The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Alexander, Vice Chair

MEETING DATE: Tuesday, March 29, 2011
TIME: 3:15 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 16** Ring (Identical H 609)	Relief/Harris & Williams/N. Broward Hospital Dist.; Compensates Laron S. Harris, Jr., by and through his parents, Melinda Williams and Laron S. Harris, Sr., and Melinda Williams and Laron S. Harris, Sr., individually, for injuries sustained as a result of the negligence of the North Broward Hospital District, d/b/a Coral Springs Medical Center. Provides a limitation on the payment of fees and costs, etc. SM 03/21/2011 Recommendation: Favorable RC 03/29/2011	
2	**SB 22** Hill (Identical H 629)	Relief/Estate of Cesar Solomon/JTA; Compensates the Estate of Cesar Solomon for Mr. Solomon's death, which was the result of negligence by a bus driver of the Jacksonville Transportation Authority. Provides a limitation on the payment of fees and costs, etc. SM 03/21/2011 Recommendation: Favorable RC 03/29/2011	
3	**SB 34** Dean (Compare H 185)	Relief/Angela Isham/City of Ft. Lauderdale; Compensates Angela Isham, individually, and as co-personal representative of the Estate of David Isham, deceased, for the death of Mr. Isham, which was due to the negligence of employees of the City of Ft. Lauderdale. Provides a limitation on the payment of fees and costs, etc. SM 03/21/2011 Recommendation: Fav/1 Amendment RC 03/29/2011	
4	**SB 46** Haridopolos (Identical H 23)	Relief/William Dillon/State of Florida; Compensates William Dillon, who was wrongfully incarcerated for 27 years and exonerated by a court after DNA testing. Directs the Chief Financial Officer to draw a warrant for the purchase of an annuity. Provides for a waiver of certain tuition and fees. Provides conditions for payment. Provides that the act does not waive certain defenses or increase the state's liability, etc. SM 03/21/2011 Recommendation: Fav/1 Amendment RC 03/29/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 70** Negron (Identical H 1487)	Relief/Carl Abbott/Palm Beach County School Board; Compensates Carl Abbott for injuries sustained as a result of the negligence of the Palm Beach County School District. Provides a limitation on the payment of fees and costs, etc. SM 03/21/2011 Recommendation: Fav/1 Amendment RC 03/29/2011	
6	**SB 306** Rich (Identical H 855, S 40)	Relief/Brown/North Broward Hospital District; Compensates Denise Gordon Brown and David Brown, parents of Darian Brown, for injuries and damages sustained as a result of the negligence of Broward General Medical Center. Provides a limitation on the payment of fees and costs, etc. SM 03/21/2011 Recommendation: Favorable RC 03/29/2011	
7	**SB 324** Flores (Identical H 1013)	Relief/James D. Feurtado, III/Miami-Dade County; Compensates James D. Feurtado, III, for injuries sustained as a result of the negligence of an employee of Miami-Dade County. Provides a limitation on the payment of fees and costs, etc. SM 03/21/2011 Recommendation: Fav/1 Amendment RC 03/29/2011	
	Consideration of proposed committee bill:		
8	**SPB 7224** **(Preliminary Draft Available - final draft will be made available at least 48 hours prior to the meeting)**	Ethics; Redefines the term "gift" to exclude contributions or expenditures reported under federal election law. Provides for an exception to a provision authorizing a state public officer to vote in an official capacity on any matter, to conform to changes made by the act. Defines the term "relative." Prohibits a member of the Legislature from voting upon any legislation inuring to his or her special private gain or loss, etc.	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 242** Joyner (Identical H 559)	Voter Information Cards; Requires that voter information cards contain the address of the polling place of the registered voter. Requires a supervisor of elections to issue a new voter information card to a voter upon a change in a voter's address of legal residence or a change in a voter's polling place address. Provides instructions for implementation by the supervisors of elections. EE 01/26/2011 Fav/1 Amendment RC 03/29/2011 JU BC	
10	**SB 532** Fasano (Identical H 249)	Public Corruption; Provides for the reclassification of criminal offenses committed under color of law. EE 03/07/2011 Favorable RC 03/29/2011 CJ BC	
11	**CS/SB 650** Regulated Industries / Jones (Identical CS/H 423)	Mobile Home Park Lot Tenancies; Provides for local code and ordinance violations to be cited to the responsible party. Prohibits liens, penalties, fines, or other administrative or civil proceedings against one party or that party's property for a duty or responsibility of the other party. Revises procedures for mobile home owners being provided eviction notice due to a change in use of the land comprising the mobile home park or the portion thereof from which mobile homes are to be evicted, etc. RI 03/09/2011 Fav/CS CA 03/21/2011 Favorable RC 03/29/2011	
12	**CS/SB 782** Transportation / Latvala (Identical CS/CS/H 601)	Fallen Officers Memorial/Road Designations; Designates the Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway in Pinellas County. Designates the Officer Jeffrey A. Kocab and Officer David J. Curtis Memorial Highway in Hillsborough County. TR 02/22/2011 Fav/CS BTA 03/17/2011 Favorable BC 03/22/2011 Favorable RC 03/29/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1504** Simmons	Initiative Petitions; Limits the validity of a signed initiative petition to 30 months. Specifies qualifications for a person to act as a paid petition circulator. Subjects a petition circulator or an initiative sponsor to criminal penalties for violating specified restrictions or requirements. Requires the Secretary of State to revise the wording of the ballot title or ballot summary for an amendment to the State Constitution proposed by the Legislature when the wording is found by a court to be confusing, misleading, or otherwise deficient, etc. EE 03/21/2011 Favorable RC 03/29/2011 CJ BC	
14	**CS/SB 1618** Rules Subcommittee on Ethics and Elections / Diaz de la Portilla (Compare H 1355)	Elections; Allows a respondent who is alleged by the Elections Commission to have violated the election code or campaign financing laws to elect as a matter of right a formal hearing before the Division of Administrative Hearings. Authorizes an administrative law judge to assess civil penalties upon the finding of a violation. Authorizes an administrative law judge to assess civil penalties upon a finding of a violation of the election code or campaign financing laws, etc. EE 03/21/2011 Fav/CS RC 03/29/2011 JU BC	

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
2/1/11	SM	Favorable
3/25/11	RC	

February 1, 2011

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

Re: **SB 16 (2011)** – Senator Jeremy Ring
HB 609 (2011) – Representative Marti Coley
Relief of Laron S. Harris, Jr., Melinda (Williams) Harris, and Laron S. Harris, Sr.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2 MILLION AGAINST THE NORTH BROWARD HOSPITAL DISTRICT FOR MEDICAL MALPRACTICE IN CONNECTION WITH THE BIRTH OF LARON S. HARRIS, JR., WHO WAS DELIVERED AT CORAL SPRINGS MEDICAL CENTER ON APRIL 1, 2003, AFTER HAVING SUFFERED A CATASTROPHIC BRAIN INJURY IN UTERO DUE TO AN UNREASONABLE DELAY IN DIAGNOSING HIS MOTHER'S PLACENTAL ABRUPTION.

FINDINGS OF FACT:

Melinda Harris was eight months pregnant with her first child when she awoke early in the morning on April 1, 2003, experiencing excruciating abdominal pain and vaginal bleeding. Her husband, Laron S. Harris, Sr., called 911 for help. Soon thereafter, Mrs. Harris was taken by ambulance to Coral Springs Medical Center (Coral Springs), a public facility located in Coral Springs, Florida, which the North Broward Hospital District owns and operates. Mrs. Harris was admitted to the hospital at 5:47 a.m. and taken to the labor and delivery floor.

Mrs. Harris's obstetrician, Dr. Alison DeSouza, was not at the hospital when Mrs. Harris arrived. An initial evaluation was performed by Laura Richman, R.N., who noted, among other things, that Mrs. Harris was in acute pain, wearing blood-stained clothing, and suffering from extremely high blood pressure. Although these symptoms are associated with a potentially life-threatening condition known as a placental abruption (meaning the placenta is tearing away from the uterus), the nurse did not call Dr. DeSouza until 6:25 a.m., some 38 minutes after Mrs. Harris's admission to the hospital.

Dr. DeSouza immediately ordered a STAT (urgent) ultrasound, among other things. A radiology technologist named Moises Pena performed a sonographic study at Mrs. Harris's bedside using a portable ultrasound machine. This took 20 minutes, from 6:52 a.m. to 7:12 a.m. Mr. Pena wrote in his notes that, based on the study, he could not rule out a placental abruption; he also noted that the ultrasonic images were of poor quality (although, as it turns out, they were, in fact, of diagnostic value, contrary to Mr. Pena's opinion). Mr. Pena sought out the radiologist, Dr. Richard Spira, to tell the doctor about the significant finding he had made, namely that Mrs. Harris possibly had a placental abruption. Mr. Pena was unable to locate Dr. Spira, however, and shortly thereafter he left Coral Springs, his shift having ending at 7:00 a.m. Consequently, Mr. Pena failed to communicate to anyone that an emergency situation might be developing.

Ms. Richman, the nurse who had examined Mrs. Harris upon admission, also left work at 7:00 a.m. when her shift ended. Neither Ms. Richman nor her successor, Olufunke O'Niyi, R.N., was made aware of the possibility that Mrs. Harris had a placental abruption. Consequently, neither nurse reported such a possibility to a physician.

Meantime, Dr. Spira (the radiologist) arrived at the hospital and reviewed the ultrasound study that Mr. Pena had performed. Based on a "wet" (preliminary) read of the study, Dr. Spira determined that the findings were "very suspicious for placental abruption." Dr. Spira further concluded that a repeat ultrasonic examination should be conducted in the radiology department, where better equipment than the portable machine was available. He reported his finding and recommendation to the labor and delivery nursing station at

7:55 a.m. For some reason, however, only part of Dr. Spira's message, i.e. the recommendation that Mrs. Harris be transported to the radiology department for a second study, made it into the patient's chart; Dr. Spira's suspicion of a placental abruption was not communicated to Dr. DeSouza (the obstetrician) or any other physician.

The request to take Mrs. Harris from labor and delivery to radiology led to an unfortunate, protracted delay, as Dr. DeSouza (who was now at the hospital but still unaware that Dr. Spira suspected a placental abruption) objected to moving her patient. While Dr. DeSouza and the radiology department argued about whether Mrs. Harris should be moved, the fetal heart monitor began reporting non-reassuring signs, namely a lack of fetal heart rate variability (meaning that the baby's heart rate was not fluctuating in speed the way it should) and, even more worrisome, variable decelerations (meaning the baby's heart rate was decreasing in relation to uterine contractions). Ms. O'Niyi, the nurse, failed to identify and tell a physician about these troubling developments, which suggested that the baby was in distress.

Eventually, at about 9:20 a.m., Mrs. Harris was transported to the radiology department, where a second ultrasound was performed. Dr. DeSouza was with the patient during this study, as was another physician, Dr. Christine Edwards, a perinatologist. Reviewing the images, Drs. DeSouza and Edwards both realized that Mrs. Harris had a placental abruption, and at 9:36 a.m. Dr. DeSouza made the call to perform an emergency Caesarean section. Mrs. Harris was taken back to labor and delivery at 9:39 a.m., where she was prepared for surgery. At 9:46 a.m., she was transported to the operating room.

Dr. DeSouza began the C-section at 10:14 a.m., more than a half an hour after the decision to operate had been made. The surgery revealed a severely damaged placenta that had torn from the uterine wall. At 10:18 a.m. Laron Harris, Jr. was born. Laron's heart, which had been beating at 134 beats per minute at 10:00 a.m. when last monitored, was now stopped, and he was not breathing. Simply put, Laron was practically dead at birth from asphyxiation. The neonatologist in attendance, Dr. Fernando Ginebra, began aggressive resuscitative efforts. For 14 minutes after being

removed from his mother's womb, Laron had no heartbeat. Then his heart started. Although Laron was revived and would survive, he had suffered permanent, catastrophic injuries.

As a result of the placental abruption, Laron was deprived of oxygen through the placenta and drowned in his mother's blood. This led to a massive stroke, which severely damaged most of his brain. The insult to Laron's brain has left him suffering from cerebral palsy, spastic quadriplegia, severe psychomotor retardation, neuromuscular scoliosis, ischemic encephalopathy, hydrocephalus, seizures, and cortical blindness. He is in a persistent near vegetative state, unable to walk, talk, hold his head erect, or sit up without the assistance of a supportive devise. Laron cannot eat and receives nutrition through a gastric feeding tube.

Laron's condition is not expected to improve. He will require care and treatment around the clock for the rest of his life.

Craig H. Lichtblau, M.D., performed a comprehensive medical evaluation of Laron and prepared a continuation of care plan, which quantifies the future medical expenses that will be incurred over the course of Laron's lifetime. The report prepared by the plaintiffs' expert economist, Fred H. Tramell, which takes into account Dr. Lichtblau's continuation of care plan, concludes that the present value of Laron's future medical needs is $18.4 million. (In contrast, defense expert John K. McKay, Ph.D., determined that the present value of Laron's future medical needs is approximately $1.4 million, based on the assumption that Laron will not survive past the age of 13.) Further, Laron's lost earnings, reduced to present value, amount to $1.4 million. The undersigned accepts as more persuasive the evidence establishing that Laron's economic losses total approximately $20 million.

LEGAL PROCEEDINGS:

In 2004, Mr. and Mrs. Harris brought suit on their son's behalf, and in their respective individual capacities, against the North Broward Hospital District and others. The action was filed in the Circuit Court in and for Broward County, Florida.

The case proceeded to trial in 2009. After jury selection and opening statements, the parties agreed to attend a mediation

conference. At mediation, the plaintiffs and all of the defendants made agreements to settle the case. The North Broward Hospital District agreed to the entry of a Consent Judgment in the plaintiffs' favor, and against the district, in the sum of $2.2 million. The district agreed to pay (and has paid) the plaintiffs $200,000 under the sovereign immunity cap. The district further agreed to take no action that might prevent the passage of a claim bill for the remaining $2 million.

Under the settlement agreements, the plaintiffs have received the following sums from the defendants indicated:

Dr. DeSouza ……$250,000

Cigna Healthcare of Florida, Inc.
& Connecticut General Life Ins. Co. ……..$4,000,000

Dr. Spira/North Broward Radiologists, P.A. ……$775,000

North Broward Hospital District ……$200,000

From this gross recovery, the plaintiffs have paid their attorneys approximately $2.3 million. In addition, they have paid (or put funds in trust for) medical and legal expenses totaling approximately $0.3 million. Thus, the plaintiffs' net recovery to date is about $2.6 million.

Some of the settlement funds that Laron has received to date have been placed in a special needs trust. In accordance with federal law, see 42 U.S.C. § 1396p(d)(4)(A), any money remaining in the trust at the time of Laron's death must first be used to reimburse the State for any benefits he has received under the Medicaid Program. As of the final hearing, Laron had discharged a Medicaid lien in the amount of approximately $103,000, which the State had placed on the previously realized settlement proceeds that were attributable to medical expenses. See Arkansas Dep't of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006). There are currently no outstanding Medicaid liens relating to benefits provided to Laron.

CLAIMANTS' ARGUMENTS:

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

- Failing timely and accurately to alert medical doctors of Mrs. Harris's symptoms upon admission, which were suspicious for placental abruption.

- Failing to ensure that the ultrasound technician's first study, which was completed at 7:12 a.m., was immediately reported to the radiologist.

- Failing to report to Mrs. Harris's treating physicians the radiologist's "wet" read of the first sonographic study, which found, as of 7:55 a.m., that Mrs. Harris likely had a placental abruption.

- Failing to identify, treat, or bring to a physician's attention the non-reassuring fetal heart monitor readings, which indicated that the baby was possibly in distress.

