The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, March 3, 2015
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 234** Banking and Insurance / Montford (Similar CS/H 4011)	Motor Vehicle Insurance; Revising the definition of the term “motor vehicle insurance” to include a policy that insures more than four automobiles; revising the definition of the term "policy" to include a policy that insures more than four automobiles, etc. BI 02/03/2015 Fav/CS JU 03/03/2015 RC	
2	**SB 462** Lee (Similar H 503)	Family Law; Providing that a collaborative law process commences when the parties enter into a collaborative law participation agreement; prohibiting a tribunal from ordering a party to participate in a collaborative law process over the party’s objection; providing for confidentiality of communications made during the collaborative law process, etc. JU 03/03/2015 RC	
3	**SB 158** Evers (Similar H 137)	Civil Liability of Farmers; Providing that an existing exemption from civil liability for farmers who gratuitously allow a person to enter upon their land for the purpose of removing farm produce or crops left in the field applies at any time, rather than only after harvesting; revising exceptions to the exemption, etc. AG 02/16/2015 Favorable JU 03/03/2015	
4	**SB 570** Dean (Identical H 619)	Service of Process of Witness Subpoenas; Providing that service of a subpoena on a witness in a civil traffic case may be made by United States mail directed to the witness at the last known address and that such service must be mailed before a specified period, etc. JU 03/03/2015 TR RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 672** Dean (Identical H 667)	Service of Process; Authorizing a criminal witness subpoena commanding a witness to appear for a deposition to be posted at the witness's residence by an authorized person if one attempt to serve the subpoena has failed, etc. JU 03/03/2015 CJ RC	
6	**SB 838** Bradley	Justices and Judges; Providing that a retired justice or retired judge is not subject to certain restrictions on employment after retirement otherwise applicable to retired employees; providing that a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; providing a directive to the Division of Law Revision and Information; providing findings of an important state interest, etc. JU 03/03/2015 ACJ AP	
7	**SB 630** Joyner (Similar H 283)	Transfers to Minors; Specifying that certain transfers from a trust are considered as having been made directly by the grantor of the trust; authorizing custodianships established by irrevocable gift and by irrevocable exercise of power of appointment to terminate when a minor attains the age of 25, subject to the minor's right in such custodianships to compel distribution of the property upon attaining the age of 21, etc. JU 03/03/2015 BI RC	
8	**SB 72** Flores	Relief of Altavious Carter by the Palm Beach County School Board; Providing for the relief of Altavious Carter by the Palm Beach County School Board; providing for an appropriation to compensate Mr. Carter for injuries sustained as a result of the negligence of a bus driver of the Palm Beach County School District; providing a limitation on the payment of fees and costs, etc. SM 02/26/2015 Recommendation: Favorable JU 03/03/2015 AED AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 58** Simpson (Similar H 3537)	Relief of C.M.H. by the Department of Children and Families; Providing for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of fees and costs, etc. SM 02/26/2015 Recommendation: Fav/1 Amendment JU 03/03/2015 AHS AP	

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 Committee on Judiciary

BILL: CS/SB 234

INTRODUCER: Banking and Insurance Committee and Senator Montford

SUBJECT: Motor Vehicle Insurance

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 234 revises the definitions of "motor vehicle insurance" and "policy" to increase the number of automobiles that may be insured on the same private passenger motor vehicle insurance policy. Existing law prohibits the writing of a personal automobile insurance policy that provides coverage for more than four automobiles on a single policy. As a result of the changes in this bill, vehicle owners may purchase, and insurance companies may issue, single policies that cover more than four private passenger motor vehicles.

II. Present Situation:

"Motor vehicle insurance," as defined in the statutes,[1] is insurance issued to a natural person or one or more related individuals residing in the same household. The insurance policy provides coverage for private passenger automobiles that are not used as public or livery conveyances or rented to others or used in the occupation, profession, or business of the insured, unless that occupation, profession, or business is farming.

The current definitions of "motor vehicle insurance" and "policy"[2] limit to four the number of automobiles that may be insured on a single private passenger insurance policy. Some insurance industry officials believe that this is an antiquated statute that was written at a time when society was less mobile and people did not envision a family having a large number of vehicles. The

[1] Section 627.041(8), F.S.
[2] Section 627.728(1)(a)2., F.S.

Office of Insurance Regulation has speculated that the statute might have been written to make certain that small business owners did not attempt to insure commercial vehicles under the cover of a personal automobile policy.[3] Currently, if a consumer needs to insure more than four automobiles in a household, then he or she must obtain multiple insurance policies or what is referred to as a split policy. A policy that insures five or more vehicles is considered fleet insurance and treated as commercial insurance for areas of rating, notices of cancellation, renewal, and nonrenewal.[4]

III. Effect of Proposed Changes:

This bill deletes the prohibition against insuring more than four automobiles in a single motor vehicle insurance policy. This is accomplished by amending the definitions of "motor vehicle insurance" and "policy" found in sections 627.041(8) and 627.728(1)(a)2., F.S. As a result, consumers may purchase, and insurers may issue, single policies that insure an unlimited number of private passenger motor vehicles.

The Office of Insurance Regulation has indicated that it has no concerns with the removal of this restriction from the statutes.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[3] Office of Insurance Regulation, *2015 Agency Legislative Bill Analysis for Senate Bill 234* (Jan. 20, 2015) (on file with the Senate Committee on Judiciary).
[4] *Id*.

B. Private Sector Impact:

Insurance companies might realize an administrative benefit and paperwork reduction by not having to write multiple policies where one single policy would be allowed under this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: sections 627.041 and 627.728.

This bill reenacts the following sections of the Florida Statutes: sections 626.9541, 627.0651, 627.4133, 627.420, 627.43141, 627.7277, 627.7281 and 627.7295 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on February 3, 2015:
The CS conforms the change to the definition of a motor vehicle insurance policy found in s. 627.041(8)(b), F.S., to the definition of a motor vehicle insurance policy found in s. 627.728(1)(a)2., F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 65 - 75.

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

And the title is amended as follows:

Delete lines 8 - 14

and insert:

four automobiles; providing an effective date.

By the Committee on Banking and Insurance; and Senator Montford

A bill to be entitled

An act relating to motor vehicle insurance; amending s. 627.041, F.S.; revising the definition of the term "motor vehicle insurance" to include a policy that insures more than four automobiles; amending s. 627.728, F.S.; revising the definition of the term "policy" to include a policy that insures more than four automobiles; reenacting s. 627.0651(5)(b), F.S., to incorporate the amendment made to s. 627.041, F.S., in a reference thereto; reenacting ss. 626.9541(1)(o), 627.4133(1)(a) and (b), 627.420, 627.43141(2), 627.7277(1), 627.7281, and 627.7295(4), to incorporate the amendment made to s. 627.728, Florida Statutes, in references thereto; providing an effective date.

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

Section 1. Subsection (8) of section 627.041, Florida Statutes, is amended to read:

627.041 Definitions.—As used in this part:

(8) "Motor vehicle insurance" means a policy of motor vehicle insurance delivered or issued for delivery in the state by an authorized insurer:

(a) Insuring a natural person as the named insured or one or more related individuals resident of the same household, or both; and

(b) Insuring a motor vehicle of the private passenger ~~type~~ or station wagon type, which ~~motor vehicle~~ is not used as public or livery conveyance for passengers or rented to others, or

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

insuring any other four-wheeled motor vehicle having a capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured, other than farming;

other than any policy issued under an automobile insurance risk apportionment plan~~; or other than any policy insuring more than four automobiles;~~ or ~~other than~~ any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

Section 2. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

(1) As used in this section, the term:

(a) "Policy" means the bodily injury and property damage liability, personal injury protection, medical payments, comprehensive, collision, and uninsured motorist coverage portions of a policy of motor vehicle insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals resident of the same household; and

2. Insuring only a motor vehicle of the private passenger ~~type~~ or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under an automobile insurance assigned risk plan~~; insuring more than four automobiles;~~ or covering garage, automobile sales agency, repair

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

59 shop, service station, or public parking place operation
60 hazards.
61
62 The term “policy” does not include a binder as defined in s.
63 627.420 unless the duration of the binder period exceeds 60
64 days.
65 Section 3. Paragraph (b) of subsection (5) of s. 627.0651,
66 Florida Statutes, is reenacted for the purpose of incorporating
67 the amendment made by this act to s. 627.041, Florida Statutes,
68 in a reference thereto.
69 Section 4. Paragraph (o) of subsection (1) of s. 626.9541,
70 paragraphs (a) and (b) of subsection (1) of s. 627.4133, s.
71 627.420, subsection (2) of s. 627.43141, subsection (1) of s.
72 627.7277, s. 627.7281, and subsection (4) of s. 627.7295,
73 Florida Statutes, are reenacted for the purpose of incorporating
74 the amendment made by this act to s. 627.728, Florida Statutes,
75 in references thereto.
76 Section 5. This act shall take effect July 1, 2015.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD
3rd District

February 23, 2015

Senator Miguel Diaz de la Portilla, Chair
Senate Judiciary Committee
406 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz de la Portilla:

I respectfully request that CS/SB 234 be scheduled for a hearing before the Senate Judiciary Committee. CS/SB 234 would remove the limitation on the number of cars that may be insured under a single personal lines motor vehicle insurance policy.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

Bill Montford

William "Bill" Montford
State Senator, District 3

cc: Tom Cibula, Staff Director

BJM/mam

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

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 462

INTRODUCER: Senator Lee

SUBJECT: Family Law

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Pre-meeting**
2.			RC	

I. Summary:

SB 462 establishes the Collaborative Law Process Act in statute as the basic framework for a collaborative law process to facilitate the out-of-court settlement of dissolution of marriage and paternity cases. The process is a type of alternative dispute resolution, which employs collaborative attorneys, mental health professionals, and financial specialists to help the parties reach a consensus. The terms of the process are contained in a collaborative law participation agreement between the parties.

Under the bill, issues that may be resolved through the collaborative process, include but are not limited to:

- Alimony and child support;
- Marital property distribution;
- Child custody and visitation;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

The bill also defines under what circumstances the collaborative law process begins and ends. The collaborative law process begins when the parties enter into a collaborative law participation agreement. Under the bill, parties may enter into a collaborative law participation agreement before filing a petition with the court or while the legal proceeding is pending. The bill also allows for partial resolution of issues collaboratively, with the remainder to be resolved through the traditional adversarial process.

Under the bill, collaborative law communications, which are communications made as part of the collaborative process, are generally confidential and privileged from disclosure, not subject to discovery in a subsequent court proceeding, and inadmissible as evidence. However, the bill provides exceptions to the privilege.

The effect of the bill is contingent upon the adoption of implementing rules by the Florida Supreme Court.

II. Present Situation:

Collaborative Law Process

The collaborative law process, a type of alternative dispute resolution, is designed to facilitate the out-of-court settlement of dissolution of marriage cases. The process employs collaborative attorneys, mental health professionals, and financial specialists to help the parties reach consensus. The parties, attorneys, and team of professionals negotiate various terms, such as the distribution of property, alimony, and child visitation and support. A collaborative law participation agreement provides the structure for how the parties will proceed.

Once the parties reach agreement on a disputed matter, they sign and file with the court the marital settlement agreement.

The purported benefits of a collaborative divorce are that the process hastens resolution of disputed issues and that the total expenses of the parties are less than the parties would incur in traditional litigation. Although a comparison of costs is not available, the International Academy of Collaborative Professionals (IACP) studied 933 cases in which the parties agreed to the collaborative process.

The IACP found that:

- Eighty percent of all collaborative cases resolved within 1 year;
- Eighty six percent of the cases studied were resolved with a formal agreement and no court appearances; and
- The average fees for all professionals totaled $24,185.[1]

Some jurisdictions disfavor the collaborative process for cases involving domestic violence, substance abuse, or severe mental illness.[2]

History of Collaborative Law Movement

The collaborative law movement, starting in 1990, began to significantly expand after 2000.[3] Known as an interdisciplinary dispute resolution process, collaborative law envisions a collaborative team of professionals assembled to assist the divorcing couple in negotiating resolution of their issues.

Today, collaborative law is practiced in every state, in every English-speaking country, and in other countries.[4] Established in 2000, the International Academy of Collaborative Professionals

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[1] Glen L. Rabenn, Marc R. Bertone, and Paul J. Toohey, *Collaborative Divorce – A Follow Up*, 55-APR Orange County Law 32, 36 (Apr. 2013).
[2] *Id*. at 36.
[3] John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20, 22 (Jan. 2013).
[4] *Id*.

has more than 4,000 professionals as members from 24 countries.[5] In the United States, at least 30,000 attorneys and family professionals have been trained in the collaborative process.[6]

Uniform Collaborative Law Act of 2009

In the United States, the Uniform Law Commission established the Uniform Collaborative Law Act of 2009 (amended in 2010). According to the ULC:

> Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure and, as is the case in mediation, information disclosed … is privileged against use in any subsequent litigation. … Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethics opinions. The Uniform Collaborative Law Rules/Act (UCLR/A) is intended to create a uniform national framework for the use of Collaborative Law; one which includes important consumer protections and enforceable privilege provisions.[7]

Eleven states, Alabama, District of Columbia, Hawaii, Maryland, Michigan, Nevada, New Jersey, Ohio, Texas, Utah, and Washington have enacted the Uniform Collaborative Law Act. The Montana Legislature is considering a bill on the UCLA for the 2015 legislative session.[8] Seven states, including Florida, address the collaborative process through local court rules.[9]

An essential component of the Uniform Collaborative Law Act (UCLA) is the mandatory disqualification of the collaborative attorneys if the parties fail to reach an agreement or intend to engage in contested litigation. Once both collaborative lawyers are disqualified from further representation, the parties must start again with new counsel. "The disqualification provision thus creates incentives for parties and Collaborative lawyers to settle."[10]

At least three sections of the American Bar Association have approved the UCLA—the Section of Dispute Resolution, the Section of Individual Right & Responsibilities, and the Family Law Section.[11] However, in 2011 when the ULC submitted the UCLA to the American Bar Association's House of Delegates for approval, it was rejected. The disqualification provision

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[5] *Id.*
[6] John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411, 430 (2012).
[7] Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary* http://www.uniformlaws.org/Shared/Docs/Collaborative_Law/UCLA%20Short%20Summary.pdf.
[8] Illinois, Massachusetts, Michigan, New Jersey, Oklahoma, and South Carolina. http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act (last visited Feb. 19, 2015).
[9] California, Florida, Indiana, Kansas, Louisiana, Minnesota, and Wisconsin. Email correspondence with Meghan McCann, National Conference of State Legislatures (Feb. 19, 2015). At least four judicial circuits in Florida have adopted local court rules on collaborative law. These are the 9th, 11th, 13th, and 18th judicial circuits. Other circuits may however recognize the collaborative process in the absence of issuing a formal administrative order.
[10] Lande, *supra* note 6 at 429.
[11] New Jersey Law Revision Commission, *Final Report Relating to New Jersey Family Collaborative Law Act*, 5 (Jul. 23, 2013), http://www.lawrev.state.nj.us/ucla/njfclaFR0723131500.pdf .

appears to have been the primary basis for the ABA's decision. Those within the ABA who objected to the UCLA have stated that the disqualification provision unfairly enables one party to disqualify the other party's attorney simply by terminating the collaborative process or initiating litigation.[12]

Florida Court System

In the 1990s, the court system began to move towards establishing family law divisions and support services to accommodate families in conflict. In 2001, the Florida Supreme Court adopted the Model Family Court Initiative. This action by the Court combined all family cases, including dependency, adoption, paternity, dissolution of marriage, and child custody into the jurisdiction of a specially designated family court. The Court noted the need for these cases to have a "system that provide[s] nonadversarial alternatives and flexibility of alternatives; a system that preserve[s] rather than destroy[s] family relationships; … and a system that facilitate[s] the process chosen by the parties."[13] The court also noted the need to fully staff a mediation program, anticipating that mediation can resolve a high percentage of disputes.[14]

In 2012, the Florida Family Law Rules committee proposed to the Florida Supreme Court a new rule 12.745, to be known as the Collaborative Process Rule.[15] In declining to adopt the rule, the court explained:

> Given the possibility of legislative action addressing the use of the collaborative law process and the fact that certain foundations, such as training or certification of attorneys for participation in the process, have not yet been laid, we conclude that the adoption of a court rule on the subject at this time would be premature.[16]

Although the Florida Supreme Court has not adopted rules on collaborative law, at least four judicial circuits in Florida have adopted local court rules on collaborative law. These are the 9th, 11th, 13th, and 18th judicial circuits. Each of these circuits that have adopted local court rules on collaborative law include the requirement that an attorney disqualify himself or herself if the collaborative process is unsuccessful. Other circuits have recognized the collaborative process in the absence of issuing a formal administrative order.

III. Effect of Proposed Changes:

Collaborative Law Process Act

SB 462 establishes the Collaborative Law Process Act (Act) as a basic framework for the collaborative law process, for use in dissolution of marriage and paternity cases. The collaborative law process, a type of alternative dispute resolution, is designed to facilitate the out-of-court settlement of dissolution of marriage cases. The process employs collaborative

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[12] Andrew J. Meyer, *The Uniform Collaborative Law Act: Statutory Framework and the Struggle for Approval by the American Bar Association*, 4 Y.B. ON ARB. & MEDIATION 212, 216 (2012).
[13] *In re Report of Family Court Steering Committee*, 794 So. 2d 518, 523 (Fla. 2001).
[14] *Id*. at 520.
[15] *In Re: Amendments to the Florida Family Law Rules of Procedure*, 84 So. 3d 257 (March 15, 2012).
[16] *Id*.

attorneys, mental health professionals, and financial specialists to help the parties reach agreement.

