Tab 1	**SB 14** by **Artiles**; (Similar to CS/CS/H 06529) Relief of Lillian Beauchamp by the St. Lucie County School Board

106662	A	S	RCS	JU, Artiles	Delete L.74 - 98:	04/04 03:16 PM

Tab 2	**SB 16** by **Steube**; (Similar to CS/H 06527) Relief of Charles Pandrea by the North Broward Hospital District

291980	A	S		JU, Steube	Delete L.66:	04/03 09:23 AM

Tab 3	**SB 40** by **Galvano**; (Similar to CS/H 06503) Relief of Sean McNamee by the School Board of Hillsborough County

970016	A	S	RCS	JU, Galvano	Delete L.69 - 81:	04/04 03:16 PM

Tab 4	**SB 304** by **Thurston**; (Similar to CS/CS/H 06531) Relief of Dustin Reinhardt by the Palm Beach County School Board

147810	D	S	RCS	JU, Thurston	Delete everything after	04/04 03:16 PM

Tab 5	**SB 310** by **Rodriguez**; (Similar to CS/H 06553) Relief of Cristina Alvarez and George Patnode by the Department of Health

841848	A	S	RCS	JU, Rodriguez	Delete L.79 - 80:	04/04 03:16 PM

Tab 6	**SB 314** by **Farmer**; (Similar to CS/H 06545) Relief of Jerry Cunningham by Broward County

Tab 7	**SB 802** by **Passidomo**; (Compare to H 07047) Regulated Professions and Occupations

117238	A	S	RCS	JU, Passidomo	Before L.186:	04/04 03:16 PM
934118	A	S	RCS	JU, Passidomo	Delete L.215 - 458.	04/04 03:16 PM
~~689094~~	A	S	WD	JU, Flores	Delete L.464 - 465:	04/04 03:16 PM
224638	A	S	RCS	JU, Passidomo	Delete L.953 - 1143:	04/04 03:16 PM
580074	A	S	RCS	JU, Passidomo	Delete L.1541 - 1672.	04/04 03:16 PM

Tab 8	**SB 996** by **Perry**; (Similar to H 00997) Administrative Proceedings

Tab 9	**SR 1440** by **Rouson**; (Identical to H 01335) Arthur G. Dozier School for Boys

532426	D	S	RCS	JU, Rouson	Delete everything after	04/04 03:16 PM

Tab 10	**CS/CS/SJR 134** by **EE, CA, Artiles**; (Similar to CS/CS/H 00721) Selection and Duties of County Sheriff

Tab 11	**CS/SJR 136** by **CA, Artiles (CO-INTRODUCERS) Powell**; (Identical to CS/H 00187) Selection and Duties of County Officers/Property Appraiser

Tab 12	**SB 762** by **Baxley**; (Identical to H 00329) Child Protection

Tab 13	**CS/SB 1002** by **CJ, Perry (CO-INTRODUCERS) Rouson, Bradley**; (Similar to CS/H 00505) Florida Comprehensive Drug Abuse Prevention and Control Act

Tab 14	**CS/SB 1206** by **HP, Montford**; (Identical to CS/H 01253) Rights and Responsibilities of Patients

Tab 15	**CS/SB 530** by **BI, Steube**; (Compare to CS/H 00877) Health Insurer Authorization

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, April 4, 2017
TIME: 9:30—11:30 a.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 14** Artiles (Similar CS/CS/H 6529)	Relief of Lillian Beauchamp by the St. Lucie County School Board; Providing for the relief of Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, by the St. Lucie County School Board; providing for an appropriation to compensate the estate of Aaron Beauchamp for his wrongful death as a result of the negligence of the St. Lucie County School District, etc. SM JU 03/07/2017 Temporarily Postponed JU 04/04/2017 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
2	**SB 16** Steube (Similar CS/H 6527)	Relief of Charles Pandrea by the North Broward Hospital District; Providing for the relief of Charles Pandrea by the North Broward Hospital District; providing for an appropriation to compensate Charles Pandrea, husband of Janet Pandrea, for the death of Janet Pandrea as a result of the negligence of the North Broward Hospital District, etc. SM JU 04/04/2017 Temporarily Postponed CA RC	Temporarily Postponed
3	**SB 40** Galvano (Similar CS/H 6503)	Relief of Sean McNamee by the School Board of Hillsborough County; Providing for the relief of Sean McNamee and his parents, Todd McNamee and Jody McNamee, by the School Board of Hillsborough County; providing for an appropriation to compensate them for injuries and damages sustained by Sean McNamee as a result of the negligence of employees of the School Board of Hillsborough County, etc. SM JU 04/04/2017 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 304** Thurston (Similar CS/CS/H 6531)	Relief of Dustin Reinhardt by the Palm Beach County School Board ; Providing for the relief of Dustin Reinhardt by the Palm Beach County School Board; providing for an appropriation and annuity to compensate him for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing that certain payments and the amount awarded under the act satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs, etc. SM JU 04/04/2017 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
5	**SB 310** Rodriguez (Similar CS/H 6553)	Relief of Cristina Alvarez and George Patnode by the Department of Health ; Providing for the relief of Cristina Alvarez and George Patnode; providing appropriations to compensate them for the death of their son, Nicholas Patnode, a minor, due to the negligence of the Department of Health; providing for the repayment of Medicaid liens; providing a limitation on the payment of fees and costs, etc. SM JU 04/04/2017 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
6	**SB 314** Farmer (Similar CS/H 6545)	Relief of Jerry Cunningham by Broward County; Providing for the relief of Jerry Cunningham by Broward County; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of Broward County, etc. SM JU 04/04/2017 Favorable CA RC	Favorable Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 802** Passidomo (Compare H 7047, S 1396)	Regulated Professions and Occupations; Requiring an individual applicant to apply for licensure in the name of the business organization that he or she proposes to operate under; requiring that a license be in the name of a qualifying agent rather than the name of a business organization; prohibiting a business organization from engaging in certain practices until it is qualified by a qualifying agent; requiring the board to certify an applicant to qualify one or more business organizations or to operate using a fictitious name under certain circumstances, etc. RI 03/08/2017 Favorable JU 04/04/2017 Fav/CS RC	Fav/CS Yeas 9 Nays 0
8	**SB 996** Perry (Similar H 997)	Administrative Proceedings; Requiring an award of attorney fees and costs to be made to a prevailing party in specified administrative proceedings subject to certain requirements; requiring an administrative law judge to conduct an evidentiary hearing and issue a final order on application for such award, etc. JU 04/04/2017 Temporarily Postponed AGG AP	Temporarily Postponed
9	**SR 1440** Rouson (Identical HR 1335)	Arthur G. Dozier School for Boys; Acknowledging the abuses experienced by children confined in the Arthur G. Dozier School for Boys and expressing the Legislature's regret for such abuses and the commitment to ensure that the children of the State of Florida are protected from the abuses and violations that took place at such facility, etc. JU 04/04/2017 Fav/CS RC	Fav/CS Yeas 9 Nays 0
10	**CS/CS/SJR 134** Ethics and Elections / Community Affairs / Artiles (Similar CS/CS/HJR 721, Compare HJR 87, CS/HJR 187, HJR 271, HJR 571, HJR 1129, SJR 130, SJR 132, CS/SJR 136, SJR 138)	Selection and Duties of County Sheriff; Proposing an amendment to the State Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff, etc. CA 02/21/2017 Fav/CS EE 03/28/2017 Fav/CS JU 04/04/2017 Temporarily Postponed RC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SJR 136** Community Affairs / Artiles (Identical CS/HJR 187, Compare HJR 87, HJR 271, HJR 571, CS/CS/HJR 721, HJR 1129, SJR 130, SJR 132, CS/CS/SJR 134, SJR 138)	Selection and Duties of County Officers/Property Appraiser ; Proposing an amendment to the State Constitution to remove authority for a county charter or special law to provide for choosing a property appraiser in a manner other than by election or to transfer the duties of the property appraiser or abolish the office of the property appraiser, etc. CA 03/22/2017 Fav/CS EE 03/28/2017 Favorable JU 04/04/2017 Favorable RC	Favorable Yeas 7 Nays 2
12	**SB 762** Baxley (Identical H 329)	Child Protection; Prohibiting a time-sharing plan from requiring visitation at a recovery residence between specified hours; authorizing a certified recovery residence to allow a minor child to visit a recovery residence, excluding visits during specified hours, etc. CF 03/27/2017 Favorable JU 04/04/2017 Favorable RC	Favorable Yeas 9 Nays 0
13	**CS/SB 1002** Criminal Justice / Perry (Similar CS/H 505, Compare CS/H 477)	Florida Comprehensive Drug Abuse Prevention and Control Act; Providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; specifying that ioflupane (123I) is not included in Schedule II of the standards and schedules of controlled substances, etc. CJ 03/27/2017 Fav/CS JU 04/04/2017 Favorable RC	Favorable Yeas 7 Nays 0
14	**CS/SB 1206** Health Policy / Montford (Identical CS/H 1253)	Rights and Responsibilities of Patients; Requiring health care facilities and providers to authorize patients to bring in any person of the patients' choosing to specified areas of the facilities or providers' offices under certain circumstances, etc. HP 03/27/2017 Fav/CS JU 04/04/2017 Favorable RC	Favorable Yeas 8 Nays 0
15	**CS/SB 530** Banking and Insurance / Steube (Compare CS/H 877)	Health Insurer Authorization; Requiring health insurers and pharmacy benefits managers on behalf of health insurers to provide certain information relating to prior authorization in a specified manner; requiring health insurers to publish on their websites and provide in writing to insureds a specified procedure to obtain protocol exceptions, etc. BI 03/27/2017 Fav/CS JU 04/04/2017 Favorable RC	Favorable Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/06/17	JU	**Fav/CS**
	CA	
	RC	

February 28, 2017

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

Re: **CS/SB 14** – Judiciary Committee and Senator Frank Artiles
HB 6529 -- Representative Cord Byrd
Relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR THE WRONGFUL DEATH OF AARON BEAUCHAMP WHICH OCCURRED WHILE HE WAS A PASSENGER IN A DISTRICT SCHOOL BUS THAT WAS STRUCK BY A TRACTOR TRAILER.

FINDINGS OF FACT:

This matter arises out of a school bus accident that occurred on March 26, 2012, in St. Lucie County, at the intersection of Okeechobee Road and Midway Road. The intersection is located on a four-lane divided highway with a speed limit of 55 mph, and it is not controlled by an overhead traffic signal. The weather at the time of the accident was clear, and there were no visual obstructions.

The Accident

At approximately 3:45 pm, Albert Hazen, a St. Lucie County School District (district) employee, was driving a school bus

westbound on Okeechobee Road. The school bus had 30 student passengers from Frances K. Sweet Elementary School on board. The school bus was equipped with four video surveillance cameras that provided various viewpoints of the crash.
Also at approximately 3:45 pm, Charles Cooper was driving a tractor trailer, owned by Cypress Trucking, in the right eastbound lane of Okeechobee Road. The tractor trailer had a flatbed semi-trailer attached and was loaded with sod.

The bus entered the left turn lane to turn left across the eastbound lanes of Okeechobee Road to reach Midway Road. As the bus turned left at the intersection, it slowed without stopping and turned in front of the tractor trailer driven by Mr. Cooper. Mr. Hazen attempted to accelerate across Okeechobee Road to avoid a collision with the tractor trailer. Mr. Cooper also attempted an evasive action by turning his steering wheel to the right prior to impact.

The front of the tractor trailer collided with the passenger side of the school bus near its rear axle. The impact caused the school bus to spin clockwise approximately 180-degrees. The accident forced the tractor trailer off of the right eastbound lane of Okeechobee Road, rolled the truck portion of the tractor trailer on its left side, and flipped the flatbed trailer upside down. The tractor trailer came to rest in the grassy area on the side of Okeechobee Road. At the time of the crash, the school bus was traveling at approximately 15 mph; whereas, the tractor trailer was traveling at 63 mph approximately 3 seconds before impact.

Mr. Hazen had been assigned an additional bus route the day of the accident, and was driving that extra route when the accident occurred. Mr. Hazen had driven this bus route ten to twelve times before. The onboard cameras captured Mr. Hazen after the crash stating, "Oh my God what I have done."

At the time of the accident, neither Mr. Hazen nor Mr. Cooper were under the influence of alcoholic beverages or narcotics. Both had valid driver licenses for the vehicles they were driving.

The accident caused one fatality and numerous injuries to the student passengers on the bus. Specifically, eight students were seriously injured, eleven students had minor injuries,

and ten students were uninjured. Mr. Hazen received minor injuries and Mr. Cooper was uninjured.

Aaron Beauchamp
Aaron Beauchamp was a 9-year-old student at Frances K. Sweet Elementary School and was onboard the school bus at the time of the accident. Aaron was seated in row 10 on the driver's side of the school bus. It was determined after the accident that Aaron had been wearing his seatbelt at the time of the accident.

The accident caused Aaron to be ejected out of his seat and be thrown about the interior of the school bus. Aaron was found on the school bus floor behind the last seats of the school bus. The medical examiner determined Aaron's cause of death was multiple blunt trauma injuries, and the manner of death was an accident.

Bus Seat and Seatbelt
The National Transportation Safety Board (NTSB) investigated the crash for the limited purpose of understanding the survival factors of the student passengers in support of another ongoing NTSB investigation. The NTSB's investigation provided detailed information concerning the condition of the bus seats and seatbelts after the crash.

The bus seats were a tubular steel frame that had plyboard for the seat and the seatback. The plyboard was covered with foam and vinyl fabric. The bus seats were designed to flip up to allow for the cleaning of the floor under the seat. The front of the seat cushion was mounted to the seat frame by two steel C-shaped brackets that allowed the seat to flip up. The NTSB's investigation after the crash found that the seat cushion latch for the seat that Aaron Beauchamp was sitting in was not engaged. The two front brackets of Aaron's seat were deformed, nearly flat, and the right front bracket was missing a screw.

The seatbelt Aaron was wearing at the time of the accident was a lap seatbelt. Upon inspection, Aaron's seatbelt had a load mark, meaning it was likely in use at the time of the accident. The seatbelt's attachment points to the seat were also rotated toward the impact point of the accident.

LEGAL PROCEEDINGS:

The claimant (Lillian Beauchamp, as the Personal Representative of the Estate of Aaron Beauchamp, a deceased child) filed suit against the district, Cypress Trucking, IC BUS, and IMMI (the seatbelt manufacturer).

The claimant settled with Cypress Trucking for $575,000. The claimant also settled with IC BUS and IMMI; however, the terms of the settlement are confidential and not disclosed to the undersigned.

The district has settled all of the claims associated with this accident except for the claimant's claim.

The claimant and the district were unable to reach a settlement agreement and proceeded to trial on September 1, 2015. The trial was held in the Nineteenth Judicial Circuit Court in St. Lucie County. The jury returned a verdict on September 8, 2015, in the favor of the claimant. The jury found that the district was 87 percent negligent in the death of Aaron Beauchamp. The jury also apportioned 13 percent of negligence to Cypress Trucking and zero percent of negligence to IC BUS, though they were not parties to the lawsuit.

The jury awarded $10 million to the claimant, the Estate of Aaron Beauchamp, and apportioned it in the following manner: $1 million each for Lillian and Simon Beauchamp's past mental pain and suffering caused by the wrongful death of Aaron and $4 million each for Lillian and Simon Beauchamp's future mental pain and suffering caused by the wrongful death of Aaron.

The proportion of the jury verdict attributed to the district is $8.7 million.

CLAIMANT'S ARGUMENTS:

The claimant agrees with the jury's apportionment of 87 percent liability to the district and agrees with the award of $8.7 million.

RESPONDENT'S ARGUMENTS:

The district admitted negligence but disputes the amount of negligence proportioned to it by the jury. The district argues that Cypress Trucking should have received a larger portion of the negligence percentage. The district also contends that there was clear evidence of negligence by IC BUS that

contributed to the death of Aaron Beauchamp and the jury should have proportioned some liability to IC BUS.

The district is opposed to the claim bill.

CONCLUSIONS OF LAW:

The district owned the school bus driven by its employee, Mr. Hazen and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature.

The district has settled all claims associated with this accident except for the claimant's claim. In settling with the other parties, the district has exhausted the statutory cap amount of $300,000 and its excess insurance policy in the amount of $1 million. The claimant has not received any money from the district and will not receive the full benefit of the jury verdict unless the Legislature approves a claim bill.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entitles who contribute to an accident even though not all of them have been joined as defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So. 2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993

So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992).

The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "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." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. *See Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917).

Mr. Hazen was employed by the district and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Hazen is attributable to the district.

Mr. Cooper was employed by Cypress Trucking and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Cooper is attributable to Cypress Trucking.

Mr. Hazen's Negligence
Section 316.122, F.S., requires drivers who are intending to turn left to yield to the right-of-way of any vehicle approaching from the opposite direction. When Mr. Hazen turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, Mr. Hazen violated s. 316.122, F.S., and breached his duty to operate the school bus with reasonable care. Mr. Hazen was issued a Uniform Traffic Citation for violating s. 316.122, F.S.

Mr. Hazen's negligence and breach of duty of care caused the accident and contributed the wrongful death of Aaron Beauchamp.

Mr. Cooper's Negligence
Section 316.183(4)(a), F.S., prohibits any person from driving at a speed that is greater than reasonable and

prudent and requires the driver to appropriately reduce speed when approaching and crossing an intersection. Mr. Cooper was traveling at 63 mph at the time of the crash, 8 mph faster than the posted speed limit of 55 mph. Mr. Cooper violated s. 316.183, F.S., and breached his duty to drive with reasonable care by driving 8 mph over the 55 mph speed limit and is partially at fault for the accident.

Section 316.302(1)(a), F.S., provides that all commercial motor vehicles in Florida engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

The Florida Highway Patrol investigation of the accident found a violation of 49 C.F.R. 393.47(e), which sets the limits for clamp brakes. The investigation found that the tractor trailer's left #3 clamp-type brake was out of adjustment, with the pushrod travel measured at two and half inches. The federal regulation allows a maximum pushrod travel of two inches for clamp-type brakes.

The investigation also found a violation of 49 C.F.R. 571.121 S5.2.2(a), which requires automatic brake adjustment systems to compensate for the wear of brakes. The tractor trailer did not compensate for the wear of the brakes and thus violated 49 C.F.R. 571.121 s5.2.2(a).

Another federal regulation, 49 C.F.R. 395.8(f)(1), requires a driver to record his or her duty status. Mr. Cooper had not updated his duty status log book the day of the accident to indicate that he was on duty.

Mr. Cooper was issued three Uniform Traffic Citations after the accident. His negligence due to speeding and having faulty brakes contributed to the wrongful death of Aaron Beauchamp.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hazen and Mr. Cooper both violated Florida law in this accident.

Mr. Hazen caused the accident when he turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, violating s. 316.122, F.S., and

breached his duty to operate the school bus with reasonable care.

Mr. Cooper contributed to the accident by driving 63 mph when the posted speed limit was 55 mph and by failing to keep the tractor trailer in compliance with federal rules and regulations.

IC BUS manufactured the seats of the bus. The damage to the seat brackets on Aaron's seat may have contributed to his death. However, the undersigned was presented with the same evidence as the jury at trial and finds that there is insufficient evidence to alter the jury's apportionment of no fault on IC BUS.

The jury sat through a multiple-day trial, listened to all of the evidence presented, and reached a verdict based on competent and substantial evidence. While Mr. Hazen and Mr. Cooper were partially at fault in this matter, Mr. Hazen's negligence far outweighs Mr. Cooper's negligence. Aaron Beauchamp died after suffering multiple blunt force trauma injures. The undersigned finds there is no newly presented evidence to alter the jury verdict and finds that the damages of $8.7 million sought by the claimant are reasonable and justly apportionable to the district as a result of Mr. Hazen's negligence.

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

ATTORNEYS FEES: The claimant's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit. However, the limits on lobbying fees, costs, and other similar expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

FISCAL IMPACT: The district is self-insured through a self-insured consortium for the statutory cap amount of $300,000. The district also maintained an insurance policy for excess coverage in the amount of $1 million. The statutory cap amount and the district's insurance funds have been consumed by other

claims arising out of the bus accident. If the bill is approved, the district will have to pay the claim from its general operating funds.

SPECIAL ISSUES

The bill refers to the school district as the *St. Lucie School Board*. The proper name for the school district is the St. Lucie School District. The undersigned recommends the bill is amended to correct this error.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 14 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lauren Jones
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute conforms the bill to the terms of a settlement between the parties for $1.5 million. The amount of the original claim was $8.7 million. The amendment also specifies the amounts that may be paid for attorney fees, lobbying fees, and costs. However, these amounts are consistent with the contractual obligations of the parties. As such, specifying the amounts for fees and costs in the claim bill is not inconsistent with the recent Florida Supreme Court opinion limiting the authority of the Legislature insert limits on fees and costs in claim bills.

106662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
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	.	
	.	

The Committee on Judiciary (Artiles) recommended the following:

Senate Amendment

Delete lines 74 - 98
and insert:
WHEREAS, the district and Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, have reached a settlement agreement in the amount $1.5 million, NOW, THEREFORE,

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

106662

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

Section 2. The St. Lucie County School District is authorized and directed to appropriate from its funds not otherwise encumbered and, on or before November 1, 2017, to draw a warrant in the amount of $1.5 million payable to Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, as compensation for damages sustained in connection with his wrongful death.

Section 3. The amount awarded under this act is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the wrongful death of Aaron Beauchamp. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $300,000, the total amount paid for lobbying fees may not exceed $75,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $4,246.02.

District Office
13501 SW 128th Street
Ste 115 A
Miami, FL 33186
305- 252- 4300

Tallahassee Office
308 Senate Office Building
402 South Monroe Street
Tallahassee, FL 32399
850-487-5040

Florida Senate
Office of Senator Frank Artiles- District 40

February, 23, 2017

The Honorable Greg Steube
Chairman, Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: SB 14 – Relief of Lillian Beauchamp by the St. Lucie County School Board

Dear Senator Steube,

I hope this correspondence finds you well.

Please have this letter serve as my formal request to have **SB 14: Relief of Lillian Beauchamp by the St. Lucie County School Board,** be heard during the next Judiciary Committee Meeting.

The purpose of this legislation is to provide relief for the Estate of Aaron Beauchamp from the St. Lucie County School Board following his death.

Should you have any questions or concerns, please feel free to reach out to my office at any time.

Respectfully,

Senator Frank Artiles, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

14
Bill Number (if applicable)

Topic Claims - Beauchamp

106662
Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

Address 104 W. Jefferson Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-3427

Email kelly@rlbookpa.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing St. Lucie County School District

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
1/2/17	SM	Unfavorable
03/30/17	JU	**Pre-meeting**
	CA	
	RC	

January 2, 2017

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

Re: **SB 16** – Senator Greg Steube
HB 6527 – Representative Shawn Harrison
Relief of Charles Pandrea by the North Broward Hospital District

SPECIAL MASTER'S FINAL REPORT

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

CURRENT STATUS:

On November 21, 2008, John G. Van Laningham, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 50 (2009). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported UNFAVORABLY. The 2009 report was reissued for SB 28 (2012), the most recent version of the claim bill for which a report is available. The 2012 report is attached as an addendum to this status report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Thomas C. Cibula. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and

determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report. Additionally, the prior claim bills on which the attached special master report is based, is effectively identical to claim bill filed for the 2016 Legislative Session.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

Attachment

THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS
Location
402 Senate Office Building
Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/2/11	SM	Unfavorable

December 2, 2011

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

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

SPECIAL MASTER'S FINAL REPORT

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

FINDINGS OF FACT:

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

The X-ray, taken on January 14, 2002, revealed a mass in Mrs. Pandrea's chest, which the radiologist suspected was cancerous. Based on the abnormal chest X-ray, Dr. Stone ordered a computed tomography (CAT) chest scan with contrast. The CAT scan was performed on January 17,

2002. The study showed an encapsulated anterior mediastinal mass, measuring six centimeters by four centimeters, with signs of calcification. Upon learning this, Dr. Stone ordered a fine-needle biopsy, which was performed on January 24, 2002. The specimen, consisting of three "cores," plus three tiny tissue fragments, was fixed in formalin (preserved in a formaldehyde solution) and sent to the pathologist for interpretation.

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

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

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

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

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

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

(Emphasis added.)

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

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

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

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

Mrs. Pandrea had her first round of chemotherapy on February 7, 2002. Mrs. Pandrea did not tolerate the treatment well. She became nauseous, began vomiting, and had a seizure, all of which ultimately sent her to the hospital on February 10, 2002. It was determined that she probably had developed an adverse reaction to one of the chemotherapy agents. Dr. Rosenberg decided to discontinue the use of that drug and substitute another agent.

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

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

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

on March 27. Following the surgery, Mrs. Pandrea developed an infection, and then sepsis. She died on April 2, 2002.

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

* * *

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

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

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

The difference between Dr. Tsivis's actual report and the "reasonable report" described by Dr. Harris is largely a matter of degree, not of kind. Dr. Tsivis's report committed (erroneously) to a diagnosis of "cancer," and offered a tentative diagnosis of NHL, but made clear that additional information would be needed to make and confirm a

definitive diagnosis. In Dr. Harris's "reasonable report," the suspected cancer (based on the chest X-ray) would be neither confirmed nor ruled out. Hence both reports, at bottom, are of the same kind (inconclusive). One (Dr. Tsivis's) is merely less so than the other.

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

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

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

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

support a reasonable decision to commence treatment. His report reasonably required that further diagnostic tests be run—just as Dr. Harris's hypothetical "reasonable report" would have done.[1]

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

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

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

When Dr. Rosenberg prematurely and negligently started Mrs. Pandrea on chemotherapy, he broke the diagnostic chain of events and started the *treatment* ball rolling. Dr. Tsivis's negligence did not start this chain of events which led to Mrs. Pandrea's death; it merely provided the occasion for Dr. Rosenberg's *intervening and superseding* negligence, which led to Mrs. Pandrea's untimely death.

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

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

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

LEGAL PROCEEDINGS:

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

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

expenses. The jury apportioned the fault for Mrs. Pandrea's death as follows: Dr. Rosenberg, 50 percent; the Hospital, 28 percent; Dr. Stone, 12 percent; and the District, 10 percent.

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

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

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

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

Under the doctrine of respondeat superior, the District is vicariously liable for the negligent acts of its agents and

employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003). Dr. Tsivis was an employee of the District and was acting in the course and scope of his employment when interpreting Mrs. Pandrea's biopsy specimen. Accordingly, Dr. Tsivis's negligence in connection with the interpretation of this specimen, if any, is attributable to the District.

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

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

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

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

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

Additionally, however, and in the alternative, even if Dr. Tsivis did breach the duty of reasonable care he owed Mrs. Pandrea, his negligence, the undersigned finds, was not, as a matter of fact, the proximate cause of Mrs. Pandrea's

death. The third element of this claim, therefore, is not met in any event.

"Proximate cause" is an involved legal concept. The "proximate cause" element of a negligence action embraces not only the "but for," causation-in-fact test, but also fairness and policy considerations, usually focusing on whether the consequences of the negligent act were foreseeable in the exercise of reasonable prudence. See, e.g., Stahl, 438 So. 2d at 17-21.

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

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

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

to have "set in motion" the "chain of events" that resulted in the plaintiff's injury. See Gibson v. Avis Rent-a-Car System, Inc., 386 So. 2d 520, 522 (Fla. 1980).[2]

In this case, the question arises whether the negligence of Dr. Rosenberg was an unforeseeable intervening cause which so profoundly and unexpectedly changed the course of events as to sever any reasonable causal connection between Dr. Tsivis's negligence and Mrs. Pandrea's death. Concerning the question of foreseeability as it arises in the context of an "intervening cause" case, the Florida Supreme Court has explained:

> [T]he question of whether to absolve a negligent actor of liability is more a question of responsibility [than physical causation]. W. Prosser, Law of Torts, § 44 (4th Ed. 1971); L. Green, Rationale of Proximate Cause, 14270 (1927); Comment, 1960 Duke L.J. 88 (1960). If an intervening cause is foreseeable the original negligent actor may still be held liable. The question of whether an intervening cause is foreseeable is for the trier of fact.
>
> * * *
>
> Another way of stating the question whether the intervening cause was foreseeable is to ask whether the harm that occurred was within the scope of the danger attributable to the defendant's negligent conduct. A person who creates a dangerous situation may be deemed negligent because he violates a duty of care. The dangerous situation so created may result in a particular type of harm. The question whether the harm that occurs was within the scope of the risk created by the defendant's conduct may be answered in a number of ways.
>
> First, the legislature may specify the type of harm for which a tortfeasor is liable. See Vining v. Avis Rent-A-Car, above;

> Concord Florida, Inc. v. Lewin, 341 So.2d 242 (Fla. 3d DCA 1976) cert. denied 348 So.2d 946 (Fla. 1977). Second, it may be shown that the particular defendant had actual knowledge that the same type of harm has resulted in the past from the same type of negligent conduct. See Homan v. County of Dade, 248 So.2d 235 (Fla. 3d DCA 1971). Finally, there is the type of harm that has so frequently resulted from the same type of negligence that "'in the field of human experience' the same type of result may be expected again." Pinkerton-Hays Lumber Co. v. Pope, 127 So.2d 441, 443 (emphasis in original).

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

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

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

Before going forward with this discussion, an important distinction must be made between *joint* tortfeasors, on the one hand, and *initial/subsequent* tortfeasors, on the other. When several wrongs combine to cause a single injury, the plaintiff can sue the joint tortfeasors together; the fact-finder

will apportion the fault among the negligent parties, who will be liable for their respective shares of the damages. In contrast, when several wrongs independently cause *several* separate injuries, the plaintiff can either sue the independent tortfeasors separately and attempt to recover damages from each for the distinct injury caused by the particular negligent party named in each suit, or he can sue the *initial* tortfeasor alone and potentially recover, exclusively from that original negligent party, all of his damages in the one suit; in that case, however, the negligence of the initial tortfeasor is not compared to that of the subsequent tortfeasor because, unlike a case involving joint tortfeasors, each one's actions were independent of the other and caused separate injuries. Id. at 435.

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

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

> Where one who has suffered personal injuries by reason of the negligence of another exercises reasonable care in securing the services of a competent physician or surgeon, and in following his advice and instructions, and his injuries are thereafter aggravated or increased by the negligence, mistake, or lack of skill of such physician or surgeon, the law regards the negligence of the wrongdoer in causing the original injury as the proximate cause of the damages flowing from the subsequent negligent or unskillful treatment thereof, and holds him liable therefor.

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

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

Id.

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

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

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

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

Mrs. Davidson's husband brought separate lawsuits for negligence against, respectively, Dr. Gaillard for his failure to diagnose Mrs. Davidson in October 1983, and the physicians who treated her in 1984, after the cancer was belatedly found. (The Davidson case under discussion deals solely with the claim against Dr. Gaillard.) At trial, the parties' experts generally agreed that, if Mrs. Davidson had been diagnosed correctly in October 1983, her prognosis would have been reasonably good; with immediate treatment, the cancer likely would have gone into remission. The defense

maintained, however, that the primary cause of Mrs. Davidson's death was not Dr. Gaillard's initial, negligent failure to detect the tumor, but rather the subsequent malpractice of the doctors who treated her for cancer. The jury agreed with the defense, finding that Dr. Gaillard's negligence was not a legal cause of Mrs. Davidson's death. Id. at 72-73.

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

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

In this case, it is Claimant's theory that Dr. Tsivis negligently rendered a false *positive* diagnosis, causing Mrs. Pandrea to seek treatment for a disease that she did not actually have. Unlike the situation in Davidson, however, where the radiologist's false *negative* diagnosis *itself* led to an aggravation of the patient's condition (i.e., a separate injury), here Dr. Tsivis's negligence (assuming he were negligent) did not *itself* cause any cognizable injury (emotional distress from a wrong diagnosis not being an issue in this case), but rather caused an injury (if at all) only in combination with the negligence of Dr. Rosenberg, without which negligence Mrs. Pandrea would not have been treated for a nonexistent cancer. In short, Dr. Tsivis (unlike Dr. Gaillard in Davidson) cannot be considered an "initial" tortfeasor under any reasonable view of the allegations or facts; at best (from Claimant's standpoint) he was a *joint* tortfeasor. (*That*, i.e. as a joint tortfeasor, is how the District was sued, and how the plaintiff's case was presented to the jury, in the civil action that preceded this legislative proceeding.) Thus, the medical negligence of Dr. Rosenberg was not, as a matter of law, the foreseeable consequence of Dr. Tsivis's negligence.

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

LEGISLATIVE HISTORY:

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

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." "Claimant's law firm, Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A., has agreed to limit its fees to the "maximum amount permitted under the law." Claimant's attorneys represent that they have incurred approximately $480,000 in litigation costs. The undersigned presumes that most (or all) of the expenses have been paid out of the nearly $5 million Claimant already has received. Information concerning the amount of attorney's fees paid to date is unavailable.

Claimant has retained Lance J. Block to lobby in favor of this bill. The contract between Claimant and Mr. Block calls for a

contingency fee of six percent. Mr. Block has attested via affidavit, however, that his fee will be in compliance with any limitations that the bill places on fees and costs.

In its current form, the instant claim bill provides that the "total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to the adoption of this act may not exceed 25 percent of the total amount awarded under this act." Claimant and his attorneys appear to be willing to abide by this limitation.

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

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

Respectfully submitted,

John G. Van Laningham
Senate Special Master

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

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

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

291980

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete line 66
and insert:
fees relating

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 8
and insert:
attorney fees; providing an effective

291980

12

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/30/17	JU	**Fav/CS**
	CA	
	RC	

February 28, 2017

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

Re: **CS/SB 40** – Judiciary Committee and Senator Bill Galvano
HB 6503 – Representative Sean Shaw
Relief of Sean McNamee by the School Board of Hillsborough County

SPECIAL MASTER'S FINAL REPORT

This is an uncontested excess judgment claim for local funds in the amount of 1.7 million against the school board of Hillsborough County for damages caused to Sean McNamee after he struck his head on a field striper that was negligently left on a football field during football practice.

FINDINGS OF FACT:

On October 9, 2013, on or around 3:20 p.m., Sean McNamee began participating in football practice with the Wharton High School football team in Hillsborough County, Florida. The players were running passing drills with their lower uniforms on but without shoulder pads or helmets. At approximately 3:45 p.m., while participating in a passing drill, Sean lost his balance after colliding with another player and struck his head on a field striper left on the field by the Wharton High school Head Football Coach David Mitchell. Sean's friend, Daniel, saw the collision and noticed that Sean was acting strangely. Daniel alerted Coach Mitchell who directed Daniel to take Sean to the locker room to be seen by the athletic trainer, Timothy Koecher. Daniel took Sean to the school, but did not escort Sean inside or speak to the trainer.

Trainer Koecher stayed with Sean intermittently in the locker room and in the training room. The extent of any examination

that Trainer Koecher conducted on Sean is not clear. The student injury report submitted to the school by Trainer Koecher states that Sean suffered from a bruise and that ice was applied. Trainer Koecher's written statement, taken a year after the incident and submitted as an addendum after the special master hearing, indicates that there was no laceration or visible bleeding in the injured area and that normal protocol was followed when assessing Sean's injury. However, the joint submission presented by both parties states that Trainer Koecher failed to adhere to proper protocol to evaluate Sean's condition and obtain appropriate medical intervention.

On several occasions, Trainer Koecher left Sean alone. Most of these occasions were for approximately 10 minutes, but on one occasion Sean was left alone for approximately 30 minutes. At approximately 4:22 p.m., during the 30-minute period alone, Sean left campus and drove himself home despite being told by the trainer on several occasions not to drive. Sean has little to no memory of driving himself home. On at least one of the occasions, trainer Koecher left Sean to get cell reception to contact Sean's mother, Jody McNamee. When Trainer Koecher contacted her, Jody McNamee was in Brandon, Florida, and she immediately headed to the school to pick up Sean.

After Sean arrived home, he was met by his younger sister who was an elementary student at the time. Upset by Sean's incoherent condition, his sister called their parents and their father, Todd McNamee, returned home and took Sean to the emergency room. Sean was initially seen at Florida Hospital, Tampa, at 6:01 p.m., approximately two and a half hours after first sustaining his injury. Sean's parents stated in the hearing that the hospital could not see him in the emergency room immediately because he was transported to the hospital by his father and not by ambulance.

A CT scan revealed that Sean suffered from a large left acute temporal convexity epidural hemorrhage measuring 5.3 x 3.2 centimeters. After consulting with a radiologist, Dr. Yoav Ritter, the treating surgeon, rushed Sean to surgery where he removed a portion of Sean's skull to relieve the cranial pressure caused by internal bleeding and swelling. Sean was placed in an induced coma while he recovered and he

emerged from his coma on October 18, 2013. He was discharged from the hospital on October 31, 2013.

Sean had a second surgery in December, 2013, to replace the portion of his skull with a titanium plate. In January, 2015, Sean began to suffer from seizures that would occur approximately every one to two months. In April, 2016, Sean suffered from a significant seizure that required an extended period of hospitalization. Testimony at the hearing placed his last known seizure on or around June or July, 2016. Sean's drivers license has been revoked due to his seizures. At the time of the settlement, total health care costs for Sean's injuries totaled approximately $500,000.

In April, 2015, Sean and his parents filed suit against the School Board of Hillsborough County. On January 7, 2016, as a result of court-ordered mediation, the parties entered into a stipulated judgement against the School Board in the amount of $2 million. Of the $2 million, $300,000 has been paid,[1] with Sean receiving $200,000 and Todd and Jody McNamee receiving $50,000 each. Less attorney's fees, costs, and medical liens, Sean has received approximately $109,000 and each parent has received approximately $36,000. Currently, there are outstanding medical liens in the amounts of $150,874 owed to Aetna and $13,831 owed to Florida Blue. The school board is self-insured for the total amount of the judgment.

In addition to the seizures, Sean suffers from ongoing mental impairment. A psychological evaluation of Sean, based on examinations performed on January 10 and 28, 2014, revealed significant changes in cognitive functions from his severe traumatic brain injury (TBI) that would have an adverse impact on school functioning. The evaluation also found that Sean will need extra help with organizational skills at home and at school and that continued parental involvement in managing his affairs and decisions clearly will be needed. However, the evaluation did not reveal deficits that would interfere with employability with accommodations made under the Americans with Disabilities Act.

Currently, Sean lives with his brother in an apartment they rent together. He is unemployed and is not enrolled in school. An

[1] Pursuant to s. 768.28, F.S.

irrevocable trust was established for Sean's medical and living expenses on April 11, 2016.

CONCLUSIONS OF LAW:

Florida schools have a special relationship with their students which creates a duty to reasonably supervise the students during all activities that are subject to the control of the school.[2] Specific to student athletes, and as pertinent to the facts of this case, Wharton High School had the duty to ensure that Sean McNamee was adequately supervised when participating in football practice and to ensure that appropriate measures were taken after he was injured to prevent aggravation of the injury.[3]

Duty to Supervise:

The school breached its duty to adequately supervise its student athletes when Coach Mitchell negligently left the field striper on the field within the practice area. By leaving the striper on the field and by having the players conduct warm up activities in the area where the striper was left, Coach Mitchell created a hazard that was the cause of Sean McNamee's injury. Additionally, although TBI is an injury that may be expected while playing football, being injured on a piece of equipment that was negligently left on the practice field is not an injury inherent to playing football.