- Failing to perform the second ultrasound on an emergency basis.

Failing to have Mrs. Harris prepared and ready for an emergency C-section in less than 30 minutes.

RESPONDENT'S POSITION:

The North Broward Hospital District does not oppose the bill. The district has "claim bill" insurance that will fully satisfy the Consent Judgment, provided that a claim bill is enacted. Thus, payment of the bill will not impair the district's ability to provide normal services.

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the North Broward Hospital District against tort liability in excess of $200,000 per occurrence. See Eldred v. North Broward Hospital District, 498 So. 2d 911, 914 (Fla. 1986)(§ 768.28 applies to special hospital taxing districts); Paushter v. South Broward Hospital District, 664 So. 2d 1032, 1033 (Fla. 4th DCA 1995). Unless a claim bill is enacted, therefore, Laron and his parents will not realize the full benefit of the settlement agreement they have made with the District.

Under the doctrine of respondeat superior, the North Broward Hospital District is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).

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

Each of the referenced individuals had a duty to provide Mrs. Harris and Laron with competent medical care. Such duty was breached, with tragic consequences: Had Laron been delivered before about 10:00 a.m., as he reasonably should have been, Laron likely would not have suffered a catastrophic brain injury in utero on April 1, 2003. The negligence of the district's employees and agents was a direct and proximate cause of Laron's substantial damages.

The sum that the North Florida Hospital District has agreed to pay Laron ($2.2 million) is a relatively small percentage of Laron's economic damages, assuming he survives to adulthood, which seems more likely than not. Taking the past and future non-economic damages of Laron and his parents into account, which were not quantified because the case was not tried to conclusion, the total damages here easily could have been fixed at a sum in excess of $20 million. Although there are other parties, besides the district, whose negligence contributed to the injury, there is no persuasive basis in the record for finding that the district's share of the fault should be fixed at less than 10 percent; rather, the record supports the conclusion, which the undersigned reaches, that the district's fault is at least that much. The undersigned concludes, therefore, that the settlement at hand is both reasonable and responsible.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." The law firm that the Harris family retained, Diez-Arguelles & Tejedor, P.A., has submitted a proposed closing statement showing that, if the claimants were awarded $2 million under the claim bill at issue, the

attorneys' fees would be limited to $500,000, or 25 percent of the compensation being sought, leaving $1.5 million for Laron.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 16 (2011) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Jeremy Ring
Representative Marti Coley
R. Philip Twogood, Secretary of the Senate
Counsel of Record

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
2/1/11	SM	Favorable
3/25/11	RC	

February 1, 2011

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

Re: **SB 22 (2011)** – Senator Anthony C. Hill, Sr.
HB 629 (2011) – Representative Charles McBurney
Relief of Estate of Cesar Solomon

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $1,050,000.00, TO BE PAYABLE ANNUALLY OVER THREE YEARS BY EQUAL WARRANTS OF $350,000, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN THE ESTATE OF CESAR SOLOMON AND THE JACKSONVILLE TRANSPORTATION AUTHORITY, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE NEGLIGENT OPERATION OF A CITY BUS THAT CAUSED THE DEATH OF CESAR SOLOMON.

FINDINGS OF FACT:

This matter arises out of a collision that occurred on March 25, 2008, in Jacksonville, Florida, at the intersection of Commonwealth Avenue and Melson Avenue. Commonwealth Avenue is a four lane roadway that runs east to west, while Melson Avenue is a two lane road that runs north to south. The intersection is controlled by overhead traffic signals.

At approximately 1:00 p.m., Cesar Solomon, a traffic signal repairman employed by the City of Jacksonville, was in the intersection effecting repairs to the traffic light. While making the repairs, Mr. Solomon was standing on a platform lift that was attached to a city-owned truck. William Turner, a co-

employee of Mr. Solomon's, remained behind the lift truck and directed traffic through the intersection. The lift truck, which faced westbound on Commonwealth Avenue, featured numerous flashing lights on the rear of the vehicle that were readily observable. An orange traffic cone was also placed behind the lift truck to warn approaching drivers.

At 1:22 p.m., Gwendolyn Wells Mordecai, a City of Jacksonville employee, was driving westbound on Commonwealth Avenue in a bus owned by the Jacksonville Transportation authority. Although Ms. Mordecai turned onto Commonwealth Avenue at least four blocks from the intersection where Mr. Solomon was working, and no visual obstructions were present that would have made it difficult for her to observe the lift vehicle, Ms. Mordecai inexplicably failed to see the lift truck and struck it from behind. Moments before the collision, Mr. Turner darted across Commonwealth Avenue to avoid being hit.

Information subsequently retrieved from the bus's event data recorder showed that the bus was traveling approximately 37 MPH at the time of impact and that there was little or no braking prior to the collision. The posted speed limit on Commonwealth Avenue was 40 MPH.

As a result of the force of the impact, the lift truck was pushed well over 100 feet and jumped the curb on the other side of the intersection. Tragically, Mr. Solomon was thrown from the platform lift, the bottom of which was elevated nearly 13 feet from the ground. Mr. Solomon sustained fatal injuries and was pronounced dead at the scene of the crash. Ms. Mordecai was uninjured.

At 1:48 p.m., Detective R.D. Peck, a traffic homicide investigator with the Jacksonville Sheriff's Office, arrived at the scene. During his investigation, which was conducted over the course of several weeks, Detective Peck and a colleague questioned Ms. Mordecai, Mr. Turner, and three other eyewitnesses. During her interview, Ms. Mordecai stated that she did not remember the accident and could not explain what happened. On May 4, 2008, Detective Peck issued Ms. Mordecai a citation for careless driving.

On April 9, 2008, the Jacksonville Transportation Authority advised Ms. Mordecai in writing that her employment was

terminated due to her "gross negligence" in connection with the collision.

Mr. Solomon, who was 52 years old at the time of his death, retired from the United States Navy in 2004 after 20 years of service and had been employed with the City of Jacksonville since 2006. In addition to his employment with the City of Jacksonville, Mr. Solomon worked part-time as a real estate agent and managed several rental properties that he owned. Mr. Solomon is survived by his wife of 23 years, Mrs. Ruby Solomon, and two children, ages 22 and 19.

The undersigned has reviewed a report prepared by Dr. Bernard F. Pettingill, an economist retained by Mr. Solomon's estate. Applying standard economic principles regarding growth and discount rates, Dr. Pettingill estimates that the range of economic losses due to Mr. Solomon's death is between $1.25 million and $1.41 million. Dr. Pettingill's conclusions, which the undersigned credits, were not challenged by the Respondent.

Had the negligence action against the Jacksonville Transportation Authority proceeded to trial, it is likely that a jury would have returned an award far in excess of the $1.25 million settlement, as the settlement amount reflects no damages other than the low range of future economic losses. Accordingly, the undersigned concludes that the settlement is both reasonable and responsible.

LITIGATION HISTORY:

On October 20, 2008, in the circuit court for Duval County, Mrs. Ruby Solomon, as the personal representative of the estate of Mr. Solomon, filed an Amended Complaint against the Jacksonville Transportation Authority, Ms. Mordecai, and Jax Transit Management Corporation. The Amended Complaint alleged that Mr. Solomon's untimely death was the direct and proximate result of Ms. Mordecai's negligent operation of the bus owned by the Jacksonville Transportation Authority.

On June 30, 2010, the estate of Mr. Solomon and the Jacksonville Transportation Authority entered into a Stipulated Final Judgment, in which the parties agreed that Ms. Mordecai was negligent and that there was no comparative fault by Mr. Solomon. The parties also agreed

that the harms and losses far exceed the statutory limit and would likely garner a multi-million dollar verdict. Based upon the foregoing, the Jacksonville Transportation Authority stipulated to the entry of a judgment in the amount of $1,250,000.00, and further agreed to remain neutral with respect to the passage of a claim bill.

The Jacksonville Transportation Authority has already paid $200,000 against the judgment, leaving $1,050,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION: Mr. Solomon's death was the direct and proximate result of Ms. Mordecai's negligent operation of a Jacksonville Transportation Authority bus.

RESPONDENT'S POSITION: The Jacksonville Transportation Authority has remained neutral in this proceeding and has taken no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW: Ms. Mordecai had a duty to operate the bus at all times with consideration for the safety of pedestrians and other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, it was Ms. Mordecai's duty to observe the lift truck as she approached and bring her vehicle under such control as the situation required. Ms. Mordecai breached this duty of care and the breach was the proximate cause of Mr. Solomon's death.

The Jacksonville Transportation Authority, as Ms. Mordecai's employer, is liable for her negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another"); City of Tampa v. Easton, 198 So. 753, 755 (Fla. 1940) ("When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being operated with the knowledge

and consent of the municipality through its officers or employees and used on the streets for lawful . . . purposes, the municipality may be liable for injuries to persons or property proximately caused by negligence of the truck driver in operating the truck.").

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

ATTORNEY'S FEES: The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees are included with the attorney's fees.

FISCAL IMPACT: The Jacksonville Transportation Authority has reserves in the amount of $1.8 million. Therefore, operations would not be adversely affected if this claim bill is approved.

SPECIAL ISSUES: The Estate of Cesar Solomon is presently engaged in litigation in Duval County circuit court with the manufacturer of the lift mechanism. The basis of the claim is that the platform lift was defective because the height of the railing was insufficient. After a careful review of the evidence in this matter, the undersigned does not believe that the Claimant's suit against the lift manufacturer will likely result in any meaningful recovery. Accordingly, the ongoing litigation should not militate against the passage of the instant claim bill. See also Fla. S. Rule 4.81(6) (2010) ("The hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted; except that the hearing and consideration of a claim that is still within the judicial or administrative systems may proceed where the parties have executed a written settlement agreement.") (Emphasis added).

As a result of Mr. Solomon's untimely death, Mrs. Solomon received funds from various collateral sources, including: $100,000 in insured motorist coverage; $58,000 in proceeds from a life insurance policy issued by Prudential Insurance Company; a $255 Social Security death benefit; and various other death benefits totaling $357,000.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2011) be reported FAVORABLY.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Anthony C. Hill, Sr.
Representative Charles McBurney
R. Philip Twogood, Secretary of the Senate
Counsel of Record

472126

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 50 - 56
and insert:
Section 2. The City of Ft. Lauderdale is authorized and directed to appropriate from funds of the City not otherwise appropriated and to draw warrants payable to Angela Isham, individually, and as co-personal representative of the estate of David Isham, deceased, in the amounts and in the timeframe contained in the Partial Satisfaction and Settlement Agreement between the City of Ft. Lauderdale and Angela Isham, said amount totaling $600,000 above the statutory amount already paid.

472126

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

And the title is amended as follows:

Delete lines 38 - 44

and insert:

WHEREAS, the City of Ft. Lauderdale has sufficient funds in its Risk Management Fund available to pay this claim, NOW, THEREFORE,

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
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DATE	COMM	ACTION
2/1/11	SM	Fav/1 amendment
3/25/11	RC	

February 1, 2011

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

Re: **SB 34 (2011)** – Senator Charlie Dean
HB 185 (2011) – Representative Debbie Mayfield
Relief of Angela Isham

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM FOR $600,000 FROM LOCAL FUNDS BASED ON A JURY AWARD FOR ANGELA ISHAM AND THEN A SETTLEMENT AGREEMENT WITH THE CITY OF FT. LAUDERDALE TO COMPENSATE CLAIMANT FOR THE DEATH OF HER HUSBAND, DAVID ISHAM, IN A MOTOR VEHICLE CRASH THAT OCCURRED DURING A POLICE PURSUIT.

FINDINGS OF FACT:

In the late afternoon of November 15, 2001, three Ft. Lauderdale narcotic detectives were patrolling an area of the City where drug transactions frequently occur. The detectives were in an unmarked car driven by Detective Carl Hannold. They were wearing black t-shirts with the word "POLICE" printed in large letters across the front. Although the detectives were in an unmarked vehicle, many people in the neighborhood saw the vehicle frequently and knew it was a police car.

The detectives observed a parked BMW with several persons standing around it. When the driver of the BMW saw the police vehicle, he immediately sped off with tires squealing. No drug-related activity was seen by the

detectives.

The detectives turned around to follow the BMW. The driver of the BMW took evasive maneuvers on the neighborhood streets and the detectives lost sight of the BMW for several minutes. The detectives circled back and spotted the BMW again. Detective Hannold pulled behind the BMW, which made a right turn at the next intersection without stopping at the stop sign. Detective Hannold followed. The detectives got behind the BMW and turned on their blue light inside the police car. The BMW accelerated away and ran the next stop sign at the intersection with a busy four-lane road. The BMW collided with a pickup truck driven by 42-year-old David Isham. Mr. Isham died at the scene from his injuries.

The driver of the BMW was identified as Jimmie Jean Charles, 20 years old. Charles was injured in the collision and was hospitalized for a short time. The BMW he was driving had been stolen. Charles was tried and convicted of vehicular homicide. He was sentenced to 15 years in prison.

The central dispute in this case was whether Detective Hannold was engaged in a pursuit of the BMW. The Ft. Lauderdale Police Department's policy manual defines a "pursuit" as:

> The operation or use of a police vehicle so as to pursue and attempt to apprehend a subject operating a motor vehicle who willfully or knowingly uses either high speed, illegal, or evasive driving tactics in an effort to avoid detention, apprehension, or arrest.

The policy manual prohibits pursuits in unmarked police cars "except when it is necessary to apprehend an individual who has caused serious bodily harm or death to any person." Pursuit for a traffic violation would be contrary to the policy. The pursuit policy also states that "accountability cannot be circumvented by verbally disguising what is actually a pursuit by using terms such as monitoring, tracking, shadowing, or following."

The City's pursuit policy is consistent with the policies of many police departments throughout the United States, which have been revised in recent years in response to the

injuries, deaths, and associated liability that often result from high-speed police pursuits. Detective Hannold said he was familiar with the pursuit policy and that he was not engaged in a pursuit. He claims that he followed the BMW because it is common for drug dealers to speed away and then "ditch" their cars and run away on foot. Hannold said that when the BMW sped away again as the blue light was activated in the unmarked police car, he did not accelerate to overtake the BMW, but, instead, came to a stop "to make it clear [to the driver of the BMW] that we were in no manner trying to catch up with him." The City claims that Detective Hannold's actions did not constitute a pursuit because he was not attempting to "apprehend" the BMW driver; he was merely attempting a traffic stop which he had the right to do when he saw the BMW driver run a stop sign.

The other two detectives supported Detective Hannold's account. The three detectives prepared individual written reports just after the incident, but they got together beforehand and agreed on what to say in their reports. Critical portions of the reports have identical wording. In their trial depositions and testimony, Hannold and the other two detectives were evasive and, in some instances, their answers lacked credibility.

At the scene of the collision, there was a large gathering of people from the neighborhood and some of them were telling media representatives and police investigators that the police were pursuing the BMW in a high-speed chase. The Police Department obtained several witness statements. One teenage boy said the police car was a block behind the BMW when the collision occurred, but the other witnesses, including two adult women closer to the scene of the collision, testified that the unmarked car was close behind the BMW and that both cars were going fast. One woman said that when the police car turned on its blue light, the BMW immediately accelerated away and the police car also "gunned it." The speed limit on the narrow residential street was 25 MPH.

A traffic accident reconstruction conducted by the Police Department estimated that the BMW was traveling about 54 MPH when it struck David Isham's truck. At trial, the City presented another accident reconstruction that concluded the BMW was going between 61 and 70 MPH. The City

argues that, since Detective Hannold's vehicle stopped without leaving skid marks, it could not have been traveling as fast as the BMW, nor could it have been very close behind the BMW.

