

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, April 14, 2015
TIME: 4:00 —6:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Brandes, Vice Chair; Senators Abruzzo, Bradley, Dean, Diaz de la Portilla, Hutson, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 78 Judiciary / Flores (Identical CS/H 3557)	Relief of Maricelly Lopez by the City of North Miami; Providing for the relief of Maricelly Lopez by the City of North Miami; providing for an appropriation to compensate Maricelly Lopez, individually and as personal representative of the Estate of Omar Miele, for the wrongful death of her son, Omar Miele, which was due to the negligence of a police officer of the City of North Miami; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the death of Omar Miele, etc. SM 03/27/2015 Recommendation: Favorable JU 03/31/2015 Fav/CS CA 04/14/2015 Favorable FP	Favorable Yeas 8 Nays 0
2	SB 44 Grimsley (Identical CS/H 3505)	Relief of the Estate of Lazaro Rodriguez by the City of Hialeah; Providing for the relief of the Estate of Lazaro Rodriguez and his legal survivors by the City of Hialeah; providing an appropriation to compensate the Estate and Lazaro Rodriguez's legal survivors for injuries sustained as a result of the negligence of the City of Hialeah; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the wrongful death of Lazaro Rodriguez, etc. SM 03/27/2015 Recommendation: Favorable JU 03/31/2015 Favorable CA 04/14/2015 Favorable FP	Favorable Yeas 8 Nays 0
3	CS/SB 1058 Ethics and Elections / Smith (Compare H 853)	Canvassing of Absentee Ballots; Authorizing the county canvassing board to begin the canvassing of absentee ballots after successfully completing testing of the electronic tabulating equipment; revising absentee ballot instructions for absent electors and certain first-time voters, respectively, to conform to changes made by the act, etc. EE 03/10/2015 Fav/CS CA 04/14/2015 Favorable RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 14, 2015, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 64 Legg (Identical CS/H 3549)	Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County; Providing for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs, etc. SM 04/03/2015 Recommendation: Unfavorable JU 04/07/2015 Favorable CA 04/14/2015 Favorable FP	Favorable Yeas 8 Nays 0
5	CS/SB 66 Judiciary / Legg (Identical CS/H 3521)	Relief of Ronald Miller by the City of Hollywood; Providing for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the City of Hollywood; providing a limitation on the payment of fees and costs, etc. SM 03/19/2015 Recommendation: Fav/1 Amendment JU 03/24/2015 Fav/CS CA 04/14/2015 Favorable FP	Favorable Yeas 8 Nays 0
6	SB 26 Diaz de la Portilla (Identical H 3525)	Relief of Thomas and Karen Brandi by Haines City; Providing for the relief of Thomas and Karen Brandi by Haines City; providing an appropriation to compensate them for injuries and damages sustained as a result of the negligence of an employee of Haines City; providing that the appropriation settles all present and future claims relating to the injuries and damages sustained by Thomas and Karen Brandi; providing a limitation on the payment of fees and costs, etc. SM 03/12/2015 Recommendation: Favorable JU 03/17/2015 JU 03/24/2015 Favorable CA 04/14/2015 Unfavorable FP	Unfavorable Yeas 2 Nays 6
7	SM 1426 Abruzzo (Identical HM 1171)	Supportive Housing for the Elderly Program; Urging Congress to restore and provide adequate funding for the Supportive Housing for the Elderly Program, etc. CF 04/09/2015 Favorable CA 04/14/2015 Favorable RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 14, 2015, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
8	SPB 7090	Local Government Capital Recovery; Requiring municipalities that meet certain criteria for delinquent designated revenues to issue a procurement request seeking bids from collection agencies, subject to certain requirements and restrictions; requiring a discussion of the current balance of a municipality's delinquent designated revenues and the efforts to collect such revenues in the management letter accompanying the municipality's annual financial audit report, etc.	Submitted as Committee Bill Yeas 5 Nays 3

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
12/31/14	SM	Favorable
3/31/15	JU	Fav/CS
04/14/15	CA	Favorable
	FP	

December 31, 2014

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

Re: **CS/SB 78** – Judiciary Committee and Senator Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Miele

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

CONCLUSIONS AND RECOMMENDATIONS:

On February 11, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 342 (2011), filed on January 3, 2011. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with one amendment. That bill was never heard in committee. The bill was subsequently filed in the next legislative session – SB 58 (2012) – and Special Master Bauer updated his report. That report is attached as an addendum to this report. The bill has been filed subsequently in each successive legislative session - SB 36 (2013), SB 40 (2014), and SB 78 (2015).

Due to the passage of time since the hearing, the Senate President reassigned the claim to me. 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.

The prior claim bill upon which a Special Master's Report was conducted, SB 58 (2012), is substantially similar to the claim bill filed for the 2015 Legislative Session.

According to counsel for Ms. Lopez, no changes have occurred since the hearing that might have altered the findings and recommendations in the report. Counsel for the City of Miami raise several issues:

1. The Plaintiff failed to exhaust all remedies pursuant to Senate Rule 4.81(6) because plaintiff did not appeal the final judgment.
2. The Plaintiff's claim is time barred by operation of section 11.065, Florida Statutes.
3. The bill fails to accurately reflect the driver of the vehicle in which Omar Mieleles was a passenger caused the accident.
4. The bill fails to accurately reflect that Omar Mieleles was not wearing his seatbelt, thus contributing to his injuries.
5. The passage of the bill would create a financial strain on the City's general revenue fund that would "significantly hurt the critical municipal services that the City provides to its residents" as well as "negatively impact both the city's internal functions but also the residents it serves."

Addressing each point in turn, I find the City's contentions to be insufficient to justify disturbing the original findings and recommendations contained in Senate Special Master's Report.

Senate Rule 4.81 provides "[t]he hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted." The plaintiff's failure to appeal a judgment with which they were apparently content is not the failure to exhaust administrative and judicial remedies. There is nothing in the

rule that requires a claimant to resort to appeals that may be deemed unnecessary or undesirable if they are content with their judgment. The essence of the rule is that all relevant proceedings be final, not that each party be required to pursue litigation to the highest permissible point of the administrative and judicial processes. The underlying case became final for judicial relief when the time for appeal passed. As such, the case is ripe for relief within the parameters of Senate Rule 4.81.

Likewise, the claim that the bill is now time barred from consideration by the legislature is without merit. While it is an open question whether section 11.065(1), Florida Statutes, could prevent a future legislature from taking up a bill that presents a claim outside the limitation period, one need not decide that question at this time. As noted in the introduction, the initial bill was presented and filed in the Legislature on January 3, 2011- within four years of both the accident that occurred on November 11, 2007, and the final judgment entered on April 21, 2010. Moreover, the bill has been presented for consideration in every subsequent legislative session. Claimants have plainly presented their claims in a timely manner that is entirely consistent with section 11.065, Florida Statutes.

As to the third and fourth points, the bill adequately describes relevant facts reflected in both the jury's verdict and the Special Master's Report, and plaintiffs' arguments are merely attempts to re-litigate those conclusions. The introductory clauses clearly set forth "the jury apportioned 50 percent of the responsibility for the death of Omar Mieles to the City of North Miami, and 50 percent to the driver of the vehicle in which Omar Mieles was traveling as a passenger." The claim bill is not made against the driver, but against the City of Miami whose officer was traveling at 60 mph in a nonemergency situation – twice the posted legal limit. The fault of the driver as well as Mr. Mieles' failure to wear his seatbelt are simply attempts to question the findings of both the jury and the Special Master which apportioned fault and re-litigate those conclusions. The City presented no new evidence to support their position. As such, I find no compelling reason to set aside or overturn the reasonable findings and recommendations of either the jury or Special Master Bauer.

Finally, the City argues the financial hardship to the general revenue fund that will result if SB 78 passes. The original Special Master's Report noted that the City had "\$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account" as of February 2011 for payment of the claim. The City did not provide any additional information concerning either of these accounts or the general revenue fund or evidence of any kind in support of its claim for financial hardship. Accordingly, I am unable to assess the merits of the City's claim. Additionally, no alternative proposal or solution was suggested by the City in the event the claim bill was passed by the Legislature and they become obligated to pay the judgment. In any event, such a question does not go to the merits of the claim and is best left to the discretion of legislators deciding whether to bestow legislative grace through the passage of legislation.

Accordingly, the findings of the original Senate Special Master are adopted by the undersigned.

Respectfully submitted,

George Levesque
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary on March 31, 2015:

The committee substitute reduces the appropriation in the bill to \$200,000. This amount is intended to reflect a recent settlement between the claimant and the City of North Miami.



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
12/2/11	SM	Favorable

December 2, 2011

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

Re: **SB 58 (2012)** – Senator Anitere Flores
Relief of Maricelly Lopez, as Personal Representative of the Estate of
Omar Mieles

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,611,237 BASED ON A JURY VERDICT AGAINST THE CITY OF NORTH MIAMI, IN WHICH THE JURY DETERMINED THAT THE CITY OF NORTH MIAMI WAS 50 PERCENT RESPONSIBLE FOR THE DEATH OF OMAR MIELES DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDINGS OF FACT:

The instant claim arises out of a traffic accident that occurred in Miami on November 11, 2007, at the intersection of Northwest 7th Avenue and Northwest 46th Street. Northwest 46th Street runs from east to west, and intersects Northwest 7th Avenue (which runs from north to south) at a right angle. At the time of the accident, the intersection was controlled by four traffic signals: two blinking red lights that directed vehicles traveling east and west on Northwest 46th Street to stop, and two blinking yellow lights for vehicles proceeding north and south on Northwest 7th Avenue.

At approximately 4:10 a.m., 19-year-old Omar Mieles was traveling east on Northwest 46th Street in a 2005 Ford Focus, which was being driven by Madelayne Ibarra. The vehicle was owned by Ms. Ibarra's mother, who was not present. Mr. Mieles' girlfriend, Raiza Areas, was positioned in the front passenger's seat. Although Ms. Ibarra and Ms. Areas were both wearing seatbelts, Mr. Mieles was lying down unrestrained on the back seat, with his head behind the front passenger's seat. Mr. Mieles, Ms. Areas, and Ms. Ibarra had spent the evening eating dinner in Coconut Grove and socializing with friends in South Beach.

Although Ms. Ibarra was not under the influence of alcohol or controlled substances, she was unfamiliar with the area and fatigued due to the late hour. As a consequence, Ms. Ibarra failed to come to a complete stop at the red traffic signal prior to entering the Northwest 7th Avenue intersection. At the same time, a City of North Miami police cruiser traveling north on Northwest 7th Avenue entered the intersection through the yellow caution light. The police vehicle, which was on routine patrol and not operating in emergency mode (i.e., the siren and emergency lights were not activated), was substantially exceeding the 30 MPH limit.

Tragically, the police cruiser, which was being operated by Officer James Thompson, struck the right rear passenger door of Ms. Ibarra's Ford Focus. Mr. Mieles, who was ejected through a rear window due to the force and location of the impact, landed approximately 35 feet from the final resting position of Ms. Ibarra's vehicle. Although Mr. Mieles sustained catastrophic head injuries as a result of the accident, neither Ms. Ibarra nor Ms. Areas was seriously injured.

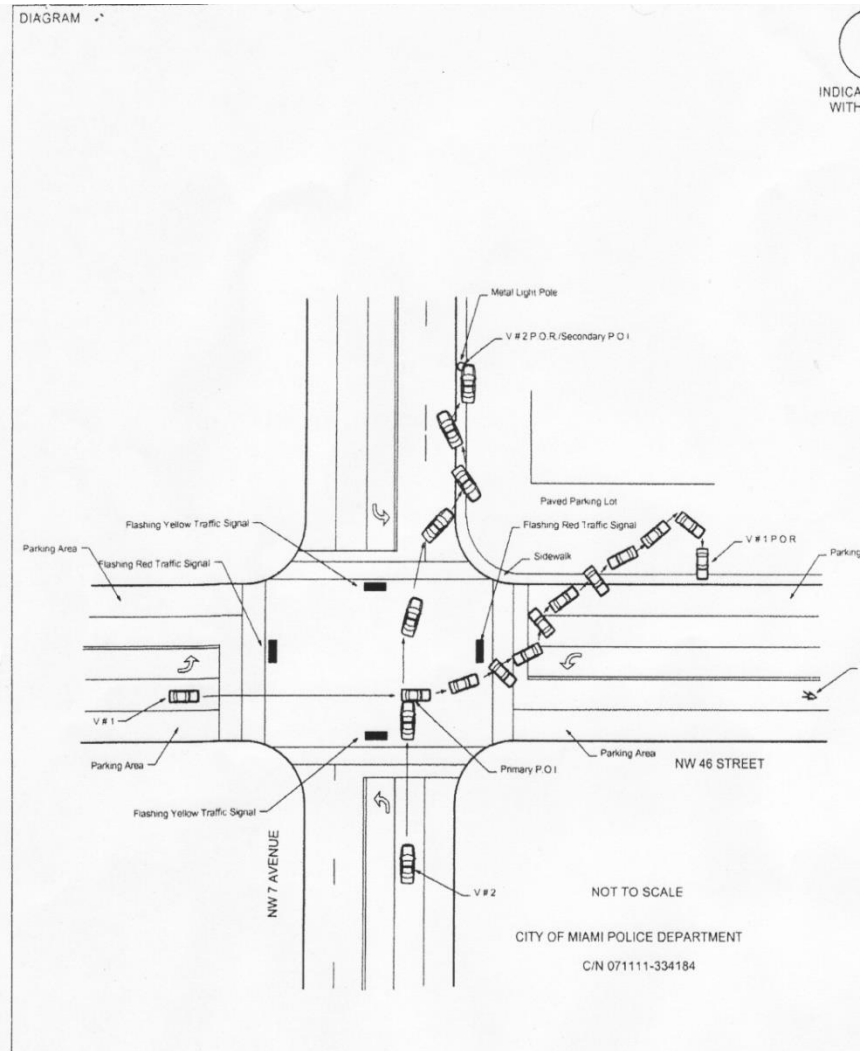
Officer Thompson, who likewise was not significantly injured in the collision, immediately radioed for emergency assistance. Paramedics responded to the scene minutes later and transported Mr. Mieles to Jackson Memorial Hospital. Soon after his arrival at the hospital, Mr. Mieles was pronounced brain dead. On November 14, 2007, with the consent of Maricelly Lopez (Mr. Mieles' mother and the Claimant in this proceeding), hospital staff harvested Mr. Mieles' heart, liver, and kidneys for donation, and he expired.

Approximately 90 minutes after the collision, K. Andrews, a detective employed with the City of Miami Police Department, arrived at the scene of the crash and initiated an accident investigation. During the investigation, Officer Thompson advised Detective Andrews that Ms. Ibarra had failed to stop at the red light and that he was unable to avoid the accident. However, Officer Thompson failed to mention that he was needlessly exceeding the speed limit at the time of the crash. Based upon the incomplete information in her possession, Detective Andrews concluded that Ms. Ibarra was solely at fault in the accident and issued her a citation for running a red light.

During the ensuing litigation between Mr. Mieles' estate and the City of North Miami, it was determined (based upon data from the patrol vehicle's "black box") that one second prior to the crash, Officer Thompson was traveling 61 MPH. As noted above, the speed limit on Northwest 7th Street at the accident location was 30 MPH.

At the time of his death, Mr. Mieles had recently graduated from high school and was working two jobs. In addition, he had been accepted to Valencia Community College and was scheduled to begin classes in January 2008. Mr. Mieles, who is survived by his mother, stepfather, and two siblings, was by all accounts a hard-working and well-liked young man.

DIAGRAM:



LITIGATION HISTORY:

On June 23, 2008, Maricelly Lopez, in her individual capacity and as the personal representative of the estate of Omar Mieles, filed a complaint for damages in Miami-Dade County circuit court against the City of North Miami. The complaint alleged that Officer Thompson's operation of his police vehicle on November 11, 2007, was negligent, and that such negligence was the direct and proximate cause of Mr. Mieles' death. In addition, the complaint alleged that Mr. Mieles' estate sustained various damages, which included medical and funeral expenses, as well as lost earnings. The complaint further asserted that Ms. Lopez sustained damages in her individual capacity, such as the loss of past and future support

and services, past and future mental pain and suffering, and loss of companionship.