Duty to Prevent Aggravation of the Injury:

The school breached its duty to ensure that appropriate measures were taken after Sean's injury to prevent aggravation of the injury. The joint submission of both parties indicates that Trainer Koecher failed to adhere to proper protocol to evaluate Sean's condition and obtain appropriate medical intervention.[4] As a result, there was a significant delay in Sean receiving the necessary medical treatment for his TBI. It is probable that the delay in treatment aggravated Sean's injury and may have caused some of the long-term changes in his cognitive functions that are present today.

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[2] *Limones v. Sch. Dist.*, 161 So. 3d 384, 390 (Fla. 2015).

[3] *Id*.

[4] Although Trainer Kocher in his written statement indicated that he followed protocol when examining Sean McNamee, there are several reasons to disregard this statement. First, the statement was made a full year after the events. Second, the submission stating that Trainer Koecher was negligent was a joint submission with agreed upon facts by both parties. Third, the statement itself was not presented at or before the hearing and, as such, the plaintiffs did not have the opportunity to respond to the statement in the hearing.

Damages:

As can be seen through the established facts, Sean suffers from both acute and chronic effects caused by the TBI he suffered on October 9, 2013. These effects include several hospitalizations and surgeries that accrued nearly $500,000 in medical expenses, ongoing seizures, loss of his ability to maintain a driver's license, and cognitive changes that will likely affect his ability to succeed in school and to live on his own. The TBI Sean suffered due to Coach Mitchell's negligence and the likely aggravation of his injury he suffered due to Trainer Koecher's negligence in obtaining proper medical care in a timely manner were the direct causes of both the acute and ongoing damages.

ATTORNEYS FEES: Senate Bill 40 restricts the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim to 25 percent of the amount awarded. As such, total attorney and lobbyist fees will be $425,000 of the $1.7 million awarded under the bill. However, the limits on lobbying fees, costs, and other expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

SPECIAL NEEDS TRUST: The undersigned recommends that Senate Bill 40 be amended to direct all payment of funds into the Sean R. McNamee Irrevocable Trust, after the deduction of costs and liens. This change will protect Sean's eligibility for means tested government benefits.

RECOMMENDATIONS: The undersigned recommends that Senate Bill 40 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute provides for the proceeds of the claim bill to be paid into a trust for the benefit of the disabled claimant. The amendment also eliminates references to caps on lobbying fees, costs, and other expenses, consistent with a recent Supreme Court Opinion.

970016

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 69 - 81
and insert:
payable to the Sean R. McNamee Irrevocable Trust as compensation for injuries and damages sustained as a result of the negligence of employees of the School Board of Hillsborough county.

Section 3. The amount paid by the School Board of Hillsborough County under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of

970016

the factual situation described in this act which resulted in injuries to Sean McNamee and damages to Todd McNamee and Jody McNamee. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

the Sean R. McNamee Irrevocable Trust as compensation for injuries and damages sustained by Sean McNamee as a result of the negligence of employees of the School Board of Hillsborough County; providing a limitation on the payment of attorney fees; providing an effective date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Higher Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR BILL GALVANO
21st District

March 30, 2017

Senator Greg Steube
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Steube:

I respectfully request that SB 40 Relief of Sean McNamee by the School Board of Hillsborough County be scheduled for a hearing in the Committee on Judiciary, at your earliest convenience.

If I can provide additional documentation to you on this, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Tom Cibula
Joyce Butler

REPLY TO:
☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
☐ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

5340
Bill Number (if applicable)

Topic 5340 Newmec

Amendment Barcode (if applicable)

Name Dan Dickey

Job Title Attorney

Address 101 E. Kennedy Blvd
Street

Phone 813-222-8222

Tampa FL 33602
City *State* *Zip*

Email DDickey@yerrmlaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Sen Newmec and Parents

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
3/28/17	SM	Favorable
4/5/17	JU	**Fav/CS**
	CA	
	RC	

March 28, 2017

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

Re: **CS/SB 304** – Judiciary Committee and Senator Perry Thurston
HB 6531 – Representative Brad Drake
Relief of Dustin Reinhardt by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $4.7 MILLION, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN DUSTIN REINHARDT, THE CLAIMANT, AND THE PALM BEACH COUNTY SCHOOL BOARD. THE BILL COMPENSATES THE CLAIMANT FOR INJURIES HE RECEIVED WHEN A TIRE EXPLODED IN HIS AUTO SHOP CLASS.

FINDINGS OF FACT:

This claim arises out of an accident that took place on September 4, 2013 in the auto shop of the Seminole Ridge Community High School in Loxahatchee, Florida. At the time of the accident, Dustin Reinhardt was 16 years old. He was taking the auto shop as a class for the third year in a row, taught by shop teacher, Raymond Craig.

On the day of the incident, a student in the auto shop class had rims to be worked on. That student and Dustin drilled holes in the truck rims, placed rubber inner tubes inside the tires, and assembled the rubber inner tube and tire on the modified rim. Mr. Craig, according to a statement he made to a law enforcement officer investigating the incident, knew that the two students had modified the rims in this way.

After Dustin and the other student finished modifying the tires, Dustin began to fill one with air. During that time, Mr. Craig stated that he walked by Dustin and told him to sit the tire upright and not stand directly in front of the tire while filling it. A few seconds later, the tire exploded, knocking Dustin unconscious and injuring his head and brain.

A tire cage is a piece of safety equipment. Inflating a tire that has first been placed inside a tire cage provides stability during the process. However, at the time of the incident, the auto shop did not have a tire cage large enough to accommodate the large truck tire.

After the accident, a medical evacuation team airlifted Dustin to St. Mary's Hospital in West Palm Beach where doctors placed him in a medically-induced coma for a month. Doctors initially told Dustin' father, Scott Reinhardt, that they did not know if Dustin would survive. When doctors brought Dustin out of the coma and sat him up, spinal fluid leaked through his nose, necessitating placement of a shunt in his brain. Dustin underwent multiple additional surgeries, including facial and skull reconstruction. Even after the surgeries, Dustin has been left with a permanent loss of vision in his right eye, considerable facial scarring, short-term memory loss, judgment deficiencies, and severe traumatic brain injury.

On October 9, 2013, the hospital transferred Dustin to a physical rehabilitation facility at the hospital.

On October 24, 2013, the hospital discharged Dustin and he returned home to live with his father, Scott Reinhardt, and Dustin's stepmother, Joann Reinhardt. Upon returning home, Dustin began to display emotional outbursts and significant aggressive behaviors. In addition to the acting out, Dustin needed near-constant supervision to remain safe.

Because of this, Scott Reinhardt and Dustin's doctors decided to place Dustin in a supervised, residential setting. Dustin's family agreed to the placement recommended by doctors, at the Florida Institute for Neurologic Rehabilitation (FINR). Dustin entered the FINR on a residential basis on March 14, 2014. In the area of vocational development, Dustin worked his way up from an hour a day of dusting at the facility, to going to an off-site landscape nursery and doing general

grounds maintenance under supervision for several hours a day.

While at FINR, another brain-injured patient set Dustin on fire. Dustin suffered third-degree burns, necessitating additional surgery.

Dustin stayed at FINR until December 2016, at which time his father had him transported to Neuro International, a facility providing assisted living services. At the facility, the staff check on Dustin every 30 minutes during the day and every 60 minutes at night. When Dustin goes out into the community, he is under constant visual supervision.

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Dustin has worked hard to overcome his emotional outbursts. With the assistance of educators at the facility, he also has been able to get his high school diploma. Although Dustin has progressed in various areas while in the care of these institutions, his medical providers and his father agree that Dustin is unable to advance to living independently. For example, medical doctors estimate that Dustin functions developmentally at the equivalent of a 10 to 12 year old. Therefore, a continued stay in a supervised setting such as Neuro International is recommended.

Notably, Dustin was born a triplet and the other triplets are in careers in the armed services. At the time of the accident, Dustin was enrolled in Army Junior ROTC. Additionally, he intended to pursue a career as a long-distance truck driver or truck mechanic.

Dustin's stepmother, Joanna Reinhardt, and his father, Scott Reinhardt, are Dustin's legal guardians.

FUTURE SERVICES REPORT: Both plaintiff and defense experts prepared a Life Care Plan for Dustin. Dr. Craig Lichtblau, a physiatrist, and Dr. David Williams, an economist for the plaintiff, estimate the cost of future care and loss of earnings at $15 million.

Dr. Alan Raphael, for the defense, estimates future care and loss of earnings at $4,348,675. Dr. Raphael based this total on a review of Dr. Lichtblau's report and consultations with Dr. Ronald Tolchin, an examining physiatrist.

Plaintiff Estimate: The first table provides a summary of economic damages, as estimated by Dr. Williams. As of the date of the report, June 24, 2015, Dr. Williams estimated Dustin's life expectancy at an additional 58.2 years. Medical expenses that Dustin is expected to incur include medical care; diagnostic tests; surgical procedures related to the artificial eye; therapeutic evaluations, consisting of physical therapy, occupational therapy, speech therapy, and neuropsychometric testing; outpatient therapy for physical therapy, occupational therapy, and speech therapy; medication; support care; and transportation, including costs of a cell phone. Dr. Williams identifies other possible medical complications, but does not calculate them for purposes of the anticipated costs. These complications could present as pulmonary, urological, renal seizure, hydrocephalus, and other possible issues.

Future Medical Expenses	$12,348,654
Loss of Future Earning Capacity	$ 1,800,000
Gross Past Medical Expenses	$ 1,377,129
Total Economic Damages	$15,525,783

Defense Estimate: The second table assumes a life expectancy of an additional 59.4 years, as of April 24, 2015. The anticipated medical expenses include medical care, therapy, medication, diagnostic tests, future surgery and hospitalization for a shunt revision in the brain and an artificial eye replacement, medical equipment, and costs of living at an assisted living facility. Dr. Raphael recognizes, but does not include estimates for possible expenses relating to the services of a professional guardian and plastic surgery for scar revisions. Additionally, the defense estimate deducts from future earnings typical pay as a landscape technician.

Future Medical Expenses and Care	$3,194,425
Loss of Future Earning Capacity	$891,000
Driver (If necessary to provide transport to a part-time job)	$263, 250
Total Economic Damages	$4,348,675

LITIGATION HISTORY:

On February 25, 2015, Dustin Reinhardt and Scott Reinhardt filed a Complaint for Damages against the School District of Palm Beach County and USAA General Indemnity Company in the Palm Beach County Circuit Court. The complaint alleged that the School District of Palm Beach County negligently failed to supervise and/or adequately protect Dustin Reinhardt. Due to the negligence of the School District of Palm Beach County, the complaint alleges that Dustin suffered significant physical, mental, and emotional injuries. Additionally, the complaint alleged that Scott Reinhardt incurred medical expenses needed to treat his son's injuries and the loss of his son's services.

After the plaintiffs filed the complaint, the parties engaged in discovery, exchanging interrogatories and taking depositions. Eventually, the Reinhardts and the School District of Palm Beach County entered into a Release and Settlement Agreement. Under its terms, the School District agreed to pay $300,000 up front, $100,000 of which the School District paid to Scott Reinhardt individually and $200,000 of which the School District paid to Scott Reinhardt in his capacity as guardian for Dustin. The School District disbursed the $300,000 within 20 days after the court approved the settlement agreement.

The court issued its order approving the settlement agreement on February 1, 2017.

The agreement acknowledges that the plaintiff has already received, and will continue to receive the benefit of payment for Dustin's full expenses, including medical, room and board, supervision and therapy at the FINR. These payments, which amount to approximately $350 a day, or $124,600 per year, have already been made through the School Board's Omaha Custodial Care Insurance Policy. The payouts will continue until September 2023, based on a ten-year total allowable payout.

In addition to the initial amount payment of $300,000, the agreement provided for the plaintiffs to receive a total of $4.7 million through the claim bill process. Of this total, $1,700,000 will be payable as a lump sum within 30 days after the claim bill is enacted, and $3,000,000 payable as a $1 million annual annuity, starting September 2023 or at the time of cessation of the payouts from the Custodial Care Insurance Policy.

CLAIMANT'S POSITION: To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Mr. Craig owed a duty to Dustin to provide a safe work environment in the auto shop class and to properly supervise the students. Mr. Craig breached that duty by allowing Dustin to put air in a large tire that had been modified, an extremely dangerous activity, without the benefit of a tire cage. In instructing Dustin to sit the tire upright, Mr. Craig knew or should have known that the tire had a propensity to explode. The explosion of the tire caused irreparable and considerable injury to Dustin.

As a result of the accident, Dustin incurred and continues to incur economic and non-economic damages. Dustin permanently lost the vision in his right eye and has had numerous surgeries. He suffers from short-term memory loss and has severe traumatic brain injury, interfering with his ability to exercise sound judgment and engage in other executive level functioning. Dustin requires lifetime medical care and treatment, including future surgery and various therapies, and room and board at an assisted living facility. Dustin is unable to pursue his dream of serving in the military or otherwise pursue his intended vocation as a long-haul trucker or as a truck mechanic. Additionally, Dustin has repeatedly expressed the desire to live on his own, support himself in the future, drive, marry, have children, and own his own home. Dustin may well not realize these desires.

RESPONDENT'S POSITION: The School Board of Palm Beach County agrees not to contest the claim bill.

CONCLUSIONS OF LAW: Section 768.28, F.S., governs this matter. This statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages which a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the

Legislature. Therefore, Dustin will not receive the full benefit of the settlement agreement with the School Board of Palm Beach County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Although school boards are not strictly liable for the safety of students, well-settled law provides that a school board has a duty to properly supervise students entrusted to the care of the school.[1] In a case in which a plaintiff alleges a lack of supervision, a teacher's duty of care is defined as reasonable, prudent, and ordinary care, or the care that a person of ordinary prudence responsible for those duties would exercise given the same circumstances.[2] Providing inadequate supervision is a breach of that duty.[3]

The tire that Dustin worked on the day of the incident was not typical for the tires brought to the auto shop class. Although the plaintiff and the defense describe the tire differently, the defense concedes that the tire was a large buggy tire, incapable of placement inside a tire cage for safety while being filled with air. Mr. Craig knew that Dustin was putting air in the tire as he asked him to sit the tire upright. However, Mr. Craig kept walking after issuing the instruction, thereby providing inadequate supervision.

Mr. Craig was employed by the School Board of Palm Beach County. The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

Due to Mr. Craig's breach of his duty of care, he caused the accident and Dustin's damages. The claimant has demonstrated significant economic damages. Dustin's medical costs are considerable and ongoing. Due to his

[1] *Benton v. School Board*, 386 So. 2d 831, 834 (Fla. 4th DCA 1980); *Comuntzis v. Pinellas County School Board*, 508 So. 2d 750, 751 (Fla. 2nd DCA 1987).
[2] *La Petite Academy v. Nassef*, 674 So. 2d 181, 182 (Fla. 2d DCA 1996).
[3] *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA 1992).

inability to live on his own, he will likely require lifetime care in a supervised setting. Dustin will never be able to pursue his chosen avocation or sustain himself.

Should this case have proceeded to trial, Dustin appears by all accounts to have presented as a sympathetic plaintiff. Just 16 when the incident happened, he will never have the opportunity to live the life accessible to others. He has also demonstrated a strong commitment to making progress towards recovery.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

COLLATERAL SOURCES:

The plaintiff has entered into a settlement agreement with various other defendant(s). The total settlement amount from sources unrelated to the claim bill, $1,373,000, comes from:

Source	Amount
Homeowner's insurance policy of the owner of the tire	$303,000
USAA uninsured motorist policy for Scott Reinhardt	$50,000
Teacher's union insurance policy of Raymond Craig, auto shop teacher	$1,000,000
Homeowner's policy of Raymond Craig, auto shop teacher	$20,000
Total	$1,373,000

FISCAL IMPACT:

The School Board of Palm Beach County is self-insured for personal injury liability claims. If approved by the Legislature, the $4.7 million will be paid from the School Board of Palm Beach County's Workers' Compensation and Liability Claims Internal Service Fund. The School Board represents that they have reserved the amount necessary to pay this claim.

ATTORNEYS FEES:

The total amount of money requested in the claim bill is $4.7 million. Should the claim bill become law, and in the amount requested, the attorney's fees, based on a 20 percent recovery, will be $940,000. Lobbyist fees, based on a 5 percent recovery, will be $235,000.

The plaintiff and defendant have already entered into a settlement agreement for the $300,000 permitted by law. Of this, Scott Reinhardt received $100,000 individually, and $200,000 as the guardian of Dustin Reinhardt. Attorney's fees for this part of the agreement are $25,000 and $50,000, respectively. These attorney's fees represent 25 percent of the total recovery.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 304 (2017) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
This committee substitute includes minor corrections to the facts alleged in the whereas clauses of the claim bill. More significantly, the committee substitute provides for the payments required under the claim bill to be used to fund a special needs trust for the benefit of the claimant. The committee substitute also identifies specific amounts that may be paid from the claim bill for attorney fees and lobbying fees.

147810

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

Section 2. The Palm Beach County School Board is authorized and directed to:

(1) Appropriate from funds of the school board not otherwise encumbered and, no later than 30 days after the effective date of this act, draw a warrant in the sum of $1.7

147810

million payable to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, as compensation for injuries and damages sustained.

(2) Purchase, for Dustin Reinhardt's benefit, three separate $1 million annuities, over a successive 3-year period of time. The first annuity shall be purchased in the year this claim bill is enacted with the other two annuities purchased in successive years thereafter. The first annuity shall make annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, beginning on or about September 2023. The second and third annuities shall make annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, pursuant to their terms.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Dustin Reinhardt. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $940,000, the total amount paid for lobbying fees may not exceed $235,000, and no amount may be paid for costs and other similar expenses relating to this claim. Attorney or lobbying fees may not be assessed against the value of the annuity.

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

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

147810

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act for the relief of Dustin Reinhardt by the Palm Beach County School Board; providing for an appropriation and annuity to compensate him for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing that certain payments and the amount awarded under the act satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, in September 2013, Dustin Reinhardt was a student at Seminole Ridge Community High School in Loxahatchee in Palm Beach County, and was involved in the Army Junior Reserve Officer Training Corps for which he received honors for his participation, and

WHEREAS, on September 4, 2013, while in auto shop class at Seminole Ridge Community High School, Dustin Reinhardt was inflating a large truck tire, which proceeded to explode, striking him in his head, and

WHEREAS, immediately following the explosion, Dustin Reinhardt was airlifted to St. Mary’s Medical Center in West Palm Beach where he underwent multiple surgeries, including skull and facial reconstruction procedures, was placed in a chemically induced coma, and spent more than 4 weeks in the

147810

intensive care unit, and

WHEREAS, Dustin Reinhardt has continued to be impacted by the injuries he incurred from the explosion, including the loss of vision in his right eye, short-term memory loss, and a recent diagnosis of severe traumatic brain injury, and

WHEREAS, the traumatic brain injury will impair Dustin Reinhardt's executive function and has resulted in symptoms such as the exhibition of socially inappropriate behavior, difficulty in planning and taking initiative, difficulty with verbal fluency, an inability to multitask, and difficulty in processing, storing, and retrieving information, and

WHEREAS, because of the explosion, Dustin Reinhardt continues to live in supervised care at the Neuro International and is unlikely to ever live an independent life, and

WHEREAS, the injuries that Dustin Reinhardt sustained were foreseeable and preventable and the school had a duty to prevent his injuries, and

WHEREAS, the parties have agreed to a settlement in the sum of $5 million, and the Palm Beach County School Board has paid $300,000 of the settlement pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving a remaining balance of $4.7 million, NOW, THEREFORE,

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 21, 2017

I respectfully request that **Senate Bill #304,** relating to Relief of Dustin Reinhardt by the Palm Beach County School Board, be placed on the:

☐ Committee agenda at your earliest possible convenience.

☒ Next committee agenda.

Perry E. Thurston, Jr.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

304
Bill Number (if applicable)

147810
Amendment Barcode (if applicable)

Topic _____

Name Ron LaFare

Job Title _____

Address 101 E College Ave
Street

Tall FL 32301
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach School Board

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
1/29/17	SM	Favorable
3/30/17	JU	**Fav/CS**
	AHS	
	AP	

January 29, 2017

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

Re: **CS/SB 310** – Judiciary Committee and Senator Jose Javier Rodriguez
HB 6553 – Representative Jackie Toledo
Relief of Christina Alvarez and George Patnode by the Department of Health

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $2.4 MILLION AGAINST THE DEPARTMENT OF HEALTH FOR THE NEGLIGENT MEDICAL CARE PROVIDED TO NICHOLAS PATNODE IN 1998 AT THE COUNTY HEALTH DEPARTMENT/PUBLIC HEALTH CLINIC OPERATED BY THE DEPARTMENT IN MARTIN COUNTY.

CURRENT STATUS:

This claim bill was previously filed with the Legislature for the 2004 through 2010 Legislative Sessions. At some point, it was heard by T. Kent Wetherell, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY. Judge Wetherell's special master report from SB 46 (2007), the latest report available, is attached.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report. Additionally, the prior claim bills on which the attached special master report is

based, is effectively identical to claim bill filed for the 2017 Legislative Session.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

Attachment

CS by Judiciary:
The committee substitute does not contain the limits on lobbying fees, costs, and other similar expenses which were contained in the underlying bill. This change ensures that the committee substitute does not impair preexisting contracts for services related to the claim bill.

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
1/17/07	SM	Favorable

January 17, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 46 (2007)** – Senator Dave Aronberg
Relief of Nicholas Patnode

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $2.4 MILLION AGAINST THE DEPARTMENT OF HEALTH FOR THE NEGLIGENT MEDICAL CARE PROVIDED TO NICHOLAS PATNODE IN 1998 AT THE COUNTY HEALTH DEPARTMENT/PUBLIC HEALTH CLINIC OPERATED BY THE DEPARTMENT IN MARTIN COUNTY.

FINDINGS OF FACT:

On December 26, 1997, 5-month-old Nicholas Patnode was taken to the Martin County Health Department - Indiantown Clinic (hereafter "the Clinic") by his mother, Christina Alvarez, because of a fever. Nicholas received his primary care through the Clinic, as did the claimants' other two children. Nicholas' regular pediatrician was Dr. Stephen Williams.

Dr. Williams diagnosed Nicholas with an ear infection. He prescribed an antibiotic, and told Ms. Alvarez to bring Nicholas back in 10 days. Nicholas completed the antibiotic, and went in for the follow-up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicholas had recovered from the ear infection.

Two days later, on Thursday, January 8, 1998, Nicholas again ran a fever causing his mother to bring him back to the Clinic. Dr. Williams saw Nicholas and measured his fever at 103.7

degrees. The fever was "without focus," meaning that there was no apparent cause for the fever. In order to rule out a dangerous bacterial infection, Dr. Williams properly ordered a complete blood count (CBC) and urine test.

The Clinic did not have lab facilities. Lab work, such as the CBC ordered by Dr. Williams, was sent to the lab at Martin Memorial Hospital for analysis. The lab faxed the results of the tests back to the Clinic physician who ordered the tests.

In addition to ordering the CBC, Dr. Williams prescribed Tylenol and Motrin for Nicholas, told his mother to keep cool clothes on him, and to watch him for a rash. He also told her that if there was a rash or if the fever persisted or got worse, she should take Nicholas immediately to the emergency room.

The next day, January 9, 1998, Ms. Alvarez stated that she checked Nicholas' temperature every 4 hours, and that his temperature was "normal" (i.e., 98.6 degrees) throughout the day. At about 4:30 p.m., Nicholas felt hot and had a fever of 100 degrees. Ms. Alvarez gave Nicholas a dose of Tylenol, and when she checked his temperature again an hour later, his fever was up to 101 degrees. At about the same time, Nicholas' father, George Patnode, arrived home from working on a friend's car.

Mr. Patnode and Ms. Alvarez proceeded directly to the Martin Memorial Hospital emergency room with Nicholas. They arrived at the hospital at approximately 6:50 p.m. Ms. Alvarez did not mention during the admission process that Nicholas had been seen by Dr. Williams on the prior day or that he had ordered a CBC test.

The emergency room physician ordered another CBC test, which showed an abnormal white blood cell count. While waiting for test results, Cristina noticed that Nicholas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture (i.e., spinal tap) indicated that Nicholas had pneumoccoccal meningitis. Nicholas was given intravenous antibiotics, and transferred by ambulance to St. Mary Hospital's pediatric intensive care unit.

Nicholas arrived at St. Mary's at 1:57 a.m., on January 10, 1998. By that time, Nicholas had gone into septic shock. He was removed from life support and died later that morning.

Dr. Williams' Background

Dr. Williams obtained his medical degree in Nigeria in the 1980's. He came to the United States in 1991 after completing an internship in a Nigerian hospital and working for a year in a public health clinic in Nigeria. It took Dr. Williams two tries to pass the exams required for him to practice medicine in the United States. He did a residency program in pediatrics in New York before coming to the Clinic in July 1996. According the Department's website, Dr. Williams was licensed to practice medicine in Florida on July 1, 1996, and his license number is ME70792.

Dr. Williams was granted permanent resident status in the United States in 1996. He worked for the Clinic pursuant to an F-1 visa that required him to provide services in an underserved area for three years. It took Dr. Williams three tries to pass the exam for Board certification in pediatrics. He was Board certified at some point in 1998 after the incident involving Nicholas.

Negligent Medical Care Provided by Dr. Williams

Dr. Williams did not order a rush or "stat" CBC; he ordered a routine CBC. Had Dr. Williams ordered the CBC "stat," the results would have been ready by 5:30 p.m., the day that they were ordered, i.e., January 8, 1998. The more credible expert testimony establishes that, in order to meet standard of care, Dr. Williams should have ordered the CBC "stat" because the test involved a five-month old child who had a fever without a focus.

The tests were completed by the lab at 11:30 p.m., on January 8, 1998. The results were faxed to the Clinic at 12:17 p.m., on January 9, 1998.

The lab results showed that Nicholas had a white blood cell count of 24,900. The normal range for a child of Nicholas' age was between 6,000 to 15,000. Nicholas' elevated white blood cell count was an indication that he might have a serious bacterial infection which, in turn, might develop into bacterial meningitis. In such cases, the standard of care requires immediate treatment with antibiotics.

The Clinic policy in effect at the time required abnormal lab results to be followed-up on with the patient within 24 hours of receipt. Dr. Williams did not review Nicolas' lab results until January 14, 1998, four days after he passed away. His failure to do so violated the clinic policy, and more importantly, fell below the standard of care.

The Clinic had a policy that required the lab to call the physician immediately if the lab results exceeded "panic values" set by the Clinic. The "panic value" set for white blood cell counts was 25,000, which was 100 higher than Nicholas' white blood cell count. The claimants' expert testified that the "panic value" should have been 15,000, which was the reference range published by the American Academy of Pediatrics.

The claimants' expert ultimately opined that had the CBC test been ordered "stat," or if the regular and actual results that were received by the Clinic at 12:17 p.m. on January 9, 1998, had been promptly reviewed and acted upon by Dr. Williams, then a course of intravenous antibiotics could have been administered in time to save Nicholas' life. The Clinic's expert, while not agreeing that a "stat" CBC was required, agreed that had Nicholas been started on antibiotics at any point up until 4:30 p.m. or so on January 9, 1998, he most likely would not have died.

The Clinic

The Clinic a county health department/public health clinic operated by the Department, with funding support from Martin County. See generally ss. 154.001-.067, F.S. Employees of the Clinic are employees of the Department. s. 154.04(2), F.S.

The Clinic serves Medicaid recipients and other low income patients who do not otherwise have access to health care. It is one of only three facilities in Martin County serving that patient population. In fiscal year 2005-06, the Clinic served more than 19,000 patients and had a budget of $7.8 million. It now has 137 employees.

The Clinic was only one of only three county health departments in the state that provides prenatal care from pregnancy to birth. The Clinic delivers approximately one-

third of the babies born in Martin County. Pediatric care is provided to many of these children after birth, as was the case with Nicholas and his siblings.

The Clinic is funded with a mix of federal, state, and county funds. It receives approximately $3.5 million in state funds and $920,000 (or 12 percent of its budget) from Martin County. As of November 30, 2006, the Clinic had a cash reserve of $1.3 million and a cash-to-budget ratio of 17.85 percent, which exceeds the 8.5 percent operating reserve required by s. 154.02(5)(a), F.S.

The Claimants

Nicholas' parents, Cristina Alvarez and George Patnode had two children prior to Nicolas. One of the other children is emotionally handicapped, has ADHD, and has pervasive developmental disorder. The other child has ADHD.

Ms. Alvarez and Ms. Patnode had been married for 10 years at the time of Nicholas' death. They separated four days after Nicolas' death, and they divorced in 2000. Both have remarried, and they each have had additional children since Nicholas' death.

George Patnode is 45-years-old. He does not work. He is a disabled veteran, who receives $724 per month in Social Security disability benefits and $115 per month from the Veterans Administration. He has been on Social Security disability since 1998. He has been working on an Associate in Arts degree at Indian River Community College for several years. He expects to complete that degree soon and then he intends to pursue a Bachelor's degree at Florida Atlantic University.

Mr. Patnode pays a total of $1,200 per month in child support, $600 of which is paid to Ms. Alvarez. He is current on his child support obligations. He is a "recovering alcoholic." He has been sober for 8 years, except for a "brief relapse in 2004," and he is active in Alcoholics Anonymous. He had two criminal offenses in 2002. The offenses were misdemeanor domestic batteries to which he pled no contest and served 30 days in jail.

Ms. Alvarez does not work outside the home. She receives $982 per month in government benefits for the two children

fathered by Mr. Patnode who are disabled, in addition to the $600 per month in child support that she receives from Mr. Patnode. She has no history of drug or alcohol abuse.

Relevant Subsequent Events

Dr. Williams no longer works for the Clinic. He left the Clinic in June 1999, after the end of the 3-year term required by his visa. Dr. Williams is now in private practice in the Tampa area.

Dr. Williams was not disciplined by the Clinic as a result of the incident. No disciplinary action was taken against his medical license.

The only policy change that came about at the Clinic as a result of Nicholas' death was the that the white blood cell count "panic value" of 25,000 was changed. Now, the "panic value" for that and other tests depends upon the range established by the lab for the specific test. No Department-wide policy changes were made as a result of the incident.

Source of Funds to Pay this Claim Bill

The bill authorizes and directs payment of this claim out of General Revenue, not the funds of the Department or the Clinic. The Department argues that neither it nor the Clinic has funds available to pay this claim and that payment of the claim from funds earmarked for the Clinic would be contrary to state law and would seriously hamper the Clinic's ability to serve its patients.

The Clinic and other county health departments receive a majority of their state funding from the County Health Department Trust Fund (CHDTF). In the 2006-07 General Appropriations Act, for example, a total of approximately $980 million of state funds were appropriated for the operation of the 67 county health departments, with $192 million (19.6%), coming from General Revenue and $780 million (79.4%) coming from the CHDTF, and the remainder (1%) coming from other sources.

Section 154.02(2), F.S., provides that funds in the CHDTF "shall be expended by the Department of Health solely for the purposes of carrying out the intent and purposes of [Part I of Chapter 154, F.S.]." Nothing in Part I of Chapter 154.02, F.S., addresses payment of claims against county health

departments. Moreover, s. 154.02(3), F.S., provides very specific language regarding the use of funds in the CHDTF; limitations on the transfer of the funds; and specific accounting requirements for those funds. Thus, it does not appear that that funds from the CHDTF could be used to pay this claim, and, under the circumstances, it is appropriate to pay the claim from General Revenue.

If the claim is paid from General Revenue, the Legislature will have to make a policy decision as to whether to concomitantly increase the appropriation of General Revenue to the Department to offset the payment of the claim. Failure to do so will provide a measure of accountability to the Department, whose employee's negligence was the basis of the claim, but it will mean that the other 66 county health departments are effectively subsidizing the payment of this claim since they will receive proportionally less General Revenue than they otherwise would have received.

In my view, it is unlikely that a proportional reduction in General Revenue would have a material negative impact on the operation of the county health departments since the amount of the claim ($2.4 million) amounts to less than 1.3 percent of the General Revenue ($192 million) and only 0.25 percent of the total state funds ($980 million) appropriated to the county health departments in fiscal year 2006-07. Thus, I recommend that the bill be amended to require payment of the claim out of the General Revenue funds appropriated to the Department for the county health departments and not from a separate and additional appropriation of General Revenue to the Department specifically for the payment of this claim.

LITIGATION HISTORY:

In 2000, the claimants filed suit against the Clinic, Dr. Williams, Martin Memorial Hospital, and others involved in the care and treatment of Nicholas from January 8 through 10, 1998. The suit was filed in circuit court in Martin County.

The claimants offered to settle with the Clinic for $200,000 prior to trial, but the Clinic rejected the offer. Martin Memorial Hospital settled with the claimants for $35,000. The claims against the other defendants were dismissed, and the case proceeded to trial against the Clinic only.

A jury trial was held in February 2002. The trial judge granted a directed verdict in favor of Mr. Patnode on the issue of his comparative negligence, but the jury had the opportunity to apportion negligence to Ms. Alvarez. The jury returned a $2.6 million verdict in favor of the claimants, finding the Clinic 100 percent responsible for Nicholas' death. The damages award was for past and future pain and suffering; no economic damages were sought or awarded. The jury apportioned 61.5 percent of the damages ($1.6 million) to Ms. Alvarez and 38.5 percent ($1 million) to Mr. Patnode.

The Department's post-trial motions were denied, and a final judgment consistent with the jury verdict was entered on March 26, 2002. The Fourth District Court of Appeal affirmed the final judgment without an opinion on April 30, 2003. The Clinic paid $200,000 in partial satisfaction of the judgment pursuant to s. 768.28, F.S., in September 2003.

The final judgment reserved jurisdiction to tax costs and attorney's fees, but no subsequent order was entered. The claimant's attorney has advised that no costs are being sought as part of the claim bill.

CLAIMANTS' POSITION:

- The claim is based on a jury verdict that was affirmed on appeal, and the jury verdict should be given full effect because it is supported by the evidence.
- Government entities should be held to the same level of accountability as the private sector, especially in the area of health care.
- The Department had an opportunity to settle this case for $200,000, but it failed to do so and, therefore, it should be required to pay the full amount awarded by the jury.

DEPARTMENT'S POSITION:

- Nicholas' mother, Ms. Patnode, should be found comparatively negligent for not taking Nicolas to the emergency room sooner, and for not telling the emergency room nurse about seeing Dr. Williams the day before.
- Payment of the claim would hinder the Clinic's ability to provide services to its patients.

- Payment of the claim should come from a separate appropriation of General Revenue because the Clinic and the Department do not have the funds to pay the claim.

CONCLUSIONS OF LAW:

Dr. Williams was an employee of the Department acting within the course and scope of his employment at the time of the incidents giving rise to this claim. As a result, the Department is vicariously liable for his negligence.

Dr. Williams owed a duty to Nicholas and his parents to properly diagnose and treat his medical condition. Dr. Williams breached that duty by failing to follow-up on the blood test that he ordered for Nicholas for the purpose of ruling out a serious bacterial infection. His failure to do so fell below the prevailing professional standard of care and was a proximate cause of Nicholas' death because had he reviewed the results of the test, Dr. Williams would have (or, at least, should have) sent Nicholas to the emergency room for antibiotics.

It is a close question in my mind as to whether Nicholas' mother was comparatively negligent for failing to take Nicholas to the emergency room sooner. On one hand, she was following Dr. Williams advice by giving Nicholas Tylenol and Motrin to reduce his fever and by only taking him to the emergency room if the fever continued despite the medications. On the other hand, it is clear from the expert medical testimony that she could not have been truthful when she testified that Nicholas' temperature was "normal" (i.e., 98.6 degrees) throughout the day on January 9, 1998, and, as a result, she might bear some responsibility for not bringing Nicholas to the emergency room until it was too late. The jury rejected the Department's argument that Nicholas' mother was comparatively negligent and, on balance, I agree with the jury's conclusion on that issue.

The damages awarded by the jury are reasonable. The damage award should, however, be reduced by $35,000 to reflect the settlement that the claimants received from Martin Memorial Hospital. It would be a windfall to the claimants if the claim bill was not reduced by the amount of that settlement because the jury specifically found that the hospital's lab was not negligent and the claimants' medical expert testified that he had no criticism of the care provided to Nicholas in the hospital's emergency room. Each parent's share of the claim

bill should be reduced by $17,500 (i.e., half of the $35,000 settlement) because they split the settlement equally.

ATTORNEY'S FEES AND LOBBYIST'S FEES: The claimants' attorney submitted an affidavit stating that attorney's fees related to this claim bill, inclusive of lobbyist's fees and costs, will be limited to 25 percent of the final claim in accordance with s. 768.28(8), F.S.

LEGISLATIVE HISTORY: This is the fourth year that this claim has been presented to the Senate. It was first presented in 2004 (SB 26), and then again in 2005 (SB 42) and 2006 (SB 52). No Special Master hearings were held on the prior years' Senate bills. The House Special Master recommended favorable consideration of the claim, as presented in HB 235 in 2004.

OTHER ISSUES: The bill authorizes and directs payment of $1.5 million to Ms. Alvarez and $900,000 to Mr. Patnode, which is consistent with the allocation of damages by the jury and the final judgment. However, the proceeds received to date -- the $35,000 settlement with Martin Memorial Hospital and the $200,000 partial satisfaction of the judgment by the Clinic -- have been split equally between Ms. Alvarez and Mr. Patnode after payment of attorney's fees and costs.

RECOMMENDATIONS: For the reasons set forth above, I recommend that SB 46 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Dave Aronberg
Faye Blanton, Secretary of the Senate
House Claims Committee

841848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 79 - 80
and insert:
Nicholas Patnode. The total amount paid for attorney fees relating to

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 7 - 8

841848

and insert:

providing a limitation on the payment of attorney fees; providing an effective date.

Florida Senate

Senator José Javier Rodríguez

District 37

DISTRICT OFFICE:
2100 Coral Way, Suite 505
Miami, Florida 33145-2657
Phone: (305) 854-0365
Fax: (305) 854-0367

TALLAHASSEE OFFICE:
220 Senate Office Building
402 South Monroe Street
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STAFF:
Chris Hudtwalcker
Legislative Aide

Laura Jimenez
Legislative Aide

Luisana Perez
District Aide

COMMITTEES:
Commerce & Tourism

Ethics & Elections

Community Affairs

SUBCOMMITTEES:
Appropriations Subcommittee on Finance & Tax

Appropriations Subcommittee on General Government

March 24th, 2017

Chairman Greg Steube
Judiciary Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to steube.greg@flsenate.gov

Chairman Steube,

I respectfully request that you place SB 310 relating to Relief of Cristina Alvarez and George Patnode by the Department of Health and SB 316 relating to Relief of Vonshelle Brothers/Brevard County Health Department on the agenda of the Judiciary Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

Senator José Javier Rodríguez
District 37

CC:
Tom Cubula, Staff Director
Joyce Butler, Administrative Assistant
Elizabeth Bolles, Legislative Assistant to Senator Stuebe
Rita Faulkner, Legislative Assistant to Senator Stuebe

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

SB 310
Bill Number (if applicable)

Topic Claims Bill.