Based on the extensive witness testimony and other evidence and argument presented by the parties, and taking into account the credibility of the witnesses, the more persuasive evidence supports the following essential facts:

- At their first encounter, Detective Hannold had reason to believe that the BMW driver was fleeing to evade apprehension.

- At their second encounter, when the BMW sped away through a stop sign, it should have been clear to Detective Hannold that the BMW driver was fleeing to evade apprehension.

- It was reasonable for the BMW driver to believe he was being pursued.

- The BMW driver sped through the next stop sign at the four-lane road to evade apprehension and it is unlikely that he would have done so if the police car had not continued to follow him.

- Whether Detective Hannold was driving as fast as the BMW and whether he was close behind the BMW in the two blocks leading to the intersection where the collision occurred are not controlling facts for determining whether Detective Hannold was engaged in a pursuit. The definition of a pursuit is not restricted to high speeds or small distances between the vehicles.

- Even if, as Detective Hannold claims, he stopped his vehicle immediately and turned off the flashing light when the BMW sped away the last time, it only means that he broke off his pursuit of the BMW, but the pursuit had commenced earlier. Detective Hannold might have terminated the pursuit, but it was too late to avoid the tragedy that he had set in motion.

The action of Detective Hannold, the reaction of the BMW

driver, and the crash that killed David Isham, fall squarely within the predictable scenarios that the City's pursuit policy was designed to avoid. Pursuing a subject who is trying to avoid apprehension can cause the subject to react by driving dangerously so as to cause injury or death. Therefore, a pursuit is prohibited if the only infraction known to the police officer is a traffic violation.

LITIGATION HISTORY:

In 2003, a lawsuit was filed in the circuit court for Broward County by Angela Isham on behalf of herself and the estate of David Isham, against the City of Ft. Lauderdale. Prior to trial, the parties stipulated that the economic damages were $1,270,438.50 In February 2008, after a five-day trial, the jury found that the City and the BMW driver were each 50 percent liable for Mr. Isham's death. The jury determined that Angela Isham's damages for the loss of her husband's companionship and for pain and suffering were $600,000. Based upon the division of damages under the version of s. 768.81, Florida Statutes, then in effect, the City's liability was $1,435,219.25. The City paid the sovereign immunity limit of $200,000, leaving a balance of $1,235,219.25, which is the amount the Claimant originally sought through this claim bill.

However, at the time of the preparation of this report, the parties informed the Special Master that they had reached a settlement of their disputes regarding this claim, and that they would seek to amend SB 34 to reflect the terms of their settlement agreement. Under the terms of the Partial Satisfaction of Judgment and Settlement Agreement, the City would pay $200,000 within 30 days of the effective date of a claim bill that approves the settlement agreement, then $100,000 per year for three years, and then $50,000 per year for two years after that, for a total of $600,000.

CONCLUSIONS OF LAW:

Detective Hannold had a duty to comply with the Police Department's policies regarding pursuits and to operate his vehicle at all times with consideration for the safety of pedestrians and other drivers. It is foreseeable that injuries to motorists and pedestrians can occur during a police pursuit. Detective Hannold breached his duty and the breach was the proximate cause of the death of David Isham. The City of Ft. Lauderdale is vicariously liable for the negligence of Detective Hannold because he was acting within the course and scope of his employment at the time of

the incident.

The jury's allocation of 50 percent liability to the City is a reasonable allocation and should not be disturbed.

A claim in the amount of $600,000, paid in installments as described above, is fair and reasonable under the circumstances.

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

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 34 (2011) be reported FAVORABLY, as amended to incorporate the parties' settlement agreement.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Charlie Dean
Representative Debbie Mayfield
R. Philip Twogood, Secretary of the Senate
Counsel of Record

735014

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Thrasher) recommended the following:

Senate Amendment

In title, delete lines 29 - 36
and insert:
WHEREAS, the prosecutors presented witness testimony against William Dillon which the prosecutors knew or should have known was unreliable, and

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
2/1/11	SM	Fav/1 amendment
3/25/11	RC	

February 1, 2011

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

Re: **SB 46 (2011)** – Senator Mike Haridopolos
HB 23 (2011) – Representative Steve Crisafulli
Relief of William Dillon

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR $810,000 FROM GENERAL REVENUE, PLUS TUITION WAIVERS, TO COMPENSATE WILLIAM DILLON FOR HIS 27-YEAR WRONGFUL INCARCERATION FOR MURDER.

FINDINGS OF FACT:

On August 17, 1981, the body of James Dvorak was found in a wooded area frequented by gay men at Canova Beach. Canova Beach is between Melbourne Beach and Satellite Beach in Brevard County, opposite the Eau Gallie Causeway. There were multiple fractures of Dvorak's skull and blood was spattered in a wide area. The medical examiner determined that Dvorak was beaten to death with fists and/or with a blunt instrument. No murder weapon was ever found. It was estimated that the beating occurred between 1:30 a.m. and 3:30 a.m. on August 17 and that Dvorak died soon afterward.

John Parker drove to Canova Beach in his truck at 1:30 a.m. or a little later. He observed a man walk up from the beach. The man appeared unsteady and upset. He wore shorts and no shirt, but had a shirt in his hand. Parker pulled his truck over to the man and asked what was wrong. The man told Parker that he could not find his car and asked Parker for a

ride to the A-Frame Tavern, which was not far away. Parker later described the man as 21 to 27 years old, about 6 feet tall, and having a "medium" mustache. The man said his name was Jim. He was sweaty and had blood smears on his leg and pants. When Parker asked about the blood, the man said he had been in a bar fight. Parker propositioned the man for sex and performed oral sex on him in the truck. Parker then drove the man to the A-Frame Tavern.

The next morning, Parker found a T-shirt in his truck. The shirt was yellow and had "SURF IT" printed on the front and back. When Parker later heard about the murder at Canova Beach, he contacted the police and told them about the hitchhiker at Canova Beach and the T-shirt that was left in his truck. The Brevard County Sheriff's Office obtained the T-shirt and prepared a sketch of the hitchhiker from Parker's description. Blood on the T-shirt was matched to the murder victim, Dvorak.

At the time of the murder, Claimant James Dillon was 22 years old and unemployed. Dillon's attorneys described his status as "between jobs" as a construction worker, but his activities in the days before and after the murder are more suggestive of a beach bum. His father said he was "destitute" and not working. Dillon was usually broke and spent his days and nights sleeping on the beach, in cars, or at the apartments of acquaintances or strangers, smoking marijuana, and "bumming" cigarettes, drinks, meals, rides, and clothes. Dillon was often at the Pelican Bar, which is across A-1-A from Canova Beach. A couple of weeks before the murder, he met Donna Parrish at the Pelican Bar and was spending a lot of time with her.

Unlike the hitchhiker, Dillon did not have a mustache. The evidence was ambiguous as to whether Dillon had tried to grow a mustache and had recently shaved it, but he never had a mustache like the one depicted in the sketch developed from Parker's description of the hitchhiker. Parker described the hitchhiker as being about 6 feet tall. Dillon is 6 feet, 4 inches tall. The T-shirt left by the hitchhiker was a size "small." It is unlikely Dillon could have worn a size small T-shirt.

Interviews conducted by homicide investigators in the Canova Beach area after the murder caused Dillon to

become a suspect. Someone thought the sketch of the hitchhiker looked like Dillon. It was reported to police that Dillon said he had "rolled fags" for money. Police were also told that Dillon had a mustache that he recently shaved off and was dressing and acting differently after the date of the murder.

On August 22, Dillon was contacted and asked for an interview. At the interview conducted a few days afterward by Agent Thom Fair, Dillon said that he and Donna Parrish, had spent the entire night of August 16 in Cocoa Beach at the home of Linda and George Plumlee. Dillon said that the next day, August 17, he and Parrish stayed with his friend Matt Bocci in Satellite Beach. Agent Fair said that Dillon had recently-healed scratches on his hands at the time of the interview.

When Donna Parrish was first interviewed, she stated at one point that she and Dillon spent the night of August 15 with Charles and Rosanne Rogers, but at another point she said it was the night of August 16. In a second interview taken just a few minutes later with different investigators, Parrish said that she and Dillon went to the Bocci residence on August 16.

Parrish said she went by herself to the Pelican Bar that evening and Dillon arrived later. She said that they left the bar at about 1:00 a.m., crossed A-1-A to Canova Beach, and then she left Dillon alone at about 2:00 a.m. and hitchhiked to Sambo's in Satellite Beach. She said Dillon came into Sambo's at about 3:00 a.m. and had money with him that he did not have earlier. Parrish was interviewed a third time a few hours later and told investigators she had lied in her previous statements. She said that she and Dillon went to the Bocci residence on August 16, that they had an argument, that she went alone to the Pelican Bar, Dillon never showed up, and that she left the bar at about 12:30 a.m. and hitchhiked home. Parrish said she called the Pelican Bar and talked to Dillon at 2:00 a.m. and that he got a ride to her home and arrived about 3:00 a.m.

Parrish said Dillon was scared and depressed when he arrived at her house and told her the "police would be after him." She said Dillon's hands were cut and he had dried blood on his hands. She also said Dillon told her that when

he needs money he sometimes goes to Canova Beach to "go home with queers and when they fall asleep I take their money."

Dillon agreed to take a polygraph test and the examiner concluded that Dillon showed deception when he was asked whether he was at Canova Beach at the time of the murder and whether he "hit" Dvorak. At the conclusion of the test, Dillon said he could not have killed Dvorak because he was at the Bocci residence the evening of August 16 until the afternoon of August 18, and never left during that period. Later, Dillon told investigators that he lied about not leaving the Bocci residence. He said he left the evening of August 16, but he did not go to Canova Beach. In a second polygraph test taken to question Dillon about whether he stole money from Dvorak, the examiner concluded that Dillon showed deception when he was asked whether he had taken money from Dvorak.

No fingerprints, blood samples, or hair samples taken from the crime scene were ever linked to Dillon. When John Parker was first asked whether he could identify Dillon as the hitchhiker, Parker was unable to make a positive identification. However, during one of Dillon's interviews, the deputies got Dillon to handle a piece of paper that was later given to John Preston, the handler of a tracking dog. According to Preston, his dog then connected Dillon's scent on the piece of paper to the bloody T-shirt left in Parker's truck, indicating that Dillon's scent was also on the T-shirt.

Three or four people said that Dillon often wore a yellow "SURF IT" T-shirt like the one left in Parker's truck by the hitchhiker. Pictures of Dillon taken around the time of his arrest show him wearing a yellow T-shirt with "EAT IT RAW" printed on the front. The words "EAT IT" were on top and the word "Raw" was below. Dillon's "EAT IT" T-shirt could have been mistaken for the yellow "SURF IT" T-shirt.

Sometime after Dillon's arrest, Charles and Rosanne Rogers contacted the Sheriff's Office and said Dillon and Parrish had spent the night of August 16 with them in Cocoa Beach. Dillon did not claim to have stayed with the Rogers on August 16 until the Rogers came forward with that account. When Dillon was asked at his trial why he had not said earlier that he stayed with the Rogers on August 16, he said

he had forgotten their names. Matt Bocci said Dillon and Parrish were at his house on August 16 and they went out in the evening and returned after midnight. Bocci's fiancée, Tracey Hermann, confirmed that Dillon and Parrish were at Bocci's house on August 16. She was certain of the date because she had just arrived on that date from Texas. Matt Bocci's brother, Joe, and Glen Zeller also lived at the house. Both Joe Bocci and Zeller saw Dillon at the Bocci residence on August 16. Joe Bocci also said he saw Dillon sleeping at the Bocci residence at 6:00 a.m. on August 17 when he (Joe) left for work.

Several people said that they saw Dillon at the Pelican Bar on the night of August 16 and early morning hours of August 17. Mark Muirhead, who was a doorman/bouncer at the Pelican Bar, says he saw Dillon and Parrish arrive at the bar at about 10:00 p.m. on August 16, leave around midnight, and then return separately later. Muirhead said Dillon returned to the Pelican Bar near closing time at 2:45 a.m. and asked Muirhead for a ride. Muirhead drove Dillon to Parrish's residence. Brevard County Sheriff Deputy George McGee followed Muirhead from the Pelican Bar to the Parrish residence because he had observed Muirhead commit a traffic violation. Deputy McGee confirmed the time and date previously reported by Muirhead. Margaret McDonald was working as a bartender at the Pelican Bar on August 16 and she recalls seeing Dillon and Parrish at the bar around midnight. She remembers that Dillon gave her a tip that night, which was unusual because he never had any money. Dillon was also seen at the Pelican Bar on the night of August 16 by another bartender, Genevieve Tisdale. A patron of the Pelican Bar, Richard Drouin, saw Dillon and Parrish at the bar on the night of August 16.

There are simply too many people who swore they saw Dillon at the Bocci residence and at the Pelican Bar on the night of August 16 and in the early hours of August 17 for me to believe they could all be mistaken. These witnesses had no apparent reason to lie about Dillon's whereabouts. Dillon, himself, swore he was at the Bocci residence on August 16. The Rogers' were mistaken about Dillon and Parrish being with them on August 16.

A week after Dillon's arrest, Parrish changed her story again. She said that she and Dillon were at the Pelican Bar on the

night of August 16, she left by herself at 1:00 a.m. on August 17 and Dillon left shortly afterward. They talked for a short while outside the bar and then Parrish hitchhiked home. She says she returned to the bar and Dillon was not there, but then showed up again and he had money to buy drinks for himself, Parrish, and some other people. She got mad at Dillon and hitchhiked home. She then called the Pelican Bar and talked to Dillon and he got a ride to Parrish's house. Parrish said Dillon told her that he had gotten in a fight and hurt someone. She said he later told her he had beaten someone "so bad he died."

A month later, Parrish changed her story again. She said she saw Dillon in the parking area next to Canova Beach just after midnight on August 17, talking with someone at a parked car. She said she later went looking for Dillon, taking the path toward the beach, and came upon a body. She said Dillon was standing next to the body, putting on his jeans.

Parrish lied from her first interview and continuously thereafter. All of her statements, whether they helped or hurt Dillon, are subject to doubt unless they are corroborated by others.

It was later disclosed that, following an interview of Parrish by Chief Homicide Investigator Charles Slaughter, he drove her to his residence and had sexual intercourse with her. The sexual encounter was reported by Parrish, who filed a complaint about it with the Sheriff's Office. Slaughter admitted the sexual contact and he was immediately suspended, demoted, and transferred out of the homicide unit.

After Dillon's arrest on August 26, 1981, he was placed in a jail cell with Roger Chapman. Agent Thom Fair met with Chapman at the jail and Chapman told Agent Fair that Dillon said he had "sucker punched" a guy at the beach and then beat him with his fists. Agent Fair said Chapman initiated the meeting. At the claim bill hearing held on November 2, 2009, Chapman testified that he had been coerced by Agent Fair to make up lies about Dillon or face harsh prosecution on his own charge of sexual battery. Chapman's charges were later dropped. Agent Fair submitted an affidavit in which he asserts that Chapman's statement was not

coerced. The testimony of Chapman and Agent Fair on this point was not subject to cross-examination and is otherwise insufficient to resolve the conflicting claim about coercion. Nevertheless, I do not find Chapman's testimony about what Dillon told him to be credible.

At Dillon's trial, Parker identified Dillon as the hitchhiker who left the T-shirt in his truck, Preston testified that his dog matched Dillon to the bloody T-shirt, and Chapman testified about Dillon's "confession" to him when they were sharing a jail cell. There was testimony that Dillon often wore a yellow "Surf-it" T-shirt. Parrish testified that she saw Dillon at Dvorak's body. It is not surprising, therefore, that the jury found Dillon guilty of murder beyond a reasonable doubt.

Long after Dillon's trial, the dog handler, John Preston, was discredited. It was established that Preston was falsely claiming that his dogs were matching crime scene evidence to suspects when there was no match.