By placing the Act in law, the bill offers another kind of alternative dispute resolution, besides mediation, to parties involved in dissolution of marriage and parentage cases. However, unlike mediation, which may be court-ordered, participation in the collaborative process is voluntary.[17]

The authority for the collaborative process provided in the bill is limited to issues governed by chapter 61, F.S. (Dissolution of Marriage; Support; Time-sharing) and chapter 742, F.S. (Determination of Parentage). More specifically, the following issues are proper issues for resolution through the collaborative law process:

- Marriage, divorce, dissolution, annulment, and marital property distribution;
- Child custody, visitation, parenting plan, and parenting time;
- Alimony, maintenance, child support;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

Beginning and End of Collaborative Process

The bill defines the circumstances in which a collaborative law case begins and ends. The collaborative law process begins when the parties enter into a collaborative law participation agreement. The agreement governs the terms of how the process will proceed. Parties may enter into the agreement before or after filing a petition on dissolution of marriage or parentage with the court.

The collaborative law process concludes when issues are resolved and the parties sign the agreement. But the bill also allows for the collaborative law process to partially resolve the issues. If partially resolved, parties agree to reserve remaining issues for the court process.

Alternatively, a collaborative law process may terminate before any issues are resolved. The collaborative law process terminates when a party:

- Provides notice to the other parties that the process has ended;
- Begins a court proceeding without consent of the other party, or asks the court to place the proceeding on a court calendar;
- Initiates a pleading, motion, order to show cause, or requests a conference with a court; or
- Discharges a collaborative attorney or a collaborative attorney withdraws as counsel.

The bill allows the process to continue if a party hires a successor collaborative attorney to replace his or her previous attorney. The unrepresented party must hire, and identify in the agreement, a successor collaborative attorney within 30 days after providing notice that the party is unrepresented.

[17] Section 61.183(1), F.S., provides, in part: "In any proceeding in which the issues of parental responsibility, primary residence, access to, visitation with, or support of a child are contested, the court may refer the parties to mediation."

In allowing parties to begin the process before or after filing a petition, partially resolve issues, and hire successor collaborative attorneys, parties can customize the process as they see fit.

Mandatory Disqualification

This bill does not provide for mandatory disqualification of the collaborative attorneys if the process does not result in an agreement. Therefore, the primary incentive to encourage resolution is not in the Act. Although the bill conforms to the Uniform Collaborative Law Act in other respects, the failure to include mandatory disqualification is a significant departure from the UCLA. However, the disqualification concept could be part of implementing rules adopted by the Supreme Court.

The bill also departs from local court rules on collaborative divorce. All circuits in which courts have adopted local rules on the collaborative process require counsel to withdraw from further representation if the process breaks down and an agreement is not reached.[18]

Confidentiality and Privilege

The bill generally provides that collaborative law communications are confidential and privileged from disclosure. As such, communications made during the collaborative law process are not subject to discovery or admissible as evidence.

The bill identifies a number of exceptions to the privilege. The privilege does not apply to communications if:

- The parties agree to waive privilege.
- A person makes a prejudicial statement during the collaborative law process. In this instance, preclusion applies to enable the person prejudiced to respond to the statement.
- A participant makes statements available to the public under the state's public records law or made during a meeting of the process that is required to be open to the public.
- A participant makes a threat, or describes a plan to inflict bodily injury.
- A participant makes a statement that is intentionally used to plan, commit, attempt to commit, or conceal a crime.
- A person seeks to introduce the statement in a claim or complaint of professional misconduct or malpractice arising from the collaborative law process.
- A person seeks to introduce the statement to prove or disprove abuse, neglect, abandonment, or exploitation of children or adults unless the Department of Children and Families is involved.
- A court finds that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in confidentiality, and the communication is sought or offered in a felony proceeding or a proceeding involving contract disputes.

[18] Order Authorizing Collaborative Process Dispute Resolution Model in the Ninth Judicial Circuit of Florida, Fla. Admin. Order No. 2008-06 (Mar. 28, 2008) (on file with Clerk, Fla. 9th Jud. Cir.); *In re:* Authorizing the Collaborative Process Dispute Resolution Model in the Eleventh Judicial Circuit of Florida, Fla. Admin Order No. 07-08 (Oct. 2007) (on file with Clerk, Fla. 11th Jud. Cir.); Collaborative Family Law Practice, Fla. Admin. Order No. S-2012-041 (Jul. 31, 2012) (on file with Clerk, Fla. 13th Jud. Cir.); *In re:* Domestic Relations—Collaborative Conflict Resolution in Dissolution of Marriage Cases, Fla. Admin. Order No. 14-04 Amended (Feb. 23, 2014) (on file with Clerk, Fla. 18th Jud. Cir.).

Other than the discrete categories of exceptions to the privilege, the bill provides a broad level of confidentiality and protection from disclosure to collaborative law communications. Additionally, disclosure is limited to only the part of the communication needed for the purpose of the disclosure. Parties will be encouraged to communicate openly during the collaborative law process.

Rule Adoption by the Florida Supreme Court

Although the bill becomes law July 1, 2015, provisions do not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility. Which issues addressed in the bill will be appropriate for placement in court rules on professional responsibility is unknown.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not contain a mandate because the bill does not affect cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although some family law attorneys already practice collaborative law in the state, the bill could theoretically expand the use of collaborative law as an alternative to traditional litigation in dissolution of marriage cases. To the extent that collaborative law reduces costs of litigation, parties undergoing divorce could benefit financially from electing to proceed in a collaborative manner.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the bill could potentially decrease judicial workload due to fewer filings, hearings, and contested issues. Some judicial workload, however, could result from *in camera* hearings regarding privilege determinations. Due to the unavailability of data needed to quantifiably establish the impact on judicial or court workload, fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 61.55, 61.56, 61.57, and 61.58.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Lee

24-00394A-15 2015462__

A bill to be entitled

An act relating to family law; providing legislative findings; providing a directive to the Division of Law Revision and Information; creating s. 61.55, F.S.; providing a purpose; creating s. 61.56, F.S.; defining terms; creating s. 61.57, F.S.; providing that a collaborative law process commences when the parties enter into a collaborative law participation agreement; prohibiting a tribunal from ordering a party to participate in a collaborative law process over the party's objection; providing the conditions under which a collaborative law process concludes, terminates, or continues; creating s. 61.58, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; providing that specified provisions do not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility; providing a contingent effective date; providing effective dates.

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

Section 1. The Legislature finds and declares that the purpose of this part is to:

(1) Create a system of practice for a collaborative law process for proceedings under chapters 61 and 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the

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24-00394A-15 2015462__

early settlement of pending litigation through voluntary settlement procedures.

(3) Preserve the working relationship between parties to a dispute through a nonadversarial method that reduces the emotional and financial toll of litigation.

Section 2. The Division of Law Revision and Information is directed to create part III of chapter 61, Florida Statutes, consisting of ss. 61.55-61.58, to be entitled the "Collaborative Law Process Act."

Section 3. Section 61.55, Florida Statutes, is created to read:

61.55 Purpose.—The purpose of this part is to create a uniform system of practice for the collaborative law process in this state. It is the policy of this state to encourage the peaceful resolution of disputes and the early resolution of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.

Section 4. Section 61.56, Florida Statutes, is created to read:

61.56 Definitions.—As used in this part, the term:

(1) "Collaborative attorney" means an attorney who represents a party in a collaborative law process.

(2) "Collaborative law communication" means an oral or written statement, including a statement made in a record, or nonverbal conduct that:

(a) Is made in the conduct of or in the course of participating in, continuing, or reconvening for a collaborative

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59 law process; and
60 (b) Occurs after the parties sign a collaborative law
61 participation agreement and before the collaborative law process
62 is concluded or terminated.
63 (3) "Collaborative law participation agreement" means an
64 agreement between persons to participate in a collaborative law
65 process.
66 (4) "Collaborative law process" means a process intended to
67 resolve a collaborative matter without intervention by a
68 tribunal and in which persons sign a collaborative law
69 participation agreement and are represented by collaborative
70 attorneys.
71 (5) "Collaborative matter" means a dispute, transaction,
72 claim, problem, or issue for resolution, including a dispute,
73 claim, or issue in a proceeding which is described in a
74 collaborative law participation agreement and arises under
75 chapter 61 or chapter 742, including, but not limited to:
76 (a) Marriage, divorce, dissolution, annulment, and marital
77 property distribution.
78 (b) Child custody, visitation, parenting plan, and
79 parenting time.
80 (c) Alimony, maintenance, and child support.
81 (d) Parental relocation with a child.
82 (e) Parentage and paternity.
83 (f) Premarital, marital, and postmarital agreements.
84 (6) "Law firm" means:
85 (a) One or more attorneys who practice law in a
86 partnership, professional corporation, sole proprietorship,
87 limited liability company, or association; or

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88 (b) One or more attorneys employed in a legal services
89 organization, the legal department of a corporation or other
90 organization, or the legal department of a governmental entity,
91 subdivision, agency, or instrumentality.
92 (7) "Nonparty participant" means a person, other than a
93 party and the party's collaborative attorney, who participates
94 in a collaborative law process.
95 (8) "Party" means a person who signs a collaborative law
96 participation agreement and whose consent is necessary to
97 resolve a collaborative matter.
98 (9) "Person" means an individual; a corporation; a business
99 trust; an estate; a trust; a partnership; a limited liability
100 company; an association; a joint venture; a public corporation;
101 a government or governmental subdivision, agency, or
102 instrumentality; or any other legal or commercial entity.
103 (10) "Proceeding" means a judicial, administrative,
104 arbitral, or other adjudicative process before a tribunal,
105 including related prehearing and posthearing motions,
106 conferences, and discovery.
107 (11) "Prospective party" means a person who discusses with
108 a prospective collaborative attorney the possibility of signing
109 a collaborative law participation agreement.
110 (12) "Record" means information that is inscribed on a
111 tangible medium or that is stored in an electronic or other
112 medium and is retrievable in perceivable form.
113 (13) "Related to a collaborative matter" means involving
114 the same parties, transaction or occurrence, nucleus of
115 operative fact, dispute, claim, or issue as the collaborative
116 matter.

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117 (14) "Sign" means, with present intent to authenticate or
118 adopt a record, to:
119 (a) Execute or adopt a tangible symbol; or
120 (b) Attach to or logically associate with the record an
121 electronic symbol, sound, or process.
122 (15) "Tribunal" means a court, arbitrator, administrative
123 agency, or other body acting in an adjudicative capacity which,
124 after presentation of evidence or legal argument, has
125 jurisdiction to render a decision affecting a party's interests
126 in a matter.
127 Section 5. Section 61.57, Florida Statutes, is created to
128 read:
129 61.57 Beginning, concluding, and terminating a
130 collaborative law process.—
131 (1) The collaborative law process commences, regardless of
132 whether a legal proceeding is pending, when the parties enter
133 into a collaborative law participation agreement.
134 (2) A tribunal may not order a party to participate in a
135 collaborative law process over that party's objection.
136 (3) A collaborative law process is concluded by any of the
137 following:
138 (a) Resolution of a collaborative matter as evidenced by a
139 signed record;
140 (b) Resolution of a part of the collaborative matter,
141 evidenced by a signed record, in which the parties agree that
142 the remaining parts of the collaborative matter will not be
143 resolved in the collaborative law process; or
144 (c) Termination of the collaborative law process.
145 (4) A collaborative law process terminates when a party:

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146 (a) Gives notice to the other parties in a record that the
147 collaborative law process is concluded;
148 (b) Begins a proceeding related to a collaborative matter
149 without the consent of all parties;
150 (c) Initiates a pleading, motion, order to show cause, or
151 request for a conference with a tribunal in a pending proceeding
152 related to a collaborative matter;
153 (d) Requests that the proceeding be put on the tribunal's
154 active calendar in a pending proceeding related to a
155 collaborative matter;
156 (e) Takes similar action requiring notice to be sent to the
157 parties in a pending proceeding related to a collaborative
158 matter; or
159 (f) Discharges a collaborative attorney or a collaborative
160 attorney withdraws from further representation of a party,
161 except as otherwise provided in subsection (7).
162 (5) A party's collaborative attorney shall give prompt
163 notice to all other parties in a record of a discharge or
164 withdrawal.
165 (6) A party may terminate a collaborative law process with
166 or without cause.
167 (7) Notwithstanding the discharge or withdrawal of a
168 collaborative attorney, the collaborative law process continues
169 if, not later than 30 days after the date that the notice of the
170 discharge or withdrawal of a collaborative attorney required by
171 subsection (5) is sent to the parties:
172 (a) The unrepresented party engages a successor
173 collaborative attorney;
174 (b) The parties consent to continue the collaborative law

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175 process by reaffirming the collaborative law participation
176 agreement in a signed record;
177 (c) The collaborative law participation agreement is
178 amended to identify the successor collaborative attorney in a
179 signed record; and
180 (d) The successor collaborative attorney confirms his or
181 her representation of a party in the collaborative law
182 participation agreement in a signed record.
183 (8) A collaborative law process does not conclude if, with
184 the consent of the parties, a party requests a tribunal to
185 approve a resolution of a collaborative matter or any part
186 thereof as evidenced by a signed record.
187 (9) A collaborative law participation agreement may provide
188 additional methods for concluding a collaborative law process.
189 Section 6. Section 61.58, Florida Statutes, is created to
190 read:
191 61.58 Confidentiality of a collaborative law
192 communication.—Except as provided in this section, a
193 collaborative law communication is confidential to the extent
194 agreed by the parties in a signed record or as otherwise
195 provided by law.
196 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
197 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—
198 (a) Subject to subsections (2) and (3), a collaborative law
199 communication is privileged as provided under paragraph (b), is
200 not subject to discovery, and is not admissible into evidence.
201 (b) In a proceeding, the following privileges apply:
202 1. A party may refuse to disclose, and may prevent another
203 person from disclosing, a collaborative law communication.

204 2. A nonparty participant may refuse to disclose, and may
205 prevent another person from disclosing, a collaborative law
206 communication of a nonparty participant.
207 (c) Evidence or information that is otherwise admissible or
208 subject to discovery does not become inadmissible or protected
209 from discovery solely because of its disclosure or use in a
210 collaborative law process.
211 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—
212 (a) A privilege under subsection (1) may be waived orally
213 or in a record during a proceeding if it is expressly waived by
214 all parties and, in the case of the privilege of a nonparty
215 participant, if it is expressly waived by the nonparty
216 participant.
217 (b) A person who makes a disclosure or representation about
218 a collaborative law communication that prejudices another person
219 in a proceeding may not assert a privilege under subsection (1).
220 This preclusion applies only to the extent necessary for the
221 person prejudiced to respond to the disclosure or
222 representation.
223 (3) LIMITS OF PRIVILEGE.—
224 (a) A privilege under subsection (1) does not apply to a
225 collaborative law communication that is:
226 1. Available to the public under chapter 119 or made during
227 a session of a collaborative law process that is open, or is
228 required by law to be open, to the public;
229 2. A threat, or statement of a plan, to inflict bodily
230 injury or commit a crime of violence;
231 3. Intentionally used to plan a crime, commit or attempt to
232 commit a crime, or conceal an ongoing crime or ongoing criminal

233 activity; or
234 4. In an agreement resulting from the collaborative law
235 process, as evidenced by a record signed by all parties to the
236 agreement.
237 (b) The privilege under subsection (1) for a collaborative
238 law communication does not apply to the extent that such
239 collaborative law communication is:
240 1. Sought or offered to prove or disprove a claim or
241 complaint of professional misconduct or malpractice arising from
242 or relating to a collaborative law process; or
243 2. Sought or offered to prove or disprove abuse, neglect,
244 abandonment, or exploitation of a child or adult unless the
245 Department of Children and Families is a party to or otherwise
246 participates in the process.
247 (c) A privilege under subsection (1) does not apply if a
248 tribunal finds, after a hearing in camera, that the party
249 seeking discovery or the proponent of the evidence has shown
250 that the evidence is not otherwise available, the need for the
251 evidence substantially outweighs the interest in protecting
252 confidentiality, and the collaborative law communication is
253 sought or offered in:
254 1. A court proceeding involving a felony; or
255 2. A proceeding seeking rescission or reformation of a
256 contract arising out of the collaborative law process or in
257 which a defense is asserted to avoid liability on the contract.
258 (d) If a collaborative law communication is subject to an
259 exception under paragraph (b) or paragraph (c), only the part of
260 the collaborative law communication necessary for the
261 application of the exception may be disclosed or admitted.

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262 (e) Disclosure or admission of evidence excepted from the
263 privilege under paragraph (b) or paragraph (c) does not make the
264 evidence or any other collaborative law communication
265 discoverable or admissible for any other purpose.
266 (f) The privilege under subsection (1) does not apply if
267 the parties agree in advance in a signed record, or if a record
268 of a proceeding reflects agreement by the parties, that all or
269 part of a collaborative law process is not privileged. This
270 paragraph does not apply to a collaborative law communication
271 made by a person who did not receive actual notice of the
272 collaborative law participation agreement before the
273 communication was made.
274 Section 7. Sections 61.55-61.58, Florida Statutes, as
275 created by this act, shall not take effect until 30 days after
276 the Florida Supreme Court adopts rules of procedure and
277 professional responsibility consistent with this act.
278 Section 8. Except as otherwise expressly provided in this
279 act, this act shall take effect July 1, 2015.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General Government
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

SENATOR TOM LEE
24th District

January 28, 2015

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
406 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla,

I respectfully request that SB 462 related to *Family Law,* be placed on the Senate Committee on Judiciary agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Tom Lee

Tom Lee
Senator, District 24

Cc: Tom Cibula, Staff Director

REPLY TO:
☐ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
☐ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 158

INTRODUCER: Senators Evers and Latvala

SUBJECT: Civil Liability of Farmers

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	Davis	Cibula	JU	**Pre-meeting**

I. Summary:

SB 158 expands and clarifies a farmer's protection from civil liability in negligence actions brought by a person the farmer gratuitously allows upon the farmer's land to remove farm produce or crops.