Amendment Barcode (if applicable)

Name Vanessa Brice

Job Title Attorney for Cristina Alvarez / George Patnode.

Address 801 N. Orange Ave Ste 830
Street

Phone 407-712-7300

Orlando FL 32801
City *State* *Zip*

Email vbrice@theflorida firm.com

Speaking: ☑ For ☐ Against ☐ Information

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

If any questions - otherwise waive in support.

Representing Cristina Alvarez & George Patnode.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
3/29/17	SM	Unfavorable
4/04/17	JU	**Favorable**
	CA	
	RC	

March 29, 2017

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

Re: **SB 314** – Senator Gary M. Farmer, Jr.
HB 6545 – Representative Jake Raburn
Relief of Jerry Cunningham by Broward County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR $550,000, IN LOCAL FUNDS, AGAINST BROWARD COUNTY FOR AN INCIDENT INVOLVING ONE OF ITS BUSES AND THE CLAIMANT, JERRY CUNNINGHAM. THE UNDERLYING SETTLEMENT IS FOR $850,000, OF WHICH THE COUNTY HAS PAID $300,000, AS PERMITTED BY LAW.

FINDINGS OF FACT:

On the morning of May 10, 2013, the Claimant and his mother walked to a Broward County Transit bus stop. The Claimant, who was 14 years old at the time, was on his way to school. On that morning, he grasped a moving Broward County Transit bus and attempted to run alongside it. Upon losing his grip and his footing, the Claimant fell to the pavement, incurring severe injuries.

Transit Bus Surveillance Video

The Claimant's counsel presented video from the bus. This video begins several minutes before the accident and continues for several minutes after the accident. The video featured an indication of the bus's speed at each moment of the footage. And it was shot from eight different camera angles simultaneously. For example, one camera was above the head of the driver, Reinaldo Soto, pointed toward the door.

Another camera was on the outside of the side of the bus opposite the driver's side, perhaps on the rear half of the bus, pointed toward the front. This video sufficiently supports the following findings of fact.

On the morning of the incident, the bus approached a stop where two women were waiting for the bus, but the Claimant was not waiting at the bus stop with them. As the bus came to a stop, one or more passengers alerted Mr. Soto that there were "runners coming." The two women safely and uneventfully entered the bus upon its arrival at the bus stop. Upon entering, the women remained at the front of the bus, as least far forward as Mr. Soto. While the women remained there, and just after the doors had begun to close, the Claimant came to the exterior of the front doors of the bus.

At the same time, the bus was just starting to ease away from the stop at 2 miles per hour. Within 3 seconds of the Claimant arriving at the front doors, and within 4 seconds of the bus beginning to ease away from the stop, the doors appear to have fully closed, and the bus had reached 6-10 miles per hour. And as for the operation or mechanics of the doors, they came together from opposite sides, meeting in the middle of the doorway, as they appear designed to do.

As the bus left the stop, the Claimant walked, then jogged, and then ran alongside the bus, with his right arm reaching across his body and his right hand making constant contact with the bus. With his left hand, the Claimant tapped on the door.

Then, with the doors closed, the bus increased its speed. It traveled at 16-19 miles per hour for several seconds, with the Claimant still running alongside of it, perhaps aided by the power of the bus.[1] At one point, and before the fall that caused his injuries, the Claimant momentarily lost his footing, yet was able to keep from falling by hanging onto the bus.

After the bus traveled several more seconds at speeds between 16 and 19 miles per hour, the Claimant fell to the pavement, thus sustaining his injuries. The video does not

[1] At the hearing, Claimant's counsel stated that it was unreasonable to think that the Claimant could run 18 or 19 miles per hour. The Special Master does not necessarily disagree that the Claimant could not reach those speeds on his own. But the evidence showed that the Claimant's speed may have been aided by the bus as he held onto it.

include any images showing that the Claimant's arm, wrist, or hand were trapped between the doors of the bus.[2, 3]

Within 5 seconds after the Claimant fell, and as passengers screamed, Mr. Soto stopped the bus.

Injuries

As a result of the accident, the Claimant incurred multiple injuries. He suffered a traumatic brain injury, skull fractures, facial fractures, rib fractures, a right clavicle fracture, a right scapular fracture, a right pulmonary contusion, and a left medial malleolus fracture.

The Claimant's Hand, Arm, or Wrist Was Not Trapped

An essential factual component of the Claimant's claim is that his hand, arm, or wrist was trapped in the bus's door. However, the preponderance of the evidence shows that the Claimant's hand, arm, or wrist was not caught in the door of the bus. Rather, the Claimant placed his hand on or in between the doors of the moving bus, and then attempted to run alongside it until he lost both his grip and his footing. At that point, he hit the ground and sustained his injuries. The following evidence was weighed in making these findings of fact.

Detective Michael Kelliher

Detective Michael Kelliher of the Traffic Homicide Unit of the Broward County Sheriff's Office investigated the accident. Det. Kelliher determined that the door of the bus could not have trapped the Claimant's arm, wrist, or hand. Instead, Det. Kelliher believed that the Claimant grabbed the door and held on as he attempted to run alongside the bus.

Det. Kelliher conducted several controlled exercises with the bus involved in the accident. One exercise involved a Detective DeJesus, who was approximately the size that the Claimant was at the time. Det. DeJesus placed his forearm

[2] The Claimant's attorney presented an audio recording of an interview by his investigator of the passenger sitting closest to the door, Brian Clark. During this recording, the *interviewer* states: "But at that point Jerry had [inaudible] reached for the bus and was already caught with his hand, hand [sic] in the door." Mr. Clark then said, "Yes." The interviewer quickly moved on. The witness's statement has little probative value for several reasons. First, the statement was not given under oath or subject to cross-examination. Secondly, the witness's "yes" answer was in response to a compound, leading question. Finally, the witness never explained what he saw that led him to conclude that the Claimant's hand was caught.

[3] The Claimant stated he has no memory of the incident.

through the open front doorway, and the doors were closed. Upon closing the doors, the 4-inch rubber safety guards (or "flaps") on the doors formed around Det. DeJesus's arm, which was in "no way constrained" by the doors. And he could remove his arm "with minimal effort."

A similar exercise was conducted with a Detective Michael Wiley, who was bigger than the Claimant was at the time of the accident. Detective Wiley was able to remove his arm "without resistance from the doors."

Assistant State Attorney Alexander Fischer

The Broward County Sherriff's Office referred the case to the State Attorney's Office in Broward County for possible prosecution. Assistant State Attorney Alex Fischer conducted a legal and factual investigation under the supervision of Assistant State Attorney Peter Holden. Mr. Fischer and Assistant State Attorney David Weigel examined a bus of the same year, make, and model as the bus involved in the Claimant's accident.

Both Mr. Fischer and Mr. Weigel "freely slid" their "entire arms through the closed door of the bus." Moreover, they discovered that the rubber flaps on the two front doors closed in such a way that the more forward door's flap was on the outside of the other flap. This created a "path" through which one may pull something, such as an arm, toward the back of the bus from the outside.

Mr. Fischer concluded that the Claimant's arm or hand was not trapped or stuck. Instead, the Claimant, perhaps with his hand in the rubber flap area of the door, was voluntarily trying to keep up with the bus.

With regard to the testing by the Sherriff's Office and the State Attorney, the Claimant's attorney attempted to discredit those tests for not being performed on a moving bus. The reports describing the testing do not state whether the tests involved a moving or a stationary bus. However, even if the tests were performed only on stationary buses, it would not undermine the conclusions of these reports. Given the construction and the operation of the doors as described above, the bus's moving away from the Claimant would have made it easier, not harder, for him to remove his hand from the doors.

Transit Bus Surveillance Video

The surveillance video appears to show the Claimant voluntarily running alongside the bus. If his arm was caught in the bus's doors, one would have expected the video of the incident to show the Claimant make a jerking motion or a tugging motion in an attempt to part with the bus. But the Claimant made no such motion.

Nonetheless, argument was presented to support the contrary conclusion—namely, that the Claimant's arm was trapped in the door of the bus, and thus the Claimant was forced to attempt to run alongside the bus until he could no longer. At one point in the video, just moments before his ultimate fall, the Claimant loses his footing yet appears to keep his hand(s) on the bus and does not fall to the ground. According to the Claimant's counsel, this proves that the Claimant's arm was caught in the doors. However, this conclusion is not required.

The fact that the Claimant momentarily lost his footing and yet did not fall to the ground could be explained by him continuing to hold onto the bus's door. Moreover, if it was the Claimant's trapped arm that prevented him from falling when he momentarily lost his footing, then it is unclear how his arm suddenly became un-trapped moments later, allowing him to fall to the ground. The Claimant's attorney did not explain how the Claimant's arm could suddenly become free. A better explanation of the moment when the Claimant lost his footing is that his arm was not trapped and that he chose to hang onto the door. As such, the Claimant kept his grip during his first loss of footing but was unable to hold on when he took his ultimate fall. Alternatively, perhaps he purposefully let go of the bus, hoping he could safely part with the bus before it reached even greater speeds.

The time elapsed from when the bus left the bus stop until the Claimant fell was approximately 9 seconds.

Parties' Stipulation

The parties stipulated in this matter that the Claimant's arm was "apparently caught in the door." However, the stipulation was not supported by the evidence presented to the Special Master. And under the Senate Rules, the Special Master is not bound by the stipulation. In contrast to the stipulation, the evidence shows that the Claimant grabbed onto the bus and

could have removed his arm or hand from it with minimal force.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether Broward County is liable for the Claimant's injuries, and if so, whether the amount of the claim is reasonable.

The Claimant asserted that the bus driver, Mr. Soto, as an agent for Broward County, negligently operated the bus, causing the Claimant to incur economic and non-economic damages.

A negligence claim has four essential elements. The Claimant must prove that the Respondent owed him or her a certain *duty* of care, that the Respondent *breached* this duty, and that the breach *caused* the Claimant to incur *damages*. Thus, the four elements of negligence are often referred to in short as (1) duty, (2) breach, (3) causation, and (4) damages.

Here, the Claimant did not prove causation. That is, the Claimant did not prove that the Respondent's alleged breach of its alleged duty caused the Claimant's injuries. Instead, the preponderance of the evidence showed that the Claimant caused his own injuries. Therefore, the Claimant failed to prove his claim.

Analysis

After briefly mentioning the Claimant's allegations as to duty and breach, the analysis will move into a discussion of causation. The Special Master's ultimate conclusion rests on the determination that the Claimant did not prove that the Respondent was the legal cause of the Claimant's accident and injuries; so, the causation element is discussed in relative depth. The issue of monetary damages is not discussed because the lack of causation makes the issue of damages moot.

Duty: The Claimant's counsel asserted three theories of duty. One of these theories was that the Respondent owed the Claimant whatever duty is owed under ordinary negligence. The Claimant's counsel also argued that the Respondent owed a heightened duty of care as a "common carrier." Third, the Claimant asserted that several rules in the Florida Administrative Code constituted duties of care. So, the

argument went, where these rules required the County to do something, the County was required to do so or face possible liability. This last theory is often referred to as "negligence *per se*." Upon questioning by the Special Master, counsel for the Claimant finally disclosed that the trial court had found, as a matter of law, that the Claimant's negligence *per se* claim was invalid.

Breach: The Claimant asserted that Mr. Soto breached his duties to the Claimant by (1) easing away from the bus stop before fully closing the doors on the bus, (2) failing to check the rearview mirrors (in which he allegedly would have seen the Claimant), (3) leaving the bus stop with passengers at the front of the bus (ahead of the "standee line"), and (4) not stopping the bus when passenger's alerted him that someone was outside the bus. As such, to prove the causation element of negligence, the Claimant needed to prove that one or more of these actions/inactions caused his injuries.

Causation: The type of causation required to sustain a negligence claim is referred to as "proximate" causation, which has two necessary elements. In short, these elements are referred to as cause-in-fact and foreseeability. Specifically, the Claimant must show (1) that the Respondent's breach in fact caused his injuries, and (2) that the accident that resulted from the Respondent's breach was a reasonably foreseeable result of the Respondent's conduct. *Coker v. Wal-Mart Stores, Inc.*, 642 So. 2d 774 (Fla. 1st DCA 1994).

The second element—foreseeability—is itself comprised of three standards set forth in case law, each of which must be met for a claimant to prove his or her case. Accordingly, causation is outlined in terms of its elements as follows:

1. Cause-in-fact.
2. Foreseeability.
    a. Natural and Probable Consequences Standard.
    b. Scope of Danger Standard.
    c. Remote Consequences Standard.

In sum, if a claimant fails to prove any of the above elements or standards, his or her claim fails. As explained below, the Claimant failed to prove (at least) the foreseeability element of causation, because he failed to prove that his claim met (at least) the first two standards of foreseeability.

The "natural and probable consequences standard" has been explained by the Florida Supreme Court as follows:

> "Natural and probable" consequences are those which a person by prudent human foresight can be expected to anticipate as *likely* to result from an act, *because they happen so frequently from commission of such act that in the field of human experience they may be expected to happen again*. "Possible" consequences [on the other hand] are those which happen to so infrequently from the commission of a particular act, that in the field of human experience, they are not expected as likely to happen again from the commission of the same act.

Cone v. Inter County Tel. and Tel. Co., 40 So. 2d 148, 149 (Fla. 1949) (Emphasis added). However, "it is immaterial that the [Respondent] could not foresee the *precise* manner in which the injury occurred or its *exact* extent." *McCain v. Florida Power Corp*., 593 So .2d 500 (1992) (emphasis in the original).

Here, the Claimant's accident was not a natural and probable consequence of Mr. Soto's alleged negligence. A person, "by prudent human foresight," would not think it *likely* that Mr. Soto's alleged breaches of his alleged duty would result in a young man, grabbing the door of the moving bus and holding onto it while the bus picked up considerable speed.

The second foreseeability standard is the scope of danger standard. Under this standard, it is not necessary that a respondent foresee the exact course of events that led to an accident, but "it must be shown that the … general-type accident was a reasonably foreseeable consequence of the [respondent's] negligence." *Tieder v. Little*, 502 So. 2d 923, 926 (Fla. 3d DCA 1987).

Here, the general-type accident that occurred was clearly not a reasonably foreseeable consequence of any of the Respondent's allegedly wrongful conduct. Rather, it was a totally unforeseeable type of accident.

The third standard that comprises the foreseeability component of proximate causation is the remote consequences standard. However, because the Claimant's

case failed to meet the first two standards, whether the Claimant met this standard is irrelevant.
In sum, the Claimant failed to meet the foreseeability element of causation. Therefore, the Claimant failed to prove the causation element of negligence, an essential element of his negligence claim.

ATTORNEY'S FEES: Section 768.28(8), F.S., limits the Claimant's attorney's fees to 25 percent of the Claimant's total recovery by way of any judgment or settlement. The Claimant's attorney and lobbyist submitted separate affidavits stating that, in the aggregate, the Claimant's attorney and lobbyist would receive no more than 25 percent of the amount awarded by this bill. Further, the affidavits stated that the Claimant, Jerry Cunningham, would receive 75 percent of any amount awarded under this bill.

RECOMMENDATIONS: Based on the foregoing, I recommend that Senate Bill 314 (2017) be reported UNFAVORABLY.

Respectfully submitted,

Adam Stallard
Senate Special Master

cc: Secretary of the Senate

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Banking and Insurance
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.
34th District

March 27, 2017

Chair Steube,
Judiciary Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Steube.Greg@flsenate.gov

Chair Steube,

I respectfully request that you place SB 314 relating to the relief of Jerry Cunningham on the agenda of the Judiciary Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

Senator Gary Farmer
District 34

CC:
Thomas Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant
Alex Blair, Legislative Assistant to Senator Steube
Elizabeth Bolles, Legislative Assistant to Senator Steube
Rita Faulkner, Legislative Assistant to Senator Steube

REPLY TO:
☐ Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
☐ 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 802
INTRODUCER:	Judiciary Committee and Senator Passidomo
SUBJECT:	Regulated Professions and Occupations
DATE:	April 6, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Favorable**
2.	Stallard	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 802 reduces or eliminates the licensing and registration requirements for several occupations and professions, and otherwise reduces the role of the Department of Business and Professional Regulation (DBPR or Department) in regulating several of these, while maintaining and sometimes creating civil causes of action or criminal liability for wrongdoing by practitioners in these industries. More specifically, the bill eliminates:

- The requirement to have a license for each yacht or ship broker office;
- Required registration for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties;
- Licensure requirements for talent agencies and the Department's regulation of talent agencies, yet maintains many statutory regulations remain, including criminal penalties for most prohibited acts or omissions provided in current law;
- The requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license, yet increases accountability of asbestos contractors for the actions of their businesses;
- Required licensure or registration for hair braiders, hair wrappers, and body wrappers; and
- The requirement that landscape architects, architects, or interior designers obtain a separate business license in addition to individual license.

Additionally, the bill modifies the existing two-tiered barbering licensure for "barbers" and "restricted barbers." Under the bill, restricted barbers are licensed to do most things that a barber

may do under current law, with the exception of applying oils, creams, lotions, or other preparations to the face, neck or scalp.

II. Present Situation:

The present situation relative to each section of the bill will be discussed in the Effect of Proposed Changes section of this bill analysis. But before proceeding to the Present Situation and Effect of Proposed Changes relative to each section of the bill, the following brief background information on the Department of Business and Professional Regulation (DBPR or Department) is presented to provide context for the discussion of the bill.

Background

Organization of the Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of DBPR, which has the following 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

Within several of these divisions, there exists one or more boards or programs, of which there are fifteen in total.[1] For example, two boards are within the Division of Real Estate,[2] and one board exists in the Division of Certified Public Accounting.[3]

[1] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

[2] *See* s. 20.165(4)(b), F.S., (establishing the Florida Real Estate Appraisal Board and the Florida Real Estate Commission).

[3] *See* s. 20.165(4)(c), F.S., (establishing the Board of Accountancy).

The Florida State Boxing Commission is assigned to DBPR for administrative and fiscal accountability purposes only.[4] DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.[5]

Powers and Duties of the Department

Chapter 455, F.S., sets forth the general powers of DBPR as to the regulation of "profession[s]." And professions are defined as "any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation." This Chapter also sets forth the procedural and administrative framework for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation, and all of the professional boards within DBPR.[6]

The Department's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[7] And this regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[8]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[9]

Permitting, Registration, Licensing, and Certification

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the Department must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[10]

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "license," which may be referred to in different instances as a permit, registration, certificate, or license.[11] And those who are granted any of these licenses are referred to as licensees.[12]

[4] Section 548.003(1), F.S.
[5] *See* Parts I and III of ch. 450, F.S
[6] *See* s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. *See* s. 455.221(1), F.S.
[7] Section 455.201(2), F.S.
[8] *Id.*
[9] Section 455.201(4)(b), F.S.
[10] Section 455.219(1), F.S.
[11] Section 455.01(4), F.S.
[12] Section 455.01(5), F.S.

In Fiscal Year 2015-2016, there were 39,216 people licensed by the Division of Accountancy, 349,668 people licensed by the Division of Real Estate, and 61,396 people licensed by the Board of Professional Engineers.[13] In Fiscal Year 2015-2016, there were 434,001 people licensed by the Division of Professions,[14] including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.[15]

The Department's Division of Florida Condominiums, Timeshares, and Mobile Homes provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[16] This Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction is limited to arbitration of election and recall disputes).[17]

[13] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2015-2016*, page 21, http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf, (last visited Apr. 1, 2017).
[14] Of the total 415,207 licensees in the Division of Professions, 23,183 are inactive. *Id*. at page 22.
[15] *Id*. at pages 21-22.
[16] Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/dbpr/lsc/index.html (last visited Apr. 1, 2017).
[17] *Id*.

III. Effect of Proposed Changes:

Yacht and Ship Broker Branch Office Licenses

Present Situation:

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker's Section is a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation (DBPR or Department). This Section processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.[18]

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.[19] Each yacht or ship broker must maintain a principal place of business in Florida and may establish branch offices in Florida. A separate license must be maintained for each branch office."[20]

Applicants for a branch office license and renewal pay a $100 fee; licenses must be renewed every two years.[21] A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection requirements.

Effect of Proposed Changes:

Section 2 of the bill amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers in addition to a license for the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license.

Labor Organizations

Present Situation:

Chapter 447, F.S., governs the licensing and regulation of labor organizations and related business agents in the state. The Department's Division of Regulation oversees the licensing and regulation of labor organizations. In addition to issuing licenses, this Division responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of

[18] *See* Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html (last visited Apr. 1, 2017).
[19] Section 326.004(1), F.S.
[20] Section 326.004(13), F.S.
[21] Rule 61B-60.002, F.A.C.

pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state."[22]

In Florida, all labor organizations are required to register with the Department and all business agents of labor organizations must obtain a license.[23] Business agents are defined as "[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or
- Soliciting or receiving from any employer any right or privilege for employees."[24]

Applicants for a business agent license must pay a $25 fee for licensure and must meet a number of licensure requirements.[25] A labor organization must register with the Department annually and pay a fee of $1.[26]

Effect of Proposed Changes:

Sections 3 through 10 of the bill amend Part I of ch. 447, F.S., eliminating the registration scheme relating to labor organizations and the licensing scheme relating to business agents. However, civil causes of action and criminal penalties for wrongdoing by labor organizations and business agents remain, as do provisions relating to the right to work and strike, recordkeeping requirements, and rights of franchise for labor organizations.

Talent Agencies

Present Situation:

Chapter 468, Part VII, F.S., governs the licensing and regulation of talent agencies. The Department's Division of Professions oversees the licensing and regulation of talent agencies. The Division of Professions processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the talent agency industry.

Individuals are prohibited from owning, operating, soliciting business, or otherwise engaging in or carrying on the occupation of a talent agency in this state unless the person first obtains licensure for the talent agency.[27] A talent agency is defined as "[a]ny person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist."[28]

To qualify for a talent agency license, each person designated in the application must be of good moral character[29] and the application must show whether the agency, any person, or any owner

[22] Section 447.02(1), F.S.
[23] Section 447.04(2), F.S.
[24] Section 447.02(2), F.S.
[25] Section 447.04(2), F.S.
[26] Section 447.06(2), F.S.
[27] Section 468.403(1), F.S.
[28] Section 468.401, F.S.
[29] "Good moral character" means "a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation." Section 468.433(2)(a), F.S.

of the agency is financially interested in any other business of like nature, and if so, must specify the interests.[30]

At the time of application, applicants for a talent agency license must pay an application fee of $300, an unlicensed activity fee of $5, and an initial licensure fee of $200 if licensed after March 31 of any odd numbered year; otherwise, the initial license fee is $400. Talent agency licensees must pay a biennial renewal fee of $400.[31]

Licensed talent agencies are required to:
- File an itemized schedule of maximum fees, charges, and commissions it intends to charge and collect for its services;[32]
- Pay to the artist all money collected from an employer for the benefit of an artist within 5 business days after receipt of the money;[33]
- Display a copy of the license conspicuously in the place of business;[34]
- File a bond with DBPR in the form of a surety for the penal sum of $5,000, which may be drawn upon if a person is aggrieved by the misconduct of the talent agency;[35]
- Maintain records including the application, registration, or contract of each artist, with additional information;[36]
- Provide a copy of the contract to the artist within 24 hours after the contract's execution;[37] and
- Abstain from the prohibited acts listed in s. 468.412, F.S.

Licensed talent agencies are prohibited from:
- Charging the artist a registration fee;[38]and
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, and advertisement, résumé service, photography service, school, acting school, workshop, or acting workshop.[39]

Talent agents are prohibited from engaging in sexual misconduct, meaning using the talent agent's position to induce or attempt to induce sexual activity.[40]

The following acts are third degree felonies,[41] punishable by up to 5 years in prison,[42] 5 years of probation, and a fine not to exceed $5,000:[43, 44]

[30] Section 468.405, F.S.
[31] Rule 61-19.005, F.A.C.
[32] Section 468.406(1), F.S.
[33] Section 468.406(2), F.S.
[34] Section 468.407(2), F.S.
[35] Section 468.408, F.S.
[36] Section 468.409, F.S.
[37] Section 468.410(3), F.S.
[38] Section 468.410(1), F.S.
[39] Section 468.410(2), F.S.
[40] Section 468.415, F.S.
[41] Section 810.08(2)(c), F.S.
[42] Section 775.082(3)(e), F.S.
[43] Section 775.083(1)(c), F.S.
[44] Section 468.413(1), F.S.

- Operating a talent agency without a license; or
- Obtaining a license through misrepresentation.

The following act or omissions are second degree misdemeanors, punishable by 60 days in jail and a fine not to exceed $500.[45]

- Assigning a license to another individual;
- Relocating a talent agency without notifying DBPR;
- Failing to provide information on an application regarding related businesses;
- Failing to maintain records;
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop;
- Failing to provide a copy of the contract to the artist;
- Failing to maintain a record sheet; and
- Knowingly sending an artist to an employer the licensee knows to be in violation of the laws of Florida or of the United States.

According to the Department, only three disciplinary orders were issued against talent agencies in recent years; two involved minor violations for failure to include the talent agency's license number in advertisements. The financial account of the licensing program has been in a perpetual deficit since the enactment of legislation authorizing talent agency licensure in 1986.[46]

Effect of Proposed Changes:

Sections 11 through 24 of the bill amend Part VII of ch. 468, F.S., eliminating all required licensure of talent agencies and the Department's regulation of talent agencies. However, many statutory regulations remain, including criminal penalties for most prohibited acts or omissions provided in current law, except those relating to licensure. Also, sexual misconduct is still prohibited, and one who violates the prohibition is still theoretically barred from ever again[47] acting as an agent, owner, or operator of a talent agency. Lastly, contract and notice requirements related to talent agents are retained.

Asbestos Abatement Business Organization

Present Situation:

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement. The Asbestos Licensing Unit is a program located under the Division of Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

[45] *See* ss. 468.413(2), 775.082(4)(b), and 775.083(1)(e), F.S.
[46] *See 2016 Legislative Bill Analysis for Senate Bill 1050 (2016)* by the Florida Department of Business and Professional Regulation, page 2 (Dec 16, 2015) (on file with Senate Committee on Judiciary).
[47] It is unclear what effect this provision has under the bill, given that the bill does not make this a crime and does not specify how someone is found to be guilty of this wrongdoing. Moreover, it is unclear who would enforce this provision.

As a general matter, a person must be a licensed asbestos contractor in order to conduct asbestos abatement work.[48]

And a person must be a licensed asbestos consultant to:
- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.[49]

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, and active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.[50]

If an applicant for licensure as an asbestos consultant or contractor intends to engage in consulting or contracting as a business organization, such as a corporation, or in any name other than the applicant's legal name, the business organization must be licensed separately as an asbestos abatement business. Each licensed business organization must have a qualifying agent who is licensed under ch. 469, F.S.,[51] is qualified to supervise the enterprise, and is financially responsible. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination, and the business organization may not engage in the practice of asbestos abatement until it is qualified.

Applicants for an asbestos abatement business license pay an application fee of $300, an unlicensed activity fee of $5, an initial licensure fee of $250, and a biennial renewal fee of $250.[52] A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection.

Effect of Proposed Changes:

Sections 25 and 26 of the bill amend ch. 469, F.S., to remove the requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license. Nonetheless, asbestos abatement contractors must qualify the business organizations they supervise and they are liable for the actions of those businesses. Asbestos abatement contractors must inform the Department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos abatement contractor to serve as qualifying agent.

[48] Section 469.003(3), F.S.
[49] Section 469.003, F.S.
[50] Section 469.004(1), F.S.
[51] Section 469.006, F.S.
[52] Rule 61E1-3.001, F.A.C.

Barbering

Present Situation:

The term "barbering" used in ss. 476.014 through 476.254, F.S, the Barbers' Act, includes any of the following practices when done for payment by the public:[53] shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.[54]

If a person wants to be licensed as a barber, he or she must pass an examination. However, to be eligible to take the examination, a person must be at least 16 years of age, pay the application fee, and either have been licensed in another state for at least 1 year or have 1,200 hours of specified training.[55] However, the Barber Board is authorized to establish by rule a procedure for a barber school or program to certify a person to take the licensure examination following completion of a minimum of 1,000 hours of training and for the licensure of such person who passes the examination.[56] Alternatively, a person may apply for and receive a restricted barbering license, which does not necessarily require as much training and authorizes the licensee to practice only in areas in which he or she has demonstrated competency.[57]

Effect of Proposed Changes:

Sections 27 and 28 of the bill amend ss. 476.034 and 476.114, F.S., to modify the existing two-tiered barbering licensure for barbers and "restricted barbers." Restricted barbers are licensed to do most things that a barber may do under current law, except applying oils, creams, lotions, or other preparations to the face, neck or scalp. And the prerequisite education for one to take the examination to become a restricted barber is 1,000 hours.

Nail and Facial Specialists, Hair Braiders; Hair Wrappers, and Body Wrappers

Present Situation:

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology, within the Department's Division of Professions, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.

[53] But not when done for the treatment of disease or physical or mental ailments.
[54] Section 476.034(2), F.S.
[55] *See* s. 476.114(2), F.S.
[56] Section 476.114(2), F.S.
[57] Section 476.144(6), F.S.

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."[58] The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."[59]

The term "cosmetologist" is defined as "a person who is licensed to engage in the practice of cosmetology . . . ."[60] "Cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."[61]

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.[62] All cosmetology and specialty salons are subject to inspection by DBPR.[63]

To qualify for a specialist license, the applicant must be at least 16 years old, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with DBPR with the registration fee.[64]

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least 1 year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.[65]

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist. DBPR does not have a separate license for polishing nails.

[58] Section 477.013(5), F.S.
[59] Section 477.013(6), F.S.
[60] Section 477.013(3), F.S.
[61] Section 477.013(4), F.S.
[62] Section 477.0263, F.S.
[63] Section 477.025, F.S.
[64] Section 477.0201, F.S.
[65] Section 477.019(2), F.S.

Effect of Proposed Changes:

Section 29 of the bill amends s. 477.013, F.S. to specify the activities that constitute the practice of a "nail specialty," a "facial specialty," and a "full specialty." A nail specialty, includes:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands, including any procedure for the affixing of artificial nails, except those that are affixed solely by a simple adhesive; and
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

A facial specialty includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services. A full specialty includes all manicuring, pedicuring, and facial services.

Section 30 of the bill repeals s. 477.0132, F.S., eliminating registration requirements for hair braiding, hair wrapping, and body wrapping.

Sections 31 and 32 of the bill amend ss. 477.0135 and 477.019, F.S., to eliminate licensure or registration for a person whose occupation or practice is confined solely to hair braiding, to hair wrapping, or to body wrapping, and to exempt these persons from certain continuing education requirements.

Section 33 of the bill deletes s. 477.026(1)(f), F.S, eliminating the registration fee for hair braiders, hair wrappers, and body wrappers.

Architecture Business or Interior Design Organization

Present Situation:

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design exists under the Department's Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

"The practice of or the offer to practice architecture or interior design by licensees through a corporation, limited liability company, or partnership offering architectural or interior design services to the public, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of [ch. 481, Part I, F.S.]."[66] An architecture or interior design business corporation, limited liability company, or partnership, which is offering architecture or interior design service to the public, must obtain a certificate of authorization prior to practicing.[67]

[66] Section 481.219(1), F.S.
[67] Section 481.219(2)-(3), F.S.

Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of $100, an unlicensed activity fee of $5, and a biennial renewal fee of $125.[68] A business entity has no regulatory obligations other than to obtain licensure.

According to DBPR, in recent years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.[69]

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in recent years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.[70]

Effect of Proposed Changes:

Sections 34 through 43 of the bill amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The bill provides that architects and interior designers qualify their business organizations with their individual licenses. The bill provides that architects and interior designers must inform DBPR of any change in their relationship with the qualified business, and the business has 60 days to obtain a replacement qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) "has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied."

Landscape Architecture Business Organization

Present Situation:

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture, a board located within the Division of Professions, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A person may not knowingly practice landscape architecture unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.[71] A corporation or partnership is permitted to

[68] Rules 61G1-17.001 and 61G1-17.002, F.A.C.
[69] *Id.*at 5.
[70] *Id.*
[71] Section 481.323(1)(a), F.S.

offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.[72]

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of $450, an unlicensed activity fee of $5, and a biennial, renewal fee of $337.50.[73] A business entity has no regulatory obligations other than to obtain licensure.

Effect of Proposed Changes:

Sections 38 through 43 of the bill amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and that they will be liable for the actions of the business organizations they qualify.

The bill repeals Department's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the bill repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm.

The bill provides that a corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect; and
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

Under the bill, landscape architects must inform DBPR of any change in their relationship with the qualified business, and the business has 1 month to obtain another qualifying landscape architect. According to DBPR, the Board of Landscape Architecture and Design issued no disciplinary orders against landscape architecture businesses during the 3 previous fiscal years.[74]

[72] Section 481.319(1), F.S.
[73] Rule 61G10-12.002, F.A.C.
[74] *Id.*

State Boxing Commission

Present Situation:

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Department's Florida State Boxing Commission.

The Commission has exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches.[75] Professional matches held in this state must meet the requirements for holding the match set forth in ch. 548, F.S., and must accord with the rules adopted by the Commission.

However, as to amateur matches, the Commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in this state.[76] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[77] This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Under current law, certain persons providing certain services related to professional and amateur boxing, kickboxing, and mixed martial arts must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.[78]

Effect of Proposed Changes:

Section 44 of the bill amends s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match.[79]

Effective Date

The bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[75] Section 548.006(3), F.S.
[76] *Id*.
[77] Section 548.002(2), F.S.
[78] Section 548.017, F.S.
[79] Section 45 conforms s. 548.003(2)(i), F.S., to the substantive change made in section 44.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals requirements for criminal history record checks for talent agents. The Department of Law Enforcement estimates an annual revenue loss of $1,824 on account of approximately 76 records checks that produce $24 each in fees payable to the state.[80]

B. Private Sector Impact:

The bill repeals requirements for criminal history record checks for talent agents, who will no longer be required to pay for and obtain these records checks.

According to the DBPR's analysis of the bill before it was amended by the Judiciary Committee, the bill would have resulted in a reduction of licensing fees, fees for renewal of licenses, and unlicensed activity fees paid by the private sector of approximately $971,003 in Fiscal Year 2017-2018, $1,123,148 in Fiscal Year 2018-2019, and $970,828 in Fiscal Year 2019-2020.[81] However, the amendment restores licensing requirements for the auctioneering and geology industries, and thus the lost revenues indicated above will be reduced by an unknown amount.

DBPR's Division of Condominiums (Yacht and Ship Brokers) estimates that the bill will result in a reduction of license and license renewal fees to be paid by the private sector of approximately $4,300 in Fiscal Year 2017-2018, $4,300 in Fiscal Year 2018-2019, and $4,300 in Fiscal Year 2019-2020.[82]

DBPR estimates that the bill will result in a reduction of the private sector's fees for licensing and renewal of licensing to be paid to the Florida State Boxing Commission of approximately $1,000 in Fiscal Year 2017-2018, $1,000 in Fiscal Year 2018-2019, and $1,000 in Fiscal Year 2019-2020.[83]

C. Government Sector Impact:

In short, DBPR anticipated a reduction in the state government's revenue over the next 3 fiscal years of $3,080,878. Also, as to the state government's expenditures in this same timeframe, DBPR estimated $246,470 less going to General Revenue by way of the 8%

[80] Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis (SB 802)*, page 3. (Feb. 15, 2017) (on file with the Senate Committee Judiciary).
[81] Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).
[82] *Id*. at page 10.
[83] *Id*.

service charge that would have had to be paid from the $3,080,878 in collected fees.[84, 85] The following chart displays these impacts in greater detail. [86] However, both the revenue and expenditure figures do not reflect changes made by an amendment adopted in the Judiciary Committee which restores the current law's licensing scheme as to two industries—auctioneering and geological services. Both industries fall under the Division of Professions.

	FY 2017-2018	FY 2018-2019	FY 2019-2020
Revenues: License fees and Unlicensed Activity Fees	Condominiums (Yacht and Ship Brokers) ($4,300) Professions ($971,003) Boxing Commission ($1,000)	Condominiums (Yacht and Ship Brokers) ($4,300) Professions ($1,123,148) Boxing Commission ($1,000)	Condominiums (Yacht and Ship Brokers) ($4,300) Professions ($970,828) Boxing Commission ($1,000)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) ($344) Professions ($77,680) Boxing Commission ($80)	Condominiums (Yacht and Ship Brokers) ($344) Professions ($89,852) Boxing Commission ($80)	Condominiums (Yacht and Ship Brokers) ($344) Professions ($77,666) Boxing Commission ($80)

Apparently, the bill will effectively cause the funding account of the DBPR's Talent Agencies' Board, which often has negative balances, to close. The fees that fund this account will no longer be charged. This account has been borrowing from better-funded accounts.[87] It is unclear whether this borrowing arrangement was beneficial for the borrowed-from accounts, and therefore for DPBR as a whole.

VI. Technical Deficiencies:

CS/SB 802 amends s. 476.114, F.S., in a way that appears to create a license to practice "restricted barbering" that is different than the "restricted license to practice barbering" set forth in s. 476.144(6), F.S. Accordingly, if the bill takes effect, it appears that Florida law will authorize two different types of restricted barbering licenses and these licenses will have similar names but will grant different levels of authority to practice restricted barbering. To eliminate the potential for confusion, the Legislature may wish to specify different names for these restricted licenses. Alternatively, the Legislature may wish to make clarifying changes to the bill and existing law to ensure that a person who receives a restricted barbering license under s. 476.114(3), F.S., or s. 476.144(6), F.S., will have the same authority to practice restricted barbering.

[84] *Id*. at page 7.
[85] $246,470 is 8% of $3,080,878.
[86] Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).
[87] *Id*. at pages 9-10.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 287.055, 326.004, 447.02, 447.09, 468.401, 468.406, 468.408, 468.409, 468.410, 468.412, 468.413, 468.415, 469.006, 469.009, 476.034, 476.114, 477.013, 477.0135, 477.019, 477.026, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 468.402, 468.403, 468.404, 468.405, 468.407, 468.414, and 477.0132.

IX. Additional Information:

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

CS by Judiciary on April 4, 2017:
The committee substitute restores current law's requirement that a firm, corporation, or partnership that offers geological services to the public must first obtain a certificate of authorization from DBPR.

The bill would have lowered the number of hours of training a person must complete before taking the examination to become a barber by at least 200, but the committee substitute restores the training requirements in current law. The committee substitute also increases the required training before one may sit for the examination for "restricted barbering" licensure from 525 hours under the bill to 1,000 hours.

The committee substitute restores current law regarding licensing and regulation of auctioneers and auction businesses and restores the provisions creating and regulating the Auctioneer Recovery Fund. The recovery fund is used to reimburse persons who have lost money as a result of an auctioneer's or auction business's wrongdoing.

B. Amendments:

None.