In addition to Dillon's loss of freedom and the many other deprivations caused by his incarceration, he claims to have been gang-raped while in prison. He also says he has dental problems due to the poor dental care he received in prison. Dillon had a good record in prison with respect to work assignments and general behavior.

LITIGATION HISTORY:

Dillon was tried in the circuit court for Brevard County. He was found guilty and sentenced to 25 years to life in prison.

A week after the trial, Dillon's attorney moved for a mistrial because Parrish wanted to recant her trial testimony. A hearing was held before the trial judge to consider the motion. Parrish said that she had lied about seeing Dillon at the body of the murder victim. She said she lied because Sheriff's deputies told her that, if she did not lie for them, she would "rot in jail for 25 years." Parrish did not explain what crime she could have been prosecuted for that could cause her to be sentenced to 25 years in prison. Following the hearing, the trial court denied the motion for mistrial, and Dillon was sent to prison.

In 2005, Dillon learned about the Wilton Dedge case and Dedge's exoneration for a rape conviction based on DNA testing. Dillon filed a motion for DNA testing. In 2007, an

interview of Dillon was seen by staff at the Innocence Project of Florida. The Innocence Project got involved to assist Dillon and paid for DNA testing of the bloody T-shirt by a private laboratory which used testing methods not available at the state laboratory. The DNA testing showed that the sweat and skin cells on the T-shirt did not come from Dillon. A motion for a new trial was granted in November 2008 and Dillon was released from prison. In December 2008, the State Attorney for the Eighteenth Judicial Circuit, Norman Wolfinger, decided not to pursue a new trial. In a letter sent to the Special Master, Wolfinger explained that "meeting the State's burden of proof was going to be unrealistic in light of the nine witnesses who are now deceased and another key witness who has substantial medical issues."

CONCLUSIONS OF LAW:

DNA Testing

Wilton Dedge and Alan Crotzer were convicted of rape. The DNA testing in their cases exonerated them because the semen taken from the victims was shown not to be their semen. Dillon's attorneys assert that the DNA testing of the bloody T-shirt proves that Dillon is innocent. That notion is also frequently stated in the newspaper articles about the Dillon case. However, while the DNA testing shows that Dillon was not the hitchhiker, it does not erase all the other evidence against Dillon.

It cannot be said with certainty that the hitchhiker murdered Dvorak. It can only be said that the hitchhiker was involved in the murder because he had Dvorak's blood on his T-shirt. Dillon is not the hitchhiker, but proof of Dillon's innocence requires that his possible involvement with the murder be eliminated.

Credibility

Dillon's prosecution involved unreliable witnesses, faulty memories, and official misconduct, making it difficult to sort out the events of August 16 and 17, 1981. In my own analysis, I disregarded the dog handler testimony and Parker's identification of Dillon as the hitchhiker. I also disregarded Chapman's testimony that Dillon confessed to the crime.

If Parrish were a credible witness, her testimony, alone, would be enough to prove Dillon's involvement in the

murder. However, Parrish was not a credible witness. All her actions showed her to be a weak person, easily manipulated and willing to lie for Dillon or for her own self-interest.

As discussed above, I do not believe Dillon's alibi that he spent the night of August 16 in Cocoa Beach at the Rogers residence. I find more persuasive the multitude of witnesses who saw him at the Bocci residence and at the Pelican Bar on August 16 and August 17. Dillon was not truthful about his whereabouts at the time of the murder. That is the most troubling aspect of this claim bill.

There was no named respondent in this case. Dillon and his attorneys presented their argument and evidence at the claim bill hearing without opposing argument or evidence.

In a letter to the Special Master, State Attorney Wolfinger stated that the DNA testing did not exonerate Dillon. Thom Fair, now retired from the Brevard County Sheriff's Office, moved to intervene after the claim bill hearing and filed an affidavit to rebut the claim that he had coerced the statement of Chapman. He still believes that Dillon is guilty of the Dvorak murder. The motion to intervene was denied, but the affidavit was made a part of the record.

Burden of Proof

In the 2008 Session, the Legislature created Chapter 961, Florida Statutes, to compensate victims of wrongful incarceration. The relief provided under Chapter 961 is $50,000 for each year of wrongful incarceration; a tuition waiver for up to 120 hours at a career center, community college, or university in Florida; and reimbursement of court costs, attorney's fees, and expenses incurred in the criminal proceedings. Dillon is ineligible to seek relief under Chapter 961 because that law is only available to persons who have no felony conviction other than the conviction for which they were wrongfully incarcerated. Dillon has a felony conviction for possession of a controlled substance -- a Quaalude – for which he served no jail time, but paid a fine and served probation. If Dillon were eligible to use Chapter 961, he would not qualify for compensation unless he presented "clear and convincing evidence" that he "neither committed the act nor the offense that served as the basis for the conviction and incarceration" and he "did not aid, abet, or act

as an accomplice or accessory to a person who committed the act or offense."

Chapter 961's requirement to prove "actual innocence" is substantially different than showing that guilt was not proved beyond a reasonable doubt. Although probably misunderstood by much of the general public, a jury's determination that a defendant is "not guilty" is not a determination that the defendant is actually innocent. The defendant is presumed to be innocent, but there is no determination of actual innocence. Some jurors may believe in the actual innocence of the defendant when they vote "not guilty," but a belief that the defendant is innocent is unnecessary for an acquittal. Jurors can suspect that a defendant more likely than not committed the act for which he or she was charged, but still find the defendant "not guilty" because the jurors are not certain of guilt. A reasonable doubt remains in their minds. In our criminal justice system, a defendant who might have actually committed the crime for which he or she is charged must be set free if the State does not prove the defendant's guilt beyond a reasonable doubt.

In contrast, Chapter 961 does not presume innocence for the purposes of compensation. Under Chapter 961, it is not enough for a claimant to show that the evidence against him or her was insufficient to prove guilt beyond a reasonable doubt. The claimant cannot be compensated unless there is clear and convincing evidence of his or her actual innocence.

Dillon's attorneys asserted that the evidence of Dillon's innocence is clear and convincing, but they argued that the proper standard of proof for this claim bill is "preponderance of the evidence." They note that this is essentially a claim bill seeking compensation for damages arising from the tort of false imprisonment and should qualify for the usual preponderance of the evidence standard that is applied in nearly all claim bills involving government torts. They also point out that previous claim bills for wrongful incarceration (Pitts, Lee, Dedge, and Crotzer) were not subject to a "clear and convincing" standard.

The Claimant's argument that the Senate should apply a preponderance of the evidence standard is a reasonable

position. However, the clear and convincing standard in Chapter 961 could be viewed as a new guide for legislative action on claims bills for wrongful incarceration because Chapter 961 is an expression of legislative intent and policy on the subject. There is no precedent to turn to in considering this issue because this is the first claim bill for wrongful incarceration since the enactment of Chapter 961.

In Dillon's case, the appropriate burden of proof is critical because, although I believe Dillon has shown by a preponderance of the evidence that he was wrongfully incarcerated, I do not believe that the evidence of his actual innocence is clear and convincing. I still have a reasonable doubt due to Dillon's presence in the area of the murder, at the time of the murder, and his not being truthful about it.

Conclusion

Because this is not a Chapter 961 proceeding, I believe the appropriate burden of proof is preponderance of the evidence. I recommend that Dillon be compensated for the 27 years he spent in prison because there is no physical evidence linking Dillon to the victim or the crime scene and Dillon would probably not have been found guilty with the credible evidence available to the prosecutors.

When Dillon first presented his claim in the 2010 Session, he was seeking the same compensation that is provided under Chapter 961. However, if the compensation provided by Chapter 961 goes only to a claimant who has no other felony conviction and who proves actual innocence by clear and convincing evidence, then it seems only logical that a claimant who has another felony conviction and proves wrongful incarceration by only a preponderance of the evidence should get less than the compensation provided by Chapter 961. Otherwise, there is no incentive for a wrongfully incarcerated person to use Chapter 961.

Dillon reduced his claim from $1.35 million to $810,000, which represents a reduction from $50,000 for each year of wrongful incarceration to $30,000 for each year. The "right" compensation in this situation is debatable, but $30,000 for each year of wrongful incarceration is a reasonable figure and it protects the integrity of Chapter 961.

In addition, Dillon requests the same tuition waivers for 120 credit hours of schooling that is available under Chapter 961. That is reasonable and I believe the Senate should approve tuition waivers for Dillon.

ATTORNEYS FEES: Dillon's attorneys are representing him *pro bono*. However, the Innocence Project of Florida reported $27,611.85 of costs incurred in obtaining the release of Dillon from prison and assisting him thereafter. There is no lobbyist's fee.

OTHER ISSUES: I recommend the deletion of the "whereas" clauses of the bill that assert that witnesses were coerced by investigators to give false testimony against Dillon. These assertions amount to legislative findings that crimes were committed by members of the Brevard County Sheriff's Office, but there have been no charges filed, no determinations by a court, and there was insufficient evidence presented to the Special Master to find that crimes were committed by the Sheriff's Office.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 46 (2011) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Mike Haridopolos
Representative Steve Crisafulli
R. Philip Twogood, Secretary of the Senate
Counsel of Record

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LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Negron) recommended the following:

Senate Amendment

In title, delete lines 22 - 27
and insert:
WHEREAS, the Palm Beach County School Board unanimously passed a resolution in support of settling the lawsuit that was filed in this case, tendered payment of $100,000 to Carl Abbott, in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and does not oppose the passage of this claim bill in favor of Carl Abbott in the amount of $1,900,000, as structured, NOW, THEREFORE,

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
2/1/11	SM	Fav/1 amendment
3/25/11	RC	

February 1, 2011

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

Re: **SB 70 (2011)** – Senator Joe Negron
Relief of Carl Abbott

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR $1.9 MILLION, IN LOCAL FUNDS, AGAINST THE PALM BEACH COUNTY SCHOOL BOARD FOR THE NEGLIGENCE OF A BUS DRIVER WHO STRUCK AND SERIOUSLY INJURED CARL ABBOTT AS HE WAS ATTEMPTING TO WALK ACROSS A ROADWAY WITHIN A MARKED PEDESTRIAN CROSSWALK.

FINDINGS OF FACT:

On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk. (See Diagram below.)

At the time Mr. Abbott began to cross U. S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed

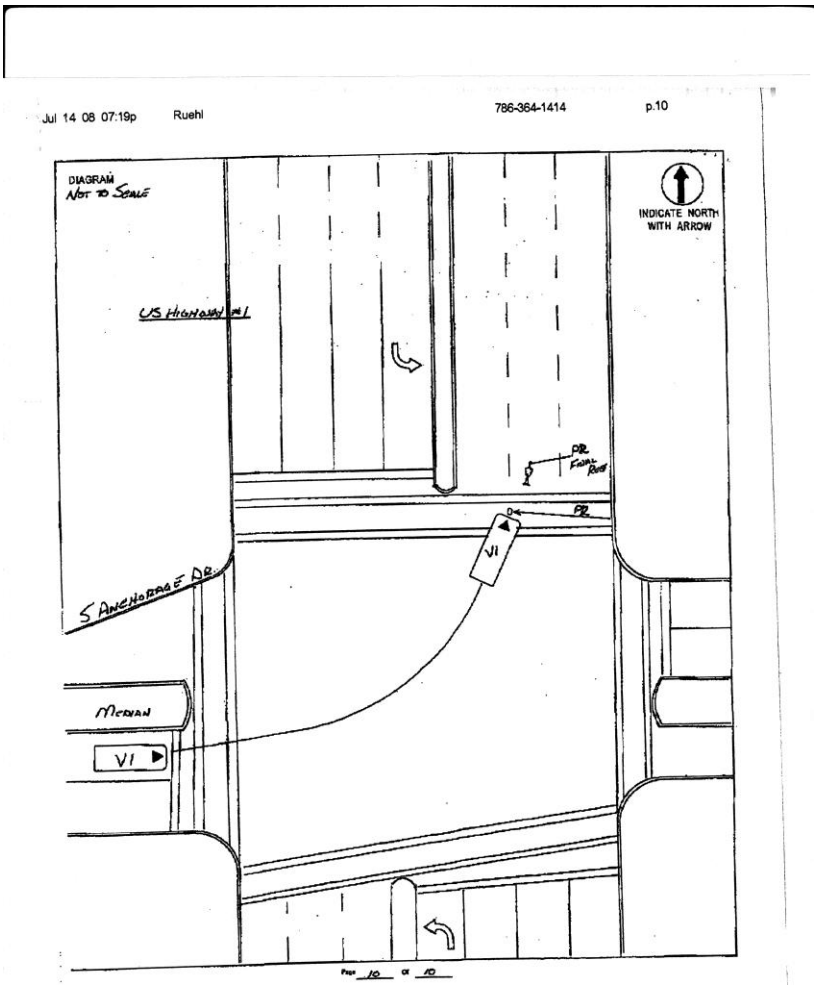
north on U. S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U. S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation (CPR) at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbot presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbot has neurogenic bladder and bowel and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about $4 million, before a reduction to present value. Based on the evidence presented, the undersigned is unable to determine the approximate amount of Mr. Abbott's past medical expenses, but it appears to be a sum between, very roughly, $200,000 and $775,000.

DIAGRAM:



LEGAL PROCEEDINGS:

In 2008, Mr. Abbott's son David, as guardian, brought suit on Mr. Abbott's behalf against the School Board of Palm Beach County. The action was filed in the Circuit Court in and for Palm Beach County, Florida.

Before trial the parties attended a mediation conference and agreed to settle the case for $2 million, $100,000 of which the School Board paid immediately. Pursuant to the settlement agreement, the $1.9 million balance will be paid, if this claim bill is enacted, in eight yearly installments of $211,111.11, plus a ninth and final annual payment of $211,111.12. These yearly payments will commence, if at all, on the effective date of the claim bill, should it become law, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments,

guaranteeing a minimum payout of $633.333.33 (if this claim bill passes).

Out of the $100,000 settlement proceeds he has already received, Mr. Abbot paid $25,000 in attorney's fees and, after paying some expenses, netted $51,905.65. This amount was paid to Mr. Abbott's guardian, David Abbott.

CLAIMANT'S ARGUMENTS: The Palm Beach County School Board is vicariously liable for the negligence of its employee, who breached the duty of a motorist to use reasonable care toward a pedestrian by failing to yield the right-of-way to Mr. Abbott as he crossed U. S. Highway #1 on foot within a marked crosswalk.

RESPONDENT'S POSITION: The Palm Beach County School Board does not oppose the enactment of this claim bill. It is self-insured, however, and would pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of $100,000. The School Board notes that payment of the $1.9 million sought in this bill would be difficult, given budgetary constraints, but it stops short of urging that the bill be rejected on this basis.

CONCLUSIONS OF LAW: As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the School Board against tort liability in excess of $200,000 per occurrence.

A school board is liable for any negligent act committed by a public school bus driver whom it employs, provided the act is within the scope of the driver's employment. Hollis v. School Board of Leon Cnty., 384 So. 2d 661, 665 (Fla. 1st DCA 1980). Ms. Bedford was the School Board's employee and was clearly acting within the scope of her employment at the time of the accident in question. Accordingly, the negligence of Ms. Bedford is attributable to the School Board.

Like any motorist, a school bus driver has a duty to look out for pedestrians and to avoid creating hazardous situations. See Resnick v. National Car Rental Systems, Inc., 266 So. 2d 74, 75 (Fla. 3d DCA 1972). While "the rights of motorists and pedestrians on highways are reciprocal," the motorist "must exercise ordinary reasonable and due care toward a pedestrian." Edwards v. Donaldson, 103 So. 2d 256, 259 (Fla. 2d DCA 1958).