Under existing law, if a farmer allows a person onto a farm without charge to harvest crops or produce leftover *after* the farm is harvested, the farmer is not liable for damages caused by the condition of the crops or produce or the condition of the land. Under the bill, a farmer may allow a person to harvest crops or produce *at any time* without being liable for the condition of the crops or produce or the condition of the land.

Under existing law, a farmer may be liable for damages caused by dangerous conditions not disclosed by the farmer to a person who is allowed to harvest leftover crops or produce. Under the bill, the farmer is liable for those damages that result from the failure of the farmer to warn of a dangerous condition of which the farmer has "actual knowledge" unless the dangerous condition would be obvious to a person entering upon the farmer's land. The farmer, however, as under existing law, remains liable for injury or death directly resulting from the farmer's gross negligence or intentional acts.

II. Present Situation:

Gleaning

Gleaning is the process of gathering leftover crops from fields after commercial harvesters or reapers complete their work.[1] Gleaning was common in earlier civilizations as a means of providing for widows and the poor who had no harvests. Today, gleaning is often practiced by humanitarian organizations and food banks as a method of providing food for impoverished

[1] Merriam Webster Dictionary, www.merriam-webster.com/dictionary/glean.

people.[2] However, the opening up of someone's land for gleaning may result in injury, damages, and litigation.

Premises Liability

A person who is injured on someone else's property may seek damages for tort liability if the person in control of the property breached a duty of care owed to the injured person.[3] People who enter the property of another person are categorized as invitees, licensees, or trespassers, and that status is determined by the relationship between the parties.[4]

Florida law has generally defined an invitee as a person "who entered the premises of another for purposes connected with the business of the owner or occupier."[5] The two duties owned by the landowner to the invitee are the duties to:

- Use reasonable care in keeping the property in a reasonably safe condition; and
- Warn of concealed conditions "which are known or should be known to the landowner"[6] but are not known to the invitee and cannot be discovered by the invitee exercising due care.[7]

Legislative History

Before 1992, there was no specific statute governing or limiting the liability of farmers who allowed others to enter their land to gather crops that remained after harvest. However, in 1992, Florida passed a protective law[8] for farmers[9] which exempts them from civil liability if they gratuitously allow a person to enter onto their land to remove any farm produce or crops that remain in the fields after harvesting. The farmer is exempt from civil liability due to any injury or death that results from the nature or condition of the land or the nature, age, or conditions of the farm produce or crop.[10] The exemption does not apply if an injury or death directly results from the gross negligence, intentional act, or known dangerous conditions that are not disclosed by the farmer.[11]

Some farmers have indicated that there are circumstances under which they would allow gleaning before harvesting but are reluctant to do so because of their concern about exposure to legal liability.[12]

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[2] The Palm Beach County Legislative Affairs Department estimates that millions of pounds of produce, representing different commodities, are plowed under each year in Palm Beach County.
[3] 74 AM JUR. 2D Torts s. 7 (2015).
[4] 41 FLA. JUR. 2D Premises Liability s. 4 (2015).
[5] Thomas D. Sawaya, FLORIDA PERSONAL INJURY LAW AND PRACTICE WITH WRONGFUL DEATH ACTIONS, s. 10:6 (2014 edition).
[6] *Id*.
[7] *Id*.
[8] Chapter 92-85, s. 1, Laws of Fla.
[9] "Farmer" is defined as "a person who is engaging in the growing or producing of farm produce, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent." Section 768.137(1), F.S.
[10] Section 768.137(2). F.S.
[11] Section 768.137(3), F.S.
[12] Conversation with Adam Basford, Director of State Legislative Affairs, Florida Farm Bureau (Feb. 19, 2015) and telephone conversation with Todd Bonlarron, Palm Beach County Legislative Affairs Department (Feb. 27, 2015).

III. Effect of Proposed Changes:

This bill expands and clarifies a farmer's protection from civil liability in negligence actions brought by a person the farmer gratuitously allows upon the farmer's land to remove farm produce or crops.

Under existing law, if a farmer allows a person without charge onto a farm to harvest crops or produce leftover *after* the farm is harvested, the farmer is not liable for damages caused by the condition of the crops or produce or the condition of the land. Under the bill, a farmer may allow a person to harvest crops or produce *at any time* without being liable for the condition of the crops or produce or the condition of the land.

Under existing law, a farmer may be liable for damages caused by dangerous conditions not disclosed by the farmer to a person who is allowed to harvest leftover crops or produce. Under the bill, the farmer is liable for those damages that result from the failure of the farmer to warn of a dangerous condition of which the farmer has "actual knowledge" unless the dangerous condition would be obvious to a person entering upon the farmer's land. The farmer, however, as under existing law, remains liable for injury or death directly resulting from the farmer's gross negligence or intentional acts.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill grants farmers exemptions from liability. Exemptions from liability, however, may violate Article I, section 21 of the State Constitution which guarantees access to the courts and provides that "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." The access to courts provision limits the power of the Legislature to abolish causes of action.

In interpreting the access to courts provision, the Florida Supreme Court held in *Kluger v. White*[13] that:

[13] *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

> where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Actions based on premises liability or an implied warranty that food must be reasonably fit for human consumption predate the adoption of the Constitution of 1968. However, committee staff have not found a specific case or statute predating the current Constitution which expressly found that a gleaner could bring a premises liability action against a farmer or an action based on the condition of crops or produce gleaned. Accordingly, whether the bill violates Article I, section 21 of the State Constitution is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Humanitarian organizations that pick up produce and crops to provide food to the needy might see an increase in the willingness of farmers to allow access to their farms. This could result in food banks, charitable organizations, and ministries receiving more food for their clients.

Persons seeking redress as discussed above under “Other Constitutional Issues” might be adversely affected by their inability to pursue litigation and receive monetary compensation for damages.

C. Government Sector Impact:

The Office of the State Courts Administrator has stated that allowing the removal of produce and crops at additional times will not have a substantial impact on the courts. The inclusion of the “actual knowledge” provision will limit instances in which farmers might be found civilly liable. The proposed changes will have little impact on the court workload, although civil cases requiring proof of actual knowledge might involve additional judicial time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 768.137, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Evers

2-00190-15 2015158__

A bill to be entitled

An act relating to the civil liability of farmers; amending s. 768.137, F.S.; providing that an existing exemption from civil liability for farmers who gratuitously allow a person to enter upon their land for the purpose of removing farm produce or crops left in the field applies at any time, rather than only after harvesting; revising exceptions to the exemption; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 768.137, Florida Statutes, are amended to read:

768.137 Definition; limitation of civil liability for certain farmers; exception.—

(2) A ~~Any~~ farmer who gratuitously allows a person ~~persons~~ to enter upon the farmer's ~~her or his own~~ land for the purpose of removing ~~any~~ farm produce or crops is ~~remaining in the fields following the harvesting thereof, shall be~~ exempt from civil liability arising out of any injury to, or the death of, such person due to ~~resulting from~~ the nature or condition of the ~~such~~ land or the nature, age, or condition of the ~~any such~~ farm produce or crops that are removed ~~crop~~.

(3) The exemption from civil liability provided ~~for~~ in this section does ~~shall~~ not apply if injury or death directly results from the gross negligence or~~,~~ intentional act of the farmer, or from the farmer's failure to warn of a dangerous condition of which the farmer has actual knowledge unless that condition

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2-00190-15 2015158__

would be obvious to a person entering upon the farmer's land ~~from known dangerous conditions not disclosed by the farmer~~.

Section 2. This act shall take effect July 1, 2015.

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

The Florida Senate

Committee Agenda Request

To: Chair Senator Diaz de la Portilla
Committee On Judiciary

Subject: Committee Agenda Request

Date: February 17, 2015

I respectfully request that **Senate Bill #158**, relating to Civil Liability of Farmers, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

The bill was passed 5-0 by the Agriculture Committee on Feb. 16, 2015.

Greg Evers

Senator Greg Evers
Florida Senate, District 2

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 570

INTRODUCER: Senator Dean

SUBJECT: Service of Process of Witness Subpoenas

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Pre-meeting**
2.			TR	
3.			RC	

I. Summary:

SB 570 adds civil traffic cases to the types of court cases for which service of process may be made on a witness by United States mail.

Service of process of witness subpoenas may be made by United States mail in criminal traffic, misdemeanor, or second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least 7 days before the witness's appearance is required.

II. Present Situation:

Service of Process

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.[1] The term "to serve" means to make legal delivery of a notice or a pleading.[2] A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.[3] A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.[4] A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process

[1] Sections 48.011 and 48.021, F.S.
[2] BLACK'S LAW DICTIONARY (10th ed. 2014).
[3] BLACK'S LAW DICTIONARY (10th ed. 2014).
[4] BLACK'S LAW DICTIONARY (10th ed. 2014).

servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.[5]

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.[6]

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.[7]

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.[8] The process server must post the subpoena at least 5 days before the witness' required appearance.[9]

[5] Sections 48.021(1) and 48.29, F.S.
[6] Section 48.031(1) and (2), F.S.
[7] Section 48.031(3)(a), F.S.
[8] Section 48.031(3)(b), F.S.
[9] Section 48.031(3)(b), F.S.

Civil Traffic Cases

A civil traffic case may result from a contest of a civil traffic citation for the following traffic infractions, which may be for moving or nonmoving violations. Examples of moving violations include:

- Speeding;[10]
- Failure to yield to highway construction workers;[11]
- Failure to drive on the right side of the roadway;[12]
- Failure to yield to a publicly owned transit bus;[13]
- Improper passing of vehicles;[14]
- Failing to signal before turning;[15] and
- Following too closely.[16]

Nonmoving violations typically consist of parking violations.[17]

A traffic infraction is a noncriminal violation that may require payment of a fine and community service hours, but is not punishable by incarceration. As such, the person charged does not have the right to a jury trial or court-appointed counsel.[18]

A person who commits a moving or nonmoving violation may receive a citation in person by a law enforcement officer or in the mail subsequent to detection of a traffic violation by a traffic infraction detector, commonly known as a red light camera.[19] A person who receives a traffic citation has the option to pay the civil penalty listed on a traffic citation, enter into a payment plan, or contest the citation at a hearing.[20]

III. Effect of Proposed Changes:

This bill adds civil traffic cases to the list of court cases for which service of process may be made on a witness by United States mail.

Under existing law, service of process of witness subpoenas may be made by United States mail in criminal traffic, misdemeanor, or second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least 7 days before the witness's appearance is required.

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[10] Section 316.183, F.S.
[11] Section 316.079, F.S.
[12] Section 316.081, F.S.
[13] Section 316.0815, F.S.
[14] Section 316.082, F.S.
[15] Section 316.155, F.S.
[16] Section 316.0895, F.S.
[17] Sections 316.1945, 316.195, and 316.1951, F.S.
[18] Section 318.13(3), F.S.
[19] Section 316.0776, F.S.
[20] Section 318.14(4), F.S.

Civil traffic cases are less serious than criminal traffic, misdemeanor, and felony cases. However, current law allows witness subpoenas to be served by mail in these more serious cases, but not in civil traffic cases.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

As this bill authorizes service of process by mail for witness subpoenas in civil traffic cases, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who challenges a civil traffic citation bears the costs of service of process for witness subpoenas. The fee for in-person service of a witness subpoena is $40.[21] Thus, by allowing witness subpoenas to be served by mail, the costs of challenging a civil traffic citation will decrease.

C. Government Sector Impact:

This bill may result in a cost savings for local sheriffs by giving them the option of serving witness subpoenas by mail for appearances in civil traffic cases.[22] This cost

[21] Section 30.231(1)(c), F.S.
[22] Email correspondence with Matt Dunagan, Florida Sheriffs Association (Feb. 19, 2015).

reduction occurs because the $40 fee authorized in statute covers all attempts to serve in a particular case.

Hillsborough County alone had to deliver 5,878 witness subpoenas in civil traffic cases last year. Hillsborough County estimates a cost savings from this bill of almost $100,000 a year in manpower costs.[23]

The Office of the State Courts Administrator anticipates a minimal fiscal impact from the bill.[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

[23] Email correspondence from Lorelei Bowden, Manager, Legislative Affairs and Grants, Hillsborough County Sheriff's Office (Feb. 27, 2015).
[24] Office of the State Courts Administrator, *2015 Judicial Impact Statement on SB 570* (Feb. 20, 2015).

By Senator Dean

5-00956A-15 2015570__

A bill to be entitled

An act relating to service of process of witness subpoenas; amending s. 48.031, F.S.; providing that service of a subpoena on a witness in a civil traffic case may be made by United States mail directed to the witness at the last known address and that such service must be mailed before a specified period; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 48.031, Florida Statutes, is amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(3)(a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a civil traffic case, a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

Section 2. This act shall take effect July 1, 2015.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR CHARLES S. DEAN, SR.
5th District

February 5, 2015

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

Dear Chairman Diaz de la Portilla,

I respectfully request you place Senate Bill 570, relating to Service of Process on Witness Subpoenas, on your Judiciary Committee agenda at your earliest convenience.

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

Sincerely,

Charles S. Dean
State Senator District 5

cc: Tom Cibula, Staff Director

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

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 672

INTRODUCER: Senator Dean

SUBJECT: Service of Process

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Pre-meeting**
2.			CJ	
3.			RC	

I. Summary:

SB 672 authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

II. Present Situation:

Service of Process

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.[1] The term "to serve" means to make legal delivery of a notice or a pleading.[2] A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.[3] A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.[4] A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process

[1] Sections 48.011 and 48.021, F.S.
[2] BLACK'S LAW DICTIONARY (10th ed. 2014).
[3] BLACK'S LAW DICTIONARY (10th ed. 2014).
[4] BLACK'S LAW DICTIONARY (10th ed. 2014).

servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.[5]

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.[6]

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.[7]

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the court appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.[8] The process server must post the subpoena at least 5 days before the witness' required appearance.[9]

III. Effect of Proposed Changes:

This bill authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted

[5] Sections 48.021(1) and 48.29, F.S.
[6] Section 48.031(1) and (2), F.S.
[7] Section 48.031(3)(a), F.S.
[8] Section 48.031(3)(b), F.S.
[9] Section 48.031(3)(b), F.S.

at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

This bill reduces from 3 to 1 the number of times a process server must fail to deliver subpoenas for depositions to witnesses before authorizing the posting of subpoenas. As such, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants represented by private counsel in criminal cases bear the costs for service of process. As a result, this bill may reduce costs for those defendants.

Although an indigent defendant represented by the Office of the Public Defender does not pay up front for service of process on a witness for deposition, the cost may be included in a lien. This bill may reduce the amount of money placed on a lien for service of process costs.

C. Government Sector Impact:

The Florida Sheriff's Association will realize a cost savings as its process servers will need to attempt service only once before posting. This cost savings will occur because the fee charged by the sheriffs is a fixed fee that includes all attempts in a particular case.

The Office of the State Courts Administrator (OSCA) anticipates more show cause hearings for non-appearance, due to the bill making service of process for depositions easier. However, the OSCA cannot accurately determine a fiscal impact.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031, Florida Statutes.

This bill reenacts sections the following sections of the Florida Statutes: 48.196 and 409.257.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[10] Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 672* (Feb. 20, 2015).

By Senator Dean

5-00578-15 2015672__

A bill to be entitled

An act relating to service of process; amending s. 48.031, F.S.; authorizing a criminal witness subpoena commanding a witness to appear for a deposition to be posted at the witness's residence by an authorized person if one attempt to serve the subpoena has failed; reenacting ss. 48.196(2) and 409.257(5), F.S., to incorporate the amendment made to s. 48.031, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 48.031, Florida Statutes, is amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(3)

(b) A criminal witness subpoena commanding the witness to appear for a court appearance may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. A criminal witness subpoena commanding the witness to appear for a deposition may be posted by a person authorized to serve process at the witness's residence if one attempt to serve the subpoena has failed. The subpoena must be posted at least 5 days before ~~prior to~~ the date of the witness's required appearance.

Section 2. Subsection (2) of s. 48.196 and subsection (5) of s. 409.257, Florida Statutes, are reenacted for the purpose

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5-00578-15 2015672__

of incorporating the amendment made by this act to s. 48.031, Florida Statutes, in references thereto.

Section 3. This act shall take effect July 1, 2015.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR CHARLES S. DEAN, SR.
5th District

February 10, 2015

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

Dear Chairman Diaz de la Portilla,

I respectfully request you place Senate Bill 672, relating to Service of Process, on your Judiciary Committee agenda at your earliest convenience.

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

Sincerely,

Charles S. Dean
State Senator District 5

cc: Tom Cibula, Staff Director

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

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 838

INTRODUCER: Senator Bradley

SUBJECT: Justices and Judges

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			AP	

I. Summary:

SB 838 reduces to 1 calendar month the time period that a retired judge must be terminated from employment to retain his or her full retirement benefits while working as a part-time senior judge.

Under existing law, the ability to engage in reemployment without jeopardizing retirement payments is based on the concept of "termination." To be considered a lawful termination period, a retiree who is reemployed must "sit out" for a full 6 calendar months. If the retiree returns to employment at the workplace of an employer who participates in the Florida Retirement System within the 6 calendar months, the ability to continue to withdraw retirement benefits ceases during the term of reemployment. Also, the retiree must have to refund to the FRS retirement distributions already made.

This bill reduces from 6 calendar months to 1 calendar month the required termination period for required justices and judges to return to work as a senior judge while maintaining retirement benefits.