117238

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
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The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Before line 186
insert:
Section 1. Paragraph (h) of subsection (2) of section 287.055, Florida Statutes, is amended to read:
287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited;

117238

penalties.—

(2) DEFINITIONS.—For purposes of this section:

(h) A "design-build firm" means a partnership, corporation, or other legal entity that:

1. Is certified under s. 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

2. Is certified under s. 471.023 to practice or to offer to practice engineering; qualified ~~certified~~ under s. 481.219 to practice or to offer to practice architecture; or qualified ~~certified~~ under s. 481.319 to practice or to offer to practice landscape architecture.

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

And the title is amended as follows:

Delete line 3

and insert:

occupations; amending s. 287.055, F.S.; redefining the term "design-build firm"; amending s. 326.004, F.S.; deleting a

934118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
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The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 215 - 458.

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

And the title is amended as follows:

Delete lines 17 - 51

and insert:

468.401,

689094

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2017	.	
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The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 464 - 465
and insert:
compensation, primarily engages in the occupation or business of procuring or attempting to procure engagements for an artist with a third party. The term does not include any person who only incidentally procures or attempts to procure such engagements.

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

689094

And the title is amended as follows:

Delete line 52

and insert:

F.S.; redefining the term "talent agency"; deleting the definitions of the terms

224638

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
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The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 953 - 1143

and insert:

Section 47. Present subsection (3) of section 476.114, Florida Statutes, is redesignated as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

476.114 Examination; prerequisites.—

(3) An applicant is eligible for licensure by examination to practice restricted barbering if he or she:

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(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c)1. Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or

2. Has received a minimum of 1,000 hours of training as established by the board, which must include, but is not limited to, the equivalent of completion of services directly related to the practice of restricted barbering at one of the following:

a. A school of barbering licensed pursuant to chapter 1005;

b. A barbering program within the public school system; or

c. A government-operated barbering program in this state.

(4) ~~(3)~~ An applicant who meets the requirements set forth in subparagraphs (2)(c)1. and 2. or subparagraphs (3)(c)1. and 2. who fails to pass the examination may take subsequent examinations as many times as necessary to pass, except that the board may specify by rule reasonable timeframes for rescheduling the examination and additional training requirements for applicants who, after the third attempt, fail to pass the examination. Prior to reexamination, the applicant must file the appropriate form and pay the reexamination fee as required by rule.

Section 48. Subsection (6) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(6) "Specialty" means the practice of one or more of the following:

(a) Nail specialty, which includes:

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1. Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive; and.

2. ~~(b)~~ Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

(b) ~~(c)~~ Facial specialty, which includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.

(c) Full specialty, which includes manicuring, pedicuring, and facial services, including all services as described in paragraphs (a) and (b).

Section 49. Section 477.0132, Florida Statutes, is repealed.

Section 50. Subsections (7), (8), and (9) are added to section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

(7) A license or registration is not required for a person whose occupation or practice is confined solely to hair braiding as defined in s. 477.013(9).

(8) A license or registration is not required for a person whose occupation or practice is confined solely to hair wrapping as defined in s. 477.013(10).

(9) A license or registration is not required for a person whose occupation or practice is confined solely to body wrapping as defined in s. 477.013(12).

Section 51. Paragraph (b) of subsection (7) of section

224638

477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(7)

~~(b) Any person whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping is exempt from the continuing education requirements of this subsection.~~

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

And the title is amended as follows:

Delete lines 105 - 124

and insert:

s. 476.114, F.S.; providing requirements for licensure by examination to practice restricted barbering; conforming a provision to changes made by the act; amending s. 477.013, F.S.; revising the definition of the term "specialty"; repealing s. 477.0132, F.S., relating to hair braiding, hair wrapping, and body wrapping registration; amending s. 477.0135, F.S.; exempting from certain licensure and registration requirements persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping; amending s. 477.019, F.S.; deleting an exemption from certain continuing education requirements for persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping; amending s. 477.026, F.S.;

580074

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
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The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1541 - 1672.

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

And the title is amended as follows:

Delete lines 170 - 177

and insert:

conforming a cross-reference;

By Senator Passidomo

28-00505-17 2017802__

A bill to be entitled

An act relating to regulated professions and occupations; amending s. 326.004, F.S.; deleting a requirement that yacht and ship brokers maintain a separate license for each branch office and related fees; amending s. 447.02, F.S.; deleting a definition; repealing s. 447.04, F.S., relating to business agents, licenses, and permits; repealing s. 447.041, F.S., relating to hearings; repealing s. 447.045, F.S., relating to certain confidential information; repealing s. 447.06, F.S., relating to the required registration of labor organizations; amending s. 447.09, F.S.; deleting prohibitions against specified actions; repealing s. 447.12, F.S., relating to registration fees; repealing s. 447.16, F.S., relating to the applicability of ch. 447, F.S.; amending s. 468.381, F.S.; revising legislative findings and intent; amending s. 468.382, F.S.; deleting definitions; repealing s. 468.384, F.S., relating to the Florida Board of Auctioneers; repealing s. 468.385, F.S., relating to required licenses, qualifications, and examination to practice auctioneering; repealing s. 468.3851, F.S., relating to license renewals for auctioneers; repealing s. 468.3852, F.S., relating to reactivation of license and fees; repealing s. 468.3855, F.S., relating to apprenticeship training requirements; repealing s. 468.386, F.S., relating to fees and local licensing requirements; repealing s. 468.387, F.S., relating to licensing of nonresidents, endorsement, and reciprocity; amending s. 468.388, F.S.; conforming provisions to changes made by the act; amending s.

28-00505-17 2017802__

468.389, F.S.; providing for a civil cause of action, rather than disciplinary proceedings, for certain prohibited acts; conforming provisions to changes made by the act; amending s. 468.391, F.S.; conforming cross-references; repealing s. 468.392, F.S., relating to the Auctioneer Recovery Fund; repealing s. 468.393, F.S., relating to a license fee surcharge and assessments; repealing s. 468.394, F.S., relating to credited interest and payment of expenses; repealing s. 468.395, F.S., relating to conditions of recovery and eligibility; repealing s. 468.396, F.S., relating to claims against a single licensee in excess of dollar limitation, joinder of claims, payment, and insufficient funds; repealing s. 468.397, F.S., relating to payment of claims; repealing s. 468.398, F.S., relating to suspension of a judgment debtor's license, repayment by the licensee, and interest; repealing s. 468.399, F.S., relating to the expenditure of excess funds; amending s. 468.401, F.S.; deleting the definitions of the terms "department," "license," and "licensee"; repealing s. 468.402, F.S., relating to the duties of the Department of Business and Professional Regulation; repealing s. 468.403, F.S., relating to licensure and application requirements for owners and operators of talent agencies; repealing s. 468.404, F.S., relating to fees and renewal of talent agency licenses; repealing s. 468.405, F.S., relating to qualification for talent agency licenses; amending s. 468.406, F.S.;

deleting the requirement for talent agencies to file with the department an itemized schedule of certain fees and an amended or supplemental schedule under certain circumstances; repealing s. 468.407, F.S., relating to license contents and posting; amending s. 468.408, F.S.; deleting a requirement that a talent agency file a bond for each talent agency license; deleting a departmental requirement to approve talent agency bonds; requiring that a bonding company notify the talent agency, rather than the department, of certain claims; amending s. 468.409, F.S.; deleting provisions requiring talent agencies to make specified records readily available for inspection by the department; amending s. 468.410, F.S.; deleting a reference to the department in talent agency contracts; amending s. 468.412, F.S.; revising the information that talent agencies are required to enter on records; revising the requirements for talent agencies to post certain laws and rules; revising the information required in talent agency publications; amending s. 468.413, F.S.; deleting provisions relating to criminal violations for failing to obtain or maintain licensure with the department; deleting provisions authorizing the court to suspend or revoke a license; deleting a provision authorizing the department to impose a $5,000 fine under certain circumstances; repealing s. 468.414, F.S., relating to collection and deposit of fines, fees, and penalties by the department; amending s. 468.415, F.S.; deleting

a provision authorizing the department to permanently revoke a license; amending s. 469.006, F.S.; requiring an individual applicant to apply for licensure in the name of the business organization that he or she proposes to operate under; requiring that a license be in the name of a qualifying agent rather than the name of a business organization; requiring the qualifying agent, rather than the business organization, to report certain changes in information; conforming provisions to changes made by the act; amending s. 469.009, F.S.; deleting the authority of the department to reprimand, censure, or impose probation on certain business organizations; amending s. 476.034, F.S.; defining and redefining terms; amending s. 476.114, F.S.; revising requirements for licensure by examination for barbers; providing requirements for licensure by examination to practice restricted barbering; conforming a cross-reference; amending s. 476.144, F.S.; conforming a cross-reference; amending s. 477.013, F.S.; revising the definition of the term "specialty"; repealing s. 477.0132, F.S., relating to hair braiding, hair wrapping, and body wrapping registration; amending s. 477.0135, F.S.; exempting from certain licensure and registration requirements persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping; amending s. 477.019, F.S.; deleting an exemption from certain continuing education requirements for persons whose occupation or practice

is confined solely to hair braiding, hair wrapping, or body wrapping; amending s. 477.0201, F.S.; providing requirements for registration as a specialist in nail specialty practices, facial specialty practices, and full specialty practices; amending s. 477.026, F.S.; conforming a provision to changes made by the act; amending s. 481.203, F.S.; defining the term "business organization"; deleting the definition of the term "certificate of authorization"; amending s. 481.219, F.S.; revising the process by which a business organization obtains the requisite license to perform architectural services; requiring that a licensee or an applicant apply to qualify a business organization under certain circumstances; specifying application requirements; authorizing the Board of Architecture and Interior Design to deny an application under certain circumstances; requiring that a qualifying agent be a registered architect or a registered interior designer under certain circumstances; requiring that a qualifying agent notify the department when she or he ceases to be affiliated with a business organization; prohibiting a business organization from engaging in certain practices until it is qualified by a qualifying agent; authorizing the executive director or the chair of the board to authorize a certain registered architect or interior designer to temporarily serve as the business organization's qualifying agent for a specified timeframe under certain circumstances; requiring the

qualifying agent to give written notice to the department before engaging in practice under her or his own name or in affiliation with another business organization; requiring the board to certify an applicant to qualify one or more business organizations or to operate using a fictitious name under certain circumstances; conforming provisions to changes made by the act; amending s. 481.221, F.S.; requiring a business organization to include the license number of a certain registered architect or interior designer in any advertising; providing an exception; conforming provisions to changes made by the act; amending s. 481.229, F.S.; conforming provisions to changes made by the act; reordering and amending s. 481.303, F.S.; defining and redefining terms; amending s. 481.321, F.S.; revising provisions that require persons to display certificate numbers under certain circumstances; conforming provisions to changes made by the act; amending ss. 481.311, 481.317, and 481.319, F.S.; conforming provisions to changes made by the act; amending s. 481.329, F.S.; conforming a cross-reference; amending s. 492.111, F.S.; revising requirements for the practice of, or offer to practice, professional geology; deleting a requirement that a firm, corporation, or partnership be issued a specified certificate of authorization; conforming provisions to changes made by the act; amending ss. 492.104, 492.113, and 492.115, F.S.; conforming provisions to changes made by the act;

amending s. 548.017, F.S.; revising the persons required to be licensed by the State Boxing Commission; amending s. 548.003, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch office. The division shall establish by rule a fee not to exceed $100 for each branch office license.~~

Section 2. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

447.02 Definitions.—The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

~~(3) The term "department" means the Department of Business and Professional Regulation.~~

Section 3. Section 447.04, Florida Statutes, is repealed.

Section 4. Section 447.041, Florida Statutes, is repealed.

Section 5. Section 447.045, Florida Statutes, is repealed.

Section 6. Section 447.06, Florida Statutes, is repealed.

Section 7. Subsections (6) and (8) of section 447.09, Florida Statutes, are amended to read:

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

~~(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.~~

~~(8) To make any false statement in an application for a license.~~

Section 8. Section 447.12, Florida Statutes, is repealed.

Section 9. Section 447.16, Florida Statutes, is repealed.

Section 10. Section 468.381, Florida Statutes, is amended to read:

468.381 Purpose.—The Legislature finds that dishonest or unscrupulous ~~unqualified~~ auctioneers and ~~apprentices and unreliable~~ auction businesses present a significant threat to the public. It is the intent of the Legislature to protect the public by creating civil and criminal causes of action against ~~a board to regulate~~ auctioneers~~, apprentices,~~ and auction businesses ~~and by requiring a license to operate~~.

Section 11. Present subsections (6), (7), and (8) of section 468.382, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and subsection (2) and present subsections (3), (4), and (5) of that section are amended, to read:

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

(2) "Auctioneer" means any person who conducts auctions within the State of Florida ~~licensed pursuant to this part who holds a valid Florida auctioneer license~~.

~~(3) "Apprentice" means any person who is being trained as an auctioneer by a licensed auctioneer.~~

~~(4) "Board" means the Florida Board of Auctioneers.~~

~~(5) "Department" means the Department of Business and Professional Regulation.~~

Section 12. Section 468.384, Florida Statutes, is repealed.

Section 13. Section 468.385, Florida Statutes, is repealed.

Section 14. Section 468.3851, Florida Statutes, is repealed.

Section 15. Section 468.3852, Florida Statutes, is repealed.

Section 16. Section 468.3855, Florida Statutes, is repealed.

Section 17. Section 468.386, Florida Statutes, is repealed.

Section 18. Section 468.387, Florida Statutes, is repealed.

Section 19. Section 468.388, Florida Statutes, is amended to read:

468.388 Conduct of an auction.—

(1) Prior to conducting an auction in this state, an auctioneer or auction business shall execute a written agreement with the owner, or the agent of the owner, of any property to be offered for sale, stating:

(a) The name and address of the owner of the property;

(b) The name and address of the person employing the auctioneer or auction business, if different from the owner; and

(c) The terms or conditions upon which the auctioneer or auction business will receive the property for sale and remit the sales proceeds to the owner.

(2) The auctioneer or auction business shall give the owner one copy of the agreement and shall keep one copy for 2 years after the date of the auction.

(3) Each auctioneer or auction business shall maintain a

record book of all sales. ~~The record book shall be open to inspection by the board at reasonable times.~~

~~(4) Each auction must be conducted by an auctioneer who has an active license or by an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent. Each auction must be conducted under the auspices of a licensed auction business. Any auctioneer or apprentice auctioneer conducting an auction, and any auction business under whose auspices such auction is held, shall be responsible for determining that any auctioneer, apprentice, or auction business with whom they are associated in conducting such auction has an active Florida auctioneer, apprentice, or auction business license.~~

~~(5) The principal auctioneer shall prominently display at the auction site the licenses of the principal auctioneer, the auction business, and any other licensed auctioneers or apprentices who are actively participating in the auction. If such a display is not practicable, then an oral announcement at the beginning of the auction or a prominent written announcement that these licenses are available for inspection at the auction site must be made.~~

(4) ~~(6)~~ If a buyer premium or any surcharge is a condition to sale at any auction, the amount of the premium or surcharge must be announced at the beginning of the auction and a written notice of this information must be conspicuously displayed or distributed to the public at the auction site.

(5) ~~(7)~~ At the beginning of an auction must be announced the terms of bidding and sale and whether the sale is with reserve, without reserve, or absolute or if a minimum bid is required. If

the sale is absolute and has been announced or advertised as such, an article or lot may not be withdrawn from sale once a bid has been accepted. If no bid is received within a reasonable time, the item or lot may be withdrawn.

(6) ~~(8)~~ If an auction has been advertised as absolute, no bid shall be accepted from the owner of the property or from someone acting on behalf of the owner unless the right to bid is specifically permitted by law.

(7) ~~(9)~~ The auction business under which the auction is conducted is responsible for all other aspects of the auction as required by this part ~~board rule~~. The auction business may delegate in whole, or in part, different aspects of the auction only to the extent that such delegation is permitted by law and that such delegation will not impede the principal auctioneer's ability to ensure the proper conduct of his or her independent responsibility for the auction. The auction business under whose auspices the auction is conducted is responsible for ensuring compliance as required by this part ~~board rule~~.

(8)(a) ~~(10)(a)~~ When settlement is not made immediately after an auction, all sale proceeds received for another person must be deposited in an escrow or trust account in an insured bank or savings and loan association located in this state within 2 working days after the auction. A maximum of $100 may be kept in the escrow account for administrative purposes.

(b) Each auction business shall maintain, for not less than 2 years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be

maintained for a 2-year period ~~and be available for inspection by the department or at the request of the board~~.

(c) Any interest which accrues to sale proceeds on deposit shall be the property of the seller for whom the funds were received unless the parties have agreed otherwise by written agreement executed prior to the auction.

(d) Unless otherwise provided by written agreement executed prior to the auction, funds received by a licensee from the seller or his or her agent for expenses, including advertising, must be expended for the purposes advanced or refunded to the seller at the time of final settlement. Any funds so received shall be maintained in an escrow or trust account in an insured bank or savings and loan association located in this state. However, this does not prohibit advanced payment of a flat fee.

~~(11)(a) All advertising by an auctioneer or auction business shall include the name and Florida license number of such auctioneer and auction business. The term "advertising" shall not include articles of clothing, directional signs, or other promotional novelty items.~~

(9)(a) ~~(b)~~ A ~~No~~ licensed auctioneer, apprentice, or auction business may not disseminate or cause to be disseminated any advertisement or advertising that ~~which~~ is false, deceptive, misleading, or untruthful. Any advertisement or advertising is ~~shall be~~ deemed to be false, deceptive, misleading, or untruthful if it:

1. Contains misrepresentations of facts.

2. Is misleading or deceptive because, in its content or in the context in which it is presented, it makes only a partial disclosure of relevant facts.

3. Creates false or unjustified expectations of the services to be performed.

4. Contains any representation or claim which the advertising licensee fails to perform.

5. Fails to include the name and license number of the principal auctioneer and the auction business.

6. Fails to include the name and license number of the sponsor if an apprentice is acting as the principal auctioneer.

7. Advertises an auction as absolute without specifying any and all items to be sold with reserve or with minimum bids.

8. Fails to include the percentage amount of any buyer's premium or surcharge which is a condition to sale.

(b) ~~(c) The provisions of~~ This subsection applies ~~apply~~ to media exposure of any nature, regardless of whether it is in the form of paid advertising.

(c) ~~(d)~~ The auction business is ~~shall be~~ responsible for the content of all advertising disseminated in preparation for an auction.

Section 20. Section 468.389, Florida Statutes, is amended to read:

468.389 Prohibited acts; penalties.—

~~(1)~~ The following acts are ~~shall be~~ grounds for a civil cause of action for damages against the auctioneer, auction business, or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business ~~the disciplinary activities provided in subsections (2) and (3)~~:

(1) ~~(a)~~ A violation of any law relating to trade or commerce of this state or of the state in which an auction is conducted.

(2) ~~(b)~~ Misrepresentation of property for sale at auction or making false promises concerning the use, value, or condition of such property by an auctioneer or auction business or by anyone acting as an agent of or with the consent of the auctioneer or auction business.

(3) ~~(c)~~ Failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction.

(4) ~~(d)~~ False, deceptive, misleading, or untruthful advertising.

(5) ~~(e)~~ Any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.

(6) ~~(f)~~ Using or permitting the use of false bidders, cappers, or shills.

(7) ~~(g)~~ Making any material false statement on a license application.

(8) ~~(h)~~ Commingling money or property of another person with his or her own. Every auctioneer and auction business shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale.

(9) ~~(i)~~ Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law.

(10) ~~(j)~~ Violating a statute ~~or administrative rule~~ regulating practice under this part ~~or a lawful disciplinary~~

~~order of the board or the department~~.

~~(k) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against by another state, territory, or country.~~

(11)~~(l)~~ Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice or the ability to practice the profession of auctioneering.

~~(2) When the board finds any person guilty of any of the prohibited acts set forth in subsection (1), it may enter an order imposing one or more of the following penalties:~~

~~(a) Refusal to certify to the department an application for licensure.~~

~~(b) Revocation or suspension of a license.~~

~~(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.~~

~~(d) Issuance of a reprimand.~~

~~(e) Placement of the auctioneer on probation for a period of time and subject to conditions as the board may specify, including requiring the auctioneer to successfully complete the licensure examination.~~

~~(f) Requirement that the person in violation make restitution to each consumer affected by that violation. Proof of such restitution shall be a signed and notarized release executed by the consumer or the consumer's estate.~~

~~(3)(a) Failure to pay a fine within a reasonable time, as prescribed by board rule, may be grounds for disciplinary action.~~

~~(b) The department may file for an injunction or bring any~~

~~other appropriate civil action against anyone who violates this part.~~

Section 21. Section 468.391, Florida Statutes, is amended to read:

468.391 Penalty.—Any auctioneer~~, apprentice,~~ or auction business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business, who ~~operates without an active license or~~ violates s. 468.389 (3), (5), (6), (8) ~~s. 468.389(1)(c), (e), (f), (h)~~, or (9) ~~(i)~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 22. Section 468.392, Florida Statutes, is repealed.

Section 23. Section 468.393, Florida Statutes, is repealed.

Section 24. Section 468.394, Florida Statutes, is repealed.

Section 25. Section 468.395, Florida Statutes, is repealed.

Section 26. Section 468.396, Florida Statutes, is repealed.

Section 27. Section 468.397, Florida Statutes, is repealed.

Section 28. Section 468.398, Florida Statutes, is repealed.

Section 29. Section 468.399, Florida Statutes, is repealed.

Section 30. Section 468.401, Florida Statutes, is amended to read:

468.401 ~~Regulation of~~ Talent agencies; definitions.—As used in this part ~~or any rule adopted pursuant hereto~~:

(8)~~(1)~~ "Talent agency" means any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist.

(6)~~(2)~~ "Owner" means any partner in a partnership, member of a firm, or principal officer or officers of a corporation,

whose partnership, firm, or corporation owns a talent agency, or any individual who is the sole owner of a talent agency.

(3) "Compensation" means any one or more of the following:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered by any person conducting the business of a talent agency under this part;

(b) Any money received by any person in excess of that which has been paid out by such person for transportation, transfer of baggage, or board and lodging for any applicant for employment; or

(c) The difference between the amount of money received by any person who furnishes employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, engagements, or performances and the amount paid by him or her to such employee, performer, or entertainer.

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Cultural Affairs of the Department of State or has participated in the state touring program of the Division of Cultural Affairs.

~~(5) "Department" means the Department of Business and Professional Regulation.~~

(5)~~(6)~~ "Operator" means the person who is or who will be in actual charge of a talent agency.

(2)~~(7)~~ "Buyer" or "employer" means a person, company,

partnership, or corporation that uses the services of a talent agency to provide artists.

(1)~~(8)~~ "Artist" means a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model.

(7)~~(9)~~ "Person" means any individual, company, society, firm, partnership, association, corporation, manager, or any agent or employee of any of the foregoing.

~~(10) "License" means a license issued by the Department of Business and Professional Regulation to carry on the business of a talent agency under this part.~~

~~(11) "Licensee" means a talent agency which holds a valid unrevoked and unforfeited license issued under this part.~~

Section 31. Section 468.402, Florida Statutes, is repealed.

Section 32. Section 468.403, Florida Statutes, is repealed.

Section 33. Section 468.404, Florida Statutes, is repealed.

Section 34. Section 468.405, Florida Statutes, is repealed.

Section 35. Subsection (1) of section 468.406, Florida Statutes, is amended to read:

468.406 Fees to be charged by talent agencies; rates; display.—

(1) Each owner or operator of a talent agency shall post ~~applicant for a license shall file with the application~~ an itemized schedule of maximum fees, charges, and commissions that ~~which~~ it intends to charge and collect for its services~~. This schedule may thereafter be raised only by filing with the department an amended or supplemental schedule at least 30 days before the change is to become effective. The schedule shall be posted~~ in a conspicuous place in each place of business of the

agency, and the schedule shall be printed in not less than a 30-point boldfaced type, except that an agency that uses written contracts containing maximum fee schedules need not post such schedules.

Section 36. Section 468.407, Florida Statutes, is repealed.

Section 37. Subsection (1) of section 468.408, Florida Statutes, is amended to read:

468.408 Bond required.—

(1) A ~~There shall be filed with the department for each~~ talent agency shall obtain ~~license~~ a bond in the form of a surety by a reputable company engaged in the bonding business and authorized to do business in this state. The bond shall be for the penal sum of $5,000, with one or more sureties ~~to be approved by the department~~, and be conditioned that the talent agency ~~applicant~~ conform to and not violate any of the duties, terms, conditions, provisions, or requirements of this part.

(a) If any person is aggrieved by the misconduct of any talent agency, the person may maintain an action in his or her own name upon the bond of the agency in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same remedies, upon the bond of the agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee.

(b) The bonding company shall notify the talent agency ~~department~~ of any claim against such bond, and a copy of such notice shall be sent to the talent agency against which the claim is made.

Section 38. Section 468.409, Florida Statutes, is amended to read:

468.409 Records required to be kept.—Each talent agency shall keep on file the application, registration, or contract of each artist. In addition, such file must include the name and address of each artist, the amount of the compensation received, and all attempts to procure engagements for the artist. No such agency or employee thereof shall knowingly make any false entry in applicant files or receipt files. Each card or document in such files shall be preserved for a period of 1 year after the date of the last entry thereon. ~~Records required under this section shall be readily available for inspection by the department during reasonable business hours at the talent agency's principal office. A talent agency must provide the department with true copies of the records in the manner prescribed by the department.~~

Section 39. Subsection (3) of section 468.410, Florida Statutes, is amended to read:

468.410 Prohibition against registration fees; referral.—

(3) A talent agency shall give each applicant a copy of a contract, within 24 hours after the contract's execution, which lists the services to be provided and the fees to be charged. ~~The contract shall state that the talent agency is regulated by the department and shall list the address and telephone number of the department.~~

Section 40. Section 468.412, Florida Statutes, is amended to read:

468.412 Talent agency regulations; prohibited acts.—

(1) A talent agency shall maintain a record sheet for each

booking. This shall be the only required record of placement and shall be kept for a period of 1 year after the date of the last entry in the buyer's file.

(2) Each talent agency shall keep records in which shall be entered:

(a) The name and address of each artist employing such talent agency;

(b) The amount of fees received from each such artist; and

(c) The employment in which each such artist is engaged at the time of employing such talent agency and the amount of compensation of the artist in such employment, if any, and the employments subsequently secured by such artist during the term of the contract between the artist and the talent agency and the amount of compensation received by the artist pursuant thereto. ~~; and~~

~~(d) Other information which the department may require from time to time.~~

~~(3) All books, records, and other papers kept pursuant to this act by any talent agency shall be open at all reasonable hours to the inspection of the department and its agents. Each talent agency shall furnish to the department, upon request, a true copy of such books, records, and papers, or any portion thereof, and shall make such reports as the department may prescribe from time to time.~~

(3) ~~(4)~~ Each talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this part ~~and of the rules adopted under this part~~. ~~Such copies shall also contain the name and address of the officer charged with enforcing this part. The department shall furnish to talent~~

~~agencies printed copies of any statute or rule required to be posted under this subsection.~~

(4)(a) ~~(5)(a)~~ No talent agency may knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

(b) A talent agency must advise an artist, in writing, that the artist has a right to rescind a contract for employment within the first 3 business days after the contract's execution. Any engagement procured by the talent agency for the artist during the first 3 business days of the contract remains commissionable to the talent agency.

(5) ~~(6)~~ No talent agency may publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of card, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the ~~licensed~~ name~~, department license number,~~ and address of the talent agency and the words "talent agency." No talent agency may give any false information or make any false promises or representations concerning an engagement or employment to any applicant who applies for an engagement or employment.

(6) ~~(7)~~ No talent agency may send or cause to be sent any person as an employee to any house of ill fame, to any house or place of amusement for immoral purposes, to any place resorted to for the purposes of prostitution, to any place for the modeling or photographing of a minor in the nude in the absence of written permission from the minor's parents or legal

guardians, the character of which places the talent agency could have ascertained upon reasonable inquiry.

(7) ~~(8)~~ No talent agency, without the written consent of the artist, may divide fees with anyone, including, but not limited to, an agent or other employee of an employer, a buyer, a casting director, a producer, a director, or any venue that uses entertainment. For purposes of this subsection, to "divide fees" includes the sharing among two or more persons of those fees charged to an artist for services performed on behalf of that artist, the total amount of which fees exceeds the amount that would have been charged to the artist by the talent agency alone.

(8) ~~(9)~~ If a talent agency collects from an artist a fee or expenses for obtaining employment for the artist, and the artist fails to procure such employment, or the artist fails to be paid for such employment if procured, such talent agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless repayment thereof is made within 48 hours after demand therefor, the talent agency shall pay to the artist an additional sum equal to the amount of the fee.

(9) ~~(10)~~ Each talent agency must maintain a permanent office and must maintain regular operating hours at that office.

(10) ~~(11)~~ A talent agency may assign an engagement contract to another talent agency licensed in this state only if the artist agrees in writing to the assignment. The assignment must occur, and written notice of the assignment must be given to the artist, within 30 days after the artist agrees in writing to the assignment.

Section 41. Section 468.413, Florida Statutes, is amended

to read:

468.413 Legal requirements; penalties.—

(1) ~~Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:~~

~~(a) Owning or operating, or soliciting business as, a talent agency in this state without first procuring a license from the department.~~

~~(b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.~~

~~(2)~~ Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

~~(a) Relocating a business as a talent agency, or operating under any name other than that designated on the license, unless written notification is given to the department and to the surety or sureties on the original bond, and unless the license is returned to the department for the recording thereon of such changes.~~

~~(b) Assigning or attempting to assign a license issued under this part.~~

~~(c) Failing to show on a license application whether or not the agency or any owner of the agency is financially interested in any other business of like nature and, if so, failing to specify such interest or interests.~~

(a) ~~(d)~~ Failing to maintain the records required by s. 468.409 or knowingly making false entries in such records.

(b) ~~(e)~~ Requiring as a condition to registering or obtaining employment or placement for any applicant that the applicant

subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop.

(c) ~~(f)~~ Failing to give each applicant a copy of a contract which lists the services to be provided and the fees to be charged by~~, which states that~~ the talent agency ~~is regulated by the department, and which lists the address and telephone number of the department~~.

(d) ~~(g)~~ Failing to maintain a record sheet as required by s. 468.412(1).

(e) ~~(h)~~ Knowingly sending or causing to be sent any artist to a prospective employer or place of business, the character or operation of which employer or place of business the talent agency knows to be in violation of the laws of the United States or of this state.

~~(3) The court may, in addition to other punishment provided for in subsection (2), suspend or revoke the license of any licensee under this part who has been found guilty of any misdemeanor listed in subsection (2).~~

(2) ~~(4)~~ In the event that ~~the department or~~ any state attorney shall have probable cause to believe that a talent agency or other person has violated any provision of subsection (1), an action may be brought by the ~~department or any~~ state attorney to enjoin such talent agency or any person from continuing such violation, or engaging therein or doing any acts in furtherance thereof, and for such other relief as to the court seems appropriate. ~~In addition to this remedy, the department may assess a penalty against any talent agency or any person in an amount not to exceed $5,000.~~

Section 42. Section 468.414, Florida Statutes, is repealed.

Section 43. Section 468.415, Florida Statutes, is amended to read:

468.415 Sexual misconduct in the operation of a talent agency.—The talent agent-artist relationship is founded on mutual trust. Sexual misconduct in the operation of a talent agency means violation of the talent agent-artist relationship through which the talent agent uses the relationship to induce or attempt to induce the artist to engage or attempt to engage in sexual activity. Sexual misconduct is prohibited in the operation of a talent agency. ~~If~~ Any agent, owner, or operator of a ~~licensed~~ talent agency who commits ~~is found to have committed~~ sexual misconduct in the operation of a talent agency~~,~~ ~~the agency license shall be permanently revoked. Such agent, owner, or operator~~ shall be permanently prohibited from acting ~~disqualified from present and future licensure~~ as an agent, owner, or operator of a ~~Florida~~ talent agency.

Section 44. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the ~~legal entity must apply for licensure through a qualifying agent or the~~ individual applicant must apply for licensure under the name of the business organization ~~fictitious name~~.

(e) A ~~The~~ license~~, when issued upon application of a business organization,~~ must be in the name of the qualifying agent ~~business organization~~, and the name of the business organization ~~qualifying agent~~ must be noted on the license ~~thereon~~. If there is a change in any information that is required to be stated on the application, the qualifying agent ~~business organization~~ shall, within 45 days after such change occurs, mail the correct information to the department.

(3) The qualifying agent must ~~shall~~ be licensed under this chapter in order for the business organization to be qualified ~~licensed~~ in the category of the business conducted for which the qualifying agent is licensed. If any qualifying agent ceases to be affiliated with such business organization, the agent shall so inform the department. In addition, if such qualifying agent is the only licensed individual affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and has ~~shall have~~ 60 days after ~~from~~ the date of termination of the qualifying agent's affiliation with the business organization ~~in which~~ to employ another qualifying agent. The business organization may not engage in consulting or contracting until a qualifying agent is employed, unless the department has granted a temporary nonrenewable license to the financially responsible officer, the president, the sole proprietor, a partner, or, in the case of a limited partnership, the general partner, who assumes all responsibilities of a primary qualifying agent for the entity. This temporary license only allows ~~shall only allow~~ the entity to proceed with incomplete contracts.

(4)

(b) Upon a favorable determination by the department, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without any examination, a new license in the qualifying agent's ~~business organization's~~ name, and the name of the business organization ~~qualifying agent~~ shall be noted thereon.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for licensure ~~of a new business organization.~~ if the qualifying agent for a business organization desires to qualify additional business organizations.~~,~~ The department shall require the agent to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization must ~~shall~~ be conditioned upon the licensee showing that the licensee has both the capacity and intent to adequately supervise each business organization. The department may ~~shall~~ not limit the number of business organizations that ~~which~~ the licensee may qualify except upon the licensee's failure to provide such information as is required under this subsection or upon a finding that the ~~such~~ information or evidence ~~as is~~ supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. A qualification for an additional business organization may be revoked or suspended upon a finding by the department that the licensee has failed in the licensee's responsibility to adequately supervise the operations of the business organization. Failure to adequately supervise the operations of a business organization

is ~~shall be~~ grounds for denial to qualify additional business organizations.

Section 45. Subsection (1) of section 469.009, Florida Statutes, is amended to read:

469.009 License revocation, suspension, and denial of issuance or renewal.—

(1) The department may revoke, suspend, or deny the issuance or renewal of a license; reprimand, censure, or place on probation any contractor, consultant, or financially responsible officer~~, or business organization~~; require financial restitution to a consumer; impose an administrative fine not to exceed $5,000 per violation; require continuing education; or assess costs associated with any investigation and prosecution if the contractor or consultant, or business organization or officer or agent thereof, is found guilty of any of the following acts:

(a) Willfully or deliberately disregarding or violating the health and safety standards of the Occupational Safety and Health Act of 1970, the Construction Safety Act, the National Emission Standards for Asbestos, the Environmental Protection Agency Asbestos Abatement Projects Worker Protection Rule, the Florida Statutes or rules promulgated thereunder, or any ordinance enacted by a political subdivision of this state.

(b) Violating any provision of chapter 455.

(c) Failing in any material respect to comply with the provisions of this chapter or any rule promulgated hereunder.

(d) Acting in the capacity of an asbestos contractor or asbestos consultant under any license issued under this chapter except in the name of the licensee as set forth on the issued

license.

(e) Proceeding on any job without obtaining all applicable approvals, authorizations, permits, and inspections.

(f) Obtaining a license by fraud or misrepresentation.

(g) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of asbestos consulting or contracting or the ability to practice asbestos consulting or contracting.

(h) Knowingly violating any building code, lifesafety code, or county or municipal ordinance relating to the practice of asbestos consulting or contracting.

(i) Performing any act which assists a person or entity in engaging in the prohibited unlicensed practice of asbestos consulting or contracting, if the licensee knows or has reasonable grounds to know that the person or entity was unlicensed.

(j) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor’s customer for supplies or services ordered by the contractor for the customer’s job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer’s job and the percentage of completion is less than the percentage of the

total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

(k) Being disciplined by any municipality or county for an act or violation of this chapter.

(l) Failing in any material respect to comply with the provisions of this chapter, or violating a rule or lawful order of the department.

(m) Abandoning an asbestos abatement project in which the asbestos contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 20 days if the contractor terminates the project without just cause and without proper notification to the owner, including the reason for termination; if the contractor fails to reasonably secure the project to safeguard the public while work is stopped; or if the contractor fails to perform work without just cause for 20 days.

(n) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted

work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(o) Committing fraud or deceit in the practice of asbestos consulting or contracting.

(p) Committing incompetency or misconduct in the practice of asbestos consulting or contracting.

(q) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property in the practice of asbestos consulting or contracting.

(r) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(s) Failing to satisfy, within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

Section 46. Subsection (2) of section 476.034, Florida Statutes, is amended, and subsections (6) and (7) are added to that section, to read:

476.034 Definitions.—As used in this act:

(2) "Barbering" means any of the following practices when done for remuneration and for the public, but not when done for

the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances, and includes restricted barbering services.

(6) "Restricted barber" means a person who is licensed to engage in the practice of restricted barbering in this state under the authority of this chapter and is subject to the same requirements and restrictions as a barber, except as specified in s. 476.114.

(7) "Restricted barbering" means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, shampooing, arranging, dressing, or curling the hair or beard, including the application of shampoo, hair conditioners, shaving creams, hair tonic, and hair spray to the face, scalp, or neck, either by hand or by mechanical appliances. The term does not include the application of oils, creams, lotions, or other preparations to the face, scalp, or neck.

Section 47. Section 476.114, Florida Statutes, is amended to read:

476.114 Examination; prerequisites.—

(1) A person desiring to be licensed as a barber shall apply to the department for licensure and is~~.~~

~~(2) An applicant shall be~~ eligible for licensure by examination to practice barbering if he or she ~~the applicant~~:

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c)1. Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or

2. Has received a minimum of 800 ~~1,200~~ hours of training in sanitation, safety, and laws and rules, as established by the board, which must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, the equivalent of completion of services directly related to the practice of barbering at one of the following:

a. A school of barbering licensed pursuant to chapter 1005;

b. A barbering program within the public school system; or

c. A government-operated barbering program in this state.

~~The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person passes the examination, she or he shall have satisfied this requirement; but if the person fails the examination, she or he shall not be qualified to take the examination again until the completion of the full requirements provided by this section.~~

(2) An applicant is eligible for licensure by examination to practice restricted barbering if he or she:

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c)1. Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in

s. 476.144(5); or

2. Has received a minimum of 525 hours of training in sanitation, safety, and laws and rules, as established by the board, which must include, but is not limited to, the equivalent of completion of services directly related to the practice of restricted barbering at one of the following:

a. A school of barbering licensed pursuant to chapter 1005;

b. A barbering program within the public school system; or

c. A government-operated barbering program in this state.

(3) An applicant who meets the requirements set forth in subparagraphs (1)(c)1. and 2. and (2)(c)1. and 2. who fails to pass the examination may take subsequent examinations as many times as necessary to pass, except that the board may specify by rule reasonable timeframes for rescheduling the examination and additional training requirements for applicants who, after the third attempt, fail to pass the examination. Prior to reexamination, the applicant must file the appropriate form and pay the reexamination fee as required by rule.

