of Rachel Hoffman speaks
2:28:57 PM Steve Carter waives in support
2:29:08 PM Mariam Coles litigation attorney for City of Tallahassee waives in support
2:29:17 PM Lewis Shelley Deputy City Attorney City of Tallahassee waives in support
2:29:21 PM Ron Book waives in support
2:29:48 PM Mr. Block introduces Rachel's mother
2:29:53 PM Sen Fasano closes
2:30:26 PM Roll call on SB 44 and CS by Sen Jones adopted
2:30:54 PM SB 44 passes
2:31:22 PM Sen Flores on SB 10
2:31:28 PM Sen Flores explains bill
2:37:38 PM SB 10 TP
2:37:49 PM SB 6 by Sen Negron
2:38:02 PM Sen Negron explains bill
2:38:44 PM Sen Gaetz ask question of Sen Negron
2:38:55 PM Sen Negron responds
2:39:19 PM Special Master answers

2:39:33 PM Sen Negron waives close
2:40:16 PM roll call
2:40:28 PM SB 6 passes
2:40:51 PM Sen Braynon explains SB 16
2:42:22 PM Amendment 816710 by Smith
2:42:33 PM Sen Braynon explains amendment
2:43:01 PM without objection amendment adopted
2:43:12 PM Evan Grob waives in support
2:43:23 PM Marlon Moffett Miami Dade County waives in support
2:43:37 PM Sen Braynon waives close
2:43:46 PM Sen Smith moves CS adopted
2:43:50 PM roll call on SB 16
2:44:03 PM SB 16 passes
2:44:37 PM Sen Flores on SB 10
2:44:49 PM Sen Flores explains amendment 387752
2:45:18 PM Sub Amendment late filed
2:45:23 PM SB 10 TP
2:45:43 PM Sen Smith on SB 22
2:47:02 PM Frank Winkles speaks for Traci Wohlgemuth
2:51:40 PM Traci Wohlgemuth speaks
2:53:04 PM Mr. Winkles speaks
2:54:08 PM Jermiah Hawkes attorney of Pasco Sheriff's Office speaks
2:57:03 PM Sen Negron ask question
2:57:12 PM Mr. Hawkes responds
2:57:22 PM Sen Negron for a followup
2:57:30 PM Mr. Hawkes answers
2:57:41 PM Sen Negron ask question
2:57:56 PM Mr. Hawkes responds
2:58:18 PM Sen Negron with a followup
2:58:29 PM Mr. Hawkes responds
2:59:05 PM Sen Thrasher speaks on the bill
2:59:55 PM Sen Smith closes on the bill
3:00:11 PM roll call on SB 22
3:00:55 PM SB 22 passes
3:01:22 PM Sen Garcia explains SB 38
3:05:09 PM Amendment 371176 explained by Sen Garcia
3:05:37 PM Amendment adopted without objection
3:05:50 PM Rick Shirley Sumter School Superintendent speaks
3:09:33 PM Sen Thrasher addresses Mr. Shirley
3:09:48 PM Mr. Shirley responds
3:10:05 PM Sen Siplin questions Mr. Shirley
3:10:14 PM Mr. Shirley responds
3:10:27 PM Sen Siplin with a followup
3:10:39 PM Mr. Shirley responds
3:11:13 PM Mr. Peter Antonacci speaks against the bill
3:15:29 PM Mr. Lee Killinger on behalf of Mr. Brown speaks for the bill
3:16:06 PM Sen Garcia closes on bill
3:16:51 PM Sen Flores moves CS for SB 38
3:16:58 PM roll call on SB 38
3:17:05 PM SB 38 passes
3:17:29 PM Sen Norman explains SB 40
3:19:25 PM Sen Norman waives close
3:19:33 PM roll call on SB 40
3:19:38 PM SB 40 passes
3:19:59 PM Sen Flores explains SB 42
3:21:54 PM Mr. Evon Grodo Assistant County Attorney waives in support
3:22:08 PM Sen Flores waives close
3:22:13 PM roll call on SB 42
3:22:23 PM SB 42 passes
3:22:44 PM Sen Montford explains SB 48
3:24:28 PM Sen Siplin offers Amendment 763994
3:24:39 PM Sen Montford explains amendment

3:24:49 PM without objection amdment adopted
3:25:05 PM Evan Grodo in support
3:25:21 PM Marla Tejelor in support
3:25:27 PM Sen Siplin moves a CS for SB 48 without objection show adopted
3:25:38 PM Sen Montfod waives close
3:25:47 PM roll call on SB 48
3:25:53 PM SB 48 passes
3:26:08 PM Sen Bogdanoff explains SB 50
3:27:59 PM Amendment 556648 late filed amendment by Sen Negron without objection introduced
3:28:12 PM Late filed Amendment adopted
3:28:31 PM Evan Grob speaks on SB 50
3:30:49 PM Mr. Lance Block speaks
3:34:19 PM Sen Siplin quesions Grob
3:34:42 PM Mr. Grob answers
3:34:49 PM Sen Negron questions
3:34:54 PM Mr. Grob answers
3:35:06 PM Sen Negron questions Sen Bogdanoff
3:35:26 PM Mr. Grob answers
3:35:44 PM Sen Bodgadanoff closes on SB 50
3:36:08 PM CS by Sen Negron without objection
3:36:17 PM roll call on SB 50
3:36:21 PM SB 50 passes
3:36:47 PM Sen Negron explains SB 52
3:37:37 PM Sen Negron waives close
3:37:43 PM roll call on SB 52
3:37:48 PM SB 52 passes
3:38:11 PM Sen Negron explains SB 54
3:39:10 PM Sen Negron waives close
3:39:16 PM roll call on SB 54
3:39:19 PM SB 54 passes
3:39:43 PM Sen Flores explains SB 58
3:39:51 PM tp on SB 58
3:40:13 PM Mr. Tim Parsons explains SB 70 on behalf
3:40:34 PM of Senator Storms
3:42:26 PM Waives Close
3:42:29 PM roll call on SB 70
3:42:36 PM SB 70 passes
3:43:00 PM Sen Gibson explains SB 1076
3:43:38 PM Sen Negron ask question of Sen Gibson
3:43:48 PM Sen Gibson responds
3:44:40 PM Lee Killinger waives in support
3:44:53 PM Sen Gibson closes
3:44:59 PM roll call on SB 1076
3:45:06 PM SB 1076 passes
3:45:49 PM Sen Flores explains SB 10
3:47:19 PM Amendment 387752 late filed introduced
3:47:41 PM Sen Flores explains amendment
3:48:51 PM Sub Amendment 623202 by Sen Richter
3:49:09 PM late filed amendment introduced
3:49:19 PM Sen Richter explains sub amendment
3:49:45 PM Sen Negron questions Sen Richter
3:49:54 PM Sen Richter responds
3:50:31 PM Sen Smith ask a question
3:50:39 PM Sen Flores answers
3:50:54 PM Sen Smith with a followup
3:51:00 PM Sen Flores answers
3:51:16 PM Mitzi Roden speaks for the bill
3:57:21 PM Mac Stipanovich speaks against the bill
4:01:16 PM Sen Negron ask Mr. Stipanovich a question
4:01:36 PM Mr. Stipanovich answers
4:03:04 PM Sen Negron with a followup
4:04:08 PM Mr. Stipanovich answers

4:04:37 PM Sen Siplin ask question
4:04:48 PM Mr. Stipanovich answers
4:05:21 PM Sen Siplin with a followup
4:05:30 PM Mr. Stipanovich answers
4:05:40 PM Back on Richter amendment
4:05:57 PM Sen Negron debates amendment
4:07:05 PM Sen Smith debates amendment
4:09:02 PM Sen Jones debates amendment
4:10:02 PM Sen Gardiner in debate of amendment
4:12:06 PM Sen Flores debates amendment
4:15:03 PM Sen Richter closes on amendment
4:21:05 PM Sen Richter closes
4:21:12 PM Sub Amendment not adopted
4:21:16 PM back on Flores amendment
4:21:25 PM Sen Flores waives close
4:21:45 PM Sen Flores amendment adopted
4:21:51 PM Back on the Bill
4:21:58 PM Sen Flores moves CS for SB 10, without objection adopted
4:22:12 PM Sen Flores closes on bill
4:22:32 PM roll call on SB 10
4:22:56 PM SB 10 passes
4:23:08 PM Sen Negron moves we rise