II. Present Situation:

The Florida Retirement System

The 1970 Florida Legislature established the Florida Retirement System (FRS) when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Legislature consolidated the Judicial Retirement System into the FRS.[1]

[1] *The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013*, Department of Management Services, at 16. http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports

The FRS is a multi-employer, contributory plan governed by the Florida Retirement System Act in chapter 121, F.S. All employee members contribute 3 percent of their salaries to the plan.[2] More than 1,000 employers participate in the FRS. As of June 30, 2013, the FRS had 621,774 active members, 346,678 retired members and beneficiaries, and 38,724 active members in the Deferred Retirement Option Program (DROP).[3]

FRS Membership

The membership of the FRS is divided into five membership classes:

- Regular Class, for members who are not specifically assigned to another class;[4]
- Special Risk Class, for law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency technicians;[5]
- Special Risk Administrative Support Class, for special risk members who moved or were reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in one of these positions under the FRS;[6]
- Elected Officers' Class, for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers;[7] and
- Senior Management Service Class, for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized in law as eligible for Senior Management Service designation.[8]

Each class is funded separately based upon the costs attributable to the members of that class.

Plan Options

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

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[2] Before 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.
[3] *The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013*, at 16-17.
[4] Section 121.021(12), F.S.
[5] Section 121.0515, F.S.
[6] Section 121.0515(8), F.S.
[7] Section 121.052, F.S.
[8] Section 121.055, F.S.

A member vests immediately in all employee contributions paid to the investment plan.[9] With respect to the employer contributions, a member vests after completing 1 work year with an FRS employer.[10] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[11] The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.[12]

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.[13] The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.[14]

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.[15] Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.[16] For members enrolled on or after July 1, 2011, the member vests in the pension plan after 8 years of creditable service.[17] Benefits payable under the pension plan are calculated based on years of service multiplied by the accrual rate multiplied by the average final compensation.[18] For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.[19] For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.[20] Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.[21]

The Deferred Retirement Option Program (DROP)

The Deferred Retirement Option Program (DROP) is a program available to eligible members of the FRS. Under DROP, the member may elect to defer receipt of retirement benefits while continuing employment with his or her FRS employer. The employee financially benefits from participation in DROP as deferred monthly benefits accrue in the FRS, with interest compounded

[9] Section 121.4501(6)(a), F.S.
[10] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the State Board of Administration (SBA) for deposit and investment by the SBA in its suspense account for up to 5 years. If the member is not reemployed as an eligible employee within 5 years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.
[11] Section 121.591, F.S.
[12] See s. 121.4501(16), F.S.
[13] Section 121.4501(8), F.S.
[14] Section 4, Art. IV, Fla. Const.
[15] Section 121.025, F.S.
[16] Section 121.021 (45)(a), F.S.
[17] Section 121.021(45)(b), F.S.
[18] Section 121.091, F.S.
[19] Section 121.021(29)(a)1., F.S.
[20] Section 121.021(29)(b)1., F.S.
[21] Section 121.021(29(a)2. and (b)2., F.S.

monthly while the employee is in DROP. Upon termination of employment, the employee the member receives the total DROP benefits and the previously determined normal retirement benefits.[22]

The following are the current employer contribution rates for each class as of July 1, 2014:[23]

Membership Class	**Normal Cost**
Regular Class	3.53%
Special Risk Class	11.01%
Special Risk Administrative Support Class	4.18%
Elected Officers' Class • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • County Officers	 6.30% 10.10% 8.36%
Senior Management Class	4.80%
DROP	4.30%

Employment with an FRS Employer after Retirement

Some FRS members wish to return to work with an FRS employer after retirement while receiving monthly retirement payments. To do so, the law requires that the member actually have satisfied the requirement of termination of employment. Before July 1, 2010, retirement followed by employment required just 1 calendar month of separation from an FRS employer to satisfy the requirement of termination.[24]

The 2010 Legislature changed the 1 month requirement to 6 months so that a member who is employed within 6 months after retirement is considered not to have terminated employment.[25] As a result, if an FRS retiree is employed with an FRS employer within the first 6 calendar months after retirement, termination is considered not to have occurred and any retirement benefits paid, including a DROP payout, must be refunded to the FRS.

After meeting the definition of termination, a retiree is also subject to reemployment limitations in the seventh through 12th calendar months after the DROP termination date or the effective retirement date. A retirement benefit cannot be received in the same month as salary from a FRS participating employer.[26] In other words, the retirement benefits of a retiree who returns to work with an FRS employer during the 7th through 12th months after retirement are suspended during that time period.

[22] Section 121.091(13), F.S.
[23] Section 121.71(4), F.S.
[24] Section 121.021(39)(a)1., F.S.
[25] Section 121.021(39)(a)2., F.S.; Chapter 2009-209, Laws of Fla., increased the time to "sit out" from 1 calendar month to 6 calendar months.
[26] Section 121.091(9), F.S.

Twelve calendar months after the DROP termination date or the effective retirement date, a retiree can receive a retirement benefit in the same month as a salary from a FRS participating employer.

Federal Law on Pension Plans and Termination of Employment

The Internal Revenue Code as it has been interpreted by the IRS generally requires that a bona fide termination occur before an employee is paid retirement benefits.[27] An employer who does not require a bona fide termination jeopardizes the qualified status of its retirement plan. Thus, upon disqualification, the plan's trust may lose its tax exempt status and, among other things, the employer contributions to the plan become taxable to the employees and the plan trust may owe income taxes on the trust earnings.[28]

Generally, the existence of a bona fide termination is "based on whether facts and circumstances indicate that the employer and employee reasonably anticipated that no further services would be performed after a certain date" or that the services of the employee would not exceed 20 percent of the employee's previous level of services.[29] A bona fide termination, for example, would not occur if an employee were to "retire" on one day in order to qualify for the early retirement subsidy, and then immediately return to work.[30] However, a short time period between an employee's retirement and reemployment might not jeopardize the qualified status of a retirement plan if the only employees who are allowed to resume work after a short separation are at least 62 years of age.[31]

In other words, the IRS would be interested in whether an employee and employer both had the intent for the employee, upon retirement, to permanently separate from service.[32]

Law and Court Rules on Retired Judges

Florida Law

Section 25.073, F.S., authorizes retired judges to resume service as a judge on a temporary basis, provided that the judge:

- Has not lost reelection or retention in his or her last judicial office; and
- Is not engaged in the practice of law.[33]

[27] Tax Exempt and Government Entities Division, Internal Revenue Service, Department of the Treasury, *Private Letter Ruling 201147038* (Apr. 2010).
[28] Internal Revenue Service, *Tax Consequences of Plan Disqualification* (last updated Feb. 2, 2015) http://www.irs.gov/Retirement-Plans/Tax-Consequences-of-Plan-Disqualification.
[29] 26 C.F.R. s. 1409A-1(h)(1)
[30] Tax Exempt and Government Entities Division, *supra* note 27.
[31] *See* 26 U.S.C. s. 401(a)(36) (stating "[a] trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.").
[32] *Id*.
[33] Section 25.073(1) and (2), F.S.

Court Rules

Under the Florida Rules of Judicial Administration, Rule 2.205(a)(3):

> (A) The chief justice may, either upon request or when otherwise necessary for the prompt dispatch of business in the courts of this state, temporarily assign justices of the supreme court, judges of district courts of appeal, circuit judges, and judges of county courts to any court for which they are qualified to serve.
> (B) … a "retired judge" is defined as a judge not engaged in the practice of law who has been a judicial officer of this state. … .
> (C) When a judge who is eligible to draw retirement compensation has entered the private practice of law, the judge may be eligible for recall to judicial service upon cessation of the private practice of law and approval of the judge's application to the court. The application shall state the period of time the judge has not engaged in the practice of law, and must be approved by the court before the judge shall be eligible for recall to judicial service.
> (D) A "senior judge" is a retired judge who is eligible to serve on assignment to temporary judicial duty.

III. Effect of Proposed Changes:

Termination of Employment as a Requirement of a Valid Retirement

SB 838 modifies the timeframe required for retired judges and justices to "sit out" between retirement and subsequent reemployment as a senior judge. This bill reduces from 6 calendar months to 1 calendar month the required termination period to be eligible for full retirement benefits.

The bill also allows termination to occur for retired justices and judges based on when the retiree has reached the later of his or her normal retirement age or the age when vested.

Under existing law, the Florida Retirement System Act treats all retirees the same regardless of profession, class membership, or potential employment, for purposes of reemployment after termination upon retirement. Under current law, a retiree who is reemployed must "sit out" for 6 calendar months to continue to draw retirement upon reemployment. If the time is too short, or the retiree intended to, and established a return to reemployment prior to retirement, the IRS may consider the retirement to be a "sham" retirement and potentially disqualify a state pension plan. If a member retires with an expectation of returning to work with an FRS employer and has proceeded accordingly, the termination may not qualify as a "bona fide termination." Additionally, carving out the 1 month exception for judges means that the FRS will treat judges more favorably than other employees of FRS employers who want to return to work after retirement.[34]

[34] *Impact Statement on Senate Bill 838,* State Board of Administration (Feb. 24, 2015) (on file with the Senate Committee on Judiciary).

Funding Mechanism

Because the bill is likely to result in justices and judges retiring earlier that currently expected, the bill provides a funding mechanism to accommodate the retirement rate increase. The bill increases the required employer contribution rates for the:

- Elected Officers' Class for Justices and Judges by 0.45 percentage points;
- DROP by 0.01 percentage points; and
- Unfunded actuarial liability for the Elected Officers' Class for Justices and Judges by 0.91 percentage points.

Impact on the State Courts System

The Office of the State Courts Administrator indicates that the current 6 month minimum termination requirement is too long, as some retired judges and justices take employment with private law firms instead of returning to the courts as a senior judge. At the discretion of the chief justice of the Supreme Court, retired judges who enter private legal practice may not be permitted to return to the bench under the Florida Rules of Judicial Administration.

Legislative Intent

Legislative intent in the bill provides that this bill serves an important state interest. Specifically, the Legislature finds that assigning retired judges and justices to temporary employment assist the state courts system in managing caseloads, particularly due to the backlog in foreclosure cases in the state.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Although judicial salaries and retirement are paid by the state, contributions for DROP are paid by local governments. To the extent this bill requires cities and counties to spend money or take action that requires the expenditure of money, the mandates provision of Art. VII, s. 18, of the State Constitution may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 14 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or

- The law must be approved by two-thirds of the membership of each house of the Legislature.

This bill contains a statement indicating that the bill fulfills an important state interest. Although the state funds the FRS, local governments must contribute to DROP. The Department of Management Services estimates the following fiscal impact to local government:

- From 7/2015 through 6/2016, $192,000;
- From 7/2016 through 6/2017, $198,000;
- From 7/2017 through 6/2018, $205,000;
- From 7/2018 through 6/2019, $211,000; and
- From 7/2019 through 6/2020, $218,000.[35]

However, these estimates are based on the 2012 Milliman actuarial study. As stated below, these figures cannot be used as they are no longer accurate (See discussion in D. Other Constitutional Issues below.)

Additionally, the important state interest cited in the legislative intent in SB 838 cites as causative the continued backlog in foreclosure cases in the state. However, in the most recent report by the Florida Supreme Court certifying a need for additional judges, the Court does not cite foreclosure cases as a reason for the creation of additional judgeships.[36]

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, Section 14 of the Florida Constitution provides:

> A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study will need to be conducted to comply with Art. X, sec. 14, Fla. Const. The bill provides adjustments to contribution rates, but bases these percentage points on a

[35] *2015 Legislative Bill Analysis*, Department of Management Services (Feb. 13, 2015) (on file with the Senate Committee on Judiciary).
[36] *In Re: Certification of Need for Additional Judges*, No. SC 14-2350 (Dec. 22. 2014) (on file with the Senate Committee on Judiciary).

2012 special study.[37] Given that the actuarial assumptions have changed since 2012, the study is no longer valid.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill enables retired judges and justices to return to the bench as senior judges in a shorter time frame (1 versus 6 calendar months).

In a 2011 survey, the Office of State Courts Administrator (OSCA) estimates that 167 senior judges and 2 senior justices are eligible to serve as senior judges, including 26 volunteer senior judges.[38]

C. Government Sector Impact:

State Board of Administration (SBA)

The SBA, Office of Defined Contribution Programs, expects to incur recurring and nonrecurring costs to implement this bill.

Recurring costs are estimated to be:
- From 7/15 through 6/16, $1.62 million;
- From 7/16 through 6/17, $1.67 million;
- From 7/17 through 6/18, $1.72 million;
- From 7/18 through 6/19, $1.78 million; and
- From 7/19 through 6/20, $1.84 million.

Nonrecurring costs, estimated to be less than $1 million, relate to system programming changes, revisions to printed materials, training service provider personnel, and coordination of service provider systems for data transfers and file formats.[39]

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[37] Kathryn M. Hunter and Robert Dezube, *Milliman Study Reflecting the Impact to the Blended Rates of the Florida Retirement System of Exempting Retired Judges from Termination and Reemployment Limitations* and *Milliman Study Reflecting the Impact to the Florida Retirement System Defined Benefit Plan of Exempting Retired Judges from Termination and Reemployment Limitations* (Feb. 9, 2012) (on file with the Senate Committee on Judiciary).
[38] *State Courts System Statistics for Retired Judges 2006-2011*, OSCA (Dec. 13, 2011) (on file with the Senate Committee on Judiciary).
[39] *Impact Statement on Senate Bill 838*, State Board of Administration (Feb. 24, 2015) (on file with the Senate Committee on Judiciary).

Office of the State Courts Administrator (OSCA)

The Office of the State Courts Administrator expects that this bill will have a positive impact on areas of the court where there is a higher workload.[40]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.021, 121.091, and 121.591.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

[40] Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Mar. 2, 2015) (on file with the Senate Committee on Judiciary).

163850

LEGISLATIVE ACTION

Senate	.	House
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	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 299 - 302
4 and insert:
5 individuals and businesses with access to courts. Therefore, the
6 Legislature further determines and

By Senator Bradley

A bill to be entitled

An act relating to justices and judges; amending s. 121.021, F.S.; revising the applicability of the term "termination"; amending s. 121.091, F.S.; providing that a retired justice or retired judge is not subject to certain restrictions on employment after retirement otherwise applicable to retired employees; amending s. 121.591, F.S.; providing that a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; adjusting employer contribution rates in order to fund changes made by the act; providing a directive to the Division of Law Revision and Information; providing findings of an important state interest; providing an effective date.

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

Section 1. Subsection (39) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(39)(a) "Termination" occurs, except as provided in paragraph (b), when a member ceases all employment relationships with participating employers, however:

1. For retirements effective before July 1, 2010, if a

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member is employed by any such employer within the next calendar month, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

2. For retirements effective on or after July 1, 2010, if a member is employed by any such employer within the next 6 calendar months, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

(b) "Termination" for a member electing to participate in the Deferred Retirement Option Program occurs when the program participant ceases all employment relationships with participating employers in accordance with s. 121.091(13), however:

1. For termination dates occurring before July 1, 2010, if the member is employed by any such employer within the next calendar month, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence shall constitute a continuation of the employment relationship.

2. For termination dates occurring on or after July 1, 2010, if the member becomes employed by any such employer within

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59 the next 6 calendar months, termination will be deemed not to
60 have occurred, except as provided in s. 121.091(13)(b)4.c. A
61 leave of absence constitutes a continuation of the employment
62 relationship.
63 (c) Effective July 1, 2011, "termination" for a member
64 receiving a refund of employee contributions occurs when a
65 member ceases all employment relationships with participating
66 employers for 3 calendar months. A leave of absence constitutes
67 a continuation of the employment relationship.
68 (d) Effective July 1, 2015, "termination" for a retired
69 justice or retired judge occurs when he or she has reached the
70 later of his or her normal retirement age or the age when vested
71 and has terminated all employment relationships with employers
72 under the Florida Retirement System for at least 1 calendar
73 month before returning to temporary employment as a senior judge
74 in any court, as assigned by the Chief Justice of the Supreme
75 Court in accordance with s. 2, Art. V of the State Constitution.
76 Section 2. Paragraphs (c), (d), and (e) of subsection (9)
77 of section 121.091, Florida Statutes, are amended, and paragraph
78 (f) is added to that subsection, to read:
79 121.091 Benefits payable under the system.—Benefits may not
80 be paid under this section unless the member has terminated
81 employment as provided in s. 121.021(39)(a) or begun
82 participation in the Deferred Retirement Option Program as
83 provided in subsection (13), and a proper application has been
84 filed in the manner prescribed by the department. The department
85 may cancel an application for retirement benefits when the
86 member or beneficiary fails to timely provide the information
87 and documents required by this chapter and the department's

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88 rules. The department shall adopt rules establishing procedures
89 for application for retirement benefits and for the cancellation
90 of such application when the required information or documents
91 are not received.
92 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—
93 (c) Any person whose retirement is effective on or after
94 July 1, 2010, or whose participation in the Deferred Retirement
95 Option Program terminates on or after July 1, 2010, who is
96 retired under this chapter, except under the disability
97 retirement provisions of subsection (4) or as provided in s.
98 121.053, may be reemployed by an employer that participates in a
99 state-administered retirement system and receive retirement
100 benefits and compensation from that employer. However, a person
101 may not be reemployed by an employer participating in the
102 Florida Retirement System before meeting the definition of
103 termination in s. 121.021 and may not receive both a salary from
104 the employer and retirement benefits for 6 calendar months after
105 meeting the definition of termination, except as provided in
106 paragraph (f). However, a DROP participant shall continue
107 employment and receive a salary during the period of
108 participation in the Deferred Retirement Option Program, as
109 provided in subsection (13).
110 1. The reemployed retiree may not renew membership in the
111 Florida Retirement System.
112 2. The employer shall pay retirement contributions in an
113 amount equal to the unfunded actuarial liability portion of the
114 employer contribution that would be required for active members
115 of the Florida Retirement System in addition to the
116 contributions required by s. 121.76.