Section 48. Paragraph (a) of subsection (6) of section 476.144, Florida Statutes, is amended to read:

476.144 Licensure.—

(6) A person may apply for a restricted license to practice barbering. The board shall adopt rules specifying procedures for an applicant to obtain a restricted license if the applicant:

(a)1. Has successfully completed a restricted barber course, as established by rule of the board, at a school of barbering licensed pursuant to chapter 1005, a barbering program within the public school system, or a government-operated barbering program in this state; or

2.a. Holds or has within the previous 5 years held an active valid license to practice barbering in another state or country or has held a Florida barbering license which has been declared null and void for failure to renew the license, and the applicant fulfilled the requirements of s. 476.114(1)(c)2. ~~s. 476.114(2)(c)2.~~ for initial licensure; and

b. Has not been disciplined relating to the practice of barbering in the previous 5 years; and

The restricted license shall limit the licensee's practice to those specific areas in which the applicant has demonstrated competence pursuant to rules adopted by the board.

Section 49. Subsection (6) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(6) "Specialty" means the practice of one or more of the following:

(a) Nail specialty, which includes:

1. Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive; and~~.~~

2.~~(b)~~ Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

(b)~~(c)~~ Facial specialty, which includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.

(c) Full specialty, which includes manicuring, pedicuring, and facial services, including all services as described in paragraphs (a) and (b).

Section 50. Section 477.0132, Florida Statutes, is repealed.

Section 51. Subsections (7), (8), and (9) are added to section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

(7) A license or registration is not required for a person whose occupation or practice is confined solely to hair braiding as defined in s. 477.013(9).

(8) A license or registration is not required for a person whose occupation or practice is confined solely to hair wrapping as defined in s. 477.013(10).

(9) A license or registration is not required for a person whose occupation or practice is confined solely to body wrapping as defined in s. 477.013(12).

Section 52. Present paragraph (b) of subsection (7) of section 477.019, Florida Statutes, is amended, and paragraph (c) of that subsection is redesignated as paragraph (b), to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(7)

~~(b) Any person whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping is exempt from the continuing education requirements of this subsection.~~

Section 53. Subsection (1) of section 477.0201, Florida

Statutes, is amended, present subsections (2) through (6) of that section are redesignated as subsections (4) through (8), respectively, and new subsections (2) and (3) are added to that section, to read:

477.0201 Specialty registration; qualifications; registration renewal; endorsement.—

(1) A ~~Any~~ person is qualified for registration as a specialist in nail ~~any one or more of the~~ specialty practices within the practice of cosmetology under this chapter if he or she meets both of the following requirements ~~who~~:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received a minimum of 150 hours of training as established by the board, which must focus primarily on sanitation and safety and include, but not be limited to, the equivalent of completion of services directly related to the practice of a nail ~~certificate of completion in a~~ specialty pursuant to s. 477.013(6)(a), ~~s. 477.013(6)~~ from one of the following:

1. A school licensed pursuant to s. 477.023.

2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.

3. A specialty program within the public school system.

4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

(2) A person is qualified for registration as a specialist in facial specialty practices within the practice of cosmetology

under this chapter if he or she meets both of the following requirements:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received a minimum of 165 hours of training as established by the board, which must focus on sanitation and safety and include, but not be limited to, the equivalent of completion of services directly related to the practice of facial specialty pursuant to s. 477.013(6)(b), from one of the following:

1. A school licensed pursuant to s. 477.023.

2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.

3. A specialty program within the public school system.

4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

(3) A person is qualified for registration as a specialist in full specialty practices within the practice of cosmetology under this chapter if he or she meets both of the following requirements:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received a minimum of 300 hours of training as established by the board, which must focus primarily on sanitation and safety and include, but not be limited to, the equivalent of completion of services directly related to the practice of full specialty pursuant to s. 477.013(6)(c), from

one of the following:

1. A school licensed pursuant to s. 477.023.

2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.

3. A specialty program within the public school system.

4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

Section 54. Paragraph (f) of subsection (1) of section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

~~(f) For hair braiders, hair wrappers, and body wrappers, fees for registration shall not exceed $25.~~

Section 55. Subsection (5) of section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part:

(5) "Business organization" means a partnership, a limited liability company, a corporation, or an individual operating under a fictitious name ~~"Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture or interior design~~.

Section 56. Section 481.219, Florida Statutes, is amended to read:

481.219 Business organization; qualifying agents ~~Certification of partnerships, limited liability companies, and corporations~~.—

(1) A licensee may ~~The practice of or the offer to~~ practice architecture or interior design ~~by licensees~~ through a business organization that offers ~~corporation, limited liability company, or partnership offering~~ architectural or interior design services to the public, or through ~~by~~ a business organization that offers ~~corporation, limited liability company, or partnership offering~~ architectural or interior design services to the public through such licensees ~~under this part~~ as agents, employees, officers, or partners~~, is permitted, subject to the provisions of this section~~.

(2) If a licensee or an applicant proposes to engage in the practice of architecture or interior design as a business organization, the licensee or applicant must apply to qualify the business organization ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he shall not be required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services~~.

(a) An application to qualify a business organization must:

1. If the business is a partnership, state the names of the partnership and its partners.

2. If the business is a corporation, state the names of the corporation and its officers and directors and the name of each

of its stockholders who is also an officer or a director.

3. If the business is operating under a fictitious name, state the fictitious name under which it is doing business.

4. If the business is not a partnership, a corporation, or operating under a fictitious name, state the name of such other legal entity and its members.

(b) The board may deny an application to qualify a business organization if the applicant or any person required to be named pursuant to paragraph (a) has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.

(3)(a) A business organization may not engage in the practice of architecture unless its qualifying agent is a registered architect under this part. A business organization may not engage in the practice of interior design unless its qualifying agent is a registered architect or a registered interior designer under this part. A qualifying agent who terminates her or his affiliation with a business organization shall immediately notify the department of such termination. If the qualifying agent who terminates her or his affiliation is the only qualifying agent for a business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination. Except as provided in paragraph (b), the business organization may not engage in the practice of architecture or interior design until it is qualified by a qualifying agent.

(b) In the event a qualifying architect or interior designer ceases employment with the business organization, the executive director or the chair of the board may authorize

another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for a period of no more than 60 days. The business organization is not authorized to operate beyond such period under this chapter absent replacement of the qualifying architect or interior designer who has ceased employment.

(c) A qualifying agent shall notify the department in writing before engaging in the practice of architecture or interior design in her or his own name or in affiliation with a different business organization, and she or he or such business organization shall supply the same information to the department as required of applicants under this part ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person operating under a fictitious name, offering interior design services to the public jointly or separately. However, when an individual is practicing interior design in her or his own name, she or he shall not be required to be certified under this section~~.

(4) All final construction documents and instruments of service which include drawings, specifications, plans, reports, or other papers or documents that involve ~~involving~~ the practice of architecture which are prepared or approved for the use of the business organization ~~corporation, limited liability company, or partnership~~ and filed for public record within the state must ~~shall~~ bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.

(5) All drawings, specifications, plans, reports, or other

papers or documents prepared or approved for the use of the business organization ~~corporation, limited liability company, or partnership~~ by an interior designer in her or his professional capacity and filed for public record within the state must ~~shall~~ bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.

~~(6) The department shall issue a certificate of authorization to any applicant who the board certifies as qualified for a certificate of authorization and who has paid the fee set in s. 481.207.~~

(6)~~(7)~~ The board shall allow ~~certify~~ an applicant to qualify one or more business organizations ~~as qualified for a certificate of authorization~~ to offer architectural or interior design services, or to use a fictitious name to offer such services, if one of the following criteria is met ~~provided that~~:

(a) One or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as architects, are registered as provided by this part.~~; or~~

(b) One or more of the principal officers of the corporation or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as interior designers, are registered as provided by this part.

~~(8) The department shall adopt rules establishing a procedure for the biennial renewal of certificates of authorization.~~

~~(9) The department shall renew a certificate of authorization upon receipt of the renewal application and biennial renewal fee.~~

(7)~~(10)~~ Each qualifying agent approved to qualify a business organization ~~partnership, limited liability company, and corporation certified~~ under this section shall notify the department within 30 days after ~~of~~ any change in the information contained in the application upon which the qualification ~~certification~~ is based. Any registered architect or interior designer who qualifies the business organization shall ensure ~~corporation, limited liability company, or partnership as provided in subsection (7) shall be responsible for ensuring~~ responsible supervising control of projects of the business organization ~~entity~~ and shall notify the department of the ~~upon~~ termination of her or his employment with a business organization qualified ~~partnership, limited liability company, or corporation certified~~ under this section ~~shall notify the department of the termination~~ within 30 days after such termination.

(8)~~(11)~~ A business organization is not ~~No corporation, limited liability company, or partnership shall be~~ relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. However, except as provided in s. 558.0035, the architect who signs and seals the construction documents and instruments of service is ~~shall be~~ liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications is ~~shall be~~ liable for the professional services performed.

~~(12) Disciplinary action against a corporation, limited liability company, or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered architect or interior designer, respectively.~~

(9)~~(13)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to mean that a certificate of registration to practice architecture or interior design must ~~shall~~ be held by a business organization ~~corporation, limited liability company, or partnership~~. ~~Nothing in~~ This section does not prohibit a business organization from offering ~~prohibits corporations, limited liability companies, and partnerships from joining together to offer~~ architectural, engineering, interior design, surveying and mapping, and landscape architectural services, or any combination of such services, to the public if the business organization~~, provided that each corporation, limited liability company, or partnership~~ otherwise meets the requirements of law.

(10)~~(14)~~ A business organization that is qualified by a registered architect may ~~Corporations, limited liability companies, or partnerships holding a valid certificate of authorization to practice architecture shall be permitted to~~ use ~~in their title~~ the term "interior designer" or "registered interior designer" in its title. ~~designer."~~

Section 57. Subsection (10) of section 481.221, Florida Statutes, is amended to read:

481.221 Seals; display of certificate number.—

(10) Each registered architect or interior designer must~~,~~ ~~and each corporation, limited liability company, or partnership holding a certificate of authorization, shall~~ include her or his

license ~~its certificate~~ number in any newspaper, telephone directory, or other advertising medium used by the registered licensee ~~architect, interior designer, corporation, limited liability company, or partnership~~. Each business organization must include the license number of the registered architect or interior designer who serves as the qualifying agent for that business organization in any newspaper, telephone directory, or other advertising medium used by the business organization, but is not required to display the license numbers of other registered architects or interior designers employed by the business organization ~~A corporation, limited liability company, or partnership is not required to display the certificate number of individual registered architects or interior designers employed by or working within the corporation, limited liability company, or partnership~~.

Section 58. Paragraphs (a) and (c) of subsection (5) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

(5)(a) ~~Nothing contained in~~ This part does not prohibit ~~shall prevent~~ a registered architect or a qualified business organization ~~partnership, limited liability company, or corporation holding a valid certificate of authorization to provide architectural services~~ from performing any interior design service or from using the title "interior designer" or "registered interior designer."

(c) Notwithstanding any other provision of this part, a registered architect or qualified business organization certified ~~any corporation, partnership, or person operating under a fictitious name which holds a certificate of~~

~~authorization~~ to provide architectural services must ~~shall~~ be qualified, without fee, ~~for a certificate of authorization~~ to provide interior design services upon submission of a completed application for qualification ~~therefor~~. ~~For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to provide interior design services under that section.~~

Section 59. Section 481.303, Florida Statutes, is reordered and amended to read:

481.303 Definitions.—As used in this chapter, the term:

(1) "Board" means the Board of Landscape Architecture.

(2) "Business organization" means any partnership, limited liability company, corporation, or individual operating under a fictitious name.

(4)~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(8)~~(3)~~ "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

(3)~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

~~(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in the practice of landscape architecture.~~

(5) ~~(6)~~ "Landscape architecture" means professional services, including, but not limited to, the following:

(a) Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of Florida-friendly landscaping as defined in s. 373.185, where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;

(b) The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;

(c) The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; and

(d) The design of such tangible objects and features as are necessary to the purpose outlined herein.

(6) ~~(7)~~ "Landscape design" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications

for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

(7) "Qualifying agent" means an owner, officer, or director of the corporation, or partner of the partnership, who is responsible for the supervision, direction, and management of projects of the business organization with which she or he is affiliated and for ensuring that responsible supervising control is being exercised.

Section 60. Subsection (5) of section 481.321, Florida Statutes, is amended to read:

481.321 Seals; display of certificate number.—

(5) Each registered landscape architect must ~~and each corporation or partnership holding a certificate of authorization shall~~ include her or his ~~its~~ certificate number in any newspaper, telephone directory, or other advertising medium used by the registered landscape architect, corporation, or partnership. A corporation or partnership must ~~is not required to~~ display the certificate number ~~numbers~~ of at least one officer, director, owner, or partner who is a ~~individual~~ registered landscape architect ~~architects~~ employed by or practicing with the corporation or partnership.

Section 61. Subsection (4) of section 481.311, Florida Statutes, is amended to read:

481.311 Licensure.—

~~(4) The board shall certify as qualified for a certificate of authorization any applicant corporation or partnership who satisfies the requirements of s. 481.319.~~

Section 62. Subsection (2) of section 481.317, Florida Statutes, is amended to read:

481.317 Temporary certificates.—

~~(2) Upon approval by the board and payment of the fee set in s. 481.307, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).~~

Section 63. Section 481.319, Florida Statutes, is amended to read:

481.319 Corporate and partnership practice of landscape architecture~~; certificate of authorization~~.—

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under this part through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is permitted, subject to the provisions of this section, if:

(a) One or more of the principal officers of the corporation, or partners of the partnership, and all personnel of the corporation or partnership who act in its behalf as landscape architects in this state are registered landscape architects; and

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one

or more of the partners of the partnership is a registered landscape architect and has applied to be the qualifying agent for the business organization~~; and~~

~~(c) The corporation or partnership has been issued a certificate of authorization by the board as provided herein~~.

(2) All documents involving the practice of landscape architecture which are prepared for the use of the corporation or partnership must ~~shall~~ bear the signature and seal of a registered landscape architect.

(3) A landscape architect applying to practice in the name of a ~~An applicant~~ corporation must ~~shall~~ file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. A landscape architect applying to practice in the name of a ~~An applicant~~ partnership must ~~shall~~ file with the department the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice landscape architecture in this state and, also, of an individual or individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by said partnership in this state.

(4) Each landscape architect qualifying a partnership or ~~and~~ corporation ~~licensed~~ under this part must ~~shall~~ notify the department within 1 month of any change in the information

contained in the application upon which the license is based. Any landscape architect who terminates her or his ~~or her~~ employment with a partnership or corporation licensed under this part shall notify the department of the termination within 1 month.

~~(5) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered landscape architect.~~

(5)~~(6)~~ Except as provided in s. 558.0035, the fact that a registered landscape architect practices landscape architecture through a corporation or partnership as provided in this section does not relieve the landscape architect from personal liability for her or his ~~or her~~ professional acts.

Section 64. Subsection (5) of section 481.329, Florida Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

(5) This part does not prohibit any person from engaging in the practice of landscape design, as defined in s. 481.303(6) ~~s. 481.303(7)~~, or from submitting for approval to a governmental agency planting plans that are independent of, or a component of, construction documents that are prepared by a Florida-registered professional. Persons providing landscape design services shall not use the title, term, or designation "landscape architect," "landscape architectural," "landscape architecture," "L.A.," "landscape engineering," or any description tending to convey the impression that she or he is a landscape architect unless she or he is registered as provided in this part.

Section 65. Section 492.111, Florida Statutes, is amended to read:

492.111 Practice of professional geology by a firm, corporation, or partnership~~; certificate of authorization~~.—The practice of, or offer to practice, professional geology by individual professional geologists licensed under the provisions of this chapter through a firm, corporation, or partnership offering geological services to the public through individually licensed professional geologists as agents, employees, officers, or partners thereof is permitted subject to the provisions of this chapter, if ~~provided that~~:

(1) At all times that it offers geological services to the public, the firm, corporation, or partnership is qualified by ~~has on file with the department the name and license number of~~ one or more individuals who hold a current, active license as a professional geologist in the state and are serving as a geologist of record for the firm, corporation, or partnership. A geologist of record may be any principal officer or employee of such firm or corporation, or any partner or employee of such partnership, who holds a current, active license as a professional geologist in this state, or any other Florida-licensed professional geologist with whom the firm, corporation, or partnership has entered into a long-term, ongoing relationship, as defined by rule of the board, to serve as one of its geologists of record. ~~It shall be the responsibility of the firm, corporation, or partnership and~~ The geologist of record shall ~~to~~ notify the department of any changes in the relationship or identity of that geologist of record within 30 days after such change.

(2) ~~The firm, corporation, or partnership has been issued a certificate of authorization by the department as provided in this chapter. For purposes of this section, a certificate of authorization shall be required of any firm, corporation, partnership, association, or person practicing under a fictitious name and offering geological services to the public; except that, when an individual is practicing professional geology in her or his own name, she or he shall not be required to obtain a certificate of authorization under this section. Such certificate of authorization shall be renewed every 2 years.~~

~~(3)~~ All final geological papers or documents involving the practice of the profession of geology which have been prepared or approved for the use of such firm, corporation, or partnership, for delivery to any person for public record with the state, shall be dated and bear the signature and seal of the professional geologist or professional geologists who prepared or approved them.

(3)~~(4)~~ Except as provided in s. 558.0035, the fact that a licensed professional geologist practices through a corporation or partnership does not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. The partnership and all partners are jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a corporation is personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by her or him or committed by any person under her or his direct

supervision and control, while rendering professional services on behalf of the corporation. The personal liability of a shareholder of a corporation, in her or his capacity as shareholder, may be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The corporation is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

~~(5) The firm, corporation, or partnership desiring a certificate of authorization shall file with the department an application therefor, upon a form to be prescribed by the department, accompanied by the required application fee.~~

~~(6) The department may refuse to issue a certificate of authorization if any facts exist which would entitle the department to suspend or revoke an existing certificate of authorization or if the department, after giving persons involved a full and fair hearing, determines that any of the officers or directors of said firm or corporation, or partners of said partnership, have violated the provisions of s. 492.113.~~

Section 66. Section 492.104, Florida Statutes, is amended to read:

492.104 Rulemaking authority.—The Board of Professional Geologists may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter. Every licensee shall be governed and controlled by this chapter and the rules adopted by the board. The board may establish ~~is authorized to set~~, by rule, fees for application, examination, ~~certificate of~~

~~authorization,~~ late renewal, initial licensure, and license renewal. These fees may ~~should~~ not exceed the cost of implementing the application, examination, initial licensure, and license renewal or other administrative process and are ~~shall be~~ established as follows:

(1) The application fee may ~~shall~~ not exceed $150 and is ~~shall be~~ nonrefundable.

(2) The examination fee may ~~shall~~ not exceed $250~~,~~ and ~~the fee~~ may be apportioned to each part of a multipart examination. The examination fee is ~~shall be~~ refundable in whole or part if the applicant is found to be ineligible to take any portion of the licensure examination.

(3) The initial license fee may ~~shall~~ not exceed $100.

(4) The biennial renewal fee may ~~shall~~ not exceed $150.

(5) ~~The fee for a certificate of authorization shall not exceed $350 and the fee for renewal of the certificate shall not exceed $350.~~

~~(6)~~ The fee for reactivation of an inactive license may ~~shall~~ not exceed $50.

(6)~~(7)~~ The fee for a provisional license may ~~shall~~ not exceed $400.

(7)~~(8)~~ The fee for application, examination, and licensure for a license by endorsement is ~~shall be~~ as provided in this section for licenses in general.

Section 67. Subsection (4) of section 492.113, Florida Statutes, is amended to read:

492.113 Disciplinary proceedings.—

(4) The department shall reissue the license of a disciplined professional geologist ~~or business~~ upon

certification by the board that the disciplined person has complied with ~~all of~~ the terms and conditions set forth in the final order.

Section 68. Section 492.115, Florida Statutes, is amended to read:

492.115 Roster of licensed professional geologists.—A roster showing the names and places of business or residence of all licensed professional geologists and all properly qualified firms, corporations, or partnerships practicing ~~holding certificates of authorization to practice~~ professional geology in the state shall be prepared annually by the department. A copy of this roster must be made available to ~~shall be obtainable by~~ each licensed professional geologist and each firm, corporation, or partnership qualified by a professional geologist ~~holding a certificate of authorization~~, and copies thereof shall be placed on file with the department.

Section 69. Subsection (1) of section 548.017, Florida Statutes, is amended to read:

548.017 Participants, managers, and other persons required to have licenses.—

(1) A participant, manager, trainer, second, ~~timekeeper,~~ referee, judge, ~~announcer,~~ physician, matchmaker, or promoter must be licensed before directly or indirectly acting in such capacity in connection with any match involving a participant. A physician approved by the commission must be licensed pursuant to chapter 458 or chapter 459, must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director before working as the ringside

physician.

Section 70. Paragraph (i) of subsection (2) of section 548.003, Florida Statutes, is amended to read:

548.003 Florida State Boxing Commission.—

(2) The Florida State Boxing Commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

~~(i) Designation and duties of a knockdown timekeeper.~~

Section 71. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KATHLEEN PASSIDOMO
28th District

COMMITTEES:
Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 9, 2017

The Honorable Greg Steube, Chair
Committee on Judiciary
Florida Senate
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Steube:

Senate Bill 802, Regulated Professions and Occupations, has been referred to the Committee on Judiciary. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Kathleen C. Passidomo

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

REPLY TO:
❒ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
❒ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

802
Bill Number (if applicable)

224638
Amendment Barcode (if applicable)

Topic Regulated Professions

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.
Street

Phone 222-4082

Tallahassee FL 32301
City *State* *Zip*

Email Samantha@frf.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Beauty Industry Counsel of the Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/4/2017
Meeting Date

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

802
Bill Number (if applicable)

680074
Amendment Barcode (if applicable)

Topic Regulated Professions

Name Phil Leary

Job Title Lobbyist

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: [✓] For [ ] Against [ ] Information

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

Representing Florida Assoc. Professional Geologists

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

802
Bill Number (if applicable)

AMND 934118
Amendment Barcode (if applicable)

Topic DEREGULATION PROFESSION

Name WARREN Trowbridge

Remove Auctioneers from 802

Job Title AUCTIONEER

Address 2020 NW FEDERAL Hwy
Street

STUART FL 34994
City *State* *Zip*

Phone 7724863439

Email KTrowbridge@choicesold.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Auctioneer Academy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	SB 802

Topic Deregulation

Amendment Barcode (if applicable)

Name Ari Bargil

Job Title Attorney

Address 2 South Biscayne Blvd. # 3180 (Street)

Miami FL 33131 (City / State / Zip)

Phone 305-721-1600

Email abargil@ij.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Institute for Justice

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SB 802
Bill Number (if applicable)

Topic SB 802

Amendment Barcode (if applicable)

Name [redacted] Colton Madill

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing DBPR

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	802

Topic _____ Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave (Street) Phone _____

Tallahassee (City) FL (State) (Zip) Email ahosek@afphq.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 996
INTRODUCER:	Senator Perry
SUBJECT:	Administrative Proceedings
DATE:	April 3, 2017
REVISED:	

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

I. Summary:

SB 996 requires the administrative law judge, unless otherwise provided by law, to award attorney's fees and costs to the prevailing party in a proceeding to cancel or modify a permit having the effect of authorizing the development of land. However, the administrative law judge is not required to make this award against the party that challenged the permit if the challenge was substantially justified or special circumstances exist that would make the award unjust.

If the order awarding fees and costs is appealed, the court hearing the appeal may, in its discretion, award additional fees and costs for the appeal. However, the total fees and costs awarded may not exceed $50,000.

II. Present Situation:

An administrative law judge must award the prevailing party attorney fees and under several circumstances, which are specified in different statutes.

Attorney's Fee Recovery in Any Administrative Case (s. 57.105(5), F.S.)

In any administrative proceeding, an administrative law judge (ALJ) must award a reasonable attorney's fee to be paid to the prevailing party, if the losing party should have known its case was not supported by the facts or the law.

More precisely, an ALJ must award the prevailing party a reasonable attorney's fee and damages[1] if the ALJ finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the ALJ or at any time before trial:

- Was not supported by the material facts necessary to establish the claim or defense; or

[1] The fee and damages must be paid in equal parts by the losing party and his or her attorney.

- Would not be supported by the application of then-existing law to those material facts.[2, 3]

An ALJ must also order damages caused by anything a party did primarily for the purpose of unreasonable delay. These damages include the attorney's fee incurred in obtaining the order.[4, 5]

Attorney's Fee Recovery in Case Challenging Agency Action (s. 120.595, F.S.)

Additionally, in a challenge to an action of a state agency that involves disputed issues of material facts, the final order must award reasonable costs[6] and reasonable attorney's fees to the prevailing party if the ALJ determines that the non-prevailing adverse party[7] participated in the proceeding for an "improper purpose." And improper purpose means participation in a proceeding that is primarily:

- To harass or to cause unnecessary delay;
- For frivolous purpose; or
- To needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

Attorney's Fee Recovery in Proceedings Initiated by a State Agency (s. 57.111, F.S.)

The "Florida Equal Access to Justice Act" is codified in s. 57.111, F.S. Under this section, unless otherwise provided by law, a prevailing small business party shall be awarded attorney's fees and costs unless the actions of the state agency were "substantially justified."[8] And a state agency's proceeding is substantially justified "if it had a reasonable basis is law or fact at the time it was initiated by a state agency."[9]

This statute pertains to actions that are "initiated by a state agency."[10] And its purpose is to diminish the deterrent effect of seeking review of, or defending against, governmental action by awarding a "prevailing small business party" an award of attorney's fees and costs in certain

[2] Section 57.105(1) and (5), F.S.
[3] See s. 57.105(3), F.S., for exceptions.
[4] Section 57.105(2) and (5), F.S.
[5] See s. 57.105(3), F.S., for exceptions.
[6] See the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions for further information about the costs that may be taxed to the losing party. Fla. R. Civ. P. Appendix II.
[7] See s. 120.595(1)(e)3., F.S., for the precise, very long definition of non-prevailing adverse party.
[8] Section 57.111(4)(a), F.S. Fees and costs also may not be awarded if special circumstances exist that would make the award unjust.
[9] Section 57.111(3)(e), F.S.
[10] "Initiated by a state agency" means that the state agency:
- Filed the first pleading in a court in this state;
- Filed a request for an administrative hearing; or
- Was required by law or rule to advise a small business party of a clear point of entry after some recognizable event in the investigatory or other free-form proceeding of the agency. Section 57.111(3)(b), F.S.

situations.[11, 12] The maximum attorney's fees and costs recoverable under the Equal Access to Justice Act is $50,000.

Attorney Fees: The American Rule and the English Rule

When courts discuss the issue of recovery of attorney's fees from an opposing party, they often speak of the American Rule and the English Rule. The American Rule is that "attorney's fees incurred while prosecuting or defending a claim are not recoverable in the absence of a statute or contractual agreement authorizing their recovery."[13] In contrast, the English Rule is that "attorney fees are taxed to the losing party as part of costs . . . ."[14] The issue of which system is preferable is debated in legal academia. Some argue that the American Rule is more egalitarian or democratic, allowing less-wealthy people to bring an action without fear of having to pay the prevailing party's hefty legal fees, as well as their own. However, others believe this concern is outweighed by the benefits of the English Rule, which discourages a person from bringing weak cases, including those meant only to harass an opponent.

III. Effect of Proposed Changes:

The bill requires the administrative law judge in an administrative proceeding, unless otherwise provided by law, to award attorney's fees and costs to the prevailing party in a proceeding to cancel or modify a permit having the effect of authorizing the development of land. However, the administrative law judge is not required to make this award against the party that challenged the permit if the challenge was substantially justified or special circumstances exist that would make the award unjust.

If the order awarding fees and costs is appealed, the court hearing the appeal may, in its discretion, award additional fees and costs for the appeal. However, the total fees and costs awarded may not exceed $50,000.

Actions Against Land Development "Permits"

Though the bill pertains only to administrative actions to cancel or modify a "permit," the bill defines this term broadly as "any permit or other official action of state government having the effect of authorizing the development of land." As such, it appears this may include not only a typical "building permit" but also many other governmental actions including a zoning decision that changes a piece of land from a conservation area to a commercial district.

[11] "Prevailing small business party" means a small business party that is in one of the following circumstances:
- "A final judgment or order has been entered in favor of the small business party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;
- "A settlement has been obtained by the small business party which is favorable to the small business party on the majority of issues which such party raised during the course of the proceeding; or
- "The state agency has sought a voluntary dismissal of its complaint." Section 57.111(3)(c), F.S.

[12] See s. 57.111(3)(d), F.S., for the definition of small business party.

[13] *Bidon v. Dep't of Prof'l Regulation*, 596 So. 2d 450, 452 (Fla. 1992).

[14] *Bell v. U.S.B. Acquisition Co*., 734 So. 2d 403, 406 (Fla. 1999).

Mandatory Awards for Cases Settled, Voluntarily Dismissed, or Taken to Final Order

The bill mandates the awarding of attorney's fees and costs not just in actions that are tried to final order but also to those that settle or are voluntarily dismissed under certain circumstances.

Regarding settled actions, to trigger the award, the settlement must be "favorable to the [prevailing] party on the majority of issues that such party raised during the course of the proceeding." Also, in a settlement that would trigger the award, the bill does not expressly authorize the parties to negotiate away the mandatory fees and costs award. However, it does not prohibit them from doing so, or from including a provision prohibiting the prevailing party from filing a motion for fees.

Regarding voluntary dismissals, a party initiating a challenge to a permit must voluntarily dismiss the challenge within 30 days to avoid liability for the other party's attorney fees and costs.

The bill takes effect on July 1, 2017

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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 could have a positive impact on developers by discouraging unmeritorious administrative actions challenging permits relating to land development. These actions may be costly in many ways, including lost revenue from delayed projects and the payment of the developers' own attorney fees and costs.

C. Government Sector Impact:

The bill could cause a reduction in the number of administrative actions of the type contemplated in the bill and thus a decreased caseload for administrative law judges. On the other hand, some actions could be extended to litigate whether attorney fees and costs should be awarded and, if awarded, how much the award should be.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 57.111, 379.502, and 403.121.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Perry

8-00936-17 2017996__

A bill to be entitled

An act relating to administrative proceedings; amending s. 57.111, F.S.; revising legislative findings and purpose; defining terms; requiring an award of attorney fees and costs to be made to a prevailing party in specified administrative proceedings subject to certain requirements; requiring an administrative law judge to conduct an evidentiary hearing and issue a final order on application for such award; providing a limit on an award of attorney fees and costs; amending ss. 379.502 and 403.121, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (2) of section 57.111, Florida Statutes, is amended, present paragraphs (b) through (f) of subsection (3) of that section are redesignated as paragraphs (c), (g), (h), (j), and (i), respectively, and new paragraphs (b), (d), (e), and (f) are added to that subsection, present subsection (6) of that section is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.—

(2)(a) The Legislature finds that certain persons may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense of civil actions and administrative proceedings. Because of the greater

Florida Senate - 2017 **SB 996**

8-00936-17 2017996__

resources of the state, the standard for an award of attorney ~~attorney's~~ fees and costs against the state should be different from the standard for an award against a private litigant.

(b) The Legislature further finds that certain persons may be unjustly affected by delay and expense caused by challenges to permits or other orders issued by governmental agencies as initiated through administrative proceedings. Because the financial consequences of delay on projects authorized by permits and orders are much greater than the consequences faced by plaintiffs in such proceedings, the standard for an award of attorney fees and costs should be different from the standard for an award in other proceedings.

(c) The purpose of this section is to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in certain situations an award of attorney ~~attorney's~~ fees and costs against the state and to diminish the imbalance of consequences when seeking review of, or defending against, such challenges in administrative proceedings by providing in certain situations an award of attorney fees and costs against the party that does not prevail.

(3) As used in this section:

(b) The term "initiated by a party seeking to challenge a permit" means an administrative proceeding filed pursuant to chapter 120 requesting the cancellation or modification of a permit as defined herein.

(d) The term "party" means a party to an administrative proceeding pursuant to chapter 120 which has been initiated by a party to cancel or modify a permit as defined herein.

(e) The term "permit" means any permit or other official

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

action of state government having the effect of authorizing the development of land.

(f) A party is a "prevailing party" when:

1. A final judgment or order has been entered in favor of the party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;

2. A settlement has been obtained by the party which is favorable to the party on the majority of issues that such party raised during the course of the proceeding; or

3. The opposing party who initiated the administrative proceeding has sought a voluntary dismissal of its complaint or petition more than 30 days after that party initiated the proceeding.

(6)(a) Unless otherwise provided by law, an award of attorney fees and costs shall be made to a prevailing party in any administrative proceeding initiated by a party seeking to cancel or modify a permit as defined herein unless the challenge was substantially justified or special circumstances exist which would make the award unjust.

(b)1. To apply for an award under this section, the attorney for the prevailing party must submit an itemized affidavit to the court that first conducted the adversarial proceeding in the underlying action, or by electronic means through the website of the Division of Administrative Hearings, which shall assign an administrative law judge in the case of a proceeding pursuant to chapter 120. The itemized affidavit submitted must reveal the nature and extent of the services the attorney rendered as well as the costs incurred in preparations,

motions, hearings, and appeals in the proceeding.

2. The application for an award of attorney fees must be made within 60 days after the date that the party becomes a prevailing party.

(c) The administrative law judge shall promptly conduct an evidentiary hearing on the application for an award of attorney fees and shall issue a final order. The final order of an administrative law judge is reviewable in accordance with s. 120.68. If a court affirms the award of attorney fees and costs in whole or in part, it may, in its discretion, award additional attorney fees and costs for the appeal.

(d) An award of attorney fees and costs under this subsection may not exceed $50,000.

Section 2. Paragraph (f) of subsection (2) of section 379.502, Florida Statutes, is amended to read:

379.502 Enforcement; procedure; remedies.—The commission has the following judicial and administrative remedies available to it for violations of s. 379.501:

(2)

(f) In any administrative proceeding brought by the commission, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the commission and the order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is entitled to an award of attorney ~~attorney's~~ fees if the administrative law judge determines that the notice of violation issued by the commission was not substantially justified as defined in s.

57.111(3) ~~s. 57.111(3)(c)~~. An award of attorney ~~attorney's~~ fees as provided by this subsection may not exceed $15,000.

Section 3. Paragraph (f) of subsection (2) of section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(2) Administrative remedies:

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent shall be entitled to an award of attorney ~~attorney's~~ fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3) ~~s. 57.111(3)(c)~~. No award of attorney ~~attorney's~~ fees as provided by this subsection shall exceed $15,000.

Section 4. This act shall take effect July 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 2, 2017

I respectfully request that **Senate Bill #996**, relating to Administrative Proceedings, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SB 996
Bill Number (if applicable)

Topic Admin Proceedings / Attorney Fee

Amendment Barcode (if applicable)

Name Denise Spivey

Job Title Professor

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/4/17
Meeting Date

996
Bill Number (if applicable)

Topic Administrative Proceedings

Amendment Barcode (if applicable)

Name Jennifer Wilson

Job Title Attorney/Lobbyist

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Conservancy of Southwest Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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4/4/2017
Meeting Date

996
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Administrative Hearings

Name Thomas Hawkins

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Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☑ ~~No~~

Lobbyist registered with Legislature: ☑ ~~Yes~~ ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4-4-17
Meeting Date

996
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SR 1440
INTRODUCER:	Judiciary Committee and Senator Rouson
SUBJECT:	Arthur G. Dozier School for Boys
DATE:	April 5, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 1440 recognizes the widespread and considerable abuse that took place at the Arthur G. Dozier School for Boys (Dozier) in Marianna and Okeechobee, Florida.[1] The State of Florida operated the school in Marianna from 1900 to 2011.

The resolution further declares that:

- The Senate regrets that the treatment of children at the Dozier School for Boys and the Okeechobee school was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the state's history;
- The Senate apologizes to the boys sent to Dozier and the Okeechobee School and their family members for what happened to them by employees of the state;
- The Senate commits to ensuring that the children of Florida are protected from this kind of abuse and violations of fundamental human decency.

Legislative resolutions have no force of law and are not subject to the approval and veto powers of the Governor.

[1] Due to overcrowding at the Marianna school, a second school opened in Okeechobee, Florida in 1955.

II. Present Situation:

Dozier School for Boys

Dozier was a state reform school located in Marianna, Florida, which operated from January 1, 1900 to June 30, 2011. Children were sent to the school for serious crimes, but also for "incorrigibility," "truancy," and "dependency."[2] Originally, the school housed children as young as 5 years old. As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).[3] In the first 13 years of operation, more than six state-led investigations took place. Over the years, allegations of severe abuse, including physical and sexual abuse, and suspicious disappearances and death of children in the care of Dozier continued. Of the 100 deaths recorded in historical documents maintained by the school, and available for review up through the year 1960, just two persons who died were staff, and the remaining were boys ranging in age from 6 to 18.[4] Investigators noted that deaths were significantly underreported.[5] Also, investigators were able to ascertain a correlation between attempted escapes and mortality of the children.[6]

In 2005, former students of the school began to publish accounts of the abuse they experienced at Dozier.[7] In 2008, Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.[8] The former students of Dozier alleged that students who died as a result of abuse were buried at the school cemetery.[9] The University of South Florida (USF) subsequently conducted research which included excavations and exhumations.[10]

University of South Florida Investigation

The University of South Florida received funding to determine the location of the missing children buried at the Arthur G. Dozier School for Boys in Marianna.[11] Funding was provided by

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[2] Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 12 (Jan. 18, 2016) (on file with the Senate Judiciary Committee).
[3] *Id*.
[4] *Id*. at 14.
[5] *Id*. at 22.
[6] *Id*. at 14.
[7] *Id*. at 30. The men who had been sent to Dozier from the late 1950's through the 1960's organized themselves as "The White House Boys Survivors Organization."
[8] Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009); available at http://thewhitehouseboys.com/fdlereport.html (last visited March 31, 2017).
[9] *Id*. at 1.
[10] *Id*. at 4.
[11] Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 11 (Jan. 18, 2016) (on file with the Senate Judiciary Committee).

the Legislature, USF, a grant from the National Institute of Justice, U.S. Department of Justice, and private donations.[12]

Using a forensic team, the USF employed at the site of the school a Ground Penetrating Radar (GPR) to detect graves, followed by archaeological test excavations in those areas.[13]

As of January 28, 2014, USF's work at Dozier has resulted in the discovery of 55 bodies.[14] Twenty-four of the 55 bodies found are unaccounted for in any official record.[15]

In January of 2016, the team submitted its report to the Florida Cabinet and Governor, and the Department of Environmental Protection.[16]

United States Department of Justice Investigation

In 1983, Dozier was the subject of a class action regarding the conditions of confinement. Plaintiffs alleged that youth continued to be hogtied, shackled, and held in solitary confinement, amidst media reports that continued to emerge of significant abuse perpetrated by staff on the children.[17] In 2011, plaintiffs filed another class action lawsuit against the facility alleging abusive and unsafe conditions of confinement.[18]

On April 7, 2010, the U.S. Department of Justice (DOJ) launched its own investigation of practices at Dozier and at the Jackson Juvenile Offender Center (JJOC), which together comprised the North Florida Youth Development Center (NYFDC). The DOJ found reasonable cause that the NFYDC had committed and was continuing to commit unconstitutional practices and violations of federal law protecting youths from harm.