The matter subsequently proceeded to a jury trial, during which the parties presented conflicting theories regarding the cause of the accident. Specifically, the plaintiff contended that Ms. Ibarra had properly stopped at the intersection and that Officer Thompson was solely responsible for the collision, while the City of North Miami argued that Ms. Ibarra had run the red light and was entirely at fault. In addition, both sides presented conflicting expert testimony regarding whether Mr. Mieles would have sustained fatal injuries had been wearing a seatbelt. In particular, the plaintiff's expert opined that due to the location of the collision (the right rear passenger's door of the Ford Focus) and its force, Mr. Mieles would have been killed even if he had been properly restrained. In contrast, the City of Miami presented expert testimony indicating that the use of a seatbelt would have saved Mr. Mieles' life.

On March 19, 2010, the jury returned a verdict, in which it determined that the City of North Miami and Ms. Ibarra were negligent, and that each was 50 percent responsible for Mr. Mieles' death. The jury apportioned no fault to Mr. Mieles. The jury further concluded that Mr. Mieles' estate and Ms. Lopez sustained the following damages:

Damages to the Estate

- \$163,950.15 for medical expenses.
- \$1,630 for funeral expenses.

Damages to Maricelly Lopez

- \$2,000 for loss of past support.
- \$40,000 for loss of future support.
- \$1,750,000 for past pain and suffering.
- \$1,750,000 for future pain and suffering.

Based on the jury's finding that the City of North Miami was 50 percent responsible, final judgment was entered against it in the amount of \$1,719,808.63 (this figure is comprised of \$1,688,195.10, which represents fifty percent of the total damages outlined above, minus various setoffs, plus costs of \$31,613.53).

No appeal of the final judgment was taken to the Third District Court of Appeal.

The City of North Miami has tendered \$108,571.30 against the final judgment, leaving \$1,611,237.33 unpaid.

CLAIMANT'S POSITION:

The City of North Miami is vicariously liable for the negligence of Officer Thompson, which was the direct and proximate cause of Omar Mieles' death. The Claimant further argues that Mr. Miles did nothing to contribute to his death.

RESPONDENT'S POSITION:

The City of North Miami objects to any payment to the Claimant through a claim bill. The City of Miami also contends that Mr. Mieles' catastrophic head injuries would have been avoided had he been properly restrained by a seat belt, and that the jury should not have apportioned any fault to Officer Thompson.

CONCLUSIONS OF LAW:

Like any motorist, Officer Thompson had a duty to operate his patrol vehicle with consideration for the safety of other drivers. Pedigo v. Smith, 395 So. 2d 615, 616 (Fla. 5th DCA 1981). Specifically, Officer Thompson owed a duty to observe the 30 MPH posted speed limit and to use caution (as directed by the yellow flashing light) as he entered the intersection. See § 316.076(1)(b), Fla. Stat. (2007) ("When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution."); § 316.183(2), Fla. Stat. (2007) ("On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business . . . districts"). By entering the intersection at 61 MPH, Officer Thompson breached his duty of care, which was a direct and proximate cause of Mr. Mieles' death.

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

As discussed above, the jury determined that Officer Thompson and Ms. Ibarra, based upon the negligent operation of their respective vehicles, were equally at fault in this tragic event. Further, in apportioning no fault to Mr. Mieles, the jury presumably found that Mr. Mieles would have been killed in the collision even if he had been properly restrained. These conclusions are reasonable and will not be disturbed by the undersigned. The undersigned also concludes that the damages awarded by the jury were appropriate.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on the Claimant's behalf. During the 2011 session, the bill (SB 342) died in Committee.

ATTORNEYS FEES:

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

FISCAL IMPACT:

As the City of North Miami is self-insured, its general funds would be used to satisfy the instant claim bill. In February 2011, the City of North Miami reported that it had \$252,000 available in a claims payment account, as well as \$538,000 in a risk management reserve account.

COLLATERAL SOURCES:

Prior to the litigation against the City of North Miami, the Claimant recovered the bodily injury limits from Ms. Ibarra's GEICO policy in the amount of \$10,000, as well as \$10,000 from the Claimant's underinsured motorist coverage.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 58 (2012) be reported FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 58 (2012)

December 2, 2011

Page 12

Respectfully submitted,

Edward T. Bauer
Senate Special Master

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

By the Committee on Judiciary; and Senator Flores

590-03271-15

201578c1

1 A bill to be entitled
2 An act for the relief of Maricelly Lopez by the City
3 of North Miami; providing for an appropriation to
4 compensate Maricelly Lopez, individually and as
5 personal representative of the Estate of Omar Mieles,
6 for the wrongful death of her son, Omar Mieles, which
7 was due to the negligence of a police officer of the
8 City of North Miami; providing a limitation on the
9 payment of fees and costs; providing that the
10 appropriation settles all present and future claims
11 related to the death of Omar Mieles; providing an
12 effective date.

13
14 WHEREAS, on November 11, 2007, 18-year-old Omar Mieles was
15 a passenger in the back seat of a vehicle traveling eastbound on
16 NW 46th Street in North Miami, Florida, and

17 WHEREAS, at that time and place, Officer James Ray
18 Thompson, a police officer employed by the City of North Miami
19 Police Department, while in the course and scope of his duties
20 as a police officer, negligently drove a police department
21 vehicle at a high rate of speed and collided with the vehicle in
22 which Omar Mieles was a passenger, and

23 WHEREAS, as a direct result of the collision caused by
24 Officer Thompson's negligence, Omar Mieles was thrown from the
25 rear window of the vehicle in which he was traveling, landed 35
26 feet from the vehicle, and died shortly thereafter from the
27 injuries he sustained, and

28 WHEREAS, the mother of Omar Mieles, Maricelly Lopez, has
29 endured continuous mental pain and suffering since the date of

590-03271-15

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30 her son's death and seeks to recover damages, individually, for
31 loss of support, services, and companionship due to the death of
32 her son, and

33 WHEREAS, the Estate of Omar Mieles seeks to recover damages
34 for medical expenses, funeral expenses, loss of earnings, and
35 net accumulation of earnings, and

36 WHEREAS, on June 23, 2008, Maricelly Lopez, as personal
37 representative of the Estate of Omar Mieles and in her
38 individual capacity as mother of Omar Mieles, filed an action
39 against the City of North Miami in the Miami-Dade County Circuit
40 Court, styled *Maricelly Lopez, Plaintiff, v. City of North*
41 *Miami, Defendants*, Case No. 13-2008-CA-035955-0000-01, to
42 recover damages for the wrongful death of Omar Mieles as a
43 result of the negligence of a police officer of the City of
44 North Miami, and

45 WHEREAS, on March 19, 2010, the case was tried before a
46 jury that returned a verdict for damages against the City of
47 North Miami and in favor of Maricelly Lopez, as personal
48 representative of the Estate of Omar Mieles and in her
49 individual capacity as mother of Omar Mieles, in the amount of
50 \$3,542,000, and

51 WHEREAS, the jury apportioned 50 percent of the
52 responsibility for the death of Omar Mieles to the City of North
53 Miami, and 50 percent to the driver of the vehicle in which Omar
54 Mieles was traveling as a passenger, and

55 WHEREAS, on April 21, 2010, a final judgment was entered
56 against the City of North Miami for \$1,719,808.63, of which the
57 city has paid \$108,571.30 pursuant to the statutory limits of
58 liability set forth in s. 768.28, Florida Statutes, and

590-03271-15

201578c1

59 WHEREAS, on March 24, 2015, the City of North Miami passed
60 a resolution unanimously authorizing the settlement of the claim
61 for \$200,000, and supporting the passage of a claim bill in that
62 amount for Maricelly Lopez, individually and as personal
63 representative of Omar Mieles, and

64 WHEREAS, the City of North Miami and Maricelly Lopez have
65 agreed to settle the claim for \$200,000, NOW, THEREFORE,

66
67 Be It Enacted by the Legislature of the State of Florida:

68
69 Section 1. The facts stated in the preamble to this act are
70 found and declared to be true.

71 Section 2. The City of North Miami is authorized and
72 directed to appropriate from funds of the city not otherwise
73 appropriated and to draw a warrant in the amount of \$200,000.00,
74 payable to Maricelly Lopez, individually and as personal
75 representative of the Estate of Omar Mieles, as compensation for
76 the death of her son due to the negligence of a police officer
77 of the City of North Miami.

78 Section 3. The total amount paid for attorney fees,
79 lobbying fees, costs, and other similar expenses relating to
80 this claim may not exceed 25 percent of the amount awarded under
81 this act.

82 Section 4. The amount paid by the City of North Miami
83 pursuant to s. 768.28, Florida Statutes, and the amount awarded
84 under this act are intended to provide the sole compensation for
85 all present and future claims arising out of the factual
86 situation described in this act which resulted in the death of
87 Omar Mieles.

590-03271-15

201578c1

88

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.14.15
Meeting Date

78
Bill Number (if applicable)

Topic Relief of Maricelly Lopez

Amendment Barcode (if applicable)

Name Sarah Camoiti

Job Title

Address 123 S. Adams St
Street

Phone 671 4401

TAUAHASSEE FL
City State Zip

Email

Speaking: For Against Information

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

Representing Maricelly Lopez

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.14

Meeting Date

78

Bill Number (if applicable)

Topic RELIEF OF MARICELY LOPEZ

Amendment Barcode (if applicable)

Name RANA BROWN

Job Title _____

Address 104 W JEFFERSON ST

Phone 850-224-3427

Street

TLH FL 32301

Email RANA@RLBPA.COM

City

State

Zip

Speaking: For Against Information

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

Representing CITY OF NORTH MIAMI

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Fiscal Policy, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Finance and Tax
Health Policy
Regulated Industries

SENATOR ANITERE FLORES

37th District

April 14, 2015

The Honorable Wilton Simpson
Chair of the Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

Due to a scheduling conflict, I request that in my absence, my legislative assistant, William McRea present SB 78.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Tom Yeatman, Staff Director, Community Affairs Committee, 315 Knott Building

REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill #78**, relating to Relief of Maricelly Lopez by the City of North Miami, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37



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
12/23/14	SM	Favorable
3/31/15	JU	Favorable
04/14/15	CA	Favorable
	FP	

December 23, 2014

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

Re: **SB 44** – Senator Grimsley
HB 3505 – Representative Steube
Relief of Estate of Lazaro Rodriguez by the City of Hialeah

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$485,000 BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF HIALEAH FOR THE DEATH OF LAZARO RODRIGUEZ DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS POLICE OFFICERS.

FINDINGS OF FACT:

At about 10:15 p.m. on July 30, 2000, 29 year old Lazaro Rodriguez was on his way home from work when his Ford Explorer was struck on the left front side by a City of Hialeah police cruiser driven by Officer Jorge Rodriguez. Lazaro Rodriguez was driving west on East 32nd Street and Officer Rodriguez was driving north on Palm Avenue when the accident occurred in the intersection of the two roads. The collision caused Lazaro Rodriguez' vehicle to run into the curb, where it tipped and struck a large concrete pole on the roadside. The impact with the pole crushed the roof above the driver, but the vehicle righted itself and continued moving before striking a third vehicle. Lazaro Rodriguez died at the scene as a result of blunt trauma injuries. He was not wearing his seat belt, but the use of a seat belt would not have prevented his death.

Just prior to the accident, Officer Rodriguez and another police officer had concluded working a domestic violence incident. The other officer was dispatched to a separate incident and Officer Rodriguez chose to respond as well. Both officers proceeded north on Palm Avenue with lights and sirens activated. The traffic light was red as they approached the intersection with East 32nd Street. The other officer, who was in the right northbound lane and slightly ahead of Officer Rodriguez, stopped at the light and made a right turn onto East 32nd Street. Officer Rodriguez, who was in the left northbound lane, slowed at the intersection. Perceiving that his path was clear, he accelerated straight through the light. His police car struck Lazaro Rodriguez' vehicle in the westbound through lane of East 32^d Street as it moved from Officer Rodriguez' right. There is no indication that either vehicle took evasive maneuvers, and Officer Rodriguez stated that he did not see Lazaro Rodriguez' vehicle until immediately before the impact.

Two vehicles were stopped in the left turn lane of eastbound 32nd Avenue East and may have obscured each driver's view of the other vehicle. In addition, there was a concrete sign, foliage, and a chain link fence on the corner that may also have obscured the drivers' views.

Officer Rodriguez was traveling at 20-24 miles per hour when the collision occurred, having accelerated after slowing down to ascertain whether the intersection was clear. Lazaro Rodriguez was traveling 35-45 miles per hour at the time of impact, equal to or in excess of the 35 mile per hour speed limit on 32nd Avenue East.

Section 316.072(5)(b)2., F.S., authorizes the operator of an emergency vehicle to proceed past a red stop signal when responding to an emergency call. However, the driver may do so only after slowing down as may be necessary for safe operation and is not relieved from the duty to drive with due regard for the safety of all persons. A City of Hialeah Police Department administrative order imposes an additional requirement that the driver of a police car come to a complete stop before proceeding through an intersection against a stop signal. Officer Rodriguez slowed down, but did not stop, before proceeding into the intersection. He was issued traffic citations for violation of s. 316.075, F.S.

(Running a Red Light) and s. 316.1925 (Careless Driving), but the disposition of the traffic violations is not known.

With regard to Lazaro Rodriguez' actions, s. 316.126(1), F.S., provides: "Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by a law enforcement officer." Lazaro Rodriguez did not stop, and there was no evidence that he slowed down or swerved prior to the collision.

Tests of blood samples taken from Officer Rodriguez and from Lazaro Rodriguez' body detected no alcohol or drugs in either driver's system.

Lazaro Rodriguez was a native of Cuba who entered the United States in March 1995 by way of an airline flight from Spain. At the time of his entry, immigration officials detected that he presented another man's Spanish passport as his own. He was detained and his legitimate Cuban passport was found on his person. He was paroled (allowed to remain in the United States) pending an exclusion hearing before an immigration judge. On April 22, 1997, Lazaro Rodriguez was ordered excluded and deported from the United States. However, he was allowed to remain in the United States while he pursued legal avenues, including requesting asylum due to persecution by the Cuban government and requesting waiver of inadmissibility due to extreme hardship. His extreme hardship waiver request was denied months before his death because his U.S. citizen daughter (Kathryn) was not a qualifying relative for purposes of waiver and he was not yet married to Beatrice Luquez, who is a permanent resident alien. Subsequent to that denial, he applied for adjustment of status as a NACARA applicant. Also, he and Beatrice Luquez were married in April 2000 and she petitioned for him to receive an immigrant visa as the spouse of a permanent resident alien. These petitions were pending

at the time of Lazaro Rodriguez' death. Lazaro Rodriguez had no criminal record, and he worked and paid federal income taxes throughout his five-year stay in the United States.

Lazaro Rodriguez is survived by his wife, Beatriz Luquez, with whom he lived for five years before getting married shortly before his death. He is also survived by his 22 year old son, Lazaro, Jr., and his 17 year old daughter, Katherine. Katherine will turn 18 on March 5, 2015. Lazaro is the child of Lazaro Rodriguez and his first wife. Katherine is the child of Lazaro Rodriguez and Beatriz Luquez.

In 2001, the claimants filed a wrongful death claim against the City of Hialeah and Hialeah, Inc. Hialeah, Inc. was owner of the land at the corner of the intersection and was alleged to be responsible for the obscured view.¹ The City settled in 2011, after nearly ten years of pre-trial discovery and motions, for \$685,000 plus \$25,000 in costs. The City has paid the statutory sovereign immunity limit of \$200,000 and the costs, and has budgeted the amount of each additional payment from July 2012 through July 2016.

CONCLUSIONS OF LAW:

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

Officer Rodriguez had a duty to exercise reasonable care in operating his police cruiser. Although he was authorized by s. 316.072(5)(b)2., F.S., to proceed through the red stop signal because he was responding to an emergency call, he was permitted to do so "only after slowing down as may be necessary for safe operation." His department had imposed a more restrictive requirement to come to a complete stop before proceeding through a stop signal. Although he slowed down and was driving under the speed limit, the fact that his vehicle collided with Lazaro Rodriguez' vehicle indicates that he did not proceed appropriately under the circumstances. Although Lazaro Rodriguez may have been speeding as much as ten miles per hour over the speed limit, his speed

¹ Hialeah, Inc., which owns and operates Hialeah Park Racing & Casino, settled with claimants for \$60,000.

was not so excessive as to completely relieve Officer Rodriguez of responsibility. Therefore, the qualified immunity provided by section 316.072(5)(b)2., F.S., is inapplicable.

Officer Rodriguez was acting within the course and scope of his employment at the time of the crash. Therefore, his negligence is attributable to the City of Hialeah.