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117 3. A retiree initially reemployed in violation of this
118 paragraph and an employer that employs or appoints such person
119 are jointly and severally liable for reimbursement of any
120 retirement benefits paid to the retirement trust fund from which
121 the benefits were paid, including the Florida Retirement System
122 Trust Fund and the Public Employee Optional Retirement Program
123 Trust Fund, as appropriate. The employer must have a written
124 statement from the employee that he or she is not retired from a
125 state-administered retirement system. Retirement benefits shall
126 remain suspended until repayment is made. Benefits suspended
127 beyond the end of the retiree's 6-month reemployment limitation
128 period shall apply toward the repayment of benefits received in
129 violation of this paragraph.
130 (d) Except as provided in paragraph (f), this subsection
131 applies to retirees, as defined in s. 121.4501(2), of the
132 Florida Retirement System Investment Plan, subject to the
133 following conditions:
134 1. A retiree may not be reemployed with an employer
135 participating in the Florida Retirement System until such person
136 has been retired for 6 calendar months.
137 2. A retiree employed in violation of this subsection and
138 an employer that employs or appoints such person are jointly and
139 severally liable for reimbursement of any benefits paid to the
140 retirement trust fund from which the benefits were paid. The
141 employer must have a written statement from the retiree that he
142 or she is not retired from a state-administered retirement
143 system.
144 (e) The limitations of this subsection apply to
145 reemployment in any capacity irrespective of the category of

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146 funds from which the person is compensated, except as provided
147 in paragraph (f).
148 (f) Effective July 1, 2015, a retired justice or retired
149 judge who has reached the later of his or her normal retirement
150 age or the age when vested, who has terminated all employment
151 with employers participating under the Florida Retirement System
152 for at least 1 calendar month, and who subsequently returns to
153 temporary employment as a senior judge in any court, as assigned
154 by the Chief Justice of the Supreme Court in accordance with s.
155 2, Art. V of the State Constitution is not subject to paragraph
156 (c), paragraph (d), or paragraph (e) while reemployed as a
157 senior judge.
158 Section 3. Paragraph (a) of subsection (1) of section
159 121.591, Florida Statutes, is amended to read:
160 121.591 Payment of benefits.—Benefits may not be paid under
161 the Florida Retirement System Investment Plan unless the member
162 has terminated employment as provided in s. 121.021(39)(a) or is
163 deceased and a proper application has been filed as prescribed
164 by the state board or the department. Benefits, including
165 employee contributions, are not payable under the investment
166 plan for employee hardships, unforeseeable emergencies, loans,
167 medical expenses, educational expenses, purchase of a principal
168 residence, payments necessary to prevent eviction or foreclosure
169 on an employee's principal residence, or any other reason except
170 a requested distribution for retirement, a mandatory de minimis
171 distribution authorized by the administrator, or a required
172 minimum distribution provided pursuant to the Internal Revenue
173 Code. The state board or department, as appropriate, may cancel
174 an application for retirement benefits if the member or

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175 beneficiary fails to timely provide the information and
176 documents required by this chapter and the rules of the state
177 board and department. In accordance with their respective
178 responsibilities, the state board and the department shall adopt
179 rules establishing procedures for application for retirement
180 benefits and for the cancellation of such application if the
181 required information or documents are not received. The state
182 board and the department, as appropriate, are authorized to cash
183 out a de minimis account of a member who has been terminated
184 from Florida Retirement System covered employment for a minimum
185 of 6 calendar months. A de minimis account is an account
186 containing employer and employee contributions and accumulated
187 earnings of not more than $5,000 made under the provisions of
188 this chapter. Such cash-out must be a complete lump-sum
189 liquidation of the account balance, subject to the provisions of
190 the Internal Revenue Code, or a lump-sum direct rollover
191 distribution paid directly to the custodian of an eligible
192 retirement plan, as defined by the Internal Revenue Code, on
193 behalf of the member. Any nonvested accumulations and associated
194 service credit, including amounts transferred to the suspense
195 account of the Florida Retirement System Investment Plan Trust
196 Fund authorized under s. 121.4501(6), shall be forfeited upon
197 payment of any vested benefit to a member or beneficiary, except
198 for de minimis distributions or minimum required distributions
199 as provided under this section. If any financial instrument
200 issued for the payment of retirement benefits under this section
201 is not presented for payment within 180 days after the last day
202 of the month in which it was originally issued, the third-party
203 administrator or other duly authorized agent of the state board

204 shall cancel the instrument and credit the amount of the
205 instrument to the suspense account of the Florida Retirement
206 System Investment Plan Trust Fund authorized under s.
207 121.4501(6). Any amounts transferred to the suspense account are
208 payable upon a proper application, not to include earnings
209 thereon, as provided in this section, within 10 years after the
210 last day of the month in which the instrument was originally
211 issued, after which time such amounts and any earnings
212 attributable to employer contributions shall be forfeited. Any
213 forfeited amounts are assets of the trust fund and are not
214 subject to chapter 717.
215 (1) NORMAL BENEFITS.—Under the investment plan:
216 (a) Benefits in the form of vested accumulations as
217 described in s. 121.4501(6) are payable under this subsection in
218 accordance with the following terms and conditions:
219 1. Benefits are payable only to a member, an alternate
220 payee of a qualified domestic relations order, or a beneficiary.
221 2. Benefits shall be paid by the third-party administrator
222 or designated approved providers in accordance with the law, the
223 contracts, and any applicable board rule or policy.
224 3. The member must be terminated from all employment with
225 all Florida Retirement System employers, as provided in s.
226 121.021(39).
227 4. Benefit payments may not be made until the member has
228 been terminated for 3 calendar months, except that the state
229 board may authorize by rule for the distribution of up to 10
230 percent of the member's account after being terminated for 1
231 calendar month if the member has reached the normal retirement
232 date as defined in s. 121.021. Effective July 1, 2015, a retired

233 justice or retired judge who returns to temporary employment as
234 a senior judge in any court pursuant to s. 2, Art. V of the
235 State Constitution and meets the criteria in the definition of
236 the term "termination" in s. 121.021(39)(d) may continue to
237 receive a distribution of his or her account as provided under
238 this paragraph after providing proof of assignment as a senior
239 judge.
240 5. If a member or former member of the Florida Retirement
241 System receives an invalid distribution, such person must either
242 repay the full amount within 90 days after receipt of final
243 notification by the state board or the third-party administrator
244 that the distribution was invalid, or, in lieu of repayment, the
245 member must terminate employment from all participating
246 employers. If such person fails to repay the full invalid
247 distribution within 90 days after receipt of final notification,
248 the person may be deemed retired from the investment plan by the
249 state board and is subject to s. 121.122. If such person is
250 deemed retired, any joint and several liability set out in s.
251 121.091(9)(d)2. is void, and the state board, the department, or
252 the employing agency is not liable for gains on payroll
253 contributions that have not been deposited to the person's
254 account in the investment plan, pending resolution of the
255 invalid distribution. The member or former member who has been
256 deemed retired or who has been determined by the state board to
257 have taken an invalid distribution may appeal the agency
258 decision through the complaint process as provided under s.
259 121.4501(9)(g)3. As used in this subparagraph, the term "invalid
260 distribution" means any distribution from an account in the
261 investment plan which is taken in violation of this section, s.

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262 121.091(9), or s. 121.4501.
263 Section 4. (1) In order to fund the benefit changes
264 provided in this act, the required employer contribution rates
265 for members of the Florida Retirement System established in s.
266 121.71(4), Florida Statutes, must be adjusted as follows:
267 (a) The Elected Officers' Class for Justices and Judges
268 must be increased by 0.45 percentage point; and
269 (b) The Deferred Retirement Option Program must be
270 increased by 0.01 percentage point.
271 (2) In order to fund the benefit changes provided in this
272 act, the required employer contribution rate for the unfunded
273 actuarial liability of the Florida Retirement System established
274 in s. 121.71(5), Florida Statutes, for the Elected Officers'
275 Class for Justices and Judges is increased by 0.91 percentage
276 point.
277 (3) The adjustments provided in subsections (1) and (2)
278 shall be in addition to all other changes to such contribution
279 rates which may be enacted into law to take effect on July 1,
280 2015, and July 1, 2016. The Division of Law Revision and
281 Information is directed to adjust accordingly the contribution
282 rates provided in s. 121.71, Florida Statutes.
283 Section 5. (1) The Legislature finds that a proper and
284 legitimate state purpose is served if employees and retirees of
285 the state and its political subdivisions, and the dependents,
286 survivors, and beneficiaries of such employees and retirees, are
287 extended the basic protections afforded by governmental
288 retirement systems which provide fair and adequate benefits and
289 which are managed, administered, and funded in an actuarially
290 sound manner as required by s. 14, Article X of the State

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291 Constitution and part VII of chapter 112, Florida Statutes.
292 Therefore, the Legislature determines and declares that this act
293 fulfills an important state interest.
294 (2) The Legislature further finds that the assignments of
295 former justices and judges to temporary employment as senior
296 judges in any court by the Chief Justice of the Supreme Court in
297 accordance with s. 2, Article V of the State Constitution assist
298 the state courts system in managing caseloads and providing
299 individuals and businesses with access to courts. In particular,
300 these assignments are critically important in assisting with the
301 disposition of the current backlog in foreclosure cases in this
302 state. Therefore, the Legislature further determines and
303 declares that this act fulfills an important state interest by
304 facilitating the ability of justices and judges who retire under
305 the Florida Retirement System to return to temporary employment
306 as senior judges in a timely manner.
307 Section 6. This act shall take effect July 1, 2015.

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The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 20, 2015

I respectfully request that **Senate Bill # 838**, relating to Justices and Judges, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 630

INTRODUCER: Senator Joyner

SUBJECT: Transfers to Minors

DATE: March 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Pre-meeting**
2.			BI	
3.			RC	

I. Summary:

SB 630 amends the Uniform Transfers to Minors Act to enable a person to make a gift to a minor which may be held by a custodian until the minor reaches the age of 25, and not 21, as provided under current law. However, the bill requires that the minor have at least 30 days to compel the distribution of the custodial property on or about the minor's 21st birthday. The extended time periods apply to gifts or property held by a custodian which were directly transferred or given to the custodian by the donor, a holder of a power of appointment,[1] or a personal representative or trustee pursuant to the terms of a trust or will. This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.

II. Present Situation:

The Florida Uniform Transfers to Minors Act was enacted in 1985. It is a state adaptation of the Uniform Transfers to Minors Act developed by the Uniform Law Commission in 1983.[2]

The Florida Uniform Transfers to Minors Act provides a simple, inexpensive mechanism for an adult to give gifts to a minor without the minor assuming control of the gifts until he or she reaches majority. The act provides for a custodianship in which an adult maintains control of property irrevocably granted which will eventually transfer directly to the minor. The custodian holds record title to the asset for the benefit of the minor.

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[1] "A power of appointment is the legal authority to make another person the outright owner of the property left by a decedent. A donor gives the power to a donee so that person may choose the beneficiaries of his trust or will." Legal Information Institute, Cornell Law School (last visited February 25, 2015) https://www.law.cornell.edu/wex/power_of_appointment.

[2] The National Conference of Commissioners on Uniform State Laws, *Transfers to Minors Act Summary*, http://uniformlaws.org/ActSummary.aspx?title=Transfers%20to%20Minors%20Act (last visited February 20, 2015). According to the National Conference's website, the uniform act has been enacted in 48 states, the District of Columbia, the U.S. Virgin Islands, and is currently pending before one other state legislature. The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Transfers to Minors Act*, http://uniformlaws.org/LegislativeFactSheet.aspx?title=Transfers%20to%20Minors%20Act (last visited February 20, 2015).

A custodianship, which is sometimes referred to as a "poor man's trust" is less expensive to operate than a trust because it does not create significant administrative fees and costs that diminish the value of the gift. Additionally, a custodianship is beneficial because the property is retained by a more mature and competent individual as opposed to an inexperienced minor. Any type of property, whether it is real or personal, tangible or intangible, may be transferred to a custodian for the minor's benefit. The act covers outright gifts and other transfers, including the payment of debts owed to a minor, and transfers of property from estates or trusts.[3]

Under current law, the duration of a custodianship is based upon who made the gift or the express directions of the donor. The duration of a custodianship extends until the minor reaches age 21 if a gift or transfer was given to a custodian directly by the donor, a person authorized by a will to give gifts to third persons, or a personal representative or trustee acting in accordance with the terms of a trust providing for the custodianship.[4] The duration of a custodianship extends until a minor reaches 18 years of age if the custodianship property is from a will or trust that does not expressly provide for a custodianship or the custodianship holds property from a debt owed to the minor or a benefit plan.[5]

III. Effect of Proposed Changes:

Under Florida's Uniform Transfers to Minors Act (UTMA), all gifts to minors must be fully distributed to the minor when he or she reaches 18 or 21 years of age. This bill allows certain custodianships to extend to the minor's 25th birthday if the minor has at least 30 days when he or she turns 21 years of age to claim all of the assets in the custodianship. This extension applies to a custodianship created by donor, a holder of a power of appointment, or a fiduciary acting pursuant to an authorization in a will or a trust.[6] This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.[7]

The bill amends s. 710.123, F.S., to establish provisions under which a custodianship may be extended to the age of 25. The document creating the custodianship must specify in its terms that it is creating a custodianship that terminates when the minor reaches the age of 25. If the transferor creates the custodianship to terminate when the minor reaches the age of 25, the minor has an absolute right to compel an immediate distribution of the property upon reaching the age of 21. The transferor, however, may limit the minor's withdrawal rights to a designated time period after the minor reaches 21 years of age. To effectively make this limitation, the custodian must provide the minor with written notice of his or her withdrawal rights. The written notice must be delivered at least 30 days before, and no later than 30 days after, the minor's 21st

[3] The National Conference of Commissioners on Uniform State Laws, *Why States Should Adopt UTMA* http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UTMA (last visited February 20, 2015).
[4] Sections 710.105 and 710.106, F.S.
[5] Sections 710.107 and 710.108, F.S.
[6] See section 1 of the bill and existing ss. 710.105 and 710.106, F.S.
[7] See section 1 of the bill and existing ss. 710.107 and 710.108, F.S. Under existing s. 710.107, F.S., a custodianship terminates when the minor reaches 18 years of age if it is funded from a will or trust that does not expressly provide for the creation of a custodianship.

birthday. The termination rights may not expire before the later of 30 days after the 21st birthday or 30 days after the custodian delivers the notice.

The bill amends s. 710.105, F.S., to provide that a transfer by irrevocable gift from a revocable trust is treated, for all purposes, as a transfer made directly by the grantor of the trust. The purpose of this change is to provide that a revocable trust will be permitted to make a gift to a minor that can be placed in a custodianship until the minor is 25 years old under s. 710.123(1), F.S. A plausible argument can be made that, if the revocable trust documents are silent about the intent to create a custodianship, then the gift would need to be distributed to the minor on his or her 18th birthday. The bill, by treating the gift as if it were directly from the grantor, ensures that such gifts can be held by a custodian until the minor's 25th birthday.

Gifts to create UTMA accounts are treated by the IRS as gifts to trusts. Gifts to trusts do not normally qualify for the gift tax annual exclusion, which is currently $14,000 per donee, per year.[8] However, the IRS allows gifts to an UTMA account that terminates at 21 to qualify for the gift tax annual exclusion, but will not allow a gift to an UTMA account that terminates at age 25 to qualify.[9] Therefore, to conform with other IRS requirements that allow gifts to trusts to qualify for the annual exclusion if the trust beneficiary has a right, for a limited time, to withdraw the gift made to the trust, the minor must also have a right for a limited time to withdraw a contribution to an age of 25.[10]

Because financial institutions might not be aware that a custodianship does not terminate until a minor reaches the age of 25, they are shielded from liability under the provisions of this bill, if funds are distributed when the minor reaches the age of 21.[11]

The extension proposed by this bill does not authorize the extension of a custodianship for someone who has already reached the age of 21 years at the time for creation of the custodianship.

According to the Real Property, Probate and Trust Law Section of The Florida Bar, seven other states have amended their state version of the Uniform Transfer to Minors Act to allow a custodian, under certain circumstances, to hold assets for a minor until he or she reaches the age of 25.[12]

The bill takes effect July 1, 2015.

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[8] Department of the Treasury, Internal Revenue Service, *IRS Publication 559: Survivors, Executors, and Administrators*, 25 (January 31, 2014).
[9] 26 U.S.C. s. 2503(c)(1) and (2).
[10] To qualify for the gift tax exclusion, the gift must be of a present interest. Treas. Reg. s. 25.2503-4(b)(2) stands for the proposition that the gift will be of a present interest if the minor has the right to extend the trust. IRS Revenue Ruling 74-43 states that if the minor has a limited period within which to compel distribution, the gift will be a present interest. *See also* 26 U.S.C. s. 2503(c).
[11] The Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Amendments to Florida Uniform Transfers to Minors Act, Ch. 710, Florida Statutes* (2015) (on file with the Senate committee on Judiciary).
[12] *Id*. Those states are Alaska, California, Nevada, Oregon, Pennsylvania, Tennessee, and Washington.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill might have a positive, yet indeterminate, fiscal impact in the private sector by allowing people who establish custodianships to legally reduce or avoid some federal taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 710.102, 710.105, and 710.123.