On May 26, 2011, Florida's Department of Juvenile Justice announced the pending closure of the two facilities at the NYFDC, based on budgetary limitations. The DOJ released its report on conditions at Dozier and JJOC on December 1, 2011.[19]

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[12] *Id*. at 4.
[13] *Id*. at 11.
[14] Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015 http://www.miamiherald.com/news/state/florida/article5427669.html (last visited March 31, 2017).
[15] University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, http://news.usf.edu/article/templates/?a=5997 (last visited March 31, 2017).
[16] Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida* (Jan. 18, 2016) (on file with the Senate Judiciary Committee).
[17] In the case of *Bobby M v. Chiles*, 907 F.Supp. 368, 372-373 (N.D. Fla. 1995), the court dismissed with prejudice the consent decree that had been entered into by the class and the defendant, on the basis that the Dozier school had remedied the abuse.
[18] *J.B. v. Walters, et al.*, 4:11-cv-00083-RH (N.D. Fla. 2011).
[19] U.S. Department of Justice, *Investigation of the Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center, Marianna, Florida* (Dec. 1, 2011), https://www.justice.gov/opa/pr/department-justice-releases-investigative-findings-arthur-g-dozier-school-boys-and-jackson (last visited March 31, 2017).

Payment for Funeral Expenses and Creation of the Dozier Task Force

In 2016, the Legislature approved payment of up to $7,500 for each child whose body was buried at and exhumed from the Dozier School for Boys, for funeral, reinternment, and grave marker expenses.[20] The legislation requires the Department of State (Department) to contract with the University of South Florida to identify and locate eligible next of kin for the children. By February 1, 2018, the Department must submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding payments and reimbursements made for these expenses.
To fund these provisions, ch. 2016-163, Laws of Fla., includes an appropriation from the General Revenue Fund in the amount of $500,000 in nonrecurring funds to the Department. The legislation directed any amount remaining as of July 1, 2017, to revert back to General Revenue and be reappropriated for the same purpose in the 2017-2018 fiscal year.

Additionally, the bill created the Dozier Task Force to make a recommendation on the creation and maintenance of a memorial and a site for the reinternment of unidentified or unclaimed remains.[21]

The Task Force submitted the following recommendations to the Department of State, Governor and Cabinet, and the Legislature:
- Provide two memorials, one in Tallahassee and one in Jackson County; and
- Provide for the reburial of unclaimed remains in Tallahassee, at a location to be determined by the Legislature.[22]

III. Effect of Proposed Changes:

CS/SR 1440 recognizes the widespread and considerable abuse that took place at the Arthur G. Dozier School for Boys (Dozier) in Marianna and Okeechobee, Florida. The state operated the school from 1900 to 2011.

In support of the resolution, SR 1440 specifically finds that:
- The Dozier school for boys opened in 1900 to house children who had committed serious offenses, but also for incorrigibility, truancy, and smoking;
- Many of the children were sentenced to Dozier for an indeterminate time without legal representation or a proper trial;

[20] Chapter 2016-163, Laws of Fla. (CS/CS/SB 708).
[21] The Legislature provided for the membership of the task force to include: the Secretary of State, or his or her designee, to serve as chair; an appointee by the President of the Florida State Conference of the National Association for the Advancement of Colored People (NAACP); an appointee from the Florida Council of Churches; an appointee by the Attorney General who is a next of kin of a child buried at Dozier; an appointee by the Chief Financial Officer who promotes the welfare of people who were formerly sent to Dozier; an appointee each by the President of the Senate and the Speaker of the House of Representatives; an appointee by the Jackson County Board of County Commissioners; and an appointee by the Commissioner of Agriculture. *Id.*
[22] WFSU, *Task Force Recommends Tallahassee, Jackson County as Sites for Dozier Memorials* (Aug. 19, 2016), http://news.wfsu.org/post/task-force-recommends-tallahassee-jackson-county-sites-dozier-memorials (last visited March 31, 2017).

- Within the first 13 years of operation six state-led investigations took place at Dozier, based on reports of children being chained to walls in irons, severely beaten, and used for child labor;
- Throughout Dozier's history, threats of closure plagued the school based on allegations of abuse and suspicious deaths;
- At a United States Senate Judiciary Committee hearing in 1958, a psychologist employed at Dozier testified having heard that boys were severely beaten by the administrator, which constituted "brutality";
- A former Dozier employee told law enforcement officers that several employees were terminated based on allegations that they made sexual advances towards boys at the facility;
- A team of forensic anthropologists from the University of South Florida, funded by the Legislature to investigate deaths at Dozier, found incomplete records of deaths and burials at Dozier between 1900 and 1960 and discovered that parents were often told of their child's death after burial;
- Forensic anthropologists also excavated the site at Dozier and found 55 burial sites, which was 24 more than reported in official records;
- In 1955, the state transferred some Dozier staff to a new school, the Okeechobee School, and similar practices followed;
- Dozier closed in 2011 after the Department of Law Enforcement and the Civil Rights Division of the United States Department of Justice confirmed harmful conditions; and
- The abuse has been substantiated by more than 500 former students of Dozier from the 1940's through the 1960's.

The resolution further declares that:

- The Senate regrets that the treatment of children at the Dozier School for Boys and the Okeechobee school was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the state's history.
- The Senate apologizes to the boys sent to Dozier and the Okeechobee School and their family members for what happened to them by employees of the state.
- The Senate commits to ensuring that the children of Florida are protected from this kind of abuse and violations of fundamental human decency.

Legislative resolutions have no force of law and are not subject to the approval and veto powers of the Governor.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

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

CS by Judiciary on April 4, 2017:
The CS revises the resolution and the facts set forth in the whereas clauses to provide:

- Children were often sent to the schools without a known basis for being sent or a specific duration of confinement;
- Within the first 13 years of operation six state-led investigations took place at Dozier, based on reports of children being chained to walls in irons, severely beaten, and used for child labor;
- Throughout Dozier's history threats of closure plagued the school, based on allegations of abuse and suspicious deaths;
- At a United States Senate Judiciary Committee hearing in 1958, a psychologist employed at Dozier testified having heard that boys were severely beaten by the administrator, which constituted "brutality";

- A former Dozier employee told law enforcement officers that several employees were terminated based on allegations that they made sexual advances towards boys at the facility; and
- In 1955, the state transferred some Dozier staff to a new school, the Okeechobee School, and similar practices followed.

B. Amendments:

None.

532426

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause
and insert:

That the Senate regrets that the treatment of boys who were sent to the Arthur G. Dozier School for Boys and the Okeechobee School was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the State of Florida's history.

BE IT FURTHER RESOLVED that the Senate apologizes to the boys who were confined to Arthur G. Dozier School for Boys and

the Okeechobee School and their family members for the wrongs committed against them by employees of the State of Florida.

BE IT FURTHER RESOLVED that the Senate expresses its commitment to ensuring that children who have been placed in the State of Florida's care are protected from abuse and violations of fundamental human decency.

========== 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 resolving clause and insert:

Senate Resolution

A resolution acknowledging the abuses experienced by children confined in the Arthur G. Dozier School for Boys and the Florida School for Boys at Okeechobee and expressing the Senate's regret for such abuses and its commitment to ensure that the children of this state are protected from the abuses and violations of fundamental human decency.

WHEREAS, the Florida State Reform School, also called the Florida Industrial School for Boys and later known as the Arthur G. Dozier School for Boys, referred to in this resolution as "Dozier School," was opened by the State of Florida in 1900 in Marianna to house children who had committed minor criminal offenses, such as incorrigibility, truancy, and smoking, as well as more serious offenses such as theft and murder, and

WHEREAS, many of the children who were sent to Dozier School were sentenced without legal representation before the

532426

court, often without a known basis for being sent to the school or a specific duration of confinement, and

WHEREAS, within the first 13 years of Dozier School's operation, six state-led investigations were conducted in response to reports of children being chained to walls in irons, severely beaten, and used for child labor, and

WHEREAS, throughout Dozier School's history, reports of abuse, suspicious deaths, and threats of closure plagued the school, and

WHEREAS, many former students of Dozier School have sworn under oath that they were beaten at a facility located on the school grounds known as the "White House," and

WHEREAS, a psychologist employed at Dozier School testified under oath at a 1958 United States Senate Judiciary Committee hearing that boys at the school were beaten by an administrator, that the blows were severe and dealt with a great deal of force with a full arm swing over the head and down, that a leather strap approximately ten inches long was used, and that the beatings were "brutality," and

WHEREAS, a former Dozier School employee stated in interviews with law enforcement that, in 1962, several employees of the school were removed from the facility based upon allegations that they made sexual advances toward boys at the facility, and

WHEREAS, a forensic investigation funded by the Florida Legislature and conducted from 2013 to 2016 by the University of South Florida found incomplete records regarding deaths and burials that occurred at Dozier School between 1900 and 1960, and that families were often notified after the child was buried

or denied access to their remains at the time of burial, and

WHEREAS, the excavations conducted as part of the forensic investigation yielded 55 burial sites, 24 more sites than reported in official records, and

WHEREAS, given the lack of documentation and contradictions in the historical record, questions persist regarding the identity of persons buried at Dozier School and the circumstances surrounding their deaths, and

WHEREAS, in 1955, the State of Florida opened a new reform school in Okeechobee, called the Florida School for Boys at Okeechobee, referred to in this resolution as "the Okeechobee School," to address overcrowding at Dozier School, and staff of Dozier School were transferred to the Okeechobee School where similar practices were implemented, and

WHEREAS, many former students of the Okeechobee School have sworn under oath that they were beaten at a facility on school grounds known as the "Adjustment Unit," and

WHEREAS, former Governor Claude Kirk toured Dozier School in 1968 and stated, "If one of your kids were kept in such circumstances, you'd be up there with rifles," and

WHEREAS, Dozier School was closed in 2011 after investigations by the Florida Department of Law Enforcement and the Civil Rights Division of the United States Department of Justice, and

WHEREAS, more than 500 former students of Dozier School and the Okeechobee School have come forward with reports of physical, mental, and sexual abuse by school staff during the 1940s, 1950s, and 1960s, and resulting trauma that has endured throughout their adult lives; NOW THEREFORE,

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill #1440**, relating to Arthur G. Dozier School for Boys , be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Darryl Rouson
Florida Senate, District 19

Cc: Sen. Lizbeth Benacquisto, VC; Tom Cibula, SD; Joyce Butler, AA

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SR 1440

Meeting Date

Bill Number (if applicable)

Topic ~~Bill~~ Reform School Abuses / Resolution

Amendment Barcode (if applicable)

Name Gov. Bob Martinez

Job Title Sr Policy Advisor, Holland & Knight

Address 315 S. Calhoun St.
Street

Phone (850) 425-5603

Tallahassee, FL 32301
City State Zip

Email bob.martinez@hklaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing White House Boys

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Reform School Abuses

Name Dr. Erin Kimmerle, USF

Job Title Director, Florida Institute for Forensic Anthropology & Applied Science (IFAAS)

Address 4202 E. Fowler Ave, SOC 107
Street

Tampa, FL 33620
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing IFAAS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Topic Dozier School

Amendment Barcode (if applicable)

Name Bryant Middleton

Job Title

Address 5017 N.W. 69th Place
Street

Gainesville, FL
City *State* *Zip*

Phone -

Email -

Speaking: ☑ For ☐ Against ☐ Information

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

Representing ~~Re~~ myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Topic Dozier

Amendment Barcode (if applicable)

Name Donald Stratton

Job Title

Address P.O. Box 876
Street

Phone

Gibsonton, FL 33534
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Topic Dozier / Okeechobee

Amendment Barcode (if applicable)

Name Jerry Cooper

Job Title

Address 5511 S.W. 14th Place
Street

Cape Coral, FL 33914
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing myself / White House Boys

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Topic Dozier / Okee Chobee

Amendment Barcode (if applicable)

Name Johnny Lee Gaddy

Job Title

Address 27327 Dale Avenue
Street

Brooksville, FL 34602
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Topic Dozier | Okeechobee

Amendment Barcode (if applicable)

Name Terry Levins

Job Title P.O. Box 3165

Address _____ Phone _____
Street

Plant City, FL 33563 Email _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1440
Bill Number (if applicable)

Topic Dozier

Amendment Barcode (if applicable)

Name Richard Huntly

Job Title

Address 523 W. Jackson St
Street

Phone

Orlando FL 32805
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/4/17
Meeting Date

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

1440
Bill Number (if applicable)

Topic DOZIER / OKEECHOBEE

Amendment Barcode (if applicable)

Name Charles Fudge

Job Title

Address 16 Lemington Court
Street

Homosassa, FL 34446
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/CS/SJR 134
INTRODUCER:	Ethics and Elections Committee; Community Affairs Committee; and Senator Artiles and others
SUBJECT:	Selection and Duties of County Sheriff
DATE:	March 30, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Carlton	Ulrich	EE	**Fav/CS**
3.	Parks	Cibula	JU	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SJR 134 proposes to amend the Florida Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff.

If the joint resolution is adopted and the proposed amendment is approved by the voters, the office of the sheriff will be filled only by vote of the county electors and for terms of 4 years.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

II. Present Situation:

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties[1] and has the authority to choose to create municipalities.[2]

[1] Art. VIII, s. 1(a), Fla. Const.
[2] Art. VIII, s. 2(a), Fla. Const.

Pursuant either to general[3] or special law, a consolidated county government may be adopted by charter approved by the county voters. Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, F.S., locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter.[4] A special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.[5] Currently, 20 Florida counties have adopted charters.[6]

Charter Commission

Creation of Charter Commission

A charter commission shall be appointed within 30 days after either (a) the adoption of a resolution by the board of county commissioners creating the commission, or (b) the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of a county requesting that a charter commission be established.[7] The charter commission must be composed of an odd number of not less than 11 nor more than 15 members.[8] The members of the commission must be appointed by the board of county commissioners of the county or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or the board of county commissioners may be a member of the charter commission.[9]

Duties of Charter Commission

The charter commission must meet within 30 days after appointment for organization purposes and must elect a chair and vice chair from its membership.[10] The charter commission must conduct a comprehensive study of county government operations and of the ways in which the county government might be improved or reorganized.[11] Within 18 months after its initial meeting, unless such time is extended by resolution of the board of county commissioners, the

[3] Section 125.60, F.S.
[4] *Id.*
[5] In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or county actions approved by referendum, *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).
[6] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2017-2018, Appendix C, at p. 104, http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf .
[7] Section 125.61(1), F.S.
[8] Section 125.61(2), F.S.
[9] *Id.*
[10] Section 125.62, F.S.
[11] Section 125.63, F.S.

charter commission must present a proposed charter to the board of county commissioners.[12] The charter commission must conduct three public hearings at intervals of not less than 10 nor more than 20 days regarding the proposed charter. At the final hearing, the charter commission must incorporate any amendments it deems desirable, vote upon the proposed charter, and forward the charter to the board of county commissioners for the holding of a referendum.[13]

Submission of the Charter to the Voters

Upon submission of the charter to the board of county commissioners, the board must call a special election to determine whether the qualified electors approve the proposed charter.[14] The referendum election must be held not more than 90 nor less than 45 days after the receipt of the proposed charter.[15]

If a majority of voters favor the adoption of the proposals in the new charter, the charter becomes effective on January 1 of the next year or at such other time as provided by the charter.[16] Once adopted by the electors, the charter may be amended only by a vote of the county electors.[17] If a majority of voters reject the adoption of the proposals in the new charter, a new referendum may not be held for 2 years following the date of the referendum.[18]

After the acceptance or rejection of the proposed charter by the qualified electors, the charter commission is dissolved, and all property of the charter commission becomes property of the county.[19]

Differences between Charter Counties and Non-Charter Counties[20]

Structure

The structure of the government of a non-charter county is specified in the Florida Constitution and in the Florida Statutes. As a result, non-charter counties may only change the structure of county government through amendments to the Florida Constitution or the Florida Statutes. In contrast, the structure of a charter county is specified in the charter as approved by the county's electorate. This flexibility allows a charter county to alter its structure in order to meet the needs of the county.

[12] *Id.*
[13] *Id.*
[14] Section 125.64(1), F.S.
[15] *Id.*
[16] Section 125.64(2), F.S.
[17] *Id.*
[18] Section 125.64(3), F.S.
[19] Section 125.64(4), F.S.
[20] The Florida Association of Counties, *Basic Differences between Charter and Non-Charter Counties* (Mar. 2008), http://www.fl-counties.com/themes/bootstrap_subtheme/sitefinity/documents/basic-differences-between-charter-and-non-charter-counties-pdf-.pdf (last visited Jan. 26, 2017).

Powers of Self-Government

A non-charter county has such powers of self-government as provided by general[21] or special law.[22] Alternatively, a charter county has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.[23] Accordingly, charter counties may take any action as long as it does not conflict with state law, whereas non-charter counties may only do what state law allows them to do.

Initiative, Referendum, and Recall of County Officers

The Florida Statutes do not provide for initiative,[24] referendum,[25] or recall[26] of county officers in a non-charter county. As a result, non-charter counties do not have the power to take these actions. On the other hand, a charter county may provide for initiative, referendum, and recall of county officers in its charter.

Administrative Code

The Florida Statutes do not require an administrative code for non-charter counties. As a result, a non-charter county may not require an administrative code. Conversely, charter counties may require an administrative code in its charter which details all regulations, policies, and procedures.

Utility Taxation

A non-charter county may not levy a utility tax in an unincorporated area of the county. However, a charter county may provide for the levying of such a tax in an unincorporated area of the county.

Special Acts

In a non-charter county, the Legislature can adopt a special act, and it is effective without the approval of the electors. However, in a charter county, a special act adopted by the Legislature is not effective unless the special act is also approved by a vote of the local electorate.

Municipal Ordinances

In a non-charter county, if there is a conflict between a municipal ordinance and a county ordinance, the municipal ordinance prevails within that municipality. On the contrary, an ordinance from a charter county will prevail over a conflicting municipal ordinance if such an instance is provided for in the county charter.

[21] Ch. 125, Part I, F.S.
[22] Art. VIII, s. 1(f), Fla. Const.
[23] Art. VIII, s. 1(g), Fla. Const.
[24] Initiative is the ability of citizens to petition to call for a referendum to consider charter revisions.
[25] Referendum is the ability of citizens to review and make periodic recommendations for revisions to the charter which are consistent with the petition and charter review requirements stipulated by the charter.
[26] Recall is the ability of citizens to remove a county commissioner from office for those reasons consistent with the Florida Statutes and the petition requirements stipulated in the charter.

County Officers Under the Florida Constitution

The Florida Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the five constitutional offices/officers).[27] The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of 4 years. These officers have prescribed duties provided for in general law.[28]

The five constitutional offices can only be altered through charter provision or by special act approved by the voters of the county.[29] All non-charter counties have the five constitutional officers with statutorily prescribed duties. Eight charter counties have changed the manner of selection of at least one of the five constitutional officers or restructured or abolished at least one of the five constitutional offices and transferred the powers to another county office.[30]

Brevard County (sheriff affected)

Brevard County "expressly preserved" the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.[31] The county reiterated the ability to transfer or add to the powers of each of the county officers.[32] The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.[33] Each officer remains elected for a 4-year term.[34]

Miami-Dade County (sheriff affected)

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections,[35] and property appraiser,[36] transferred these powers to the mayor, and granted the

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[27] Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the constitution provides for counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.
[28] *See* ch. 30, F.S. (setting forth certain duties of the sheriff as a constitutional officer); ch. 197, F.S. (setting forth certain duties of the tax collector as a constitutional officer); ch. 193, Part I, F.S. (setting forth certain duties of the property appraiser as a constitutional officer); ch. 102, F.S. (setting forth certain duties of the supervisor of elections as a constitutional officer); ch. 28, F.S. (setting forth certain duties of the clerk of the circuit court as a constitutional officer).
[29] Art. VIII, s. 1(d), Fla. Const.
[30] Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.
[31] BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 4, s. 4.1, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[32] BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[33] BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[34] BREVARD COUNTY FLORIDA, Code of Ordinances, Charter, Art. 4, s. 4.1.1, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[35] Referred to in the Miami-Dade Charter as the "supervisor of registration." See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.
[36] Referred to in the Miami-Dade Charter as the "county surveyor." *See* MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

mayor the discretion to sub-delegate the powers.[37] The duties of the sheriff were transferred to the police department, the director of which is appointed by the mayor.[38] The duties of the tax collector were transferred to the department of finance,[39] the director of which is jointly appointed by the mayor and the clerk of court.[40] The county property appraiser, although not retained as a constitutional office, remains an elected position.[41] The duties of the supervisor of elections were transferred to the elections department, the director of which is appointed by the mayor.[42] The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.[43] Although the clerk is still the clerk of the county commission, the clerk's financial recorder and custodian duties were transferred to the department of financial services, and the clerk's auditing duties were transferred to the commission auditor.[44]

Volusia County (sheriff affected)

Volusia County established its charter by special law in 1970,[45] and the voters of Volusia County subsequently approved it in a special countywide election the same year. Volusia County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser. The county transferred these offices' powers to new charter offices. The duties of the sheriff were transferred to and divided between the department of public safety and the department of corrections.[46] The duties of the tax collector were transferred to the department of finance.[47] The duties of the property appraiser were transferred to the department of property appraisal.[48] The duties of the supervisor of elections were transferred to the department of elections.[49] The sheriff, property appraiser, and supervisor of elections are elected directors of

[37] MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.
[38] Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. See Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH2AD_ARTXIIMIDEPODE.
[39] MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I s. 5.03, Nov. 4, 2014, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH. See also MIAMIDADE.GOV, Miami-Dade County Finance Department, http://www.miamidade.gov/finance.
[40] MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I s. 5.03, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.
[41] MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments.
[42] Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments.
[43] MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments.
[44] MIAMIDADE.GOV, Miami-Dade County Finance Department, http://www.miamidade.gov/finance/; MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I s. 9.10, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.
[45] Chapter 70-966, Laws of Fla.
[46] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(2), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[47] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(1), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[48] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(3), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[49] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(4), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

their respective offices.[50] The tax collector is appointed by the county manager and confirmed by the county council.[51] The clerk of the circuit court remains a constitutionally elected officer except that the clerk's constitutional duties as clerk of the county commission were transferred to and divided between the department of central services and the department of finance.[52]

Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.[53] However, the office of the tax collector was abolished and the duties were transferred to the department of finance and administrative services, headed by the finance and administrative services director appointed by the county administrator.[54] Though the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission were transferred to the county administrator.[55]

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[56] Although the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county administrator.[57]

Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[58] The clerk of the circuit court retains the status of constitutional officer but the clerk's duties as clerk of the county commission were

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[50] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 602.1, https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[51] VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 2-111(a), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO. VOLUSIA.ORG, Revenue Division-Tax Collection, http://www.volusia.org/services/financial-and-administrative-services/revenue-services/.
[52] CLERK OF THE CIRCUIT COURT, VOLUSIA COUNTY FLORIDA, Overview, https://www.clerk.org/html/about.aspx#Overview; VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1 (1)(b) & (5), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[53] BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, "Definitions," https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.
[54] BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 3.05 & 3.06, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.
[55] BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, "Definitions" & s. 3.03G., https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.
[56] CLAY COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.1, 2014 Edition, http://www.claycountygov.com/about-us.
[57] CLAY COUNTY FLORIDA, Home Rule Charter, Article III, ss. 3.1 & 2.3A.(1)(f), 2014 Edition, http://www.claycountygov.com/about-us.
[58] JACKSONVILLE FLORIDA, Charter and Related Laws, Part A. ss. 8.01, 9.01, 10.01 & 11.01, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA. Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. Art. VIII, s. 6(e), Fla. Const., (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934). The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

transferred to the council secretary and the constitutional duties as auditor were transferred to the council auditor.[59]

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,[60] and supervisor of elections.[61] Although the clerk of the circuit court also retains the status of constitutional officer, [62] the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.[63]

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[64] The clerk of the circuit court retains the status of constitutional officer, but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.

Existing Selection and Removal Procedures for Constitutional Officers in Charter Counties

In addition to whether the five constitutional officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in Art. VIII, s. 1(d) of the Florida Constitution, these additional "selection and removal procedures" could be interpreted as affecting the selection of the five constitutional officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the five constitutional officers. The broad home rule power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special law."[65] This suggests that counties can currently modify their selection or removal procedures within the existing Art. VIII, s. 1(d), Florida Constitution, framework through charter amendment or special law.[66]

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[59] JACKSONVILLE FLORIDA, Charter and Related Laws, Part A. s. 12.06, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE FLORIDA, Code of Ordinances, Title II ss. 11.103 & 13.103, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA.

[60] At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, Charter, s. 703, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

[61] ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, http://www.ocfelections.com/aboutbillcowles.aspx.

[62] ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-66, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

[63] ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-67, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

[64] OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III s. 3.1, https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

[65] Art. VIII, s. 1(g), Fla. Const.

[66] Current statute and case law also supports this principle. *See* s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13

Term Limits

Three charter counties have imposed term limits on one or more of the five constitutional officers.[67] Although the imposition of term limits on the five constitutional officers is not constitutionally or statutorily prohibited, or expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of the charter.[68]

Recall

Five counties have charters expressly providing for the recall of one or more of the five constitutional officers.[69] Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the five constitutional officers.[70]

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the five constitutional officers.[71] Non-partisan election of the five constitutional officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.[72]

III. Effect of Proposed Changes:

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of the sheriff will have no impact on non-charter counties[73] and those charter counties that retained the sheriff without any changes to its selection or authority.[74] Charter counties that changed the selection or authority of the sheriff will be required to revise their charters and ordinances to conform to the revised constitutional requirement.[75]

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

(Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the five constitutional officers).

[67] Duval, Orange, and Sarasota Counties.

[68] *Telli v. Broward County*, supra at n. 65.

[69] Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

[70] Section 100.361, F.S.

[71] Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.

[72] *See* Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

[73] Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

[74] Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

[75] Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts use a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"[76]

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[76] *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the cost to advertise constitutional amendments for the 2016 primary and general election cycle was $117.56 per word. Using 2016 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2018 general election could be $84,643.20, at a minimum. This cost estimate is contingent on multiple amendments needing advertising, as there is an inverse relationship between the price per word and the length of the advertisements. If no other amendments needed to be advertised, the price per word would be significantly higher. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. Total expenses related to constitutional amendment advertising for the 2018 election cycle are likely to be significant, as the 2018 ballot will include amendments placed there by the Constitutional Revision Commission (when the Commission last met in 1998, 13 amendments were placed on the ballot). Amendments can also be placed on the ballot via the initiative petition process, or by a joint resolution of the Florida Legislature, but so far, no amendments have yet made it to the 2018 ballot.

The proposed constitutional amendment would require the affected counties to expend funds to (a) provide for election of a sheriff, and (b) reorganize their governments to accommodate the sheriff's office and responsibilities. The cost to these counties is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. The next general election in Florida is the gubernatorial election scheduled for November 6, 2018. If approved by the voters, the amendment takes effect on January 8, 2019. As a result, affected charter counties will have just over 2 months to revise their charters and ordinances to conform to this amendment.

VIII. Statutes Affected:

The amendment proposed by this joint resolution, if approved by the electorate and implemented by the Legislature, amends Article VIII, section 1 of the Florida Constitution.

IX. Additional Information:

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

CS/CS by Ethics and Elections on March 28, 2017:
While the committee substitute contains a substantial rewrite of the new language being added as the last sentence of Article VIII, s. 8(1)(d), Fla. Const., there do not appear to be any changes to the legal effect of the bill made by this committee substitute.

CS by Community Affairs on February 21, 2017:
Requires the sheriff to be an elected officer in all counties and retains the charter county and special law options to change the office and duties of the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court.

B. Amendments:

None.

By the Committees on Ethics and Elections; and Community Affairs; and Senators Artiles and Powell

582-03001-17 2017134c2

Senate Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to remove authority for a county charter or special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff.

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

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) COUNTY OFFICERS. There shall be elected by the electors

582-03001-17 2017134c2

of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court ~~any county officer~~ may be chosen in another manner therein specified, or ~~any county office~~ may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Notwithstanding subsection (e) of section 6 of this article, a county charter may not abolish the office of the sheriff, transfer the duties of the office of the sheriff to another office, change the length of the term of a sheriff, or establish any manner of selection of a sheriff other than election by the electors of the county.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is

provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) TAXES; LIMITATION. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) COUNTY ORDINANCES. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.

(j) VIOLATION OF ORDINANCES. Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) COUNTY SEAT. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county

in the manner prescribed by law. No instrument shall be deemed recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VIII, SECTION 1

SELECTION AND DUTIES OF COUNTY SHERIFF.—Proposing an amendment to the State Constitution to remove authority for a county charter or a special law to provide for choosing a sheriff in a manner other than by election or to alter the duties of the sheriff or abolish the office of the sheriff. The amendment is applicable to all counties and takes effect January 8, 2019, if approved.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Joint Resolution #134**, relating to the Selection and Duties of County Officers/Sheriff, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-4-17
Meeting Date

134
Bill Number (if applicable)

Topic COUNTY OFFICERS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title ASSOCIATE DIR. PUBLIC POLICY

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

134
Bill Number (if applicable)

Topic Select & Duties of Sheriff

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title lobbyist

Address 300 East Brevard St.
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

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

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

Representing Florida Police Benevolent Association

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

134
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Sheriff Mike Adkinson

Job Title Sheriff of Walton County

Address 752 Triple G Road
Street

Phone 850-892-8186

DeFuniak Springs | FL | 32433
City | *State* | *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

134
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Sheriff Mike Chitwood

Job Title Sheriff of Volusia County

Address 123 W. Indiana Ave.
Street

Phone 386-736-5961

DeLand FL 32720
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Volusia County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

134
Bill Number (if applicable)

Topic Constitutional officer - Sheriff

Amendment Barcode (if applicable)

Name Pat Patterson

Job Title Volusia Co. Council member, former Rep.

Address 123 W. Indiana Ave
Street

DeLand, FL 32720
City *State* *Zip*

Phone

Email ppatterson@volusia.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Volusia County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

134

Meeting Date | *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810 Phone 305-979-7110

Street

MIAMI 33128 Email JESS.MCCARTY@MIAMIDADE.GOV

City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing MIAMI - DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

134
Bill Number (if applicable)

Topic Sheriffs Bill

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Captain

Address 2500 West Colonial Dr
Street

Orl FL 32804
City *State* *Zip*

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Sheriff Jerry L. Demings OCSO

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

134
Bill Number (if applicable)

Topic Constitutional Officer - Sheriff

Amendment Barcode (if applicable)

Name Arlene Smith

Job Title Legislative Affairs

Address 123 W Indiana Ave
Street
DeLand, FL 32720
City *State* *Zip*

Phone 386-405-1552

Email asmith@volusia.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing County of Volusia

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/17
Meeting Date

134
Bill Number (if applicable)

Topic County Officers

Amendment Barcode (if applicable)

Name Kelley Teague

Job Title Legislative Affairs

Address 201 S. Rosalind Ave
Street

Orlando FL 32801
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2015
Meeting Date

SJR 134
Bill Number (if applicable)

Topic Constitutional County Officer

Amendment Barcode (if applicable)

Name Edward b. Labrador

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Avenue, Room 426
Street

Fort Lauderdale, FL 33301
City *State* *Zip*

Phone (954) 826-1155

Email elabrador@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SJR 136
INTRODUCER:	Community Affairs Committee and Senator Artiles and others
SUBJECT:	Selection and Duties of County Officers/Property Appraiser
DATE:	March 29, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Fox	Ulrich	EE	**Favorable**
3.	Parks	Cibula	JU	**Favorable**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SJR 136 proposes to amend the Florida Constitution to remove authority for a county charter or special law to provide for choosing a property appraiser in a manner other than by election or to alter the duties of the property appraiser or abolish the office of the appraiser.

If the Legislature adopts the joint resolution and voters approve the proposed amendment, *all* county property appraisers will be *constitutional* officers elected for terms of 4 years.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

II. Present Situation:

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties[1] and has the authority to choose to create municipalities.[2]

[1] Art. VIII, s. 1(a), Fla. Const.
[2] Art. VIII, s. 2(a), Fla. Const.

Pursuant either to general[3] or special law, a consolidated county government may be adopted by charter approved by the county voters. Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, F.S., locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter.[4] Currently, 20 Florida counties have adopted charters.[5] However, a special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.[6]

Charter Commission

Creation of Charter Commission

After the adoption of a resolution by the board of county commissioners or upon the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of a county requesting that a charter commission be established, a charter commission shall be appointed within 30 days after the adoption of the resolution or filing of the petition.[7] The charter commission must be composed of an odd number of not less than 11 nor more than 15 members.[8] The members of the commission must be appointed by the board of county commissioners of the county or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or the board of county commissioners may be a member of the charter commission.[9]

Duties of Charter Commission

The charter commission must meet within 30 days after appointment for organization purposes and must elect a chair and vice chair from its membership.[10] The charter commission must conduct a comprehensive study of county government operations and of the ways in which the county government might be improved or reorganized.[11] Within 18 months after its initial meeting, unless such time is extended by resolution of the board of county commissioners, the

[3] Section 125.60, F.S.
[4] *Id.*
[5] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2017-2018, Appendix C, at p. 104, http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf
[6] In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or county actions approved by referendum, *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).
[7] Section 125.61(1), F.S.
[8] Section 125.61(2), F.S.
[9] *Id.*
[10] Section 125.62, F.S.
[11] Section 125.63, F.S.

charter commission must present a proposed charter to the board of county commissioners.[12] The charter commission must conduct three public hearings at intervals of not less than 10 nor more than 20 days regarding the proposed charter. At the final hearing, the charter commission must incorporate any amendments it deems desirable, vote upon the proposed charter, and forward the charter to the board of county commissioners for the holding of a referendum.[13]

Submission of the Charter to the Voters

Upon submission of the charter to the board of county commissioners, the board must call a special election to determine whether the qualified electors approve the proposed charter.[14] The referendum election must be held not more than 90 nor less than 45 days after the receipt of the proposed charter.[15]

If a majority of voters favor the adoption of the proposals in the new charter, the charter becomes effective on January 1 of the next year or at such other time as provided by the charter.[16] Once adopted by the electors, the charter may be amended only by a vote of the county electors.[17] If a majority of voters reject the adoption of the proposals in the new charter, a new referendum may not be held for 2 years following the date of the referendum.[18]

After the acceptance or rejection of the proposed charter by the qualified electors, the charter commission is dissolved, and all property of the charter commission becomes property of the county.[19]

Differences between Charter Counties and Non-Charter Counties[20]

Structure

The structure of the government of a non-charter county is specified in the Florida Constitution and in the Florida Statutes. As a result, non-charter counties may change the structure of county government only through amendments to the Florida Constitution or the Florida Statutes. In contrast, the structure of a charter county is specified in the charter as approved by the county's electorate. This flexibility allows a charter county to alter its structure in order to meet the needs of the county.

[12] *Id.*
[13] *Id.*
[14] Section 125.64(1), F.S.
[15] *Id.*
[16] Section 125.64(2), F.S.
[17] *Id.*
[18] Section 125.64(3), F.S.
[19] Section 125.64(4), F.S.
[20] The Florida Association of Counties, *Basic Differences between Charter and Non-Charter Counties* (Mar. 2008), http://www.fl-counties.com/themes/bootstrap_subtheme/sitefinity/documents/basic-differences-between-charter-and-non-charter-counties-pdf-.pdf (last visited March 15, 2017).

Powers of Self-Government

A non-charter county has such powers of self-government as provided by general[21] or special law.[22] Alternatively, a charter county has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.[23] Accordingly, charter counties may take any action as long as it does not conflict with state law, whereas non-charter counties may only do what state law allows them to do.

Initiative, Referendum, and Recall of County Officers

The Florida Statutes do not provide for initiative,[24] referendum,[25] or recall[26] of county officers in a non-charter county. As a result, non-charter counties do not have the power to take these actions. On the other hand, a charter county may provide for initiative, referendum, and recall of county officers in its charter.

Administrative Code

The Florida Statutes do not require an administrative code for non-charter counties. As a result, a non-charter county may not require an administrative code. Conversely, charter counties may require an administrative code in its charter which details all regulations, policies, and procedures.

Utility Taxation

A non-charter county may not levy a utility tax in an unincorporated area of the county. However, a charter county may provide for the levying of such a tax in an unincorporated area of the county.

Special Acts

In a non-charter county, the Legislature can adopt a special act, and it is effective without the approval of the electors. However, in a charter county, a special act adopted by the Legislature is not effective unless the special act is also approved by a vote of the local electorate.

Municipal Ordinances

In a non-charter county, if there is a conflict between a municipal ordinance and a county ordinance, the municipal ordinance prevails within that municipality. On the contrary, an ordinance from a charter county will prevail over a conflicting municipal ordinance if such an instance is provided for in the county charter.

[21] Ch. 125, Part I, F.S.
[22] Art. VIII, s. 1(f), Fla. Const.
[23] Art. VIII, s. 1(g), Fla. Const.
[24] Initiative is the ability of citizens to petition to call for a referendum to consider charter revisions.
[25] Referendum is the ability of citizens to review and make periodic recommendations for revisions to the charter which are consistent with the petition and charter review requirements stipulated by the charter.
[26] Recall is the ability of citizens to remove a county commissioner from office for those reasons consistent with the Florida Statutes and the petition requirements stipulated in the charter.

County Officers under the Florida Constitution

The Florida Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the five constitutional offices/officers).[27] The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of 4 years. These officers have prescribed duties provided for in general law.[28]

The five constitutional offices can only be altered through charter provision or by special act approved by the voters of the county.[29] All non-charter counties have the five constitutional officers with statutorily prescribed duties. Eight charter counties have changed the manner of selection of at least one of the five constitutional officers or restructured or abolished at least one of the five constitutional offices and transferred the powers to another county office, as detailed below.[30] Changes in three of those counties — Brevard, Miami-Dade, and Volusia — involve the office of property appraiser.

Brevard County (property appraiser affected)

Brevard "expressly preserved" the offices of the property appraiser, sheriff, tax collector, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.[31] The county reiterated the ability to transfer or add to the powers of each of the county officers.[32] The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.[33] Each of the officers remains elected for 4-year terms.[34]

[27] Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the constitution provides for counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.
[28] *See* ch. 30, F.S. (setting forth certain duties of the sheriff as a constitutional officer); ch. 197, F.S. (setting forth certain duties of the tax collector as a constitutional officer); ch. 193, Part I, F.S. (setting forth certain duties of the property appraiser as a constitutional officer); ch. 102, F.S. (setting forth certain duties of the supervisor of elections as a constitutional officer); ch. 28, F.S. (setting forth certain duties of the clerk of the circuit court as a constitutional officer).
[29] Art. VIII, s. 1(d), Fla. Const.
[30] Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.
[31] BREVARD CTY., FLA., Code of Ordinances, Charter, Art. 4, s. 4.1, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[32] BREVARD CTY., FLA., Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[33] BREVARD CTY., FLA., Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.
[34] BREVARD CTY., FLA., Code of Ordinances, Charter, Art. 4, s. 4.1.1, https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances.

Miami-Dade County (property appraiser affected)

Miami-Dade County has abolished the constitutional offices of the property appraiser,[35] sheriff, tax collector, and supervisor of elections;[36] transferred these powers to the mayor; and granted the mayor the discretion to sub-delegate the powers.[37] The duties of the sheriff were transferred to the police department, the director of which is appointed by the mayor.[38] The duties of the tax collector were transferred to the department of finance,[39] the director of which is jointly appointed by the mayor and the clerk of court.[40] The county property appraiser, although not retained as a constitutional office, remains an elected position.[41] The duties of the supervisor of elections were transferred to the elections department, the director of which is appointed by the mayor.[42] The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.[43] Although the clerk is still the clerk of the county commission, the clerk's financial recorder and custodian duties were transferred to the department of financial services, and the clerk's auditing duties were transferred to the commission auditor.[44]

Volusia County (property appraiser affected)

Volusia County established its charter by special law in 1970,[45] and the voters of Volusia County subsequently approved it in a special countywide election the same year. Volusia County abolished the constitutional offices of the property appraiser, sheriff, tax collector, and supervisor of elections. The county transferred these offices' powers to new charter offices. The duties of the sheriff were transferred to and divided between the department of public safety and the department of corrections.[46] The duties of the tax collector were transferred to the department

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[35] Referred to in the Miami-Dade Charter as the "county surveyor." *See* MIAMI-DADE CTY., FLA., *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

[36] Referred to in the Miami-Dade Charter as the "supervisor of registration." See MIAMI-DADE CTY., FLA., *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

[37] MIAMI-DADE CTY., FLA., *Constitutional Amendment and Charter*, Part I s. 9.01, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

[38] Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. See Miami-Dade Cty., fla., Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH2AD_ARTXIIMIDEPODE.

[39] MIAMI-DADE CTY., FLA., Constitutional Amendment and Charter, Part I s. 5.03, Nov. 4, 2014, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH. See also MIAMIDADE.GOV, Miami-Dade County Finance Department, http://www.miamidade.gov/finance.

[40] MIAMI-DADE CTY., FLA., Constitutional Amendment and Charter, Part I s. 5.03, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

[41] MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments.

[42] Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments.

[43] MIAMIDADE.GOV, County Departments, http://miamidade.gov/wps/portal/Main/departments.

[44] MIAMIDADE.GOV, Miami-Dade County Finance Department, http://www.miamidade.gov/finance/; MIAMI-DADE CTY., FLA., Constitutional Amendment and Charter, Part I s. 9.10, https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

[45] Chapter 70-966, Laws of Fla.

[46] VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 601.1(2), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

of finance.[47] The duties of the property appraiser were transferred to the department of property appraisal.[48] The duties of the supervisor of elections were transferred to the department of elections.[49] The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.[50] The tax collector is appointed by the county manager and confirmed by the county council.[51] The clerk of the circuit court remains a constitutionally elected officer except that the clerk's constitutional duties as clerk of the county commission were transferred to and divided between the department of central services and the department of finance.[52]

Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.[53] However, the office of the Broward tax collector was abolished and the duties were transferred to the county's finance department, headed by a director appointed by the county administrator.[54] Though the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission were transferred to the county administrator.[55]

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[56] Although the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county administrator.[57]

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[47] VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 601.1(1), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[48] VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 601.1(3), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[49] VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 601.1(4), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[50] VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 602.1, https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[51] VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 2-111(a), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO. VOLUSIA.ORG, Revenue Division-Tax Collection, http://www.volusia.org/services/financial-and-administrative-services/revenue-services/.
[52] CLERK OF THE CIRCUIT COURT, VOLUSIA CTY., FLA., Overview, https://www.clerk.org/html/about.aspx#Overview; VOLUSIA CTY., FLA., Code of Ordinances, Part I Charter s. 601.1 (1)(b) & (5), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.
[53] BROWARD CTY., FLA., Code of Ordinances, Part I Charter, "Definitions," https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.
[54] BROWARD CTY., FLA., Code of Ordinances, Part I Charter ss. 3.05 & 3.06, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.
[55] BROWARD CTY., FLA., Code of Ordinances, Part I Charter, "Definitions" & s. 3.03G., https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.
[56] CLAY CTY., FLA., Home Rule Charter, Article III, s. 3.1, 2014 Edition, http://www.claycountygov.com/about-us.
[57] CLAY CTY., FLA., Home Rule Charter, Article III, ss. 3.1 & 2.3A.(1)(f), 2014 Edition, http://www.claycountygov.com/about-us.

Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[58] The clerk of the circuit court retains the status of constitutional officer but the clerk's duties as clerk of the county commission were transferred to the council secretary and the constitutional duties as auditor were transferred to the council auditor.[59]

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,[60] and supervisor of elections.[61] Although the clerk of the circuit court also retains the status of constitutional officer,[62] the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.[63]

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.[64] The clerk of the circuit court retains the status of constitutional officer, but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.

Existing Selection and Removal Procedures for Constitutional Officers in Charter Counties

In addition to whether the five constitutional officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in Art. VIII, s. 1(d) of the Florida Constitution, these additional "selection and removal procedures" could be interpreted as affecting the selection of the five constitutional officers.

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[58] JACKSONVILLE, FLA., Charter and Related Laws, Part A. ss. 8.01, 9.01, 10.01 & 11.01, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA. Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. Art. VIII, s. 6(e), Fla. Const., (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934). The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

[59] JACKSONVILLE, FLA., Charter and Related Laws, Part A. s. 12.06, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE, FLA., Code of Ordinances, Title II ss. 11.103 & 13.103, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA.

[60] At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE CTY., FLA., Charter, s. 703, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

[61] ORANGE CTY., FLA., SUPERVISOR OF ELECTIONS, *About the Supervisor*, http://www.ocfelections.com/aboutbillcowles.aspx.

[62] ORANGE CTY., FLA., Code of Ordinances, Part I s. 2-66, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

[63] ORANGE CTY., FLA., Code of Ordinances, Part I s. 2-67, https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

[64] OSCEOLA CTY., FLA., Home Rule Charter, Article III s. 3.1, https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the five constitutional officers. The broad home rule power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special law."[65] This suggests that counties can currently modify their selection or removal procedures within the existing Article VIII framework through charter amendment or special law.[66]

Term Limits

Three charter counties have imposed term limits on one or more of the five constitutional officers.[67] Although the imposition of term limits on the five constitutional officers is not constitutionally or statutorily prohibited, or expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of the charter.[68]

Recall

Five counties have charters expressly providing for the recall of one or more of the five constitutional officers.[69] Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the five constitutional officers.[70]

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the five constitutional officers.[71] Non-partisan election of the five constitutional officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.[72]

III. Effect of Proposed Changes:

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of the property appraiser will have no impact on non-charter counties and those charter counties that retained the property appraiser without any changes to its selection or authority. Brevard, Miami-Dade, and Volusia counties changed the selection or authority of the property appraiser and will be required to revise their charters and ordinances to conform to the revised constitutional requirement.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional

[65] Art. VIII, s. 1(g), Fla. Const.
[66] Current statute and case law also supports this principle. *See* s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13 (Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the five constitutional officers).
[67] Duval, Orange, and Sarasota Counties.
[68] *Telli v. Broward County*, supra at n. 65.
[69] Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.
[70] Section 100.361, F.S.
[71] Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.
[72] *See* Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); ch. 105, F.S. (providing for non-partisan elections and procedure).

amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"[73]

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[73] *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).

C. Government Sector Impact:

Charter counties that changed the selection or authority of the property appraiser will incur an indeterminate negative fiscal impact to the extent of having to revise their charters and ordinances to conform to the revised constitutional requirement.

Also, the Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the cost to advertise constitutional amendments for the 2016 primary and general election cycle was $117.56 per word. Using 2016 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the *2018 general election could be **$87,680.30***, at a minimum.[74]

VI. Technical Deficiencies:

None.

VII. Related Issues:

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. The next general election in Florida is the gubernatorial election scheduled for November 6, 2018. If approved by the voters, the amendment takes effect on January 8, 2019. As a result, affected charter counties will have just over 2 months to revise their charters and ordinances to conform to this amendment.

VIII. Statutes Affected:

This joint resolution, if approved by the electorate, amends Article VIII, section 1 of the Florida Constitution.

IX. Additional Information:

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

CS by Community Affairs Committee on March 22, 2017:
Requires the property appraiser to be an elected officer in all counties and retains the charter county and special law options to change the office and duties of the tax collector, the sheriff, the supervisor of elections, and the clerk of the circuit court.

[74] 2017 Agency Legislative Bill Analysis, Department of State, HJR 136 (3/23/2017).

B. Amendments:

None.

By the Committee on Community Affairs; and Senators Artiles and Powell

578-02731-17 2017136c1

Senate Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to remove authority for a county charter or special law to provide for choosing a property appraiser in a manner other than by election or to transfer the duties of the property appraiser or abolish the office of the property appraiser.

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

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

578-02731-17 2017136c1

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, a sheriff, a tax collector, a supervisor of elections, and a clerk of the circuit court ~~any county officer~~ may be chosen in another manner therein specified, or ~~any county office~~ may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Notwithstanding subsection 6(e) of this article, this subsection provides the exclusive manner for the selection, length of term, abolition of office, and transfer of duties of the property appraiser of each county.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county

commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) TAXES; LIMITATION. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) COUNTY ORDINANCES. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.

(j) VIOLATION OF ORDINANCES. Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) COUNTY SEAT. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed

recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VIII, SECTION 1

SELECTION AND DUTIES OF PROPERTY APPRAISERS.—Proposing an amendment to the State Constitution to remove authority for a county charter or special law to provide for choosing a property appraiser in a manner other than by election or to transfer the duties of the property appraiser or abolish the office of the property appraiser. The amendment is applicable to all counties and takes effect January 8, 2019, if approved.

The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Joint Resolution #136**, relating to the Selection and Duties of County Officers/Property Appraiser, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

136
Bill Number (if applicable)

Topic Constitutional officer-Property Appraiser

Amendment Barcode (if applicable)

Name Pat Patterson

Job Title Volusia Co. Council member, former Rep

Address 125 W. Indiana Ave
Street

DeLand, FL 32720
City *State* *Zip*

Phone

Email ppatterso@volusia.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Volusia County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-4-17
Meeting Date

136
Bill Number (if applicable)

Topic COUNTY OFFICERS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title ASSOCIATE DIR. PUBLIC POLICY

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

136
Bill Number (if applicable)

Topic Constitutional officer - Property Ap.

Amendment Barcode (if applicable)

Name Arlene Smith

Job Title Legislative Affairs

Address 123 W. Indiana Ave
Street
DeLand, FL 32720
City *State* *Zip*

Phone 386-405-1552

Email asmith@volusia.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing County of Volusia

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

136

Meeting Date | *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810 Phone 305-979-7110

Street

MIAMI 33128 Email JESS.MCCARTY@MIAMIDADE.GOV

City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SJR 136
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Loren Levy

Job Title General Counsel, Property Appraisers' Assn of Fla

Address 1828 Riggins Rd
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone 850-219-0220

Email paafc@comcast.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Property Appraisers Assn of Fla.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/17
Meeting Date

1360
Bill Number (if applicable)

Topic County Officers

Amendment Barcode (if applicable)

Name Kelley Teague

Job Title Legislative Affairs Director

Address 201 S. Rosalind Ave
Street

Orlando FL 32801
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

SJR 136
Bill Number (if applicable)

Topic Constitutional County Officer

Amendment Barcode (if applicable)

Name Edward M. Labrador

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Avenue, Room 404
Street

Phone (954) 826-1155

Fort Lauderdale FL 33301
City *State* *Zip*

Email elabrador@broward.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 762
INTRODUCER:	Senator Baxley
SUBJECT:	Child Protection
DATE:	March 29, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Parks	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 762 affects child custody disputes where a parent resides in a recovery residence because of a drug or alcohol addiction. The bill provides that in such cases, a court-ordered time-sharing plan may not require a minor child to visit a parent between the hours of 9 p.m. and 7 a.m. if that parent lives in a recovery residence. The bill further provides as a condition of certification by the Department of Children and Families that a recovery residence may not allow a child to visit a resident parent during those hours.

The bill has an effective date of July 1, 2017, and does appear to have a fiscal impact.

II. Present Situation:

Parenting and Time-sharing Plans

The public policy of Florida is that each minor child should have frequent and continuing contact with both parents.[1] A court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[2] In determining time-sharing with each parent, a court must consider the best interests of the child based on a list of factors.[3] These factors include:

- The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required;
- The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties;

[1] Section 61.13(2)(c)1, F.S.
[2] Section 61.13(2)(c)2, F.S.
[3] Section 61.13(3), F.S.

- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent;
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- The geographic viability of the parenting plan;
- The moral fitness of the parents;
- The mental and physical health of the parents;
- The home, school, and community record of the child;
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child;
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child;
- The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child; and
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

A final factor allows the court to take into account any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.[4]

Recovery Residences

In section 397.311(36), F.S., a recovery residence is defined as "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means . . . by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[5] Recovery residences may elect to participate in a voluntary certification program administered through the Department of Children and Families (DCF).[6] Requirements for certification of a recovery residence include:

- Submission of documents, including a policy and procedure manual, rules for residents, intake procedures, refund policy, a code of ethics, proof of insurance, and proof of background screening;[7]
- Active management by a certified recovery residence administrator;[8]
- Submission of all owners, directors, and chief financial officers to a level 2 (nationwide) background screening;[9] and
- An onsite inspection of the recovery residence.[10]

[4] Section 61.13(3)(t), F.S.
[5] Recovery residences are commonly known as "halfway houses," but the rehabilitation industry has attempted to move away from that name due to a perceived stigma with it. *See* Beth Sanders, *Recovery Residence vs. Halfway House: What You Need to Know*, REHABS.COM, http://www.rehabs.com/pro-talk-articles/halfway-house-vs-recovery-residence-what-you-need-to-know/ (Aug. 5, 2014).
[6] Section 397.487, F.S.
[7] Section 397.487(3), F.S.
[8] Section 397.487(4), F.S.
[9] Section 397.487(6), F.S.
[10] Section 397.487(5), F.S.

The certification of a recovery residence may be suspended or revoked if the residence is not in compliance with any of the requirements for certification above.[11] A person may not advertise a recovery residence as a "certified recovery residence" unless the recovery residence has been issued a certificate of compliance by the Department of Children and Families.[12]

III. Effect of Proposed Changes:

The bill amends s. 61.13, F.S., to provide that a court-ordered time-sharing plan may not require a minor child to visit a parent residing in a recovery residence between 9 p.m. and 7 a.m.

The bill also amends s. 397.487, F.S., to provide that as a requirement of certification, a recovery residence may not allow minor children to visit or remain between 9 p.m. and 7 a.m. A certified recovery residence may allow minor children to visit a parent during the other hours of the day. Together, the statutory changes made by the bill prohibit a parent who resides in a recovery residence from exercising overnight visitation with a child while the parent resides at the recovery residence.

The bill takes effect July 1, 2017.

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:

As most recovery residences are private, the bill will most affect them. The bill should reduce overhead costs for recovery residences, as the operators will have to perform less childproofing in the evenings. Operators will also have to hire less supervision for the residences and will no longer have to worry about subsidizing the care of children (for example, purchasing an extra bed so a child can stay overnight).

[11] Section 397.487(8)(a), F.S.
[12] Section 397.487(9), F.S.

On the other hand, the bill also stands to possibly increase childcare costs for parents who do not live in recovery residences. These parents will no longer be able to count on dropping their kids off with the other parent for visitation and will have to provide more support for the child themselves during evening hours. These costs can possibly be offset by court orders requiring more child support from the parents who are in recovery residences and cannot host a child overnight. However, parents in recovery often have difficulty finding gainful employment, so a full recouping of costs is not guaranteed.

C. Government Sector Impact:

The bill may slightly lower costs for the Department of Children and Families, which will have less to inspect now that recovery residences no longer have to prepare to host children in evening hours.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.13 and 397.487 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Baxley

12-00884-17 2017762__

A bill to be entitled

An act relating to child protection; amending s. 61.13, F.S.; prohibiting a time-sharing plan from requiring visitation at a recovery residence between specified hours; amending s. 397.487, F.S.; authorizing a certified recovery residence to allow a minor child to visit a recovery residence, excluding visits during specified hours; providing an effective date.

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

Section 1. Subsection (9) is added to section 61.13, Florida Statutes, to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(9) A time-sharing plan may not require that a minor child visit a parent who is a resident of a recovery residence, as defined by s. 397.311, between the hours of 9 p.m. and 7 a.m.

Section 2. Subsection (10) is added to section 397.487, Florida Statutes, to read:

397.487 Voluntary certification of recovery residences.—

(10) A certified recovery residence may allow a minor child to visit a parent who is a resident of the recovery residence, provided that the minor child may not visit or remain in the recovery residence between the hours of 9 p.m. and 7 a.m.

Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 27, 2017

The Honorable Senator Greg Steube
326 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Steube,

I respectfully request you place Senate Bill 762 Child Protection on your next available agenda.

This bill authorizes a minor child to visit a recovery residence, excluding visits during the hours of 9 p.m. to 7 a.m.

I appreciate your favorable consideration.

Onward & Upward,

Dennis Baxley
Senator, District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1002
INTRODUCER:	Criminal Justice Committee and Senator Perry and others
SUBJECT:	Florida Comprehensive Drug Abuse Prevention and Control Act
DATE:	April 3, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1002 amends Florida's controlled substance schedules to provide that ioflupane (123I)[1] is not included as a Schedule II controlled substance.

Currently, ioflupane (123I) is a Schedule II controlled substance in Florida because of its derivation from cocaine via ecgonine, both of which are Schedule II substances. Prior to September 2015, ioflupane (123I) was also a Schedule II controlled substance under the federal Controlled Substances Act. However, effective September 11, 2015, the U.S. Drug Enforcement Administration removed ioflupane (123I) from that schedule because the drug is not subject to abuse and currently has a medically acceptable use in DaTscan, a drug product used to visualize striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.

The bill also provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

[1] The bill refers to the substance as "Ioflupane (123I)." An analysis of the bill by the Florida Department of Law Enforcement refers to the substance as "Ioflupane I 123." Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis (SB 1002)* (Jan. 26, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). However, FDLE's analysis does not indicate that the chemical nomenclature used in the bill to describe this substance is incorrect. This bill analysis uses the nomenclature used in the bill.

The Criminal Justice Impact Conference estimates that the bill will not have a prison bed impact.

II. Present Situation:

Ioflupane (123I)

An ioflupane (123I) injection, or a DaTscan, is a contrast agent used in single-photon emission computed tomography to detect dopamine transporters (DaT) for persons with suspected parkinsonian syndromes. Although a DaTscan cannot diagnose Parkinson's disease, the scan is used to help a doctor confirm a diagnosis of the disease.[2]

Florida's Controlled Substance Schedules and Scheduling of Ioflupane (123I)

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the statute. The most important factors in determining which schedule may apply to a substance is the "potential for abuse"[3] of the substance and whether there is a currently accepted medical use for the substance.[4] The controlled substance schedules are described as follows:

- Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes substances such as cannabis and heroin.[5]
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes substances such as raw opium, cocaine, and codeine.[6]
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes substances such as stimulants and anabolic steroids.[7]
- Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes substances such as benzodiazepines and barbiturates.[8]
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes substances such as mixtures that contain small quantities of opiates and codeine.[9]

The majority of provisions criminalizing behavior relating to controlled substances are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of

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[2] Parkinson's Disease Foundation, *DaTscan for Parkinson's: What Does it Mean?* (Jan. 20, 2011); available at: http://www.pdf.org/en/science_news/release/pr_1295578745 (last visited March 30, 2017).
[3] Pursuant to s. 893.035(3)(a), F.S., "potential for abuse" means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.
[4] See s. 893.03, F.S.
[5] Section 893.03(1), F.S.
[6] Section 893.03(2), F.S.
[7] Section 893.03(3), F.S.
[8] Section 893.03(4), F.S.
[9] Section 893.03(5), F.S.

controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.[10] Other factors, such as the quantity of controlled substances involved in a crime or the location where the violation occurs can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Ioflupane (123I) is a Schedule II controlled substance because it is derived from cocaine via ecgonine, both of which are Schedule II controlled substances. The substance falls under s. 893.03(2)(a)4., F.S., (cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine).

Federal Controlled Substance Schedules

The federal Controlled Substances Act[11] also classifies certain substances into schedules based on potential for abuse of the substance and whether there is a currently accepted medical use for it. Until 2015, federal law recognized ioflupane (123I) as a Schedule II controlled substance because of its derivation from cocaine via ecgonine, both of which are Schedule II controlled substances.[12]

Ioflupane (123I) is the active pharmaceutical ingredient in the drug product DaTscan.[13] The U.S. Food and Drug Administration (FDA) approved the New Drug Application for DaTscan, for the indication of visualizing striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.[14]

In 2010, the U.S. Department of Health and Human Services recommended to the U.S. Drug Enforcement Administration (DEA) that ioflupane (123I) be removed from the list of Schedule II substances.[15] In response, the DEA completed a review of FDA-approved diagnostic products containing ioflupane (123I), which at the time was only DaTscan.[16] The DEA agreed to remove ioflupane (123I) from the federal Controlled Substances Act based on the following:

- There is no data demonstrating that individuals are administering quantities of DaTscan sufficient to create a hazard to their health or to the safety of other individuals or to the community. Approximately 6,000 vials of DaTscan would be required to produce a subjective "high" in humans from exposure to ioflupane (123I). The volume of 6,000 vials is about 15 liters of fluid, an amount that would be lethal if administered intravenously.
- Over 168,000 doses of DaTscan were administered to patients worldwide and there was no clinical evidence of pharmacological effects.
- Meaningful extraction of ioflupane (123I) from DaTscan would be impossible due to its limited production and availability and because extraction is technically complex and would require advanced equipment not available to the general public.

[10] *See, e.g.*, s. 893.13(1)(a) and (c), F.S.
[11] 21 U.S.C. section 812.
[12] U.S. Drug Enforcement Administration, *Schedules of Controlled Substances: Removal of [123I] Ioflupane I 123 from Schedule II of the Controlled Substances Act*, pgs. 31521-31525, available at https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0603.htm (last visited March 29, 2017).
[13] *Id.* at 31522.
[14] *Id.*
[15] *Id.* at 31523.
[16] *Id.*

- There have been no reports of abuse of ioflupane (123I) or seizures as a result of ioflupane (123I).
- Because of the limited amounts of manufactured DaTscan, the low concentration of ioflupane (123I) per vial, and the existence of stringent regulatory controls on the manufacturing and handling of DaTscan, abuse of DaTscan is not possible as a practical matter.
- There was no psychic or physiological dependence potential of FDA-approved diagnostic products containing ioflupane (123I).
- Ioflupane (123I) is not an immediate precursor of a substance already controlled under the federal Controlled Substances Act.[17]

Accordingly, ioflupane (123I) was removed from the schedule of the federal Controlled Substances Act on September 11, 2015.[18]

III. Effect of Proposed Changes:

The bill specifies that ioflupane (123I) is not included as a Schedule II controlled substance under s. 890.03(2)(a)4., F.S., (cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine). Current law includes as a Schedule II controlled substance cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, from which ioflupane is derived.

The bill also provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.[19]

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[17] *Id.* at 31524.

[18] U.S. Drug Enforcement Administration, *Schedules of Controlled Substances: Removal of [123I] Ioflupane from Schedule II of the Controlled Substances Act*, pgs. 54715-54718, *available at* https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0911.htm (last visited on March 29, 2017).

[19] "Legislative enactments frequently incorporate portions of the Florida Statutes by reference. A cross-reference to a general body of law (without reference to a specific statute) incorporates the referenced law and any subsequent amendments to or repeal of the referenced law." Preface to the Official 2016 Florida Statutes, p. viii (case citations omitted). "In contrast, as a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute." *Id*. To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments.

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:

By specifying that ioflupane (123I) is excluded from the list of Schedule II Controlled Substances, the administrative, civil, and criminal sanctions applicable to controlled substances will not apply to a person who possesses ioflupane (123I). [20]

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will not have a prison bed impact.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03, Florida Statutes.

This bill creates section 893.015, Florida Statutes

[20] Department of Law Enforcement, *supra* note 1, at 2.
[21] Office of Economic and Demographic Research, *Criminal Justice Impact Conference Narrative Analyses of Adopted Impacts*, available at: http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB505.pdf (last visited March 29, 2017). CS/HB 505 is the companion bill to this bill.

IX. Additional Information:

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

CS by Criminal Justice on March 27, 2017:
The CS provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Perry, Rouson, and Bradley

591-02931-17 20171002c1

A bill to be entitled

An act relating to the Florida Comprehensive Drug Abuse Prevention and Control Act; creating s. 893.015, F.S.; specifying the chapter's purpose; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; amending s. 893.03, F.S.; specifying that ioflupane (123I) is not included in Schedule II of the standards and schedules of controlled substances; providing an effective date.

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

Section 1. Section 893.015, Florida Statutes, is created to read:

893.015 Statutory references.—The purpose of this chapter is to comprehensively address drug abuse prevention and control in this state. To this end, unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 893 or to any section or portion of a section of chapter 893 includes all subsequent amendments to chapter 893 or to the referenced section or portion of a section.

Section 2. Paragraph (a) of subsection (2) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of

591-02931-17 20171002c1

this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmefene or isoquinoline alkaloids of opium, including, but not limited to the following:

a. Raw opium.

b. Opium extracts.

c. Opium fluid extracts.

d. Powdered opium.

e. Granulated opium.

f. Tincture of opium.

g. Codeine.

h. Ethylmorphine.

i. Etorphine hydrochloride.

j. Hydrocodone.

k. Hydromorphone.

l. Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

m. Metopon (methyldihydromorphinone).

n. Morphine.

o. Oxycodone.

p. Oxymorphone.

q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances may ~~shall~~ not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum, L.*

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, except that these substances may not include ioflupane (123I).

Section 3. This act shall take effect July 1, 2017.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1206
INTRODUCER:	Health Policy Committee and Senator Montford
SUBJECT:	Rights and Responsibilities of Patients
DATE:	April 3, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1206 amends the Florida Patient's Bill of Rights to add as a right the right of a patient to bring a person of his or her choice to the patient-accessible areas of a health care facility or provider's office while the patient receives inpatient or outpatient treatment or consults with his or her health care provider unless:

- The health of the patient, other patients, or staff of the facility or office would be at risk.
- The facility or provider cannot reasonably accommodate the other person being present.

The right of a patient to bring another patient with him or her must be included in the summary of rights and responsibilities provided by health care providers to patients.

II. Present Situation:

Florida Patient's Bill of Rights and Responsibilities

The Patient's Bill of Rights and Responsibilities[1] (Bill of Rights) establishes a list of rights that each patient has when seeking health care in specified settings. The Bill of Rights requires health care facilities[2] and providers[3] to ensure:

[1] Section 381.026(4), F.S.
[2] Defined as hospitals and ambulatory surgical centers licensed under ch. 395, F.S., in s. 381.026(2)(b), F.S.
[3] Defined as physicians licensed under chs. 458, 459, and 461, F.S., in s. 381.026(2)(c), F.S.

- The patient's dignity is respected through protecting the patient has the right to privacy, with some exceptions; the right to a prompt and reasonable response to a question; and the right to retain and use personal clothing and possessions as space permits.
- The patient has access to pertinent information including, but not limited to, information on services offered by the provider; the patient's diagnosis, planned course of treatment, alternatives, risks, and prognosis with some exceptions; and the right to express grievances with the healthcare provider; and information on facility rules and regulations.
- The patient has access to financial information including, but not limited to, information on financial resources for the patient's healthcare, a reasonable estimate of charges, and a link to financial information disseminated by the Agency for Health Care Administration.[4]
- The patient has access to health care including impartial access to medical treatment regardless of race, national origin, religion, handicap, or source of payment; treatment for any emergency medical condition that will deteriorate from failure to provide such treatment; and access to any mode of treatment that is, in the patient's judgement and the judgement of his or her health care practitioner, in the best interests of the patient.
- That the patient knows whether the treatment he or she is receiving is for purposes of experimental research.

The Bill of Rights requires health care providers and health care facilities to provide patients with a written summary of the Florida Patient's Bill of Rights. Included in the summary along with a listing of a patient's rights are a patient's responsibilities. Each patient must respect the health care provider's and health care facility's right to expect behavior that is reasonable and responsible. Additionally, a patient is responsible for:

- Providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.
- Reporting unexpected changes in his or her condition to the health care provider.
- Reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.
- Following the treatment plan recommended by the health care provider.
- Keeping appointments and, when unable to do so, notifying the health care provider or health care facility.
- Accepting the consequences if he or she refuses treatment or does not follow the health care provider's instructions.
- Assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.
- Following health care facility rules and regulations affecting patient care and conduct.[5]

III. Effect of Proposed Changes:

CS/SB 1206 amends the Florida Patient's Bill of Rights to add as a right the right of a patient to bring a person of his or her choice to the patient-accessible areas of a health care facility or provider's office while the patient receives inpatient or outpatient treatment or consults with his or her health care provider unless:

[4] Pursuant to s. 408.05(3), F.S.
[5] Section 381.026(5) and (6), F.S.

- The health of the patient, other patients, or staff of the facility or office would be at risk; or
- The facility or provider cannot reasonably accommodate the other person being present.

The right of a patient to bring another patient with him or her must be included in the summary of rights and responsibilities provided by health care providers to patients.

A potential effect of the bill may be to resolve a statutory restriction on discussing a patient's condition with others present in the room, addressed in s. 456.057(7)(a) and (c), F.S., related to the ownership and control of patient records. This section of law prohibits a health care practitioner from discussing the medical condition of a patient with any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. This restriction may be more restrictive than that provided in the federal Health Insurance Portability and Accountability Act (HIPAA), which allows a provider to share or discuss information if the patient is present and does not object.[6] The new right established in this bill appears to clarify that the physician may discuss the patient's condition and treatment while a person of the patient's choosing is in the room.

The bill takes effect July 1, 2017.

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:

None.

[6] Department of Health and Human Services, *Summary of the HIPAA Privacy Rule, Permitted Uses and Disclosures* (pg. 5); available at: https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations (last visited Mar. 30, 2017).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "patient-accessible areas" is not defined in the bill. As the bill does not include rulemaking authority clarifying the meaning of the term may be difficult.

VIII. Statutes Affected:

This bill substantially amends section 381.026, Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 26, 2017:
The CS clarifies that a patient does not have the right to bring a person with him or her to a consultation or in-patient or out-patient surgery if doing so would risk the health and safety of the patient, other patients, or facility or office staff or if the health care facility or provider cannot reasonably accommodate the person. Additionally, the amendment removes language restricting any person or entity with a fiduciary interest in the patient's treatment from attending the patient's consultations or attempting to change the course of the patient's treatment.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Montford

588-02951-17 20171206c1

A bill to be entitled

An act relating to the rights and responsibilities of patients; amending s. 381.026, F.S.; requiring health care facilities and providers to authorize patients to bring in any person of the patients' choosing to specified areas of the facilities or providers' offices under certain circumstances; requiring health care facilities and providers to include such authorization as an additional patient standard in the statement of rights and responsibilities made available to patients by health care providers; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) and subsection (6) of section 381.026, Florida Statutes, are amended to read:

381.026 Florida Patient's Bill of Rights and Responsibilities.—

(4) RIGHTS OF PATIENTS.—Each health care facility or provider shall observe the following standards:

(a) *Individual dignity.*—

1. The individual dignity of a patient must be respected at all times and upon all occasions.

2. Every patient who is provided health care services retains certain rights to privacy, which must be respected without regard to the patient's economic status or source of payment for his or her care. The patient's rights to privacy must be respected to the extent consistent with providing

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adequate medical care to the patient and with the efficient administration of the health care facility or provider's office. However, this subparagraph does not preclude necessary and discreet discussion of a patient's case or examination by appropriate medical personnel.

3. A patient has the right to a prompt and reasonable response to a question or request. A health care facility shall respond in a reasonable manner to the request of a patient's health care provider for medical services to the patient. The health care facility shall also respond in a reasonable manner to the patient's request for other services customarily rendered by the health care facility to the extent such services do not require the approval of the patient's health care provider or are not inconsistent with the patient's treatment.

4. A patient in a health care facility has the right to retain and use personal clothing or possessions as space permits, unless for him or her to do so would infringe upon the right of another patient or is medically or programmatically contraindicated for documented medical, safety, or programmatic reasons.

5. A patient receiving care in a health care facility or in a provider's office has the right to bring any person of his or her choosing to the patient-accessible areas of the health care facility or provider's office to accompany the patient while the patient is receiving inpatient or outpatient treatment or is consulting with his or her health care provider, unless doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated by the facility or provider.

(6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.—Any health care provider who treats a patient in an office or any health care facility licensed under chapter 395 that provides emergency services and care or outpatient services and care to a patient, or admits and treats a patient, shall adopt and make available to the patient, in writing, a statement of the rights and responsibilities of patients, including the following:

SUMMARY OF THE FLORIDA PATIENT'S BILL
OF RIGHTS AND RESPONSIBILITIES

Florida law requires that your health care provider or health care facility recognize your rights while you are receiving medical care and that you respect the health care provider's or health care facility's right to expect certain behavior on the part of patients. You may request a copy of the full text of this law from your health care provider or health care facility. A summary of your rights and responsibilities follows:

A patient has the right to be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.

A patient has the right to a prompt and reasonable response to questions and requests.

A patient has the right to know who is providing medical services and who is responsible for his or her care.

A patient has the right to know what patient support services are available, including whether an interpreter is available if he or she does not speak English.

A patient has the right to bring any person of his or her choosing to the patient-accessible areas of the health care facility or provider's office to accompany the patient while the patient is receiving inpatient or outpatient treatment or is consulting with his or her health care provider, unless doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated by the facility or provider.

A patient has the right to know what rules and regulations apply to his or her conduct.

A patient has the right to be given by the health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.

A patient has the right to refuse any treatment, except as otherwise provided by law.

A patient has the right to be given, upon request, full information and necessary counseling on the availability of known financial resources for his or her care.

A patient who is eligible for Medicare has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts the Medicare assignment rate.

A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.

A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national

origin, religion, handicap, or source of payment.

A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide treatment.

A patient has the right to know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.

A patient has the right to express grievances regarding any violation of his or her rights, as stated in Florida law, through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.

A patient is responsible for providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.

A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.

A patient is responsible for reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.

A patient is responsible for following the treatment plan recommended by the health care provider.

A patient is responsible for keeping appointments and, when he or she is unable to do so for any reason, for notifying the health care provider or health care facility.

A patient is responsible for his or her actions if he or she refuses treatment or does not follow the health care

provider's instructions.

A patient is responsible for assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.

A patient is responsible for following health care facility rules and regulations affecting patient care and conduct.

Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR BILL MONTFORD
3rd District

March 29, 2017

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

Dear Chair Steube:

I respectfully request that SB 1206 a bill relating to Patients Rights be placed on the agenda for the next Judiciary Committee Meeting:

Your consideration is greatly appreciated.

Sincerely,

Bill Montford

William "Bill" Montford
Senate District 3

WM/md

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

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

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

1206
Bill Number (if applicable)

Topic Patient Bill of Rights

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title

Address 108 E. Jefferson St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 559 0855

Email cyhenderson@me.com

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

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

Representing Crown Consulting

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 530
INTRODUCER:	Banking and Insurance Committee and Senator Steube
SUBJECT:	Health Insurer Authorization
DATE:	April 3, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 530 revises provisions of the Insurance Code relating to prior authorization and step therapy or fail-first protocols. The bill creates an expedited, standard process for the approval or denial of prior authorizations and protocol exceptions, which provides greater transparency for consumers and providers regarding policies and procedures.

Under the process of prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a health care service under the plan. Step therapy or fail-first protocols for medical treatment or prescription drugs coverage require an insured or enrollee to try a certain drug or treatment before receiving coverage for another drug or medical treatment. However, timely access to health care can be critical for individuals who have conditions that may cause death, disability, or serious discomfort unless treated with the most appropriate medical care.

The bill:

- Requires a health insurer (which means a health insurer, health maintenance organization (HMO), or Medicaid managed care plan), or pharmacy benefit manager (PBM) on behalf of a health insurer to authorize or deny a prior authorization request or a protocol exception request or appeal of a denial in nonurgent care situation within 72 hours after receiving a prior authorization form or protocol exception request. In urgent circumstances, a health insurer must authorize or deny a request within 24 hours.

- Provides greater transparency for consumers by requiring health insurers or PBMs to provide public access on its website to current prior authorization requirements, restrictions, and forms and in written or electronic form upon request. If a health insurer, or PBM intends to amend or implement a new prior authorization requirement or restriction, the entity must update the website 60 days before the effective date of the new requirement or restriction. Notification of the change must be provided to all insureds or enrollees using the affected service and to all contract providers who provide the affected services at least 60 days before the effective date.
- Requires a health insurer to grant a protocol exception request under certain conditions.
- Provides that if the health insurer authorizes the protocol exception request, the health insurer must specify the approved medical procedure, course of treatment, or prescription drug benefits.
- Requires that if the health insurer denies the protocol exception request, the health insurer must provide specified information, including instruction on how to appeal a denial.

The fiscal impact on the Medicaid program is indeterminate. The State Group Insurance program indicates that the two fully-insured HMOs would incur an indeterminate negative impact. The provisions of the bill would not have a fiscal impact on the state's self-funded insurance plans.

II. Present Situation:

Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[1] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[2] As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[3]

The Florida Insurance Code requires health insurers and HMOs to provide an outline of coverage or other information describing the benefits, coverages, and limitations of a policy or contract. This may include an outline of coverage describing the principal exclusions and limitations of the policy.[4] Further, each contract, certificate, or member handbook of an HMO must delineate the services for which a subscriber is entitled and any limitations under the contract.[5]

Section 627.4234, F.S., requires a health insurance policy or health care services plan, which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this state to contain one or more of the following procedures or provisions to contain health insurance costs or cost increases:

- Coinsurance.

[1] Section 20.121(3)(a), F.S.
[2] Section 641.21(1), F.S.
[3] Section 641.495, F.S.
[4] Section 627.642, F.S.
[5] Section 641.31(4), F.S.

- Deductible amounts.
- Utilization review.
- Audits of provider bills to verify that services and supplies billed were furnished and that proper charges were made.
- Scheduled benefits.
- Benefits for preadmission testing.
- Any lawful measure or combination of measures for which the insurer provides to the office information demonstrating that the measure or combination of measures is reasonably expected to contain health insurance costs or cost increases.

Pursuant to s. 627.42392, F.S., any health insurer (health insurer, HMO, Medicaid managed care plan) or pharmacy benefit manager, on behalf of the health insurer, that does not use an online prior authorization form must use a standardized form adopted by the Financial Services Commission to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form must include all clinical documentation necessary for the health insurer to make a decision.

Florida's Statewide Medicaid Managed Care[6]

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (agency) oversees the Medicaid program.[7] The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) managed care program. The agency contracts with managed care plans to provide services to eligible enrollees.[8]

Managed Care Covered Services

The benefit package offered by the MMA plans is comprehensive and covers all Medicaid state plan benefits (with very limited exceptions). This includes all medically necessary services for children. Most Florida Medicaid enrollees who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The agency maintains coverage policies for most Florida Medicaid services, which are incorporated by reference into Rule 59G-4, F.A.C. Florida Medicaid managed care plans cannot be more restrictive than these policies or the Florida Medicaid state plan (which is approved by the federal Centers for Medicare and Medicaid Services) in providing services to their enrollees.

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics (P&T) committee within the agency for the development of a Florida Medicaid preferred drug list (PDL). The P&T committee meets quarterly, reviews all drug classes included in the formulary at least every 12 months, and may recommend additions to and deletions from the agency's Medicaid PDL,

[6] Agency for Health Care Administration, Analysis of SB 530 (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance).
[7] Part III of ch. 409, F.S., governs the Medicaid program.
[8] A managed care plan that is eligible to provide services under the SMMC program must have a contract with the agency to provide services under the Medicaid program; be a health insurer, an exclusive provider organization or a HMO authorized under ch. 624, 627, or 641, F.S., respectively, or a provider service network authorized under s. 409.912(2), F.S., or an accountable care organization authorized under federal law. (s. 409.962, F.S.)

such that the PDL provides for medically appropriate drug therapies for Florida Medicaid recipients and an array of choices for prescribers within each therapeutic class. The agency also manages the federally required Medicaid Drug Utilization Board, which meets quarterly, and develops and reviews clinical prior authorization criteria, including step-therapy protocols for drugs that are not on the Medicaid PDL.

Florida Medicaid managed care plans serving MMA enrollees are required to provide all prescription drugs listed on the agency's PDL and otherwise covered by Medicaid.[9] As such, the Florida Medicaid managed care plans have not implemented their own plan-specific formulary or PDL. The Florida Medicaid managed care plan's prior authorization criteria/protocols related to prescribed drugs cannot be more restrictive than the criteria established by the agency.

Prior Authorization Requirements

Florida Medicaid managed care plans may implement service authorization and utilization management requirements for the services they provide under the SMMC program. However, Florida Medicaid managed care plans are required to ensure that service authorization decisions are based on objective evidenced-based criteria; utilization management procedures are applied consistently; and all decisions to deny or limit a requested service are made by health care providers who have the appropriate clinical expertise in treating the enrollee's condition. The Florida Medicaid managed care plans are also required to adopt practice guidelines that are based on valid and reliable clinical evidence or a consensus of health care professionals in a particular field; consider the needs of the enrollees; are adopted in consultation with providers; and are reviewed and updated periodically, as appropriate.[10]

Florida Medicaid managed care plans must establish and maintain a utilization management system to monitor utilization of services, including an automated service authorization system for denials, service limitations, and reductions of authorization. Section 627.42392, F.S., requires the use of a standard prior authorization form by health insurers. A health insurer that does not provide an electronic prior authorization process for use by its providers is required to use the prior authorization form adopted by the Financial Services Commission for authorization of procedures, treatments, or prescription drugs. Currently, Medicaid managed care plans are required by contract to have electronic authorization processes and are therefore exempt from this provision.

The SMMC contract requires managed care plans to authorize or deny a standard request for prior authorization for services other than prescribed drugs within 7 days and authorize or deny an expedited request within 48 hours after receiving the request. Within 24 hours after receipt of a request, a managed care plan must respond to a request for prior authorization. The timeframe for standard authorization decisions can be extended up to 7 additional days if the enrollee or the provider requests an extension or the managed care plan justifies the need for additional information and describes how the extension is in the enrollee's interest.

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[9] See Agency for Health Care Administration Pharmacy Policy available at: http://ahca.myflorida.com/Medicaid/Policy_and_Quality/Policy/pharmacy_policy/index.shtml (last viewed Mar. 30, 2017).

[10] These guidelines are consistent with requirements found in federal and state regulations (See 42 CFR s. 438.236(b)). All service authorization decisions made by the managed care plans must be consistent with the State's Medicaid medical necessity definition (Rule 59G-1.010, F.A.C.).

Enrollee Materials and Services

Managed care plans are contractually required to notify enrollees via the enrollee handbook of any procedures for obtaining required services and authorization requirements, including any services available without prior authorization. All enrollee communications, including written materials, spoken scripts, and websites, must be at or near the fourth grade reading level. Managed care plans are required by contract to issue a provider handbook to all providers that includes prior authorization and referral procedures, including required forms. Managed care plans are required to keep all provider handbooks and bulletins up to date and in compliance with state and federal laws. The managed care plans must notify its enrollees in writing of any changes to covered services or service authorization protocols at least 30 days in advance of the change.

The managed care plan must send a written notice of adverse benefit determination to the enrollee to inform the enrollee about a decision to deny, reduce, suspend, or terminate a requested service and provide directions on how the enrollee may ask for a plan appeal to dispute the managed care plan's adverse benefit determination. The enrollee has 60 days after the plan's adverse benefit determination to ask for a plan appeal. For decisions that are appealed, the managed care plan must have a second health care professional who was neither involved in any previous level of review or decision-making, nor a subordinate of any such individual. The managed care plan then has 30 days from the date of the enrollee's request to make a final decision. The managed care plan has 72 hours to respond to the enrollee or his or her authorized representative's request for an expedited plan appeal. The enrollee must complete the plan appeal process before asking for a Medicaid fair hearing.

Florida State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S.

Contractually, health plans and contracted third party administrators are required to review urgent or emergency prior authorization requests within 24 hours after receipt and within 14 calendar days after initial receipt for routine requests. Current industry standards for utilization review change notices to plan participants/enrollees is 30 days.[11]

[11] Department of Management Services, *Analysis of SB 530* (Mar. 23, 2017) (on file with the Senate Banking and Insurance Committee and the Senate Judiciary Committee).

Federal Patient Protection and Affordable Care Act

Health Insurance Reforms

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.[12] The PPACA requires health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits[13] and other provisions.

The PPACA requires insurers and HMOs that offer qualified health plans (QHPs) to provide ten categories of essential health benefits (EHB), which includes prescription drugs.[14] The federal Health Insurance Marketplace must certify such plans of an insurer or HMO.[15] The federal deadline for insurers and HMOs to submit 2018 rates and forms to the Florida Office of Insurance Regulation is May 3, 2017.[16,17]

Prescription Drug Coverage

For purposes of complying with the federal EHBs for prescription drugs, plans must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan. Plans must have a Pharmacy and Therapeutics Committee design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. The PPACA also requires plans to implement an internal appeals and independent external review process if an insured is denied coverage of a drug on the formulary.[18]

Plans are required to publish an up-to-date and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the way a drug can be obtained, in

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[12] The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.
[13] 42 U.S.C. s.18022.
[14] See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed March 30, 2017) for Florida's benchmark plan.
[15] Center for Consumer Information & Insurance Oversight, *Qualified Health Plans,* https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html (last viewed Mar. 30, 2017).
[16] Office of Insurance Regulation, *Guidance to Insurers,* available at http://www.floir.com/sitedocuments/PPACANoticetoIndustry201802032017.pdf (last viewed Mar. 30, 2017).
[17] President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,* https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed: Mar. 30, 2017).
[18] 45 C.F.R. s. 147.136.

a manner that is easily accessible to insureds, prospective insureds, the state, and the public.[19] Restrictions include prior authorization, step therapy, quantity limits and access restrictions.[20]

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, plans may place utilization management requirements on the use of certain medical treatments or drugs on their formulary. Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under a plan. In some cases, plans require an insured to use a step therapy protocol for drugs or a medical treatment, which requires the insured to try one drug or medical procedure first to treat the medical condition before the insurer will cover another drug or procedure for that condition.

III. Effect of Proposed Changes:

Section 1 revises s. 627.42392, F.S., relating to prior authorization by a health insurer. A health insurer is an authorized health insurer offering major medical or similar comprehensive coverage, a Medicaid managed care plan, or an HMO. The section defines the term, "urgent care situation," which has the same meaning as in s. 627.42393, F.S. (see section 2, below).

A health insurer or a pharmacy benefits manager (PBM) on behalf of a health insurer is required to provide current prior authorization requirements, restrictions, and forms on a publicly accessible website and in written or electronic format upon request. The requirements must be described in clear and easily understandable language. Further, the bill requires any clinical criteria to be described in language easily understandable by a provider.

If a health insurer or a PBM on behalf of a health insurer intends to amend or implement new prior authorization requirements or restrictions, the health insurer or PBM must:

- Ensure that the new or amended requirements or restrictions have been available on the their website at least 60 days before the effective date of the changes.
- Provide notice to policyholders and providers who are affected by the changes at least 60 days before the effective date. Notice may be delivered electronically or by other methods mutually agreed upon by the insured or provider.

These notice requirements do not apply to expansion of coverage.

Health insurers or PBMs on behalf of health insurers must approve or deny prior authorization requests in urgent and nonurgent care circumstances within 24 hours and 72 hours, respectively, after receipt of the prior authorization form. Notice must be given to the patient and the treating provider of the patient.

Section 2 creates s. 627.42393, F.S., relating to step therapy or fail-first protocols. The bill defines the following terms:

[19] 45 C.F.R. s. 156.122(d).

[20] According to CMS, this formulary drug list website link should be the same direct formulary drug list link for obtaining information on prescription drug coverage in the Summary of Benefits Coverage, in accordance with 45 CFR s. 147.200(a)(2).

- "Fail-first protocol," is a written protocol that specifies the order in which a certain medical procedure, prescription drugs or course of treatment must be used to treat an insured's condition.
- "Health insurer" has the same meaning as provided in s. 627.42392, F.S. (see section 1, above).
- "Preceding prescription drug or medical treatment," is a medical procedure, course of treatment, or prescription drug that must be used pursuant to a health insurer's fail first protocol as a condition of coverage under a health insurance policy or HMO contract to treat an insured's condition.
- "Protocol exception" is a determination by a health insurer that a fail first protocol is not medically appropriate or indicated for treatment of an insured's condition, and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating provider for the insured's condition.
- "Urgent care situation" is an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured's treating physician, would seriously jeopardize the insured's life or health or ability to regain maximum function or subject the patient to severe pain that cannot be managed adequately.

A health insurer is required to publish on its website and provide to an insured in writing the procedure for requesting a protocol exception, including the following:
- A description of the manner in which an insured may request a protocol exception.
- The manner and timeframe in which a health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request.
- The conditions in which the protocol exception request must be granted.

As is the case for a response to a request for a prior authorization, the health insurer must authorize or deny a protocol exception request or respond to an appeal of a health insurer's authorization or denial of a request within 24 hours after receipt in an urgent care situation; or within 72 hours after receipt in a nonurgent care situation. The health insurer must include a detailed written explanation of the reason for the denial and the procedure to appeal the denial.

A health insurer must grant a protocol exception request if:
- A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;
- A preceding prescription drug is expected to be ineffective based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;
- The insured previously received a preceding prescription drug or another prescription drug or medical treatment that is in the same pharmacologic class or that has the same mechanism of action as a preceding prescription drug, respectively, and the drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or
- The bill provides that a preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of the drug or treatment is expected to:

- Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;
- Worsen the medical condition of the insured that exists simultaneously but independently with the condition under treatment; or
- Decrease the ability of the insured to achieve or maintain his or her ability to perform daily activities.

The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

Section 3 provides that the bill takes effect July 1, 2017.

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 does not address whether its provisions apply prospectively to future contracts between a person and an insurer or an HMO or to contracts in existence on the effective date of the bill.

Article I, section 10 of the State Constitution provides:

> **Prohibited laws.—**No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

This bill may potentially be challenged to the extent that its provisions substantially alter existing contracts, In *Pomponio v. Claridge of Pompano Condominium, Inc.*,[21] the Florida Supreme Court reviewed a statute which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court invalidated the law as an unconstitutional impairment of contract, after applying a three-prong test."[22] The court noted that the inquiry is not required and the law will stand if the court initially finds that the alteration of contractual obligations is minimal.[23]

[21] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979).
[22] *Id*. at 779, 782.
[23] In so doing, the court concluded, "[t]he severity of the impairment measures the height of the hurdle the state legislation must clear." *Id*.

However, a substantial or severe impairment of an existing contract requires the court to consider whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[24]

In *United States Fidelity & Guaranty Co. v. Department of Insurance*, the Florida Supreme Court followed *Pomponio*.[25] In so doing, the court stated that the overall query involves a balancing of a person's interest to not have his or her contracts impaired, with the state's interest in exercising legitimate police power.[26] As provided in *Pomponio*, the severity of the impairment increases the level of scrutiny.[27]

Relevant to whether an impairment of contract is constitutional is the degree to which the plaintiff's industry had been regulated in the past. If the industry of the plaintiff was already heavily regulated at the time the plaintiff entered into the contract, further regulation is expected, and therefore considered to be reasonable by the court.[28]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill may give health care providers greater flexibility in prescribing medications to meet the unique medical needs of their patients and reduce the administrative burden associated with the prior authorization process and the current step therapy or fail-first therapy protocols.

Insurers and HMOs may experience an indeterminate increase in costs associated with changes in the step therapy protocols provided in the bill. These cost increases are likely to pass through to the purchasers of health insurance, such as individuals and employers.[29]

The provisions of the bill would not apply to self-insured health plans because plans are preempted from state regulation under the Employee Retirement Income Security Act of 1974.

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[24] *Id*.
[25] *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355, 1360 (Fla. 1984).
[26] *Id*. at 1360.
[27] *Id*.
[28] *Id*. at 1361.
[29] Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis of SB 530* (Feb. 2, 2017) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Judiciary).

C. Government Sector Impact:

Division of State Group Insurance/DMS[30]

The fiscal impact of the bill is unknown. However, the bill will negatively impact the division's fully insured HMO vendors, Capital Health Plan (CHP) and Florida Health Care Plans (FHCP). The initial estimated fiscal impact for CHP would be $450,000 annually. The FHCP was unable to provide a fiscal impact estimate. The provisions of the bill will not affect the state's self-funded insurance plans.

The requirement of a 60-day notice for utilization review changes may prevent timely changes when external or internal factors facilitate an urgent need for the change. The 60-day notice requirement could discourage utilization review changes all together, many of which are made to maintain or increase quality. Other changes are made to assist in the elimination of fraud, abuse, and overuse of certain prescription drugs and medical treatments.

Medicaid[31]

According to the Agency for Health Care Administration, CS/SB 530 will have an indeterminate fiscal impact on the agency. The bill will require the agency to amend the Statewide Medicaid Managed Care (SMMC) contracts to modify the prior authorization requirements and the utilization review timeframes. The agency will use current agency resources to amend the contract. The bill will significantly affect the business (staffing, systems, etc.) and clinical operations of the Medicaid managed care plans. The bill requires the plans to shorten the time to review authorizations, which will increase the administrative costs.

The agency notes that the situations specified in the bill, for which a plan would be required to authorize a request for a "protocol exception," should already be contemplated in the plans' clinical/evidence based authorization criteria under the SMMC program and are factors addressed in the application of the State's Medicaid medical necessity definition. All Medicaid managed care plans must use the State's Medicaid medical necessity definition in their approval and denial of services. As such, it is unclear of the benefit achieved from applying the requirements related to the "protocol exception" to managed care plans furnishing services under the SMMC program, other than to add administrative requirements on the plans in an effort to expedite authorization decisions. The timely response standards for protocol exceptions will require the plans to increase their authorization staff and will result in an increase in administrative expenses. These increased costs will need to be reflected in the SMMC capitation rates as administrative expenses.

[30] Department of Management Services, *Senate Bill 530 Analysis* (Mar. 23, 2017) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Judiciary).
[31] Agency for Health Care Administration, *Senate Bill 530 Analysis* (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

Terms

The provisions of section 1 of the bill apply to health insurers and pharmacy benefit managers on behalf of health insurers. The OIR regulates health insurers; however, PBMs are not licensed or regulated by the OIR. It is unclear whether the health insurer is responsible for the actions of the PBM. The OIR analysis of the bill expresses concern regarding enforcing PBM compliance with this bill.[32]

Notice of Prior Authorization Changes

The bill requires health insurers or a PBM to provide at least 60 days' prior notice to insureds and physicians prior to implementing new requirements or restrictions to the prior authorization process. However, the bill does not allow for exceptions in circumstances where a drug or procedure is found to be hazardous or could result in harm to an insured.

VII. Related Issues:

Effective Date

According to the OIR, the filing submission deadline for PPACA-compliant form and rate filings in the individual and small group market is May 3, 2017. This deadline is applicable for products sold on and off the exchange. However, the effective date of the bill is July 1, 2017. Many plans operate on a calendar year basis.

VIII. Statutes Affected:

This bill substantially amends section 627.4292, Florida Statutes.

This bill creates section 627.4293, Florida Statutes.

IX. Additional Information:

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

Banking and Insurance Committee on March 27, 2015:
The CS:

- Revises definitions.
- Removes applicability of the provisions of the bill to utilization review entities.
- Revises procedures for prior authorization and fail first protocols.
- Shortens response time for health insurers to authorize or deny a prior authorization request or a fail first protocol exception request for nonurgent care situations from 3 business days to 72 hours.

[32] Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis of SB 530* (Feb. 2, 2017) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Judiciary).

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Steube

597-02949-17 2017530c1

A bill to be entitled

An act relating to health insurer authorization; amending s. 627.42392, F.S.; revising and providing definitions; revising criteria for prior authorization forms; requiring health insurers and pharmacy benefits managers on behalf of health insurers to provide certain information relating to prior authorization in a specified manner; prohibiting such insurers and pharmacy benefits managers from implementing or making changes to requirements or restrictions to obtain prior authorization, except under certain circumstances; providing applicability; requiring such insurers or pharmacy benefits managers to authorize or deny prior authorization requests and provide certain notices within specified timeframes; creating s. 627.42393, F.S.; providing definitions; requiring health insurers to publish on their websites and provide in writing to insureds a specified procedure to obtain protocol exceptions; specifying timeframes in which health insurers must authorize or deny protocol exception requests and respond to an appeal to a health insurer's authorization or denial of a request; requiring authorizations or denials to specify certain information; providing circumstances in which health insurers must grant a protocol exception request; authorizing health insurers to request documentation in support of a protocol exception request; providing an effective date.

597-02949-17 2017530c1

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

Section 1. Section 627.42392, Florida Statutes, is amended to read:

627.42392 Prior authorization.—

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

(a) "Health insurer" means an authorized insurer offering an individual or group insurance policy that provides major medical or similar comprehensive coverage ~~health insurance as defined in s. 624.603~~, a managed care plan as defined in s. 409.962(10) ~~s. 409.962(9)~~, or a health maintenance organization as defined in s. 641.19(12).

(b) "Urgent care situation" has the same meaning as in s. 627.42393.

(2) Notwithstanding any other provision of law, effective January 1, 2017, or six (6) months after the effective date of the rule adopting the prior authorization form, whichever is later, a health insurer, or a pharmacy benefits manager on behalf of the health insurer, which does not provide an electronic prior authorization process for use by its contracted providers, shall only use the prior authorization form that has been approved by the Financial Services Commission for granting a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form may not exceed two pages in length, excluding any instructions or guiding documentation, and must include all clinical documentation necessary for the health insurer to make a decision. At a minimum, the form must include: (1) sufficient patient information to identify the member, date of birth, full

name, and Health Plan ID number; (2) provider name, address and phone number; (3) the medical procedure, course of treatment, or prescription drug benefit being requested, including the medical reason therefor, and all services tried and failed; (4) any laboratory documentation required; and (5) an attestation that all information provided is true and accurate. The form, whether in electronic or paper format, may not require information that is not necessary for the determination of medical necessity of, or coverage for, the requested medical procedure, course of treatment, or prescription drug.

(3) The Financial Services Commission in consultation with the Agency for Health Care Administration shall adopt by rule guidelines for all prior authorization forms which ensure the general uniformity of such forms.

(4) Electronic prior authorization approvals do not preclude benefit verification or medical review by the insurer under either the medical or pharmacy benefits.

(5) A health insurer or a pharmacy benefits manager on behalf of the health insurer must provide the following information in writing or in an electronic format upon request, and on a publicly accessible Internet website:

(a) Detailed descriptions of requirements and restrictions to obtain prior authorization for coverage of a medical procedure, course of treatment, or prescription drug in clear, easily understandable language. Clinical criteria must be described in language easily understandable by a health care provider.

(b) Prior authorization forms.

(6) A health insurer or a pharmacy benefits manager on

behalf of the health insurer may not implement any new requirements or restrictions or make changes to existing requirements or restrictions to obtain prior authorization unless:

(a) The changes have been available on a publicly accessible Internet website at least 60 days before the implementation of the changes.

(b) Policyholders and health care providers who are affected by the new requirements and restrictions or changes to the requirements and restrictions are provided with a written notice of the changes at least 60 days before the changes are implemented. Such notice may be delivered electronically or by other means as agreed to by the insured or health care provider.

This subsection does not apply to expansion of health care services coverage.

(7) A health insurer or a pharmacy benefits manager on behalf of the health insurer must authorize or deny a prior authorization request and notify the patient and the patient's treating health care provider of the decision within:

(a) Seventy-two hours of obtaining a completed prior authorization form for nonurgent care situations.

(b) Twenty-four hours of obtaining a completed prior authorization form for urgent care situations.

Section 2. Section 627.42393, Florida Statutes, is created to read:

627.42393 Fail-first protocols.—

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

(a) "Fail-first protocol" means a written protocol that

specifies the order in which a certain medical procedure, course of treatment, or prescription drug must be used to treat an insured's condition.

(b) "Health insurer" has the same meaning as provided in s. 627.42392.

(c) "Preceding prescription drug or medical treatment" means a medical procedure, course of treatment, or prescription drug that must be used pursuant to a health insurer's fail-first protocol as a condition of coverage under a health insurance policy or a health maintenance contract to treat an insured's condition.

(d) "Protocol exception" means a determination by a health insurer that a fail-first protocol is not medically appropriate or indicated for treatment of an insured's condition and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating health care provider for the insured's condition.

(e) "Urgent care situation" means an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured's treating physician, would:

1. Seriously jeopardize the insured's life, health, or ability to regain maximum function; or

2. Subject the insured to severe pain that cannot be adequately managed.

(2) A health insurer must publish on its website, and provide to an insured in writing, a procedure for an insured and

health care provider to request a protocol exception. The procedure must include:

(a) A description of the manner in which an insured or health care provider may request a protocol exception.

(b) The manner and timeframe in which the health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request.

(c) The conditions in which the protocol exception request must be granted.

(3)(a) The health insurer must authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request within:

1. Seventy-two hours of obtaining a completed prior authorization form for nonurgent care situations.

2. Twenty-four hours of obtaining a completed prior authorization form for urgent care situations.

(b) An authorization of the request must specify the approved medical procedure, course of treatment, or prescription drug benefits.

(c) A denial of the request must include a detailed, written explanation of the reason for the denial, the clinical rationale that supports the denial, and the procedure to appeal the health insurer's determination.

(4) A health insurer must grant a protocol exception request if:

(a) A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;

(b) A preceding prescription drug is expected to be ineffective, based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;

(c) The insured has previously received a preceding prescription drug or medical treatment that is in the same pharmacologic class or has the same mechanism of action, and such drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or

(d) A preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of such drug or treatment is expected to:

1. Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;

2. Worsen an insured's medical condition that exists simultaneously but independently with the condition under treatment; or

3. Decrease the insured's ability to achieve or maintain his or her ability to perform daily activities.

(5) The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SB 530
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Wendes Trancoso

Job Title Vice President + General Counsel

Address 200 W. College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-386-2204

Email Wendes@FAHP.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SB 530
Bill Number (if applicable)

Topic Health Insurer Authorization

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street, 200
Street

Phone 850-205-9000

Tallahassee FL 32301
City *State* *Zip*

Email aimee.diazlyon@mhdfirm.com

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

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

Representing BioFlorida / The AIDS Institute

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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S-001 (10/14/14)

9:30 am
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THE FLORIDA SENATE

APPEARANCE RECORD

4/4/17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 530

Meeting Date *Bill Number (if applicable)*

Topic Health Insurer Authorization *Amendment Barcode (if applicable)*

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr. Phone 878-7364

Street

Tallahassee FL 32301 Email winnsr@earthlink.net

City *State* *Zip*

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

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

Representing Florida Osteopathic Medical Association

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SB 530
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
Street

Phone 850 224-6496

Email jscott@flmedical.org

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

CS/SB 530

Meeting Date | *Bill Number (if applicable)*

Topic Health Insurance

Amendment Barcode (if applicable)

Name Beth Labasky

Job Title Consultant

Address 1401 Village Square Blvd. *Street*

Phone 850 322 7335

Tall. FL 32312 *City* *State* *Zip*

Email bethlabasky@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Alpha 1 Foundation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

SB 530
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Julie Ryan

Job Title _____

Address 5380 NW 55th Blvd
Street

Coconut Creek FL 33073
City *State* *Zip*

Phone 9544290196

Email Jnryan2010@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NPF National Psoriasis Foundation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.4.17
Meeting Date

SB 530
Bill Number (if applicable)

Topic Step Therapy

Amendment Barcode (if applicable)

Name Amy Prentice

Job Title State Govt Relations Manager

Address 5818 Iron Willow Ct
Street
Alexandria VA 22310
City *State* *Zip*

Phone 703.400.0137

Email AmyDPrentice@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Nat'l Psoriasis Foundation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

SB 530
Bill Number (if applicable)

Topic Prior Authorization / Step Therapy

Amendment Barcode (if applicable)

Name Claudia Stewart

Job Title Director Advocacy Access

Address 2136 Magnolia Grove Way
Street

Midlothian VA
City *State* *Zip*

Phone

Email CStewart@arthritis.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/2017
Meeting Date

SB 530
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Carolyn Norman

Job Title _____

Address 2233 SW 15 St # 213
Street

Deerfield Bch FL 33442
City *State* *Zip*

Phone 954-224-2381

Email pebble6@bellsouth.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Psoriatic Arthritis

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 4, 2017
Meeting Date

CS/SB 530
Bill Number (if applicable)

Topic Health Insurer Authorization

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 202 W. College Ave, Ste 304
Street

Tall FL 32301
City *State* *Zip*

Phone 850 228 6387

Email dobarker@AARP.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/4/17
Meeting Date

SB 530
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Christina Cavanagh

Job Title Family Physician

Address 10470 Quail Hollow Ln
Street

Phone 239 850 0262

Fort Myers FL 33912
City *State* *Zip*

Email christycavanagh@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FMA / FAFP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-4-17
Meeting Date

SB530
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jennifer Ross & Memrie Ross

Job Title Arthritis Foundation Ambassador

Address 2378 Geranium Ave
Street

Phone 904-838-3228

Middleburg FL 32068
City *State* *Zip*

Email JJRoss98@gmail.com

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

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

Representing Arthritis Foundation

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/4/17
Meeting Date

530
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave #240
Street

Jacksonville, FL 32204
City *State* *Zip*

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Gastroenterologic Society / Florida Chapter, American College of Physicians

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

CourtSmart Tag Report

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

Started: 4/4/2017 9:32:20 AM
Ends: 4/4/2017 11:25:47 AM Length: 01:53:28

9:32:19 AM Meeting called to order by Chair Steube
9:32:21 AM Roll call by Administrative Assistant, Joyce Butler
9:32:25 AM Quorum present
9:32:50 AM SB 40 presented by Senator Galvano
9:33:16 AM Amendment Barcode No. 970016 presented by Senator Galvano
9:33:49 AM Amendment Barcode No. 970016 adopted
9:33:59 AM David Dickey, Attorney waives in support
9:34:21 AM Senator Galvano waives closure
9:34:28 AM CS/SB 40 reported favorably
9:34:48 AM SR 1440 presented by Senator Rouson
9:34:59 AM Amendment Barcode No. 532426 presented by Senator Rouson
9:35:12 AM Amendment Barcode No. 532426 adopted
9:36:04 AM Speaker Gov. Bob Martinez, Sr. Policy Advisor, Holland & Knight in support
9:37:41 AM Speaker Erin Kimmerle, Director, Florida Institute for Forensic Anthropology & Applied Science in support
9:40:35 AM Speaker Capt. Bryant Middleton in support
9:45:10 AM Speaker Donald Stratton in support
9:47:20 AM Speaker Jerry Cooper in support
9:50:08 AM Speaker Johny Lee Gaddy in support
9:54:14 AM Speaker Terry Levins in support
9:55:28 AM Speaker Richard Huntley in support
9:57:10 AM Speaker Charles Fudge in support
9:59:56 AM Debate by Senator Benacquisto
10:01:19 AM Debate by Senator Garcia
10:03:22 AM Debate by Senator Mayfield
10:04:45 AM SR 1440 closed by Senator Rouson
10:05:33 AM Roll call on CS/SR 1440 by AA Joyce Butler
10:05:39 AM CS/SR 1440 reported favorably
10:06:13 AM SB 314 presented by Senator Farmer
10:08:27 AM Senator Farmer closes on SB 314
10:08:33 AM Roll call on SB 314 by AA Joyce Butler
10:08:49 AM SB 314 reported favorably
10:09:01 AM CS/SB 1206 presented by Senator Montford
10:09:51 AM Cynthia Henderson, Crowne Consulting waives in support
10:10:01 AM Senator Montford waives close
10:10:07 AM Roll call on CS/SB 1206 by AA Joyce Butler
10:10:09 AM CS/SB 1206 reported favorably
10:10:30 AM CS/SB 1002 presented by Senator Perry
10:11:04 AM Senator Perry waives close
10:11:08 AM Roll call on CS/SB 1002 by AA Joyce Butler
10:11:11 AM CS/SB 1002 reported favorably
10:11:31 AM SB 996 presented by Senator Perry

10:12:30 AM SB 996 TP'd per Senator Perry
10:12:41 AM CS/CS/SJR 134 presented by Senator Artiles
10:13:03 AM Question from Senator Thurston
10:13:20 AM Response by Senator Artiles
10:13:25 AM Follow-up from Senator Thurston
10:13:33 AM Response by Senator Artiles
10:13:59 AM Follow-up question from Senator Thurston
10:14:11 AM Response by Senator Artiles
10:14:16 AM Follow-up question from Senator Thurston
10:14:31 AM Response by Senator Artiles
10:15:01 AM Follow-up question from Senator Thurston
10:15:07 AM Response by Senator Artiles
10:15:31 AM Question from Senator Flores
10:16:29 AM Response by Senator Artiles
10:16:53 AM Follow-up question from Senator Flores
10:16:56 AM Response by Senator Artiles
10:17:22 AM Follow-up question from Senator Flores
10:17:31 AM Response by Senator Artiles
10:18:53 AM Speaker Laura Youmans, Florida Association of Counties in opposition
10:21:03 AM Question from Senator Thurston
10:21:08 AM Response by Ms. Youmans
10:21:14 AM Follow-up question from Senator Thurston
10:21:20 AM Response by Ms. Youmans
10:21:51 AM Follow-up question from Senator Thurston
10:21:58 AM Response by Ms. Youmans
10:22:09 AM Follow-up question from Senator Thurston
10:22:26 AM Response by Ms. Youmans
10:23:04 AM Question from Senator Mayfield
10:23:08 AM Response by Ms. Youmans
10:23:18 AM Follow-up question from Senator Mayfield
10:23:57 AM Response by Ms. Laura Youmans
10:24:41 AM Matt Puckett, Florida Police Benevolent Association waives in support
10:25:17 AM Speaker Sheriff Mike Adkinson, Florida Sheriffs Association in support
10:28:19 AM Question from Senator Thurston
10:28:27 AM Response by Mr. Adkinson
10:30:37 AM Speaker Sheriff Mike Chitwood, Volusia County Sheriff's Office in support
10:33:09 AM Question from Senator Gibson
10:33:17 AM Response by Sheriff Chitwood
10:33:38 AM Follow-up question from Senator Gibson
10:33:41 AM Response by Sheriff Chitwood
10:34:16 AM Follow-up question from Senator Gibson
10:34:19 AM Response by Sheriff Chitwood
10:34:41 AM Follow-up question from Senator Gibson
10:34:50 AM Response by Sheriff Chitwood
10:35:06 AM Speaker Pat Patterson, Volusia County Council Member in opposition
10:37:20 AM Speaker Jess McCarty, Assistant County Attorney, Miami-Dade County in opposition
10:38:16 AM Question from Senator Garcia
10:38:24 AM Response by Mr. McCarty
10:38:32 AM Follow-up question from Senator Garcia
10:38:44 AM Response by Mr. McCarty
10:39:28 AM Capt. Dennis Strange, Orange County waives in support
10:40:01 AM Arlene Smith, Legislative Affairs, County of Volusia waives in support

10:40:10 AM Arlene Smith restates that she waives in opposition
10:40:21 AM Kelly Teague, Legislative Affairs, Orange County waives in opposition
10:40:31 AM Speaker Edward Labrador, Director Intergovernmental Affairs, Broward County
10:43:04 AM Senator Mayfield makes motion to TP CS/CS/SJR 134
10:43:12 AM CS/CS/SJR 134 temporarily postponed
10:43:25 AM SB 14 presented by Senator Artiles
10:43:41 AM Amendment Barcode No. 106662 presented by Senator Artiles
10:44:46 AM Kelly Mallette, St. Lucie County school District waives in support
10:44:52 AM Senator Artiles waives close
10:44:58 AM Roll call on CS/SB 14 by AA Joyce Butler
10:45:01 AM CS/SB 14 reported favorably
10:45:24 AM CS/SJR 136 presented by Senator Artiles
10:45:45 AM Question from Senator Flores
10:45:49 AM Response by Senator Artiles
10:46:44 AM Question from Senator Gibson
10:46:52 AM Response by Senator Artiles
10:47:03 AM Pat Patterson, Volusia County Council Member waives in opposition
10:47:11 AM Speaker Laura Youmans, Florida Association of Counties in opposition
10:47:45 AM Question from Senator Thurston
10:47:53 AM Response by Ms. Youmans
10:48:06 AM Arlene Smith, Legislative Affairs, County of Volusia waives in opposition
10:48:30 AM Jess McCarty, Assistant County Attorney, Miami-Dade County waives in opposition
10:48:38 AM Loren Levy, General Counsel, Property Appraisers' Association of Florida waives in support
10:48:43 AM Kelly Teague, Legislative Affairs Director, Orange County waives in opposition
10:48:51 AM Speaker Edward Labrador, Director Intergovernmental Affairs, Broward County in opposition
10:50:30 AM Debate by Senator Gibson
10:50:37 AM Senator Artiles closes on CS/SJR 136
10:51:00 AM Roll call on CS/SJR 136 by AA Joyce Butler
10:51:22 AM CS/SJR 136 reported favorably
10:51:57 AM TAB 5 - Chair ask Senator Rodriguez to present SB 310
10:52:16 AM SB 310 presented by Senator Rodriguez
10:52:32 AM Amendment Barcode No. 841848 presented by Senator Rodriguez
10:52:53 AM Amendment Barcode No. 841848 adopted
10:52:59 AM Vanessa Brice waives in support
10:53:08 AM Senator Rodriguez waives close
10:53:15 AM Roll call on SB 310 by AA Joyce Butler
10:53:16 AM CS/SB 310 reported favorably
10:53:33 AM SB 802 presented by Senator Passidomo
10:53:52 AM Amendment Barcode No. 117238 explained and adopted
10:54:24 AM Amendment Barcode No. 934118 explained and adopted
10:54:35 AM Amendment Barcode No. 689094 presented
10:54:56 AM Amendment Barcode No. 689094 explained by Senator Flores
10:55:59 AM Amendment Barcode No. 689094 withdrawn
10:56:05 AM Amendment Barcode No. 224638 explained and adopted
10:56:19 AM Amendment Barcode No. 580074 explained
10:56:29 AM Amendment Barcode No. 580074 adopted
10:56:36 AM Question from Senator Powell
10:56:42 AM Response by Senator Passidomo
10:57:05 AM Follow-up question from Senator Powell
10:57:08 AM Response by Senator Passidomo

10:57:34 AM Follow-up question from Senator Powell
10:57:51 AM Response by Senator Passidomo
10:58:22 AM Speaker Samantha Padgett, Vice President & General Counsel, Beauty Industry Counsel of the Florida Retail Federation
10:59:13 AM Phil Leary, Florida Association Professional Geologists waives in support
10:59:22 AM Warren Trowbridge, Florida Auctioneer Academy waives in support
10:59:33 AM Speaker Ari Bargil, Attorney, Institute for Justice in opposition
11:00:34 AM Colton Madill, Legislative Affairs Director, DBPR waives in support
11:00:42 AM Andrew Hosok, Americans for Prosperity waives in support
11:00:47 AM Debate by Senator Gibson
11:01:48 AM Debate by Senator Thurston
11:02:05 AM Debate by Senator Powell
11:02:59 AM Senator Passidomo waives close
11:03:03 AM Roll call on CS/SB 802 by AA Joyce Butler
11:03:07 AM CS/SB 802 reported favorably
11:03:23 AM SB 762 presented by Senator Baxley
11:04:08 AM Senator Baxley waives close
11:04:13 AM Roll call on SB 762 by AA Joyce Butler
11:04:15 AM SB 762 reported favorably
11:04:44 AM SB 304 presented by Senator Thurston
11:05:17 AM Amendment Barcode No. 147810 presented by Senator Thurston
11:05:42 AM Amendment Barcode No. 147810 adopted
11:05:52 AM Ron LaFace waives in support of amendment
11:06:02 AM Senator Thurston waives close
11:06:10 AM Roll call on CS/SB 304 by AA Joyce Butler
11:06:12 AM CS/SB 304 reported favorably
11:06:29 AM CS/SB 530 presented by Senator Steube
11:07:39 AM Speakers Jennifer Ross and Memrie Ross
11:10:46 AM Chris Nuland, waives in support
11:10:53 AM Speaker Christina Cavanagh in support
11:12:06 AM Dorene Barker, Associate State Director, AARP waives in support
11:12:14 AM Carolyn Worman waives in support
11:12:26 AM Claudia Stewart waives in support
11:12:40 AM Julia Ryan waives in support
11:12:43 AM Beth Labasky waives in support
11:12:45 AM Stephen Winn waives in support
11:12:52 AM Amy Prentice waives in support
11:12:53 AM Aimee Diaz Lyon waives in support
11:12:56 AM Jeff Scott waives in support
11:13:08 AM Speaker Wences Troncoso in opposition
11:17:08 AM Question from Senator Mayfield
11:17:13 AM Response by Mr. Troncoso
11:17:33 AM Follow-up question from Senator Mayfield
11:18:51 AM Response by Mr. Troncoso
11:20:49 AM Follow-up question from Senator Mayfield
11:20:55 AM Response by Mr. Troncoso
11:21:37 AM Debate by Senator Benacquisto
11:23:05 AM Senator Steube closes on CS/SB 530
11:23:15 AM Roll call on CS/SB 530 by AA Joyce Butler
11:23:39 AM CS/SB 530 reported favorably
11:23:59 AM Senator Mayfield recommends TP'ing SB 16
11:24:12 AM SB 16 Temporarily Postponed

11:24:19 AM Senator Gibson votes yes on SR 1440, SB 314, SB 1206 and SB 1002
11:24:51 AM Senator Bracy votes yes on SB 40 and SR 1440
11:25:03 AM Senator Powell votes yes SB 14, SR 1440, SB 1206, CS/SB 1002 and SB 314
11:25:36 AM Senator Benacquisto moves to adjourn