Here, the applicable traffic regulations required that Ms. Bedford yield to Mr. Abbott because he was crossing the road within a marked crosswalk. See § 316.130(7), Fla. Stat.; see also, § 316.075(1)(a)1., Fla. Stat. ("[V]ehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such [green] signal is exhibited.") Ms. Bedford breached the duty to use reasonable care for the safety of Mr. Abbott. Her negligence was the direct and proximate cause of Mr. Abbott's serious and irreversible brain injury.

The sum that the School District has agreed to pay Mr. Abbott ($2 million) is both reasonable and responsible, given the nature and permanence of the injury and the Mr. Abbott's substantial and continuing medical needs.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Mr. Abbott's attorney, Joseph R. Johnson, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

SPECIAL ISSUES:

The claim bill requires some relatively technical amendments to conform to the parties' settlement agreement. The anticipated revisions, which the claimant's counsel is expected to prepare, will not change the bill's substance in any meaningful way.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 70 (2011) be reported FAVORABLY, as amended.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Joe Negron
R. Philip Twogood, Secretary of the Senate
Counsel of Record

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
2/1/11	SM	Favorable
3/25/11	RC	

February 1, 2011

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

Re: **SB 306 (2011)** – Senator Nan H. Rich
Relief of Denise Brown and David Brown, for the benefit of their son, Darian Brown

SPECIAL MASTER'S FINAL REPORT

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

LEGAL PROCEEDINGS:

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

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

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

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

CLAIMANTS' ARGUMENTS:

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

- Failing timely to alert Mrs. Brown's obstetrician, or any medical doctor, of the onset of fetal tachycardia, despite a standing order to do just that.

- Failing timely to notify a physician of the loss of fetal heart rate variability and subsequent onset of late decelerations, which (the nurses should have known) indicated that the baby was likely in distress.

- Failing to notice, for hours, that the graph paper in the electronic fetal monitor had been inserted upside down, producing tracings that were not readily interpretable.

- Failing to order an emergency C-section immediately upon discovery that the baby's fetal heart signals were non-reassuring.

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

CONCLUSIONS OF LAW: As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields the North Broward Hospital District against tort liability in excess of $200,000 per occurrence. See Eldred v. North Broward Hospital District, 498 So. 2d 911, 914 (Fla. 1986)(§ 768.28 applies to special hospital taxing districts); Paushter v. South Broward Hospital District, 664 So. 2d 1032, 1033 (Fla. 4th DCA 1995). Unless a claim bill is enacted, therefore, Darian and his parents will not realize the full benefit of the settlement agreement they have made with the district.

Under the doctrine of respondeat superior, the North Broward Hospital District is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).

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

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

The sum that the North Florida Hospital District has agreed to pay Darian ($2.2 million in the aggregate) is a relatively

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

ATTORNEYS FEES: Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." The law firm that the Harris family retained, Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, LLP, has submitted the affidavit of Nancy La Vista, Esquire, attesting that, if the claimants were awarded $2 million under the claim bill at issue, the attorneys' fees would be limited to $500,000, or 25 percent of the compensation being sought.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 306 (2011) be reported FAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Nan H. Rich
R. Philip Twogood, Secretary of the Senate
Counsel of Record

623308

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Flores) recommended the following:

Senate Amendment

In title, delete line 10
and insert:
37 at the time of the accident, sustained serious and
permanent neurologic and orthopedic

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
2/7/11	SM	Fav/1 amendment
3/25/11	RC	

February 7, 2011

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

Re: **SB 324 (2011)** – Senator Anitere Flores
Relief of James D. Feurtado

SPECIAL MASTER'S FINAL REPORT

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

FINDINGS OF FACT:

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

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

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

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

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

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

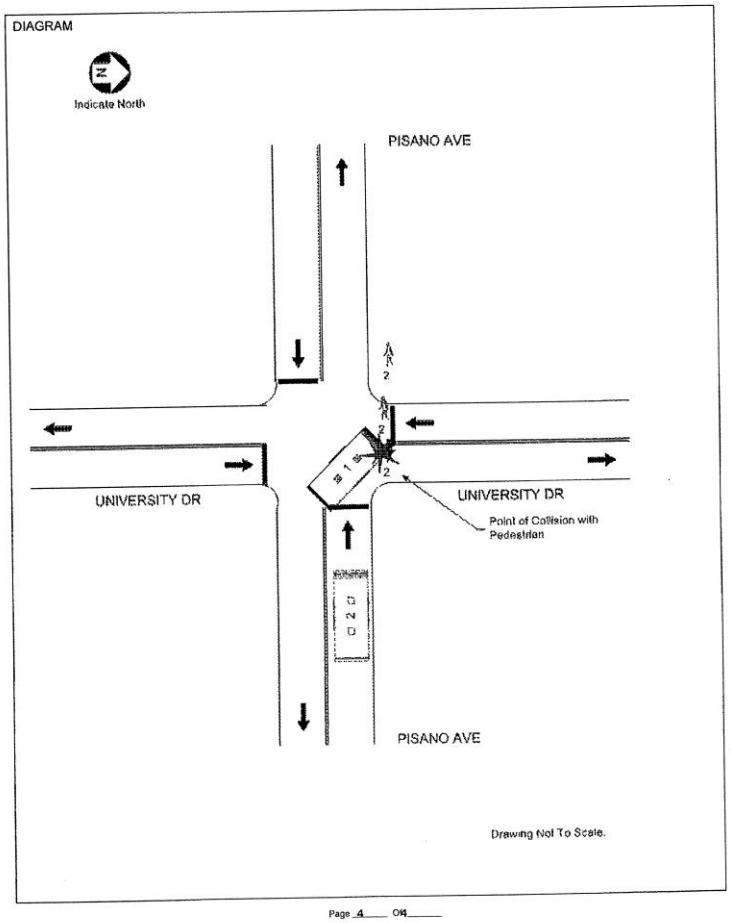
At the time of the final hearing before the undersigned, the Claimant remains with permanent mild to moderate traumatic brain damage as a result of the collision. In addition, the Claimant continues to suffer from deafness in one ear, vertigo, headaches, scarring, and mild psychiatric issues.

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

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

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

DIAGRAM:



LITIGATION HISTORY:

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

On November 3, 2009, the parties successfully reached a mediated settlement in the amount of $1,250,000. Pursuant to the terms of the settlement, Miami-Dade County agreed to tender $100,000 to the Claimant upon the approval of the settlement by the Board of County Commissioners. Miami-Dade County further agreed not to oppose a claim bill in the amount of $1,150,000.

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

CLAIMANT'S POSITION:

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

RESPONDENT'S POSITION:

Miami-Dade County supports this claim bill.

CONCLUSIONS OF LAW:

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

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

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

Miami-Dade County, as Mr. Rollins' employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); see also Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another").

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

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

ATTORNEYS FEES: The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. Lobbyist's fees are included with the attorney's fees.

SOURCE OF FUNDS: If Senate Bill 324 is approved, Miami-Dade Transit operating funds will be used to satisfy the claim.

SPECIAL ISSUES: Although the Claimant was 37 years old at the time of the accident, Senate Bill 324 erroneously provides that the Claimant was 38 years old. Accordingly, the bill should be amended to reflect the Claimant's correct age.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 324 (2011) be reported FAVORABLY, as amended.

Respectfully submitted,

Edward T. Bauer
Senate Special Master

cc: Senator Anitere Flores
R. Philip Twogood, Secretary of the Senate
Counsel of Record

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL:	SPB 7224
INTRODUCER:	For consideration by the Rules Committee
SUBJECT:	Ethics
DATE:	March 24, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Phelps		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7224 amends the voting conflicts law by prohibiting a member of the Legislature from voting on certain legislation. It also requires a member to publicly state to the body or the committee to which the member belongs, prior to consideration of the legislation, all of the interests which give rise to the voting conflict. The bill would also require disclosure of the specific nature of those interests in a memorandum filed with either the Secretary of the Senate or Clerk of the House of Representatives within 15 days after the vote. The memorandum would be published in the journal of the house of which the legislator is a member.

The bill amends the financial disclosure laws applicable to elected constitutional officers by requiring the Florida Commission on Ethics ("Commission") to review timely-filed financial disclosures of elected constitutional officers, along with any supporting documents provided, to determine if the filing is sufficient. The bill requires the Commission to notify filers whether their disclosures are sufficient by July 31, and provides 30 days for the official to correct the filing without penalty. Also, if information is omitted from the form which is required to be disclosed, and that information was contained in the supporting documentation filed with the Commission but was not caught by the Commission, the officer shall not be liable for fines or penalties.

Finally, the bill incorporates recommendations made by the Nineteenth Statewide Grand Jury on Public Corruption ("Grand Jury"). Specifically, the bill amends the definition of the term "gift" so that campaign contributions made pursuant to federal elections laws are not a gift. Also, the bill requires two additional types of public servant to file an annual statement of financial interests pursuant to s. 112.3145, F.S. In addition, the bill implements the grand jury

recommendations concerning use of the term "corruptly" in the criminal bribery and misuse of public position provisions.

This bill substantially amends the following sections of the Florida Statutes: s. 112.312, F.S., s. 112.3143, F.S., s. 112.3144, F.S., s. 112.3145, F.S., s. 838.015, F.S., s. 838.016, F.S., and s. 838.022, F.S. The bill also creates s. 112.31435, F.S. Finally, the bill repeals s. 838.014(4), F.S.

II. Present Situation:

Voting Conflicts:

Under Section 112.3143(2), Florida Statutes, **no state public officer is prohibited from voting in an official capacity on any matter**. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

Conversely, county, municipal, and other local officers are prohibited from voting on any measure which would inure to his/her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained, other than an agency; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. In the event of a conflict, the county, municipal, and other local officers are required to publicly state to the assembly the nature of the officer's interests in the matter from which he or she is abstaining prior to the vote being taken. Additionally, the county, municipal, and other local officers are required to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

Financial Disclosure:

Currently, all elected constitutional officers and candidates for such offices are required by Art. II, s. 8 of the State Constitution, to file a full and public disclosure of their financial interests annually. The annual full and public disclosure is also required of all statewide elected officers and any other officers, candidates, and employees as determined by law. Currently, the financial disclosure requirements are contained in s. 112.3144, F.S., and s. 112.3145, F.S. Section 112.3144, F.S., is the implementing language for the full and public disclosure of financial interests required of the constitutionally specified officers and candidates.[1]

[1] Section 112.3145, F.S., requires an annual statement of financial interests of certain public officers and employees which are specifically enumerated therein. There are some additional officers, who would not otherwise be required to file financial disclosure, from which the Legislature requires annual financial disclosure in the applicable enabling legislation.

Currently, the Commission serves as the depository for the financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of $25 per day for failure to timely file financial disclosure. The automatic fine is capped at $1,500. Neither the Commission nor the supervisor of elections is required to examine the financial disclosure filings.

If a filer is uncertain about whether he or she is required to disclose information, the filer may contact the Commission for guidance. Usually, the Commission's staff can answer simple questions by telephone or letter. In some circumstances, staff may not be able to provide such informal guidance. The Commission's staff will usually provide the filer the "safe harbor" advice to disclose the information or will advise the filer to seek a formal opinion from the Commission at its next available meeting. Upon receipt of the guidance, the onus is on the filer to include the information on their original form or, if necessary, file an amendment form. A member of the public can file a complaint with the Commission alleging that the person failed to disclose information which they were legally obligated to disclose. That complaint follows the same procedure as any complaint alleging a violation of one of the standards of conduct in the Code of Ethics. In the event that the Commission finds the filer in violation, he or she is subject to the penalties in s. 112.317, F.S.

Nineteenth Statewide Grand Jury Recommendations:

On November 30, 2009, Governor Crist convened the Grand Jury to review the ethics laws for possible improvement and to investigate any potential criminal activity within the Grand Jury's jurisdiction. On December 17, 2010, the Grand Jury issued a 124-page report interim report. The report contains various findings of fact, explanation of current ethics laws, and suggestions for improvement of those laws.

One recommendation was to clarify what constitutes a "gift." Currently, the definition of gifts for purposes of the Code of Ethics is located in s. 112.312(12), F.S. That section also identifies certain things which are specifically excluded from the definition of "gift." Currently, campaign contributions regulated by state law are specifically excluded from the definition of "gift." The exemption, which must be narrowly construed, does not include campaign contributions given which are reported pursuant to federal law. The Grand Jury recommended fixing this omission.

Another recommendation concerned who is required to file an annual statement of financial interests pursuant to s. 112.3145, F.S. Generally, only those specifically enumerated in that statute are required to file an annual statement of financial interests.[2] This filing requirement is less onerous than that required in Article II, s. 8 of the Florida Constitution. Currently, neither members of a community redevelopment agency board nor finance directors of county,

[2] Section 112.3145(1)(a)2.g., permits a unit of local government to require financial disclosure of individuals if permitted to do so by the enabling legislation or via ordinance or resolution.

municipal, or other political subdivisions are required to file annual financial disclosure. The Grand Jury recommended requiring annual financial disclosure of those individuals.

The final Grand Jury recommendation addressed in the bill concerns crimes such as bribery and criminal misuse of public position. Currently, s. 838.014(4), F.S., defines the term "corruptly."[3] "Corruptly" is then incorporated as the requisite mental state for the public corruption offenses in Chapter 838 of the Florida Statutes. The Grand Jury heard testimony that the use of that mental state prevents State Attorneys from being able to try or convict public officers for those offenses. Thus, the Grand Jury concluded that "corruptly" should be stricken from the criminal provisions.

III. Effect of Proposed Changes:

Voting Conflicts:

As previously mentioned, current law provides that no statewide elected officer is prohibited from voting in an official capacity on any matter. The bill creates an exception to the general rule in Section 112.3143(2), F. S., that state public officers may vote in an official capacity on any matter. The bill creates s. 112.31435, F.S. which prohibits a member of the Legislature from voting upon any legislation that would inure to his or her special private gain or loss. The bill also prohibits a member of the Legislature from voting on a matter which he or she knows would inure to the special private gain or loss of his or her relative, business associate, employer, board upon which the member sits, or a principal by whom the member is retained or the parent corporation or subsidiary of a corporate principal by whom the member is retained.

The bill also requires a member to disclose, prior to a vote being taken, all of the interests in the legislation that give rise to the voting conflict. Additionally, the member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

The bill specifically provides that a member of the Legislature is not prohibited from voting on a General Appropriations Act or implementing legislation on the floor of the Senate or the House of Representatives.

Financial Disclosure:

The bill amends s. 112.3144, F.S., concerning the filing of annual full and public disclosure of the interests by elected constitutional officers. Specifically, the bill requires the Commission to review any full and public disclosure of financial interests filed by an elected constitutional officer no later than 5:00 p.m. on July 1.[4] The Commission is required to compare the form and any other supplemental or supporting documentation provided by the filer to determine whether the filing is sufficient. The Commission must then notify the filer whether his or her disclosure is

[3] It is important to note that the definition of "corruptly" in s. 838.014(4), F.S., is different in s. 112.312(9), F.S., which applies to the Code of Ethics.

[4] If a filing is not received before 5:00 p.m. on July 1, the bill does not require the Commission to conduct a review of the officer's full and public disclosure of financial interests.

sufficient. If the filing is sufficient, the Commission accepts the filing and shall consider the disclosure to be filed as of the date received.

If the Commission determines, based upon the full and public disclosure form and supporting or supplemental documents, that the filer omitted information required to be filed, the Commission must notify the filer by certified mail. The notice must be sent within thirty days of July 1 and must state with particularity the reason(s) for the deficiency. The officer must then file a new full and public disclosure of financial interests no later than September 1 of that year. A complaint cannot be filed alleging a violation of s. 112.3144, F.S., based on errors identified by the Commission, unless the filer fails to make the corrections necessary to comply with the disclosure requirement by September 1. If the officer fails to file the corrected form by September 1, he or she remains subject to the automatic fines for failure to timely file his or her disclosure. However, the officer would retain the right to appeal any automatic fine based on the existence of unusual circumstances.

When the filing is determined to be sufficient, the officer is not liable for any fines or penalties related to the filing. However, the exemption from liability for fines or penalties is not intended to apply where the filer omits information necessary for the Commission to make its sufficiency determination. This encourages the officer to disclose any information which would facilitate the Commission's review and prevents withholding information in an effort to receive the exemption.

Nineteenth Statewide Grand Jury Recommendations:

Consistent with the recommendations of the Grand Jury, the bill amends the definition of "gift" in s. 112.312(12), F.S. The bill exempts campaign contributions reported pursuant to federal elections law from the definition of a "gift."

The bill also incorporates two other recommendations of the Grand Jury by amending s. 112.3145, F.S. The first change requires members of a community redevelopment agency board to file annual financial disclosure. The second change requires a finance director of a county, municipality, or other political subdivision to file annual financial disclosure.

Consistent with the Grand Jury's recommendation concerning the criminal bribery and misuse of public position statutes, the bill removes "corruptly" from Chapter 838 of the Florida Statutes. Specifically, the definition of "corruptly" in s. 838.014(4), F.S., is repealed. Then, the phrase "corruptly" is replaced with "knowingly" in s. 838.015, s. 838.016, and s. 838.022 of the Florida Statutes. Thus, the mental state required for those offenses would become "knowingly."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Commission on Ethics may incur additional costs related to sufficiency reviews for certain financial disclosure filings, but such amount is indeterminate at this time. Any potential increase in work caused by the sufficiency review could be offset by using seasonal OPS staff for the thirty day period in which the Commission conducts the review.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL:	SB 242
INTRODUCER:	Senator Joyner
SUBJECT:	Voter Information Cards
DATE:	March 25, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	EE	**Fav/1 amendment**
2.	Seay	Phelps	RC	**Pre-meeting**
3.			JU	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☒	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

The bill requires the voter information card prescribed in statute and furnished by the supervisor of elections to include the address of the polling place. It provides that if an elector's polling place address changes, the supervisor must send the elector a new voter information card. The bill also specifies that the supervisor must provide a voter information card meeting the requirements of this act for any elector who, on or after September 1, 2011, registers to vote, requests a replacement card, or changes their name, address, or party affiliation.

This bill substantially amends section 97.071, Florida Statutes.

II. Present Situation:

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must contain the following information:

- Voter's registration number;
- Date of registration;
- Full name;

- Party affiliation;
- Date of birth;
- Address of legal residence;
- Precinct number;
- Supervisor's name and contact information; and
- Any other information deemed necessary by the supervisor.[1]

Replacement cards are provided free of charge upon verification of the voter's registration, if the voter provides a signed written request for a replacement card.[2] The uniform statewide voter registration application may also be used to request a replacement card.[3] New cards are automatically issued when a voter's name, address, or party affiliation changes.[4]

A survey in 2010[5] indicated that 61 counties include the polling place address on the voter information card. The following six counties did not include the polling place address on the voter information card: Glades, Jefferson, Madison, Orange[6], Taylor and Volusia.

III. Effect of Proposed Changes:

The bill requires the voter information card to include an elector's polling place address. It also provides that when an elector's polling place address changes, the supervisor must send a new card to the elector. The bill also specifies that the supervisor must provide a voter information card meeting the requirements of this act for any elector who, on or after September 1, 2011, registers to vote, requests a replacement card, or changes their name, address, or party affiliation.

This bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[1] Section 97.071(1), F.S.
[2] Section 97.071(2), F.S.
[3] Section 97.052(1), F.S.
[4] Section 97.071(3), F.S.; *see also* s. 97.1031, F.S.
[5] Unofficial Survey, *Voter Card with Polling Place Address*, conducted by Florida State Association of Supervisors of Elections (February 2010).
[6] While Orange County does not print the polling place address on the voter information cards, the polling place address is provided on the sample ballots that are mailed out prior to each election. The Orange County Supervisor of Elections office has explained that the office provides the polling place address on the sample ballot instead of the voter information card as the polling place varies for municipal elections and general elections. *See id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Six counties will be required to issue new voter information cards reflecting the polling place address. While it varies from county to county, the average county cost to print and mail one card is roughly 52 cents.[7]

VI. Technical Deficiencies:

It may be prudent to use the same date in Sections 2 and 3 of the bill, to avoid confusion; a travelling amendment with the bill changes the date in Section 2 to August 1, 2012.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 500128 by Rules Subcommittee on Ethics and Elections on January 26, 2011:
The amendment changes the date that supervisors must provide voter information cards with polling place addresses from September 1, 2011 to August 1, 2012.

[7] The cost estimate is based on 2009 data provided by the Florida State Association of Supervisors of Elections.

500128

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/27/2011	.	
	.	
	.	
	.	

The Committee on Rules Subcommittee on Ethics and Elections (Joyner) recommended the following:

Senate Amendment

Delete line 43
and insert:
Florida Statutes, on or after August 1, 2012.

348012

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Rules (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 775.0876, Florida Statutes, is created to read:

775.0876 Offenses committed using public authority or position to facilitate the offense; reclassification.—The penalty for any felony or misdemeanor offense shall be reclassified if a public servant, as defined in s. 838.014, uses his or her public authority or position to further or facilitate such felony or misdemeanor.

(1) The reclassification of the felony or misdemeanor is as

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follows:

(a) A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree.

(b) A misdemeanor of the first degree is reclassified as a felony of the third degree.

(c) A felony of the third degree is reclassified as a felony of the second degree.

(d) A felony of the second degree is reclassified as a felony of the first degree.

(e) A felony of the first degree is reclassified as a life felony.

(2) For purposes of sentencing under chapter 921, a felony offense that is reclassified under this section shall be ranked one level above its ranking under s. 921.0022 or s. 921.0023.

(3) Reclassification does not apply if the underlying misdemeanor or felony offense has conduct committed under color of law as one of its necessary elements. The term "under color of law" means conduct based on public authority or position or the assertion of such authority or position.

Section 2. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public corruption; creating s. 775.0876, F.S.; providing for the reclassification of a criminal offense committed by a public servant who

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uses his or her public authority or position to further or facilitate the offense; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL:	SB 532
INTRODUCER:	Senator Fasano
SUBJECT:	Public Corruption
DATE:	March 25, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Favorable**
2.	Carlton	Phelps	RC	**Pre-meeting**
3.			CJ	
4.			BC	
5.				
6.				

I. Summary:

The bill reclassifies most criminal offenses committed "under color of law" up one degree of severity (2nd degree misdemeanor is reclassified as a 1st degree misdemeanor, 1st degree misdemeanor is reclassified as a 3rd degree felony, etc.); "under color of law" means conduct based on public authority or position, or the assertion of public authority or position. The bill, however, does not reclassify a life felony to a capital felony. Also, the reclassification does not apply to criminal offenses where the underlying offense requires acting "under color of law" as a necessary element of the crime (i.e., official misconduct, bid tampering). For purposes of the felony sentencing guidelines in Chapter 921, F.S., the bill also designates such reclassified offenses one level above their current ranking.

The bill takes effect July 1, 2011.

This bill creates section 775.0876 of the Florida Statutes.

II. Present Situation:

The Florida Criminal Code generally classifies felonies as criminal offenses punishable by more than one year in the state penitentiary; a misdemeanor is a criminal offense punishable by up to one year in a county correctional facility.[1]

[1] Section 775.08, F.S.

Felonies are further classified as:

- Capital: punishable by death or life imprisonment without parole.
- Life: for most offenses, punishable by life imprisonment, and a fine of up to $15K.
- 1st Degree: punishable by imprisonment for a term not exceeding 30 years, or when specified by statute not exceeding life imprisonment, and a fine of up to $10K.
- 2nd Degree: punishable by imprisonment not exceeding 15 years, and a fine of up to $10K.
- 3rd Degree: punishable by imprisonment not exceeding 5 years, and a fine of up to $5K.

Misdemeanors are further classified as:

- 1st Degree: punishable by imprisonment not exceeding 1 year, and a fine of up to $1K.
- 2nd Degree: punishable by imprisonment not exceeding 60 days, and a fine of up to $500.

The Criminal Punishment Code applies to all but capital felonies, and contains an offense severity ranking chart that designates offenses into certain "levels" from 1 to 10 based on severity, that are then used to determine sentencing guidelines in a particular case.

Though there was a similar bill filed last year[2], it was not adopted. Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed "under color of law" where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. It is noteworthy that the Nineteenth Statewide Grand Jury recently recommended that the Legislature consider reclassification of such offenses.[3]

III. Effect of Proposed Changes:

The bill reclassifies felony and misdemeanor criminal offenses committed "under color of law" up one degree of severity, unless conduct committed "under color of law" is a necessary element of the underlying crime:

- 2nd degree misdemeanor → 1st degree misdemeanor
- 1st degree misdemeanor → 3rd degree felony
- 3rd degree felony → 2nd degree felony
- 2nd degree felony → 1st degree felony
- 1st degree felony → life felony

The bill, however, does not reclassify a life felony to a capital felony.

The term "under color of law" means conduct based on public authority or position or the assertion of such authority or position.

[2] SB 734 (2010).
[3] Nineteenth Statewide Grand Jury, First Interim Report (December 17, 2010). Available online at: http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf

So, for example, violating the criminal offense of official misconduct in s. 838.022, F.S., which necessarily requires corrupt conduct by a "public servant" in the performance of certain public duties, would not result in a reclassification while a public employee who uses his or her public position to aid or abet someone in the commission of Medicaid provider fraud in violation of s. 409.920, F.S., would be reclassified.

For purposes of the felony sentencing guidelines in Chapter 921, such reclassified offenses are designated one level above their current ranking.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed this bill on March 2, 2011, and found its impact to be indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL:	CS/SB 650
INTRODUCER:	Regulated Industries and Senators Jones and Latvala
SUBJECT:	Mobile Home Park Lot Tenancies
DATE:	March 25, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Favorable**
3.	Wolfgang	Phelps	RC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The committee substitute (CS) provides that local governments must cite the responsible party for violations of local codes or ordinances. The CS makes it clear that mobile home owners and mobile home *park* owners have distinct statutory obligations and can only be penalized for violations of their respective obligations (i.e., mobile home owners should not be punished for statutory violations applying to mobile home park owners and vice versa).

The bill provides mobile home park homeowners' associations a right of first refusal to purchase a mobile home park in situations in which a mobile home park is subject to a change in land use. The bill also establishes notice procedures.

The bill would take effect upon becoming law.

This bill substantially amends section 723.061, Florida Statutes. The bill creates section 723.024, Florida Statutes.

II. Present Situation:

Mobile Home Act

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

The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides in part that:

> Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.[1]

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[2]

Mobile Home Park Owner's Obligations

Section 723.022, F.S., sets for the park owners obligations. Park owners must:

> (1) Comply with the requirements of applicable building, housing, and health codes.
> (2) Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.
> (3) Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.
> (4) Maintain utility connections and systems for which the park owner is responsible in proper operating condition.
> (5) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

[1] Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.
[2] Section 723.002(1), F.S.

Mobile Home Owner's Obligations

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner must:

> (1) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.
> (2) Keep the mobile home lot which he or she occupies clean and sanitary.
> (3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Eviction of a Mobile Home Owner by a Park Owner

Section 723.061(1), F.S., specifies the following grounds that a mobile home park owner may rely on to evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home:

- Nonpayment of lot rental amount;
- Conviction of a violation of a federal or state law or local ordinance, which violation may be deemed detrimental to the health, safety, or welfare of other residents of the mobile home park;
- Violation of a park rule or regulation, the rental agreement, or ch. 723, F.S.;
- Change in use of the land comprising the mobile home park; or
- Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

In order to evict mobile home owners due to a change in the use of the land where the mobile home park is located, the park owner is required to give all affected tenants at least six months written notice of the projected change in land use to provide tenants with enough time to secure other accommodations.[3] The notice of a change in land use must be in writing, posted on the premises, and sent to the mobile home owner, tenant, or occupant by certified or registered mail.[4] The mobile home park owner is not required to disclose the proposed land use designation for the park in the eviction notice.[5]

In addition to the notice required for a proposed change in land use, a park owner must provide written notice to the mobile home owner or the directors of the homeowners' association, if one has been established, of any application for a change in zoning of the mobile home park within five days after filing for such zoning change with the zoning authority.[6]

[3] Section 723.061(1)(d), F.S.
[4] Section 723.061(5), F.S.
[5] *See Harris v. Martin Regency, Ltd.*, 576 So. 2d 1294, 1296 (Fla. 1991) (recognizing that "the legislature did not intend to require the park owner to specify what the 'change in use' would be").
[6] Section 723.081, F.S.

Sale of Mobile Home Park: Mobile Home Owner's Rights

A mobile home park owner who offers[7] his or her park for sale to the general public must notify[8] the officers of the homeowners' association of the offer, asking price, and terms and conditions of sale.[9] The mobile home owner's right to purchase the park must be exercised by and through the mobile homeowners' association created pursuant to ss. 723.075-723.079, F.S.

The mobile homeowners' association must be given 45 days from the date the notice is mailed, to execute a contract with the park owner that meets the price and terms and conditions, as set forth in the notice. If the homeowners' association and the park owner fail to execute a contract within those 45 days, the park owner has no further obligation, unless he or she subsequently agrees to accept a lower price.[10] However, if the park owner agrees to sell the park at a lower price than specified in the notice to the homeowners' association, then the homeowners' association will have an additional 10 days to meet the price and terms and conditions.[11]

The mobile home park owner is also required to notify the homeowners' association of any unsolicited bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to, and allow the homeowners' association to purchase the park under the price and terms and conditions of the bona fide offer to purchase.[12] Although the park owner must consider subsequent offers by the homeowners' association, he or she is free to execute a contract to sell the park to a party other than the association at any time if the offer is unsolicited.[13]

Florida Mobile Home Relocation Corporation

In 2001, the Legislature created the Mobile Home Relocation Program in response to concerns associated with the closure of mobile home parks.[14] The Florida Mobile Home Relocation Corporation (corporation) is a public corporation that governs the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park.[15]

Moving Expenses Available to Mobile Home Owners

Under current law, a displaced mobile home owner is entitled to certain relocation expenses paid by the corporation.[16] The amount of payment includes the lesser of the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or $3,000 for a single-section mobile home and $6,000 for a multi-section mobile home. Moving

[7] Section 723.071(3)(b), F.S., defines the term "offer" to mean any solicitation by the park owner to the general public.
[8] Section 723.071(3)(a), F.S., defines the term "notify" to mean the placing of a notice in U.S. mail addressed to the officers of the homeowners' association. The notice is deemed to have been given upon the mailing.
[9] Section 723.071(1)(a), F.S.
[10] Section 723.071(1)(b), F.S.
[11] Section 723.071(1)(c), F.S.
[12] Section 723.071(2), F.S.
[13] *Id.*
[14] Chapter 2001-227, L.O.F.
[15] Section 723.0611, F.S.
[16] *Id.*

expenses incorporate the cost of taking down, moving, and setting up the mobile home in a new location.[17]

In order to obtain payment for moving expenses, the mobile home owner must submit an application for payment to the corporation along with a copy of the notice of a change in use and a contract with a moving company for relocating the mobile home.[18] If the corporation does not approve payment within 45 days of receipt, it is deemed approved. Upon approval, the corporation issues a voucher in the amount of the contract price to relocate the mobile home, which the moving contractor may redeem upon completion of the move and approval of the relocation by the mobile home owner.[19]

Once a mobile home owner's application for funding has been approved by the corporation, he or she is barred from filing a claim or cause of action under ch. 723, F.S., directly relating to or arising from the proposed change in land use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest.[20] Likewise, the corporation may not approve an application for funding if the applicant has either:

- Filed a claim or cause of action;
- Is actively pursuing such claim or cause of action; or
- Has a judgment against the corporation, park owner, or the park owner's successors in interest – unless the claim or cause of action is dismissed with prejudice.[21]

In lieu of collecting moving expenses from the corporation, a mobile home owner can elect to abandon the home and collect payment from the corporation in the amount of $1,375 for a single section mobile home or $2,750 for a multi-section mobile home. If the mobile home owner chooses to abandon the mobile home, he or she must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.[22]

Payments to the Florida Mobile Home Relocation Corporation[23]

A mobile home park owner is required to contribute $2,750 per single-section mobile home and $3,750 per multi-section mobile home to the corporation for each application that is submitted for moving expenses due to a change in land use.[24] These payments must be made within 30 days after receipt of the invoice from the corporation, and they are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S.[25]

The mobile home park owner is not required to make payments, nor is the mobile home owner entitled to compensation, if:

[17] Section 723.0612(1), F.S.
[18] Section 723.0612(3), F.S.
[19] Section 723.0612(3)-(4), F.S.
[20] Section 723.0612(9), F.S.
[21] *Id.*
[22] Section 723.0612(7),F.S.
[23] Payments made to the corporation are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S., to be used by the Department of Business and Professional Regulation to carry on the purposes of the corporation.
[24] Section 723.06116(1), F.S.
[25] *Id.*

- The mobile home owner is moved to another location in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the park owner, prior to the notice of a change in land use, that he or she was vacating the premises;
- The mobile home owner abandoned the mobile home, as stated in s. 723.0612(7), F.S.; or
- The mobile home owner had an eviction action filed against him or her for nonpayment of the lot rental amount under s. 723.061(1)(a), F.S., prior to the date that the notice of a change in land use was mailed.[26]

In addition to the above payments, the Florida Mobile Home Relocation Trust Fund receives revenue from mobile home park owners through a $1 annual surcharge levied on the annual fee the park owners remit to the department for each lot they own within the mobile home park. Mobile home owners also contribute to the trust fund through a $1 annual surcharge on the decal fee remitted to the Department of Highway Safety and Motor Vehicles.[27]

III. Effect of Proposed Changes:

Section 1 creates s. 723.024, F.S., to specify that local governments must cite the responsible party for violations of local codes or ordinances. The CS makes it clear that mobile home owners and mobile home *park* owners have distinct statutory obligations and can only be penalized (via a lien, penalty, fine, or other administrative or civil proceeding) for violations of their respective obligations (i.e., mobile home owners should not be punished for statutory violations applying to mobile home park owners and vice versa).

Section 2 amends s. 723.061(1)(d), F.S., relating to eviction due to change in land use. Section 723.061(1)(d)1., F.S., requires the park owner to provide written notice to the officers of the homeowners' association of the right to purchase the mobile home park at the price and terms and conditions set forth in the notice.

The CS requires that the notice be delivered to the officers of the homeowners' association by mail. It gives the homeowners' association the right to execute and deliver a contract for purchase of the park to the park owner within 45 days after the written notice was mailed. The contract must be for the same price and terms and conditions set forth in the notice, which may also require the purchase of other real estate that is contiguous or adjacent to the mobile home park. If the park owner and the homeowners' association do not execute a contract within 45 days, the park owner is under no further obligation unless the park owner elects to offer or sell the park at a lower rate. If the park owner does elect to offer or sell the park at a price less than the price specified in the written notice to the homeowners' association, then the homeowners' association has an additional 10 days to meet the revised price and terms and conditions.

The CS clarifies that the park owner has no obligation under ss. 723.061(1)(d) or 723.071, F.S., to provide any further notice to, or to negotiate with, the homeowners' association for the sale of the mobile home park after six months from the date of mailing the initial notice.

[26] Section 723.06116(2), F.S.
[27] Section 723.06115(1), F.S.

The CS amends s. 723.061(1)(d)2., F.S., to clarify that the six months notice of an eviction due to a projected change in land use must be provided by the park owner to the affected mobile home owners instead of to the affected tenants.

The CS deletes subsection (3) of s. 723.061, F.S. Currently, this subsection provides that the provisions of 723.083, F.S.,[28] do not apply to any park where the provisions of "this subsection" apply. There are no provisions governing parks under the subsection. Prior to its amendment in 2001, this provision was included in a paragraph within subsection (2) of 723.061, F.S.[29] The provisions in subsection (2) were deleted in 2001.[30] Therefore, the language in subsection (3) appears to have been mistakenly preserved after the 2001 amendment. However, courts have interpreted this provision as precluding the application of s. 723.083, F.S., when a mobile home park owner gives notice under s. 723.061, F.S.[31] Therefore, the bill clarifies that the provisions of s. 723.083, F.S., which requires the government to consider the adequacy of parks for relocation, apply when a mobile home park owner gives notice under s. 723.061, F.S.

The bill amends s. 723.061(4), F.S., to exempt the notice provided to officers of the homeowners' association under s. 723.061(1)(d)1., F.S., from the notice requirements provided under s. 723.061(4), F.S. The notice requirements under s. 723.061(4), F.S., require that the notice be posted on the premises, and sent and addressed to the mobile home owner, tenant, or occupant by certified or registered mail, return receipt requested at his or her last known address.

Section 3 provides that the bill would take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that the mobile home park owner must offer to sell the park to the home owners if the park owner intends to change to use of the land comprising the mobile

[28] Section 723.083, F.S., provides that no agency of municipal, local, county, or state government may approve any application for rezoning, or take other action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.
[29] Section 6, ch. 2001-227, L.O.F.
[30] *Id.*
[31] *DeFalco v. City of Hallandale Beach*, 18 So. 3d 1126, 1128 (Fla. DCA 2009).

home park and the home owners meet the price and terms and conditions of the park owner for the sale of the mobile home park. The bill does not require that a park owner intend to sell the park as a prerequisite to requiring the park owner to offer to sell the park to the homeowners' association. This may implicate situations in which the park owner does not intend to sell the land. For example, a situation in which the park owner plans to personally develop the land for a different use and does not plan to sell the property to another developer. This requirement may implicate prohibitions contained in the Sixth Amendment of the U.S. Constitution if applied to deny an application for a change in land use. The Sixth Amendment prohibits the taking of private property for public use without just compensation. A regulatory taking may occur when government regulation "does not substantially advance a legitimate state interest, but instead singles out mobile home park owners to bear an unfair burden, and therefore constitutes an unconstitutional regulatory taking of their property."[32]

A private taking to benefit a private party without any public purpose is void under the 5th Amendment of the U.S. Constitution.[33] A park owner may raise a takings claim under the Fifth and Fourteenth Amendments to the U.S. Constitution. However, in *Kelo v. City of New London Conn.*, the U.S. Supreme Court found that a city's taking of private residences to allow redevelopment under the city's multiuse plan for sale for private development satisfied the public use test and did not violate the 5th Amendment.[34] The property owner may not prevail if the legislature finds and states a clear public purpose and provides a due process mechanism. For example, in *Hawaii Housing Auth. v. Midkiff*, the U.S. Supreme Court held that a Hawaiian statute that permitted a housing authority to take private land under eminent domain proceedings and to sell it to the tenant in fee simple did not violate the 5th or 14th amendments of the U.S. Constitution because the public purpose was to end the evil of land oligopoly.[35]

In *Aspen-Tarpon Springs v. Stuart*, the First District Court of Appeals held that s. 723.061(2), F.S., was unconstitutional as a regulatory taking of property without compensation.[36] This provision, since amended,[37] required a mobile home park owner who wished to change the land use of a park to either pay to have the tenants moved to another comparable park within 50 miles or purchase the mobile home from the tenants at a statutorily determined value. In *Aspen-Tarpon Springs*, the court found that neither the "buy" or "relocation" options were economically feasible, and were, as a practical matter, confiscatory because it authorized a permanent physical occupation of the owner's property. This issue has not been addressed by the Florida Supreme Court.

Based on the analysis in *Aspen-Tarpon Springs*, it is not clear whether the requirement that the home park owner offer to sell the park to the home owners if they meet his or her price, terms, and conditions of sale, especially in circumstances in which the park owner does not intend to sell the property to effectuate the change in use of the land, would be

[32] *Aspen-Tarpon Springs v. Stuart*, 635 So. 2d 61 (Fla. 1st DCA 1994).
[33] *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 245 (1984).
[34] *Kelo v. City of New London Conn.*, 545 U.S. 469 (2005).
[35] *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 245 (1984).
[36] *Aspen-Tarpon Springs v. Stuart*, 635 So. 2d 61 (Fla. 1st DCA 1994).
[37] Section 6, ch. 2001-227, L.O.F.

economically feasible, and if not economically feasible, whether the requirement would be an unconstitutional taking under the Sixth Amendment of the U.S. Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

See the "Effect of Proposed Changes" section of this bill analysis for a discussion of the rights of mobile home owners and the responsibilities for mobile home park owners created by the bill, which may affect them financially through the purchase and sale of property in a mobile home park.

C. Government Sector Impact:

The bill would require that local governments to cite the responsible party for violations of local codes or ordinances. It would also prohibit local governments from assessing a lien, penalty, or fine, or initiating an administrative or civil proceeding against the mobile home owner or park owner who does not have a duty or responsibility relating to the alleged violation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Regulated Industries on March 9, 2011:
The committee substitute amends s. 723.024(1), F.S., to require local governments to cite the responsible party for violations of local codes or ordinances instead of authorizing local governments to enforce the statutory obligations in ss. 723.022 and 723.023, F.S., through local government ordinances.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee					
BILL:	CS/SB 782				
INTRODUCER:	Transportation Committee and Senator Latvala				
SUBJECT:	Fallen Officers Memorial/Road Designations				
DATE:	March 25, 2011	REVISED:			

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Fav/CS**
2.	Carey	Meyer, R.	BTA	**Favorable**
3.	Carey	Meyer, C.	BC	**Favorable**
4.	Carey	Phelps	RC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Section 334.071, F.S., specifies the purpose and effect of the designation of roads, bridges, and other transportation facilities for honorary or memorial purposes by the Florida Legislature. These designations are for honorary purposes only, and do not require changing of street signs, mailing addresses, or 911 listings. The bill designates the following road as follows:

- State Road 687 in Pinellas County from I-275 to I-175 as "Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway."

- State Road 583/North 50th Street in Hillsborough County from Melbourne Blvd/East 21st Avenue to State Road 574/Martin Luther King Jr., Blvd as "Officer Jeffrey A. Kocab and Officer David L. Curtis Memorial Highway."

This bill creates an undesignated section of law.

II. Present Situation:

Section 334.071, F.S., provides: (1) Legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility, and may not be construed

to require any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes; (2) When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility; and (3) The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, resolutions supporting the designations must be passed by each affected local government prior to the erection of markers.

III. Effect of Proposed Changes:

The effects of the bill are as follows:

Section 1: The bill designates State Road 687 in Pinellas County from I-275 to I-175 as "Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway". Also this bill directs FDOT to erect suitable markers.

Sgt. Thomas J. Baitlinger served as a law enforcement officer at the St. Petersburg Police Department for over 15. He voluntarily served as a mentor for students at Gibbs High School, and Sgt. Baitlinger also volunteered for other various committees including the police pension board.

Officer Jeffrey A. Yaslowitz served as a law enforcement officer at the St. Petersburg Police Department for over 11 years. Officer Yaslowitz proved to be an invaluable asset to the department by exemplifying characteristics of public service. He is remembered by his colleagues for his bravery and drive for excellence during his years of service.

Sgt. Thomas J. Baitinger and Officer Jeffrey A. Yaslowitz died in the line of duty on January 24, 2011, while responding to a call for back up. Sgt. Baitinger is survived by his wife, Paige, and Officer Yaslowitz is survived by his wife, Lorraine, and three children.

Officer David S. Crawford served as a law enforcement officer at the St. Petersburg Police Department for 25 years. He gained notoriety for his domestic violence victim advocacy, and he often spoke at schools to educate young people about issues surrounding domestic violence. On February 21, 2011, Officer David S. Crawford was shot multiple times while responding to a report of a suspicious person. Officer David S. Crawford is survived by his wife, Donna, and daughter.

Section 2: The bill designates State Road 583/North 50th Street in Hillsborough County from Melbourne Blvd/East 21st Avenue to State Road 574/Martin Luther King Jr., Blvd is designated as "Officer Jeffrey A. Kocab and Officer David L. Curtis Memorial Highway".

Officer Jeffrey A. Kocab joined the Plant City Police Department in 2005, and later joined the Tampa Police Department in 2009. During his years as a police officer, Officer Kocab was decorated with multiple awards as employee of the month and Officer of Year in 2007 and 2009.

Officer David L. Curtis served in the Tampa Police Department for over 3 years. In 2007, Officer Curtis was named Officer of the Month for his dedication involving a child neglect case.

Officer Jeffrey A. Kocab and Officer David L. Curtis were killed while attempting to make an arrest at a traffic stop. Officer Kocab is survived his wife, Sara. Officer Curtis is survived by his wife, Kelly, and four sons.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDOT will incur costs of approximately $1,600 (from the State Transportation Trust Fund) for erecting markers for the designations. This is based on the assumption that four markers will be erected at a cost of $400 per marker. The FDOT will also have to pay the recurring cost of maintaining these signs over time, and for future replacement of the signs as necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation Committee on February 22, 2011:
The committee substitute incorporates the Officer Jeffrey A. Kocab and Officer David L. Curtis Memorial Highway, and adds Officer David S. Crawford to the Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL:	SB 1504
INTRODUCER:	Senator Simmons
SUBJECT:	Initiative Petitions
DATE:	March 25, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	EE	**Favorable**
2.	Seay	Phelps	RC	**Pre-meeting**
3.			CJ	
4.			BC	
5.				
6.				

I. Summary:

Senate Bill 1504 seeks to limit the validity of a signed initiative petition to a period of 30 months. The bill provides that paid petition circulators must meet certain qualifications and that the political committee sponsoring the initiative must have paid petition circulators sign and complete an affidavit. The bill adds criminal penalties if a paid petition circulator or sponsoring committee violates specified restrictions or requirements; and if a person alters a signed initiative petition form without knowledge or consent of the person who signed the form. The bill requires the Secretary of State to revise a ballot title or ballot summary proposed by joint resolution of the Legislature if a court finds the original ballot title or ballot summary to be deficient by a court. The bill provides that if the court's decision is not reversed, the Secretary of State is required to place the amendment with the revised ballot title or ballot summary on the ballot.

The bill provides an effective date of July 1, 2011.

This bill substantially amends ss. 15.21, 16.061, 100.371, 101.161, 104.185, and 1011.73 and creates s. 101.161 of the Florida Statutes.

II. Present Situation:

Constitutional Amendments by Initiative Petitions

Article XI of the Florida Constitution allows voters to approve constitutional amendments proposed through the following methods:

- Proposed by joint resolution passed by a three-fifths vote of each house of the legislature;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or

- Proposal by the citizen initiative petition.

Petitions signed by the requisite number of voters may be used to place an issue[1] before voters and for several other purposes. Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Florida adopted the citizen initiative process in 1968.[2] Section 3, Art. XI, of the Florida Constitution, which authorizes citizen initiatives, states:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Accordingly, signatures equal to eight percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. For the 2012 general election ballot, 676,811 signatures are required.[3]

Initiative Petition Process

When an individual or group is seeking to place a constitutional amendment on the ballot, they must register as a political committee with the Division of Elections (Division).[4] The political committee sponsoring the initiative petition is required to submit the proposed initiative amendment form to the Division prior to being circulated for signatures.[5]

Once the form is approved by the Division, the petition may then be circulated for signature by electors. An elector's signature on the petition form must be dated – and the signature is valid for a period of four years following the date.[6] When a committee has obtained signatures from ten percent of the electors required from at least 25 percent of the state's congressional districts, the Secretary of State is required to submit an initiative petition to the Attorney General and the Financial Impact Estimating Conference.[7] Within 30 days of receipt, the Attorney General must

[1] Under s. 106.011(7), F.S., an issue "means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election."

[2] Section 3, Art. XI, FLA CONST.

[3] Florida Department of State: Division of Elections, Congressional District Requirements, *available at* http://election.dos.state.fl.us/constitutional-amendments/cong-dist-require.shtml.

[4] Pursuant to s. 106.03, F.S. *See also* s. 100.371(2), F.S.

[5] The Department of State has adopted rules that set out the style and requirements of the initiative amendment form. *See* s. 100.371(2), F.S.; Rule 1S-2.009(2), FLA. ADMIN. CODE.

[6] Section 100.371(3), F.S.

[7] The Secretary of State only submits the initiative petition to the Attorney General and Financial Impact Estimating Conference if three conditions have been met: the initiative sponsor has registered as a political committee; the sponsor has submitted the ballot title, substance, and text of the proposed revision or amendment to the Secretary of State; and the

petition the Florida Supreme Court requesting an advisory opinion regarding compliance of the text of the proposed amendment and compliance of the proposed ballot title and summary.[8]

As petition signatures are received, the appropriate supervisor of elections must verify the validity of each signature.[9] In addition, the political committee sponsoring the initiative petition must pay a fee to the appropriate supervisor of elections for the verification of signatures on petitions.[10] Supervisors of elections must certify the total number of valid signatures with the Secretary of State by February 1 of the year of the election.[11] After the filing date, the Secretary of State determines if the requirements for the total number of verified valid signatures and the distribution of the signatures among the state's congressional districts have been met.[12] If the threshold has been met, the Secretary of State issues a certificate of ballot position for the proposed amendment along with a designating number.[13]

Regulation of Petition Circulators

Currently, Florida does not regulate initiative petition circulators. Of the 24 states that currently allow citizen initiatives, more than half of the states require that petition circulators are eligible to vote in the state.[14] Age and residency requirements are among the most common regulations governing petition circulators.[15] Some states have also enacted pay-per-signature bans as it has been argued that a circulator's desire to earn more money may motivate fraudulent behavior in gathering additional signatures. There is currently a conflict among federal courts regarding the validity of pay-per-signature bans.[16]

Some groups have used fraudulent, illegal, or unethical practices among petition circulators, including: false claims of residency by "mercenary petition gatherers"; false attestations that the gatherer was present when the petitions were signed; misrepresentations and lies to voters as to the effect of petitions; and "bait-and-switch" and other deceptive tactics to get voters to sign a

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Secretary has received a letter from the Division of Elections confirming the veracity of the electors' signatures. Section 15.21, F.S. *See also* s. 3, Art. XI, FLA. CONST.

[8] Section 16.061, F.S. The text of the proposed amendment is required by the State Constitution to be limited to one subject. Sec. 3, Art. XI, FLA. CONST. The wording of the ballot title and summary "shall be printed in clear and unambiguous language on the ballot." *Florida Dept. of State v. Florida State Conference of NAACP Branches*, 43 So.3d 662, 665 (Fla. 2010); *see also* section 101.161(1), F.S.

[9] *Id.*

[10] *See* section 99.097, F.S.

[11] Initiative petitions for constitutional amendments are only placed on the ballot at general elections; therefore, the deadline for that specific class of initiative petitions would be February 1 of the year of the general election. Section 100.371(1), F.S. The verification fee charged to the sponsoring political committee is 10 cents per signature or the actual cost of verification, whichever is less. Section 100.371(6)(e), F.S.

[12] Section 100.371(4), F.S.

[13] Section 100.371(4); section 101.161, F.S.

[14] National Conference of State Legislatures, Laws Governing Petition Circulators, last updated May 8, 2009, http://www.ncsl.org/default.aspx?tabid=16535.

[15] Residency requirements have been challenged in courts with mixed results. *See* Initiative & Referendum Institute v. Jaeger, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's residency requirement for circulators); *but see* Yes on Term Limits, Inc. v. Savage, 550 F.3d 1023 (10th Cir. 2008) (Oklahoma's residency requirement for circulators violated First Amendment). In a similar case, the U.S. Supreme Court ruled that a Colorado law requiring petition circulators to be *registered voters* was unconstitutional. *See* Buckley v. American Constitutional Law Foundation, 119 S.Ct. 636 (1999).

[16] *See* Initiative & Referendum Institute v. Jaeger, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's pay-per-signature ban); *but see* Independence Institute v. Buescher, 718 F. Supp. 2d. 1257 (D. Colo. 2010) (preliminary injunction granted against enforcement of Colorado's pay-per-signature ban).

petition that was not properly explained to them.[17] The extent to which these practices are occurring in Florida is a matter of some debate, although some reports suggest that Florida may not be immune.[18] There have been some reforms to the initiative petition process in Florida in recent years; with fraudulent activity being one of the concerns.[19]

Challenge of Constitutional Amendments

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.[20] This has been referred to by the courts as the "accuracy requirement."[21] All constitutional amendments are subject to this requirement; including amendments proposed by the Legislature.[22] In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts for failing to be in "clear and unambiguous language." For example, the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.[23]

If a court rules to remove an amendment from the ballot, there is no opportunity for the Legislature to correct a deficiency in the ballot title or ballot summary absent calling a special session.

III. Effect of Proposed Changes:

Section 1 amends s. 100.371(3), F.S., to change the validity of signatures on initiative petitions for a period of 4 years following the date of the signature to a period of 30 months following the date.

Section 2 creates s. 100.372, F.S., to create definitions for "initiative sponsor", "petition circulator", and "paid petition circulator."

This section establishes specific qualifications for paid petition circulators, including: a paid petition circulator must be at least 18 years of age and eligible to vote in Florida; a person is prohibited from acting as a paid petition circulator for 5 years following a conviction or a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction; and a person is required to carry identification while acting as a paid petition circulator.

This section requires that a paid petition circulator may not be paid, directly or indirectly, based on the number of signatures that they receive on an initiative petition.

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[17] *See generally* Ballot Initiative Strategy Center, *Ballot Integrity: A Broken System in Need of Solutions* (July 2010).

[18] For example, supervisors of elections found names of dead electors signed on petitions to get proposed constitutional amendments on the 2004 general election ballot. *See e.g.,* Joni James and Lucy Morgan, *Names of the dead found on petitions,* ST. PETERSBURG TIMES, Sept. 28, 2004, at 1B.

[19] The statutory mechanism to revoke one's signature from an initiative petition was adopted by the 2007 Legislature after concerns about fraud; but the signature-revocation mechanism has since been ruled unconstitutional by the Florida Supreme Court. *See* Browning v. Florida Hometown Democracy, 29 So.3d 1053 (Fla. 2010).

[20] Roberts v. Doyle, 43 So.3d 654 (Fla. 2010).

[21] Armstrong v. Harris, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

[22] *Id.* at 13.

[23] Roberts v. Doyle, 43 So.3d 654 (Fla. 2010); Fla. Dept. of State v. Mangat, 43 So.3d 642 (Fla. 2010); Fla. Dept. of State v. Fla. State Conference of NAACP Branches, 43 So.3d 662 (Fla. 2010).

This section establishes that each initiative petition form presented by a paid petition circulator for another person's signature must legibly identify the name of the paid petition circulator.

This section requires political committees sponsoring an initiative petition to only employ an individual as a paid petition circulator unless the individual has signed an affidavit attesting that they have not been convicted or have entered into a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction. This section specifies that the sponsoring political committee must maintain records of the names, addresses, and affidavits of paid petition circulators for a minimum of four years. Additionally, the section prohibits the political committee sponsoring the initiative from compensating paid petition circulators based on the amount of initiative petition signatures obtained.

Any person who violates the provisions of this section commits a misdemeanor of the first degree. Additionally, the bill authorizes the Department of State to adopt rules to administer this section.

Section 3 amends s. 101.161, F.S., to add clarifying language relating to the definitions of ballot summary and ballot title of constitutional amendments or other public measures placed on the ballot.

This section provides that if a court determines that a constitutional amendment proposed by joint resolution of the Legislature has a deficient ballot title or ballot summary, it is not grounds for removal of the amendment from the ballot. Courts are directed to specifically identify the deficiency in the ballot title or ballot summary in a written decision. This section provides that the Secretary of State shall revise the ballot title or ballot summary to correct the deficiency; in addition to pursuing reversal of the deciding court's ruling. If the judicial decision is not reversed, the revised ballot title or ballot summary for the amendment shall be placed on the ballot.

Section 4 amends s. 104.185, F.S., to provide that an individual who alters an initiative petition form that has been signed by another person, without the other person's knowledge or consent, has committed a misdemeanor of the first degree.

Sections 5, 6, and 7 amend ss. 15.21(2), 16.061(1), 1011.73(b)(4), F.S. respectively, to replace references to "substance" with "ballot summary," to conform to the amendments incorporated in s. 101.161, F.S.

Section 8 provides that if any provision of this act or its application is later held invalid; the invalid provision or application is severable and does not affect other provisions or applications of the act that may be executed independently of the invalid provision or application.

Section 9 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may impose additional administrative costs on a political committee sponsoring a citizen initiative in the screening of paid petition circulators; which is indeterminate at this time.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL:	CS/SB 1618
INTRODUCER:	Rules Subcommittee on Ethics and Elections and Senator Diaz de la Portilla
SUBJECT:	Elections
DATE:	March 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Carlton	Roberts	EE	**Fav/CS**
2.	Fox/Carlton	Phelps	RC	**Pre-meeting**
3.			JU	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 1618 corrects an oversight in an omnibus 2007 election law that shifted final order authority, in many cases, from the Florida Elections Commission to an administrative law judge (ALJ) at the Division of Administrative Hearings (DOAH), but neglected to statutorily authorize the ALJ to institute any civil penalties for election law violations. This bill grants the ALJ the same penalty powers as the Commission, and provides that the ALJ must consider the same aggravating and mitigating circumstances in determining the amount of penalties.

The bill also reverses the current default procedure whereby alleged election law violations are transferred to DOAH *unless* the party charged with the offense elects to have a hearing before the Commission; the bill mandates that the alleged violator affirmatively request a hearing at DOAH within 30 days after the Commission's probable cause determination, or the Commission will hear the case.

CS/SB 1618 also specifically adds electioneering communication organizations (ECOs) to the list of entities embraced by the election law penalty provisions, to conform to 2010 changes to the ECO laws.

The bill takes effect upon becoming a law.

This bill substantially amends Section 106.25, F.S., and Section 106.265, F.S.

II. Present Situation:

Penalties for Election Violations

The Florida Elections Commission has jurisdiction to investigate and determine violations of Chapters 104 and 106 of the Florida Statutes,[1] and to impose a civil penalty of up to $1,000 per violation, in most cases.[2]

Until 2007, where there were disputed issues of material fact, an alleged violator could elect to have a formal hearing at the Division of Administrative Hearings (DOAH), with the matter returning to the Commission for final disposition and a determination of penalties, if applicable. Otherwise, the Commission would conduct the hearing.

In 2007, the Legislature amended the procedure to have *all* cases default to an ALJ at DOAH after the Commission makes a probable cause determination, *unless* the alleged violator elects[3] to have a formal or informal hearing before the commission; or, resolves the matter by consent order.[4] The 2007 changes also gave the ALJ the authority to enter a *final order* on the matter, appealable directly to Florida's appellate courts: cases forwarded to DOAH never return to the Commission for final disposition. The 2007 law, however, neglected to give the ALJ the power to impose a civil penalty in cases where the ALJ found a violation.

This omission has been the subject of litigation.[5] In April 2006, the Commission received a sworn complaint alleging that James Davis, a candidate, had violated certain elections laws. The Commission conducted an investigation and found probable cause, charging Mr. Davis with five violations of Chapter 106, F.S. Because he did not request a hearing before the Commission, or elect to resolve the matter by a consent order, the matter was referred to DOAH for a formal administrative hearing. Ultimately, the ALJ found that Mr. Davis violated the Election Code, as alleged. The ALJ declined to impose civil penalties, however, because he determined that he lacked the express authority to do so. The Commission appealed the case to the First District Court of Appeal, which affirmed the order. As a result, complaints heard by an ALJ can result in a violation without recourse to the imposition of a civil penalty for the violation.[6]

[1] Section 106.25(1), F.S.
[2] Section 106.265(1), F.S. In addition, Sections 104.271 and 106.19, F.S., provide for expanded and enhanced penalties for certain election law violations.
[3] Within 30 days after the probable cause determination.
[4] Chapter 2007-30, Section 48, LAWS OF FLORIDA.
[5] *Florida Elections Commission v. Davis*, 44 So.3d 1211 (Fla. 1st DCA 2010).
[6] Because of the nature of such proceedings, it is unclear whether the Commission would have jurisdiction to impose a civil penalty based upon a final order from DOAH — or even how they practically would accomplish it.

Electioneering Communications Organizations

Section 106.265, F.S., contains the specific authority for the Commission to impose a civil penalty for a violation of Chapter 104 or Chapter 106 of the Florida Statutes. That section authorizes the Commission to impose a civil penalty not to exceed $1,000 per count, with the precise amount dependent upon consideration of certain aggravating and mitigating factors. The section further provides that the Commission is responsible for collecting civil penalties when any person, political committee, committee of continuous existence, or political party fails or refuses to pay any civil penalties, and requires such penalties to be deposited into the now-defunct Election Campaign Financing Trust Fund.[7] Finally, the section permits a respondent, under certain circumstances, to seek reimbursement for attorneys fees.

Nothing in Section 106.265, F.S., specifically addresses *electioneering communications organizations*, which can also commit elections violations; until last year — when they were more explicitly detailed in statute — ECOs were generally treated like political committees for most purposes under the campaign finance laws.[8]

III. Effect of Proposed Changes:

CS/SB 1618 establishes a new default procedure for violations alleged by the Elections Commission, providing that a hearing will be conducted by the Commission *unless* an alleged violator elects, as a matter of right, to have a formal hearing before an ALJ at DOAH. Further, it authorizes the ALJ to impose the same civil penalties as the Commission pursuant to ss. 104.271, 106.19, and 106.265, F.S., and requires the ALJ to take into account the same mitigating and aggravating factors that the Commission must consider. As under current law, the ALJ's final order, which may now include civil penalties, is appealable directly to the District Courts of Appeal and does not return to the Commission for disposition.

The bill also integrates ECOs into a statutory list of entities for the purpose of assessing election law civil penalties, and clarifies that all civil penalties collected are deposited to the General Revenue Fund of the State instead of the defunct Election Campaign Financing Trust Fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[7] The Elections Campaign Financing Trust Fund expired effective November 4, 1996, by operation of law. Funding for public campaign financing in statewide races has since been handled through the General Revenue Fund.

[8] *See generally*, Ch. 2010-167, LAWS OF FLA. (detailing requirements for ECOs in sections such as 106.0703, F.S.); *see also*, s. 106.011(1)(b)3., F.S. (2009) (for purposes of registering and reporting contributions and expenditures, ECOs are treated like political committees).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could result in very modest increases to the General Revenue fund depending on the number and extent of administrative fines collected, which is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Ethics and Elections on March 21, 2011:
The CS differs from the original bill in that it adds a cross-reference to allow a DOAH administrative law judge to impose an additional penalty for candidates who violate the political defamation provision in s. 104.271, F.S.

B. Amendments:

None.