This bill reenacts the following sections of the Florida Statutes: 710.117 and 710.121.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Joyner

19-00594-15 2015630__

A bill to be entitled

An act relating to transfers to minors; amending s. 710.102, F.S; defining the term "general power of appointment"; amending s. 710.105, F.S.; specifying that certain transfers from a trust are considered as having been made directly by the grantor of the trust; amending s. 710.123, F.S.; authorizing custodianships established by irrevocable gift and by irrevocable exercise of power of appointment to terminate when a minor attains the age of 25, subject to the minor's right in such custodianships to compel distribution of the property upon attaining the age of 21; limiting liability of financial institutions for certain distributions of custodial property; reenacting ss. 710.117(2) and 710.121(2) and (6), F.S., to incorporate the amendment made to s. 710.105, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (9) through (18) of section 710.102, Florida Statutes, are renumbered as subsections (10) through (19), respectively, and a new subsection (9) is added to that section, to read:

710.102 Definitions.—As used in this act, the term:

(9) "General power of appointment" means a power of appointment as defined in s. 732.2025(3).

Section 2. Section 710.105, Florida Statutes, is amended to read:

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

19-00594-15 2015630__

710.105 Transfer by gift or exercise of power of appointment.—A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to s. 710.111. Notwithstanding s. 710.106, a transfer by irrevocable gift from a trust over which the grantor has at the time of transfer a right of revocation, as defined in s. 733.707(3)(e), shall be treated for all purposes under this act as a transfer made directly by the grantor of the trust.

Section 3. Section 710.123, Florida Statutes, is amended to read:

710.123 Termination of custodianship.—

(1) The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) ~~(1)~~ The minor's attainment of 21 years of age with respect to custodial property transferred under s. 710.105 or s. 710.106. However, a transferor may, with respect to such custodial property, create the custodianship so that it terminates when the minor attains 25 years of age;

(b) ~~(2)~~ The minor's attainment of ~~age~~ 18 years of age with respect to custodial property transferred under s. 710.107 or s. 710.108; or

(c) ~~(3)~~ The minor's death.

(2) If the transferor of a custodianship under paragraph (1)(a) creates the custodianship to terminate when the minor attains 25 years of age, in the case of a custodianship created by irrevocable gift or by irrevocable inter vivos exercise of a general power of appointment, the minor nevertheless has the

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

59 absolute right to compel immediate distribution of the entire
60 custodial property when the minor attains 21 years of age.
61 (3) As to a custodianship described in subsection (2), a
62 transferor may provide, by delivery of a written instrument to
63 the custodian upon the creation of such custodianship, that the
64 minor's right to compel immediate distribution of the entire
65 custodial property will terminate upon the expiration of a fixed
66 period that begins with the custodian's delivery of a written
67 notice to the minor of the existence of such right. To be
68 effective to terminate the minor's right to compel an immediate
69 distribution of the entire custodial property when the minor
70 attains 21 years of age, the custodian's written notice must be
71 delivered at least 30 days before, and not later than 30 days
72 after, the date upon which the minor attains 21 years of age,
73 and the fixed period specified in the notice for the termination
74 of such right may not expire before the later of 30 days after
75 the minor attains 21 years of age or 30 days after the custodian
76 delivers such notice.
77 (4) Notwithstanding s. 710.102(12), if the transferor
78 creates the custodianship to terminate when the minor attains 25
79 years of age, solely for purposes of the application of the
80 termination provisions of this section, the term "minor" means
81 an individual who has not attained 25 years of age.
82 (5) A financial institution has no liability to a custodian
83 or minor for distribution of custodial property to, or for the
84 benefit of, the minor in a custodianship created by irrevocable
85 gift or by irrevocable exercise of a general power of
86 appointment when the minor attains 21 years of age.
87 Section 4. Subsection (2) of s. 710.117 and subsections (2)

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

88 and (6) of s. 710.121, Florida Statutes, are reenacted for the
89 purpose of incorporating the amendments made by this act to s.
90 710.105, Florida Statutes, in references thereto.
91 Section 5. This act shall take effect July 1, 2015.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

February 9, 2015

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

Dear Chairman Diaz de la Portilla:

This is to request that Senate Bill 630, Transfers to Minors, be placed on the agenda for the Committee on Judiciary. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:
❒ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
❒ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Capitol

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

DATE	COMM	ACTION
12/29/14	SM	Favorable
3/3/15	JU	Pre-meeting
	AED	
	AP	

December 29, 2014

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

Re: **SB 72** – Senator Flores
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $944,034.30 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

CURRENT STATUS:

On February 3, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 26 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Jason Hand. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have

significantly altered the findings or recommendation in the previous report.

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

Additionally, the prior claim bill, SB 26 (2012), is effectively identical to claim bill filed for the 2015 Legislative Session.

Respectfully submitted,

Jason Hand
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
12/02/11	SM	Fav/1 amendment

December 2, 2011

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

Re: **SB 26 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $944,034.30 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDINGS OF FACT:

Following a four-day trial in the Palm Beach County Circuit Court a jury found that Claimant had sustained a permanent injury in an accident that occurred December 15, 2005, and awarded him the following damages with the amount of the award in parentheses: past medical expenses ($96,475.64); future medical expenses ($175,892.00); past pain and suffering ($478,333.33); and future pain and suffering ($343,333.33). The award of damages totaled $1,094,034.30. The verdict was dated February 12, 2010.

On February 25, 2010, Judge Thomas H. Barkdull entered final judgment for Claimant as follows: "Pursuant to the Jury Verdict rendered in this action, IT IS ADJUDGED: That [Claimant] recover from [the School Board] the sum of [$1,094,034.30] that shall bear interest annually at the

statutory rate and for which let execution issue for the first One Hundred Thousand Dollars ($100,000.00) of this judgment and that portion of the judgment that exceeds [$100,000] may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature further [sic] to 768.28."

The court retained jurisdiction to determine taxable costs as well as to determine set offs, if any. On August 4, 2010, Judge Barkdull entered a "Final Cost Judgment" in the amount of $50,394.52 with interest at the statutory rate with the following provision: "but for which execution shall not issue, but this judgment may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature pursuant to 768.28."

On April 14, 2010, the School Board paid to Claimant the sum of $100,000.00 in partial satisfaction of the Final Judgment.

At the trial and in this claims proceeding, the School Board stipulated that it is liable for Claimant's damages.

In this claims proceeding, the School Board does not contest the award for Claimant's past medical expenses or the award for Claimant's past pain and suffering. The School Board asserts that the awards for future medical expenses and future pain and suffering are excessive.

Claimant, a male, born September 7, 1991, is a basketball player who currently plays for Santa Fe College. On December 15, 2005, Claimant was being transported from basketball practice to his home in a van being driven by Vincent Merriweather, a volunteer coach for Claimant's team. Mr. Merriweather served as a mentor to Claimant.

On that date Mr. Merriweather's van was stopped at a red light in a westbound lane at the intersection of Forest Hills Boulevard and Olympia Boulevard in Palm Beach County when a school bus owned and operated by the Palm Beach County School District rear-ended the van. It was estimated that the bus was traveling in excess of 45 MPH when it hit the van, and there was no credible evidence that the driver applied his brakes at any point before the accident.

The negligence of the school bus driver was the cause of the accident and was the proximate cause of the damages suffered by Claimant.

Mr. Merriweather was also injured in the accident and suffered damages in excess of $100,000.00. Mr. Merriweather was granted compensation for his excess damages by Chapter 2009-247, Laws of Florida.

Claimant was wearing a seat belt at the time of the crash. Claimant's seat failed as a result to the force of the impact, and he was thrown into the back of the van and briefly lost consciousness. When he regained consciousness, he began yelling for Mr. Merriweather, who was unable to respond. Claimant was able to exit the van, but he immediately experienced pain in his neck. An unidentified person assisted Claimant by helping him to lie down on the pavement. A person identified as a school nurse told Claimant to be still until emergency services arrived and advised him to stay still.

Emergency responders arrived on the scene in a timely fashion, stabilized Claimant's head and neck, and transported him to Wellington Regional Hospital.

Diagnostic testing at Wellington Regional Hospital reflected that Claimant had suffered a cervical fracture in the region of the neck referred to as C6-C7. The cervical area of the neck, consisting of seven vertebrae, is immediately above the thoracic region. The designation C6-7 (or C6-C7) indicates the area where the sixth cervical vertebrae and the seventh cervical vertebrae are located. Between the two vertebrae is a disc, which serves several purposes, including acting as a shock absorber between the two vertebrae. The spinal cord runs through the vertebrae of the cervical and thoracic regions.

Due to the severity of the injury, which included a risk of paralysis, Wellington Regional Hospital transferred Claimant to the trauma center at St. Mary's Hospital.

At St. Mary's, Claimant was placed in cervical traction consisting of immobilizing hardware being screwed into his skull and being strapped to a bed where he was unable to move.

Dr. Bret Baynham, a certified pediatric orthopedic surgeon, performed the following procedures on Claimant: Open Reduction C6-7 Fracture-Dislocation; Anterior Cervical Discectomy C6-7; Anterior Cervical Decompression, C6-7; Anterior Cervical Interbody Fusion Device C6-7; and Anterior Cervical Fusion C6-7.

In layman's terms, Dr. Baynham fused Claimant's C6-C7 vertebrae. He removed the disc between C6-C7. In the area from which the disc had been removed, he inserted a hollowed metallic dowel, referred to as a cage, filled with particles of bones that were designed to allow the two vertebrae to eventually grow together. He then affixed a metal plate to stabilize C6-C7 using special bone screws. The metal plate is intended to be permanent.

Dr. Baynham provided Claimant excellent care.

Post-surgery, Claimant underwent a grueling rehabilitation. Claimant worked hard during rehabilitation and cooperated fully with his therapists and other treatment providers.

Dr. Baynham continued to follow Claimant's recovery post-surgery. On July 27, 2006, Dr. Baynham found Claimant to be pain free and gradually returning to normal activities. Dr. Baynham's office notes reflect the following recommendation: "At this point we are going to allow [Claimant] to return to full activity. Based on his clinical and radiographic findings he is found to have a stable healed injury without any evidence of any residual instability or neurologic compromise. If he should have any problems as we move forward he is to refrain from activity and contact us immediately. This would include pain recurrence or any signs or symptoms associated with spinal cord or nerve root irritation. Otherwise if he remains well we would like to have him follow up in six months for re-evaluation including radiographs if indicated."

After July 27, 2006, Claimant resumed playing basketball and became a star high school player and a full-scholarship player at Santa Fe College in Gainesville. Claimant has been cleared to play basketball without any medical restrictions attributable to the injuries he received in the 2005 accident.

At present, Claimant experiences periodic neck pain.

Adjacent disc disease (also referred to in the record as "adjacent segment disease") can be a consequence of fusing two vertebrae. When two discs are fused, greater mechanical loading or stress is placed on the vertebrae above or below the fused discs, which may or may not cause disc degeneration and require further intervention. While adjacent disc disease may be discernable by a MRI relatively soon after the fusion, symptoms from the disease typically come later in life, but may not come at all.

Claimant was seen by Dr. Baynham on follow-up on November 27, 2007. His impression was that Claimant was stable with no residual neurologic impairment, no pain in the neck, and no functional loss of motion. His recommendation was that "Based on the clinical and radiographic findings [Claimant] is found to have a stable healed injury without evidence of any residual instability or neurologic compromise. No further treatment is indicated at this time. No restrictions to athletic participation. Follow up prn."

Claimant experienced neck and back pain in 2009 and returned to Dr. Baynham in January and June of that year. In June 2009, Dr. Baynham ordered an MRI for Claimant. Dr. Baynham observed changes in C7-T1 (T1 is the first thoracic vertebrae). Dr. Baynham testified that the changes could be the delayed manifestation of injuries from the initial injury. He also testified that the changes could be the result of adjacent segment disease phenomenon. Dr. Baynham testified that the changes "are certainly consistent with not only the zone of initial injury, but also some additional changes that are probably the result of this adjacent segment disease phenomenon, as best we know."

Dr. Baynham further testified that "based on his young age and his life expectancy and based on the current state of understanding of this phenomenon of the adjacent level disc disease, I think it is probable, most probable that he will continue to experience changes there. And it will, in time, probably rise to the level of becoming clinically significant, meaning a source of pain and potentially a source requiring additional treatment."

Dr. Craig H. Lichtblau is a physiatrist who specializes in physical medicine, rehabilitation, and evaluation. Dr. Lichtblau was retained by Claimant to conduct a Comprehensive Rehabilitation Evaluation of Claimant, give an impairment rating of Claimant, and provide a Continuation of Care plan for Claimant

Dr. Lichtblau assigned Claimant a 4 percent permanent partial impairment of the whole person.

Dr. Lichtblau's Continuation of Care plan included the services that Dr. Lichtblau believed Claimant would or may need in the future. Dr. Lichtblau's plan included future epidural steroid injections and surgical intervention. Dr. Baynham testified that including epidural steroid injections is reasonable. Dr. Baynham also testified that Claimant is at an increased risk of future surgical intervention.

Bernard E. Pettingill, Jr., Ph.D. is a consulting economist who, on February 12, 2009, prepared an analysis entitled "The Present Value Analysis of the Future Medical Care Costs of [Claimant]". At the time of the analysis, Claimant's life expectancy was projected to by 53.6 years beyond the date of the report.

Claimant represented in his "Summary of Case" that the parties stipulated that Claimant's past medical expenses for purposes of trial were $96,475.64.

Dr. Pettingill used Dr. Lichtblau's Continuation of Care plan to compute the present value of Claimant's "Total Economic Loss, Period II, Future Loss, After Trial Date". Claimant presented evidence to the jury that the correct total economic loss for the post-trial period, as computed by Dr. Pettingill, was $363,487.00.

Claimant was examined by Dr. Jordan Grabel, a neurological surgeon, on July 17, 2008, at the request of the School Board. Dr. Grabel reviewed Claimant's medical records and took histories from Claimant and Claimant's mother. Dr. Grabel found that Claimant's surgery had healed and that there were no other abnormalities that could be associated with the accident. Dr. Grabel opined that there was a 50-50

chance that the onset of adjacent segment disease will be discernable by X-ray in future years. He further opined that there is no way to determine whether Claimant will become symptomatic or need future surgical treatment. Dr. Grabel was of the opinion that the Continuation of Care plan prepared by Dr. Lichtblau included non-invasive follow-up treatment that was unnecessary.

The School Board did not have a consulting economist estimate the present value of Claimant's future economic loss based on the services Dr. Grabel believed Claimant would need.

Dr. Mark Rubenstein conducted a compulsory medical examination of Claimant on August 11, 2008. Dr. Rubenstein's evaluation included a physical examination and a review of Claimant's medical records. Dr. Rubenstein's report reflects his opinion that Claimant's future medical care will be limited to physician visits on an as-needed basis and that Claimant will require future MRI studies and X-rays. Although he acknowledged the possibility of adjacent disc disease, he did not believe that intervention was medically probable. Dr. Rubenstein's report reflects the opinion that Claimant's future pain management will be limited to the use of anti-inflammatory medications.

In its position statement, the School Board represents that Dr. Rubenstein is a physiatrist retained by the School Board and that he believed that Claimant's future care not including surgery for adjacent segment disease would be approximately $25,000.00. The undersigned did not find that figure in Dr. Rubenstein's report.

CLAIMANT'S POSITION:

1. The negligence of the school bus driver was the sole and proximate cause of the injuries and damages sustained by Claimant.

2. Claimant's future damages are not speculative, and the jury's verdict is supported by the evidence.

SCHOOL BOARD'S POSITION:

1. School Board stipulated that it is liable for Claimant's damages.

2. School Board does not dispute the jury award for past medical expenses or for past pain and suffering.

3. School Board asserts that Claimant has healed and has become a star basketball player.

4. School Board contends that awards for future medical expenses and future pain and suffering are excessive and speculative.

5. School Board argues that $25,000.00 would suffice for future medical expenses and that $50,000.00 would suffice for future pain and suffering.

6. School Board is self-insured and is experiencing a bleak fiscal year with expected shortfalls of over $54,000,000.00.

CONCLUSIONS OF LAW:

The bus driver had a duty to exercise reasonable care in the operation of the bus. See generally s. 316.183(1), Fla. Stat. He breached this duty by crashing into the back of Mr. Merriweather's stopped van. See Eppler v. Tarmac America, Inc., 752 So. 2d 592 (Fla. 2000) (rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

The school bus driver was an employee of the School Board acting within the course and scope of his employment at the time of the accident. As a result, the driver's negligence is attributable to the School Board.

Consistent with the School Board's stipulation as to its liability, it is concluded that the bus driver's negligence was the sole and proximate cause of the injuries and damages sustained by Claimant, and that the driver's negligence is attributable to the School Board.

The jury based its verdict on competent, substantial evidence.

LEGISLATIVE HISTORY:

This is the second year that this claim has been presented to the Legislature.

ATTORNEYS FEES:

Claimant's attorney filed an affidavit stating that attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), Florida Statutes. Lobbyist fees are incorporated into the attorney's fees cap.

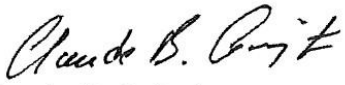
The Legislature is free to limit those amounts as it sees fit. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008). The bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

FISCAL IMPACT: The School Board is self-insured and has no liability insurance applicable to this claim. The School Board expects to face a substantial budgetary shortfall and the passage of this claim bill will add to its budgetary difficulties.

OTHER ISSUES: The bill, as filed, does not include the sum of $50,394.52, which is the amount of the "Final Cost Judgment" entered by Judge Barkdull on August 4, 2010. The bill should be amended to add costs in the sum of $50,394.52, so that the total amount of the award will be increased from the sum of $994,034.30 to the sum of $1,044,428.82.

RECOMMENDATIONS: Based upon the foregoing, I recommend that Senate Bill 26 be reported FAVORABLY, as amended.