Lazaro Rodriguez also had a duty to exercise reasonable care in operating his motor vehicle. Although there is insufficient evidence to conclude that he was speeding, s. 316.126(1), F.S., required him to stop his vehicle clear of the intersection until the Officer Rodriguez' police car had passed. It is possible that Lazaro Rodriguez saw the first police car turning from Palm Avenue and did not perceive that there was a second police car continuing through the intersection. Nevertheless, he was negligent in failing to stop until Officer Rodriguez' vehicle had cleared the intersection.

After considering all of the factors in this case, I conclude that the amount of this claims bill is appropriate.

ATTORNEYS FEES:

From the \$225,000 already paid by the City (\$200,000 of the settlement amount plus \$25,000 in costs), trial and appellate counsel received \$67,500 in attorney fees and the client was charged \$44,243.29 for costs and expenses. A total of \$87,908.04 has been paid by claimants for costs and expenses.

Information provided by claimants' counsel indicates that the claimants have entered into attorney fee agreements for payment of a total of 37%, plus costs, for trial counsel (25%), appellate counsel (5%), and claims bill counsel (7%). However, the bill provides that the total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to the claim may not exceed 25 percent of the total amount awarded under the act. The Florida Supreme Court has held that the Legislature has the authority to limit attorney fees in a claim bill even if the attorney has contracted for a higher amount. *Gamble v. Wells*, 450 So.2d 850 (Fla. 1984).

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 44 (2015) be reported FAVORABLY.

Respectfully submitted,

Scott E. Clodfelter
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

By Senator Grimsley

21-00013-15

201544__

1 A bill to be entitled
2 An act for the relief of the Estate of Lazaro
3 Rodriguez and his legal survivors by the City of
4 Hialeah; providing an appropriation to compensate the
5 Estate and Lazaro Rodriguez's legal survivors for
6 injuries sustained as a result of the negligence of
7 the City of Hialeah; providing a limitation on the
8 payment of fees and costs; providing that the
9 appropriation settles all present and future claims
10 related to the wrongful death of Lazaro Rodriguez;
11 providing an effective date.

12
13 WHEREAS, on July 30, 2000, at approximately 10:14 p.m., 29-
14 year-old Lazaro Rodriguez was lawfully and properly operating
15 his 1997 Ford Explorer in the westbound lanes of East 32nd
16 Street in the City of Hialeah, and

17 WHEREAS, at the same time, Officer Jorge Rodriguez, a City
18 of Hialeah road patrolman, was on duty and overheard a radio
19 summons of another unit and, despite the fact that he was not
20 dispatched to the call, decided to respond, and

21 WHEREAS, in responding to the call, Officer Rodriguez was
22 traveling northbound on Palm Avenue in the City of Hialeah while
23 Lazaro Rodriguez was traveling westbound on East 32nd Street,
24 and

25 WHEREAS, Officer Rodriguez ran the red light at the
26 intersection of Palm Avenue and East 32nd Street, crashing his
27 police cruiser into the driver side of the vehicle driven by
28 Lazaro Rodriguez, and

29 WHEREAS, the severe impact of the collision forced Lazaro

21-00013-15

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30 Rodriguez's vehicle into a concrete utility pole at the
31 northwest corner of the intersection and then into another
32 vehicle, and

33 WHEREAS, the force of the crash was so great that it caused
34 massive and fatal blunt trauma injuries to Lazaro Rodriguez, and
35 he was pronounced dead at the scene, and

36 WHEREAS, at the conclusion of the traffic homicide
37 investigation concerning the death of Lazaro Rodriguez, the City
38 of Hialeah Police Department found that Officer Rodriguez had
39 violated Florida traffic statutes by unlawfully running the red
40 light at the intersection of Palm Avenue and East 32nd Street
41 and operating his motor vehicle in a careless manner, and that
42 these violations were the legal cause of the traffic collision
43 and the death of Lazaro Rodriguez, and

44 WHEREAS, Lazaro Rodriguez left a widow, Beatriz Luquez, and
45 children, Lazaro, Jr., and Katherine, all of whom were dependent
46 upon him financially and emotionally and loved him dearly, and

47 WHEREAS, in 2001, Ms. Luquez, individually and as the
48 personal representative of the Estate of Lazaro Rodriguez, filed
49 a wrongful death lawsuit in the 11th Judicial Circuit Court in
50 and for Miami-Dade County, styled *Beatriz Luquez, individually
51 and as Personal Representative of the Estate of Lazaro Rodriguez
52 v. City of Hialeah*, Case No. 01-3691 CA 08, and

53 WHEREAS, the parties to the lawsuit entered into a formal
54 settlement agreement following mediation and a unanimous vote by
55 the Hialeah City Council, and

56 WHEREAS, the terms of the settlement agreement required the
57 claimants to dismiss their case with prejudice and provide a
58 full release of liability to the city and its employees, which

21-00013-15

201544__

59 the claimants have done, in exchange for payments by the City of
60 Hialeah totaling \$685,000, plus \$25,000 for costs, to be paid
61 over 5 years if the Legislature approves the unpaid amounts, and

62 WHEREAS, pursuant to the settlement agreement, the City of
63 Hialeah has paid \$200,000 to the claimants, plus \$25,000 for
64 costs, leaving an unpaid balance of \$485,000, and

65 WHEREAS, as part of the terms of the settlement agreement
66 and general release, the City of Hialeah has agreed to support
67 the passage of a claim bill and to pay the remaining balance of
68 \$485,000 in installments, with the last payment to be made on
69 July 1, 2016, NOW, THEREFORE,

70

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

72

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

75 Section 2. The City of Hialeah is authorized and directed
76 to appropriate from funds of the city not otherwise appropriated
77 and to draw warrants totaling the amount of \$485,000, payable to
78 Beatriz Luquez, individually and as personal representative of
79 the Estate of Lazaro Rodriguez, and to Lazaro Rodriguez, Jr.,
80 and Katherine Rodriguez, as compensation for injuries and
81 damages sustained by the claimants as a result of the death of
82 Lazaro Rodriguez. The amount of \$385,000 shall be paid on July
83 1, 2015, and \$100,000 shall be paid on July 1, 2016.

84 Section 3. The total amount paid for attorney fees,
85 lobbying fees, costs, and other similar expenses relating to
86 this claim may not exceed 25 percent of the total amount awarded
87 under this act.

21-00013-15

201544__

88 Section 4. The amounts awarded pursuant to the waiver of
89 sovereign immunity under s. 768.28, Florida Statutes, and under
90 this act are intended to provide the sole compensation for all
91 present and future claims arising out of the factual situation
92 described in the preamble to this act which resulted in the
93 death of Lazaro Rodriguez.

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

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 Community Affairs

BILL: CS/SB 1058

INTRODUCER: Ethics and Elections Committee and Senator Smith

SUBJECT: Canvassing of Absentee Ballots

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1058 permits a county canvassing board to begin canvassing absentee ballots as soon as the Supervisor of Elections successfully completes testing of the electronic tabulating equipment.

II. Present Situation:

Section 101.68(2), F.S., provides that a county canvassing board may begin the canvassing of absentee ballots at 7 a.m. on the 15th day before the election, but not later than noon on the day following the election.

III. Effect of Proposed Changes:

The bill permits a county canvassing board to begin canvassing absentee ballots as soon as the Supervisor of Elections successfully completes testing of the electronic tabulating equipment. The bill also makes conforming changes to the instructions provided to absentee voters to reflect the longer canvassing period for absentee ballots. Those instructions are contained in ss. 101.65 and 101.6923, F.S.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 101.68, 101.65, and 101.6923.

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 Ethics and Elections on March 10, 2015:

Specifies that canvassing of absentee ballots can begin upon successful completion of testing of the electronic vote tabulating equipment instead of 28 days prior to the election.

B. Amendments:

None.

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

By the Committee on Ethics and Elections; and Senator Smith

582-02135-15

20151058c1

1 A bill to be entitled
2 An act relating to canvassing of absentee ballots;
3 amending s. 101.68, F.S.; authorizing the county
4 canvassing board to begin the canvassing of absentee
5 ballots after successfully completing testing of the
6 electronic tabulating equipment; removing obsolete
7 language; amending ss. 101.65 and 101.6923, F.S.;
8 revising absentee ballot instructions for absent
9 electors and certain first-time voters, respectively,
10 to conform to changes made by the act; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (a) of subsection (2) of section
16 101.68, Florida Statutes, is amended to read:

17 101.68 Canvassing of absentee ballot.-

18 (2) (a) The county canvassing board may begin the canvassing
19 of absentee ballots after successfully testing the electronic
20 tabulating equipment as required by this chapter at 7 a.m. on
21 ~~the 15th day before the election,~~ but not later than noon on the
22 day following the election. ~~In addition, for any county using~~
23 ~~electronic tabulating equipment, the processing of absentee~~
24 ~~ballots through such tabulating equipment may begin at 7 a.m. on~~
25 ~~the 15th day before the election.~~ However, notwithstanding any
26 such authorization to begin canvassing or otherwise processing
27 absentee ballots early, no result shall be released until after
28 the closing of the polls in that county on election day. Any
29 supervisor of elections, deputy supervisor of elections,

582-02135-15

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30 canvassing board member, election board member, or election
31 employee who releases the results of a canvassing or processing
32 of absentee ballots before ~~prior to~~ the closing of the polls in
33 that county on election day commits a felony of the third
34 degree, punishable as provided in s. 775.082, s. 775.083, or s.
35 775.084.

36 Section 2. Section 101.65, Florida Statutes, is amended to
37 read:

38 101.65 Instructions to absent electors.—The supervisor
39 shall enclose with each absentee ballot separate printed
40 instructions in substantially the following form:

41

42 READ THESE INSTRUCTIONS CAREFULLY

43 BEFORE MARKING BALLOT.

44 1. VERY IMPORTANT. In order to ensure that your absentee
45 ballot will be counted, it should be completed and returned as
46 soon as possible so that it can reach the supervisor of
47 elections of the county in which your precinct is located no
48 later than 7 p.m. on the day of the election. However, if you
49 are an overseas voter casting a ballot in a presidential
50 preference primary or general election, your absentee ballot
51 must be postmarked or dated no later than the date of the
52 election and received by the supervisor of elections of the
53 county in which you are registered to vote no later than 10 days
54 after the date of the election.

55 2. Mark your ballot in secret as instructed on the ballot.
56 You must mark your own ballot unless you are unable to do so
57 because of blindness, disability, or inability to read or write.

58 3. Mark only the number of candidates or issue choices for

582-02135-15

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59 a race as indicated on the ballot. If you are allowed to "Vote
60 for One" candidate and you vote for more than one candidate,
61 your vote in that race will not be counted.

62 4. Place your marked ballot in the enclosed secrecy
63 envelope.

64 5. Insert the secrecy envelope into the enclosed mailing
65 envelope which is addressed to the supervisor.

66 6. Seal the mailing envelope and completely fill out the
67 Voter's Certificate on the back of the mailing envelope.

68 7. VERY IMPORTANT. In order for your absentee ballot to be
69 counted, you must sign your name on the line above (Voter's
70 Signature). An absentee ballot will be considered illegal and
71 not be counted if the signature on the voter's certificate does
72 not match the signature on record. The signature on file at the
73 start of the canvass of the absentee ballots is the signature
74 that will be used to verify your signature on the voter's
75 certificate. If you need to update your signature for this
76 election, send your signature update on a voter registration
77 application to your supervisor of elections so that it is
78 received no later than the start of the canvassing of absentee
79 ballots, which can occur as early as the 25th ~~occurs no earlier~~
80 ~~than the 15th~~ day before election day.

81 8. VERY IMPORTANT. If you are an overseas voter, you must
82 include the date you signed the Voter's Certificate on the line
83 above (Date) or your ballot may not be counted.

84 9. Mail, deliver, or have delivered the completed mailing
85 envelope. Be sure there is sufficient postage if mailed.

86 10. FELONY NOTICE. It is a felony under Florida law to
87 accept any gift, payment, or gratuity in exchange for your vote

582-02135-15

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88 for a candidate. It is also a felony under Florida law to vote
89 in an election using a false identity or false address, or under
90 any other circumstances making your ballot false or fraudulent.

91 Section 3. Subsection (2) of section 101.6923, Florida
92 Statutes, is amended to read:

93 101.6923 Special absentee ballot instructions for certain
94 first-time voters.—

95 (2) A voter covered by this section shall be provided with
96 printed instructions with his or her absentee ballot in
97 substantially the following form:

98

99 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR
100 BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE
101 YOUR BALLOT NOT TO COUNT.

102

103 1. In order to ensure that your absentee ballot will be
104 counted, it should be completed and returned as soon as possible
105 so that it can reach the supervisor of elections of the county
106 in which your precinct is located no later than 7 p.m. on the
107 date of the election. However, if you are an overseas voter
108 casting a ballot in a presidential preference primary or general
109 election, your absentee ballot must be postmarked or dated no
110 later than the date of the election and received by the
111 supervisor of elections of the county in which you are
112 registered to vote no later than 10 days after the date of the
113 election.

114 2. Mark your ballot in secret as instructed on the ballot.
115 You must mark your own ballot unless you are unable to do so
116 because of blindness, disability, or inability to read or write.

582-02135-15

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117 3. Mark only the number of candidates or issue choices for
118 a race as indicated on the ballot. If you are allowed to "Vote
119 for One" candidate and you vote for more than one, your vote in
120 that race will not be counted.

121 4. Place your marked ballot in the enclosed secrecy
122 envelope and seal the envelope.

123 5. Insert the secrecy envelope into the enclosed envelope
124 bearing the Voter's Certificate. Seal the envelope and
125 completely fill out the Voter's Certificate on the back of the
126 envelope.

127 a. You must sign your name on the line above (Voter's
128 Signature).

129 b. If you are an overseas voter, you must include the date
130 you signed the Voter's Certificate on the line above (Date) or
131 your ballot may not be counted.

132 c. An absentee ballot will be considered illegal and will
133 not be counted if the signature on the Voter's Certificate does
134 not match the signature on record. The signature on file at the
135 start of the canvass of the absentee ballots is the signature
136 that will be used to verify your signature on the Voter's
137 Certificate. If you need to update your signature for this
138 election, send your signature update on a voter registration
139 application to your supervisor of elections so that it is
140 received no later than the start of canvassing of absentee
141 ballots, which can occur as early as the 25th ~~occurs no earlier~~
142 ~~than the 15th~~ day before election day.

143 6. Unless you meet one of the exemptions in Item 7., you
144 must make a copy of one of the following forms of
145 identification:

582-02135-15

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146 a. Identification which must include your name and
147 photograph: United States passport; debit or credit card;
148 military identification; student identification; retirement
149 center identification; neighborhood association identification;
150 or public assistance identification; or

151 b. Identification which shows your name and current
152 residence address: current utility bill, bank statement,
153 government check, paycheck, or government document (excluding
154 voter identification card).

155 7. The identification requirements of Item 6. do not apply
156 if you meet one of the following requirements:

157 a. You are 65 years of age or older.

158 b. You have a temporary or permanent physical disability.

159 c. You are a member of a uniformed service on active duty
160 who, by reason of such active duty, will be absent from the
161 county on election day.

162 d. You are a member of the Merchant Marine who, by reason
163 of service in the Merchant Marine, will be absent from the
164 county on election day.

165 e. You are the spouse or dependent of a member referred to
166 in paragraph c. or paragraph d. who, by reason of the active
167 duty or service of the member, will be absent from the county on
168 election day.

169 f. You are currently residing outside the United States.

170 8. Place the envelope bearing the Voter's Certificate into
171 the mailing envelope addressed to the supervisor. Insert a copy
172 of your identification in the mailing envelope. DO NOT PUT YOUR
173 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR
174 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR

582-02135-15

20151058c1

175 BALLOT WILL NOT COUNT.

176 9. Mail, deliver, or have delivered the completed mailing
177 envelope. Be sure there is sufficient postage if mailed.

178 10. FELONY NOTICE. It is a felony under Florida law to
179 accept any gift, payment, or gratuity in exchange for your vote
180 for a candidate. It is also a felony under Florida law to vote
181 in an election using a false identity or false address, or under
182 any other circumstances making your ballot false or fraudulent.

183 Section 4. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 11, 2015

I respectfully request that **Senate Bill #1058**, relating to Canvassing Absentee Ballots, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Chris Smith", written over a horizontal line.

Senator Christopher L. Smith
Florida Senate, District 31



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
12/19/14	SM	Unfavorable
4/7/15	JU	Favorable
04/14/15	CA	Favorable
	FP	

December 19, 2014

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

Re: **SB 64** – Senator John Legg
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

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

CURRENT STATUS:

On December 21, 2010, 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 60 (2011). 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 same administrative law judge served as the Senate special master for the identical bill the following year, SB 50 (2012). The judge issued an effectively identical report and recommended that the bill be reported unfavorably. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Sandra Stovall. 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.

The prior claim bill, SB 50 (2012), is effectively identical to the 2015 bill filed for the 2015 Legislative Session, except the full amount to be paid by Miami-Dade County under the claim bill correctly reflects the amount agreed upon in the settlement agreement (\$940,000) rather than the entire amount of the judgment.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
12/2/11	SM	Unfavorable

December 2, 2011

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

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

SPECIAL MASTER'S FINAL REPORT

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

FINDINGS OF FACT:

On November 12, 2004, at 2:28 p.m., Nhora Acosta, 53, and her friend Zunilda Vargas boarded a bus operated by the Miami-Dade Transit Authority (MTA). The bus was eastbound on SW 8th Street in Miami. Ms. Acosta was returning to work after having lunched with Ms. Vargas. Neither woman was elderly, handicapped, infirm, or burdened with packages; both were able-bodied and apparently healthy.

The bus was crowded, and there were no seats for the women near the front. They began walking down the center aisle to the rear of the bus, where seats were available in an elevated seating area. To access this raised seating platform, a passenger must climb two steps, which are incorporated into the center aisle. As Ms. Acosta and Ms. Vargas headed to the back of the bus, the driver, Fernando Arrieta, pulled away

from the bus stop and proceeded to drive eastward on SW 8th Street, in the right lane.

About 11 seconds after the bus began moving, an SUV traveling in the left eastbound lane began pulling into the right lane, in front of the bus. This maneuver took nearly 4 seconds to complete. Immediately upon changing lanes, however, the SUV began breaking. Mr. Arrieta simultaneously stepped on the bus's breaks, to avoid a rear-end collision with the SUV.

The SUV needed to stop suddenly because a jaywalker was standing in the middle of the road, in between the two eastbound lanes. Two vehicles in the left eastbound lane had come to a complete stop. (The SUV had changed lanes, moving left-to-right in front of the bus, to pass these vehicles on the right.) It is reasonable to infer, and the undersigned finds, that the jaywalker had not anticipated that the SUV would cut in front of the bus when he began to cross the eastbound lanes on SW 8th Street. When the SUV suddenly appeared in the right lane, ahead of, and moving faster than, the bus, the jaywalker froze, calculating that he might not beat the SUV if it failed to slow down. Once the SUV began to break, however, the jaywalker dashed in front of it, safely reaching the sidewalk 2 seconds later. The SUV continued forward, and the two vehicles in the left lane, which had stopped, now took off. The bus came to a complete stop in the right lane, at the curb. Twenty seconds had elapsed from the time the bus pulled away after picking up Ms. Acosta and Ms. Vargas.

Inside the bus, a tragic accident had occurred. At about the moment the SUV began to change lanes, Ms. Acosta stepped up onto the rear seating platform. Ms. Vargas, who was right behind her, did the same about 2 seconds later. When the bus stopped to avoid running into the SUV, both Ms. Acosta and Ms. Vargas lost balance. Ms. Acosta tripped over Ms. Vargas's leg and fell off the elevated platform, striking her head on the lower center aisle. The injury proved to be fatal. Ms. Acosta died the next day in the hospital, having never regained consciousness.

The foregoing findings are based not only on the testimony presented, but also on the undersigned's independent review of the videos that the bus's onboard cameras recorded.

Based on a careful review of the videos, the following chronology of the material events has been created:

Hour	Minute	Second(s)	Event
2PM	28	44	Front doors are open
		46	Acosta steps onto bus
		47	Vargas boards
		48-53	Acosta pays fare; begins walking to back of crowded bus
		53-56	Vargas pays fare; begins walking to back of crowded bus
		57	Bus starts moving forward
		57-59	Acosta and Vargas walking to back of moving bus
	29	00-06	Acosta and Vargas still walking to back of moving bus
		06-08	Acosta steps up onto rear seating platform; Vargas approaching her from behind
		08-12	SUV, moving left to right, pulls into the right eastbound lane, in front of bus
		09-10	Vargas steps up onto rear seating platform, behind Acosta
		09-16	Two vehicles have stopped moving in the left eastbound lane, one behind the other
		11-13	Drives applies the breaks
		12-13	Pedestrian stands between the left and right eastbound lanes; two vehicles are parked in the left lane, having stopped for the pedestrian
		12	SUV is breaking
		13-14	Vargas loses balance, begins to fall

		14-15	Acosta begins to trip on Vargas's outstretched leg, falls
		14-16	Pedestrian dashes, left to right, toward sidewalk, directly in front of the SUV in the right eastbound lane
		16-18	Acosta is down; Vargas recovers balance, stands without having fallen
		17	Bus is at complete stop; SUV proceeds eastbound
		17-21	Two vehicles in left lane drive off, eastbound
		29-33	Front doors open
		36	Driver gets up from seat
		40	Driver begins walking back

At the conclusion of the trial in the civil action that Ms. Acosta's daughter Monica and son Luis brought against Miami-Dade County, which will be discussed below, the jury returned a verdict in favor of the plaintiffs, awarding each of them \$3 million for non-economic damages, i.e., "pain and suffering." No award for economic damages, e.g., lost earnings, was made because Ms. Acosta, a Venezuelan citizen, was in the U.S. illegally, having overstayed her tourist visa, and hence her children could not prove earnings from lawful employment.

The jury in the civil trial was asked to compare the negligence, if any, of Ms. Acosta; the unnamed pedestrian; the unnamed driver of the SUV; and Mr. Arrieta, and to apportion the fault between them by percentages. The jury determined that Mr. Arrieta's negligence was the sole cause of Ms. Acosta's fatal injury.

The undersigned considers the jury's apportionment of 100 percent of the fault to the bus driver to be inexplicable (except as the product of sympathy and emotion) and, ultimately, indefensible. Clearly, the unnamed pedestrian, who decided to cross a busy road outside of a marked crosswalk, acted recklessly and endangered himself and others. This jaywalker therefore owned the lion's share of the blame for this unfortunate accident, and the undersigned charges him with 90 percent of the fault. The unnamed driver of the SUV

was partially responsible for the accident; had he remained in the left lane and slowed to a stop, as the two vehicles in front of him did, it is likely that this accident would not have occurred. The undersigned places 10 percent of the blame on this driver. Mr. Arrieta's conduct in bringing the bus to a controlled, nonviolent stop to avoid rear-ending the SUV, which had stopped suddenly to avoid hitting the jaywalker standing the middle of the busy road, was reasonable under the circumstances.

The claimants argue that Mr. Arrieta was negligent in failing to wait for Ms. Acosta and her friend to sit down or grab a handrail. As will be discussed below, the standard of care does not generally require a bus driver to wait for a boarding passenger to sit down before pulling away, unless the passenger is elderly, infirm, disabled, etc., or the driver knows or reasonably should know of some reason (besides ordinary traffic conditions) that might cause him to make a sudden stop. Based on the evidence presented in this case, the undersigned finds that (a) both Ms. Acosta Ms. Vargas were able-bodied and apparently healthy; and (b) Mr. Arrieta had no reason to anticipate that a jaywalker soon would cross his bus's path and disrupt traffic. Thus, it is determined that Mr. Arrieta did not breach the duty of care by driving the bus while Ms. Acosta and Ms. Vargas were still in the process of finding seats.

Even if Mr. Arrieta were negligent in failing to wait for Ms. Acosta to take her seat before driving off, however, which the undersigned (based on the law and the evidence presented here) does not believe was the case, he was certainly not more responsible for the accident than the unnamed driver of the SUV. At most, therefore, Mr. Arrieta was 5 percent at fault, the SUV driver 5 percent responsible, and the jaywalker 90 percent to blame.

LEGAL PROCEEDINGS:

In 2005, the Monica and Luis Acosta, Ms. Acosta's children, brought a wrongful death action against Miami-Dade County based on the alleged negligence of the MTA employee, Mr. Arrieta. The action was filed in the circuit court in Miami-Dade County.

The case was tried before a jury in or around November 2007. The jury returned a verdict awarding Monica and Luis \$3 million each for pain and suffering. As mentioned above, the

jury apportioned 100 percent the fault for Ms. Acosta's death to the bus driver, finding specifically that neither the jaywalker, the SUV driver, nor Ms. Acosta herself were in any way negligent in causing Ms. Acosta's death. On November 8, 2007, trial court entered a judgment against Miami-Dade County in accordance with the jury's verdict.

The county appealed the judgment. In April 2010, while the appeal was pending before the Third District Court, the parties agreed to a settlement of the case, under which the county, in exchange for a release of liability, would: (a) pay \$200,000 to the claimants (which it since has done); (b) dismiss the appeal; and (c) support a claim bill in the amount of \$940,000.

Upon the county's payment of \$200,000, the claimants received net proceeds of \$98,237.30, after deductions for attorneys' fees (\$50,000) and costs (\$51,762.70).

CLAIMANTS' ARGUMENTS:

Miami-Dade County is vicariously liable for the negligence of its employee, Mr. Arrieta, who breached the duty of a common carrier to exercise the highest degree of care consistent with the practical operation of the bus by:

- Failing to wait for Ms. Acosta to take a seat before pulling away from the bus stop;
- Failing to pay attention to his surroundings while driving; and
- Slamming the brakes and making a sudden, violent stop.

RESPONDENT'S POSITION:

The county supports a claim bill in the amount of \$940,000. If the claim bill were enacted, the county would satisfy the award using the operating funds of the MTA.

CONCLUSIONS OF LAW:

As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields Miami-Dade County against tort liability in excess of \$200,000 per occurrence.

The operator of a bus system is vicariously liable for any negligent act committed by a driver whom it employs, provided the act is within the scope of the driver's employment. See, e.g., Metro. Dade Cnty. v. Asusta, 359 So. 2d 58, 59 (Fla. 3d DCA 1978); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA

1964). Mr. Arrieta was the county's employee and was clearly acting within the scope of his employment at the time of the accident in question. Accordingly, the negligence of Mr. Arrieta, if any, is attributable to the county.

As a general rule, the duty of a common carrier is "to exercise the highest degree of care consistent with the practical operation of the bus." Jacksonville Coach Co. v. Rivers, 144 So. 2d 308, 310 (Fla. 1962). That the bus stopped suddenly, however, is insufficient, without more, to establish negligence on the part of the driver, as the Florida Supreme Court announced in Rivers:

Ruling out stops of extraordinary violence, not incidental to ordinary travel, as inapplicable to the stop which occurred here, the sudden stopping of the bus was not a basis for a finding that the bus was negligently operated, in the absence of other evidence, relating to the stop, of some act of commission or omission by the driver which together with the 'sudden' stop would suffice to show a violation of the carrier's duty. This is so because a sudden or abrupt stop, which could be the result of negligent operation, could as well result from conditions and circumstances making it entirely proper and free of any negligence.

Id. (emphasis added; reinstating directed verdict in favor of defense; quoting Blackman v. Miami Transit Co., 125 So. 2d 128, 130 (Fla. 3d DCA 1960)).

Here, the evidence establishes that the stop in question, while sudden and unexpected, was not extraordinarily violent and was incidental to ordinary travel, inasmuch as making a sudden stop in traffic, unexpectedly, is commonly understood to be one of the recurring inconveniences (and risks) of driving a motor vehicle. The evidence, moreover, does not establish that the driver failed to pay attention to his surroundings; rather, as the videos show, Mr. Arrieta reacted prudently and reasonably to an unexpected situation, namely the slowing of the SUV (which had just pulled ahead of the

bus) to avoid hitting a jaywalker who was standing in the middle of the road, in traffic.

The question whether the driver should have waited for Ms. Acosta to take a seat before putting the bus in motion is somewhat closer. Florida law, however, does not generally require that a driver wait for passengers to be seated before proceeding, although such a duty might arise where the driver prevents the passenger from taking a seat, Ginn v. Broward Cnty. Transit, 396 So. 2d 804, 806 (Fla. 4th DCA 1981), or reasonably could have anticipated the need to make a sudden stop, Metro. Dade Cnty. V. Asusta, 359 So. 2d 58, 60 (Fla. 3d DCA 1978). Indeed, courts have entered judgments as a matter of law against plaintiffs who have fallen on moving buses while on their way to a seat. See, e.g., Peterson v. Cent. Fla. Reg'l Transp., 769 So. 2d 418, 421 (Fla. 5th DCA 2000)(affirming directed verdict in favor of bus operator, where plaintiff, who was carrying a large, rain-soaked bag, was injured in fall on bus while walking down a wet aisle to take a seat in the back); Artigas v. Allstate Ins. Co., 541 So. 2d 739, 740(Fla. 3d DCA 1989)(affirming summary judgment in favor of bus operator because, although plaintiff had fallen after boarding bus while on her way to seat, standard of care was not violated); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA 1964)(bus operator entitled to JNOV where plaintiff, who had been proceeding to a seat, fell when bus made a sudden, but nonviolent, stop).

Claimants argue that the MTA's Procedures Manual required the driver to wait for Ms. Acosta to take a seat before starting to move, but this is not accurate. The manual requires the driver to wait only when the passenger is "an elderly person, customer with a disability, a person holding a child, or a person with arms full of packages." Ms. Acosta was none of these. Otherwise, the driver is instructed to "be careful not to make a sudden start or stop" when passengers are standing in the aisle or walking to a seat. Here, the evidence fails to prove that the driver was not being careful; rather, Mr. Arrieta was required to stop suddenly because of an unexpected situation over which he had no control and could not reasonably have anticipated. In any event, the Procedures Manual does not fix the standard of care. See Artigas, 541 So. 2d at 740 n.1.

Based on the foregoing legal principles, as applied to the evidence presented in the case, the undersigned makes the ultimate determination that the driver was not negligent, in that

he did not breach the standard of care owed to a passenger when he stopped his bus to avoid rear-ending an SUV, which had slowed suddenly to avoid striking a jaywalker who was standing in the middle of traffic.

ATTORNEYS FEES:

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

SPECIAL ISSUES:

If enacted in its current form, the claim bill would direct that the entire judgment amount of \$6 million be paid to Ms. Acosta's children. Thus, the bill needs to be amended to conform to the parties' settlement agreement, pursuant to which claimants have agreed to accept the smaller sum of \$940,000.

At the time of her death in November 2004, Ms. Acosta was a citizen of Venezuela. She had come into the U.S. in July 2003 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which expired on January 22, 2004.

Monica and Luis Acosta are citizens of Venezuela. Monica Cantillo Acosta, who was in the U.S. on a Non-Immigrant B2 (Visitor for Pleasure) Visa for some period of time, had returned to Venezuela to attend school before her mother's death, apparently without having overstayed her visa. Luis Acosta, who was a teenager at the time of his mother's death, was in the U.S. in November 2004 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which had expired on June 18, 2004.

GENERAL CONCLUSIONS:

This sad case arises out of a freak accident, which tragically cost Ms. Acosta her life. Clearly her children have suffered a grievous loss—one for which, in a perfect world, they would be richly compensated. The problem here is that the party who is mostly to blame for Ms. Acosta's death, the negligent jaywalker, was not identified. Nor was the driver of the SUV identified; yet that person, too, rightfully bears a smaller, but nontrivial, share of the fault. Although the bus driver's (and through him the county's) fair share of the blame falls in the range from 0 percent to 5 percent (and at the bottom end of

the range, in the undersigned's estimation), the jury decided to make the county pay the entire loss, assigning 100 percent of the fault to the bus driver. This was unfair and unsupportable based on the facts and law. The county's financial responsibility to the plaintiffs should not exceed \$300,000 (5 percent of \$6 million). Having paid \$200,000, the county, at a minimum, already has satisfied two-thirds of its maximum liability—and probably has overpaid.

That said, the county did agree to support a claim bill in the amount of \$940,000. This, in itself, is a compelling reason to support the bill, and should be given great weight. Nevertheless, the undersigned concludes that, on balance, the present settlement, if consummated via approval of this claim bill, would not be a responsible use of taxpayer money.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 50 (2012) be reported UNFAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

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

By Senator Legg

17-00069-15

201564__

1 A bill to be entitled

2 An act for the relief of Monica Cantillo Acosta and
3 Luis Alberto Cantillo Acosta, the surviving children
4 of Nhora Acosta, by Miami-Dade County; providing for
5 an appropriation to compensate them for the wrongful
6 death of their mother, Ms. Acosta, due to injuries
7 sustained as a result of the negligence of a Miami-
8 Dade County bus driver; providing a limitation on the
9 payment of fees and costs; providing an effective
10 date.

11
12 WHEREAS, on November 12, 2004, at approximately 4:16 p.m.,
13 Nhora Acosta entered Miami-Dade County bus number 04142 at a
14 stop on SW 8th Street in Miami, paid the driver, and tried to
15 find a seat on the crowded bus, and

16 WHEREAS, while Ms. Acosta walked toward the rear of the bus
17 in search of a seat, the bus driver, ignoring her safety and
18 failing to appropriately anticipate the stop-and-go traffic
19 patterns on the busy street, accelerated so quickly that, in
20 order to avoid a collision with another vehicle, he suddenly
21 slammed on the brakes, and

22 WHEREAS, the sudden change in velocity caused Ms. Acosta to
23 fall and strike her head on an interior portion of the bus, and

24 WHEREAS, as a result of the fall, Ms. Acosta suffered a
25 severe closed head injury and massive brain damage, including a
26 right subdural hemorrhage, a left dural hemorrhage, diffused
27 cerebral edema, and basilar herniations, and

28 WHEREAS, Ms. Acosta was rushed to the trauma resuscitation
29 bay at Jackson Memorial Hospital in a comatose state, was placed

17-00069-15

201564__

30 on a ventilator, underwent various procedures to no avail, and
31 was pronounced dead at 2:05 p.m. the next day, and

32 WHEREAS, Ms. Acosta was a 54-year-old single mother of two
33 children, Monica and Luis, who had been raised exclusively by
34 their mother, and because of her death, her children were left
35 orphaned, and

36 WHEREAS, Monica and Luis loved their mother, their only
37 parent, dearly and have lost her support, love, and guidance and
38 have suffered intense mental pain due to her untimely death, as
39 a result of the negligence of the Miami-Dade bus driver, and

40 WHEREAS, on November 5, 2007, a Miami-Dade County jury
41 rendered a verdict and found the Miami-Dade County bus driver
42 100 percent negligent and responsible for the wrongful death of
43 Ms. Acosta, and determined the damages of Monica and Luis to be
44 \$3 million each, and

45 WHEREAS, the parties have subsequently settled this matter
46 for \$1.14 million, and Miami-Dade County has paid the claimants
47 \$200,000 under the statutory limits of liability set forth in s.
48 768.28, Florida Statutes, NOW, THEREFORE,

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. The facts stated in the preamble to this act are
53 found and declared to be true.

54 Section 2. Miami-Dade County is authorized and directed to
55 appropriate from funds of the county not otherwise appropriated
56 and to draw a warrant in the sum of \$470,000, payable to Monica
57 Cantillo Acosta, and a warrant in the sum of \$470,000, payable
58 to Louis Alberto Cantillo Acosta, as compensation for the

17-00069-15

201564__

59 wrongful death of their mother, Nhora Acosta.

60 Section 3. The amount paid by Miami-Dade County pursuant to
61 s. 768.28, Florida Statutes, and the amounts awarded under this
62 act are intended to provide the sole compensation for all
63 present and future claims arising out of the factual situation
64 described in this act which resulted in the death of Ms. Acosta.
65 The total amount paid for attorney fees, lobbying fees, costs,
66 and other similar expenses relating to this claim may not exceed
67 25 percent of the total amount awarded under this act.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

April 14, 2015

The Honorable Wilton Simpson
Senate Committee on Community Affairs, Chair
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

Senate Bill 64, related to Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County, is on the Committee on Community Affairs agenda for April 14, 2015. I will be unable to attend.

Please recognize my Legislative Assistant, Rich Reidy, to present SB 64 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", with a long horizontal stroke extending to the right.

John Legg
State Senator, District 17

cc: Tom Yeatman, Staff Director

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

March 5, 2015

The Honorable Wilton Simpson
Committee on Community Affairs Chair
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

RE: SB 0064 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County

Dear Chair Simpson:

SB 0064 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County has been referred to your committee. I respectfully request that it be placed on the Committee on Community Affairs Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg
State Senator, District 17

cc: Tom Yeatman, Staff Director

JL/jb

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
10/23/14	SM	FAV/1 amendment
3/24/15	JU	Fav/CS
04/14/15	CA	Favorable
	FP	

February 2, 2015 (Rev. 3/24/15)

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

Re: **CS/SB 66** – Judiciary Committee and Senator Legg
Relief of Ronald Miller by the City of Hollywood

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR \$100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

CURRENT STATUS:

On November 17, 2008, 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. On February 1, 2011, for SB 64 (2011), the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. Since that time, the matter has been settled between Mr. Miller and the City of Hollywood. Subsequently, the special master's December 2, 2011, report for SB 8 (2012) reflected the settlement and recommended that the bill be reported favorably. The report reflecting the settlement is attached as an addendum to this report.

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

SPECIAL MASTER'S FINAL REPORT – SB 8

February 2, 2015 (Rev. 3/24/15)

Page 2

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 claimant, Ronald Miller, changes have not occurred since the hearing which might have altered the findings and recommendations in the report.

Additionally, the prior claim bill, SB 8 (2012), is effectively identical to claim bill filed for the 2015 Legislative Session.

Respectfully submitted,

Diana W. Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary on March 24, 2015:

The committee substitute corrects the spelling of the last name of the city employee who caused the accident leading to the claim bill.



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
12/02/11	SM	Favorable

December 2, 2011

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

Re: **SB 8 (2012)** – Senator Eleanor Sobel
HB 43 (2012) – Representative Evan Jenne
Relief of Ronald Miller

SPECIAL MASTER'S FINAL REPORT

THIS SETTLED EXCESS JUDGMENT CLAIM FOR \$100,000 AGAINST THE CITY OF HOLLYWOOD, WHICH WOULD BE PAID FROM LOCAL FUNDS, ARISES OUT OF AN AUTOMOBILE ACCIDENT CAUSED BY A MUNICIPAL EMPLOYEE WHOSE NEGLIGENT DRIVING ALLEGEDLY LEFT RONALD MILLER WITH INJURIES TO HIS KNEES.

FINDINGS OF FACT:

At about 5:30 p.m. on July 30, 2002, Ronald Miller, a self-employed lawn service provider, was driving north on Federal Highway. As he approached Sheridan Street in the City of Hollywood, Florida, Miller encountered traffic congestion in both of the northbound lanes on Federal Highway; cars were backed up for several blocks south of Sheridan Street, where the light was red.

Miller planned to turn left and travel west on Sherman Street, which is one block south of Sheridan Street. Avoiding the lines of traffic waiting for the light to turn green at Sheridan, Miller maneuvered his pickup truck—which was pulling a trailer carrying his lawn equipment—into the center left-turn lane, which is a common lane providing for the two-way movement of traffic. Miller's speed was at least 20 MPH—within the posted limit but faster than the circumstances warranted, as

the left-turn lane is not meant to be used, as Miller was using it, for passing cars waiting at a red light.

Meantime, Robert Mettler, an employee of the City of Hollywood, was attempting to leave a Burger King restaurant which is located on the east side of Federal Highway, facing Sherman Street. (The Burger King thus was off to Miller's right as he approached from the south.) Mettler was on duty, behind the wheel of a City-owned pickup truck. He wanted to head south on Federal Highway, and thus needed to make a difficult left-hand turn across three lanes of rush-hour traffic: the two northbound lanes, where traffic was currently stopped, and the common turn lane, in which Miller (unbeknownst to Mettler) was presently moving north.

Drivers stopped on Federal Highway (in the northbound lanes) let Mettler out of the Burger King parking lot. As he edged his way between the parked cars, Mettler saw one of the drivers give him a hand signal, which he interpreted as a sign that the center lane was clear. Mettler himself could not get an unobstructed southward view of the turn lane because of the vehicles backed up on Federal Highway.

Mettler decided that the turn lane was clear and began nosing his truck forward. By this time, Miller was almost there; he was looking both forward and to his left and didn't see Mettler on his right. Mettler accelerated, pulling forward into the turn lane. In so doing, he failed to exercise reasonable care under the circumstances. Instantly, the trucks collided head-to-head.

Miller was not wearing his seatbelt. The force of the impact thrust him forward, and his knees struck the dashboard. Though hurt, Miller was not incapacitated; indeed, he walked away from the crash without assistance and later declined medical treatment at the accident site. Mettler was not badly injured.

The Hollywood Police Department was called, and an officer investigated the accident. Metter was given a ticket for failing to yield the right-of-way, in violation of s. 316.125(1), Florida Statutes. (Several months later, Mettler would be found guilty of this infraction.)

Hours after the crash, Miller's knees were painful and his neck was sore, so he sought treatment at Hollywood Medical

Center, checking into the emergency room at around midnight. The emergency room doctor prescribed painkillers and a cervical collar and sent Miller home.

Miller saw a chiropractor on July 31, 2002. After several visits, Miller switched to another chiropractor, Dr. Keith Buchalter, from whom he received treatment for neck and knee pain beginning August 12, 2002, and continuing until March 5, 2003. While under Dr. Buchalter's care, on September 16, 2002, Miller had magnetic resonance imaging (MRI) scans taken of his cervical spine, left knee, and right knee. These MRI scans, taken about one-and-a-half months after the crash, produced the first (and only) post-accident radiologic studies of Miller's knees and neck. The radiologist who read the scans believed the images showed, among other things, a torn anterior cruciate ligament (ACL) in both of Miller's knees.

On October 16, 2002, Miller was seen by Dr. Stephen Wender, an orthopedic surgeon. Dr. Wender prescribed a course of non-steroidal anti-inflammatory drugs for Miller's still-painful knees. On March 20, 2003, approximately eight months after the accident, Dr. Wender performed arthroscopic surgery on Miller's left and right knees. Dr. Wender did not repair the ACL in either of Miller's knees because, it turned out, Miller did not have ligament damage after all.

This was not the first time that an orthopedic surgeon had operated on Miller's right knee. It was, in fact, the *fourth* surgery on Miller's right knee, which had been damaged years earlier when Miller, as a pedestrian, had been hit by a car. The previous accident had led to three knee surgeries by two different doctors. Medical records from the prior surgeries were not produced at hearing, and the orthopedic surgeons who performed them did not testify.

The undersigned is persuaded, and finds, that Miller's right knee sustained some injury as a result of the July 2002 crash. Without information concerning the nature and extent of the previous injuries to Miller's right knee, however, it cannot be determined, with reasonable particularity, which damage was proximately caused by the accident in 2002, and which was present before this accident. That said, the evidence shows (and the undersigned finds) that, broadly speaking, roughly 80

to 90 percent of the damage to Miller's right knee existed before the 2002 accident.

Miller's left knee, too, was injured in the 2002 crash. While the left knee (unlike the right) had not previously suffered a traumatic injury, by July 2002 Miller's left knee already had begun to deteriorate due to degenerative arthritis. In other words, Miller's left knee had a chronic, preexisting condition. There is no evidence, however, that Miller's left knee was bothering him before the accident in question.

Miller incurred approximately \$75,000 in medical expenses following the 2002 accident, beginning with the next-day treatment in the emergency room and continuing until he had knee surgery in March 2003. These medical expenses constitute an economic loss that was directly and proximately caused by the 2002 accident.

Miller wants to be compensated for "pain and suffering" (which category includes, in addition to pain and suffering, such noneconomic losses as mental anguish, inconvenience, and loss of capacity to enjoy life). At the trial on the civil suit in which Miller sued the City for negligence, the jury awarded Miller \$700,000 for pain and suffering—\$200,000 for past suffering and \$500,000 for future suffering.

Mettler's failure to use reasonable care to avoid colliding with Miller's pickup truck unquestionably constituted negligence. Miller, however, was negligent too, for he drove too fast for the circumstances and failed to pay reasonable attention to all of the traffic on the road. The jury in the civil trial was asked to compare the negligence of Mettler to that of Miller and apportion the fault between them by percentages. The jury determined that Mettler's negligence comprised 95 percent of the cause of Miller's injuries, while finding Miller himself five percent at fault.

While the undersigned might have placed a bit more blame on Miller, he nonetheless considers the jury's apportionment of the fault to be consistent with the evidence and will defer to the jury's collective wisdom in the matter. It is found, therefore, that Metter was 95 percent responsible for the crash, Miller five percent.

LEGAL PROCEEDINGS:

In January 2005, Miller brought suit against the City. The action was filed in the Broward County Circuit Court.

The case was tried before a jury in June 2006. The jury returned a verdict awarding Miller a total of \$1.19 million in damages, broken down as follows: (a) \$200,000 for past pain and suffering; (b) \$500,000 for future pain and suffering; (c) \$75,000 for past medical expenses; and (d) \$415,000 for future medical expenses. The trial court entered a judgment against the City in the amount of \$1.13 million—or 95 percent of the total damages, in accordance with the jury's apportionment of fault. (All of the foregoing numbers were rounded for ease of reference.)

The City appealed the adverse judgment. The Fourth District Court of Appeal affirmed, per curiam, without issuing an opinion.

On August 16, 2007, the City paid \$100,000 to Miller, satisfying so much of the judgment as falls outside the protection of sovereign immunity. The City previously (in 2002) had compensated Miller in full for his property damage, which consequently is not in issue here.

The proceeds recovered on the judgment were distributed to Miller in February 2008. His net recovery, after paying attorney's fees (\$30,000), litigation costs (\$21,000), and medical bills (\$6,400), was \$43,000. (These numbers have been rounded for convenience.)

CLAIMANT'S ARGUMENTS:

The City is vicariously liable for its employee's negligent operation of a municipal vehicle, which negligence caused an accident wherein Miller suffered severe and permanent bodily injuries.

RESPONDENT'S POSITION:

In a letter dated September 23, 2011, counsel for the City stated that "the parties involved have agreed on the amounts requested in SB 8/HB 43, as well as the 'whereas' clause findings. Accordingly, it is the parties' intent to ask members to pass this bill as a stipulated matter."

CONCLUSIONS OF LAW:

As provided in s. 768.28, Florida Statutes (2010), sovereign immunity shields the City against tort liability in excess of \$200,000 per occurrence.

Under the doctrine of respondeat superior, the City is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See Roessler v. Novak, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003). Metter, a City employee, was acting within the course and scope of his employment when he negligently collided with Miller. The City, therefore, is liable for Mettler's negligence.

Miller was negligent, too, and his negligence was a contributory cause of the accident. Therefore, it is necessary to determine the extent of Mettler's fault as compared to Miller's. As noted above, the jury's allocation of 95 percent of the fault to the City (through Miller) is reasonable. The undersigned accordingly concludes that the City was 95 percent to blame for the accident.

Miller proved that Mettler's negligence proximately caused acute injuries that resulted in Miller's incurring \$75,000 in medical expenses. An award for these past medical expenses is factually and legally justified (apart from sovereign immunity considerations). Miller established, as well, that he is entitled to an award for pain and suffering.

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." Miller's attorney, Winston & Clark, P.A., has submitted proposed distribution statement showing that the attorneys' and lobbyist's fees would be limited, in the aggregate, to 25 percent of the compensation being sought.

SPECIAL ISSUES:

The parties have agreed to settle this claim for the payment by the City of \$100,000. This amount is reasonable and responsible.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 8 (2012) be reported FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 8

December 2, 2011

Page 7

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Eleanor Sobel
Representative Evan Jenne
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By the Committee on Judiciary; and Senator Legg

590-02823-15

201566c1

1 A bill to be entitled
2 An act for the relief of Ronald Miller by the City of
3 Hollywood; providing for an appropriation to
4 compensate him for injuries sustained as a result of
5 the negligence of an employee of the City of
6 Hollywood; providing a limitation on the payment of
7 fees and costs; providing an effective date.

8
9 WHEREAS, on July 30, 2002, Ronald Miller was driving his
10 pickup truck home from work, northbound on Federal Highway in
11 the left-turn lane, and

12 WHEREAS, at that time Robert Mettler, a City of Hollywood
13 employee, driving a city utilities truck, cut across the
14 northbound lanes of traffic and crashed head-on into Ronald
15 Miller's vehicle, and

16 WHEREAS, the impact of the crash caused Ronald Miller to
17 have corrective surgeries for damage to both knees, and

18 WHEREAS, the jury returned a verdict in favor of Ronald
19 Miller, and a final judgment was entered in the amount of
20 \$1,130,731.89, and a cost judgment was entered in the amount of
21 \$17,257.82, and

22 WHEREAS, the City of Hollywood has paid \$100,000 to Ronald
23 Miller under the statutory limits of liability set forth in s.
24 768.28, Florida Statutes, and

25 WHEREAS, the parties have negotiated in good faith and have
26 arrived at a stipulated resolution of this matter for the
27 payment by the City of Hollywood of an additional \$100,000 to
28 Ronald Miller, NOW, THEREFORE,

29

590-02823-15

201566c1

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

31
32 Section 1. The facts stated in the preamble to this act are
33 found and declared to be true.

34 Section 2. The City of Hollywood is authorized and directed
35 to appropriate from funds of the city not otherwise appropriated
36 and to draw a warrant, payable to Ronald Miller, for the total
37 amount of \$100,000 as compensation for injuries and damages
38 sustained as a result of the negligence of an employee of the
39 City of Hollywood.

40 Section 3. The amount paid by the City of Hollywood
41 pursuant to s. 768.28, Florida Statutes, and the amount awarded
42 under this act are intended to provide the sole compensation for
43 all present and future claims arising out of the factual
44 situation described in this act which resulted in injuries to
45 Ronald Miller. All expenses that constitute a part of Ronald
46 Miller's judgments described in this claim shall be paid from
47 the amount awarded under this act on a pro rata basis. The total
48 amount paid for attorney fees, lobbying fees, costs, and other
49 similar expenses relating to this claim may not exceed 25
50 percent of the amount awarded under this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/14

Meeting Date

66

Bill Number (if applicable)

Topic Miller Claim Bill

Amendment Barcode (if applicable)

Name Jason Vager

Job Title _____

Address _____

Phone 5779090

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing City of Hollywood

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

April 14, 2015

The Honorable Wilton Simpson
Senate Committee on Community Affairs, Chair
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

Senate Bill 66, related to Relief of Ronald Miller by the City of Hollywood, is on the Committee on Community Affairs agenda for April 14, 2015. I will be unable to attend.

Please recognize my Legislative Assistant, Rich Reidy, to present SB 66 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", with a long horizontal stroke extending to the right.

John Legg
State Senator, District 17

cc: Tom Yeatman, Staff Director

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

March 25, 2015

The Honorable Wilton Simpson
Committee on Community Affairs Chair
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

RE: SB 66 - Relief of Ronald Miller by the City of Hollywood

Dear Chair Simpson:

SB 66 - Relief of Ronald Miller by the City of Hollywood has been referred to your committee. I respectfully request that it be placed on the Committee on Community Affairs Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg
State Senator, District 17

cc: Tom Yeatman, Staff Director

JL/jb

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
12/5/14	SM	Favorable
03/24/15	JU	Favorable
04/14/15	CA	Unfavorable
	FP	

December 5, 2014

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

Re: **SB 26** – Senator Miguel Diaz de la Portilla
Relief of Thomas and Karen Brandi

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$825,094 AGAINST THE CITY OF HAINES CITY FOR THE RELIEF OF THOMAS AND KAREN BRANDI FOR THE INJURIES AND DAMAGES SUFFERED BY THOMAS BRANDI WHEN HIS VEHICLE WAS STRUCK BY A HAINES CITY POLICE OFFICER'S VEHICLE ON MARCH 26, 2005.

FINDINGS OF FACT:

Liability

At approximately 8:50 PM on March 26, 2005, Thomas Brandi was travelling west on Southern Dunes Boulevard through the intersection of Southern Dunes Boulevard and U.S. 27. Mr. Brandi was in the center lane of three lanes. The right-hand lane was a "right turn only" lane, the left lane was a "left-turn only" lane and Mr. Brandi's lane could either turn right onto U.S. 27 north with the flow of the right-hand lane or proceed straight through the intersection.

Mr. Brandi was well into the intersection when a Haines City Police car being driven by Haines City Police Officer Pamela Graham northbound on U.S. 27 struck Mr. Brandi's vehicle broad-side at the driver door. Officer Graham was employed by the City of Haines City (the City) at the time of the crash.

The northbound lanes of U.S. 27 at Southern Dunes Boulevard consist of two northbound lanes, a left-turn lane and a right-turn lane. The police car was in the northbound lane closest to the left-turn lane.

The traffic lights at the intersection were working at the time of the crash. The posted speed limit was 45 MPH. The police car's emergency lights and sirens were activated. Both Mr. Brandi and Officer Graham were wearing seatbelts. There was construction occurring at the intersection but it was not an active construction site at the time of the crash.

Mr. Brandi was seriously injured in the traffic crash and was transported by helicopter to the trauma center at Lakeland Regional Medical Center. (Mr. Brandi's injuries and the damages from the crash will be discussed below in the **Damages** section.)

At a deposition taken in preparation for the jury trial of the negligence claim brought by Mr. Brandi against Haines City, Officer Graham testified that she believed she had heard a fellow officer request emergency help over the radio. Officer Graham then proceeded quickly from the jail to the point of impact with Mr. Brandi's vehicle, as she mistakenly responded to the call she thought she had heard. Officer Graham testified that she entered the intersection on a yellow light.

No other witnesses to the traffic crash gave sworn statements or testified at the trial of this matter, however three additional witness statements have been presented for review during the claim bill process.

One eyewitness reported that as she (the witness) approached the intersection heading east on Southern Dunes Boulevard the traffic light turned yellow. The witness judged that she could have made the light but decided to stop due to not being familiar with the area. As the witness stopped a police car came through the intersection "very fast" and collided with a car that came from directly across the intersection from the witness. The witness perceived that the car across from her, in the westbound flow of traffic, turned left at the intersection. The witness confirmed that the police car had its emergency lights on but she was unable to verify that the siren was on because the witness was listening to

music. The police car was heading from the witness' right to left.

The other two eyewitness statements were provided by a couple who observed the traffic crash from their semi-truck cab in the southbound lane of U.S. 27. He was driving while she was in the sleeping quarters, looking straight ahead. He was inching the semi forward so that he "wouldn't have to stop." There was one car ahead of the semi.

Both witnesses said that the police car had its emergency lights and sirens on. The police car "did not slow very much" and came on through the intersection, striking Mr. Brandi's vehicle that "had the light," heading westbound. One witness described the police officer as driving erratically. The other witness estimated the police car's speed to be about 35-40 MPH.

One witness explained that it looked like there was a van or SUV in the left turn lane on Mr. Brandi's side of the intersection which was quite likely to have blocked his view of the police car approaching the intersection from Mr. Brandi's left. This eyewitness stated that there was "no way" Mr. Brandi could have seen the police car coming.

The Florida Highway Patrol trooper who investigated the crash listed witnesses in his report but did not include any detailed witness statements. The report noted that "witnesses stated that the police vehicle proceeded through the intersection on a red light with blue lights and siren."

The trooper cited Officer Graham for violating s. 316.126(5), F.S., by not operating her emergency vehicle with due regard for the safety of all persons using the highway. The trooper also cited Mr. Brandi for failure to yield to an emergency vehicle in violation of s. 316.126, F.S.

The Haines City Emergency Vehicle Operation Policy, adopted in accordance with s. 316.072, F.S., requires that an officer will not "enter controlled intersections against the directional flow of traffic at a speed greater than 15 MPH and will be sure that cross-traffic has yielded in each lane before attempting to cross that lane." Officer Graham testified that she looked both ways before entering the intersection.

The Haines City Police Department conducted its own investigation and found Officer Graham to have violated the Emergency Vehicle Operation Policy and that she had committed the traffic violation cited by the investigating FHP Trooper. Accordingly, Officer Graham was disciplined by the Department.

An accident reconstructionist, hired by Mr. Brandi's attorneys prior to the negligence trial in this matter, studied and reported on the traffic light sequence at the Southern Dunes Boulevard and U.S. 27 intersection where the crash occurred. He testified that, heading northbound like Officer Graham was driving, there was a 4.3 second yellow light followed by an "all-red." All-red is the period of time when all four sides of an intersection have a red light, in this case, a full second. This full second of all-red is designed to give traffic that may have entered an intersection late on a yellow light time to clear the intersection before the adjacent lanes get a green light.

Both at the scene and at the trauma center Mr. Brandi said that he had consumed 4 beers earlier in the day. Two hours after the traffic crash no alcohol or drugs were in his system according to blood and urine tests performed at the Lakeland Regional Medical Center trauma center.

On the Issue of Damages

Before March 26, 2005

A careful reading of the many reports and expert opinions about Mr. Brandi's psychological and emotional conditions, as well as his history with alcohol, indicate depression and alcohol abuse dating back to 2001. There are indications that he experienced issues with job dissatisfaction both before and after the traffic crash.

It appears that Mr. Brandi feels that his alcohol abuse is something he needs to control because the reports indicate that he has sought counseling and attended A.A. intermittently since at least 2003.

Prior to the traffic crash in March of 2005, Mr. Brandi's last employment was as a maintenance technician for Owens Illinois Plastics. This employment ended in May of 2003.

During this period of time in 2003 Mr. Brandi was suffering with depression and alcohol abuse. He sought treatment with

his family doctor who eventually referred him to a psychiatrist who treated Mr. Brandi's depression. Mr. Brandi seemed to be making good progress with the combination of medication and counseling.

Mr. Brandi began taking college courses but stopped taking those classes during the summer of 2004. Beginning that summer he assisted family members with post-hurricane housing issues. He did repairs on his own home and other projects around the house. Mr. Brandi also paid the household bills and did most of the cooking as his wife was employed full-time.

Mr. and Mrs. Brandi were pursuing the adoption of a child just prior to the traffic crash in 2005. They were undergoing a home-study as part of the adoption process. Both felt Mr. Brandi was doing much better with the depression and alcohol issues. In addition to pursuing the adoption of a child, Mr. Brandi had begun looking for work.

March 26, 2005 – Trial

The trauma center doctor testified at trial that witnesses at the scene indicated that Mr. Brandi was initially unresponsive after the crash. He was awake and talking when EMS arrived.

Mr. Brandi could not remember what happened before, during, or after the crash. He repeated the same questions over and over with the EMS personnel and the trauma room doctor.

The Life Flight crew suspected that Mr. Brandi was suffering from a closed head injury with altered mental status. The trauma center doctor suspected a concussion but Mr. Brandi's CAT scan came back normal.

The medical reports, and deposition and trial testimony presented for review in the claim bill process, show that as a result of the traffic crash Mr. Brandi suffered a potentially life-threatening aortic tear and numerous bone fractures. The aortic tear was repaired early in Mr. Brandi's ten day hospital stay at Lakeland Regional Medical Center.

Mr. Brandi's orthopedic injuries included a fractured sternum, rib, fibula, and multiple pelvic fractures.

He was discharged to Florida Hospital in Orlando for rehabilitation, both physical and cognitive. At the time of discharge from Florida Hospital one of Mr. Brandi's diagnoses was listed as "mild traumatic brain injury secondary to motor vehicle collision."

According to discharge reports from Florida Hospital, after the ten-day rehabilitation he continued to exhibit "mild cognitive communicative disorder with decreased insight, decreased executive functioning, and decreased concentration."

Prior to discharge from Florida Hospital, Mr. and Mrs. Brandi advised the neuropsychologist on the case about Mr. Brandi's "pretty significant depression over the past two years." While he noted that Mr. Brandi's adjustment after the traffic crash was going extremely well, the neuropsychologist counseled Mr. and Mrs. Brandi about how "adjustment reactions can become more problematic in concussion with a history of depression prior to an incident."

The neuropsychologist's discharge orders recommended outpatient follow-up for occupational, physical, and speech therapy.

The many medical and specialist reports submitted for consideration in this matter indicate that Mr. Brandi was diligent in his follow-up treatment and was progressing well.

In fact, through the Fall of 2005 he participated in vocational rehabilitation, reporting no physical limitations. He was motivated at that time to pursue a two-year degree with an emphasis on biomedical engineering. Mr. Brandi's vocational rehabilitation counselor believed that Mr. Brandi could enter the job market in that field upon completion of the coursework.

The counselor recommended that Mr. Brandi continue on medication management for depression, with short-term counseling related to adjustment depression issues.

Mr. Brandi made some attempts to go back to work after the traffic crash. The first reported job was at an automotive garage where he was expected to perform tasks he had reportedly been good at and enjoyed doing prior to the crash. Mr. Brandi reported, however, that he was unable to figure out how to do more than simple tire and lube work. It seems to

have been during this period of time when he began to struggle with alcohol again.

Mr. Brandi started out strong with his outpatient therapy regimen after the crash and he seemed to be somewhat optimistic and enthusiastic about the future.

At some point, however, it is clear that things took a turn for the worse. Mr. Brandi began to report or exhibit anxiety, depression, confusion, forgetfulness, irritability, withdrawal, frustration, obsessive-compulsive behavior and even violence toward his wife.

There was a time when the Brandis separated about two years after the traffic crash. Mrs. Brandi reports that Mr. Brandi's personality has changed significantly since the traffic crash. He underwent in-patient intensive alcohol treatment from March through July of 2008.

Mr. Brandi has experienced aches and pains and some physical limitations in the last several years, most likely related to the physical injuries he received in the traffic crash.

Mr. Brandi has undergone neuropsychological, medical, and psychiatric testing and evaluations since the traffic crash in March of 2005.

The opinions of the experts vary largely as follows:

- Mr. Brandi's MRI shows damage to the brain and it was caused by the traffic crash;
- Mr. Brandi's brain injury is of a permanent nature and will require life-long coping skills to overcome the resulting cognitive impairment;
- Mr. Brandi did not suffer a closed head injury resulting from the traffic crash;
- If Mr. Brandi suffered such a trauma it was minor and did not cause any residual cognitive impairment;
- If Mr. Brandi suffers on-going cognitive impairment resulting from the crash, his ability to cope (or inability, at times) is exacerbated by his depressive disorder and occasional alcohol abuse;
- If Mr. Brandi suffers cognitive impairment it was not caused by the traffic crash but is the result of depression and alcohol abuse.

Mr. Brandi seems to have been able to find some joy and satisfaction in his work and hobbies from time to time. He has reported that he particularly enjoys fishing, being with family, and riding his motorcycle.

The monetary damages related to the traffic crash will be discussed below.

Litigation History

Thomas and Karen Brandi filed suit against the City of Haines City for damages they suffered as a result of the negligent actions of the City's employee, Officer Graham, on March 26, 2005. The trial lasted nearly a week.

In addition to the fact-issues that were in contention, the trial jury also heard evidence suggesting a continuation of care plan for Mr. Brandi's future.

Evidence was also presented on the matters of Mr. Brandi's loss of earning capacity, the cost of future medical care, lost wages from the date of the traffic crash to the date of the trial, medical costs incurred by the Brandis as a result of the crash, and past and future pain and suffering.

The trial jury rendered its verdict on November 17, 2009. The jury assigned 60% negligence to the City and 40% to Mr. Brandi. It should be noted that the jury did not have the benefit of the three impartial eyewitness's testimony at trial.

The jury found that Mr. Brandi suffered permanent injury in the crash. It awarded Mrs. Brandi \$175,000 for loss of Mr. Brandi's comfort, society and attentions, and services.

For Mr. Brandi's medical expenses and past lost earnings, the jury awarded \$279,330 in damages. Future medical expenses and lost earning ability for the next 25 years (Mr. Brandi was 39 years old at the time of the crash) were compensated in the amount of \$903,000. The jury awarded past and future pain and suffering in the amount of \$450,000. The verdict total is \$1,807,330.

CONCLUSIONS OF LAW:

On The Merits

The testimony of three impartial eyewitnesses to the crash, none of whom the jury heard from at trial, shows that Officer Graham did not have the right of way nor did she proceed with

sufficient caution approaching and coming into the intersection of U.S. 27 and Southern Dunes Boulevard.

Officer Graham was employed by the City of Haines City and acting within the scope of her employment at the time of the traffic crash. Officer Graham was operating a city vehicle in an unsafe manner, her actions amounted to negligence on the part of the City and were the cause of the traffic crash that injured Thomas Brandi as described in this report.

Although Mr. Brandi has abused alcohol for years, the undersigned finds that there is insufficient evidence to conclude that he was impaired by alcohol or drugs at the time of the vehicle crash. This finding is based upon two primary factors: the toxicology results which were obtained so soon after the crash and eyewitness testimony that Brandi did not run a red light as an impaired person might do.

Additionally, eyewitness testimony leads one to conclude that Mr. Brandi did not see or hear the police car before he entered the intersection. A van or SUV was blocking his view in the "left turn only" lane, therefore even if Mr. Brandi entered the intersection on a yellow light, that decision would not indicate impaired or even abnormal driving behavior.

At the trial of this matter the judge ruled that the City had not presented sufficient evidence on the matter of whether Mr. Brandi was wearing his seat belt at the time of the crash. Having reviewed the trooper's crash report, the crash scene photographs, and the testimony of the Trooper, as well as considering the trial court's ruling, the undersigned finds that Mr. Brandi was wearing his seat belt.

Out of respect for the sanctity of the trial jury's verdict, the undersigned will not suggest a reallocation of comparative negligence between the parties although one wonders what the verdict might have been if the impartial eyewitnesses had been heard from at trial.

The damages awarded by the jury are based on sufficient evidence and will not be disturbed.

The City of Haines City, as a municipality, is covered by the provisions of s. 768.28, Florida Statutes. The statute waives the City's sovereign immunity from tort actions with monetary

limits within which the City is liable to pay a claim or a judgment, not to exceed the sum of \$200,000.

On January 14, 2010, the trial court entered a Final Judgment in the case allowing Thomas and Karen Brandi to recover a total of \$200,000 from the City. This sum has been paid by the City's insurance carrier, Preferred Governmental Insurance Trust (PGIT).

The court stated as follows in the Final Judgment: "This judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full jury verdict."

The full outstanding amount of the verdict and the amount of the claim bill is \$825,094. The Claimants have provided the undersigned with the computation that supports this amount. The Claimants have also provided the required Proof of Publication in order to lawfully proceed with the claim bill.

On May 17, 2010, the court entered its Order granting the Brandi's January 26th Motion to Tax Costs against the City in the amount of \$94,049.84. The costs were clearly enumerated and attached as Exhibit D to the Motion.

Also attached to the Motion, as Exhibit F, was a form entitled "Common Agreement Declarations" in which PGIT names the City of Haines City as a "covered party" during the time of the traffic crash. Under "Supplementary Payments – Coverages A and B" the form also appears to indicate that the insurance trust will "pay, with respect to any claim or suit we defend...[a]ll costs taxed against the covered party in the suit...[t]hese payments will not reduce the limits of coverage." The costs of litigation set forth in the court's Order have not been paid to date.

The Brandi's Motion also asked the court for the joinder of the City's liability insurance carrier (PGIT) as a party defendant for the purpose of including the insurance carrier in the judgment for costs. The record before the undersigned does not show how the court ruled on that part of the Brandi's Motion.

The Claimant suggests that the City is a named insured of an excess policy issued by State National Insurance Company.

The City characterizes the relationship as “excess indemnity coverage” at \$2,000,000 per occurrence.

No matter the nomenclature the amount of the claim bill, if passed by Legislature, should not have a direct effect on the coffers of the City. It appears that the amount of the claim bill should be paid by the City’s insurer.

Finality for Purposes of a Claim Bill

The City argues that the claim bill is not ripe for consideration by the Legislature because the Claimants do not have an enforceable excess judgment. The City’s position seems to be based upon the fact that the court’s Final Judgment in the trial of the matter does not complete the computations for reaching an outstanding net Judgment amount.

From a litigation standpoint, the case has been fully litigated through the jury trial process and the jury has spoken.

For reasons unknown to the undersigned the trial court did not perform the reduction in the total verdict amount to allocate 40% negligence to Mr. Brandi. Likewise the court did not assign credit to the City for collateral sources of payment to the Brandis.

The trial court entered a simplified Final Judgment in the case allowing Thomas and Karen Brandi to recover a total of \$200,000 from the City. The court also stated as follows in the Final Judgment: *“This judgment is entered without prejudice to the Plaintiff’s right to pursue payment of the full jury verdict.”*(emphasis added)

The City argues that absent a request from the Brandis for the court to reduce the verdict amount by 40% that the court was “unable to apply any reduction based on comparative negligence.” While it is true that the court did not make the reduction and was evidently not asked to do so by the Claimant, nor did the City make the request.

The City further argues that Mr. Brandi’s failure to ask the court to clarify its Final Judgment “prevented the trial court from considering collateral sources” or setoffs of funds Mr. Brandi received from sources besides the City. The Claimant did not seek such clarification from the trial court, however neither did the City.

In this Special Master's view the City's argument affixes "blame" solely upon the Claimant for a lack of clarity in the Final Judgment, but the City had the ability to request further clarity from the court as well.

The undersigned finds nothing in the Florida Rules of Civil Procedure that prevents either party from seeking clarification from the trial court in these matters.

The Senate Rule related to claim bills (Rule 4.81) states that "[t]he hearing and consideration of a claim bill shall be held in abeyance until all available administrative and judicial remedies have been exhausted."

The question of whether "all available...judicial remedies have been exhausted" is the heart of the City's argument that the claim bill is not ripe for consideration by the Senate.

While it is the view of the undersigned that the court's Final Judgment in the trial of this matter lacks clarity as to the specific amount of damages (above the \$200,000 waiver of sovereign immunity limits) due Mr. Brandi, the judgment is a Final Judgment nonetheless. The case was fully litigated and a jury reached a verdict.

This Special Master finds that the computations submitted by the Claimant, which reduce the verdict (\$1,807,330) by collateral source payments (\$88,922) then further reduce that amount by the 40% comparative negligence assigned to Mr. Brandi, the \$100,000 paid by Claimant's auto insurance and the \$200,000 paid by the City, and then adds the taxable costs (\$94,049) as ordered by the court, are accurate. Therefore, the resulting amount of the claim bill is \$825,094.

The Senate's interpretation of the Senate Rule's application to the claim bill can only be determined by the members of Senate. The undersigned believes that the Senate can find that all judicial remedies have been exhausted in this matter without violating the Rule 4.81.

ATTORNEYS FEES:

Counsel for the Claimants has submitted an affidavit stating: "I have complied with Florida Statute s. 768.28(a) and all lobbying fees related to this claims bill will be included as part

of the above statutory cap on attorney's fees." Although the affidavit incorrectly cites the statute, it appears that Counsel's intent is to comply with s. 768.28(8), Florida Statutes and that Counsel will not "charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement."

The undersigned suggests that a corrected affidavit be submitted prior to the consideration of the claim bill.

RECOMMENDATIONS:

For the reasons set forth herein, the undersigned recommends that Senate Bill 26 be reported FAVORABLY in the amount of \$825,094.

Respectfully submitted,

Connie Cellon
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

By Senator Diaz de la Portilla

40-00051-15

201526__

1 A bill to be entitled

2 An act for the relief of Thomas and Karen Brandi by
3 Haines City; providing an appropriation to compensate
4 them for injuries and damages sustained as a result of
5 the negligence of an employee of Haines City;
6 providing that the appropriation settles all present
7 and future claims relating to the injuries and damages
8 sustained by Thomas and Karen Brandi; providing a
9 limitation on the payment of fees and costs; providing
10 an effective date.

11
12 WHEREAS, Thomas Brandi was involved in a two-vehicle
13 accident that occurred on March 26, 2005, on U.S. Highway 27 in
14 Haines City, Florida, and

15 WHEREAS, Thomas Brandi was traveling alone and turning onto
16 U.S. Highway 27 from Southern Dunes Boulevard on a green arrow
17 when his vehicle was broadsided on the driver's side by a Haines
18 City Police Department car operated by Officer Pamela Graham,
19 and

20 WHEREAS, Officer Graham entered the intersection despite a
21 red light and struck the driver's side door of Mr. Brandi's
22 vehicle at a speed in excess of 45 miles per hour, and

23 WHEREAS, Officer Graham failed to operate her vehicle in a
24 reasonably safe manner and conducted herself in direct violation
25 of procedures of the Haines City Police Department, and

26 WHEREAS, although Officer Graham claimed that she was
27 responding to a distress call, there was no evidence to support
28 this claim, and the internal investigation conducted by the
29 Haines City Police Department concluded that she was neither

40-00051-15

201526__

30 called nor dispatched to the location where she was headed, and

31 WHEREAS, the internal investigation also found Officer
32 Graham to be at fault in the accident, and

33 WHEREAS, as a result of the crash, Thomas Brandi sustained
34 life-threatening injuries, including an aortic arch tear with
35 contained hematoma and suggestion of active bleeding, a
36 fractured rib, a right fibula fracture, a fractured sternum, a
37 left acetabulum fracture, multiple right inferior pubic ramus
38 fractures, and severe traumatic brain injury resulting in
39 cognitive disorder, complex personality change, depressive
40 disorder, pain disorder, post-traumatic stress disorder, and
41 panic disorder, and

42 WHEREAS, Thomas Brandi's medical expenses at the time of
43 trial exceeded \$156,000, and

44 WHEREAS, after a trial, a jury entered a verdict assessing
45 Haines City 60 percent liability for the injuries sustained by
46 Mr. Brandi in the accident and assessing Thomas Brandi 40
47 percent liability for the accident, and

48 WHEREAS, future medical expenses and lost earning ability
49 in the future totaled \$903,000, and the verdict included an
50 award for past medical expenses and lost wages in the amount of
51 \$279,330, and

52 WHEREAS, Thomas Brandi was awarded \$450,000 in damages for
53 past and future pain and suffering, and his wife, Karen Brandi,
54 was awarded \$175,000 in damages for past and future loss of
55 consortium, and

56 WHEREAS, after reduction for comparative negligence, the
57 net award to Thomas and Karen Brandi was \$1,084,396, and

58 WHEREAS, a stipulated cost judgment in the amount of

40-00051-15

201526__

59 \$94,049 was entered by the trial court against Haines City, and

60 WHEREAS, Thomas Brandi's medical expenses as of August 1,
61 2011, are \$167,330, and, as a result of those expenses, Aetna
62 Health, Inc., has a lien on any recovery in this matter in the
63 amount of \$78,109, and

64 WHEREAS, the city of Haines City paid \$200,000 to Thomas
65 and Karen Brandi in satisfaction of sovereign immunity limits
66 under s. 768.28, Florida Statutes, and

67 WHEREAS, Thomas Brandi received a payment of \$100,000 from
68 his uninsured motorist insurance coverage, NOW, THEREFORE,

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. The facts stated in the preamble to this act are
73 found and declared to be true.

74 Section 2. Haines City is authorized and directed to
75 appropriate from funds of the city not otherwise appropriated
76 and to draw a warrant in the sum of \$825,094, payable to Thomas
77 Brandi and his wife, Karen Brandi, as compensation for injuries
78 and damages sustained as a result of the negligence of an
79 employee of Haines City.

80 Section 3. The amount paid pursuant to s. 768.28, Florida
81 Statutes, and the amount awarded under this act are intended to
82 provide the sole compensation for all present and future claims
83 arising out of the factual situation described in this act which
84 resulted in the injuries and damages to Thomas and Karen Brandi.
85 The total amount paid for attorney fees, lobbying fees, costs,
86 and other similar expenses relating to this claim may not exceed
87 25 percent of the total amount awarded under this act.

40-00051-15

201526__

88

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14

26

Meeting Date

Bill Number (if applicable)

Topic Brandi Claim Bill

Amendment Barcode (if applicable)

Name Jason Unger

Job Title

Address 301 S. Branough St.

Phone 577 9090

Street

City TLH State FL Zip

Email junger@gray-robinson.com

Speaking: [] For [X] Against [] Information

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

Representing Meadowbrook

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

26
Bill Number (if applicable)

Topic Senate Bill 26 Brendi

Amendment Barcode (if applicable)

Name Ken McKenna

Job Title Attorney

Address 719 Vassar St.
Street

Phone 407 244 3000

Orlando FL 32804
City State Zip

Email

Speaking: For Against Information

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

Representing Clements Thomas + Keren Brendi

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 24, 2015

The Honorable Wilton Simpson
Chair
Community Affairs

Via Email

Dear Chair Simpson:

My Claims Bill, SB 26, has passed out of the Judiciary Committee; the next reference is Community Affairs.

I respectfully request that you agenda the bill at the next available meeting.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Mr. Tom Yeatman, Staff Director; Ms. Ann Whittaker, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SM 1426

INTRODUCER: Senator Abruzzo

SUBJECT: Supportive Housing for the Elderly Program

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Wagoner</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SM 1426 finds that the elderly population in Florida are in need of affordable housing. The memorial urges the United States Congress to provide adequate funding for the Supportive Housing for the Elderly Program.

II. Present Situation:

The Supportive Housing for the Elderly Program is a federal program that provides assistance to expand the supply of housing with supportive services for the elderly.¹ Through the program, the U.S. Department of Housing and Urban Development (HUD) provides capital advances to eligible private, nonprofit sponsors.² The sponsor then supplies the affordable housing. The capital is interest free and does not have to be repaid so long as the housing remains available for very low-income elderly persons for at least 40 years. Project rental assistance covers the difference between the HUD-approved operating cost of the project and the tenants' contributions toward rent. Occupancy is open to very low-income households which include at least one person 62 years of age or older.³

The legal authority for the program is contained in section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by section 210 of the Housing and Community Development Act of 1974 (Public Law 86-372); section 801 of the Cranston-Gonzalez National Affordable

¹ U.S. Department of Housing and Urban Development website, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/eld202 (last visited April 9, 2015).

² Mixed-finance organizations are also eligible. For-profit limited partnerships are eligible if the sole general partner is either a nonprofit organization, or a for-profit corporation wholly owned and controlled by one or more nonprofit organizations, or a limited liability company wholly owned and controlled by one or more nonprofit organizations to finance the development of rental housing with supportive services for the elderly. *Id.*

³ For the most recent income limits and their calculation methodology, see HUD, *Income Limits*, *available at* <http://www.huduser.org/portal/datasets/il.html> (last visited April 9, 2015).

Housing Act (Public Law 101-625); the Housing and Community Development Act of 1992 (Public Law 102-550); the Rescissions Act (Public Law 104-19); the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569); the Housing and Economic Recovery Act of 2008 (Public Law 110-289); and section 202 Supportive Housing for the Elderly Act of 2010 (Public Law 111-372). Regulations may be found at 24 CFR part 891.⁴

III. Effect of Proposed Changes:

The memorial urges the United States Congress to provide adequate funding of the Supportive Housing for the Elderly Program. The Legislature finds that the elderly population in Florida needs low-cost housing. Copies of the memorial are to be distributed to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

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:

If federal funding increased, persons needing affordable housing and entities supplying affordable housing would benefit.

C. Government Sector Impact:

Additional affordable housing would likely reduce the state's costs in other areas assisting the elderly and low-income persons.

⁴ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Abruzzo

25-00319A-15

20151426__

Senate Memorial

A memorial to the Congress of the United States,
urging Congress to restore and provide adequate
funding for the Supportive Housing for the Elderly
Program.

WHEREAS, the senior population nationwide increased
dramatically from 3.1 million in 1900 to 41.4 million in 2011,
and, by 2030, is projected to increase to 70 million, and

WHEREAS, more than 50 percent of the senior population
nationwide resides in nine states, including second-ranked
Florida, which, in 2011, had a senior population of 3.4 million,
and

WHEREAS, interest rates for personal savings accounts have
dropped to less than one-half of 1 percent, pension and health
care payments for retirees are decreasing, and the value and
security of investments in 401(k) retirement savings accounts
and stocks have dramatically decreased, and

WHEREAS, federal funding for low-cost housing for seniors
has been cut drastically, with no new construction funded in
2012, and

WHEREAS, thousands of low-income seniors are in immediate,
desperate need for low-cost housing, NOW, THEREFORE,

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

That the Congress of the United States is urged to assist
our nation's low-income seniors by restoring and adequately
funding the Supportive Housing for the Elderly Program.

25-00319A-15

20151426__

30 BE IT FURTHER RESOLVED that copies of this memorial be
31 dispatched to the President of the United States, to the
32 President of the United States Senate, to the Speaker of the
33 United States House of Representatives, and to each member of
34 the Florida delegation to the United States Congress.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/14/15
Meeting Date

SM 1426
Bill Number (if applicable)

Topic Supportive Housing for Elders

Amendment Barcode (if applicable)

Name Richard Polzangin

Job Title Government Affairs Director

Address 1300 N DUVRE ST

Phone 850 224-4206

Street 721/265500 FL Zip 32303
City State

Email

Speaking: For Against Information

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

Representing Florida Alliance for Retired Americans

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)

4/14/2015
Meeting Date

1426
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

Minority Whip
25th District

April 13th, 2015

The Honorable Wilton Simpson
Senate Committee on Community Affairs
315 Knott Building
404. South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simpson,

I respectfully request that Senate Memorial 1426, "Supportive Housing for the Elderly Program", be placed on the Community Affairs Committee agenda. This proposed memorial encourages the U.S. Congress and the President of the United States to enact policies that will reinstate funding of the Supportive Housing for the Elderly Program.

Thank you in advance for your consideration of Senate Memorial 1426. If further information is required, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "JA", written over a white background.

Joseph Abruzzo

cc: Staff Director Tom Yeatman

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SPB 7090

INTRODUCER: Community Affairs Committee

SUBJECT: Local Government Capital Recovery

DATE: April 14, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stearns	Yeatman		CA Submitted as Committee Bill

I. Summary:

SPB 7090 requires any municipality meeting certain requirements regarding delinquent fines or charges to issue a procurement request seeking bids from licensed collection agencies offering a one-time up-front cash payment to the municipality in exchange for the right to collect all of the municipality's delinquent designated revenues as of the date of the invitation to bid.

If the municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. The municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law.

All municipalities must include a discussion of the municipality's delinquent designated revenues and the efforts undertaken by the municipality to collect these revenues as part of the management letter submitted with the annual financial audit report.

II. Present Situation:

Municipal Code Enforcement and Other Fees and Fines

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.¹ However, the Florida Constitution grants local governments broad home rule authority. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.² Local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue

¹ FLA. CONST. art VII, s. 1(a) and 9(a).

² FLA. CONST. art VIII, 2(b). See also s. 166.021, F.S.

sources. While local governments may have independent, home-rule authority to levy these fees or assessments, there are also Florida Statutes that authorize specific types of fees.

Code enforcement fees are one example of a specific local fee authorized by state statute. Chapter 162, F.S., outlines a process by which local governments may appoint code enforcement boards to assess fines against property owners as a way to enforce county or municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.³ Any such fine, including any repair costs incurred to bring the property into compliance with code, may also constitute a lien against the owner of the property and any other real property owned by such owner.⁴ However, the statute states that local governments are not prevented by statute from enforcing codes and ordinances by any other means.⁵

Municipally-owned Utilities

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."⁶ Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.⁷ With respect to public works projects, including water and sewer utility services,⁸ municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of ch. 180, F.S.⁹ Current law requires municipalities providing telecommunication services to abide by certain requirements.¹⁰ Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).¹¹ PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.¹² PSC regulation of municipal natural gas utilities is limited to territorial

³ Section 162.21, F.S.

⁴ Section 162.09, F.S.

⁵ Section. 162.21, F.S.

⁶ Art. VII, s. 10(d), Fla. Const. See ss. 361.10-361.18, F.S.

⁷ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies"; "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes"; and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁸ Section 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

⁹ Section 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. Section 180.19, F.S.

¹⁰ See s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

¹¹ See s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

¹² Section 366.04(2), (5), and (6), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction, *available at* <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited April 9, 2015).

issues.¹³ Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.¹⁴

Uncollected Fees and Fines

Many fees and fines imposed by municipalities are difficult to collect in a timely manner. However, because municipalities have the authority to file liens against the property as part of code and ordinance enforcement activities, collection rates over the long run are very high as most properties are likely to be sold at some point in time. Consequently, at any given time, a municipality can have a large balance of uncollected fees and fines.

In a survey of large cities in Florida performed by a private company in 2013, seven cities reported a total of \$421,885,684 in uncollected utility charges and code enforcement, abatement, administrative and other fines backed by property liens. Municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.¹⁵ When done on a contingency basis, fees paid to the collection agency may not exceed 40 percent of the amount originally owed to the municipality.

Collection Agencies

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.¹⁶ As of January 2014, there were 1,344 registered collection agencies in Florida.¹⁷

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act¹⁸ and the Florida Consumer Collection Practices Act.¹⁹ Both acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney’s fees and costs.

Annual Financial Audit Report

Section 218.32, F.S., requires that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, F.S., submit to the Florida Department of Financial

¹³ Section 366.04(3), F.S. According to the PSC’s most recent “Facts and Figures of the Florida Utility Industry” (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction, available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited April 9, 2015).

¹⁴ Section 367.022(2), F.S.

¹⁵ Section 938.35, F.S.

¹⁶ Section 559.555, F.S.

¹⁷ E-mail from the OFR (received January 9, 2014), on file with the House Insurance & Banking Subcommittee staff.

¹⁸ 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

¹⁹ Part VI of Chapter 559, F.S.

Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.²⁰ The AFR must include any component units, as defined by generally accepted accounting principles, and each component unit must provide the local governmental entity, within a reasonable time period, financial information necessary to comply with the AFR reporting requirements. Some entities, including municipalities, are required to provide a financial audit report along with its AFR, and must do so within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year.²¹ AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and are useful for detailed financial analysis.

III. Effect of Proposed Changes:

Section 1 creates s. 166.30, F.S., relating to municipal capital recovery. The bill provides a specified list of local government revenue sources, including:

- “Abatement fines,” which are amounts billed to an owner of real property by a municipality to recover funds expended by the municipality to bring the property into compliance with municipal ordinance by taking some action at the property.
- “Administrative fines,” which are amounts billed to an individual for the violation of a municipal ordinance or code unrelated to real property.
- “Property fines,” which are amounts other than abatement fines which are billed to a property owner due to the property being out of compliance with city ordinance or code, regardless of whether a lien was attached to the property related to such fine.
- “Utility charges,” which are amounts billed to a customer, other than a governmental entity, by a municipally-owned utility for providing utility service.

These revenue sources are collectively referred to as “designated revenues” by the bill. The bill defines a “procurement request” as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a municipality’s procurement policy.

The bill provides that, after October 1, 2015, any municipality that meets at least one of the following criteria must issue a procurement request within 30 days of first meeting the criterion. The criteria are:

- The sum of the municipality’s designated revenues which are more than 90 days delinquent is at least \$10,000,000;
- The sum of the municipality’s designated revenues which are more than 180 days delinquent is at least \$5,000,000; or
- The sum of the municipality’s designated revenues which are more than 270 days delinquent is at least \$1,000,000.

The municipality must seek bids from licensed collection agencies offering an up-front cash payment to the municipality in addition to any portion of the bid based on contingency fees in exchange for the right to collect all of the municipality’s delinquent designated revenues as of

²⁰ Pursuant to s. 218.32(1)(c), F.S., regional planning councils; local government finance commissions, boards, or councils; and municipal power corporations created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), F.S., are also required to submit an AFR and audit report to DFS.

²¹ Sections 218.32(1)(d)-(e), F.S.

the date the procurement request is issued. However, the municipality is not required to enter into a contractual relationship with any company responding to the procurement request.

If the municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous 12 months, the municipality is not required to issue a procurement request.

If a municipality meets at least one of the above described criteria 1 year after it issues a procurement request, it must issue an additional procurement request. When calculating whether the municipality meets one of the criteria, any amount turned over to a collection agency pursuant to the original procurement request shall be excluded from the calculation.

Any municipality issuing a procurement request pursuant to this section is required to file a copy of all responses to the procurement request with the DFS, which must maintain a copy of all such bids for a period of at least 5 years.

Section 2 amends s. 218.39, F.S., to require all municipalities to include, as part of the management letter submitted with the AFR, a discussion of the municipality's delinquent designated revenues and the efforts undertaken by the municipality to collect these revenues.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Cities may suffer some adverse financial impact as a result of the bill's new reporting requirements and the bill's requirement to issue invitations to bid, however those impacts are expected to be insignificant and likely to be absorbed as part of the cities' daily operations.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may, in certain circumstances, require an insignificant expenditure of funds by a municipality to issue an invitation to bid.

DFS may need to procure additional computer storage space for the electronic files. Cost of this storage is indeterminate because the DFS is not certain how the bids need to be stored or how many will be received.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 218.39 of the Florida Statutes.

This bill creates section 166.28 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.

FOR CONSIDERATION By the Committee on Community Affairs

578-03424-15

20157090pb

1 A bill to be entitled
2 An act relating to local government capital recovery;
3 creating s. 166.28, F.S.; defining terms; requiring
4 municipalities that meet certain criteria for
5 delinquent designated revenues to issue a procurement
6 request seeking bids from collection agencies, subject
7 to certain requirements and restrictions; providing
8 requirements for the content of the procurement
9 request; providing that municipalities issuing such
10 procurement requests are not required to enter into
11 any contractual arrangement; requiring that any
12 delinquent designated revenues that a collection
13 agency agrees to collect be excluded when the
14 municipality calculates whether it meets specified
15 criteria, under certain circumstances; requiring a
16 municipality to forward a copy of all bids received to
17 the Department of Financial Services; requiring the
18 department to keep all such bids on file for a
19 specified period of time; amending s. 218.39, F.S.;
20 requiring a discussion of the current balance of a
21 municipality's delinquent designated revenues and the
22 efforts to collect such revenues in the management
23 letter accompanying the municipality's annual
24 financial audit report; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Section 166.28, Florida Statutes, is created to
29 read:

578-03424-15

20157090pb

30 166.28 Municipal Capital Recovery.-

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

32 (a) "Abatement fine" means an amount billed to an owner of
33 real property by a municipality after the municipality brings
34 such real property or a portion thereof into compliance with
35 municipal ordinance or code by removal, repair, rehabilitation,
36 demolition, improvement, remediation, storage, transportation,
37 or disposal done concerning the real property or any tangible
38 personal property located thereon, regardless of whether a lien
39 was attached to the property related to such fine.

40 (b) "Administrative fine" means an amount billed to an
41 individual for the violation of a municipal ordinance or code
42 unrelated to real property.

43 (c) "Delinquent" means unpaid after the due date listed on
44 the original billing of an abatement fine, administrative fine,
45 property fine, or utility charge, regardless of whether the
46 municipality has contracted with a collection agency pursuant to
47 s. 938.35 for the collection of the unpaid fines or charges.

48 (d) "Designated revenues" means abatement fines,
49 administrative fines, property fines, and utility charges.

50 (e) "Procurement request" means an invitation to bid,
51 invitation to negotiate, or request for proposal issued by a
52 municipality pursuant to its procurement policies.

53 (f) "Property fine" means an amount other than an abatement
54 fine which is billed to a property owner due to the property
55 being out of compliance with city ordinance or code, regardless
56 of whether a lien was attached to the property related to such
57 fine.

58 (g) "Utility charge" means an amount billed to a customer,

578-03424-15

20157090pb

59 other than a governmental entity as defined in s. 768.295, by a
60 municipally owned utility for providing utility service.

61 (2) After October 1, 2015, any municipality that meets at
62 least one of the criteria in paragraph (a), paragraph (b), or
63 paragraph (c) shall issue a procurement request within 30 days
64 of first meeting at least one such criterion.

65 (a) The sum of the municipality's designated revenues that
66 are more than 90 days delinquent is at least \$10 million;

67 (b) The sum of the municipality's designated revenues that
68 are more than 180 days delinquent is at least \$5 million; or

69 (c) The sum of the municipality's designated revenues that
70 are more than 270 days delinquent is at least \$1 million.

71 (3) If a municipality's delinquent designated revenues are
72 less than 20 percent of the total designated revenues billed by
73 the municipality in the previous 12 months, the requirements of
74 subsections (2) and (5) shall not apply.

75 (4) A procurement request issued pursuant to subsection (2)
76 or subsection (5) must seek bids from collection agencies
77 registered pursuant to s. 559.553. The procurement request must
78 specify that the municipality is seeking an up-front payment of
79 cash to the municipality in addition to any portion of the bid
80 based on contingency fees, in exchange for the right to collect
81 all of the municipality's delinquent designated revenues as of
82 the date the procurement request is issued. The procurement
83 request must specify that bids based solely on contingency fees
84 with no up-front payment of cash will not be accepted.

85 (5) If a municipality meets at least one of the criteria in
86 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c) 1 year
87 after it issues a procurement request pursuant to subsection (2)

578-03424-15

20157090pb

88 or this subsection, it must issue an additional procurement
89 request meeting the requirements of subsection (4).

90 (6) A municipality issuing a procurement request pursuant
91 to this section is not required to enter into a contract for
92 services with any collection agency that responds to the
93 procurement request.

94 (7) If a municipality enters into a contract for services
95 with a collection agency that submitted a bid meeting the
96 requirements of a procurement request issued pursuant to this
97 section, any delinquent designated revenues that the collection
98 agency agrees to collect shall be excluded thereafter when the
99 municipality calculates whether it meets any of the criteria in
100 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c).

101 (8) After all bids have been received in response to a
102 municipality's procurement request issued pursuant to this
103 section, the municipality shall forward a copy of all bids
104 received to the Department of Financial Services. The department
105 shall keep all such bids on file for a period of 5 years or
106 more.

107 Section 2. Subsection (4) of section 218.39, Florida
108 Statutes, is amended to read:

109 218.39 Annual financial audit reports.—

110 (4) A management letter shall be prepared and included as a
111 part of each financial audit report. For municipal financial
112 audit reports, the letter must include a discussion of the
113 current balance of the municipality's delinquent designated
114 revenues as defined in s. 166.28, and the efforts the
115 municipality has undertaken to collect such revenues.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/14/2015
Meeting Date

7090
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justicedjesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

7090

SB ~~7090~~

4/14/15

Meeting Date

Bill Number (if applicable)

Topic SB 7020

Amendment Barcode (if applicable)

Name Kate Estes

Job Title General Counsel

Address 4209 Baymeadows Rd.
Street

Phone 850 7281680

Jacksonville FL 32217
City State Zip

Email kate@associationcapitol.com

Speaking: For Against Information

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

Representing Municipal Capital Recovery

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/14/15
Meeting Date

7090
Bill Number (if applicable)

Topic Local Governmental Capital Recovery

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 701-3621

Tallahassee, FL 32302
City State Zip

Email ahughes@flcities.com

Speaking: For Against Information

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

Representing Florida League of Cities

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.

CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 4/14/2015 4:07:08 PM

Ends: 4/14/2015 5:00:16 PM

Length: 00:53:09

4:08:12 PM Call to order
4:09:51 PM Tab 3 SB 1058 Senator Smith
4:10:21 PM Senator Bradley
4:10:59 PM Roll call on SB 1058
4:11:15 PM Bill reported favorably
4:11:29 PM Tab 2 SB 44 Senator Grimsley
4:12:17 PM Roll call on SB 44
4:12:28 PM Bill reported favorably
4:12:51 PM Tab 1 SB 78 Senator Flores
4:13:09 PM Senator Flores LA William McRea
4:13:36 PM Sarah Caroll, Maricelly Lopez
4:13:44 PM Roll call on SB 78
4:13:50 PM Bill reported favorably
4:14:03 PM Tab 4 SB 64 Senator Legg
4:14:08 PM Senator Legg LA Rich Reidy
4:15:21 PM Roll call on SB 64
4:15:36 PM Bill reported favorably
4:15:49 PM Tab 5 SB 66 Senator Legg
4:15:57 PM Senator Legg LA Rich Reidy
4:17:11 PM Jason Unger, City of Hollywood
4:17:19 PM Roll call on SB 66
4:17:33 PM Bill reported favorably
4:17:50 PM Tab 7 SM 1426 Senator Abruzzo
4:18:41 PM Brian Pitts, Justice-2-Jesus
4:19:47 PM Richard Polangin, Florida Alliance for Retired Americans
4:19:56 PM Roll call on SM 1426
4:20:06 PM Memorial reported favorably
4:20:26 PM Tab 8 SPB 7090 Senator Simpson
4:21:02 PM Amber Hughes, Florida League of Cities
4:23:17 PM Kate Estes, Municipal Capital Recovery
4:24:09 PM Brian Pitts, Justice-2-Jesus
4:26:11 PM Motion Senator Simpson
4:26:19 PM Roll call on SPB 7090
4:26:43 PM Bill reported favorably
4:26:58 PM Tab 6 SB 26 Senator Diaz de la Portilla
4:28:33 PM Senator Bradley
4:29:13 PM Special Master Connie Cellon
4:31:29 PM Senator Bradley
4:31:36 PM Ms. Cellon
4:33:55 PM Senator Bradley
4:33:58 PM Ms. Cellon
4:34:37 PM Ken McKenna, Claimants
4:37:22 PM Senator Bradley
4:38:04 PM Mr. McKenna
4:39:12 PM Senator Bradley
4:39:52 PM Mr. McKenna
4:41:40 PM Senator Dean
4:42:15 PM Mr. McKenna
4:43:17 PM Jason Unger, Haines City
4:45:08 PM Senator Bradley
4:46:47 PM Mr. Unger
4:48:25 PM Mr. McKenna

4:49:39 PM Senator Bradley
4:49:52 PM Mr. McKenna
4:50:44 PM Senator Bradley
4:50:59 PM Mr. McKenna
4:51:49 PM Senator Hutson
4:52:05 PM Mr. McKenna
4:52:49 PM Senator Hutson
4:53:05 PM Ms. Cellon
4:53:44 PM Senator Diaz de la Portilla close
4:59:15 PM Roll call on SB 26
4:59:43 PM Bill reported unfavorably
5:00:07 PM Senator Diaz de la Portilla motion
5:00:11 PM Adjourned