Respectfully submitted,



Claude B. Arrington
Senate Special Master

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

By Senator Flores

A bill to be entitled

An act for the relief of Altavious Carter by the Palm Beach County School Board; providing for an appropriation to compensate Mr. Carter for injuries sustained as a result of the negligence of a bus driver of the Palm Beach County School District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on December 15, 2005, 14-year-old Altavious Carter, a freshman at Summit Christian School in Palm Beach County, was a passenger in a vehicle driven by Vincent H. Merriweather, and

WHEREAS, while Mr. Merriweather was stopped at a red light at the intersection of Forest Hill Boulevard and Olympia Boulevard in Palm Beach County, his vehicle was struck by a school bus driven by an employee of the Palm Beach County School District, and

WHEREAS, the bus driver, Dennis Gratham, was cited for careless driving and the speed of the bus at the time of impact was 48.5 miles per hour, and

WHEREAS, the seat in which Mr. Carter was sitting was broken as a result of the crash, and Mr. Carter, who was wearing a seatbelt, was thrown into the back of the van, his neck was broken at the C6 level, and he suffered a C6-7 interior subluxation and reversal of normal cervical lordosis, with spinal cord flattening, and

WHEREAS, Mr. Carter was taken by ambulance to Wellington Regional Medical Center and subsequently to St. Mary's Medical

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

Center, where he was diagnosed and treated for these injuries, and

WHEREAS, Mr. Carter received a discectomy and fusion at C6-7, along with placement of a bone graft and cage, plates, and screws to fuse the spine at C6-7, and

WHEREAS, following rehabilitation, an MRI taken in June 2009 indicated a small herniation at the C7-T1 level, representing the start of degenerative disc disease, and

WHEREAS, on February 25, 2010, Mr. Carter received a jury verdict against the Palm Beach County School Board, and the court entered a judgment in the amount of $1,094,034.30, and

WHEREAS, the Palm Beach County School Board is obligated to pay the statutory limit of $100,000 under s. 768.28, Florida Statutes, and

WHEREAS, the Palm Beach County School Board is responsible for paying the remainder of the judgment, which is $994,034.30, 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 School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw a warrant in the sum of $994,034.30, payable to Altavious Carter as compensation for injuries and damages sustained.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amount

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

59 awarded under this act are intended to provide the sole
60 compensation for all present and future claims arising out of
61 the factual situation described in this act which resulted in
62 injuries to Mr. Carter. The total amount paid for attorney fees,
63 lobbying fees, costs, and other similar expenses relating to
64 this claim may not exceed 25 percent of the total amount awarded
65 under this act.
66 Section 4. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Capitol

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

DATE	COMM	ACTION
12/18/14	SM	Fav/1 amendment
3/3/15	JU	Pre-meeting

December 18, 2014

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

Re: **SB 58** – Senator Wilton Simpson
Relief of C.M.H. by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $5,000,000 PREDICATED ON THE ENTRY OF A JURY AWARD IN FAVOR OF CHRISTOPHER HANN AND THERESA HANN, INDIVIDUALLY, AND AS NATURAL GUARDIANS OF C.M.H., A MINOR CHILD, DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

FINDINGS OF FACT:

The Department of Children and Families, placed J.W., a 10 year old foster child with a history of violence and sexual assaults against younger children, in the home of Christopher and Theresa Hann. The Hanns had young children of their own, and because the Hanns were not trained to handle a child with J.W.'s propensity for violence, the department should not have placed J.W. in the Hann's home. Making matters worse, the department concealed J.W.'s violent past from the Hanns when it had a duty to disclose it. Ultimately, the department's placement of J.W. in the Hann's home led to the emotional, physical, and sexual abuse of C.M.H., the Hann's 8 year old son, by J.W.

The Department of Children and Families knew of J.W.'s propensity for violence toward other children.

J.W. was born January 23, 1992, in Florida, to a teenage mother who had a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide during the third month of her pregnancy by inhaling butane. J.W.'s mother was living in a shelter for homeless and runaway youth at his birth. J.W.'s biological father had a history of drug abuse and played no major role in his life.

J.W. lived with his mother until the age of 4. During this time he was subjected to extreme neglect, cruelty, and physical and sexual abuse by his mother, her boyfriends, and her extended family members. J.W., at age 1, was subjected to sexual abuse for approximately 2-3 years by males visiting his mother. He was severely beaten at age 2 while in the care of his mother's boyfriend.

As a result of his repeated abuse and neglect, J.W. began to exhibit symptoms of post-traumatic stress disorder. Due to aggressive behaviors, he was dismissed from two daycare centers. At age 3, he attempted suicide. He was subsequently diagnosed as having attention deficit hyperactivity disorder with psychotic behavior and suicidal tendencies and treated with anti-psychotic medication.

J.W. was returned to his mother's care at age 5. He was severely psychotic and began setting fires. In June 1997, J.W. was admitted to the Columbia Hospital Inpatient Psychiatric Program for a week due to self-mutilation, violent behavior, homicidal ideation, auditory hallucinations, and multiple suicide attempts. J.W. would continue receiving intensive outpatient psychiatric treatment for 7 months following his initial hospitalization.

After receiving a report that J.W. was again sexually molested by another of his mother's male friends, the department placed J.W. back into foster care where he resided on and off for approximately 5 years. He was involuntarily hospitalized at least two more times by age 9. One hospitalization was due to aggressive behavior, an attempt to stab his uncle and his babysitter with a knife. Later he was hospitalized for planning to bring a gun and knife to school to kill a teacher and himself. In 2002, J.W. was living with his mother who had married several years earlier and had given birth to a daughter with her new husband. The department and the family entered into

a voluntary case plan to address continuing allegations of abuse, neglect, and domestic violence in the home. During this time, J.W. began to exhibit sexually aggressive behavior towards other children. Multiple reports indicated that J.W. performed anal penetration on a neighborhood girl. He also continued to display severe psychotic behavior. On one occasion he attempted to cut his stepfather's throat while he slept.

On June 14, 2002, DCF family services counselor, Suzy Parchment, referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. Realizing the severity of J.W.'s behavior, in a communication with Camelot on June 24, Ms. Parchment noted that J.W. needed to be in a residential treatment facility as soon as possible.

As an emergency, temporary solution and noting that J.W. was a danger in the home, Camelot accepted the referral to provide mental health services to J.W. in his natural home while the department sought residential placement. Camelot noted on its admission form that J.W. was a sexual predator and engaged in sexually inappropriate behavior. It was also noted that J.W. suffered from non-specified psychosis, major depression with psychotic features, adjustment disorder and attention deficit hyperactivity disorder. The in-home counselor assigned to J.W.'s case did not have experience with sexual trauma, and Camelot's initial treatment plan did not include any specific goals or specialized treatment for sexual abuse.

J.W.'s mother informed Camelot and the department that J.W. was giving his 3 year old sister hickies, bouncing her on his lap in a sexual manner, and having her fondle his genitals. Camelot performed a child safety determination and found that based on J.W.'s history, a sibling was likely to be in immediate danger of moderate to severe harm if J.W. was not supervised. Camelot recommended that J.W.'s parents separate him from his younger sister at night and closely watch him when he interacts with his sister.

On or about August 2002, the department removed J.W. and his younger sister from their mother's care after she abandoned them at a friend's house. J.W. was sheltered in the home of a family friend, Luz Cruz, a non-relative

placement while his younger half-sister was placed with family members.

J.W. underwent a Comprehensive Behavioral Health Assessment on August 30, 2002, at the request of DCF. The assessment concluded that J.W. "should not have unsupervised access to [his younger sister], or to any younger, or smaller children wherever he resides." The Assessment also states: "***J.W.'s caregiver must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of J.W.***"

Based upon the findings and recommendations in the Assessment, J.W. was referred to Father Flanagan's Boys' Home d/b/s Girls and Boys Town, a DCF service provider, for case management services.

The Department of Children and Families knew that J.W., should not have been placed in a home with younger children.

Ms. Parchment removed J.W. from the Cruz home on September 6, 2002, due to allegations of sexual abuse by a member of the Cruz family; however, she did not report the abuse allegation as required by Florida law. It was also on September 6, 2002, that J.W. was placed with the Hanns.

Mr. and Mrs. Hann were former neighbors of J.W. and his natural family. The Hanns lived with their two children, a daughter, age 16, and a son, C.M.H., age 8. They were not licensed or trained foster parents. In the past, J.W. had often sought shelter in the Hann home when left alone by his mother. Theresa Hann had offered to care for J.W. and his mother lobbied Camelot and the department to have J.W. placed with the Hann family instead of Luz Cruz.

Ms. Parchment recalled her first impressions of the Hann family were of nice people who maintained a very organized and clean home. She believed Theresa Hann's main purpose was to care for J.W. and that she had no ulterior motives. However, despite the willingness of the Hanns to care for

J.W., the removal of J.W. from the Cruz home and placement in the Hann home violated DCF rules.

Under the department's rules, it is required to obtain prior court approval for all non-relative placements. This requirement eliminates non-relative placements for use in lieu of emergency shelter care. Ms. Parchment did not obtain the required court approval prior to placing J.W. in the Hann home. She also failed to notify the department's legal team, who is responsible for court filings, of the allegation of sexual abuse of J.W. in the Cruz home or his subsequent placement in the Hann home for two months.

Additionally, the placement directly conflicted with previous recommendations by department providers regarding placement for J.W. due to his sexually aggressive behaviors. J.W. was placed in a home with an 8 year old child even though 2 months earlier Camelot had warned that a sibling would be in danger in a home with J.W. One week prior to the placement, St. Mary's Medical Center had recommended that J.W. not have unsupervised access to younger children. The Hanns were not provided any information about J.W.'s ongoing inappropriate behavior with younger children and the Hanns allowed J.W. to share a bedroom with their son, C.M.H. Department rules expressly prohibit placing a sexually aggressive child in a bedroom with another child. Ms. Parchment knew of the planned sleeping arrangements prior to placing J.W. in the Hann home but did not tell them that the arrangement was prohibited under the department's rules.

The Department of Children and Families failed to inform the Hanns of J.W.'s background.

Christopher Hann specifically requested information about J.W., but the department failed to provide any information regarding J.W.'s troubled history of child-on-child sexual abuse or on his background generally. Florida law requires DCF to share psychological, psychiatric and behavioral histories, comprehensive behavioral assessments and other social assessments found in the child's resource record with caregivers. The department acknowledged during litigation that no evidence of a child resource record for J.W. was found. Additionally, for the purpose of preventing the reoccurrence of child-on-child sexual abuse, the department must provide caregivers of sexual abuse victims and aggressors with

written, complete, and detailed information and strategies related to such children, including the date of the sexual abuse incident(s), type of abuse, type of treatment received, and outcome of the treatment in order to "provide a safe living environment for **all** the children living in the home."

Not only did the department fail to comply with its own requirements, Ms. Parchment told Mr. Hann that she was not allowed to give him such information about J.W. because the placement was temporary. Nevertheless, J.W. remained in the Hann home for approximately 3 years during which his behavioral problems continued and quickly escalated.

The Department of Children and Families knew it should have removed J.W. from the Hann home as his violent behaviors increased.

Within a few weeks after J.W.'s placement in the Hann home, Mrs. Hann reported to Camelot that J.W. was playing with matches in the presence of C.M.H.; exhibited extreme anger and hostility towards C.M.H., including yelling, screaming "shut up" at the smallest aggravation or noise, and kicking C.M.H. Among J.W.'s behavioral problems, he stabbed himself with a straightened paper clip after being grounded for leaving the neighborhood without permission; threatened to jump out of a window after it was discovered he stole a roll of felt from school; and attacked Ms. Hann, biting and scratching her when she grounded him for cursing.

Camelot recommended to Ms. Parchment that the Hanns place a one way monitor in the bedroom shared by J.W. and C.M.H. While Ms. Parchment agreed to pass the recommendation on to the Hanns, there is no evidence that the information was shared or that the Hanns ever obtained the monitor.

J.W.'s behavior further deteriorated and on October 24, 2002, after a physical altercation with C.M.H., he pulled a knife on the younger child but was stopped from further assaulting him by Mr. Hann. Camelot was immediately informed of the incident by Mr. Hann, and J.W. was again involuntarily committed into Columbia Hospital for a mental health assessment. Camelot's notes indicate Ms. Parchment was informed of J.W.'s escalating behavior in the Hann home. Ms. Parchment later acknowledged that at this point she should

have considered removing J.W. from the Hann home due to the danger he posed to himself, the Hanns and their son.

A week after the mental health assessment was performed, J.W. sexually assaulted a 4 year old girl who was visiting the Hann home. The children were watching a movie when J.W. exposed his genitals and began "humping" the young girl. Ms. Hann reported the incident to DCF. During the course of the investigation, the department learned the children were not under the direct supervision of any adult at the time of the incident – a failure that DCF providers warned would lead to harm of other children when left alone with J.W. Again, DCF was required to give immediate consideration to the safety of C.M.H. Despite, the inability of the Hanns, who both worked outside the home, to adequately supervise J.W. and his continuing access to young children, DCF did not remove J.W. from the Hann home.

Camelot began pressuring Ms. Parchment to schedule a psychosexual evaluation of J.W. which she was required to do months earlier pursuant to DCF's operating procedures. The evaluation had in fact been requested by Camelot when J.W. was placed with the Hanns and again just 2 days before he sexually assaulted the 4 year old girl visiting the Hann home. Camelot's notes indicate that it told Ms. Parchment that "[J.W.] needed specific sexual counseling by a specialist in this area." Ms. Parchment took no action so Camelot advised Mr. Hann that a new safety plan would be implemented which prohibited J.W. and C.M.H. from sharing a bedroom and requiring J.W. to be under close adult supervision when other children were present. Such recommendations had already been a complete failure at preventing J.W. from perpetuating sexual abuse on other children. Further, still without knowledge of J.W.'s extensive history of sexual abuse as a victim and aggressor, Mr. Hann informed Camelot that the family disagreed with and would not follow the safety plan.

The Department of Children and Families ignored repeated warnings from its service providers.

Beginning in November 2002, Girls and Boys Town began providing services to J.W. in conjunction with Camelot. The assessment of J.W.'s case and his current behaviors, which was performed by Girls and Boys Town, found that despite his

escalating violence and suicidal and sexually aggressive actions, no additional interventions or therapies had been put in place.

Camelot again requested a psychosexual evaluation of J.W. on November 6, 2002.

Additionally, in November 2002, C.M.H. began to exhibit behavioral problems which Camelot directly attributed to J.W. being in the home. C.M.H.'s grade dropped. In one school year he went from being an "A", "B", or "C" student to failing grades and was ultimately retained in the fourth grade.

In December 2002, the Hanns, overwhelmed with the number of providers involved in J.W.'s care and the disruption to their family, canceled the services of Camelot. Camelot recommended in its discharge form, signed by Ms. Parchment, that J.W. be placed in a residential treatment facility; however, DCF did not initiate a change in placement.

In June 2003, J.W. began expressing sexually inappropriate behavior towards C.M.H., asking him if he wanted to "see what sperm looks like" before masturbating to completion in front of him and attempting to hand him the semen. Due to this new escalation of J.W.'s behavior now directed at C.M.H., the department finally secured the psychosexual evaluation of J.W. but still did not remove him from the Hann home.

The department received the results of the psychosexual evaluation of J.W. performed by The Chrysalis Center on September 18, 2003. The Center found that J.W. "fit the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors with children younger than himself." Further, it was found that J.W. "[presented] a risk of potentially becoming increasing more aggressive" and "continuing sexually inappropriate behaviors." The Center warned that J.W. "may seek out victims who are children and coerce them to engage in sexual activity." And again the Center recommended specific counseling for J.W. and appropriate training for his caregivers, the Hanns.

Finally, in October 2003, the Hanns requested J.W. be placed in a therapeutic treatment facility as they did not feel equipped to provide him with services and interventions he needed.

Therapeutic placement was authorized for J.W. and he was referred to Alternate Family Care in Jupiter, Florida. The Hanns were told that if J.W. was removed from their home they would not be permitted visitation privileges with him at the facility. The Hanns did not want to be the next in a series of parental figures that abandoned J.W. so they ultimately made the decision to maintain him in their home with a request for additional services to treat his ongoing issues. At this time the Hanns begin training to become therapeutic foster parents.

C.M.H.'s problems due to J.W.'s presence in the home continued at school. Beginning in late 2003 to early 2004, C.M.H. began to act out and have more conflicts in school. He received a student discipline referral for ongoing behavioral problems in the classroom. Additionally, in early 2004 he began gaining weight and would subsequently gain about 40 pounds over the next two years.

The Department of Children and Families failed to remove a dangerous child it had placed in the Hann home when requested by the Hanns.

Mrs. Hann was diagnosed with terminal cancer on March 3, 2004. As a result, Mr. Hann contacted DCF within 48 hours of the diagnosis and requested the process of having J.W.'s placement with them as "long-term non-relative care" be stopped and asked that J.W. be placed elsewhere. Ms. Parchment visited the Hann home within 24 hours after the request and advised the family that "we'll get on it."

Nothing was done and contrary to the express request and wishes of the Hanns and without their knowledge, DCF had the Hanns declared as "long term non-relative caregivers" of J.W. The department subsequently closed the dependency case, leaving J.W. him the care of the Hanns.

The Department of Children and Family Services withdrew support for the Hann family when it was needed most.

The Hanns were not part of the foster care system so when DCF closed its dependency case, the Hann family lost approximately 50 percent of their services and counseling. Father Flanagan's suspended services to J.W. and the Hann family in April 2004. The Hanns would later directly attribute

the resurgence in J.W.'s inappropriate sexual behavior to the loss of counseling services.

With almost no support from DCF, the Hanns grew more desperate as they tried to deal with Mrs. Hann's illness and J.W.'s escalating behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan from St. Mary's Child Development Center's Children's Provider Network noted that he began to have nightmares and was easily frustrated. The report also noted that his mother's diagnosis of terminal cancer and intensive chemotherapy treatments were contributing to C.M.H.'s increasing separation anxiety and grief issues. He was diagnosed with post-traumatic stress disorder.

In April 2005, Mr. Hann wrote DCF and the juvenile judge requesting help in placing J.W. in a residential placement. There was no response to his request, and J.W. remained in the Hann home.

A report from Child & Family Connections, the lead agency for community-based care in Palm Beach County, dated June 16, 2005, provided a description of J.W.'s personality and behavior, the high risk of sexual behavior problems and increasing aggression, his excessive masturbation, seeking out younger children, lies, and refusal to take responsibility for his actions. The reported stated that the Hanns "[had] been told that it is not a matter of will J.W. perpetrate on their son again, but a matter of when the perpetration would occur. [J.W. was] in need of a more restrictive setting with intensive services specializing in sexual specific treatment." The report also noted that J.W.'s previous therapist, current therapist, and a psychosexual evaluation all recommended a full-time group home facility specializing in sexual specific treatment. The report concluded that J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

Predictably, the numerous failures of the Department and its Family Services resulted in the sexual assault of another child.

On June 29, 2005, after a physical altercation between J.W. and Mrs. Hann, C.M.H., then 10 years old, told his parents

that 2 years prior, J.W. had forced him to engage in oral sex while the boys were at a sleepover at this cousin's house. Mr. Hann called Girls & Boys Town and demanded that J.W. be removed from the home immediately. Later that same day, the department finally removed J.W. from the Hann home, and he was taken to an emergency shelter until a placement could be determined.

The court entered an order on August 11, 2005, authorizing the placement of J.W. into a residential treatment center. The court found that although a previous court order authorized placement in a specialized therapeutic group home, due to another incident that occurred while in emergency shelter, J.W. required a higher level of care.

Theresa Hann passed away the next year shortly after initiating litigation against DCF and its providers.

CLAIMANT'S POSITION:

The lawsuit was filed against the department, Camelot Community Care, Inc., Elaine Beckwith, Chrysalis Center, and Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida. The suit alleged the defendants were negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to:

1. The initial placement of J.W. in the Hann home;
2. The failure of DCF to follow its own rules and operating procedures to provide the necessary treatment and services for J.W.;
3. The failure of DCF to provide the required information to the Hanns regarding J.W.'s history of sexual abuse and sexual aggressiveness, including the failure to formulate a safety plan for J.W. and all the children residing in the Hann home;
4. The failure of DCF to maintain the safety of J.W. and any children residing in the placement;
5. The failure of the DCF employee to report the allegations of sexual abuse of J.W. as mandated by s. 39.201, F.S.; and
6. DCF moving forward with having the court declare the Hanns "long-term non-relative caregivers," closing the case file, and leaving J.W. in the custody of the Hanns without notice to them and despite their request to stop the process.

RESPONDENT'S POSITION: The Department of Children and Families defended the lawsuit. On November 18, 2013, after a 4-week jury trial, a judgment was entered in the amount of $10,000,000. DCF was found to be 50 percent liable ($5,000,000) and Mr. and Mrs. Hann were found to be 50 percent liable ($5,000,000). The jury attributed no liability to the remaining defendants.

CONCLUSIONS OF LAW: Every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. With respect to this claim bill, which is based on a negligence claim, the claimant proved that the state had a duty to the claimant, the state breached that duty, and that the breach caused the claimant's damages.

Duty
The Department of Children and Families had a duty pursuant to exercise reasonable care when placing a child involved in child-on-child sexual abuse or sexual assault in substitute care; to provide caregivers of children with sexual aggression and sexual abuse with written, detailed and complete information of the child's history; to establish appropriate safeguards and strategies to protect all children living in the foster or temporary care; to ensure the foster family is properly trained and equipped to meet the serious needs of the foster child; and to exercise reasonable care under the circumstances.

Breach
A preponderance of the evidence establishes that DCF breached its duties by failing to follow its governing statutes, rules, and internal operating procedures by:

- Placing J.W., a known sexually aggressive, severely emotionally disturbed, and dangerous child in the Hann home without legal authority and in direct conflict with recommendations of DCF service providers that J.W. not have access to young children;
- Failing to ensure that Mr. and Mrs. Hann were duly licensed and trained as required by department rule, making them capable of safely caring for a child with J.W.'s extensive needs;
- Failing to fully and completely inform the Hanns of J.W.'s history, and the risk and danger he posed to C.M.H. as required by department rule; and

- Failing to remove J.W. from the Hann home when it became clear that the placement was inappropriate and dangerous to the Hanns and C.M.H. particularly.

Causation
The sexual, physical and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its duties regarding the foster placement of a known sexually aggressive child.

Damages
At the conclusion of a 2-week trial, the jury found DCF and Mr. and Mrs. Hann each 50 percent responsible for the negligence that resulted in the injuries suffered by C.M.H. The jury awarded C.M.H. $6 million for past pain and suffering, $3.5 million for future pain and suffering, $250,000.00 for future treatment and services and $250,000.00 for future loss of earning capacity for a total award of $10 million. The department and Mr. and Mrs. Hann were each responsible for $5 million. The jury did not assess any liability for negligence against the remaining 6 defendants.

C.M.H. was initially diagnosed with post-traumatic stress disorder in 2005. Thomas N. Dikel, Ph.D., reaffirmed the diagnosis in 2010, finding that C.M.H.'s severe PTSD was cause by his "experiences of child-on-child sexual abuse, exacerbated and magnified by his mother's diagnosis of stage 4, metastatic colon cancer."

He was re-evaluated by Dr. Stephen Alexander in October 2014. Dr. Alexander found C.M.H. to continue to suffer from PTSD and major depression, but had become even more dysfunctional since his initial evaluation due to lack of services. Dr. Alexander attributed the majority of C.M.H.'s psychological trauma to this mother's illness and death; however, he did note that due to J.W.'s presence in the home during her illness, the two events have become inextricably intertwined in this psyche.

Comprehensive Rehabilitation Consultants, Inc., created a life plan for C.M.H. to determine the funds necessary to provide the support needed by C.M.H. as a direct consequence of the sexual abuse he experienced. It was determined the cost for medical, psycho-therapies, educational and support services

as well as ancillary services of transportation, housing and personal items would be $2.23 million over C.M.H.'s life.

As a result of the judgment entered by the court against DCF, the state paid $100,000 (the maximum allowed under the state's sovereign immunity waiver) with the remaining $4.9 million to be paid if this claim bill is passed by the Legislature and signed into law by the Governor.

COLLATERAL SOURCES OF RECOVERY:

Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida (Father Flanagan) was a named defendant in the lawsuit. Father Flanagan executed a settlement agreement with Claimants on July 30, 2013, in the amount of $340,000. However, in October 2013, the jury found that Father Flanagan was not negligent for any loss, injury or damage to C.M.H.

ATTORNEY FEES:

Claimant's attorneys have acknowledged in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

The negligence of the department and the Hanns were the legal proximate cause of the damages suffered by C.M.H. However, The jury award of $9.5 million for non-economic damages or pain and suffering is not supported by the weight of the evidence. According to Dr. Alexander's October 2014 report, C.M.H. continues to suffer from PTSD but attributes a majority of C.M.H.'s psychological trauma to the illness and death of his mother. The department should not be held financially liable for C.M.H.'s psychological trauma that occurred due to the illness and death of his mother.

Damages awarded by the jury in the amount of $500,000 for future treatment and services and lost wages due to the sexual abuse are reasonable under the circumstances and are fully supported by the weight of the evidence. C.M.H. requires intensive and long-term psychotherapy, psychiatric evaluation and treatment and possible psychotropic mediations to assist him in dealing with his PTSD.

It should be noted that since receiving the settlement from Father Flanagan's in 2013, C.M.H. has only sought psychiatric treatment one time.

Accordingly, I recommend that SB 58 be reported FAVORABLY, with the amount to be paid amended to $2.5 million. The jury awarded $9.5 million ($4.75 million assessed to DCF) for past and future pain and suffering. Based on a lack of objective evidence in the record, a 50 percent reduction of DCF's obligation or $2.375 million may be a more appropriate amount to be paid for the non-economic damages. A corresponding reduction of 50 percent of DCF's share of the economic damages ($125,000) would be appropriate.

I further recommend that the funds be paid into a trust established for C.M.H. in equal installments over 10 years to pay for expenses related to education, psycho-therapies and living expenses. Any funds remaining in the trust after 10 years should be distributed in full to C.M.H.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

359438

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete line 110
and insert:
this claim, the remaining funds shall be placed into an irrevocable trust created for C.M.H. for

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 29 - 99
and insert:

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12 and which C.M.H.’s parents did not receive, and
13 WHEREAS, the testimony of the DCF caseworker confirms that
14 DCF was aware that 10-year-old J.W. and C.M.H., who was then 8
15 years old, were sharing the same bedroom, and
16 WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-
17 year-old child who was visiting C.M.H.’s home, and
18 WHEREAS, although DCF knew that J.W. was a sexual offender,
19 the agency did not remove him from the home, and
20 WHEREAS, DCF failed to implement a written safety plan as
21 required by DCF Operating Procedure 175-88, and
22 WHEREAS, after November 2002, J.W.’s behavioral problems
23 escalated, and he deliberately squeezed C.M.H.’s pet mouse to
24 death in front of C.M.H. and made physical threats toward
25 C.M.H., and
26 WHEREAS, C.M.H.’s parents decided to begin the process of
27 adopting J.W., whom they considered a part of their family, and
28 WHEREAS, the family subsequently became aware that J.W.
29 needed significant mental health treatment, including placement
30 in a residential treatment facility, and
31 WHEREAS, the family was informed by DCF that they would not
32 be granted visitation privileges if J.W. was removed from their
33 home and placed in a residential treatment facility, and
34 WHEREAS, in January 2004, the family began taking classes
35 to train to be therapeutic foster parents to better meet J.W.’s
36 needs, and
37 WHEREAS, in March 2004, after C.M.H.’s mother was diagnosed
38 with Stage 4, terminal, metastatic colon cancer, which had
39 spread to her liver, C.M.H.’s father, contacted DCF to postpone
40 the adoption, and

359438

41 WHEREAS, in April 2004, DCF closed out J.W.'s dependency
42 file, leaving J.W. in the custody of the family without any
43 subsidies or assistance, and
44 WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the
45 juvenile judge assigned to the case to request help in placing
46 J.W. in a residential treatment facility, however, DCF provided
47 no assistance, and
48 WHEREAS, on July 28, 2005, after a physical altercation
49 between J.W. and C.M.H., C.M.H. disclosed to his parents that
50 J.W. had sexually assaulted him, and J.W. was immediately
51 removed from the home, and
52 WHEREAS, C.M.H. sustained severe and permanent psychiatric
53 injury, including posttraumatic stress disorder, as a result of
54 the sexual and emotional abuse perpetrated by J.W., and without
55 immediate interventions will face a lifetime of dysfunction,
56 trauma, and tragedy, and
57 WHEREAS, the sexual assault of C.M.H. by J.W. was
58 predictable and preventable, and
59 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA
60 003727, was filed in the 15th Judicial Circuit in and for Palm
61 Beach County on behalf of C.M.H., by and through his parents,
62 alleging negligence on the part of DCF and its providers which
63 allowed the perpetration of sexual abuse against and the
64 victimization of C.M.H. by J.W., and
65 WHEREAS, DCF aggressively defended and denied the
66 allegations in the claim and a jury trial was set in Palm Beach
67 County, and
68 WHEREAS, on January 2, 2014, after a jury trial and verdict
69 for $5 million, the court entered a judgment against DCF for

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70 $5,176,543.08, including costs, and
71 WHEREAS, the Division of Risk Management of the Department
72 of Financial Services has paid $100,000, as allowed under s.
73 768.28, Florida Statutes, for costs, less than half of the total
74 amount of litigation costs expended by plaintiff’s counsel to
75 litigate this case and to complete the trial, and
76 WHEREAS, C.M.H., now 21 years of age, is at a vulnerable
77 stage in his life and urgently needs to recover the balance of
78 the judgment awarded him so that his psychiatric injuries may be
79 addressed and he may lead a normal life, and
80 WHEREAS, the balance of the judgment is to be paid into an
81 irrevocable trust through the passage of this claim bill in the
82 amount of $5,076,543.08, NOW, THERFORE,

By Senator Simpson

A bill to be entitled

An act for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, J.W. was victimized from the time he was 18 months of age by his mother's boyfriend, which caused him to become sexually aggressive, and

WHEREAS, on September 5, 2002, J.W., then in the custody of the Department of Children and Families ("DCF"), formerly known as the Department of Children and Family Services, was temporarily placed into the home of C.M.H., whose parents became nonrelative caregivers and volunteered to have J.W. live in their home, and

WHEREAS, the DCF caseworker assigned to J.W.'s case failed to disclose to C.M.H.'s family a recommendation that J.W. be expeditiously placed in a residential treatment facility; that he had an extensive history as a victim and perpetrator of sexual abuse; and that he was an alleged juvenile sexual offender, and

WHEREAS, prior to the placement of J.W. with the family, DCF obtained a comprehensive behavioral health assessment that stated that J.W. was sexually aggressive and recommended specific precautions and training for potential foster parents, and

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WHEREAS, the testimony of the DCF caseworker confirms that DCF was aware that 10-year-old J.W. and C.M.H., who was then 8 years old, were sharing the same bedroom, and

WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-year-old child who was visiting C.M.H.'s home, and

WHEREAS, although DCF knew that J.W. was a sexual offender, the agency did not remove him from the home, and

WHEREAS, DCF failed to implement a written safety plan as required by DCF Operating Procedure 175-88, and

WHEREAS, after November 2002, J.W.'s behavioral problems escalated, and he deliberately squeezed C.M.H.'s pet mouse to death in front of C.M.H. and made physical threats toward C.M.H., and

WHEREAS, C.M.H.'s parents decided to begin the process of adopting J.W., whom they considered a part of their family, and

WHEREAS, the family subsequently became aware that J.W. needed significant mental health treatment, including placement in a residential treatment facility, and

WHEREAS, the family was informed by DCF that they would not be granted visitation privileges if J.W. was removed from their home and placed in a residential treatment facility, and

WHEREAS, in January 2004, the family began taking classes to train to be therapeutic foster parents to better meet J.W.'s needs, and

WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed with Stage 4, terminal, metastatic colon cancer, which had spread to her liver, C.M.H.'s father, contacted DCF to postpone the adoption, and

WHEREAS, in April 2004, DCF closed out J.W.'s dependency

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file, leaving J.W. in the custody of the family without any subsidies or assistance, and

WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the juvenile judge assigned to the case to request help in placing J.W. in a residential treatment facility, however, DCF provided no assistance, and

WHEREAS, on July 28, 2005, after a physical altercation between J.W. and C.M.H., C.M.H. disclosed to his parents that J.W. had sexually assaulted him, and J.W. was immediately removed from the home, and

WHEREAS, C.M.H. sustained severe and permanent psychiatric injury, including posttraumatic stress disorder, as a result of the sexual and emotional abuse perpetrated by J.W., and without immediate interventions will face a lifetime of dysfunction, trauma, and tragedy, and

WHEREAS, the sexual assault of C.M.H. by J.W. was predictable and preventable, and

WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA 003727, was filed in the 15th Judicial Circuit in and for Palm Beach County on behalf of C.M.H., by and through his parents, alleging negligence on the part of DCF and its providers which allowed the perpetration of sexual abuse against and the victimization of C.M.H. by J.W., and

WHEREAS, DCF aggressively defended and denied the allegations in the claim and a jury trial was set in Palm Beach County, and

WHEREAS, on January 2, 2014, after a jury trial and verdict for $5 million, the court entered a judgment against DCF for $5,176,543.08, including costs, and

WHEREAS, the Division of Risk Management of the Department of Financial Services has paid $100,000, as allowed under s. 768.28, Florida Statutes, for costs, less than half of the total amount of litigation costs expended by plaintiff's counsel to litigate this case and to complete the trial, and

WHEREAS, C.M.H., now 21 years of age, is at a vulnerable stage in his life and urgently needs to recover the balance of the judgment awarded him so that his psychiatric injuries may be addressed and he may lead a normal life, and

WHEREAS, the balance of the judgment is to be paid through the passage of this claim bill in the amount of $5,076,543.08, NOW, THERFORE,

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

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

Section 2. There is appropriated from the General Revenue Fund to the Department of Children and Families the sum of $5,076,543.08 for the relief of C.M.H. for the personal injuries and damages he sustained. After payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim, the remaining funds shall be disbursed to C.M.H. for his exclusive use and benefit.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of C.M.H. in the sum of $5,076,543.08 upon funds of the Department of Children and Families in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury not otherwise

117 appropriated.
118 Section 4. The amount paid by the Department of Children
119 and Families pursuant to s. 768.28, Florida Statutes, and the
120 amount awarded under this act are intended to provide the sole
121 compensation for all present and future claims arising out of
122 the factual situation described in the preamble to this act
123 which resulted in the personal injuries and damages to C.M.H.
124 The total amount of attorney fees and lobbying fees relating to
125 this claim may not exceed 25 percent of the amount awarded under
126 this act.
127 Section 5. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Environmental Preservation and Conservation, *Vice Chair*
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON
18th District

January 15, 2015

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

Senator Diaz de la Portilla,

Please place Senate Bill 58 relating to a claim for relief of C.M.H. by the Department of Children and Families, on the next Committee on Judiciary agenda.

Please contact my office with any questions. Thank you.

Wilton Simpson

Senator, 18th District

CC: Tom Cibula, Staff Director

REPLY TO:
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore