Tab 1	**SB 4** by **Rodriguez;** Identical to H 06509 Relief of Patricia Ermini by the Lee County Sheriff's Office

202284	A	S		JU, Rodriguez	Delete L.216 - 222:	03/24 03:34 PM

Tab 2	**SB 6** by **Rodriguez;** Identical to H 06517 Relief of Jose Correa by Miami-Dade County

Tab 3	**SB 24** by **DiCeglie;** Identical to H 06503 Relief of Mande Penney-Lemmon by Sarasota County

Tab 4	**SB 28** by **Martin;** Similar to H 06523 Relief of Darline Angervil and J.R. by the South Broward Hospital District

Tab 5	**SB 30** by **Martin;** Identical to H 06533 Relief of the Estate of M.N. by the Broward County Sheriff's Office

Tab 6	**SB 72** by **Berman;** Similar to H 00061 Use of Campaign Funds for Child Care Expenses

Tab 7	**SB 96** by **Bernard;** Identical to H 06521 Relief of Jacob Rodgers by the City of Gainesville

Tab 8	**CS/SB 304** by **CF, Sharief (CO-INTRODUCERS) Garcia, Rouson;** Compare to H 00511 Specific Medical Diagnoses in Child Protective Investigations

788916	A	S		JU, Sharief	Delete L.34 - 35:	03/24 04:25 PM
730156	SA	S		JU, Sharief	Delete L.27 - 37.	03/25 10:40 AM

Tab 9	**SB 382** by **Bernard;** Similar to CS/H 00365 Rent of Affordable Housing Dwelling Units

~~764470~~	D	S	LWD	JU, Bernard	Delete everything after	03/24 04:42 PM
343700	D	S	L	JU, Bernard	Delete everything after	03/24 04:42 PM

Tab 10	**SB 658** by **Truenow;** Compare to H 00893 Waiver or Release of Liens

Tab 11	**SB 1142** by **Rodriguez;** Compare to CS/H 01175 Release of Conservation Easements

Tab 12	**SB 1430** by **Collins;** Similar to CS/H 00265 Postjudgment Execution Proceedings Relating to Terrorism

Tab 13	**SB 1622** by **Trumbull (CO-INTRODUCERS) Rouson, Berman;** Identical to H 06001 Recreational Customary use of Beaches

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Tuesday, March 25, 2025
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators Berman, DiCeglie, Gaetz, Hooper, Leek, Osgood, Passidomo, Polsky, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 4** Rodriguez (Identical H 6509)	Relief of Patricia Ermini by the Lee County Sheriff's Office; Providing for the relief of Patricia Ermini by the Lee County Sheriff's Office; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of the Lee County Sheriff's Office; providing a limitation on the payment of attorney fees, etc. SM JU 03/25/2025 CA RC	
2	**SB 6** Rodriguez (Identical H 6517)	Relief of Jose Correa by Miami-Dade County; Providing for the relief of Jose Correa by Miami-Dade County; providing for an appropriation to compensate Jose Correa for injuries sustained as a result of the negligence of an employee of Miami-Dade County; providing a limitation on compensation and the payment of certain fees, etc. SM JU 03/25/2025 CA RC	
3	**SB 24** DiCeglie (Identical H 6503)	Relief of Mande Penney-Lemmon by Sarasota County; Providing for the relief of Mande Penney-Lemmon by Sarasota County; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of Sarasota County, through its employee; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 28** Martin (Similar H 6523)	Relief of Darline Angervil and J.R. by the South Broward Hospital District; Providing for the relief of Darline Angervil and J.R., a minor, by the South Broward Hospital District; providing an appropriation to compensate Darline Angervil, individually and as parent and natural legal guardian of J.R., for injuries and damages sustained as a result of negligence of the South Broward Hospital District; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 HP RC	
5	**SB 30** Martin (Identical H 6533)	Relief of the Estate of M.N. by the Broward County Sheriff's Office; Providing for the relief of the Estate of M.N. by the Broward County Sheriff's Office; providing for an appropriation to compensate the estate for injuries sustained by M.N. and her subsequent death as a result of the negligence of the Broward County Sheriff's Office; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 CA RC	
6	**SB 72** Berman (Similar H 61)	Use of Campaign Funds for Child Care Expenses; Authorizing a candidate to use funds on deposit in his or her campaign account to pay for child care expenses under specified conditions; requiring candidates to maintain specified records for a specified timeframe and provide such records to the Division of Elections, etc. EE 02/18/2025 Favorable JU 03/25/2025 RC	
7	**SB 96** Bernard (Identical H 6521)	Relief of Jacob Rodgers by the City of Gainesville; Providing for the relief of Jacob Rodgers by the City of Gainesville; providing for an appropriation to compensate Jacob Rodgers for injuries sustained as a result of the negligence of an employee of the City of Gainesville; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 304** Children, Families, and Elder Affairs / Sharief (Compare H 511)	Specific Medical Diagnoses in Child Protective Investigations; Requiring that reports made by certain persons contain a summary of a specified analysis; providing an exception to the requirement that the Department of Children and Families immediately forward certain allegations to a law enforcement agency; requiring Child Protection Teams to consult with a licensed physician or advanced practice registered nurse when evaluating certain reports; authorizing, under a certain circumstance, a parent or legal custodian from whom a child was removed to request specified examinations of the child, etc. CF 03/12/2025 Fav/CS JU 03/25/2025 RC	
9	**SB 382** Bernard (Similar CS/H 365)	Rent of Affordable Housing Dwelling Units; Prohibiting certain landlords of specified dwelling units from increasing rent during the term of a rental agreement, etc. JU 03/25/2025 CA RC	
10	**SB 658** Truenow (Compare H 893)	Waiver or Release of Liens; Requiring that waiver and release of lien forms include specific language; authorizing a lienor who executes such lien and release forms in exchange for payment, rather than a check, to condition such waiver and release on receipt of funds, rather than payment of a check, etc. JU 03/25/2025 CA RC	
11	**SB 1142** Rodriguez (Compare H 1175)	Release of Conservation Easements; Requiring certain water management districts, upon application by the fee simple owner of a parcel subject to a conservation easement, to release the conservation easement if specified conditions are met; providing for the valuation of the property upon such release; specifying that land released from the conservation easement may be used for development consistent with certain zoning, etc. EN 03/17/2025 Favorable JU 03/25/2025 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 1430** Collins (Similar CS/H 265)	Postjudgment Execution Proceedings Relating to Terrorism; Providing additional requirements for postjudgment execution proceedings to enforce judgments entered against terrorist parties under specified provisions; providing retroactive application of specified provisions, etc. JU 03/25/2025 CJ RC	
13	**SB 1622** Trumbull (Identical H 6001, H 6043, S 284)	Recreational Customary use of Beaches; Repealing a provision relating to the establishment of recreational customary use of beaches, etc. JU 03/25/2025 CA RC	
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Pre-meeting

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 4** – Senator Rodriguez
HB 6509 – Representative Hart
Relief of Patricia Ermini by the Lee County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $626,769.93 TO BE PAID BY THE FLORIDA SHERIFFS SELF INSURANCE FUND ON BEHALF OF ITS INSURED, THE LEE COUNTY SHERIFF'S OFFICE, TO PATRICIA ERMINI AS COMPENSATION FOR DAMAGES AWARDED BY JURY VERDICT IN CONNECTION WITH NEGLIGENT CONDUCT DURING A WELLNESS CHECK BY LEE COUNTY SHERIFF'S DEPUTIES. THE AMOUNT REPRESENTS AN EXCESS JUDGMENT IN THE AMOUNT OF $550,000, PLUS INTEREST, TAXABLE TRIAL COSTS, AND APPELLATE COSTS AWARDED TO MS. ERMINI AS A RESULT OF HER INJURIES.

FINDINGS OF FACT:

On the evening of March 23, 2012, Ms. Robin LaCasse (LaCasse), at approximately 8:40 p.m., placed a phone call to the Lee County Sheriff's office to request a wellness check on her mother, the claimant, Ms. Ermini (then Ms. Mapes) (Ermini).[1] During the call, LaCasse informed the Sherriff's Office that she had spoken with Ermini about an hour before and Ermini seemed distraught and possibly suicidal. LaCasse

[1] Lee County Sherriff's Office, Call from Robin LaCasse CFS#12-125672 at 1, Respondent's Exhibit C.

was concerned that she had been unable to get back in touch with Ermini. During the call, LaCasse also relayed that Ermini had a pistol in her home and that Ermini may have been drinking.[2]

At approximately 8:45 p.m., three Lee County deputies were dispatched to the home of Ermini to conduct the wellness check—Charlene Palmese (Palmese), Robert Hamer (Hamer), and Richard Lisenbee (Lisenbee).[3] Deputies Palmese, and Lisenbee were relatively inexperienced law enforcement officers, Palmese[4] having completed her field training in November of 2011 and Lisenbee having completed his field training in February of 2011.[5] Hamer was the more senior official, with ten years of experience between the Lee County Sherriff's Department and New York City Police Department.[6]

The deputies were advised, by dispatch and computer-aided dispatch of Ermini's name, age (70 years old), that Ermini was going through a divorce, received bad news that day, and was possibly suicidal; that LaCasse was concerned for Ermini's well-being; that Ermini owned a pistol; that Ermini had not answered her phone for the past hour; and Ermini was possibly intoxicated.[7]

Lisenbee was the first to arrive on scene at approximately 8:53 p.m.,[8] parking his patrol vehicle out of view of Ermini's residence. Lisenbee, according to his testimony, did not do a full check of the perimeter of Ermini's home, did not check for open or broken windows, and instead headed to Ermini's front door. Lisenbee banged on the door and announced "Sherriff's Office."[9] Finding the door to be unlocked, Lisenbee briefly stepped into the residence to find the all of the lights turned

[2] *Id.*
[3] Lee County Sherriff's Office, Incident Recall, Claimant's Exhibit 30.
[4] Trial Transcript Vol 1 Day One of Three of Trial: Direct of Charlene Palmese, Claimant's Exhibit 34.
[5] Trial Transcript Vol 2 Day Two of Three of Trial Part 1: Direct of Richard Lisenbee, Claimant's Exhibit 35.
[6] Trial Transcript Vol 2 Day Two of Three of Trial Part 1: Direct of Robert Hamer, Claimant's Exhibit 35.
[7] *See* Incident Recall, *supra* note 3, and Trial Transcript Vol 2 Day Two of Three of Trial: Direct and redirect of Karen Snyder-O'Bannon, Claimant's Exhibit 35.
[8] Incident Recall, *supra* note 3.
[9] Direct of Lisenbee, *supra* note 5.

off and it very dark inside.[10] Lisenbee then backed out of the home as Palmese arrived.[11]

Palmese was the next to arrive at 8:55 p.m.,[12] also parking her patrol vehicle out of view of Ermini's residence.[13] After re-entering the home through the door Lisenbee left open, Palmese and Lisenbee stated that Lisenbee again called out "Sheriff's Office," again with no response.[14] The home was in a significant degree of disarray[15] and Lisenbee claimed to see a wine bottle on the floor.[16] At this point, the two deputies, decided that the situation called for additional backup and they backed out of the home.[17]

Hamer was the last of the deputies to arrive, at approximately 8:57 p.m.[18] He retrieved an AR-15 rifle from the trunk of his patrol vehicle and joined Lisenbee and Palmese outside of Ermini's residence.[19] He could not say for certain whether his vehicle was visible from the residence, "but there [were] trees in the back of the picture," of his parked vehicle.[20]

The three deputies (Lisenbee, Palmese, and Hamer) reentered the home and began to "clear" the residence. Lisenbee approached Ermini's bedroom. The bedroom had double-doors, both of which were closed, and the officers could not see through them. Lisenbee opened the door on his right side, and shined a flashlight onto Ermini's bed. He did not knock first and was intentionally obfuscating himself from Ermini's vision with the flashlight.[21]

At this point, the testimony significantly diverges. Lisenbee stated that he announced several times "Sherriff's Office, we're here to help you," and then went into Ermini's bedroom

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[10] *Id.* At trial there did seem to be some inconsistency between Lisenbee's testimony and previous deposition regarding the status of Ermini's front door as to whether it was "unlatched" or simply unlocked, but closed.
[11] Direct of Lisenbee, *supra* note 5.
[12] Incident Recall, *supra* note 3.
[13] Direct of Palmese, *supra* note 4.
[14] Direct of Palmese, *supra* note 4; Direct of Lisenbee, *supra* note 5.
[15] *See* Composite Exhibit—Photographs, Respondent's Exhibit F.
[16] Lee County Sherriff's Office, Sworn Statement of Deputy Richard Lisenbee CFS#12-125672, Respondent's Exhibit J.
[17] *Id.*; Direct of Palmese, *supra* note 4.
[18] Incident Recall, *supra* note 3
[19] Direct of Hamer, *supra* note 6
[20] *Id.*
[21] Direct of Lisenbee, *supra* note 5.

continuing to shout, "Sherriff's Office, we're here to help you." Lisenbee did not think that shouting would frighten Ermini. Lisenbee then said that he saw Ermini lying on her bed in her undergarments. He did not see a firearm at this time. At this point, Ermini appeared to arouse from her sleep, and, according to Lisenbee said, "Who is it?" to which Lisenbee responded again with, "Sherriff's Office, we're here to help you." After this, according to Lisenbee, Ermini responded with "I don't care. I'm gonna shoot you."[22]

Hamer recalled that he first entered the home he went through the living room. Having heard Lisenbee make contact with Ermini, he turned around and looked towards the double doors of Ermini's bedroom. After hearing Ermini state, "I don't care. I'm gonna shoot you," he told her to get back as he and Lisenbee backed away from the double-doors.[23]

Ermini's recollection of the events in her testimony at trial was that she awoke when someone opened the door to her bedroom and heard someone say, "Here she is over here."[24] Upon hearing this, Ermini testified that she said, "Get out of my house, I have a gun." She did not recall hearing anyone say that they were with the Sherriff's Department or that they were there to help her.

Ermini approached her bedroom door with her Glock pistol, and at some point placed her finger onto its trigger.[25] Hamer stated that, as Lisenbee was walking backwards, he saw Ermini approach, place both hands around the grip of her firearm, finger on the trigger, pointing the firearm at him with Ermini stating that "I'm gonna shoot you." At this point, Hamer, having kneeled down into a firing position, stated that he shot at Ermini seven times and that there was no time for him to tell Ermini to drop her firearm.[26]

Ermini recalled in her trial testimony that she was standing behind her opened bedroom door, "apparently" with her

[22] Direct of Lisenbee, *supra* note 5.
[23] Direct of Hamer, *supra* note 6.
[24] Trial Transcript Vol. 4 Day Three of Three of Trial Part 1: Direct of Robert Hamer, Claimant's Exhibit 37.
[25] According to the claimant's own expert witness on Glock firearms, Larry Williams, at the special master's hearing, it would be "impossible" for a Glock pistol such as Ermini's to discharge a round without a person pulling the trigger and the pistol could not accidentally go off simply by being dropped. Since it is not disputed that Ermini's pistol did discharge, she had her finger on the trigger of the firearm at some point.
[26] Direct of Hamer, *supra* note 6.

firearm (which she did not remember picking up). Ermini then stated that she looked around the door and the light of flashlights were hitting her in the eye and said, "Put your flashlights down, I can't see anything." The flashlights then went off of her and that is when she saw "this guy down on his knees with—well, I call it a machine gun," who then opened fire. After being shot twice, Ermini said she asked, "What are you shooting me for?" followed by what sounded like "bombs going off in my house." This is the last thing she could recall from the incident.[27]

Regardless of what series of events prompted it, Hamer fired his AR-15 seven times in Ermini's direction, striking her five times through the closed half of her double-door. At some point after Hamer started firing, Ermini's firearm discharged,[28] with the round later found in the ceiling of her home. Hamer admits to firing first. Hamer stated that he ceased firing upon seeing Ermini fall and drop her weapon, which fell to the left side of Ermini (Ermini is right handed).

The entire time elapsed from when the three deputies entered the home together through the front door and shots being fired is not entirely clear from the record. However, during the special master hearing, counsel for the Claimant played a recording of the dispatch from the night of the incident.[29] From the time that Palmese reported to dispatch that the door to Ermini's home was open until the report of shots fired was approximately 35 seconds. This likely represents the maximum amount of time that elapsed from the time the three deputies entered the home and Ermini was shot. The entire time from when Lisenbee first arrived on scene and shots were fired was likely no more than six to seven minutes.

According to Hamer, he immediately began giving emergency care to Ermini until paramedics arrived.[30] According to the witnesses (deputies and the paramedics that arrived on scene), Ermini still seemed extremely confused as to what

[27] Direct of Ermini, *supra* note 24.
[28] What caused Ermini's discharge is inconclusive. Claimant did present evidence at the special master's hearing that Ermini's firearm may have inadvertently discharged due to a "limp-wrist malfunction," potentially demonstrating that Ermini did not have a full grip of the weapon at the time it discharged. However, even if so, it does not necessarily indicate whether or not Ermini intended to fire at the officers or that the pulling of the trigger of her firearm was inadvertent due to being shot. Regardless, it is clear from the evidence that Ermini had her finger on the trigger of her firearm and that Hamer was the first to shoot.
[29] A full copy of the dispatch audio was also provided in Respondent's Exhibit E.
[30] Direct of Hamer, *supra* note 6.

was happening—asking why the deputies were in her home and why they were trying to kill her. Ermini was subsequently transported to Lee Memorial Hospital for treatment where she ultimately survived her wounds. She was also placed under constant supervision by sheriff's deputies at the hospital due to suspicion that she had committed a criminal offense. Ermini was formally arrested on March 30.[31]

At the hospital, Ermini was diagnosed with gunshot wounds to her head, upper right extremity, and lower left extremity with an open fracture[32] to her femur. She also had blood in the 4th ventricle leading from her brain and wood splinters imbedded in her face from her bedroom door.[33] It was also later discovered that Ermini had a wood fragment from her damaged door lodged in her right eye.

Shortly after Ermini's admission, around 9:35 p.m., the hospital also drew blood for a series of lab tests. As part of the lab test, Ermini's blood alcohol level came back as 0.0148.[34] Dr. Robert O'Connor (O'Connor), a trauma surgeon at Lee Memorial Hospital who helped treat Ermini, stated at trial that although this would be nearly double the legal limit for driving, it does not automatically indicate impairment as alcohol can affect people differently.

Ermini was discharged from the hospital on April 18, ending up staying in the hospital for a total of 26 days. During that time, Ermini had multiple surgeries including skin grafts and a rod placed in her leg.[35]

On June 5, 2012, the State's Attorney Office filed a no information due to lack of evidence, dropping the charges against Ermini.[36]

In describing her injuries at trial, Ermini stated that she still does not see well out of her injured eye and can no longer drive at night, still did not have full range of motion with her arm, still took pain medicine for her leg, and continued to have scars from her injuries. She also suffered for several years

[31] Lee County Sherriff's Office, Criminal Investigation Report, Respondent's Exhibit H.
[32] An open fracture is a broken bone with an open wound or break in the skin.
[33] Trial Transcript Vol 3 Day Two of Three of Trial Part 2: Direct of Robert O'Connor, Claimant's Exhibit 36.
[34] *Id*. Ermini admitted to having "two goblets of wine" that evening. Direct of Ermini, *supra* note 24.
[35] *Id*.
[36] *Ermini v. Scott*, 249 F. Supp. 3d 1253, 1263 (M.D. Fla. 2017)

from fear that someone would come in her room while she was asleep. She testified that she still slept with her "bedroom door locked and my gun real close by."[37]

LITIGATION HISTORY:

On November 10, 2015, Claimant filed a complaint and demand (in Federal Court) for jury trial against Sheriff Mike Scott (Scott), in his official capacity as Sheriff of Lee County, Florida, and Palmese, Lisenbee, Hamer, and William Murphy (Murphy), individually.[38]

On October 24, 2016, Claimant filed an amended complaint.[39] The amended complaint against Scott alleged 13 total counts:

- Count I (Federal Law Claim): Violation Civil Rights against Palmese, Lisenbee, and Hamer for Unlawful Search and Seizure Pursuant to 42 U.S.C. § 1983.
- Count II (Federal Law Claim): Violation of Civil Rights Excessive and Deadly Force against Hamer Pursuant to 42 U.S.C. § 1983.
- Count III (Federal Law Claim): Violation of Civil Rights of Pursuant to 42 U.S.C. § 1983 against Murphy for False Arrest.
- Count IV (Federal Law Claim): Violation of Civil Rights Pursuant to 42 U.S.C. § 1983 Against Murphy for Falsifying an Affidavit to Obtain an Unlawful Search Warrant.
- Count V (State Law Claim): Unlawful Search and Seizure by Palmese, Lisenbee, and Hamer.
- Count VI (State Law Claim): Claim for Battery against Hamer.
- Count VII (State Law Claim): Claim for Gross Negligence against Palmese, Lisenbee, and Hamer.
- Count VIII (State Law Claim): Claim for Negligent Infliction of Emotional Distress against Lisenbee and Hamer.
- Count IX (State Law Claim): Claim for Malicious Prosecution against Murphy.
- Count X (State Law Claim): Claim for Intentional Infliction of Emotional Distress against Murphy.

[37] Direct of Ermini, *supra* note 24.
[38] Patricia I. Ermini, formerly known as Patricia I. Mapes, Plaintiff, v. Mike Scott, in his Official Capacity as Sheriff of Lee County, Florida, Charlene Palmese, individually, Richard Lisenbee, individually, Robert Hamer, individually and William Murphy, individually, Defendants., 2015 WL 13801355 (M.D.Fla.).
[39] Patricia I. Ermini, formerly known as Patricia I. Mapes, Plaintiff, v. Mike Scott, in his Official Capacity as Sheriff of Lee County, Florida, Charlene Palmese, individually, Richard Lisenbee, individually, Robert Hamer, individually and William Murphy, individually, Defendants., 2016 WL 10951433 (M.D.Fla.).

- Count XI (State Law Claim): Claim for Negligence against Scott for Failure to Properly Train and Supervise.
- Count XII (State Law Claim): Claim for Negligence against Scott.
- Count XIII (State Law Claim): Claim for Defamation against Scott. The amended complaint notes, however, that this count had already been dismissed.

On April 15, 2017, the trial court granted summary judgment dismissing all of the counts in the case, except the portion of Count XII relating to Scott.[40]

On January 9, 2018, a three-day trial was conducted regarding the claim of negligence against Scott, in his official capacity as Sherriff of Lee County. At the conclusion of the trial, the jury found that the negligence of Scott was the legal cause of Ermini's injuries, and also found that Ermini's negligence also contributed to her injuries. The jury found "Ermini's damages for pain and suffering disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, scarring and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future" to be $1,000,000. The jury apportioned fault to be 75 percent with Scott and 25 percent with Ermini, making a total award to Ermini of $750,000.[41] The court subsequently entered a judgment in favor of Ermini for $750,000 on January 12, 2018.

On February 7, 2018, Respondent filed a Motion for New Trial and Renewed Motion for Judgment as a Matter of Law. This motion was denied by the trial court on March 2, 2018.[42]

Respondent subsequently appealed the trial court's decision in the United States Court of Appeals, Eleventh Circuit. This appeal was denied on September 10, 2019.[43]

A *de novo* special master final hearing was held on December 19, 2023. The Legislature is not bound by settlements or jury

[40] *Ermini v. Scott*, 249 F. Supp. 3d 1253, 1283 (M.D. Fla. 2017)
[41] Jury Verdict Form for 2018 WL 1053132 (M.D.Fla.).
[42] *Ermini v. Scott,* 2:15-CV-701-FTM-31CM, 2018 WL 1139053, at *3 (M.D. Fla. Mar. 2, 2018), aff'd, 937 F.3d 1329 (11th Cir. 2019).
[43] *Ermini v. Scott*, 937 F.3d 1329 (11th Cir. 2019).

verdicts when considering a claim bill, passage of which is an act of legislative grace.

CONCLUSIONS OF LAW:

Section 768.28, of the Florida Statutes, waives sovereign immunity for tort liability up to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

Vicarious Liability

As pointed out by the appellate court, "practically speaking, the deputies' actions are on trial," [44] and Scott was the defendant due to vicarious liability whereby an employer is responsible for actions of employees. Section 30.07, of the Florida Statutes, authorizes such vicarious liability for the actions of deputies stating that, "Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible."

Negligence, Generally

Negligence is the failure to take care to do what a reasonable and prudent person would ordinarily do under the circumstances.[45] Negligence is inherently relative—"its existence must depend in each case upon the particular circumstances which surrounded the parties at the time and place of the events upon which the controversy is based."[46]

Negligence comprises four necessary elements: (1) *duty*–where the defendant has a legal obligation to protect others against unreasonable risks; (2) *breach*–which occurs when the defendant has failed to conform to the required standard of conduct; (3) *causation*–where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) *damages*–actual harm.[47]

Negligent Use of Excessive Force

[44] *Id.* at 1343 (11th Cir. 2019)
[45] *De Wald v. Quarnstrom*, 60 So.2d 919, 921 (Fla. 1952).
[46] *Spivey v. Battaglia*, 258 So.2d 815, 817 (Fla. 1972).
[47] *Williams v. Davis*, 974 So.2d 1052, 1056–1057 (Fla. 2007).

Respondent argues that Ermini's claim is barred in this matter as it is based upon a non-existent cause of action in Florida—negligent use of excessive force. Citing *City of Miami v. Ross*, 695 So.2d 486, 487 (Fla. 3d DCA 1997), *City of Miami v. Sanders*, 672 So.2d 46, 48 (Fla. 3d DCA 1996), and others, Respondent correctly argues that negligent use of excessive force is not a possible cause of action. In *Sanders*, the court points out that excessive force is an intentional tort involving battery, and thus, by its very nature, not negligence. Battery cannot be premised upon an omission or failure to act.[48]

The *Sanders* court does, however, point out that negligence "on the other hand, requires only the showing of a failure to use due care and does not contain the element of intent" and "a separate negligence claim based upon a distinct act of negligence may be brought against a police officer in conjunction with a claim for excessive use of force."[49] "Negligence is not dependent upon bad intention, nor is it necessarily [negated] by good intention."[50]

The issue in this matter is not the force, excessive or otherwise,[51] used by the deputies. Rather, it is whether the deputies were negligent in conducting the wellness check—which then lead to the use of force.

Duty

Duty Element with Government Entities

To have liability in tort for a government entity, there must exist an "underlying common law or statutory duty of care with respect to the alleged negligent conduct. For certain basic judgmental or discretionary governmental functions, there has never been an applicable duty of care."[52] Section 768.28, of the Florida Statutes, does not establish any new duty of care for governmental entities. The purpose of statute was to waive

[48] *Sullivan v. Atl. Fed. Sav. & Loan Ass'n*., 454 So.2d 52, 54 (Fla. 4th DCA 1984).
[49] *Sanders* at 47-48.
[50] *Booth v. Mary Carter Paint Co.*, 182 So.2d 292, 299 (Fla. 2d DCA 1966).
[51] As stated, the excessive force claim made in the original complaint was dismissed via summary judgment. Thus, "excessive force" is not being considered here as part of Ermini's claim.
[52] *Trianon Park Condo. Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 917 (Fla. 1985).

immunity that prevented recovery for breaches of existing common-law duties of care.[53]

Undertaker Doctrine

Special relationships can give rise to a duty. Such a duty can arise from a status (such as between a parent and child) or can arise from voluntary contracts or undertakings. An undertaking in this sense means an explicit or implicit promise, or commitment, conveyed through words or conduct.[54] Generally, undertakings create a duty which must be performed with reasonable care.[55]

The Florida Supreme Court, in *Wallace v. Dean*, 3 So. 3d 1035, 1049 (Fla. 2009), held that a sheriff, acting through their deputies, owed a common-law duty of care to a specific individual when they undertook to provide a service (a welfare check) to that individual. The Court found that once the deputies—who are agents of the sheriff—"respond, actually engage an injured party, and then undertake a safety check, which places the injured party in a 'zone of risk' because the officers *either* increased the risk of harm to the injured party or induced third parties—who would have otherwise rendered aid—to forebear from doing so."[56] The Court also cited, with approval, the common-law undertakers doctrine stated in Restatement (Second) of Torts section 323:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
> (a) his failure to exercise such care *increases the risk of such harm*, or
> (b) the *harm is suffered* because of *the other's reliance upon the undertaking*.[57]

[53] *Id.*
[54] Dan B. Dobbs, Paul T. Hayden, and Ellen M. Bublick, The Law of Torts § 410 (2d ed.) (regarding defendant's undertaking creating a duty to the plaintiff).
[55] Roos v. Morrison, 913 So.2d 59, 64 (Fla. 1st DCA 2005).
[56] *Wallace v. Dean*, 3 So.3d 1035, 1040 (Fla. 2009).
[57] *Id*. at 1051.

In the matter at hand, like in *Wallace*, the deputies were engaged in a wellness check, and in so doing, owed a duty to Ermini to exercise reasonable care in doing so. The duty of care owed would be that of a reasonable law enforcement officer.

Breach

In this case, the deputies had been informed that Ermini was potentially intoxicated. They also had been informed that Ermini was potentially suicidal and had a firearm. In entering a fully darkened home and getting no response to their initial inquiries, the deputies should have reasonably inferred that Ermini was either asleep or unconscious. As such, she likely would be slow, or unable, to hear their pronouncements that they were with the sheriff's office and were there to help her.

Further, any reasonable person, and especially a law enforcement officer, should recognize that having unexpected persons in one's darkened home, obscured while shining flashlights while one is asleep at night, would be very likely to be frightening and surprising. It is also not unreasonable to anticipate that a person in such a situation may instinctually reach for a firearm to protect themselves.

Given the obvious risk to Ermini and the officers in the situation, the likely less than 35 seconds from time the three deputies entered the home together through the front door and shots being fired, demonstrates that the deputies were either careless or reckless in assessing the situation and attempting to safely make contact with Ermini to assess her well-being. The conduct of the deputies in conducting the wellness check was negligent in both the management of the situation and time taken to assess alternatives.

Causation

The Respondent argues that Ermini, "either knew she was attempting to kill deputies, or she was too drunk to know she was about to kill deputies who were there to help

her."[58] However, this argument is based solely upon the fact that the deputies "repeatedly announced their presence."[59] The deputies parked their patrol vehicles out of sight (Palmese and Lisenbee testified this was done intentionally, Hamer could not recall or ascertain whether he had done the same, but likely had done so) and Lisenbee intentionally obfuscated himself from Ermini's vision with a flashlight. The deputies did not indicate that they were there at the behest of Ermini's daughter or give any other evidence that they were who they said they were. Thus, Ermini's only audio or visual indication that the deputies were law enforcement with no ill-intention were the deputies' announcement—a statement any unlawful intruder could make as well.

In addition, the record does not indicate that Ermini had, at the time of the incident or at any time before the incident, any animus towards law enforcement. Thus, there is no basis to the claim that Ermini was intentionally seeking to kill someone due to that person being a law enforcement officer. Instead, a preponderance of the evidence shows that Ermini was a frightened woman, clothed in undergarments and just aroused from sleep, who was not fully aware of the circumstances within which she suddenly found herself (which may have been partially due to intoxication, discussed further below), who took spur of the moment action to protect herself in her own home from unexpected persons entering her home at night. The deputies may have reasonably feared for their own lives before Hamer shot at Ermini; however, the deputies' own negligent conduct placed themselves in that situation. This same negligence was the cause of Ermini's injuries.

Damages

Through the provision of records and evidence showing Ermini's injuries, the Claimants have established that the jury verdict of $750,000 for pain and suffering was reasonable and should not be disturbed. Though Ermini's health and mental condition has improved over the past decade, her previous and continued suffering, makes the jury award appropriate.

[58] Respondent Sherriff's statement of the case.
[59] *Id*.

Alcohol Defense

Section 768.36, of the Florida Statutes, which is part of Florida's negligence code, states that:

> In any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:
> (a) The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and
> (b) As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.

In this case, at trial, the district court jury was instructed as to this provision of Florida negligence law. Counsel for Sherriff Scott, in its appeal, challenged the district court's jury instructions and verdict-form entry pertaining to this defense. Counsel argued that the Sherriff was entitled to a "new trial because the district court improperly told the jury about the legal effect of any finding under the alcohol defense—namely, that if proved the defense would bar Ermini from recovering. That information, he says, was unnecessary and was likely to evoke sympathy for Ermini."[60] The appellate court rejected this argument finding that federal law (which controlled this issue in the case) "doesn't preclude district court judges from accurately informing jurors of the effects of their findings—in either their instructions or their verdict forms."[61] Further, the court found that such instructions are permissible if done impassively and accurately.[62]

The jury in this matter considered Ermini to be 25 percent at fault for her injuries as a result of her apparent intoxication on the evening of March 23, 2012. This is well below the standard of 50 percent in section 768.36, of the Florida Statutes.

[60] Ermini v. Scott, 937 F.3d 1329, 1335 (11th Cir. 2019).
[61] *Id*. at 1337.
[62] *Id.*

Owing to Ermini's blood alcohol level taken at the hospital after the shooting and her apparent slow recognition and confusion as to what was occurring in her home on that evening, evidence here shows that Ermini is somewhat at fault for her own injuries. However, far greater responsibility in regards to Ermini's injuries lies with the deputies' negligence in conducting the wellness check that evening. Thus, I concur with the finding of the jury and find that a preponderance of the evidence shows that Ermini was 25 percent at fault for her injuries and Scott's deputies' negligence were 75 percent at fault for Ermini's injuries, through which Scott is vicariously liable in his official capacity

ATTORNEY FEES:

Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The Claimant's attorney has submitted an affidavit to limit attorney fees to 25 percent of the total amount awarded and has not sought any attorney fees for her lobbying effort on behalf of Ermini.[63]

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 4 be reported FAVORABLY.

Respectfully submitted,

Kurt Schrader
Senate Special Master

cc: Secretary of the Senate

[63] Sworn Affidavit of Colleen J. MacAlister, November 27, 2023.

202284

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment

Delete lines 216 - 222

and insert:

Section 2. The Lee County Sheriff's Office is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $626,769.93 payable to Patricia Ermini as compensation for injuries and damages sustained.

Section 3. The amount paid by the Lee County

By Senator Rodriguez

40-00012-25 20254__

A bill to be entitled

An act for the relief of Patricia Ermini by the Lee County Sheriff's Office; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of the Lee County Sheriff's Office; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on the evening of March 23, 2012, 71-year-old Patricia Ermini spoke on the telephone with her daughter, Robin Lacasse, who found that her mother was extremely upset in the wake of her contentious and expensive divorce after a brief marriage, and

WHEREAS, Ms. Lacasse suggested to her mother that she hang up, take some time to calm down, and, afterward, call her back, which her mother did; however, Ms. Lacasse missed her mother's call, and

WHEREAS, when Ms. Ermini failed to reach her daughter, she went to bed in her bedroom, which was being cooled by a window air conditioner, and

WHEREAS, over the course of half an hour, Ms. Lacasse repeatedly tried to return her mother's call, and, when her mother did not answer, Ms. Lacasse called the Lee County Sheriff's Office (LCSO) to request that a well-being check be conducted to determine whether her mother was safe, and

WHEREAS, shortly before 9 p.m., LCSO dispatch relayed the call for a well-being check to Deputy Charlene Palmese, with Deputies Richard Lisenbee and Robert Hamer also responding to the call, conveying the following information to the deputies:

40-00012-25 20254__

Ms. Ermini's name and age; that the request for a well-being check had been initiated by Ms. Ermini's daughter, who did not reside in Lee County and was afraid for her mother's life; that Ms. Ermini was in the middle of a difficult divorce; that Ms. Ermini had told her daughter that she "couldn't take it anymore"; that Ms. Ermini's daughter was worried that Ms. Ermini might commit suicide; that Ms. Ermini had never threatened suicide before; that Ms. Ermini did not suffer from mental illness; and that Ms. Ermini had a gun and might have been drinking, and

WHEREAS, at the time of the call, Deputy Lisenbee was on probation and undergoing remedial training, in part because of his demonstrated inability to control scenes or suspects through verbal commands, and he later told investigators that he could not recall receiving training in the conduct of well-being checks, and

WHEREAS, Deputy Palmese had completed her field training only a few days before the call, during which she received instruction on how to respond to a well-being check, but she later told investigators that she could not recall whether, at the time of the call, she had ever actually participated in a well-being check, and

WHEREAS, Deputy Hamer had been to many suicide threat calls, and he made it a practice to carry his rifle when it was known that a firearm was present on the premises where the subject of the call was located, and

WHEREAS, Deputy Lisenbee, who was the first to arrive at Ms. Ermini's home in response to the call, observed that there were no lights on in the home when he arrived and, after a brief

exterior check, went to the front door, where he secured a screen door in the open position, knocked on the door, and announced, "Sheriff's Office," to no response, and

WHEREAS, Deputy Lisenbee determined that the front door was unlocked, opened the door, and again said, "Sheriff's Office," followed by "Anyone here? Anyone home?" to no response, and

WHEREAS, Deputy Palmese was second to arrive, followed by Deputy Hamer, who, like the other deputies, parked out of view from inside the residence, and

WHEREAS, Deputy Hamer retrieved from the trunk of his vehicle his AR-15 rifle, which was equipped with a flashlight and a sighting device that allowed him to find his target more quickly and easily, and

WHEREAS, Deputy Hamer determined that the three deputies, all of whom were wearing dark green uniforms, should go into the residence to clear the house, and

WHEREAS, Deputy Hamer activated the flashlight on his rifle, and Deputy Lisenbee announced "Sheriff's Office" once or twice more before they entered the home, after which they proceeded to move about the dark residence in silence as they cleared the living room, finally arriving at the primary bedroom, which had double doors, both of which were closed, and

WHEREAS, without knocking or further announcing their presence, Deputy Lisenbee opened the right-hand bedroom door and shined his flashlight on a female, who appeared to be asleep on the bed wearing only undergarments, and

WHEREAS, after Deputy Lisenbee entered the bedroom doorway, he announced, "Sheriff's Office. Are you okay?" to which the woman responded, "Who's there? Who's there?," and

WHEREAS, Deputy Lisenbee said, "Sheriff's Office. We're here to make sure you're okay. Are you okay?," and

WHEREAS, Deputy Lisenbee said that, although the woman may have sounded frightened, he did not temper his tone, nor did he ever shine his flashlight on himself to allow Ms. Ermini to see that he was, in fact, a uniformed officer, and

WHEREAS, Deputy Hamer said he heard Ms. Ermini say, "What are you doing here? I have a gun," and

WHEREAS, Deputy Hamer later acknowledged that he didn't know whether Ms. Ermini had heard or understood Deputy Lisenbee, yet nonetheless, he turned off the flashlight on his gun, "took the point," and stepped in front of Deputy Lisenbee because, he said, he had more weaponry, was the senior officer on scene, and had significantly more gun range time, and

WHEREAS, terrified, Ms. Ermini told the person at the doorway, whom she perceived as an intruder, to get out of her house "because [she had] a gun" and, with that, jumped up from the bed and hid behind the still-closed left-hand bedroom door, and

WHEREAS, it remains unclear whether Ms. Ermini grabbed her gun as she ran to shelter behind the door, and

WHEREAS, as Ms. Ermini tried to look around the bedroom door, she was shot multiple times, with Deputy Hamer firing seven rounds from his rifle through the closed bedroom door, and

WHEREAS, according to the chief crime scene investigator, a bullet fired through the middle of the door struck Ms. Ermini in her left leg, shattering her femur and causing her to fall backward onto the floor; another bullet hit her in the upper right arm, leaving a portion of her upper arm missing; and a

third bullet caused a graze wound across the back of her head, and

WHEREAS, a wood splinter from the door lodged in her right eye, temporarily blinding her in that eye, and

WHEREAS, it was less than 2 minutes from the time of entry until Ms. Ermini was shot multiple times and fell to the floor, and

WHEREAS, Deputy Hamer notified dispatch of the shooting and continued to sweep the bedroom before finally delivering first aid to Ms. Ermini, whom he handcuffed because she was still alive and therefore posed a continuing threat to the deputies, and

WHEREAS, Lee County Emergency Medical Services (EMS) were dispatched at the same time as the officers and were waiting just two blocks away, which likely saved Ms. Ermini's life, and

WHEREAS, when the lead paramedic for EMS arrived, he determined that Ms. Ermini had life-threatening injuries to the front and back of her left leg and to the front and back of her right arm, and a laceration to the back of her head just above the neckline, and

WHEREAS, Ms. Ermini repeatedly asked the paramedic why she had been shot, who the intruders were, and why they were in her home, and

WHEREAS, Ms. Ermini's most grievous injury was the shattered femur in her left leg, and moving her caused her significant blood loss and excruciating pain, and

WHEREAS, Ms. Ermini was taken to Lee Memorial Hospital in critical condition and later admitted to the intensive care unit, and

WHEREAS, in addition to the gunshot wounds, Ms. Ermini had numerous wounds on her face from the wood splinters from the bedroom door, and

WHEREAS, an LCSO lieutenant who followed the ambulance to the hospital initially refused the emergency room doctor's request to remove the handcuffs from Ms. Ermini; emergency room staff were told that Ms. Ermini "tried to kill a cop"; and Ms. Ermini's family members were denied visitation, and

WHEREAS, doctors were able to save Ms. Ermini's eye with surgery, but her vision has deteriorated since the incident, and

WHEREAS, Ms. Ermini required multiple surgeries to repair her femur and address her wounds, including multiple skin grafts on her shoulder, and

WHEREAS, after discharge, she suffered a severe septic infection that caused her tremendous pain, and the pain medications she was prescribed induced debilitating paranoia, and

WHEREAS, on March 24, 2012, Sheriff Mike Scott told the news media that Ms. Ermini shot at deputies who had responded to a well-being check and that they returned fire, which directly contradicts Deputy Hamer's statement, in which he indicated that he shot first, and

WHEREAS, on March 29, 2012, Ms. Ermini was arrested in the intensive care unit on two counts of aggravated assault on a law enforcement officer, which the state attorney declined to prosecute, and

WHEREAS, Ms. Ermini was an emergency room nurse in South Florida for many years and had worked hand-in-hand with law enforcement officers, no evidence was ever produced that she had

any animus toward law enforcement officers, and it is still disputed that Ms. Ermini's weapon was discharged during the encounter, and

WHEREAS, Ms. Ermini remained hospitalized for about 30 days and has never fully recovered from her injuries, and

WHEREAS, Ms. Ermini continues to suffer acute pain, fatigue, and a limited range of motion due to the gunshot wound to her upper arm, all of which impair her ability to accomplish many of the activities of daily living, and she also suffers from debilitating posttraumatic stress disorder, and

WHEREAS, Ms. Ermini was forced to sell her home because she cannot afford in-home assistance, and

WHEREAS, Deputy Lisenbee and Deputy Hamer were terminated by the LCSO shortly after the incident, the latter for "conduct unbecoming," and

WHEREAS, in November 2015, Ms. Ermini filed suit against LCSO and the individual deputies involved in the call, and

WHEREAS, on January 12, 2018, after a 4-day trial, a jury that included a retired law enforcement officer awarded $1 million in damages to Ms. Ermini for her pain and suffering, and

WHEREAS, after apportionment of 75 percent of the fault to LCSO, a judgment was entered in Ms. Ermini's favor for $750,000, and

WHEREAS, ultimately, after numerous procedural attempts by LCSO to overturn the judgment, the United States Court of Appeals for the 11th Circuit affirmed the judgment of the United States District Court in Ms. Ermini's favor, and on or about December 9, 2019, the Florida Sheriffs Risk Management Fund, on behalf of its insured, the Lee County Sheriff's Office, paid the

statutory limit of $200,000 in damages under section 768.28, Florida Statutes, and

WHEREAS, this claim bill is for recovery of the excess judgment in the amount of $550,000, plus interest and taxable trial costs and appellate costs awarded to Ms. Ermini in the amount of $76,769.93, for a total claim of $626,769.93, NOW, THEREFORE,

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

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

Section 2. The Florida Sheriffs Risk Management Fund is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $626,769.93 payable to Patricia Ermini as compensation for injuries and damages sustained.

Section 3. The amount paid by the Florida Sheriffs Risk Management Fund, on behalf of its insured, the Lee County Sheriff's Office, pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Patricia Ermini. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Pre-meeting
	CA	
	RC	

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 6** – Senator Ana Maria Rodriguez
HB 6517 – Representative Busatta
Relief of Jose Correa by Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM BILL FOR $4.1 MILLION. THE CLAIMANT, JOSE CORREA, SEEKS DAMAGES FROM MIAMI-DADE COUNTY FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF A MIAMI-DADE COUNTY BUS DRIVEN BY A COUNTY EMPLOYEE.

FINDINGS OF FACT:

Jose Correa, a 61-year-old, was a pedestrian injured in a bus accident involving an in-service Miami-Dade County bus that was driven by an on-duty Miami-Dade County bus driver. Mr. Correa's injuries include a below the knee amputation of his left leg. Because of the amputation, Mr. Correa suffers from neuropathic pain syndrome and phantom limb pain. A Miami-Dade County bus driver, Traci Constant, contributed to the injuries Mr. Correa sustained.

The Accident on December 16, 2021

At approximately 12:00 p.m., on December 16, 2021, Jose Correa was walking home and crossing the street at the intersection of Le Jeune (SW 42nd Avenue) and Bird (SW 40th Street) when he was struck by a bus operated by Traci

Constant, an on-duty Miami-Dade County bus driver.[1] Mr. Correa was crossing the roadway within the crosswalk at the time of the accident, and witnesses indicated that it was a clear and sunny day.[2]

Prior to the accident, Ms. Constant pulled into the left turn lane traveling southbound on Le Jeune (SW 42nd Avenue) and began to make a left eastbound turn onto Bird (SW 40th Street). Before making the left turn, Ms. Constant pulled out onto the intersection to wait for northbound traffic to clear, however, when she made the left turn, the traffic light was red.[3]

Mr. Correa was walking northbound on the crosswalk at the intersection of Le Jeune (SW 42nd Avenue) and Bird (SW 40th Street) when Ms. Constant made a left turn and struck him with the left side mirror of the bus.[4] The Traffic Homicide Report indicates that Mr. Correa walked across the crosswalk with a "do not cross" red hand (to stop/do not cross).[5] However, during the claim bill hearing held on January 30, 2025, the claimant's attorney asserted that the pedestrian crosswalk traffic signal was not working properly.[6]

At collision, Mr. Correa fell onto the roadway and the left rear tires of the bus dragged Mr. Correa's left leg until the bus came to a controlled stop.[7] The Coral Gables Fire Rescue (Engine #4 and Rescue #2) responded to the accident and administered first aid. Mr. Correa was then transported to Jackson Memorial Hospital – Ryder Trauma Unit.[8]

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[1] Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV, Crash Report Number 24384495, 5 (Dec. 16, 2021).
[2] Traffic Homicide Report, Miami-Dade Police Department, Case Number PD211216-401989 (Jan. 25, 2023).
[3] *See Id*; *see also* Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV, Crash Report Number 24384495, 5 (Dec. 16, 2021).
[4] *Id.*
[5] Traffic Homicide Report, Miami-Dade Police Department, Case Number PD211216-401989 (Jan. 25, 2023).
[6] *See* Correa Special Master Claim Bill Hearing (Jan. 30, 2025) at 18:08-19:32. During the claim bill hearing, the claimant's attorney indicated that they hired a private investigator to take a video of the traffic signal not working properly. This video was not taken on the day of the accident but on a later date. However, the Special Masters never received this video to add into evidence.
[7] Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV, Crash Report Number 24384495, 5 (Dec. 16, 2021).
[8] Patient Care Record, Coral Gables Fire Department, Incident Number 21008649 (Dec. 16, 2021).

Prior to the Accident

During the claim bill hearing, the respondent's counsel stated that on the morning of the accident at approximately 11:45 a.m., Mr. Correa walked to a nearby 7-Eleven where a police officer, Officer Smith, witnessed Mr. Correa "swaying" and indicated that Mr. Correa was visibly intoxicated.[9] However, Mr. Correa stated that he did not have any alcohol on the day of the accident.[10]

Disciplinary Action Report and Hearing

Ms. Constant was suspended for 10 days following a "Miami-Dade County Disciplinary Action Report" dated January 13, 2022, and a "Disciplinary Hearing" that was held on March 4, 2022. The report indicates that Ms. Constant's actions on the day of the "accident" constituted a violation of Miami-Dade County Personnel Rules, and the accident was deemed preventable by the Accident Grading Committee.[11]

Traffic Homicide Report

The traffic homicide report provides that the roadway was free of defects or obstructions which would have affected the collision, the bus appeared to have been in good operating condition, and Ms. Constant was operating the bus with no apparent impairments.[12] Additionally, the homicide report indicates that Mr. Correa violated the visible red "do-not-walk" crosswalk traffic signal.[13] During a deposition taken on August 10, 2023, the traffic homicide detective, Detective Quinones, stated that he took a video on the day of the accident to demonstrate that the crosswalk traffic signal was working properly.[14] The traffic homicide report also lists "severe signs of impairment" as "probable cause," and states that Officer Smith observed Mr. Correa as being intoxicated moments

[9] *See* Correa Special Master Claim Bill Hearing (Jan. 30, 2025) at 1:09:01-1:11:47. During the claim bill hearing, respondent's counsel read Officer Smith's statement aloud. *See also* Officer Smith recorded statement from the scene of the accident (Dec. 16, 2021).
[10] *See id*. at 24:10-24:20. Additionally, no evidence was submitted to demonstrate that a blood alcohol test was ever administered to Mr. Correa after the accident.
[11] *See* Disciplinary Action Report, Miami-Dade County, Transportation and Public Work Department, Division Number 06771031, Traci Constant (Jan 13, 2022). *See also* Memorandum, Miami-Dade County, MDT Bus Operations, Disciplinary Hearing, Bus Operator Traci Constant (March 4, 2022).
[12] Traffic Homicide Report, Miami-Dade Police Department, Case Number PD211216-401989 (Jan. 25, 2023).
[13] *Id*.
[14] *See* Quinones Deposition, 27-30 (Aug. 10, 2023).

before the collision.[15] Ultimately, the traffic homicide report attributes fault to Ms. Constant and Mr. Correa.[16]

Medical Injuries

Mr. Correa suffered extensive injuries, including a below the knee amputation of his left leg. Because of the amputation, Mr. Correa suffers from neuropathic pain syndrome and phantom limb pain.[17] During the claim bill hearing, Mr. Correa indicated that Medicare covered most of his medical expenses.[18] However, the claimant's attorney provided financial data and projected Mr. Correa's total past medical liens to be approximately $339,416.[19]

Current and Future Needs

Currently, Mr. Correa is living in an assisted living facility, but he would like to live on his own again.[20] During the claim bill hearing, Mr. Correa explained that his prosthetic does not fit him properly due to skin integrity issues.[21] However, he hopes to get those problems addressed and corrected.[22] The claimant's attorney provided a life care evaluation that estimates Mr. Correa's "present value of future loss" to be approximately $4,051,261.[23] Additionally, Mr. Correa and his sister testified that the claimant's quality of life has dramatically decreased since the accident in December of 2021.[24]

LITIGATION HISTORY:

A lawsuit was filed in July of 2022, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, case no. 2022-013508-CA-01, styled *Jose Correa v. Miami-Dade County*. The complaint asserted vicarious liability negligence claims on behalf of Mr. Correa against Miami-

[15] Traffic Homicide Report, Miami-Dade Police Department, Case Number PD211216-401989 (Jan. 25, 2023).
[16] *Id*.
[17] *See* Claimant's Summary of the Case*; see also* Special Master Claim Bill Hearing (Jan. 30, 2025).
[18] *See* Correa Special Master Claim Bill Hearing (Jan. 30, 2025) at 51:28.
[19] *See id*. at 55:00. In the Claim Bill Hearing the Claimant's attorney stated that Mr. Correa's Medicaid lien was approximately $339,416, and all other past expenses have been satisfied. The "Claimant's Summary of the Case" indicates that Mr. Correa's past medical bills are approximately $1,300,000.
[20] *See* Correa Special Master Claim Bill Hearing (Jan. 30, 2025) at 44:38-48:07.
[21] *See id*. at 38:40-42:00.
[22] *Id*.
[23] *See* Gary A. Anderson, Summary of the Past and Present Value of Future Economic Loss to Jose Correa (May 30, 2023). *See also* Paul M. Ramos, Life Care Plan for Jose Correa (Oct. 16, 2023).
[24] *See* Correa Special Master Claim Bill Hearing (Jan. 30, 2025). Mr. Correa and his sister testified regarding the claimant's quality of life. Prior to the accident, Mr. Correa enjoyed being active and had an active lifestyle. Additionally, both the claimant and his sister testified that Mr. Correa has had a difficult time mentally and emotionally post-accident.

Dade County. The complaint further alleged that Miami-Dade County's employee, Traci Constant, carelessly and negligently struck Mr. Correa while she was driving a Miami-Dade County passenger bus. As a result, the complaint provides that Mr. Correa suffered great bodily injury, pain, disability, disfigurement, mental anguish, and the loss of the capacity for the enjoyment of life.

Release of all Claims and Settlement Agreement

On March 25, 2024, Mr. Correa signed a "release" to release and discharge Miami-Dade County from liability related to the facts in Circuit Court Case 2022-013508-CA-01.[25] Pursuant to that "release," the claimant received $200,000 from Miami-Dade County, and the respondent agreed to support a claim bill in the amount of $4,100,000.[26]

Section 768.28 of the Florida Statutes limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to $200,000 for one individual, and $300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature.

On November 25, 2024, a "notice of voluntary dismissal with prejudice" was entered in Circuit Court Case 2022-013508-CA-01.

On March 13, 2025, the attorneys for both parties executed and signed a letter stating that everything enclosed in the March 25, 2024, "Release" is considered a settlement agreement between Miami-Dade County and Mr. Correa.

Miami-Dade County agrees with the claimant's position that this claim bill arises out of a settlement between Miami-Dade County and the claimant, Mr. Correa, and agrees to support a claim bill in the amount of $4,100,000.[27]

CONCLUSIONS OF LAW:

The claim bill hearing held on January 30, 2025, was a de novo proceeding to determine whether Miami-Dade County is liable for negligence damages caused by its employee, Traci

[25] Release of All Claims, Jose Correa v. Miami-Dade County, Case No. 22-013508-CA-01 (Mar. 25, 2024).
[26] *Id*.
[27] Miami-Dade County's Summary, Positions, and Insurance Statement, Senate Bill 6*; see also* Correa Special Master Claim Bill Hearing (Jan. 30, 2025).

Constant acting within the scope of her employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Under the legal doctrine of *respondeat superior*, Miami-Dade County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Because Ms. Constant was operating a bus in the course and scope of her employment at the time of the accident and because the bus was owned by Miami-Dade County, the County is responsible for any wrongful acts, including negligence, committed by Ms. Constant.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.[28]

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff. The "greater weight of the evidence" burden of proof "means the more persuasive and convincing force and effect of the entire evidence in the case."[29]

In this case, Miami-Dade County's liability depends on whether Ms. Constant negligently operated the County's bus and whether that negligent operation caused Mr. Correa's resulting injuries.

[28] *Williams v. Davis,* 974 So.2d 1052, at 1056-1057 (Fla. 2007)*; see also* Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.
[29] Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

Duty

A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.[30]

In this case, Ms. Constant was responsible for the duty of reasonable care to others while driving her Miami-Dade County bus. In accordance with Miami-Dade County Personnel Rules, Ms. Constant had a reasonable duty to observe "safe driving practices," including a duty against "making right or left turns on red traffic signals," a duty to "use caution before entering intersections," and a duty to give pedestrians the right-of-way. Additionally, in accordance with the Metrobus Operation Rules and Procedures Manual, Ms. Constant had a reasonable duty to not enter an intersection unless she knew the bus could get completely across if the signal changed to red, and a duty to never run a red or yellow light.

Section 316.075(1)(c), of the Florida Statutes, provides that:

> [t]he driver of a vehicle facing a steady red signal shall stop before entering the crosswalk and remain stopped to allow a pedestrian, with a permitted signal, to cross a roadway when the pedestrian is in the crosswalk or steps into the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger…[u]nless otherwise directed by a pedestrian control signal…, pedestrians facing a steady red signal must not enter the roadway.

Section 316.075(1)(a), of the Florida Statutes, provides that:

> [v]ehicular traffic facing a circular green signal may proceed cautiously straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

[30] *McClain v. Florida Power Corp.*, 593 So.2d 500, 503 n. 2 (Fla. 1992).

Section 316.075(1)(b), of the Florida Statutes, provides that "[v]ehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic must not enter the intersection."

Breach
The undersigned finds that Ms. Constant breached the duty of care owed to Mr. Correa.

As stated above, Ms. Constant pulled into the left turn lane traveling southbound on Le Jeune (SW 42nd Avenue) and began to make a left eastbound turn onto Bird (SW 40th Street). Before making the left turn, Ms. Constant pulled out into the intersection to wait for northbound traffic to clear; however, when she made the left turn, the traffic light was red. Mr. Correa was walking northbound on the crosswalk at the intersection of Le Jeune (SW 42nd Avenue) and Bird (SW 40th Street) when Ms. Constant made a left turn and struck him with the left side mirror of the bus. Then, Mr. Correa fell onto the roadway and the left rear tires of the bus dragged Mr. Correa's left leg until the bus came to a controlled stop.

Causation
Mr. Correa's injuries were the natural and direct consequence of Ms. Constant's breach of her duty. Ms. Constant was acting within the scope of her employment at the time of the accident. Miami-Dade County, as the employer, is liable for damages caused by its employee's negligent act.

Damages
A plaintiff's damages are computed by adding these elements together:

Economic Damages
- Past Medical Expenses
- Future Medical Expenses

Non-Economic Damages
- Past Pain and Suffering and Loss of Enjoyment of Life
- Future Pain and Suffering and Loss of Enjoyment of Life

The claimant's attorney provided financial data and projected Mr. Correa's total past medical liens to be approximately $339,416, and projected his total future medical expenses to be approximately $4,051,261.[31]

No evidence was presented or available indicating the damages authorized by the settlement agreement are excessive or inappropriate.[32]

Comparative Negligence

Comparative negligence is the legal theory that a defendant may diminish his or her responsibility to an injured plaintiff by demonstrating that another person, sometimes the plaintiff and sometimes another defendant or even an unnamed party, was also negligent and that negligence contributed to the plaintiff's injuries. The goal of proving a successful comparative negligence defense is to hold other people responsible for the injuries they cause to a plaintiff. By apportioning damages among all who are at fault, it will ultimately reduce the amount of damages owed by a defendant.[33]

If this case had proceeded to trial, it would likely have been disputed that Ms. Constant was solely at fault in the collision or solely responsible for Mr. Correa's injuries and damages.[34] Miami-Dade County raised the affirmative defense of comparative negligence in its Answer to the Plaintiffs' Complaint to reduce the County's liability in causing the accident and its responsibility for Mr. Correa's damages.

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[31] In the Claim Bill Hearing the Claimant's attorney stated that Mr. Correa's Medicaid lien was approximately $339,416. The "Claimant's Summary of the Case" indicates that Mr. Correa's past medical bills are approximately $1,300,000. *See also* Gary A. Anderson, Summary of the Past and Present Value of Future Economic Loss to Jose Correa (May 30, 2023). The "Summary of the Past and Present Value of Future Economic Loss to Jose Correa" states that the estimated total of future loss is $4,051,261, however, this is the amount Mr. Correa is expected to be billed but does not factor in any potential outside assistance (i.e. Medicare). *See also* Paul M. Ramos, Life Care Plan for Jose Correa (Oct. 16, 2023). *See also* s. 409.910(11)(f), F.S., which provides for recovery in a tort action when Medicaid has provided medical goods and services to a plaintiff who is a Medicaid recipient.

[32] *See Estate of Dougherty v. WCA of Florida, LLC*. (Fla. Cir. Ct. 2018). *See also Fernandez v. BFI Waste Systems of North America, Inc.* (Fla. Cir. Ct. 2000). *See also Gold v. Duncan; Sara Lee; Bryan Foods, Inc.* (Fla. Cir. Ct. 1991),

[33] Section 768.81, of the Florida Statutes, is the comparative fault statute. The apportionment of damages is established in section 768.81(3), of the Florida Statutes.

[34] *See* Miami-Dade County's Summary, Positions, and Insurance Statement.

Section 768.36(2), of the Florida Statutes, provides that:

> "[i]n any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:
>
> (a) The plaintiff was under the influence of any alcoholic beverage…to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and
>
> (b) As a result of the influence of such alcoholic beverage the plaintiff was more than 50 percent at fault for his or her own harm.[35]

Section 316.130(1), of the Florida Statutes., provides that a pedestrian must "obey the instructions of any official traffic control device specifically applicable to the pedestrian unless otherwise directed by a police officer." Additionally, section 316.075(1)(c), of the Florida Statutes, states that a pedestrian facing a steady red signal may not enter the roadway.

Mr. Correa violated s. 316.130(1), F.S., by entering the roadway with a steady red signal, and is no more than 50 percent at fault for his injuries. However, Ms. Constant had a heightened duty to adhere to the requirements of the Miami-Dade County Personnel Rules, which requires bus drivers to give pedestrians the right-of-way, and as stated above, Ms. Constant breached that duty.

Ultimately, the following was established by the greater weight of the evidence; Mr. Correa was negligent when he entered the crosswalk with a steady red signal; and Ms. Constant was negligent when she pulled into the intersection and turned left when the traffic light was red.[36] The parties entered into a signed settlement agreement, and Miami-Dade County agrees with the claimant's position that this claim bill arises out of a settlement between Miami-Dade County and the

[35] *See* s. 768.36(2), F.S. It is unclear whether Mr. Correa had been drinking prior to the accident and on the day of the accident. The recorded statement by Officer Smith indicated that Mr. Correa was "swaying" and was potentially intoxicated, however, evidence of an alcohol toxicology was not entered into the record. Additionally, at the claim bill hearing, Mr. Correa testified that he did not have any alcohol on the day of the accident.

[36] As stated above, Ms. Constant owed Mr. Correa a heightened duty of care as established by Miami-Dade County Personnel Rules, which requires bus drivers to give pedestrians the right-of-way.

claimant, Mr. Correa, and agrees to support a claim bill in the amount of $4,100,000. Thus, the settled claim amount of $4,100,000 to be paid by Miami-Dade County seems reasonable based on the evidence presented, including any comparative negligence, and in taking into consideration the unpredictable nature of juries.[37]

ATTORNEY FEES: Attorney fees may not exceed 25 percent of the amount awarded. The claimant's attorney has agreed to limit fees to 25 percent of any amount awarded by the Legislature. Additionally, lobbying fees will be limited to 7 percent of any amount awarded by the Legislature.

RECOMMENDATIONS: Based on the foregoing, the undersigned recommends that Senate Bill 6 be reported FAVORABLY.

Respectfully submitted,

/s/ Carter McMillan
Senate Special Master

cc: Secretary of the Senate

[37] *See Estate of Dougherty v. WCA of Florida, LLC.*, 2018 WL 6925662 (Fla. Cir. Ct.), where a bicyclist was struck and killed by a truck as she was trying to get from the bike lane to the crosswalk and the truck driver failed to yield, failed to check his mirrors, failed to use his turn signal, and failed to slow down as he executed his turn. The Defense claimed that Dougherty made a sudden turn that put her bicycle in the path of the truck and that tests showed that Dougherty had both alcohol and cocaine in her system at the time of the crash. The jury found the plaintiff was "not under the influence of cocaine and/or alcohol to the extent that her normal faculties were impaired or that she had a blood alcohol level of 0.08 or higher" and was 20 percent negligent and the defendant was found to be 80 percent negligent, and awarded $25,000,000 to the plaintiffs for the wrongful death of their daughter. *See also Fernandez v. BFI Waste Systems of North America, Inc.*, 2000 WL 33268233 (Fla. Cir. Ct.), where a 70 year old retired woman suffered injuries after she was struck while crossing a roadway outside of the crosswalk by the defendant recycling truck. In *Fernandez*, the jury found the plaintiff to be 50 percent negligent and the jury awarded $1,487,000 to the plaintiff. The case was settled after trial for $725,000. *See also Gold v. Duncan, Sara Lee, and Bryan Foods, Inc.*, 1992 WL 737190 (Fla. Cir. Ct.), where an 88 year old woman suffered an amputated right arm and her left arm was rendered useless as a result of being struck by a tractor-trailer driven by the defendant and owned by the co-defendants. The defendant had been stopped at a traffic light waiting to turn, and the plaintiff was waiting to cross the roadway. When the light turned green, the defendant started to execute a wide turn. When the plaintiff started to walk forward, she was struck, and the rear wheels of the trailer ran over her arms. The plaintiff contended that she did not think the truck was turning. The defendant alleged that the plaintiff walked into the truck, and two eyewitnesses stated that the plaintiff began walking after the truck was blocking the crosswalk. The plaintiff was found 50 percent negligent, and the award was reduced to $2,000,000.

By Senator Rodriguez

40-00078-25 20256__

A bill to be entitled

An act for the relief of Jose Correa by Miami-Dade County; providing for an appropriation to compensate Jose Correa for injuries sustained as a result of the negligence of an employee of Miami-Dade County; providing a limitation on compensation and the payment of certain fees; providing an effective date.

WHEREAS, on December 16, 2021, Jose Correa was lawfully walking across Bird Road, SW 40th Street, within the marked crosswalk at the intersection of Bird Road and Le Jeune Road, SW 42nd Avenue, in Miami-Dade County, and

WHEREAS, a Miami-Dade County bus driver failed to observe Mr. Correa and made a left-hand turn at the intersection, causing a collision between the bus and Mr. Correa, and

WHEREAS, Mr. Correa has alleged, through a lawsuit filed on July 21, 2022, in the Circuit Court of the Eleventh Judicial Circuit, that the negligence of Miami-Dade County, through its bus driver, was the proximate cause of Mr. Correa's injuries, and

WHEREAS, Mr. Correa suffered personal injuries resulting in significant pain and anguish, including a below-knee amputation, and will continue to suffer pain and anguish for the remainder of his life, and

WHEREAS, since the incident, Mr. Correa has incurred considerable medical care and treatment costs related to his injuries, and he will require such care and treatment for the remainder of his life, and

WHEREAS, following the filing of the lawsuit, Mr. Correa

40-00078-25 20256__

and Miami-Dade County reached a settlement agreement in the amount of $4.3 million, and

WHEREAS, pursuant to that settlement agreement and the limits of liability set forth in s. 768.28, Florida Statutes, the settlement agreement will be partially satisfied by Miami-Dade County in the amount of $200,000, and the satisfaction of the remainder is contingent upon the passage of a claim bill in the amount of $4.1 million, NOW, THEREFORE,

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

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

Section 2. Miami-Dade County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $4.1 million payable to Jose Correa as compensation for injuries and damages sustained.

Section 3. The amount paid by Miami-Dade County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Jose Correa. The total amount paid for attorney fees and lobbying fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Pre-meeting

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24** – Senator DiCeglie
HB 6503 – Representative Nix
Relief of Mande Penney-Lemmon by Sarasota County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2,291,364.63. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A $2,491,364.63 JURY VERDICT REGARDING THE NEGLIGENCE OF SARASOTA COUNTY, WHICH RESULTED IN THE INJURY OF MANDE PENNEY-LEMMON.[1]

FINDINGS OF FACT:

The Accident on October 1, 2018

On the afternoon of October 1, 2018, Mande Penney-Lemmon was driving her elderly companion, Mary-Helen, to a doctor's appointment. While traveling on East Venice Avenue, traffic came to a halt and Ms. Penney-Lemmon followed suit. Around the same time, Jill Marie Parnell was driving behind Ms. Penney-Lemmon in her Sarasota County-issued parks-and-recreation truck, which was equipped with an industrial winch and steel brush guard. Without warning, Ms. Parnell struck the rear of Ms. Penney-Lemmon's car at approximately

[1] Sarasota County sent Ms. Penney-Lemmon a check for $200,000 to satisfy its statutorily authorized obligation, but she did not deposit it as she did not want to give the impression that the check was being accepted as full satisfaction of the $2,491,364.63 judgment. Regardless of the outcome of the claim bill, the County said it would send another check.

25 mph, knocking Ms. Penney-Lemmon's vehicle into two stopped vehicles in front of her. Both Ms. Penney-Lemmon and her companion were wearing their seatbelts at the time of the collision.

LITIGATION HISTORY:

A lawsuit was filed in June of 2022 with a claim of vicarious liability negligence on behalf of Mande Penney-Lemmon against Sarasota County.[2] The complaint alleged that the County's employee, Jill Marie Parnell, negligently rear-ended Ms. Penney-Lemmon, causing Ms. Penney-Lemmon to sustain life-altering injuries and preventing her from being able to work.

Trial

At trial, Ms. Penney-Lemmon called her neurologist (Dr. Sanjay Yathiraj) to testify that he diagnosed her with a traumatic brain injury.[3] He conducted a physical exam, reviewed her scans, and reviewed her medical history, and he determined that she had chemical changes and electrical changes on the brain arising from a trauma. Ms. Penney-Lemmon also presented evidence that her symptoms—migraines, shoulder pain, neck pain, inability to focus, inability to recall, and pain radiating on her left side—only began after the accident.

The County contested the claim at trial and raised concerns with the causation and damages elements of the claim.[4] Specifically, the County argued that Ms. Penney-Lemmon's scans showed signs of multiple sclerosis that may have pre-existed the accident; this medical opinion raised questions as to the cause of her symptoms, which the County argued warranted more testing.

Regarding damages, the County believed[5] that more testing was required to determine if Ms. Penney-Lemmon had a traumatic brain injury or multiple sclerosis; therefore, it argued no damages should be awarded to Ms. Penney-Lemmon unless and until she has a definitive diagnosis.

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[2] *See Penney-Lemmon v. Sarasota County*, 2022 CA 2865, Complaint (June 6, 2020).
[3] *See* Trial Transcript, 239-260 (Apr. 8, 2024).
[4] The County otherwise admitted that Ms. Parnell, its employee, was negligently operating her vehicle.
[5] The County expressly reaffirmed this position at the special master hearing.

Jury Verdict

Ms. Penney-Lemmon presented evidence in the form of a Life Care Plan ("Plan") that detailed the future medical expenses Ms. Penney-Lemmon was expected to incur for the treatment of her injuries.[6] This Plan included recommended treatment from doctors of various specialties, including:

- Mental Health/Behavioral Health
- Physical Therapy
- Neurospine
- Orthopedic Surgery
- Neurology
- Primary Care

The Plan included projected future expenses totaling $851,851 and medication totaling $74,118.24.

The jury, after considering both parties' presented evidence, rendered a verdict[7] awarding Ms. Penny-Lemmon:

- $71,364.63 for past medical expenses
- $500,000 for future medical expenses

The jury also awarded Ms. Penney-Lemmon:

- $120,000 in past lost wages
- $300,000 in future lost wages
- $400,000 for past pain and suffering
- $1,100,000 for future pain and suffering

After the jury rendered its verdict, the court entered a final judgment in favor of Ms. Penny-Lemmon in the amount of $2,491,364.63.

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature.

[6] *See* Future Medical Treatment and Cost Tables.
[7] *See Penney-Lemmon v. Sarasota County,* 2022 CA 2865, Verdict (Apr. 10, 2024).

The County does not support the relief of Ms. Penney-Lemmon, and it is contesting the entire amount of damages.[8]

CONCLUSIONS OF LAW:

The claim bill hearing held on January 17, 2025, was a *de novo* proceeding to determine whether Sarasota County is liable in negligence for damages caused by its employee, Jill Marie Parnell, acting within the scope of her employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Under the legal doctrine of *respondeat superior*, Sarasota County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Being that Ms. Parnell was operating a parks-and-recreation vehicle in the course and scope of her employment at the time of the collision, and because the vehicle was owned by Sarasota County, the County is responsible for negligence committed by Ms. Parnell.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) – damages – actual harm.[9]

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff.[10] The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.

[8] The undersigned asked counsel for the County if there was a number his client would be comfortable compromising with, and he responded that he was not authorized to provide a number. Special Master Hearing, 4:38:05-4:38:33.
[9] *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182, 1185 (Fla. 2003).
[10] *Alachua Lake Corp. v. Jacobs*, 9 So. 2d 631, 632 (Fla. 1942).

In this case, Sarasota County's liability depends on whether Ms. Parnell negligently operated her parks-and-recreation truck and whether that negligent operation caused Ms. Penney-Lemmon's resulting injuries.

Duty
A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.

In this case, Ms. Parnell was responsible for exercising the duty of reasonable care to others while driving her parks-and-recreation vehicle. Any person operating a vehicle within the state "shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section."[11]

Breach
The undersigned finds that Ms. Parnell breached the duty of care owed to Ms. Penney-Lemmon.

Ms. Parnell was wearing a headset while driving[12] to hear the navigation directions to her next work meeting. She also testified that nothing was functionally wrong with her vehicle before the crash and that she did not realize the cars in front of her were even stopped until she collided with them. The weather was reportedly clear, and there was nothing obstructing Ms. Parnell's vision; she simply was not paying attention to the halted traffic in front of her and rear-ended Ms. Penney-Lemmon's vehicle.

Causation
Ms. Penney-Lemmon's injuries were the natural and direct consequence of Ms. Parnell's breach of her duty. Ms. Parnell was acting within the scope of her employment at the time of the collision. Sarasota County, as the employer, is liable for damages caused by its employee's negligent act.

[11] Section 316.1925, F.S. Ms. Parnell was cited for careless driving in violation of section 316.1925, of the Florida Statutes. *See* Florida Traffic Crash Report , 4 (Oct. 1, 2018)..
[12] Though she was not cited for this under section 316.304, of the Florida Statutes, Ms. Parnell testified that she was indeed wearing a headset for navigation purposes while driving.

Sarasota County contests the causation element and argues that more testing needs to be conducted to determine what Ms. Penney-Lemmon's injury is. The County had a doctor testify before the special masters,[13] and that doctor believes there are signs in Ms. Penney-Lemmon's scans that suggest she was misdiagnosed with traumatic brain injury when she shows signs of multiple sclerosis, which the County argues pre-existed the accident.

Ms. Penney-Lemmon explained that, after the accident, her chiropractor referred her to the neurologist for: acute post-traumatic headaches, acute pain due to trauma, post-concussive syndrome, TMJ disorder, radialopathy—cervical region, and spinal enthesopathy—cervical region. Ms. Penney-Lemmon, herself, testified that she had none of these symptoms prior to the accident. Additionally, she was not seeking treatment for any of these symptoms prior to the accident.

Ms. Penney-Lemmon presented testimony and depositions from both her chiropractor and her neurologist. Regarding the multiple sclerosis theory, her neurologist testified that there was no indication of multiple sclerosis in her patient history or her symptom complaints.[14] The neurologist also testified that Ms. Penney-Lemmon was also not being treated for multiple sclerosis and has never been treated for multiple sclerosis; she was being treated for traumatic brain injury and diffused axonal injury.[15]

The undersigned finds that Ms. Penney-Lemmon presented sufficient evidence to prove that the accident was the cause of her injuries.

Damages
A plaintiff's damages are computed by adding these elements together:

Economic Damages
- Past medical expenses[16]
- Future medical expenses

[13] Special Master Hearing, 1:33:20-2:06:20.
[14] See Trial Transcript, 259 (Apr. 8, 2024).
[15] *Id*.
[16] Counsel for the County stated that his client had no position to challenge the past medical expenses. Special Master Hearing, 4:33:30-4:33:46.

Non-Economic Damages

- Past pain and suffering and loss of enjoyment of life
- Future pain and suffering and loss of enjoyment of life

The claimant's attorney provided financial data that projected Ms. Penney-Lemmon's total past medical charges to be $71,364.63 and presented evidence that her total medical expenses will be approximately $417,000 to $600,000.[17] Additionally, her counsel calculated her past lost wages to be $120,000 and her future lost wages to be $300,000.[18] The claimant's attorney also argued that Ms. Penney-Lemmon's past non-economic damages amount to $400,000 and her future non-economic damages amount to $1,100,000.[19]

The County argued that these damages were inappropriate because it is unclear if Ms. Penney-Lemmon suffers from traumatic brain injury or multiple sclerosis; the County believes there are signatures of multiple sclerosis, and it does not want to pay for a pre-existing condition. When asked if there was a number the County would compromise with, counsel for the County said no; it is contesting the damages in the entirety.[20]

The undersigned finds that Ms. Penney-Lemmon presented evidence that was sufficient to prove that she suffers from a traumatic brain injury and requires current and future treatment for that injury.

IMPACT ON BUDGET:

Counsel for the County was asked what the impact would be on the County's budget if this claim bill were passed, to which he responded: "Every dollar can only be spent once. So if we are required to spend…whatever amount the Legislature determines on paying above the amount set by 768.28, [that is] money we can't use for other things."[21]

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[17] *See* Letter from Carl E. Reynolds, Esquire, To Special Masters Mawn and Thomas, 5 (Jan. 30, 2025).
[18] *See* Trial Transcript, 223 (Apr. 9, 2024); *see also Penney-Lemmon v. Sarasota County,* 2022 CA 2865, Verdict (Apr. 10, 2024).
[19] *See Penney-Lemmon v. Sarasota County,* 2022 CA 2865, Verdict (Apr. 10, 2024). Ms. Penney-Lemmon testified that, due to the accident, she has experienced a significant reduction in her quality of life, she cannot work, and she requires treatment for her ongoing health issues.
[20] Special Master Hearing, 4:38:05-4:38:33.
[21] *Id*., 4:38:34-4:39:02.

Counsel for the County was also asked if the funds were available to pay the claims bill, to which he responded: "We operate with a healthy county reserve system, but… it's a choice… it then constrains the ability of Sarasota County to be able to make other choices."[22]

Counsel also stated that the County has claim bill insurance and believes the amount requested in this claim bill meets the threshold to trigger the insurance.[23]

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded.[24] The claimant's attorney has agreed to limit fees to 25 percent of any amount awarded by the Legislature.[25] Additionally, lobbying fees will be limited to 5 percent of any amount awarded by the Legislature.[26]

RECOMMENDATIONS:

Based on the reasons above, the undersigned recommends that Senate Bill 24 be reported FAVORABLY.

Respectfully submitted,

Oliver Thomas
Senate Special Master

cc: Secretary of the Senate

[22] *Id*. at 4:39:05-4:39:19.
[23] Special Master Hearing, 4:44:18-4:45:04.
[24] Section 768.28, F.S.
[25] *See* Sworn Affidavit Regarding Fees (Dec. 4, 2024).
[26] *Id*.

By Senator DiCeglie

18-00133A-25 202524__

A bill to be entitled

An act for the relief of Mande Penney-Lemmon by Sarasota County; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of Sarasota County, through its employee; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on or about October 1, 2018, Mande Penney-Lemmon was lawfully driving over the Venice Avenue Bridge in Venice and came to a complete stop when traffic stalled in front of her vehicle at or near the intersection of East Venice Avenue and Tamiami Trail North, and

WHEREAS, at the same time, Jill Parnell, an employee of Sarasota County, who was acting within the course and scope of her official duties as a supervisor for the county's Department of Parks, Recreation, and Natural Resources, was driving over the same bridge in a motor vehicle owned by Sarasota County, and

WHEREAS, it was a clear and sunny day, and there were no visual obstructions as Ms. Parnell was driving, and

WHEREAS, Ms. Parnell admitted that she was wearing headphones at the time and did not notice that traffic had come to a stop ahead of her, and

WHEREAS, Ms. Parnell's vehicle collided directly into the back of Ms. Penney-Lemmon's vehicle, the impact of which caused Ms. Penney-Lemmon's vehicle to hit the vehicle stopped in front of her, and

WHEREAS, due to the impacts involving both the rear and

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front of Ms. Penney-Lemmon's vehicle which were caused by Ms. Parnell's negligent driving, Ms. Penney-Lemmon suffered significant physical and neurological injuries, including, but not limited to, discogenic injuries to her neck, disc herniation in her lower back, a type II SLAP tear in her left shoulder, and bilateral temporomandibular joint dysfunction, all of which have required medical intervention and have had a negative impact on her quality of life, and

WHEREAS, Ms. Penney-Lemmon was subsequently diagnosed with a traumatic brain injury as a result of the accident which will limit her ability to function normally for the remainder of her life, and

WHEREAS, Ms. Penney-Lemmon continues to suffer from chronic headaches and anxiety and depression related to the accident, and

WHEREAS, Ms. Penney-Lemmon brought a civil action against Sarasota County in the Twelfth Judicial Circuit in and for Sarasota County, case number 2022-CA-2865, for the negligent acts of its employee Ms. Parnell, which resulted in injuries to Ms. Penney-Lemmon, and

WHEREAS, the jury found that negligence on the part of Sarasota County, through the actions of its employee Ms. Parnell, was the cause of the injuries and damages to Ms. Penney-Lemmon and issued a verdict in her favor in the amount of $2,491,364.63, plus interest at the rate of 9.34 percent per annum, or 0.000255191 percent per day, for past and future damages, and

WHEREAS, Sarasota County has paid the statutory limit of $200,000 in damages under s. 768.28, Florida Statutes, and

WHEREAS, this claim bill is for recovery of the excess judgment in favor of Ms. Penney-Lemmon, in the amount of $2,291,364.63, NOW, THEREFORE,

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

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

Section 2. Sarasota County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the amount of $2,291,364.63, payable to Mande Penney-Lemmon as compensation for injuries and damages sustained.

Section 3. The amount paid by Sarasota County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mande Penney-Lemmon. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Pre-meeting
	HP	
	RC	

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 28** – Senator Martin
HB 6523 – Representative Tuck
Relief of Darline Angervil by the South Broward Hospital District

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL FOR LOCAL FUNDS IN THE AMOUNT OF $6,100,000, PAYABLE FROM UNENCUMBERED FUNDS OF THE SOUTH BROWARD HOSPITAL DISTRICT, BASED ON A SETTLEMENT AGREEMENT BETWEEN DARLENE ANGERVIL AND THE DISTRICT. THE SETTLEMENT AGREEMENT RESOLVED A CIVIL ACTION THAT AROSE FROM THE ALLEGED NEGLIGENCE OF THE DISTRICT THAT CAUSED INJURIES TO MS. ANGERVIL AND HER CHILD, J.R., A MINOR.

FINDINGS OF FACT:

On January 14, 2014, Darline Angervil (then known as Darline Rocher), just over 30 weeks pregnant, was admitted to Memorial Hospital West, a hospital owned by the South Broward Hospital District (District). Ms. Angervil went to the hospital concerned about decreased fetal movement, hypertension, and headaches. Her obstetrician, Dr. Emil Abdalla, ordered continuous fetal monitoring and that her vital signs be taken at least once every two hours. Records show that her blood pressure was elevated throughout the day of January 14, including a systolic blood pressure of 160 mm or

higher on two occasions at least four hours apart. Ms. Angervil was diagnosed with preeclampsia with severe features, making this a high-risk pregnancy.

Preeclampsia is a condition that remains during the remainder of the pregnancy until the baby is delivered. The objective was to treat the mother with medications and rest, monitor the mother and baby, hoping to delay delivery until it was considered safe and prudent to deliver the baby.

Throughout the following two days, January 15 and 16, records show that Ms. Angervil continued to complain about headaches. One of these headaches, on January 16, Ms. Angervil rated 7 out of 10 on the severity scale. Nurse Melanie Wells, a District employed labor and delivery nurse, began her shift on January 16 at 7:00 p.m., and was assigned to Ms. Angervil.

At approximately 8:25 p.m. on January 16, Nurse Wells contacted Dr. Abdalla to request an order to remove the continuous electronic fetal heart rate monitor. At 8:27 p.m., Dr. Abdalla provided Nurse Wells with a telephone order to remove the electronic fetal monitor. The records and testimony provided do not show that Nurse Wells notified Dr. Abdalla of Ms. Angervil's consecutive high blood pressure readings, the fetal monitoring strip showing a prolonged deceleration some 9 minutes earlier, or the headaches when she requested the order removing the monitor.

Expert testimony provided to the Special Master opined that Nurse Wells, when requesting removal of the monitor, should have specifically mentioned to Dr. Abdalla that the patient had complained of a headache off and on throughout the afternoon hours requiring treatment; that the fetal monitoring had exhibited prolonged decelerations; and that the blood pressures were trending up. The expert testimony concluded that Nurse Wells should have advocated to continue fetal monitoring rather than for the monitor to be removed.

That evening, Ms. Angervil continued to have consecutive abnormal blood pressure readings at 8:29 p.m. (149/89), 9:07 p.m. (153/90), 9:24 p.m. (159/91), and 10:33 p.m. (156/89). Nurse Wells did not put the fetal monitor back on Ms. Angervil or notify Dr. Abdalla of the continuing high blood pressure

readings. Blood pressure readings were not recorded after the 10:33 p.m. reading until 2:00 a.m. on January 17.

At 2:24 a.m. on January 17, Ms. Angervil called for the nurse complaining of headache, chest pain, and difficulty breathing. Nurse Wells initiated oxygen and checked Ms. Angervil's vital signs. At this time, J.R. was not being monitored. At 2.26 a.m., Ms. Angervil's blood pressure reading was dangerously high (194/104). A similar blood pressure reading at 2:28 a.m. (197/101) confirmed a hypertensive crisis. Additional extremely high blood pressure readings were recorded at 2:32 a.m. (196/102) and 2:37 a.m. (194/104). At 2:40 a.m., Nurse Wells called Dr. Abdalla's nurse midwife, despite directions that Dr. Abdalla was to be called directly, if needed. The nurse midwife told Nurse Wells she needed to call Dr. Abdalla. At 2:43 a.m., Nurse Wells contacted Dr. Abdalla, which call lasted four minutes. On the call, Dr. Abdalla ordered the administration of Hydralazine to lower Ms. Angervil's blood pressure, and at 2:54 a.m., records show the Hydralazine was administered.

After the call with Dr. Abdalla, Nurse Wells attempted to find fetal heart tones but was unable to do so. At 2:54 a.m., due to the difficulty in finding fetal heart tones, the nurse manager contacted an OB/GYN who was working on the floor, Dr. Gazon, to assist in detecting fetal heart tones with an ultrasound machine. At 2:56 a.m., critically low fetal heart tones were observed, whereby Dr. Gazon ordered an emergency cesarean section. Dr. Abdalla arrived at the Hospital and began the cesarean section at 3:05 a.m.

J.R. was delivered at 3:17 a.m. with an extremely low Apgar score of 0-1-3.[1] J.R. was noted to be flaccid (totally limp), cyanotic (bluish or purplish discoloration of the skin due to low blood oxygen levels), apneic (not breathing), and asystolic (no heart rate), essentially lifeless, resulting in emergency neonatal resuscitation. Within the first day, J.R. was transferred from Memorial West Hospital to Joe DiMaggio Children's Hospital for a higher level of care. J.R.'s birth, resuscitation, and subsequent course of neonatal treatment are consistent with a hypoxic injury around the time of delivery, and her medical records include numerous

[1] The Apgar score is a standardized assessment of a neonate's status immediately after birth and the response to resuscitation efforts. National Institute of Health, https://www.ncbi.nlm.nih.gov/books/NBK470569/ (visited February 12, 2025).

references to her "Birth-related hypoxia." J.R.'s treating physicians provided assessment notes describing the profound nature of J.R.'s catastrophic injuries and constant needs.

Brain ultrasound scans taken over a five-week period demonstrate that the injury to J.R. occurred at or near the time of her birth. According to expert testimony provided by neuroradiologist, Dr. Jerome Barakos, the brain ultrasound scan taken on:

- The afternoon of her birth, January 17, 2014, showed normal echogenicity throughout the brain without any abnormal findings for a premature infant;
- January 24, 2014, showed a characteristic injury to J.R.'s brain, which had not evolved to the point of being identifiable on that first scan; that at this point there had been enough time for the brain changes of injury to occur;
- February 24, 2014, showed a loss of brain volume, proving that there was damage so great, demonstrating atrophy.

Further testimony provided by Dr. Barakos opined that the course of a day or two is needed before the brain cells actually start changing shape and falling apart such that an injury of this type will show in a brain ultrasound scan. He stated that when these changes on the scan take at least a day or two before you can see those changes, the brain injury happened very close to the time of the first scan; that if the injury happened days before J.R.'s birth, the injury would have shown on the first scan.

LITIGATION HISTORY:

On March 7, 2016, Claimant filed a lawsuit against the District, Dr. Abdalla and his employer, and neonatologist Dr. Vicki Johnston and her nurse practitioner and their employer. In 2020, the claims against all the defendants except the District were settled. In September of 2022, the case proceeded to trial against just the District. After a six week trial, the jury was unable to reach a verdict and a mistrial was declared.

The second trial against the District began in October of 2023. During the second week of this trial, shortly after the Claimant rested their case, the parties reached a settlement. Pursuant to the settlement agreement, the District agreed to the entry of a consent judgment of $6.4 million, which was entered on September 6, 2024. The terms of the agreement required the District to pay the sovereign immunity limits of $300,000, with

the remaining $6.1 million balance to be paid upon the passage of a claim bill.

RESPONDENT'S POSITION: The District admits there was a deviation from the standard of care by the District related to the failure to monitor the fetal status of J.R. in a timely and adequate manner and the failure to notify the attending physician of Ms. Angervil's changes in status in a timely manner that caused a neurological injury to J.R. The District has agreed to support the claim bill.

CONCLUSIONS OF LAW: The claim bill hearing held on January 9, 2025, was a *de novo* proceeding to determine whether the District is liable in negligence for damages it may have caused to the Claimant and J.R., and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the damages a claimant can collect from government entities as a result of its negligence or the negligence of its employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Damages in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the Claimant will not receive the full amount of the settlement unless the Legislature approves a claim bill authorizing additional payment.

Every claim bill must be based on facts sufficient to meet the "greater weight of the evidence" standard. The "greater weight of the evidence" burden of proof "means the more persuasive and convincing force and effect of the entire evidence in the case."[2] With respect to this claim bill, the Claimant proved that the District had a duty to the Claimant, the District breached that duty, and that the breach caused the Claimant's injuries and resulting damages.

Negligence
Negligence is "the failure to use reasonable care, which is the care that a reasonably careful person would use under

[2] Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

like circumstances";[3] and "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[4]

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.[5]

In this matter, the District's liability depends on whether the District's employee, Nurse Wells, violated the applicable standard of care during her shift that began on January 16, 2014, and whether this breach caused the resulting injuries to Ms. Angervil and J.R.

Duty

A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.[6] A health care provider generally has a duty when providing health care services, to provide such services in a non-negligent manner. This duty is known as the "standard of care." Section 766.102(1), of the Florida Statutes, establishes that the prevailing professional standard of care in a medical malpractice claim against a health care provider is "that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers." The standard of care in medical malpractice cases is determined through consideration of expert testimony.[7]

Under the doctrine of *respondeat superior*, an employer is liable for acts of employees performed within the course of

[3] Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.
[4] Fla. Std. Jury Instr. (Civ.), 401.12(a) - *Legal Cause, Generally*.
[5] *Williams v. Davis*, 974 So. 2d 1052, 1056 (Fla. 2007). *See also* Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.
[6] *McCain v. Fla. Power Corp*., 593 So. 2d 500, 503 n. 2 (Fla. 1992).
[7] *Pate v. Threlkel*, 661 So. 2d 278, 281 (Fla. 1995).

their employment.[8] In this matter, the District, and its employee, Nurse Wells, had a duty to provide its services in a non-negligent manner.

Breach
A preponderance of the evidence establishes that the District breached its duties by failing to render its services in a non-negligent manner by not continually monitoring the fetal heart tones during the evening of January 16, 2014, and into the early morning of January 17, 2014, as well as by failing to notify the attending physician of Ms. Angervil's changes in status in a timely manner. These failures led to the delay in the emergency delivery of J.R.

Causation
In order to prove negligence, the Claimant must show that the breach of duty caused the specific injury or damage to the plaintiff.[9] Proximate cause is generally concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."[10] To prove proximate cause, the Claimant generally must submit evidence that there is a sequence between the District's negligence and the Claimant's injuries such that it can be reasonably said that but for the District's negligence, the injuries would not have occurred.

In this matter, the injuries suffered by J.R. were the direct and proximate result of the District's failure to fulfill its duties in a non-negligent manner. Expert testimony showed that had the fetal heart tones been monitored continually:

- It would have shown sooner that J.R. was in fetal distress.
- That the cesarean section would have been performed sooner.
- That J.R. would have been delivered before the oxygen deprivation could have caused her neurological injuries.

Damages
J.R.'s birth-related medical record is consistent with a hypoxic injury around the time of delivery, and her medical records are replete with discussions of her "birth-related hypoxia" (oxygen deprivation at birth). The Claimant has established that J.R.

[8] *Dieas v. Associates Loan Co.,* 99 So. 2d 279, 280-281 (Fla. 1957); *Stinson v. Prevatt*, 94 So. 656, 657 (Fla. 1922).
[9] *Stahl v. Metro Dade Cnty.*, 438 So. 2d 14 (Fla. 3rd DCA 1983).
[10] *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431, 435 (Fla. 4th DCA 2006).

suffered irreversible neurological injuries during labor and delivery due to lack of oxygen. The challenges and disabilities that she now faces are consistent with, and caused by, the birth injury that she experienced. J.R. is expected to live into her fifties.

The record demonstrates that the nature of J.R.'s injuries and constant needs resulting from her injuries at birth includes mixed quadriparetic cerebral palsy related to hypoxic ischemic encephalopathy, global profound developmental delay, periventricular leukomalacia, constipation, dysphagia, failure to thrive, gastrostomy tube placement, seizure disorder, esophagitis, dystonia and dyskinesias, and impairment of mobility and communication/cognition.

According to J.R.'s doctors, as well as Respondent's own medical evaluations, she will require care of a licensed practical nurse 24 hours a day and continued highly specialized medical care which include physicians, nursing, physical therapy, occupational therapy, speech therapy, orthotists, durable medical equipment, supplies, and surgeries. J.R. is tube-fed and will remain severely cognitively impaired with seizure disorder, nonambulatory, and totally dependent for all activities of daily living.

A Life Care Plan was created for J.R. to determine the needs she has as a direct consequence of the injuries. Raffa Consulting Economists, Inc., created a report based on the Life Care Plan that estimated the present value of the combined economic loss over J.R.'s life for lost wages, medical, educational and support services, as well as ancillary services of transportation, housing and personal items, is between $26,741,930 and $27,570,135. This amount does not include any non-economic damages for J.R., nor any loss, economic or noneconomic, to Ms. Angervil.

The Claimant's attorney asked the jury for a verdict of approximately $45 million in the first trial of this case. It is possible that the jury in the second trial could have found the District 100% at fault and liable for the $45 million award. The Guardian ad Litem appointed by the court for J.R. fully supports the settlement and believes it constitutes an excellent recovery for J.R. and her mother. It is the Guardian's recommendation the settlement, as well as the Claimant's

proposed allocation, be approved as it is in the best interest of J.R.

Should the full amount of the claim bill be awarded, the Claimant proposes the following allocations:

Attorney and Lobbyist Fees (25%)	$1,525,000
Costs[11]	690,107
Medicaid and Health Liens	156,497
J.R. Special Needs Trust	3,000,000
Darline Angervil	728,396
	$6,100,000

As a result of the consent agreement entered by the parties and by the court, the District has paid $300,000 (the maximum allowed under the state's sovereign immunity waiver) with the remaining $6.1 million to be paid if this claim bill is passed by the Legislature and becomes law. The District has an insurance policy that will pay the amount awarded over $2 million.

Based upon the arguments and documents provided before, during, and after the special master hearing, the undersigned believes that the settlement, and the Claimant's proposed allocation, represent a proper and fair agreement.

COLLATERAL SOURCES OF RECOVERY:

The original lawsuit in this matter included as defendants Dr. Abdalla and his employer, and neonatologist Dr. Vicki Johnston and her nurse practitioner and their employer. In 2020, the claims against these defendants were settled for $6,500,000. Of funds paid from this Court-approved settlement with the other defendants, $2,000,000 was placed in a Special Needs Trust for J.R.; $1,150,000 was used to purchase a Structured Settlement for J.R.; $186,919 went to Darline Angervil; and $699,234 was held in trust to partially resolve medical liens ($419,260 in lien reductions from negotiations were distributed to Ms. Angervil).

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded.[12] The Claimant's attorney has agreed to limit attorney and lobbying fees to 25 percent of any amount awarded by the Legislature.

[11] This amount reflects the current costs prior to the Special Master hearing. Claimant's attorneys have agreed to absorb the additional costs incurred for the hearing and going forward from the Claimant's attorney's fees.
[12] *See* s. 768.28(8), F.S.

RECOMMENDATIONS:

Recommended Amendments
Lines 140–144 of the claim bill should be amended to reflect the allocation of the award between J.R. and Darline Angervil, with the funds going to J.R. directly paid to the Special Needs Trust created for her benefit.

Recommendation on the Merits
The greater weight of the evidence in this matter demonstrates that the negligence of the District's employee was the legal proximate cause of the injuries and damages suffered by J.R. and her mother, Darline Angervil. The damage award agreed upon by the parties is well within the actual damages suffered by J.R. and Ms. Angervil.

Accordingly, I recommend that SB 28 be reported FAVORABLY, with recommended amendments, in the amount $6.1 million, with the portion of funds allocated for the benefit of J.R. being paid into a Special Needs trust established for J.R.

Respectfully submitted,

Tom Thomas
Senate Special Master

cc: Secretary of the Senate

By Senator Martin

33-00147-25 202528__

A bill to be entitled

An act for the relief of Darline Angervil and J.R., a minor, by the South Broward Hospital District; providing an appropriation to compensate Darline Angervil, individually and as parent and natural legal guardian of J.R., for injuries and damages sustained as a result of negligence of the South Broward Hospital District; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on the afternoon of January 14, 2014, Darline Angervil, then known as Darline Rocher, was admitted to Memorial Hospital West, operated by the South Broward Hospital District, when she was 30.3 weeks pregnant, with complaints of decreased fetal movement, pregnancy-induced hypertension, and headaches, and

WHEREAS, due to Ms. Angervil's presenting conditions and complaints, Dr. Emil Abdalla, Ms. Angervil's obstetrician, ordered continuous monitoring of the fetal heart rate and rhythm and entered an order that Ms. Angervil's vital signs be taken at least every 2 hours, and

WHEREAS, Ms. Angervil's vital sign flowsheets showed elevated blood pressure levels throughout the afternoon and evening hours of January 14, including a systolic blood pressure of 160 mm Hg or higher on at least two occasions at least 4 hours apart while resting in bed, indicating preeclampsia with severe features, and

WHEREAS, the only way to treat preeclampsia is to deliver

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the baby, and, therefore, the patient and baby must be monitored regularly until it is safe and prudent to deliver, and

WHEREAS, at 2 a.m. on January 15, due to the diagnosis of preeclampsia, magnesium sulfate was ordered for neuro protection, which also secondarily stabilized Ms. Angervil's blood pressure, and

WHEREAS, Ms. Angervil's medical records for January 15 include complaints of headache and the results from a 24-hour urine protein analysis showing 743 mg, both of which are consistent with preeclampsia, and

WHEREAS, at 9:34 a.m. on January 16, an order was entered to discontinue the magnesium sulfate, and shortly thereafter Ms. Angervil's blood pressure began to rise, and

WHEREAS, Ms. Angervil continued to complain of headache during the day shift on January 16, including a 4:01 p.m. complaint of a headache that she rated 7 out of 10 on the severity scale, and at 5:30 p.m., Ms. Angervil's vital sign flowsheets began to show abnormal blood pressure readings, and

WHEREAS, at 7 p.m. on January 16, Ms. Melanie Wells, a nurse employed by the South Broward Hospital District in the Labor and Delivery Department at Memorial Hospital West, began her shift and was assigned to Ms. Angervil, who continued to complain of headache, and

WHEREAS, at approximately 8:25 p.m. on January 16, as Ms. Angervil continued to complain of headache at shift change, maintained consecutive abnormal blood pressure readings, and had an electronic fetal monitoring strip showing a prolonged deceleration some 9 minutes earlier, Ms. Wells contacted Dr. Abdalla to request an order to remove the continuous electronic

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

fetal monitor, and

WHEREAS, at 8:27 p.m., Dr. Abdalla entered the order to remove the continuous electronic fetal monitor, and Ms. Angervil continued to have consecutive abnormal blood pressure readings at 8:29, 9:07, 9:24, and 10:33 p.m.; however, Ms. Wells did not replace the electronic fetal monitor on Ms. Angervil, and

WHEREAS, shortly before 2:24 a.m. on January 17, Ms. Angervil contacted her nurse, complaining of headache, chest pain, and difficulty breathing, at which time Ms. Wells initiated oxygen and checked Ms. Angervil's vital signs, and

WHEREAS, at 2:26 a.m., Ms. Angervil's blood pressure reading was dangerously high, a second blood pressure reading at 2:28 a.m. confirmed a hypertensive crisis, and additional consecutive extremely high blood pressure readings were recorded at 2:32, 2:37, and 2:40 a.m., and

WHEREAS, at 2:43 a.m., 17 minutes after the initial spike in blood pressure, and with no record of performance of any fetal assessment, Ms. Wells contacted Dr. Abdalla, and at 2:50 a.m., Dr. Abdalla ordered the administration of hydralazine to lower Ms. Angervil's blood pressure, at which time Ms. Wells attempted to find fetal heart tones but was unable to do so, and

WHEREAS, due to the difficulty in finding fetal heart tones, at 2:54 a.m., the nurse manager contacted another OB/GYN who was working on the floor to assist in detecting fetal heart tones with an ultrasound machine, and at 2:56 a.m., critically low heart tones were visualized, resulting in the need for an emergency cesarean section, and

WHEREAS, at 2:59 a.m., Ms. Wells contacted Dr. Abdalla to address the difficulty in finding fetal heart tones, at which

time Dr. Abdalla advised he was on his way to the hospital to perform an emergency cesarean section, and medical records reflect that the cesarean section began at 3:05 a.m., with delivery at 3:17 a.m. by Dr. Abdalla, and

WHEREAS, the delivery note completed by Ms. Wells documented delivery at 3:17 a.m. of a 2 pound, 5.2 ounce female, J.R., with an Apgar score of 0-1-3, who at delivery was noted to be flaccid, cyanotic, apneic, and asystolic, essentially lifeless, and

WHEREAS, neonatal resuscitation was led by ARNP Donna Durham, a blue alert code was called at 3:19 a.m., and Ms. Durham initiated chest compressions with bag mask ventilation, and

WHEREAS, J.R.'s birth record, resuscitation, and subsequent course of NICU treatment are entirely consistent with a hypoxic injury around the time of delivery, and her medical records are replete with discussions of her "birth-related hypoxia," and

WHEREAS, J.R.'s treating physicians provided assessment notes describing the profound nature of J.R.'s catastrophic injuries and constant needs, including mixed quadriparetic cerebral palsy related to hypoxic ischemic encephalopathy, global profound developmental delay, periventricular leukomalacia, constipation, dysphagia, failure to thrive, gastrostomy tube placement, seizure disorder, esophagitis, dystonia and dyskinesias, and impairment of mobility and impairment of communication/cognition, resulting in her need for nursing care 24 hours a day, and

WHEREAS, on March 7, 2016, Ms. Angervil, individually and as parent and natural guardian of J.R., a minor, filed a legal

action in the Circuit Court for the 17th Judicial Circuit, in and for Broward County, under case number 2016-CA-4209, against the South Broward Hospital District, Dr. Abdalla and his employer, and neonatologist Dr. Vicki Johnson and her ARNP and their employer, alleging, in part, negligence of the district in failing to meet the standard of care for the monitoring, the evaluation of both Ms. Angervil and J.R., and the timely notification of medical specialists regarding the change in Ms. Angervil's medical condition, and

WHEREAS, Ms. Angervil and the South Broward Hospital District agreed to a consent judgment entered into on or about October 19, 2023, for $6.4 million, in which the district agreed to pay Ms. Angervil $300,000 pursuant to the statutory limit imposed under s. 768.28, Florida Statutes, leaving a balance of $6.1 million, and

WHEREAS, the South Broward Hospital District has agreed to support this claim bill for the remaining $6.1 million, NOW, THEREFORE,

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

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

Section 2. The South Broward Hospital District is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $6.1 million payable to Darline Angervil as compensation for injuries and damages sustained.

Section 3. The amount paid by the South Broward Hospital

District pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Darline Angervil, individually and as parent and natural legal guardian of J.R. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Pre-meeting
	CA	
	RU	

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30** – Senator Martin
HB 6533 – Representative LaMarca
Relief of Estate of M.N. by the Broward County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2,498,258.50 PAYABLE BY THE BROWARD SHERIFF'S OFFICE TO THE ESTATE OF M.N. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A JURY AWARD AND ASSOCIATED AWARDED COSTS THAT AROSE FROM A LAWSUIT ALLEGING THAT THE NEGLIGENCE OF THE BROWARD SHERIFF'S OFFICE, ITS EMPLOYEES, AND OTHER DEFENDANTS RESULTED IN THE DEATH OF M.N.

FINDINGS OF FACT:

M.N. was the daughter of Keshia Walsh and Christopher Nevarez. She was born on April 20, 2016[1] and died on October 28, 2016.[2] Ms. Walsh and Mr. Nevarez are also parents to D.N., born February 2, 2012.[3]

From approximately January to September 14, 2016, Ms. Walsh lived in the home of Ann McClain, Mr. Nevarez's mother. D.N., and, after her birth, M.N., also lived with Ms.

[1] Claimant's Exhibit 49, M.N. Birth Certificate.
[2] Claimant's Exhibit 32, M.N. Death Certificate.
[3] Claimant's Exhibit 1 at 1, Intake Report.

McClain during this timeframe.[4] Mr. Nevarez lived separately at his girlfriend's house.

Mr. Nevarez and Ms. Walsh split care for M.N. while the other worked. Generally, Mr. Nevarez cared for M.N. at Ms. McClain's home on certain days, and Ms. Walsh cared for M.N. on other days. If one could not provide care for M.N. on their assigned day, it fell to that person to find alternate care.[5]

On August 19, 2016, Ms. Walsh brought M.N. to Broward Health hospital. She reported that M.N. had fallen from a couch at Juan Santos' dwelling and received a black eye. The hospital x-rayed M.N., and did not find any fractures.

Mr. Nevarez and Ms. Walsh brought M.N. to a follow up medical appointment at Personal Care Pediatrics pursuant to follow up care instructions from Broward Health hospital.[6] At that visit, Mr. Nevarez questioned the doctor whether it was likely that M.N. had borne her injuries as the result of a fall, and the doctor responded that it was possible.

On September 14, 2016, Ms. Walsh and Mr. Nevarez had a conflict. Ms. Walsh, abruptly moved herself, D.N., and M.N. out of Ms. McClain's home and into the home of Ms. Walsh's co-worker, Juan Santos, and his daughter K.S.

Mr. Nevarez did not attempt to contact Ms. Walsh for approximately 2 weeks after the confrontation in order to "let her cool off." He further testified that this sort of behavior had happened before, and that he expected Ms. Walsh to return to Ms. McClain's home eventually. Ms. McClain maintained intermittent contact via text messages with Ms. Walsh, but could not discover where Ms. Walsh and the children (D.N. and M.N.) were living.

Mr. Nevarez and Ms. McClain both testified that they thereafter attempted to see M.N. and D.N. by:[7]

[4] Claimant Exhibit 87 at 159-161, Christopher Nevarez Testimony at TPR Hearing.
[5] Claimant Exhibit 87 at 159, Christopher Nevarez Testimony at TPR Hearing.
[6] Mr. Nevarez Claim Bill 30 hearing testimony. *See also*, Claimant Exhibit 56 at 6, Personal Care Pediatrics File for M.N.
[7] Mr. Nevarez, Claim Bill 30 hearing testimony.

- Texting Ms. Walsh at the number previously used to contact her, although it is unclear whether the messages went through to Ms. Walsh's phone;[8]
- Asking for Ms. Walsh at her place of employment;
- Attempting to visit D.N. at his school;
- Having Ms. McClain and other friends attempt to follow Ms. Walsh's car home from her place of employment.

Some of Mr. Nevarez's text messages did inquire when he would next see his children. Other text messages were profane and threatening to Ms. Walsh.[9]

October 13, 2016 Medical Diagnosis and Treatment

On October 13, 2016, Ms. Walsh brought M.N. to Northwest Medical Center with complaints of a fever and leg pain. M.N. was admitted as a patient of Dr. Font in the ER at 3:23 pm.[10] When questioned about the possible cause of M.N.'s leg pain, Ms. Walsh reported that there was no recent trauma and could not provide an explanation.[11]

Between 3:45 and 5:00 p.m., M.N. was x-rayed and diagnosed with subacute fractures in her left proximal tibia and fibula.[12]

Dr. Font then initiated a call to the child abuse hotline to report M.N.'s injuries as the result of suspected abuse.[13] At 5:45 pm, the treating nurse entered into M.N.'s chart that the first DCF notification had been made.[14]

Dr. Font then disclosed the diagnosed fractures to Ms. Walsh; at this time, Ms. Walsh reported that M.N. "had a fall from a couch about 2 months ago. She was seen at North Broward Hospital and had a CAT scan off the brain and some other x-rays."[15] Dr. Font noted that her continued conversations with Ms. Walsh about the source of the injury were not satisfactory,

[8] Mr. Nevarez testifies that he believes his phone number had been blocked by Ms. Walsh, and therefore she did not receive his messages. See also, Claimant Exhibit 87 at 171 and 192, Christopher Nevarez Testimony at TPR Hearing.
[9] Claimant Exhibit 30, Text Messages between Chris Nevarez and Keshia Walsh.
[10] Claimant Exhibit 55 at 1, *Northwest Medical Center Coding Summary for M.N.'s Oct. 13, 2016 visit*.
[11] Claimant Exhibit 68 at 33-36, Deposition of Dr. Font (May 16, 2022); and Claimant Exhibit 55 at 1, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit* ("Mom denied any recent trauma.")
[12] Claimant Exhibit 55 at 6-7, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.
[13] Claimant Exhibit 68 at 24-35, Deposition of Dr. Font (May 16, 2022).
[14] Claimant Exhibit 55 at 7, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.
[15] Claimant Exhibit 55 at 7, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.

and that Ms. Walsh "couldn't give [us] really good information […] I felt like mom the whole time was trying to say something happened at the baby-sitter."[16]

Dr. Font reviewed M.N.'s records from her August North Broward Hospital visit and noted an x-ray was completed at that time, and no fractures were found.[17] She further noted that the August hospital chart had noted "facial contusion/bruising."[18]

At approximately 5:00 p.m., Dr. Font contacted M.N.'s pediatric office to discuss M.N.'s medical history.

At 5:20 p.m., Dr. Font consulted with an orthopedic specialist, Mark Fortney. He stated that he did not feel that the October 13th tibia fracture was related to the fall from the couch 2 months ago. Mr. Fortney stated that he suspected M.N.'s fractures to be about 3-4 weeks old, and "could be nonaccidental" and recommended reporting the injury.[19]

At 5:45 p.m., Dr. Matthew Buckler conducted a bone osseus survey of M.N.'s x-rays. Dr. Buckler telephonically disclosed his findings of a "partially healed left proximal tibial and fibular metaphyseal fracture with periostitis" and "additional distal left radial metaphyseal fracture" to Dr. Font at approximately 6:02 pm.[20]

Dr. Font's shift ended at 7:00 p.m.; she waited an additional hour to attempt to meet with the DCF investigator but left Northwest Medical Center at 8:00 p.m. Dr. Font testifies that no child protective investigator contacted her about M.N. at any point.[21]

At 9:25 p.m., the treating nurse noted in M.N.'s medical file that a status update call was made to DCF.[22] It was subsequently determined (at 10:13 p.m.) that the "hot line

[16] Claimant Exhibit 68 at 39-40, Deposition of Dr. Font (May 16, 2022).
[17] Claimant Exhibit 55 at 9, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.
[18] *Id*. at 8.
[19] *Id*. at 8-9.
[20] Claimant Exhibit 11, Northwest Medical Center Diagnostic Imaging Reports (October 13, 20216).
[21] Claimant Exhibit 68 at 64, 69-70, Deposition of Dr. Font (May 16, 2022).
[22] Claimant Exhibit 55 at 4, *Northwest Medical Center EDM Live Emergency Patient Record for M.N*.(Oct. 13, 2016).

keyed it in wrong earlier, and the investigator would arrive at the hospital to initiate the investigation in about three hours.

October 13, 2016 Investigation by BSO

At about 10:15 p.m., BSO dispatched child protective investigator (CPI) Henry to Northwest Medical Center to investigate Dr. Font's report. CPI Henry's handwritten notes detail her next investigative step as a face-to-face with M.N. and Ms. Walsh at 10:54 p.m.. CPI Henry's chronological notes, entered at a computer the next afternoon, detail an intervening contact with the reporter—however, this is disputed by Dr. Font's testimony, which states that she never spoke to a CPI about M.N.

CPI Henry conducted a "face-to-face" meeting with M.N. and Ms. Walsh at 10:54 pm. During her meeting with Ms. Walsh, CPI Henry learned that:

- M.N. had been taken to North Broward Hospital in August of 2016 as a result of a fall from the couch.
- Ms. Walsh brought M.N. to the hospital on this day as a result of a fever and stiff legs.
- Ms. Walsh used several babysitters to care for M.N., including a friend named Valerie and a "Portuguese lady." Ms. Walsh provided CPI Henry with a business card that provided a phone number and that advertised "babysitting services", but did not provide a business or personal name for the "Portuguese lady."
- Ms. Walsh lived with a roommate, Juan Santos.[23]

CPI Henry next met with nurse Margaret Vincent at 11:05 p.m.[24] This implies that the face-to-face meeting with Ms. Walsh and M.N. lasted no more than 10 minutes.

CPI Henry's notes of her investigation noted M.N.'s three diagnosed fractures, her own observations of a mark under M.N.'s eye,[25] and of discoloration on M.N.'s left wrist.[26]

M.N. was discharged from Northwest Medical Center at 11:38 p.m.[27]

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[23] Claimant Exhibit 3, CPI Henry Handwritten Case Notes for Case 2016-287154.
[24] *Id*.
[25] Toniele Henry Deposition, p. 103, line 15-21, stating that, "It wasn't a black eye […] It was just like a faint little puffy thing under her eye."
[26] Claimant Exhibit 2 at 5, Child Protective Investigation Chronological Record of CPI Henry on 10/13/2016.
[27] Claimant Exhibit 12, Northwest Medical Center Discharge Summary (Oct. 13, 2016).

Immediately after M.N.'s discharge from Northwest Medical Center, CPI Henry visited Ms. Walsh at Mr. Santos' home. She was met there by the Broward County Sheriff's Office Law Enforcement.

Law enforcement reported in their investigation report that M.N. had "swelling and discoloration to her left eye [which] appeared to be an injury that was sustained recently." Additionally, law enforcement asked Ms. Walsh how M.N.'s fractures were sustained, to which she responded that she had no idea, but that she wouldn't be bringing her to the babysitter who she had been using any more.[28]

CPI Henry conducted a Child Present Danger Assessment on October 13. The report found that there was no present danger threat to M.N., and that "*[t]he mother took the victim to Northwest medical center because the child was exhibiting some stiffness in her leg and she has a fever. The fever could be from the child teething. There was a[n] x-ray completed in which revealed the injuries occurred about two to three weeks ago. The mother advises the victim child fell off the couch in August and was seen at North Broward hospital. The mother advised the child goes to private babysitter when she goes to work. The mother has completed a follow up appointment with the pediatrician. CPT was contacted.*"[29]

Of relevant note, CPI Henry's Present Danger Assessment indicated "No" to the question presented: "Child has a serious illness or injury (indicative of child abuse) that is unexplained, or the Parent/Legal Guardian/Caregiver explanations are inconsistent with the illness or injury."

While still at Mr. Santos' home, CPI Henry developed an impending safety plan that Ms. Walsh signed. The safety plan required that Ms. Walsh would: not leave the child on the couch or bed, and would place M.N. in the pack and play when she falls asleep; enroll M.N. in a licensed daycare; not leave the children in the care of the babysitter or home where the

[28] Claimant Exhibit 40, *BSO Investigative File for Case 2016-287154*.
[29] Claimant Exhibit 6, *Florida Safety Decision Making Methodology Child Present Danger Assessment, FSFN Case ID 101483774* (Oct. 14, 2016).

incident occurred; notify CPI of the identity of who will be providing care to the children while she [Ms. Walsh] works.[30]

CPI Henry took the following actions in furtherance of the abuse investigation regarding M.N.:[31]

- Called the Child Protective Team to refer M.N.'s case on October 14, 2016. She was told that they would conduct a review of M.N.'s medical files.[32]
- Received and uploaded M.N.'s medical files from Northwest Medical Center on October 15, 2016. CPI Henry does not remember reviewing these files.
- Attempted to call the 'Portuguese Babysitter' once on October 17, 2016. No contact was made, however.

CPI Henry did not attempt to contact Juan Santos, nor refer him to the BSO Analytical team for a background and related issues check.

CPI Henry did not attempt to contact Mr. Nevarez at any point from October 15 to October 24, 2016.

CPI Henry's investigation was subject to a supervisory review on October 18, 2016, wherein supervisor Bossous recommended that CPI Henry obtain medical file from M.N.'s August hospital visit, obtain collateral contact from neighbors, interview the [Portuguese] babysitters, and offer daycare services.[33] CPI Henry's chronological case notes do not reflect any activity on M.N.'s investigation after receipt of these recommendations.

October 24th, 2016 Injuries

On October 24, 2016, M.N. was brought to North Broward Medical Center in an unresponsive state and transferred via air ambulance to Broward General Medical Center. It was later determined that Juan Santos had beaten M.N. and caused significant injuries to her skull.

On October 28, 2016, M.N. died as a result of her injuries.[34]

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[30] Claimant Exhibit 7, *Child Safety Plan* (October 14, 2016). Notably, Ms. Walsh placed M.N. in the care of babysitters beginning on October 15th, 2 days after signing the safety plan, and failed to communicate this to the CPI. See Claimant Exhibit 41, *Walsh Babysitting Timeline* (Oct. 27, 2016).
[31] Claimant Exhibit 2, *T. Henry Chronological Notes for M.N.'s abuse investigation* (Oct. 13-Oct. 24, 2016).
[32] Claimant Exhibit 53 at 1, Broward *County Child Protection Team Final Case Summary Report* (Dec. 13, 2016).
[33] Claimant Exhibit 25, *Supervisor Consultation* (Oct. 18, 2016).
[34] Claimant Exhibit 32, *M.N. Death Certificate* (Oct. 28, 2016).

On October 24, 2016, BSO placed D.N. in the care of Christopher Nevarez and implemented a safety plan preventing Ms. Walsh from having contact with D.N. Ms. Walsh's parental rights to D.N. were terminated on June 20, 2018.

LITIGATION HISTORY:

A jury trial was conducted in August 2023, wherein the claimant alleged that BSO negligently failed to protect M.N. from abuse, thereby causing her death.[35] On August 16, 2023, the jury rendered a verdict in favor of the estate of M.N., with 36.6 percent of the fault apportioned to Christopher Nevarez, 2.7 percent of the fault apportioned to Ann McClain, and 58 percent of the fault apportioned to the BSO.[36] An additional cost judgment of $88,258.50 was entered on July 16, 2024. The claimants executed two settlement agreements before the matter went to trial—the first with M.N.'s pediatricians for the payment of $100,000, and the second with Broward County for $90,000 payment made to the estate of M.N.

CONCLUSIONS OF LAW:

The claim bill hearing held on February 3, 2025, was a *de novo* proceeding to determine whether BSO is liable in negligence for damages suffered by the claimant's estate, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by jury verdicts when considering a claim bill, the passage of which would be an act of legislative grace.

In this matter, the claimant alleges negligence on behalf of an employee of the BSO. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.[37]

Negligence

Negligence is "the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances;"[38] and "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces

35 *Ann McClain v. Sheriff of Broward County*, CACE 18-025385(02) (Fla. 17th Cir. Ct. 2025).

36 Claimant's Exhibit 94, *Ann McClain v. Sheriff of Broward County*, CACE 18-025385(02) (Fla. 17th Cir. Ct. 2025).

37 *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

38 Florida Civil Jury Instructions 401.4 – Negligence.

or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[39]

In a negligence action, "a plaintiff must establish the four elements of duty, breach, proximate causation, and damages."[40]

BSO's Duty of Care

Whether a duty of care exists is a question of law.[41] Statute, case law, and agency policy describe the duty of care owed by a CPI during the course of an investigation of abuse. At the time of its involvement with M.N., the BSO was the contracted provider of child protective investigations for Broward County.[42] The BSO has a duty to reasonably investigate complaints of child abuse and neglect.[43]

However, where the "express intention of the legislature is to protect a class of individuals from a particularized harm, the governmental entity entrusted with the protection owes a duty to individuals within the class."[44] It has been found that "HRS is not a mere police agency and its relationship with an abused child is far more than that of a police agency to the victim of a crime … the primary duty of HRS is to immediately prevent any further harm to the child…[.]"[45]

Broward County, separately, was the contracted authority to perform child protective team services in Broward County, including completing medical examinations, nursing assessments, specialized and forensic interviews, providing expertise in evaluating alleged maltreatments of child abuse and neglect.

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[39] Florida Civil Jury Instructions 401.12(a) – Legal Cause, Generally.
[40] *Limones v. School Dist. of Lee County*, 161 So. 3d 384, 389 (Fla. 2015).
[41] *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).
[42] Section 39.3065, F.S.
[43] *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 498 So. 2d 441, 442-43 (Fla. 3d DCA 1986) (stating that the Dept. of Health and Rehabilitative Services, a precursor to the Dept. of Children and Families, has a statutory duty of care to prevent further harm to children when reports of child abuse are received); *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431 (Fla. 4th DCA 2006).
[44] *Id.* (noting that the child was a member of the class protected under a specific statute and the [Department of Health and Rehabilitative Services] owed a statutory duty to protect him from abuse and neglect).
[45] *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 529 So. 2d 258, at 261 (Fla. 1988).

BSO's Policies and Procedures Regarding Investigation

The BSO is required to commence an investigation immediately if it appears that the immediate safety or well-being of a child is endangered, […] or that the facts otherwise so warrant.[46]

BSO Must Interview and Contact Relevant Individuals

If an abuse investigation is initiated at a hospital emergency room, the CPI must consult with the attending physician to determine whether the injury is the result of maltreatment. If the physician who examined the child is not associated with Child Protective Team (CPT), the investigator must immediately contact the local CPT office to share the examining physician's impressions and contact information with a case coordinator. CPT will determine whether or not to respond on-site to conduct additional medical evaluation of the child and/or determine the need for follow-up CPT services.[47]

The BSO is separately required to contact a CPT in person or by phone to discuss all reports of fractures in a child of any age.

During an investigation, BSO's assessment of the safety and perceived needs for the child and family "must include a face-to-face interview with the child, other siblings, parents, and *other adults in the household* and an onsite assessment of the child's residence."[48]

The BSO must review prior criminal history of parents and caretakers. If a CPI discovers the presence of an additional adult household member who was not screened by the Florida Abuse Hotline at the time of an initial report, then the CPI must, within 24 hours of such discovery, request:

- An abuse history from the Hotline. The Hotline must endeavor to produce this history within 24 hours of the CPI's request; and
- A criminal records check, including all call-out history, from the local criminal agency. The criminal record check must be initiated within 24 hours of the individual's identity and

[46] Section 39.201(5), F.S. (2016).
[47] Claimant Exhibit 4, *CFOP 170-5, 9-8, Child Protective Team Consultations* (April 4, 2016). Claimant Exhibit 65, Deposition of Chantale Bossous at 96-97.
[48] Section 39.301(7), F.S.. *Emphasis added*.

presence in the home becoming known to the investigator.[49]

CPI must attempt to contact the non-offending parent, and if unsuccessful, must make daily attempts thereafter.[50]

Present and Impending Danger Assessments
The BSO must conduct a present danger assessment during its investigation of reported maltreatment. A discovered bone fracture is considered maltreatment pursuant to DCF/BSO policy, but "accidental bone fractures that are not alleged to be inflicted or the result of inadequate supervision do not constitute "Bone Fracture" as maltreatment."[51]

Present danger which occurs during ongoing services may involve the parent or legal guardian in an in-home case, a relative or non-relative caregiver. The CPI should find a threatening family condition where there is a serious injury to an infant with no plausible explanation, and/or the perpetrator is unknown.[52]

In conducting the maltreatment index assessment, the CPI must verify his or her findings to establish by a preponderance of credible evidence that the broken bone was or was not the result of a willful act by a parent or caregiver. Such evidence can be documented through:[53]

- Interview of the Parents/Legal Guardians/Alleged Perpetrator
- Interview of Household Members/Witnesses/Collaterals (which include nonmaltreating parent)
- Analysis of reports and interviews from law enforcement.
- Assessment of the CPT.
- Obtaining and analyzing any medical reports to assess for prior injuries, location of the fracture, the number of fractures and the aging of fractures.

The CPI is required to conduct a separate Focus of Family Assessment of each family that reside together and share

[49] Rule 65C-29.003, Florida Administrative Code (June 5, 2016). Rule 65C-29.009, Florida Administrative Code (2014).
[50] Claimant Exhibit 65, Deposition of Chantale Bossous at 54-55.
[51] CFOP-4: Bone Fracture.
[52] CFOP 170-1, 2-2
[53] CFOP-4: Bone Fracture.

caregiving responsibilities, regardless of the household that is responsible for the maltreatment.[54]

BSO's Breach of Duty

Once a duty is found to exist, whether a defendant was negligent in fulfilling that duty is a question for the finder of fact.[55] A fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or child protective investigator in this instance, would have under the same or similar circumstances.[56]

The BSO failed to take the following steps, that a reasonable and prudent person would have:

- Contact CPT immediately (while at the hospital for M.N.'s investigation). Rather, CPI Henry contacted the CPT the next afternoon.
- Conduct a face-to-face interview with Mr. Santos, a known adult housemate. Additionally. CPI Henry did not seek to obtain Mr. Santos' abuse or criminal history.
- Contact or interview Mr. Nevarez.
- Interview any third-party witnesses, including Mr. Santos, any of the babysitters whose names Ms. Walsh provided, any of Ms. Walsh's friends or neighbors, or Ms. McClain.
- Speak directly with the reporting physician, Dr. Font. In particular, the BSO CPI was required to provide her name and contact information to the professionally mandated reporter within 24 hours of being assigned to the investigation.[57]
- Review M.N.'s medical file.

It would have been prudent, and in fact was required by Departmental policy and regulation, for the CPI to follow-up on these steps to shed more light on the incident and gather more information about the unexplained injuries to M.N. Instead, CPI Henry appears to have accepted Ms. Walsh's explanation of the significant injuries that the "Portuguese babysitters" were the perpetrators of the injury without

[54] CFOP 170-1, 2-3(4). (May 2016).
[55] *Yamuni, 529 So. 2d* at 262.
[56] *Russel v. Jacksonville Gas Corp.*, 117 So. 2d 29, 32 (Fla 1st DCA 1960) (defining negligence as, "the doing of something that a reasonable and prudent person would not ordinarily have done under the same or similar circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").
[57] CFOP 170-5, Chapter 18-2, *Interviewing Collateral Contacts: Procedures*.

attempting to verify that finding through additional investigation.

Even though DCF has up to 60 days to complete an investigation,[58] the DCF failed to take precursory and required steps that an ordinary prudent CPI would have taken in this instance. For these reasons, I find that the DCF breached its duty of care.

Ms. Walsh contributed to this breach by failing to give Mr. Nevarez's contact information to CPI Henry. Additionally, Ms. Walsh contributed to this breach by failing to give a full accounting of who she left M.N. with for babysitting, specifically by failing to name Mr. Santos as one of M.N.'s caretakers.

Proximate Cause

In order to prove negligence, the claimant must show that the breach of duty caused the specific injury or damage to the plaintiff.[59] Proximate cause is generally concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."[60] To prove proximate cause, the plaintiff generally must submit evidence that "there is a natural, direct, and continuous sequence between BSO's negligence and [M.N.'s] death such that it can be reasonably said that but for BSO's negligence, the abuse to and death of [M.N.] would not have occurred."[61]

The undersigned finds that Ms. Walsh contributed to the BSO's negligent investigation of M.N.'s abuse by failing to be upfront with the CPI about (1) her children's relationship with their father; (2) her knowledge of Mr. Nevarez's contact information; and (3) her reliance on Mr. Santos for childcare. However, this misinformation could, and should have been overcome by adherence to the required investigative policies and procedures.

There is competent substantial evidence in the record to support a finding that BSO had a duty to reasonably investigate the complaint of child abuse. The BSO owed this

[58] Section 39.301(17), F.S. (2010).
[59] *Stahl v. Metro Dade Cnty.*, 438 So. 2d 14 (Fla. 3rd DCA 1983).
[60] *Amora*, 944 So. 2d at 431.
[61] *Id.*

duty to M.N. Specifically, BSO failed to appropriately identify the present danger to M.N. in home situation by failing to have a criminal background check run on Mr. Santos within 24 hours of the CPI's knowledge of his presence in M.N.'s household. If CPI Henry had , then the CPI would have been legally required to remove M.N. from Ms. Walsh and Mr. Santos' home, and Mr. Santos would not have had opportunity to inflict the injuries that ultimately caused M.N.'s death.

This failure foreseeably and substantially caused the injuries that resulted in M.N.'s death. The claimants presented evidence that there is a natural, direct, and continuous sequence between BSO's negligence and M.N.'s death such that it can reasonably be said that but for BSO's negligence, the injuries that resulted in M.N.'s death would not have occurred.

In the civil matter filed in the interest of M.N.'s estate, a jury found that BSO's inactions proximately caused M.N.'s death. "[T]he issue of proximate cause is generally a question of fact concerned with 'whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred.'"[62] In cases against the Department of Children and Families (DCF) having some similarities to this matter, the appellate court determined that "[t]he plaintiffs presented evidence that there is a natural, direct, and continuous sequence between DCF's negligence and [a child's] injuries such that it can be reasonably said that but for DCF's negligence, the abuse to [the child] would not have occurred."[63]

Damages

Finally, M.N.'s surviving parent suffered damages because of the BSO's negligence. Through the provision of personal testimony by Mr. Nevarez and Ms. McClain, supporting evidence and similar case law, claimants established that the jury verdict and final judgment of $2.61 million, and awarded costs of $88,258.50 for the Mr. Nevarez's mental pain and suffering,[64] as the father of M.N., is reasonable.

[62] *Amora*, 944 So. 2d at 431.
[63] *Id.*
[64] Section 768.21, F.S., authorizes damages for wrongful death.

The $ 2,498,258.50 jury award and cost judgment awarding taxable costs in this matter is not excessive compared to jury verdicts in similar cases.

Sovereign Immunity
Although it appears that the BSO had insurance coverage at the time of the event, it is alleged by the BSO that their insurance coverage for this event has been denied, but no formal communication of the denial has been received from the insurance company. BSO has paid $110,000 of the jury award, which is being held in the claimant's trust account and has not been released to the claimants.

Broward County Payment
Broward County has paid its share, $90,000, of the $2.61 million jury award. The total $200,000 payment from the BSO and Broward County represent the sovereign immunity limit.

Settlement with Personal Care Pediatrics
The claimants settled their claim against the doctors of Personal Care Pediatrics through a confidential settlement made before the trial. During the special master hearing, claimant's counsel testified that the settlement was for $100,000, which is being held in the claimant's trust account and has not been released to the claimants.

Settlement with Keisha Walsh
At the hearing conducted, the undersigned asked claimant's attorneys to detail the legal issues relating to Ms. Walsh's right to a portion of M.N.'s estate. The claimant's attorneys represented that the probate matter was ongoing, but that they would provide their pleadings as evidence of their position in the matter. Claimant provided the pleadings on February 14, 2025. The undersigned subsequently discovered that claimant's attorneys had entered into a settlement with Ms. Walsh, and asked that claimant's attorneys provide a copy of the settlement and any related documents. Claimant's attorneys responded with a narrative detailing that the party had settled with Ms. Walsh in the probate matter to pay Ms. Walsh $30,000, but no copy of the settlement agreement.

ATTORNEY FEES: Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The claimant's attorneys have submitted an affidavit to limit attorney fees to 25 percent of the total amount awarded under the claim bill and lobbying fees to 5 percent of the total amount awarded under the claim bill.[65]

RECOMMENDATIONS: Based upon the foregoing, the undersigned recommends that SB 30 be reported FAVORABLY.

Respectfully submitted,

Jessie Harmsen
Senate Special Master

cc: Tracy Cantella, Secretary of the Senate

[65] Claimant Exhibit 97, Sworn Affidavit of Stacie Schmerling.

By Senator Martin

33-00136B-25 202530__

A bill to be entitled

An act for the relief of the Estate of M.N. by the Broward County Sheriff's Office; providing for an appropriation to compensate the estate for injuries sustained by M.N. and her subsequent death as a result of the negligence of the Broward County Sheriff's Office; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on October 13, 2016, 5-month-old M.N. was brought to Northwest Medical Center in Broward County with a fever and intermittent leg pain, and

WHEREAS, diagnostic imaging revealed that M.N. had multiple fractures in her upper and lower extremities which were in different stages of healing, some of which were estimated to be approximately 3 weeks old, including fractures to her left tibia, left fibula, and left radius, and

WHEREAS, the treating physician observed bruising around M.N.'s left eye and discoloration on M.N.'s left wrist and learned that, at 3 months of age, M.N. had sustained a black eye, allegedly from falling off a couch, which resulted in a visit to Broward Health, and

WHEREAS, the treating physician consulted with a pediatric orthopedic specialist who, upon reviewing M.N.'s diagnostic imaging, advised that the fractures did not appear to be accidental and recommended that M.N.'s injuries be reported to the Department of Children and Families' (DCF) Abuse Hotline, and

WHEREAS, on October 13, 2016, the treating physician sent,

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and DCF received, a report through DCF's Abuse Hotline describing M.N.'s injuries, which report was assigned to the Broward County Sheriff's Office (BSO) for investigation, as the BSO was the law enforcement agency charged with conducting child protective investigations in Broward County pursuant to s. 39.303, Florida Statutes, and

WHEREAS, that same day, upon receiving the abuse hotline report, a BSO child protective investigator (CPI) responded to Northwest Medical Center and observed the bruising around M.N.'s left eye and the discoloration on her left wrist and learned that, in addition to M.N.'s unexplained healing fractures, each of the aforementioned injuries occurred while M.N. was in the care or presence of her mother, K.W.; that the origins of the injuries were unexplained; and that K.W. had taken M.N. to different medical facilities to receive treatment for the child's injuries, and

WHEREAS, as the agency charged under s. 39.001, Florida Statutes, with conducting child protective investigations to ensure child safety and prevent further harm to children, the BSO owed M.N. a duty to ensure her safety and to protect her from further harm, and

WHEREAS, despite the CPI having actual knowledge that there was a pattern of unexplained injuries to M.N. while in K.W.'s care and that the child was in immediate need of a safety plan for her protection, the BSO allowed M.N. to be discharged from the hospital in the custody of K.W., and

WHEREAS, the BSO determined that M.N.'s father, C.N., was a nonoffending parent; however, K.W. had moved into the home of a male friend, Juan Santos, and, throughout September and October

2016, refused to respond to C.N.'s multiple requests to visit M.N., and

WHEREAS, the BSO failed to contact C.N., despite the fact that the BSO was required to do so to inform him of M.N.'s injuries and to discuss placement of the child, and

WHEREAS, the BSO failed to meet with Mr. Santos, to explore whether he was a caregiver to M.N., or to conduct a background check on him, and instead allowed M.N. to remain with K.W. and Mr. Santos, during which time M.N. was subject to further severe abuse, and

WHEREAS, on October 24, 2016, while the BSO's child protective investigation remained open, M.N., at only 6 months of age, sustained life-threatening injuries, including a parietal skull fracture, severe brain and spinal cord injury, and extensive retinal hemorrhages, due to shaking and impact, and

WHEREAS, on October 24, 2016, M.N. was transported to the hospital, where she was declared brain-dead and placed on life support, and she died from her injuries on October 28, 2016, after being removed from life support, and

WHEREAS, on October 24, 2016, an additional abuse hotline report was received regarding M.N., and the case was again assigned to the BSO for investigation, and

WHEREAS, the BSO closed its investigation of M.N.'s case on July 17, 2017, with verified findings of bone fractures, internal injuries, threatened harm, and death, and

WHEREAS, following a jury trial, a verdict was rendered on August 16, 2023, in the amount of $4.5 million in favor of M.N.'s father, C.N., for his pain and suffering as a result

M.N.'s wrongful death, with 58 percent of the jury award, totaling $2.61 million, apportioned to the BSO, and

WHEREAS, the BSO admitted its negligence during the trial following the testimony of its own CPI, her supervisor, and other BSO employees, and

WHEREAS, the jury found that, but for the BSO's negligence in failing to complete a thorough child protective investigation, ensure M.N.'s safety, and protect M.N. from further abuse and neglect, which was its primary duty, M.N. would not have died and C.N. would not have suffered damages arising out of the loss of his daughter, and

WHEREAS, $110,000 of the jury award was recovered from the BSO and $90,000 was recovered from Broward County, which total has exhausted the sovereign immunity limits set forth in s. 768.28, Florida Statutes, and

WHEREAS, the trial court entered a cost judgment awarding taxable costs in the amount of $88,258.50 to the Estate of M.N., to be paid by the BSO, and

WHEREAS, a total of $2,498,258.50, representing $2.41 million in excess of the sovereign immunity limits and $88,258.50 in costs awarded to the Estate of M.N., plus interest remains unpaid by the BSO, and

WHEREAS, the Estate of M.N. is responsible for payment of attorney fees and all remaining costs and expenses relating to this claim, subject to the limitations set forth in this act, and

WHEREAS, the claimant has been paid the statutory limit of $200,000 pursuant to s. 768.28, Florida Statutes, leaving a balance of $2.41 million plus taxable trial costs awarded in the

amount of $88,258.50 for a total claim of $2,498,258.50, plus interest, NOW, THEREFORE,

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

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

Section 2. The Broward County Sheriff's Office is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $2,498,258.50 payable to the Estate of M.N. as compensation for injuries and damages sustained.

Section 3. It is the intent of the Legislature that all government liens, including Medicaid liens, resulting from the treatment and care of M.N. for the occurrences described in this act be waived and paid by the state.

Section 4. The amount paid by the Broward County Sheriff's Office pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to the Estate of M.N. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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 Judiciary

BILL:	SB 72
INTRODUCER:	Senator Berman
SUBJECT:	Use of Campaign Funds for Child Care Expenses
DATE:	March 24, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Biehl	Roberts	EE	**Favorable**
2.	Collazo	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 72 changes the law to allow a candidate's campaign funds to be used for campaign-related child care expenses.

Generally, campaign funds may not be used to defray a candidate's living expenses. There is an exception to this general prohibition in state law, however, and the bill expands that exception. It allows a candidate's campaign funds to be used to pay for campaign-related child care expenses if the expense would not exist were it not for the candidate's campaign.

The bill also prescribes certain record retention and reporting requirements for a candidate who uses campaign funds to pay for child care expenses.

The bill takes effect July 1, 2025.

II. Present Situation:

Each candidate for public office must appoint a campaign treasurer and designate a campaign depository before he or she may accept a contribution or make an expenditure in furtherance of his or her candidacy.[1] Contributions must be deposited in, and expenditures disbursed from, a designated campaign account.

For purposes of this requirement, a "candidate" means a person who:

- Seeks to qualify for nomination or election by means of the petition process.
- Seeks to qualify for election as a write-in candidate.

[1] Section 106.021(1)(a), F.S.

- Receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office.
- Appoints a treasurer and designates a primary depository.
- Files qualification papers and subscribes to a candidate's oath as required by law.[2]

Additionally, for purposes of the requirement, a "contribution" means any of the following:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between electioneering communications organizations, or between any combination of these groups.
- The payment, by a person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes interest earned on such account or certificate.[3]

An "expenditure" for purposes of the requirement means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering contribution.[4]

State law prohibits a candidate or spouse of a candidate from using funds on deposit in a campaign account to defray normal living expenses for the candidate or the candidate's family, other than expenses actually incurred for transportation, meals, and lodging by the candidate or a family member during travel in the course of the campaign.[5] Generally, the question asked to determine if such expense is incurred in the course of the campaign is whether the expense would exist if the campaign did not.

In 2018, the Federal Election Commission released an advisory opinion allowing campaign funds to be used to pay for a federal candidate's child care expenses that are incurred as a direct result of campaign activities.[6] Since that opinion, 13 states have enacted their own laws allowing state and local candidates to use campaign funds for campaign-related childcare expenses.[7]

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[2] Section 106.011(3), F.S. The definition does not include any candidate for a political party executive committee. *Id.*
[3] Section 106.011(5), F.S.
[4] Section106.011(10)(a), F.S.
[5] Section 106.1405, F.S.
[6] *See* Federal Election Commission, *Advisory Opinion 2018-06* (May 10, 2018), available at https://www.fec.gov/files/legal/aos/2018-06/2018-06.pdf (concluding that a candidate could use campaign funds to pay for certain childcare expenses because such expenses would not exist irrespective of the candidacy).
[7] National Conference of State Legislatures, *Use of Campaign Funds for Child Care Expenses*, https://www.ncsl.org/elections-and-campaigns/use-of-campaign-funds-for-child-care-expenses (last visited Feb. 14, 2025). In addition, Minnesota has a similar law that preceded the 2018 federal opinion. *Id.*

III. Effect of Proposed Changes:

SB 72 provides the two following definitions:

- "Campaign-related child care expenses" means the costs associated with the care of a candidate's dependent child due to campaign activities, such as participating in campaign events, canvassing, participating in debates, and meeting with constituents or donors.
- "Eligible child care provider" means any individual or licensed organization.

Based upon these definitions, the bill allows a candidate to use campaign funds to pay for campaign-related child care expenses if the expense would not exist were it not for the candidate's campaign and the following conditions are met:

- The campaign funds are not used for child care expenses unrelated to campaign activities, such as personal errands or routine child care unrelated to campaigning.
- The candidate maintains and provides to the Division of Elections clear records of all child care expenses reimbursed by campaign funds, including dates, times, and descriptions of campaign events engaged in.

In addition, the candidate must:

- Maintain for auditing purposes receipts or invoices from the eligible child care provider, along with proof of payment, for at least 3 years after the campaign ends; and
- Disclose the use of campaign funds for child care in his or her regular campaign finance reports, specifying the amounts and dates of child care expenses.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Candidates for state and local office will be able to use campaign funds to pay for childcare expenses directly related to the campaign instead of having to use personal funds.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 106.1405 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Berman

26-00163B-25 202572__

A bill to be entitled

An act relating to use of campaign funds for child care expenses; amending s. 106.1405, F.S.; defining terms; authorizing a candidate to use funds on deposit in his or her campaign account to pay for child care expenses under specified conditions; requiring candidates to maintain specified records for a specified timeframe and provide such records to the Division of Elections; requiring candidates to disclose certain child care expenses in campaign finance reports; providing an effective date.

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

Section 1. Section 106.1405, Florida Statutes, is amended to read:

106.1405 Use of campaign funds.—

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

(a) "Campaign-related child care expenses" means the costs associated with the care of a candidate's dependent child due to campaign activities, such as participating in campaign events, canvassing, participating in debates, and meeting with constituents or donors.

(b) "Eligible child care provider" means any individual or licensed organization.

(2) A candidate or the spouse of a candidate may not use funds on deposit in a campaign account of such candidate to defray normal living expenses for the candidate or the candidate's family, other than expenses actually incurred for

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transportation, meals, and lodging by the candidate or a family member during travel in the course of the campaign.

(3) Notwithstanding subsection (2), a candidate may use funds on deposit in his or her campaign account to pay for campaign-related child care expenses if the expense would not exist were it not for the candidate's campaign and the following conditions are met:

(a) Campaign funds may not be used for child care expenses unrelated to campaign activities, such as personal errands or routine child care unrelated to campaigning.

(b) The candidate maintains and provides to the division clear records of all child care expenses reimbursed by campaign funds, including dates, times, and descriptions of campaign events engaged in.

1. Receipts or invoices from the eligible child care provider, along with proof of payment, must be maintained for auditing purposes for at least 3 years after the campaign ends.

2. A candidate shall disclose the use of campaign funds for child care in his or her regular campaign finance reports, specifying the amounts and dates of child care expenses.

Section 2. This act shall take effect July 1, 2025.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/35	JU	Pre-meeting
	CA	
	RC	

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 96** – Senator Bernard
HB 6521 – Representative Weinberger
Relief of Jacob Rodgers by the City of Gainesville

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $10,800,000.00. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A $11,000,000.00 JURY VERDICT REGARDING THE NEGLIGENCE OF THE CITY OF GAINESVILLE, WHICH RESULTED IN THE INJURY OF JACOB RODGERS.

FINDINGS OF FACT:

The Accident on October 7, 2015

On the evening of October 7, 2015, Jacob Rodgers was riding in a truck with his two friends, Hank Blackwell and Chantz Thomas. During the day, the trio worked as electrical helpers; during the evening, they were enrolled in Santa Fe Community College's training program to become certified electricians and attended night classes. On that particular evening, the three friends had carpooled from work to night school and were returning to retrieve their vehicles from work around 8 pm. The truck belonged to Mr. Blackwell, and Mr. Blackwell was driving. Mr. Thomas was in the passenger seat and Mr. Rodgers was in the back seat. Notably, Mr. Rodgers was not wearing his seatbelt.

Around the same time, William Stormant, a City of Gainesville[1] employee, was traveling home from work in his city-owned vehicle that was provided to him by his employer. Just before leaving, Mr. Stormant went to the on-site gym for the first time, and by the time he left, it was dark outside. On his way home, Mr. Stormant was going to drive by a substation[2] that he managed to check if the gate was closed. That particular site had a history of having construction materials stolen, so a gate was installed to curtail the thefts. Because it was so dark, Mr. Stormant could not see the gate from where he was driving, so he took a detour to drive close enough to see it. As he approached the gate, he saw it was locked and closed. Once he concluded his inspection, he turned around and left. While driving, Mr. Stormant took an interest in the LED lighting in the area[3] and ended up taking his focus off the road. Since he was not paying attention to his driving, he did not see the upcoming stop sign and he failed to stop.

Mr. Stormant was already in the middle of the intersection when he realized he missed the stop sign. Before he knew it, he collided with the truck being driven by Mr. Blackwell and caused it to flip. As a result, Mr. Rodgers was ejected from the vehicle. According to the accident report, the truck overturned an unknown number of times and landed upright on the grass shoulder.[4]

LITIGATION HISTORY:

A lawsuit was filed in February of 2016 with a claim of vicarious liability negligence on behalf of Jacob Rodgers against the City of Gainesville ("the City"). The Third Amended Complaint alleged that the City's employee, William Stormant—in the course and scope of his employment—negligently failed to obey a stop sign and caused his vehicle to collide with Hank Blackwell's truck, which led to Mr.

[1] Mr. Stormant works for the Gainesville Regional Utilities, which is under the City of Gainesville. *See* Day 1 part 2 (PM) Trial Testimony, 294.
[2] Mr. Stormant's working title was "Energy Measurement and Regulation Manager," which meant he was a "manager over the substation group, the relay group, the gas and electric metering group." *See* Day 1 part 2 (PM) Trial Testimony, 301.
[3] Mr. Stormant attended a meeting earlier in the day in which a participant discussed the new LED lights that were being installed, which is why he diverted his attention from the road to the lights. *Id.*
[4] *See* Crash Report Update 10-13-2015, 3.

Rodgers suffering "serious, life threatening and permanent physical and emotional injuries."

Pre-trial

The City argued that sovereign immunity barred Mr. Rodgers's claim because Mr. Stormant was not acting within the course and scope of his employment when he detoured to check the substation gate. It reasoned that Mr. Stormant was on his way home and had already concluded his workday, so he was not acting on behalf of his employer. The City filed a motion for summary judgment asserting this position and argued that it was not responsible for Mr. Stormant's negligent driving. In October of 2018, the trial court denied the City's motion, concluding that Mr. Stormant was acting within the course and scope of his duties at the time of the accident.[5,6]

Trial

Mr. Rodgers testified that, at the time of the accident, he was riding in the back seat of Mr. Blackwell's truck and was not wearing his seatbelt.[7] After he was ejected from the vehicle, he lost all memory from the moment of impact to when he awoke.[8] Upon regaining consciousness, he could no longer feel his lower body; it was completely and permanently paralyzed.[9] He also sustained a skull fracture; his ear was hanging off and had to be restitched to his head;[10] and his broken spine had to be stabilized with the surgical installation of a bar.[11] As a result of the accident, Mr. Rodgers was bound to a wheelchair.

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[5] *See* Order Denying COG's Motion for Final Summary Judgment, 2-3. The trial court acknowledged the City's assertion of the "going and coming rule" set forth in section 440.092 of the Florida Statutes. However, the court also applied the dual-purpose doctrine, an exception to that rule which allows for waiver of sovereign immunity when the employee's travel is serving a dual purpose, one of which being business in nature. In this case, Mr. Stormant was serving a business purpose when he detoured to check the substation and a personal purpose when he was returning to his drive home, so the trial court concluded that he was acting within the course and scope of his work duties.

[6] The City appealed the trial court's decision to the First District Court of Appeal. That court per curiam affirmed the trial court's decision.

[7] *See* Trial Transcript Day 2 PM Session, 181.

[8] *See Id.*

[9] *See* Trial Transcript Day 2 PM Session, 185.

[10] *See Id.*

[11] *See* Trial Transcript Day 2 PM Session, 187.

Mr. Rodgers also testified that he had to relearn how to do basic tasks, such as going to the bathroom; getting himself from a chair to a toilet seat; wheeling himself around for movement; getting dressed; and putting on shoes.[12] Mr. Rodgers also testified that he has to use a catheter to urinate because he cannot urinate normally.[13] This makes him susceptible to urinary tract infections, which requires medical treatment.[14] In order to perform a bowel movement, Mr. Rodgers explained that because he has no sensation in his lower body, he has to manually dig his waste out of his body.[15] Additionally, Mr. Rodgers testified that, because of the paralysis, the change in his circulation has made him susceptible to blood clots.[16] In order to prevent these, he has to physically massage his legs to push blood through his veins, keep his legs propped up, and constantly check them for heat or red spots; if he does not, any undetected blood clot could prove fatal.[17]

Mr. Rodgers testified that he was attending school to become an electrician, but he can no longer do that job because of his disability.[18]

William Stormant, the employee of the City, testified that he was on his way home from work when he detoured to check if a substation gate was locked, as he could not see it from the road because it was too dark.[19] After he confirmed the gate was closed, he resumed his drive home from his detour. Shortly after he resumed his drive, he noticed the new LED lights, which caught his attention and distracted him from the road.[20] Before he knew it, he had run a stop sign and entered the middle of an intersection.[21] He testified that he impacted the truck that Mr. Rodgers was a passenger in.[22]

The City presented the testimony of an accident reconstruction expert, who testified that, had Mr. Blackwell

[12] *See* Trial Transcript Day 2 PM Session, 188.
[13] *See* Trial Transcript Day 2 PM Session, 193.
[14] *See* Trial Transcript Day 2 PM Session, 198.
[15] *See* Trial Transcript Day 2 PM Session, 200-201.
[16] *See* Trial Transcript Day 2 PM Session, 213.
[17] *Id.*
[18] *See* Trial Transcript Day 2 PM Session, 171.
[19] *See* Day 1 part 2 (PM) Trial Testimony, 297.
[20] *See* Day 1 part 2 (PM) Trial Testimony, 301.
[21] *Id.*
[22] *Id.*

been going the speed limit, the accident would not have occurred.[23] He presented a simulation that he relied on to come to this conclusion.[24]

The City also presented the testimony of a biomechanics expert, who testified that, had Mr. Rodgers been wearing his seatbelt, he would not have been ejected from the truck and would have sustained only light injuries.[25]

The City maintained its position that sovereign immunity barred Mr. Rodgers's claim and argued that the amount he was asking for should be reduced by the fact that Mr. Rodgers was not wearing his seatbelt and that Mr. Blackwell was going approximately 10 mph in excess of the speed limit at the time of the accident.[26]

The jury deliberated and entered a verdict in favor of Mr. Rodgers. The jury found that Mr. Stormant was "a legal cause of loss, injury, or damage to" Mr. Rodgers.[27] Due to confusion with the jury instructions,[28] the jury awarded Mr. Rodgers $120,000,000.00.

The City filed two post-trial motions in response to this verdict: a motion for new trial and alternative motion for remittitur, and a motion to set aside the verdict. The trial court denied both, but granted the motion for remittitur, reducing Mr. Rodgers's overall award to $18,319,181.20. Both parties appealed the final judgment. The appellate court affirmed the issue of damages and expressly rejected the City's argument that Mr. Stormant was not acting in the course and scope of his employment at the time of the accident but remanded the case to the trial court to conduct a new trial on the jury instruction issue and the allocation of fault.[29]

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[23] Trial Transcript – Day 4 AM Session, 12 (39).
[24] *Id.*
[25] Trial Transcript – Day 4 AM Session, 22 (78).
[26] Mr. Blackwell estimated that he was going 50 miles an hour at the time of the accident. However, the computer in his car showed he was going nine or ten miles an hour over the 45-mph speed limit. *See* Trial Transcript – Day 2 AM Session, 42.
[27] *See* 2021-05-06 - Verdict.
[28] The jury determined that Mr. Rodgers was not a legal cause of his injuries because not wearing a seatbelt in the back seat is not a crime in Florida. Therefore, it concluded that Mr. Rodgers not wearing a seatbelt was not a legal cause of his injury because he was doing nothing illegal that contributed to his damages.
[29] The appellate court ordered a new trial and directed the trial court to instruct the jury that "Stormant was negligent and the City is liable for Stormant's actions." *See City of Gainesville v. Rodgers*, 377 So. 3d 626, 634 (Fla. 1st DCA 2023); 2023-11-19 Opinion-Disposition, 11.

In lieu of a new trial, the parties agreed to settle the case.[30] Both parties agreed to a judgment in the amount of $11,000,000.00, but both parties reserved all rights with respect to a legislative claim bill.[31] The City included, and Mr. Rodgers agreed to, the provision that: "The City/GRU does not waive any defenses of sovereign immunity and does not agree to execution of judgment beyond the statutory cap provided in FS 768.28."[32]

CONCLUSIONS OF LAW:

The claim bill held on February 28, 2025, was a *de novo* proceeding to determine whether the City of Gainesville is liable in negligence for damages caused by its employee, William Stormant, acting within the scope of his employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Under the legal doctrine of *respondeat superior*, Sarasota County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Being that Ms. Parnell was operating a parks-and-recreation vehicle in the course and scope of her employment at the time of the collision, and because the vehicle was owned by Sarasota County, the County is responsible for negligence committed by Ms. Parnell.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) – damages – actual harm.[33]

[30] *See* Settlement Agreement with Plaintiff's Signature.
[31] *Id.*
[32] *Id.*
[33] *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182, 1185 (Fla. 2003).

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff.[34] The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.

In this case, the City of Gainesville's liability depends on whether Mr. Stormant negligently operated his city-owned vehicle and whether that negligent operation caused Mr. Rodgers's resulting injuries.

Duty
A legal duty may arise from statutes or regulations; common law interpretations of statutes of regulations; other common law precedent; and the general facts of the case.

In this case, Mr. Stormant was responsible for exercising the duty of reasonable care to others while driving his city-owned vehicle.[35] Any person operating a vehicle within the state "shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section."[36]

Breach
The undersigned finds that Mr. Stormant breached the duty of care owed to Mr. Rodgers.

Mr. Stormant testified that he was distracted by the LED lights and was lost in thought while driving. As a result, he failed to adhere to the stop sign and drove into the middle of the intersection.

Causation
Mr. Rodgers's injuries were the natural and direct consequence of Mr. Stormant's breach of his duty. He was

[34] *Alachua Lake Corp. v. Jacobs*, 9 So. 2d 631, 632 (Fla. 1942).
[35] *Gowdy v. Bell* 993 So. 2d 585, 586 (Fla. 1st DCA 2008) ("The operator of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path.").
[36] Mr. Stormant was cited for violating section 316.123(2)(a), of the Florida Statutes, which provides that "every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line." *See* Exhibit #38 (Deposition Exhibits), 2; *see* section 316.123(2)(a), F.S.

ejected from the vehicle and sustained major injuries as a result of Mr. Stormant running the stop sign and colliding with Mr. Blackwell's truck. The City of Gainesville argues that Mr. Stormant was not acting within the course and scope of his employment because he was driving home, but the undersigned finds that the employee was returning to his route home from his detour, which he took solely for a business purpose. Therefore, he was acting within the course and scope of his duties, and the City of Gainesville, as the employer, is liable for damages caused by its employee's negligent act.

Damages

A plaintiff's damages are computed by adding these elements together:

Economic Damages

- Past medical expenses
- Future medical expenses

Non-Economic Damages

- Past pain and suffering and loss of enjoyment of life
- Future pain and suffering and loss of enjoyment of life

As a result of the accident, Mr. Rodgers can no longer feel his lower body; it is completely and permanently paralyzed.[37] He also sustained a skull fracture; his ear was hanging off and had to be restitched to his head;[38] and his broken spine had to be stabilized with the surgical installation of a bar.[39] Mr. Rodgers is also bound to a wheelchair. Mr. Rodgers's attorney provided a breakdown of what the claim bill award would be used for, should this bill pass.[40] $4,814.57 would be used to pay for past medical visits, and $285,683.88 would be used to pay off medical liens.[41] $3,210,355.62 would be used to pay for attorney fees and costs.[42]

[37] *See* Trial Transcript Day 2 PM Session, 185.
[38] *See Id.*
[39] *See* Trial Transcript Day 2 PM Session, 187.
[40] *See* Rodgers Cost Breakdown, 1.
[41] *Id.*, 2.
[42] *Id.*

Mr. Rodgers would net $7,789,644.38.[43] The claimant's attorney explained that $3,900,000.00[44] would be used to "fund a medical annuity that will provide lifetime medical health benefits for his future medical expenses (mostly for home health care and hospitalization expenses)," $1,950,000.00 would purchase "tax free municipal bonds to supplement his income moving forward in case of future job loss[45] (future loss earnings)," and $1,000,000.00 would "establish an investment portfolio to pay for loss of household services and equipment."[46] The claimant's attorney classified these expenses as past and future economic losses.[47] For non-economic damages, his attorney stated that $950,000.00 would be invested in a "general investment fund managed for vacations and enjoyment of life."[48]

The City contests these damages in the entirety, arguing that Mr. Stormant was not acting within the course and scope of his employment. In the alternative, the City argues that Mr. Rodgers was not wearing his seatbelt and more fault should be assigned to him. Specifically, the City believes the "most fair allocation of fault for the spinal cord injury is 10% to Mr. Stormant, 10% to Mr. Blackwell, and 80% to Mr. Rodgers."[49]

Comparative Fault
Florida's comparative fault statute, section 768.81, F.S., applies to this case because Mr. Rodgers, Mr. Blackwell, and Mr. Stormant were all three at fault for Mr. Rodgers's injuries.

Mr. Rodgers was at fault for:

- Failing to wear his seat belt.

Mr. Blackwell was at fault for:

- Excessive speeding.

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[43] *Id.*
[44] *See* Amended Catastrophic Life Care Plan, 40. Mr. Rodgers submitted a life care plan, in which Dr. Christopher Leber estimated Mr. Rodgers's future medical costs to be $4,759,035.37. These costs included physician services, routine diagnostics, medications, laboratory studies, rehabilitation services, equipment and supplies, nursing and attendant care, and acute care services.
[45] Mr. Rodgers also presented the report of Andrea Bradford, an Associate Vocational Specialist, in which she explained that Mr. Rodgers's lost wages are valued somewhere between $392,040 and $576,840. *See* Amended Vocational Assessment – J. Rodgers, 36-37.
[46] *See* SB 96 Post-Hearing Follow-up Email (March 11, 2025).
[47] *Id.*
[48] *Id.*
[49] *Id.* (March 3, 2025).

Mr. Stormant was at fault for:

- Violating section 316.123(2)(a), F.S., by failing to stop at a clearly marked stop sign;
- Failure to operate his vehicle with reasonable care.

While all three were partially at fault in this matter, Mr. Stormant's negligence far outweighs that of Mr. Rodgers and Mr. Blackwell; the undersigned finds there was sufficient evidence presented to prove the collision ultimately happened because Mr. Stormant ran the stop sign.

The City believes the "most fair allocation of fault for the spinal cord injury is 10% to Mr. Stormant, 10% to Mr. Blackwell, and 80% to Mr. Rodgers."[50] The City argues that 80% of fault should be allocated to Mr. Rodgers because he was not wearing his seatbelt, and his injuries were worsened by his negligent act. However, the undersigned finds that the City's suggested allocation fails to take into account that the mere fact that Mr. Rodgers was not wearing a seatbelt, alone, did not cause him to be ejected from the vehicle.[51] The collision, caused by Mr. Stormant's negligence, was the cause.[52] As such, the undersigned finds that assigning 80% of fault to Mr. Rodgers for his failure to wear a seatbelt would be unreasonable.

The settlement agreement, which was entered into by both parties, reduced the original award of $18,319,181.20 to $11,000,000.00[53] in order to avoid a retrial. While the Legislature is not bound by any settlement agreement, it is worthy of note that it reduced the original award amount by

[50] *Id*.
[51] In support of his position, Mr. Rodgers testified that he habitually does *not* wear his seatbelt in the back seat, and he has never been in an accident before. *See* Day 2 part 2 (PM), 209.
[52] The City presented the testimony of an accident reconstructionist. *See* Day 4 part 1 (AM), 4 (7). Counsel for the City listed three "ingredients" in the case to him: that Mr. Stormant ran a stop sign, Mr. Blackwell was speeding, and Mr. Rodgers was not wearing his seatbelt. *Id.*, 18 (63). The witness was asked "if you take out any of those ingredients, does Mr. Rodgers get ejected from the vehicle?" *Id.* The witness replied "I don't think the ejection happens." *Id.* He continued by stating "his occupant space, by and large, is intact after the crash. He's going to stay in the truck, that much I think is true." *Id.* The undersigned finds this testimony unpersuasive, as he erroneously assumes the crash would have happened regardless of whether Mr. Rodgers wore a seatbelt. To this point, the witness was previously asked "It took somebody to blow through a stop sign and hit him to cause the forces and the flipping of the truck for him to be ejected, correct?" *Id.*, 14 (49). The witness replied "Correct." *Id.* It is undisputed that Mr. Rodgers's choice to not wear his seatbelt worsened his injuries, but him not wearing a seatbelt—that fact by itself—did not eject him from the truck, the collision did.
[53] This is also the same amount asked for in the claim bill.

40%. This agreement, in effect, assigns 40% of fault to Mr. Rodgers in exchange for both parties avoiding a retrial. The undersigned finds that assigning 40% of fault to Mr. Rodgers is reasonable, and, based on the above discussion of damages, the $11,000,000.00 request reflects that appropriate allocation of fault.

Based on the foregoing, the undersigned finds:

- That Mr. Rodgers presented evidence that was sufficient to prove he suffers from a spinal cord injury and requires current and future treatment for that injury;
- The $11,000,000.00 requested in the claim bill is reasonable and represents a reasonable allocation of fault to Mr. Rodgers.

IMPACT ON BUDGET:

The undersigned asked for the impact on the budget and the City responded: "GRU can pull together up to $10.8 million in cash for a claim bill, but GRU has not budgeted any money for a claim bill. If the Legislature passes a bill for the $10.8 million amount requested by Claimant, that would equal roughly one-third of the electric system's operating cash, and would hinder the system's ability to pay its bills. Thus, GRU would need to make up the money by pulling from its reserves, cutting the amount budgeted for paying on existing debt and for its capital improvement plan, or taking on new debt."[54]

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded, and lobbying fees will be limited to 5 percent of any amount awarded by the Legislature.[55] Counsel for Rodgers totaled his attorney fees to $2,612,500.00 and the lobbyist fees to $137,500.00, both of which fall within the statutory limits.[56]

RECOMMENDATIONS:

Based on the reasons above, the undersigned recommends that Senate Bill 96 be reported FAVORABLY.

[54] *See* SB 96 Post-Hearing Follow-up Email (March 6, 2025).
[55] Section 768.28, F.S.
[56] *See* Rodgers Cost Breakdown, 1.

Respectfully submitted,

Oliver Thomas
Senate Special Master

cc: Secretary of the Senate

By Senator Bernard

24-00515-25 202596__

A bill to be entitled

An act for the relief of Jacob Rodgers by the City of Gainesville; providing for an appropriation to compensate Jacob Rodgers for injuries sustained as a result of the negligence of an employee of the City of Gainesville; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on October 7, 2015, Jacob Rodgers was a passenger in a vehicle when it was struck by a vehicle owned by the City of Gainesville, d/b/a Gainesville Regional Utilities, and operated by an employee, and

WHEREAS, the City of Gainesville, d/b/a Gainesville Regional Utilities, employee ran a stop sign and struck the side of the vehicle occupied by Mr. Rodgers, and

WHEREAS, Mr. Rodgers, who was 20 years old at the time, sustained catastrophic injuries, including spinal fractures that resulted in Mr. Rodgers becoming a paraplegic, which will require him to receive supervised medical care, home health care, future medical care, and other services in the future, and

WHEREAS, Mr. Rodgers brought suit against the City of Gainesville, d/b/a Gainesville Regional Utilities, in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County under case number 2016-CA-000659, and

WHEREAS, the suit was tried before an Alachua County jury, and the jury found the City of Gainesville 100 percent at fault and assessed total damages of $120 million, and

WHEREAS, the trial court ordered a remittitur, which

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resulted in a final judgment of $18,319,181.20, and

WHEREAS, the City of Gainesville appealed the final judgment, resulting in Mr. Rodgers agreeing to the remittitur of $18,319,181.20 and the City of Gainesville obtaining a new trial on the issue of comparative negligence of Mr. Rodgers, and the damage award of $18,319,181.20 was not reversed by the trial court, and

WHEREAS, the parties mediated the case pursuant to a court order and reached a settlement agreement that the City of Gainesville, d/b/a Gainesville Regional Utilities, would consent to a final judgment of $11 million, and

WHEREAS, the Gainesville Regional Utilities Authority board adopted and approved the settlement agreement, and

WHEREAS, the City of Gainesville paid the statutory limit of $200,000 under s. 768.28, Florida Statutes, NOW, THEREFORE,

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

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

Section 2. The City of Gainesville is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $10.8 million payable to Jacob Rodgers as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Gainesville pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and

damages to Jacob Rodgers. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 304
INTRODUCER:	Children, Families and Elder Affairs Committee and Senators Sharief, Garcia, and Rouson
SUBJECT:	Child Abuse Investigations
DATE:	March 24, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Tuszynski	CF	**Fav/CS**
2.	Collazo	Cibula	JU	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 304 requires certain medical professionals to rule out certain diseases and medical conditions which can be mistaken as evidence of child abuse or neglect before involving law enforcement agencies or filing a petition to find the child dependent under state law.

The main provisions of the bill:

- Require certain mandatory reporters of child abuse, abandonment, or neglect to include a summary of the analysis used to rule out a differential diagnosis of certain pre-existing medical conditions identified in the bill.
- Give the Department of Children and Families additional time to forward allegations of criminal conduct to a law enforcement agency, if the parent has alleged the existence of certain pre-existing medical conditions identified in the bill or has requested an examination.
- Require child protective investigators, at the commencement of an investigation, to remind parents being investigated that they have a duty to report their child's pre-existing medical conditions and provide supporting records in a timely manner.
- Require child protection teams to consult with licensed physicians or APRNs having relevant experience when evaluating a child having certain pre-existing medical conditions.
- Allow a parent from whom a child has been removed to request additional medical examinations in certain cases, provided the parent custodian pays for them.

The bill takes effect July 1, 2025.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates Florida's dependency system, which is charged with protecting child welfare. This system identifies children and families in need of services through reports to a central child abuse hotline and child protective investigations.[1] The Department of Children and Families and community-based care lead agencies[2] then work with those families to address the problems endangering children. If identified problems cannot be addressed, the system finds safe out-of-home placements for these children.

The department's practice model for child and family well-being is a safety-focused, trauma-informed, and family-centered approach. It is implemented to ensure:

- *Permanency.* Florida's children should enjoy long-term, secure relationships within strong families and communities.
- *Child Well-Being.* Florida's children should be physically and emotionally healthy and socially competent.
- *Safety.* Florida's children should live free from maltreatment.
- *Family Well-Being.* Florida's families should nurture, protect, and meet the needs of their children, and should be well integrated into their communities.[3]

The department contracts for case management, out-of-home services, and related services with community-based care lead agencies.[4] The outsourced provision of child welfare services is intended to increase local community ownership of the services provided and their design. Lead agencies contract with many subcontractors for case management and direct-care services to children and their families.[5] There are 16 lead agencies statewide that serve the state's 20 judicial circuits.[6] However, the department remains responsible for the operation of the central abuse hotline and investigations of abuse, abandonment, and neglect.[7] The department is also responsible for all program oversight and the overall performance of the child welfare system.[8]

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[1] *See generally* s. 39.101, F.S. (establishing the central abuse hotline and timeframes for initiating investigations).
[2] *See* s. 409.986(1)(a), F.S. (finding that it is the intent of the Legislature that the Department of Children and Families "provide child protection and child welfare services to children through contracting with community-based care lead agencies"). A "community-based care lead agency" or "lead agency" means a single entity with which the DCF has a contract for the provision of care for children in the child protection and child welfare system, in a community that is no smaller than a county and no larger than two contiguous judicial circuits. Section 409.986(3)(d), F.S. The secretary of the DCF may authorize more than one eligible lead agency within a single county if doing so will result in more effective delivery of services to children. *Id.*
[3] *See generally* Department of Children and Families (DCF), *Florida's Child Welfare Practice Model,* available at: https://www.myflfamilies.com/sites/default/files/2022-12/FLCSPracticeModel_0.pdf (last visited Mar. 17, 2025).
[4] Section 409.986(3)(e), F.S.; *see generally* Part V, Chapter 409, F.S. (regulating community-based child welfare).
[5] DCF, *About Community-Based Care (CBC),* https://www.myflfamilies.com/services/child-and-family-well-being/community-based-care/about (last visited Mar. 17, 2025).
[6] DCF, *Lead Agency Information,* https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Mar. 17, 2025).
[7] Section 39.101, F.S.
[8] Section 409.986(1)(b), F.S.

Dependency System Process

If a child is in danger of, or has suffered from, abuse, neglect, or abandonment, the dependency system is set up to protect the child's welfare. The dependency process includes, among other things:

- A report to the central abuse hotline.
- A child protective investigation to determine the safety of the child.
- A court finding that the child is dependent.
- Case planning to address the problems that resulted in the child's dependency.
- Reunification with the child's parent or another option, such as adoption, to establish permanency.[9]

Mandatory Reporting

Florida law requires *any* person who knows, or has reasonable cause to suspect, that a child is being abused, abandoned, or neglected to report the knowledge or suspicion to the department's central abuse hotline.[10] A person from the general public, while a mandatory reporter, may make a report anonymously.[11] However, persons having certain occupations such as physician, nurse, teacher, law enforcement officer, or judge must provide their name to the central abuse hotline when making the report.[12]

Central Abuse Hotline and Investigations

The central abuse hotline is the first step in the safety assessment and investigation process. Accordingly, by statute it must be available to receive all reports of known or suspected child abuse, abandonment, or neglect 24 hours a day, 7 days a week, via telephone, writing, or electronic reporting.[13]

When allegations have been made against a parent, legal custodian, caregiver,[14] or other person responsible for the child's welfare,[15] the hotline counselor must assess whether the report meets the statutory definition of abuse, abandonment, or neglect.[16] If it does, the report is accepted for a protective investigation.[17] At the same time, the department makes a determination regarding when to initiate a protective investigation:

- Immediately if:

[9] Office of the State Courts Administrator, The Office of Family Courts, *A Caregiver's Guide to Dependency Court,* 2 (Jan. 2024), available at https://www.flcourts.gov/content/download/787836/file/A%20Caregiver's%20Guide%20to%20Dependency%20Court%20(Oct%202020).pdf; *see also* ch. 39, F.S.
[10] Section 39. 201(1)(a), F.S.
[11] Section 39.201(1)(b)1., F.S.
[12] Section 39.201(1)(b)2., F.S.
[13] Section 39.101(1)(a), F.S.
[14] "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare. Section 39.01(10), F.S.
[15] "Other person responsible for a child's welfare" means the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice, with exceptions of specified personnel working in their official capacity. Section 39.01(57), F.S. Reports of known or suspected institutional child abuse or neglect must be made in the same manner as other reports. Section 39.201(3)(d), F.S.
[16] Section 39.201(4)(a), F.S.
[17] *Id.*

  - It appears the child's immediate safety or well-being is endangered;
  - The family may flee or the child will be unavailable for purposes of conducting a child protective investigation; or
  - The facts otherwise warrant; or
- Within 24 hours in all other child abuse, abandonment, or neglect cases.[18]

For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department's designated district staff responsible for protective investigations to ensure that an investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must only notify the department's designated district staff in sufficient time to allow for an investigation.[19]

Once assigned, a child protective investigator must assess the safety and perceived needs of the child and family; whether in-home services are needed to stabilize the family; and whether the safety of the child necessitates removal and the provision of out-of-home services.[20]

Medical Examination

A child protective investigator may refer a child to a licensed physician or a hospital's emergency department without the consent of the child's parents or legal custodian if the child has bruises indicating a need for medical examination, or if the child verbally complains or appears to be in distress due to injuries caused by suspected child abuse, abandonment, or neglect. The examination may be performed by any licensed physician or an advanced practice registered nurse.[21]

Consent for non-emergency medical treatment must be obtained from a parent or legal custodian of the child, if available; otherwise, the department must obtain a court order for medical treatment.[22]

Child Protection Teams

A child protection team is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs' offices in cases of child abuse and neglect.[23] Child protection teams are independent community-based programs contracted by the Department of Health Children's Medical Services program which provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions. The objective is to protect children and enhance caregivers' capacity to provide safer environments whenever possible.[24]

[18] Section 39.101(2), F.S.
[19] Section 39.301(1)(a), F.S.
[20] *See generally* s. 39.301, F.S. and Part IV, Chapter 39, F.S. (regulating taking children into custody and shelter hearings).
[21] Section 39.304(1)(b), F.S.
[22] Section 39.304(2)(a), F.S.
[23] Florida Department of Health, *Child Protection*, available at https://www.floridahealth.gov/%5C/programs-and-services/childrens-health/cms-specialty-programs/Child-Protection/index.html (last visited Mar. 17, 2025).
[24] UF Health, Child Protection Team, https://cpt.pediatrics.med.ufl.edu/about-us/ (last visited Mar. 17, 2025).

Certain reports of child abuse, abandonment, and neglect to the hotline must be referred to a child protection team, including:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child 5 years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival at a health care facility or have been injured and later died because of suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional problems in a child if emotional or other abuse, abandonment, or neglect is suspected.
- A child who does not live in this state and is currently being evaluated in a medical facility in this state.[25]

When the child protection team accepts a referral from the department or a law enforcement agency, it may provide one or more of the following services:

- Medical diagnosis and evaluation.
- Child forensic interviews.
- Child and family assessments.
- Psychological and psychiatric evaluations.
- Expert court testimony.[26]

III. Effect of Proposed Changes:

The bill requires certain medical professionals to rule out certain diseases and medical conditions which can be mistaken as evidence of child abuse or neglect before involving law enforcement agencies or filing a petition to find the child dependent under state law.

Section 1 of the bill amends s. 39.201(1), F.S., regarding mandatory reporting. These changes require reports of abuse made by a physician, osteopathic physician, medical examiner, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons to contain a short explanation of how certain diseases or medical conditions were ruled out as the cause of the child's injury or condition. This process of ruling out diseases or medical conditions as the cause of a child's injury or condition is described in formal terms in the bill as a "differential diagnosis." The differential diagnosis described by the bill must address the following diseases or conditions:

- Rickets.[27]

[25] Section 39.303(4), F.S.
[26] *See generally* s. 39.303(3), F.S.
[27] A child born with this disorder may have weak or softened bones due to a lack of sufficient calcium or phosphorus. John Hopkins Medicine, *Metabolic Bone Disease: Osteomalacia,* https://www.hopkinsmedicine.org/health/conditions-and-diseases/metabolic-bone-disease (last visited Mar. 17, 2025).

- Ehlers-Danlos syndrome.[28]
- Osteogenesis imperfecta (also known as brittle bone disease).[29]
- Vitamin D deficiency.[30]
- Any other medical condition known to appear to be caused by, or known to be misdiagnosed as, abuse.

Section 2 of the bill amends s. 39.301(2)(a), F.S., regarding the initiation of protective investigations, to give the department additional time to forward an allegation of criminal conduct to a law enforcement agency.

Under the bill, the department does not need to immediately forward an allegation of criminal conduct if the parent or legal custodian from whom a child has been removed:

- Has alleged a pre-existing diagnosis of Rickets, Ehlers-Danlos syndrome, Osteogenesis Imperfecta, or any other medical condition known to appear to be caused by, or known to be misdiagnosed as, abuse.
- Has requested that the child have an examination for a second opinion or a differential diagnosis under s. 39.304(1)(c), F.S., as provided in Section 4 of the bill and described in more detail below.

Allegations of criminal conduct that have not been immediately forwarded to a law enforcement agency for the above reasons must be immediately forwarded upon completion of the investigation if criminal conduct is still alleged.

The bill also amends s. 39.301(5)(a), F.S., regarding the duties of child protective investigators, to require a child protective investigator who has commenced an investigation to inform the parent or legal custodian being investigated of his or her duty to:

- Report a preexisting diagnosis for the child of Rickets, Ehlers-Danlos syndrome, Osteogenesis Imperfecta, or any other medical condition known to appear to be caused by, or known to be misdiagnosed as, abuse.
- Provide any medical records that support that diagnosis to the department in a timely manner.

Section 3 of the bill amends s. 39.303, F.S., regarding child protection teams and sexual abuse treatment programs, to expand existing consultation requirements.

Under current law, child protection teams evaluating a report of medical neglect and assessing the health care needs of a medically complex child must consult with a physician who has experience in treating children with the same condition.

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[28] A child born with this disorder may have overly flexible joints and stretchy, fragile skin. Mayo Clinic, *Ehlers-Danlos syndrome*, https://www.mayoclinic.org/diseases-conditions/ehlers-danlos-syndrome/symptoms-causes/syc-20362125 (last visited Mar. 17, 2025).

[29] A child born with this disorder may have soft bones that break easily, bones that are not formed normally, and other problems. Johns Hopkins Medicine, *Health: Osteogenesis Imperfecta*, https://www.hopkinsmedicine.org/health/conditions-and-diseases/osteogenesis-imperfecta (last visited Mar. 17, 2025).

[30] Having inadequate amounts of Vitamin D in your body may cause health problems like brittle bones and muscle weakness. Yale Medicine, V*itamin D Deficiency*, https://www.yalemedicine.org/conditions/vitamin-d-deficiency (last visited Mar. 17, 2025).

Under the bill, child protection teams must consult with a licensed physician[31] or a licensed advanced practice registered nurse (APRN)[32] having experience in, and routinely providing medical care to, pediatric patients when evaluating a report of:

- Medical neglect and assessing the needs of a medically complex child; or
- A child having a reported preexisting diagnosis of Rickets, Ehlers-Danlos syndrome, Osteogenesis Imperfecta, or any other medical condition known to appear to be caused by, or known to be misdiagnosed as, abuse.

Section 4 of the bill amends s. 39.304(1), F.S., regarding photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected children, to allow a parent or legal custodian from whom a child was removed to request additional medical examinations in certain cases.

Under the bill, if an examination is performed on a child under existing law, the parent or legal custodian from whom the child was removed may:

- Request an examination by the child protection team as soon as practicable, if the team did not perform the initial examination that led to the allegations of abuse, abandonment, or neglect.
- Request that the child be examined by a licensed physician or a licensed APRN of the parent or legal custodian's choosing who routinely provides medical care to pediatric patients, if the initial examination was performed by the child protection team and the parent or legal custodian would like a second opinion on diagnosis or treatment; or
- Request that the child be examined by a licensed physician or a licensed APRN who routinely provides diagnosis of, and medical care to, pediatric patients, to rule out a differential diagnosis of Rickets, Ehlers-Danlos syndrome, Osteogenesis Imperfecta, or any other medical condition known to appear to be caused by, or known to be misdiagnosed as, abuse.

The bill also requires the requesting parent or legal custodian to pay for these medical examinations, or for them to be paid for as otherwise covered by insurance. The bill does not allow a request for a second opinion examination for a child alleged to have been sexually abused.

Section 5 of the bill provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[31] *See* chs. 458 and 459, F.S. (regulating medical practice and osteopathic medicine).
[32] *See* ch. 464, F.S. (regulating nursing).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families may incur additional costs to evaluate whether a child's injury or condition is the result of a disease or medical condition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 39.201, 39.301, 39.303, and 39.304.

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 Children, Families, and Elder Affairs on March 12, 2025:

- Requires certain mandatory reporters of child abuse, abandonment, or neglect to include a summary of the analysis used to rule out a differential diagnosis of certain conditions.

- Stops the requirement of an immediate report of allegations to law enforcement in the instances related to these diagnoses and requires the report only after an investigation is complete and criminal conduct is still alleged.
- Creates a requirement for a parent to be informed of the duty to report any pre-existing medical condition at the initiation of an investigation and provide supporting records of that diagnosis in a timely manner.
- Requires the Child Protection Team to consult with an experienced physician or APRN when evaluating reports that contain pre-existing diagnoses of certain medical conditions.
- Allows a parent to request examinations in certain instances to get a second opinion on diagnosis or treatment or to rule out differential diagnosis of certain conditions.

B. Amendments:

None.

788916

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Sharief) recommended the following:

Senate Amendment

Delete lines 34 - 35
and insert:
(d) Any report made by a physician, an osteopathic physician, a medical examiner, a chiropractic physician, a nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons must contain a summary of the

730156

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Judiciary (Sharief) recommended the following:

Senate Substitute for Amendment (788916) (with title amendment)

Delete lines 27 - 37.

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

And the title is amended as follows:

Delete lines 3 - 5

and insert:

protective investigations; amending s. 39.301,

By the Committee on Children, Families, and Elder Affairs; and Senators Sharief and Garcia

586-02326-25 2025304c1

A bill to be entitled

An act relating to specific medical diagnoses in child protective investigations; amending s. 39.201, F.S.; requiring that reports made by certain persons contain a summary of a specified analysis; amending s. 39.301, F.S.; providing an exception to the requirement that the Department of Children and Families immediately forward certain allegations to a law enforcement agency; requiring a child protective investigator to inform the subject of an investigation of a certain duty; conforming a cross-reference; amending s. 39.303, F.S.; requiring Child Protection Teams to consult with a licensed physician or advanced practice registered nurse when evaluating certain reports; conforming provisions to changes made by the act; amending s. 39.304, F.S.; authorizing, under a certain circumstance, a parent or legal custodian from whom a child was removed to request specified examinations of the child; requiring that certain examinations be paid for by the parent or legal custodian making the request or as otherwise covered by insurance or Medicaid; prohibiting the request of an examination for a specified purpose; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (1) of section 39.201, Florida Statutes, to read:

39.201 Required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.—

(1) MANDATORY REPORTING.—

(d) Any report made by a person whose occupation is listed in sub-subparagraph (b)2.a. must contain a summary of the analysis used to rule out a differential diagnosis of the conditions specified in s. 39.303(4)(b).

Section 2. Paragraph (a) of subsection (2), paragraph (a) of subsection (5), and paragraph (c) of subsection (14) of section 39.301, Florida Statutes, are amended to read:

39.301 Initiation of protective investigations.—

(2)(a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred, unless the parent or legal custodian:

1. Has alleged that the child has a preexisting diagnosis specified in s. 39.303(4)(b); or

2. Is requesting that the child have an examination under s. 39.304(1)(c).

Allegations of criminal conduct that are not immediately forwarded to the law enforcement agency pursuant to subparagraph 1. or subparagraph 2. must be immediately forwarded to the law enforcement agency upon completion of the investigation under this part if criminal conduct is still alleged.

(5)(a) Upon commencing an investigation under this part, the child protective investigator shall inform any subject of the investigation of the following:

1. The names of the investigators and identifying credentials from the department.

2. The purpose of the investigation.

3. The right to obtain his or her own attorney and ways that the information provided by the subject may be used.

4. The possible outcomes and services of the department's response.

5. The right of the parent or legal custodian to be engaged to the fullest extent possible in determining the nature of the allegation and the nature of any identified problem and the remedy.

6. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

7. The duty of the parent or legal custodian to report any preexisting diagnosis for the child which is specified in s. 39.303(4)(b) and provide any medical records that support that diagnosis in a timely manner.

(14)

(c) The department, in consultation with the judiciary, shall adopt by rule:

1. Criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. Such factors must include, but are not limited to, noncompliance with a safety plan or the case plan developed by the department, and the family under this chapter, and prior

abuse reports with findings that involve the child, the child's sibling, or the child's caregiver.

2. Requirements that if after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to Child Protection Teams pursuant to s. 39.303(5) and (6) ~~s. 39.303(4) and (5)~~, the file must include written documentation that the administrative review included the results of the team's evaluation.

Section 3. Present subsections (4) through (10) of section 39.303, Florida Statutes, are redesignated as subsections (5) through (11), respectively, a new subsection (4) is added to that section, and subsection (3) and present subsections (5) and (6) of that section are amended, to read:

39.303 Child Protection Teams and sexual abuse treatment programs; services; eligible cases.—

(3) The Department of Health shall use and convene the Child Protection Teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Families. This section does not remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or

neglect or sexual abuse of a child. The role of the Child Protection Teams is to support activities of the program and to provide services deemed by the Child Protection Teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a Child Protection Team must be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of related findings.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A Child Protection Team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a

representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such Child Protection Team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Families, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases. The training service must include training in the recognition of and appropriate responses to head trauma and brain injury in a child under 6 years of age as required by ss. 402.402(2) and 409.988.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child Protection Team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

~~A Child Protection Team that is evaluating a report of medical~~

~~neglect and assessing the health care needs of a medically complex child shall consult with a physician who has experience in treating children with the same condition.~~

(4) A Child Protection Team shall consult with a physician licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464 who has experience in and routinely provides medical care to pediatric patients when evaluating a report of:

(a) Medical neglect and assessing the needs of a medically complex child; or

(b) A child with a reported preexisting diagnosis of any of the following:

1. Rickets.

2. Ehlers-Danlos syndrome.

3. Osteogenesis imperfecta.

4. Vitamin D deficiency.

5. Any other medical condition known to appear to be caused by, or known to be misdiagnosed as, abuse.

(6)~~(5)~~ All abuse and neglect cases transmitted for investigation to a circuit by the hotline must be simultaneously transmitted to the Child Protection Team for review. For the purpose of determining whether a face-to-face medical evaluation by a Child Protection Team is necessary, all cases transmitted to the Child Protection Team which meet the criteria in subsection (5) ~~(4)~~ must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a Child Protection Team;

(b) A physician licensed under chapter 458 or chapter 459

who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of the Child Protection Team medical director or a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a Child Protection Team;

(c) An advanced practice registered nurse licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of a Child Protection Team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of the Child Protection Team medical director or a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a Child Protection Team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of the Child Protection Team medical director or a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a Child Protection Team.

(7)~~(6)~~ A face-to-face medical evaluation by a Child Protection Team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the Child Protection Team, and a consultation between the Child Protection Team medical director or a Child Protection Team board-certified pediatrician, advanced practice registered nurse, physician assistant working under the supervision of a Child Protection

Team medical director or a Child Protection Team board-certified pediatrician, or registered nurse working under the direct supervision of a Child Protection Team medical director or a Child Protection Team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (5)(a)-(h) ~~(4)(a)-(h)~~ as reported; or

(c) The Child Protection Team medical director or a Child Protection Team board-certified pediatrician, as authorized in subsection (6) ~~(5)~~, determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a Child Protection Team medical director or a Child Protection Team pediatrician, as authorized in subsection (6) ~~(5)~~, may determine that a face-to-face medical evaluation is necessary.

Section 4. Paragraph (c) is added to subsection (1) of section 39.304, Florida Statutes, to read:

39.304 Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.—

(1)

(c) If an examination is performed on a child under paragraph (b), the parent or legal custodian from whom the child was removed pursuant to s. 39.401 may:

1. If the initial examination was not performed by the Child Protection Team, request that the child be examined by the

Child Protection Team as soon as practicable;

2. If the initial examination was performed by the Child Protection Team, for the purpose of obtaining a second opinion on diagnosis or treatment, request that the child be examined by a physician licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464 of his or her choosing who routinely provides medical care to pediatric patients; or

3. For the purpose of ruling out a differential diagnosis, request that the child be examined by a physician licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464 who routinely provides diagnosis of and medical care to pediatric patients for the conditions specified in s. 39.303(4)(b).

An examination requested under subparagraph 2. or subparagraph 3. must be paid for by the parent or legal custodian making such request or as otherwise covered by insurance or Medicaid. An examination may not be requested under this paragraph for the purpose of obtaining a second opinion as to whether a child has been sexually abused.

Section 5. This act shall take effect July 1, 2025.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 382
INTRODUCER:	Senator Bernard
SUBJECT:	Rent of Affordable Housing Dwelling Units
DATE:	March 24, 2025
REVISED:	

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

I. Summary:

SB 382 prohibits a landlord of a dwelling unit that qualifies as affordable housing and who has received federal, state, or local funding or tax incentives because of the dwelling unit's status as an affordable housing unit from increasing the rent of the dwelling unit during the term of a rental agreement. Affordable housing refers to rental of a dwelling to one or more natural persons whose total annual adjusted gross income is less than 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not in an MSA, within the county, where the rent does not exceed 30 percent of income.

The bill specifies that it does not prohibit a landlord from increasing the rent of a dwelling unit that qualifies as affordable housing when a tenant is renewing his or her rental agreement.

The bill is effective July 1, 2025.

II. Present Situation:

Landlord and Tenant Law - Regulation of Rents

Residential lease agreements are governed by the Florida Residential Landlord and Tenant Act.[1] The term "rent" is defined to mean "the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement."[2]

The Act does not contain any limit on rental rates or restrictions on rent increases. As to an unwritten lease agreement, the rent can be raised by the landlord by giving oral notice, which is the same as the notice required to terminate the lease, and the tenant must choose to either pay or

[1] Part II of ch. 83, F.S.
[2] Section 83.43(12), F.S.

leave. In the more typical written lease, the periodic rental rate is expressed in writing. Ordinary contract law prohibits a landlord having a written lease from increasing the rent unless specifically allowed by the terms of the written lease, unless the tenant agrees. Florida law does not contain any limits on the rent that the landlord can ask for when offering a unit for lease or when negotiating with a current tenant for renewal of the lease.[3]

Affordable Rental Housing

The term "affordable housing" generally refers to housing subsidized by government or charitable organizations to furnish housing at rental rates below the prevailing market rate for the benefit of lower income individuals and families. Landlords are not required by any law to participate in programs creating affordable housing.

The State Housing Strategy Act[4] defines the term "affordable" to mean a monthly rent that does not exceed 30 percent of the adjusted gross income for a qualifying household.[5] The qualifying households are classified as:

- "Extremely-low-income," refers to the income of one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.[6]
- "Very-low income," refers to one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.[7]
- "Low-income," meaning one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.[8]
- "Moderate-income," meaning one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.[9]

[3] Of course, state and federal fair housing laws prohibit a landlord from imposing or attempting to impose discriminatory rental rates.
[4] Part I of ch. 420, F.S.
[5] Section 420.0004(3), F.S.
[6] Section 420.0004(9), F.S.
[7] Section 420.0004(17), F.S.
[8] Section 420.0004(11), F.S.
[9] Section 420.0004(12), F.S.

It appears that the moderate-income classification would include members of all the other three classifications.

Affordable Housing Rents with Federally Based Subsidy

The term "rent" as applied to rental housing where a federally based subsidy is available may refer to different amounts related to a rental unit. It may refer to the "fair market rent," referring to the maximum rent that a subsidized landlord in a given area may charge for a specific type and size of rental unit in the applicable base year.[10] The fair market rent is set by the U.S. Department of Housing and Urban Development (HUD) and is adjusted at least annually.[11] The fair market rent may be increased by the fair market value of utilities furnished by the landlord, if any. The fair market rent is due from the tenant if no subsidy is applied.

The rent that a subsidized tenant pays is referred to as the "monthly rent." The monthly rent is calculated by subtracting the "tenant assistance payment" from the fair market rent.[12] The tenant assistance payment is the sum of all subsidies available to the tenant. Subsidies are based on factors specific to the tenant or tenants, including the size of the unit rented, the number of residents in the dwelling, and the income of the tenant or the combined income of the residents. Subsidies are also based on funding formulas set by HUD. These formulas periodically change due to changes in applicable law and funding changes imposed by government budgeting.

There are numerous reasons why the monthly rent of an affordable housing unit may change during the term of a lease. For example, the monthly rent may change if:

- HUD determines that the fair market rent has changed.
- HUD determines that the fair market value of utilities furnished has changed.
- The income, the number of people in the household, or other factors considered in determining the tenant's fair market rent or the tenant's assistance payment change.
- The terms and conditions, or the procedures for qualification, of the tenant's assistance program have changed.
- The tenant fails to provide information showing that the tenant still qualifies for the tenant's assistance program.[13]

These reasons are disclosed in HUD's Model Lease for Subsidized Programs, which is a fill-in-the-blank lease form. The tenant must be given at least 30-days notice of a change in the tenant's monthly rent due to one of these reasons.[14] The monthly rent may also increase should the tenant no longer qualify for assistance.[15]

The terms and conditions of a federally subsidized program described above do not necessarily apply to the terms and conditions of the numerous charitable, local, state and federal programs that provide rental housing assistance to low-income individuals and families through direct

[10] 24 CFR § 888.111.
[11] 24 CFR § 888.113.
[12] Model Lease for Subsidized Programs, Form HUD-90105a (12/2007).
[13] Model Lease, paragraph 4.
[14] Id.
[15] 24 CFR § 576.106.

subsidies or indirect subsidies. Indirect subsidies include various property tax and income tax relief programs.

III. Effect of Proposed Changes:

The bill prohibits a landlord of a dwelling unit that qualifies as affordable housing and who has received federal, state, or local funding or tax incentives because of the dwelling unit's status as an affordable housing unit from increasing the rent of the dwelling unit during the term of a rental agreement.

The bill specifies that it does not prohibit a landlord from increasing the rent of a dwelling unit that qualifies as affordable housing when a tenant is renewing his or her rental agreement.

The bill is effective July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Art. I, s. 10, of the state constitution prohibits any law impairing the obligation of contract. To the extent that this bill may impact the terms of a lease executed prior to July 1, 2025, this bill may not be enforceable as to that lease.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that this bill limits future rent increases where applied, this bill may lower costs to low-income individuals and lead to a corresponding decrease in revenues to

landlords. The reduction in revenues to landlords may discourage them from participating in affordable housing programs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill is unclear in its reference to the term "rent." In the realm of affordable housing, the term "rent" could be interpreted to refer to one of several different sums. As written and in light of the definition of "rent" in existing law, the term likely would be interpreted as related to federally subsidized housing to mean the "tenant's monthly rent," i.e. the amount due after applying the tenant's subsidy. It is arguable, however, that the provision of the bill allowing a rent increase upon renewal means that the intent of the bill is to simply prohibit mid-lease rent payable based on a change to the fair market rent while still allowing change based on other factors (such as status, persons moving in/out, and change in income). Accordingly, it might be helpful to clarify the meaning of the rent by amending the bill to refer to either the term "fair market rent" or the "tenant's monthly rent," or some other more definitive term or phrase, depending upon the intent.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 83.46 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.

764470

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/24/2025	.	
	.	
	.	
	.	

The Committee on Judiciary (Bernard) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 83.46, Florida Statutes, to read:

83.46 Rent; duration of tenancies.—

(4)(a) As used in this subsection, the term "affordable" has the same meaning as in s. 420.0004(3).

(b) A person who is a landlord of a dwelling unit that qualifies as affordable housing and who has received federal,

764470

state, or local funding or tax incentives because of the dwelling unit's status as an affordable housing unit may not increase the rent of the dwelling unit during the term of a rental agreement.

(c) This subsection does not prohibit a landlord from increasing the rent of a dwelling unit that qualifies as affordable housing when a tenant is renewing his or her rental agreement.

(d) This subsection applies to rental agreements that have a term of 13 months or less and are entered into on or after July 1, 2026.

Section 2. This act shall take effect July 1, 2025.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to rent of affordable housing dwelling units; amending s. 83.46, F.S.; defining the term "affordable"; prohibiting certain landlords of specified dwelling units from increasing rent during the term of a rental agreement; providing construction; providing applicability; providing an effective date.

343700

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bernard) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 83.46, Florida Statutes, to read:

83.46 Rent; duration of tenancies.—

(4)(a) As used in this subsection, the term:

1. "Affordable" has the same meaning as in s. 420.0004(3).

2. "Base rent" means the initial rent for a dwelling unit charged by a landlord which is calculated based on a formula

343700

dictated by an affordable housing program and which is based on the most recent publication of the federal Department of Housing and Urban Development's Area Median Income; based on reasonable rent calculated by a public housing agency; or is otherwise based on the terms of the affordable housing program. Base rent applies before deduction of monthly housing assistance payments or the like to calculate a monthly net rent payable by the tenant.

(b) A person that is a landlord of a dwelling unit that qualifies as affordable housing and who has received federal, state, or local funding or tax incentives because of the dwelling unit's status as an affordable housing unit may not increase the base rent of the dwelling unit during the term of a rental agreement.

(c) This subsection does not prohibit a landlord from increasing the base rent of a dwelling unit that qualifies as affordable housing when a tenant is renewing his or her rental agreement, or prohibit changes to the net rent based on changes to the tenant's qualifications for a housing assistance payment under the terms of such affordable housing program.

(d) This subsection applies to rental agreements that have a term of 13 months or less and are entered into on or after July 1, 2026.

Section 2. This act shall take effect July 1, 2025.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

343700

A bill to be entitled

An act relating to rent of affordable housing dwelling units; amending s. 83.46, F.S.; defining the terms "affordable" and "base rent"; prohibiting certain landlords of specified dwelling units from increasing the base rent during the term of a rental agreement; providing construction; providing applicability; providing an effective date.

By Senator Bernard

24-01138-25 2025382__

A bill to be entitled

An act relating to rent of affordable housing dwelling units; amending s. 83.46, F.S.; prohibiting certain landlords of specified dwelling units from increasing rent during the term of a rental agreement; providing construction; defining the term "affordable"; providing an effective date.

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

Section 1. Subsection (4) is added to section 83.46, Florida Statutes, to read:

83.46 Rent; duration of tenancies.—

(4) A person who is a landlord of a dwelling unit that qualifies as affordable housing and who has received federal, state, or local funding or tax incentives because of the dwelling unit's status as an affordable housing unit may not increase the rent of the dwelling unit during the term of a rental agreement. This subsection does not prohibit a landlord from increasing the rent of a dwelling unit that qualifies as affordable housing when a tenant is renewing his or her rental agreement. As used in this subsection, the term "affordable" has the same meaning as in s. 420.0004.

Section 2. This act shall take effect July 1, 2025.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 658
INTRODUCER:	Senator Truenow
SUBJECT:	Waiver or Release of Liens
DATE:	March 24, 2025
REVISED:	

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

I. Summary:

SB 658 amends the Construction Lien Law to modify the statutory forms which may be used to waive and release liens, and to expand upon the kinds of payment that a person may use to obtain an executed waiver and release of lien document.

The Construction Lien Law seeks to ensure that people working on construction projects are paid for their work. To ensure payment, any person who provides services, labor, or materials for improving, repairing, or maintaining real property may place a construction lien on the property, provided the person (the "lienor") complies with certain statutory procedures.

When a lienor is seeking a progress payment or final payment for his or her work, the lienor can induce payment by waiving and releasing his or her lien on the property using certain statutory forms. Currently, the lienor can use forms that are substantially similar to the statutory forms, or even forms that are entirely different, which are enforced in accordance with their own terms.

Instead of permitting lienors to use forms that are substantially similar to the statutory forms, or different forms altogether, the bill amends the Construction Lien Law to make it so lienors no longer have the option of using waiver and release of lien forms that differ from the forms prescribed by statute. All waiver and release of lien forms will have to be identical to the forms prescribed by statute to be enforceable.

Additionally, under existing Construction Lien Law, a lienor may execute a lien waiver and release in exchange for a check, and may condition the waiver and release on payment of the check. The bill amends the Construction Lien Law to permit other forms of payment in addition to payment by check.

The bill takes effect July 1, 2025.

II. Present Situation:

Construction Liens

Generally

The Construction Lien Law[1] seeks to ensure that people working on construction projects are paid for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien[2] on the property, provided the person complies with statutory procedures.[3] These procedures require the filing or serving of various documents, including a:

- Notice of Commencement.[4]
- Notice to Owner.[5]
- Claim of Lien.[6]
- Notice of Termination.[7]
- Waiver or Release of Lien.[8]
- Notice of Contest of Lien.[9]
- Contractor's Final Payment Affidavit.[10]
- Request for Sworn Statement of Account.[11]

To record a construction lien on real property, the lienor must record a claim of lien with the clerk's office in the county where the property is located and serve the owner with the claim of lien within 15 days after recording the lien.[12] If a claim of lien is not recorded, the lien is voidable to the extent that the failure to record the claim prejudices any person entitled to rely on service of the claim of lien.[13]

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[1] Chapter 713, Part I, F.S. *See* s. 713.001, F.S. (providing the short title).
[2] A lien is a claim against property that evidences a debt, obligation, or duty. *See* 34 FLA. JUR. 2D, *Liens* s. 1 (describing a lien as a charge on property for the payment or discharge of a debt or duty which may be created only by a contract of the parties or by operation of law).
[3] Chapter 713, Part I, F.S.
[4] Section 713.13, F.S.
[5] To secure construction lien rights, a person working on a construction project who is not in direct contract ("privity") with the owner must serve a notice to the owner in the statutory form provided; laborers are exempt from this requirement. The notice informs the owner that someone with whom he or she is not in privity is providing services or materials on the property and that such person expects the owner to ensure he or she is paid. The notice must be served no later than 45 days after the person begins furnishing services or materials and before the date the owner disburses the final payment after the contractor has furnished his or her final payment affidavit. After receiving a notice to owner, the owner generally must obtain a waiver or release of lien from the notice's sender before paying the contractor unless a payment bond applies. Otherwise, payments to the contractor may leave the owner liable to the notice sender if the contractor does not pay such person. *See generally* s. 713.06, F.S.; *see also Stock Bldg. Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313 (Fla 3d DCA 2011) (observing that the "purpose of the notice is to protect an owner from the possibility of paying over to his contractor sums which ought to go to a subcontractor who remains unpaid" (citation omitted)).
[6] Section 713.08, F.S.
[7] Section 713.132, F.S.
[8] Section 713.20, F.S.
[9] Section 713.22(2), F.S.
[10] Section 713.06(3)(d), F.S.
[11] Section 713.16, F.S.
[12] Section 713.08(4)(c), F.S.
[13] *Id.*

A person may file a claim of lien at any time during the progress of the work but may not file a claim of lien later than 90 days after the person's final furnishing of labor or materials.[14] A person may record a single claim of lien for multiple services or materials provided to different properties so long as such services or materials were provided under the same contract, the person is in privity with the owner, and the properties have the same owner.[15] However, a person may not record a single claim of lien for multiple services or materials if there is more than one contract, even if the contracts for services and materials are with the same owner.[16]

Waiver or Release of Lien

The Construction Lien Law provides that any person may, at any time, waive, release, or satisfy any part of his or her lien under the Construction Lien Law.[17] The waiver, release, or satisfaction of the lien may be either as to the amount due for labor, services, or materials furnished; for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release; or as to any part or parcel of the real property.[18] A written waiver of the right to file a mechanics' lien is generally valid and effective.[19]

A right to claim a lien may not be waived in advance, and any waiver of a right to claim a lien that is made in advance is unenforceable. A lien may be waived only to the extent of labor, services, or materials furnished.[20] The right to a lien may be waived expressly or by implication.[21] Before such an important right will be deemed to have been waived by the implication of one's conduct, the implication must be clear and unambiguous, and any ambiguity will be resolved against a waiver;[22] but if it is clear that a waiver is intended, the contract will be construed according to the parties' intention.[23]

The Construction Lien Law sets forth the forms to be substantially followed when a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, either a progress payment[24] or the final payment.[25] A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms set forth in the statute;[26] nevertheless, a lien waiver or lien release that is not substantially similar to the forms set forth is enforceable in accordance with its terms.[27]

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[14] Section 713.08(5), F.S.
[15] Section 713.09, F.S.
[16] *See id.*; *see also Lee v. All Florida Construction Co.*, 662 So. 2d 365, 366-67 (Fla. 3d DCA 1995) (finding that a contractor was required to file two claims of mechanics' lien against a home for construction and subsequent repair work done on the home, even though work was done on the same structure, where construction and repairs were done under two separate contracts).
[17] Section 713.20(3), F.S.
[18] *Id.*
[19] *Greco-Davis Contracting Co. v. Stevmier, Inc.*, 162 So. 2d 285, 285 (Fla. 2d DCA 1964).
[20] Section 713.20(2), F.S.
[21] *Frank Maio General Contractor, Inc. v. Consolidated Elec. Supply, Inc.*, 452 So. 2d 1092, 1093 (Fla. 4th DCA 1984); *Orlando Central Park, Inc. v. Master Door Co. of Orlando, Inc.*, 303 So. 2d 685, 686 (Fla. 4th DCA 1974).
[22] *Id.*
[23] *Frank Maio General Contractor, Inc.*, 452 So. 2d at 1093.
[24] Section 713.20(4), F.S.
[25] Section 713.20(5), F.S.
[26] Section 713.20(6), F.S.
[27] Section 713.20(8), F.S.

A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check. However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid check until any such condition is satisfied.[28]

III. Effect of Proposed Changes:

Under the existing Construction Lien Law, whenever a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment (see s. 713.20(4), F.S.) or a final payment (see s. 713.20(5), F.S.), the lienor has the option of either:

- Using waiver and release of lien forms that are identical or substantially similar to the forms in s. 713.20(4) and (5), F.S.
- Using waiver and release of lien forms that are not substantially similar to the forms in the statute, in which case the form will be enforced in accordance with its terms.

The bill amends s. 713.20(4) and (5), F.S., to make it so lienors no longer have the option of using waiver and release of lien forms that differ from the forms prescribed by statute. All waiver and release of lien forms will have to be identical to the forms prescribed by statute to be enforceable.

Additionally, under existing Construction Lien Law, a lienor may execute a lien waiver and release in exchange for a check, and may condition the waiver and release on payment of the check. The bill amends s. 713.20(7), F.S., to permit other forms of payment in addition to payment by check.

The bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[28] Section 713.20(7), F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By prohibiting the use of waiver and release forms that differ from the statutory forms, those obligated to make payments will have less power to force those entitled to payment to waive additional rights as a condition of receiving payment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 713.20 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Truenow

13-00819-25 2025658__

A bill to be entitled

An act relating to waiver or release of liens; amending s. 713.20, F.S.; requiring that waiver and release of lien forms include specific language; authorizing a lienor who executes such lien and release forms in exchange for payment, rather than a check, to condition such waiver and release on receipt of funds, rather than payment of a check; deleting a provision that a lien waiver or lien release is enforceable if it does not contain such specific language; providing an effective date.

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

Section 1. Subsections (4), (5), (7), and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(4) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment, the waiver or release must ~~may~~ be in ~~substantially~~ the following form:

WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of $...., hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through ...(insert date)... to ...(insert the name of your customer)...

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on the job of ...(insert the name of the owner)... to the following property:

...(description of property)...

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on ...., ...(year).... ...(Lienor)...
By: .....

(5) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, the final payment, the waiver and release must ~~may~~ be in ~~substantially~~ the following form:

WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of $....., hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to ...(insert the name of your customer)... on the job of ...(insert the name of the owner)... to the following described property:

...(description of property)...

DATED on ...., ...(year).... ...(Lienor)...

By: .....

(7) A lienor who executes a lien waiver and release in exchange for payment ~~a check~~ may condition the waiver and release on receipt of funds ~~payment of the check~~. However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid funds ~~check~~ until any such condition is satisfied.

~~(8) A lien waiver or lien release that is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.~~

Section 2. This act shall take effect July 1, 2025.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1142
INTRODUCER:	Senator Rodriguez
SUBJECT:	Release of Conservation Easements
DATE:	March 24, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Favorable**
2.	Collazo	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 1142 directs water management districts to release conservation easements upon application by the fee simple owner of a parcel of land that is subject to a conservation easement if:

- The land is less than 15 acres and bordered on at least three sides by impervious surfaces, such as a road.
- Any undeveloped adjacent parcels are less than 15 acres and similarly bordered on three or more sides by impervious surfaces.
- The land contains no historical, architectural, archaeological, or cultural significance.
- The applicant has secured sufficient mitigation credits.

The bill provides that upon the release of the conservation easement, the ad valorem taxes on the property must be based on the just value of the property. Further, the property may be used for development that is consistent with the zoning designation of the adjacent lands.

The bill takes effect July 1, 2025.

II. Present Situation:

Conservation Easements

As pressure on Florida's natural areas increases, the state's conservation and recreational land acquisition agencies must augment their traditional fee simple acquisition programs with alternatives to the fee simple acquisition of conservation land.[1] Conservation easements are a method of less-than-fee acquisition which allows more land to be brought under public protection for conservation at a lower cost.[2]

[1] Section 253.0251(1)-(2), F.S.
[2] *Id.*

A conservation easement is a right or interest in real property which is held to:
- Retain land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retain land or water areas as suitable habitat for fish, plants, or wildlife;
- Retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance, including abandoned and neglected cemeteries that are 50 or more years old; or
- Maintain existing land uses.[3]

Conservation easements may also limit or prohibit any or all of the following:
- Constructing or placing buildings, roads, signs, billboards, or other advertising, utilities, or other structures on or above the ground.
- Dumping or placing soil or other substance or material as landfill, or dumping or placing trash, waste, or unsightly or offensive materials.
- Removing or destroying trees, shrubs, or other vegetation.
- Excavating, dredging, or removing loam, peat, gravel, soil, rock, or other material substance in a manner that affects the surface.
- Using the surface except for purposes that permit the land or water area to remain predominantly in its natural condition.
- Engaging in activities that are detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- Engaging in acts or uses that are detrimental to the retention of land or water areas.
- Engaging in acts or uses that are detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance, including abandoned and neglected cemeteries that are 50 or more years old.[4]

A conservation easement may be acquired by any governmental body, agency, charitable corporation, or trust whose purposes include any of the following:
- Protecting natural, scenic, or open space values of real property.
- Assuring its availability for agricultural, forest, recreational, or open space use.
- Protecting natural resources.
- Maintaining or enhancing air or water quality.
- Preserving sites or properties of historical, architectural, archaeological, or cultural significance, including abandoned and neglected cemeteries that are 50 or more years old.[5]

Conservation easements "run with the land," which means they bind current and subsequent owners in perpetuity to the easement's restrictions.[6] By granting or selling a conservation

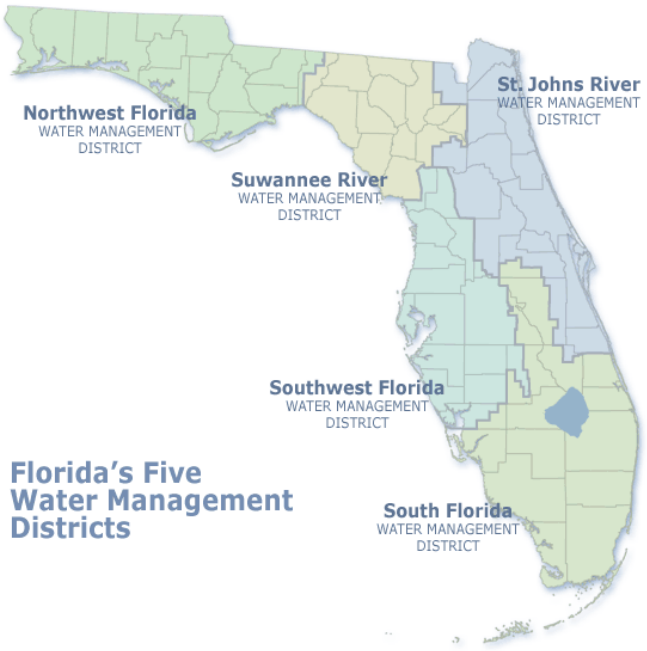
[3] Section 704.06(1), F.S.
[4] Section 704.06(1)(a)-(h), F.S.
[5] Section 704.06(3), F.S.
[6] Section 704.06(2), F.S.; Florida Department of Environmental Protection (DEP), *Conservation Easements FAQs*, https://floridadep.gov/lands/environmental-services/content/conservation-easements-faqs (last visited Mar. 19, 2025).

easement, a property owner may retain title to the property along with certain negotiated rights, while protecting their property's natural, historical, and archaeological resources.[7]

The State Constitution governs the disposition of a fee interest held by an entity of the state for conservation purposes.[8] However, a conservation easement may be disposed of as provided by law because it is a less-than-fee interest in land. A conservation easement may be released by the easement holder to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust.[9] The governing board of any public agency, the Board of Trustees of the Internal Improvement Trust Fund, or a charitable corporation or trust that holds title to a development right may not convey that right to anyone other than the governing board of another public agency, a charitable corporation or trust, or the record owner of the fee interest in the land to which the development right attaches.[10] The conveyance to the owner of the fee must be made only after a determination that it would not adversely affect the interest of the public.[11]

Water Management District Conservation Easements

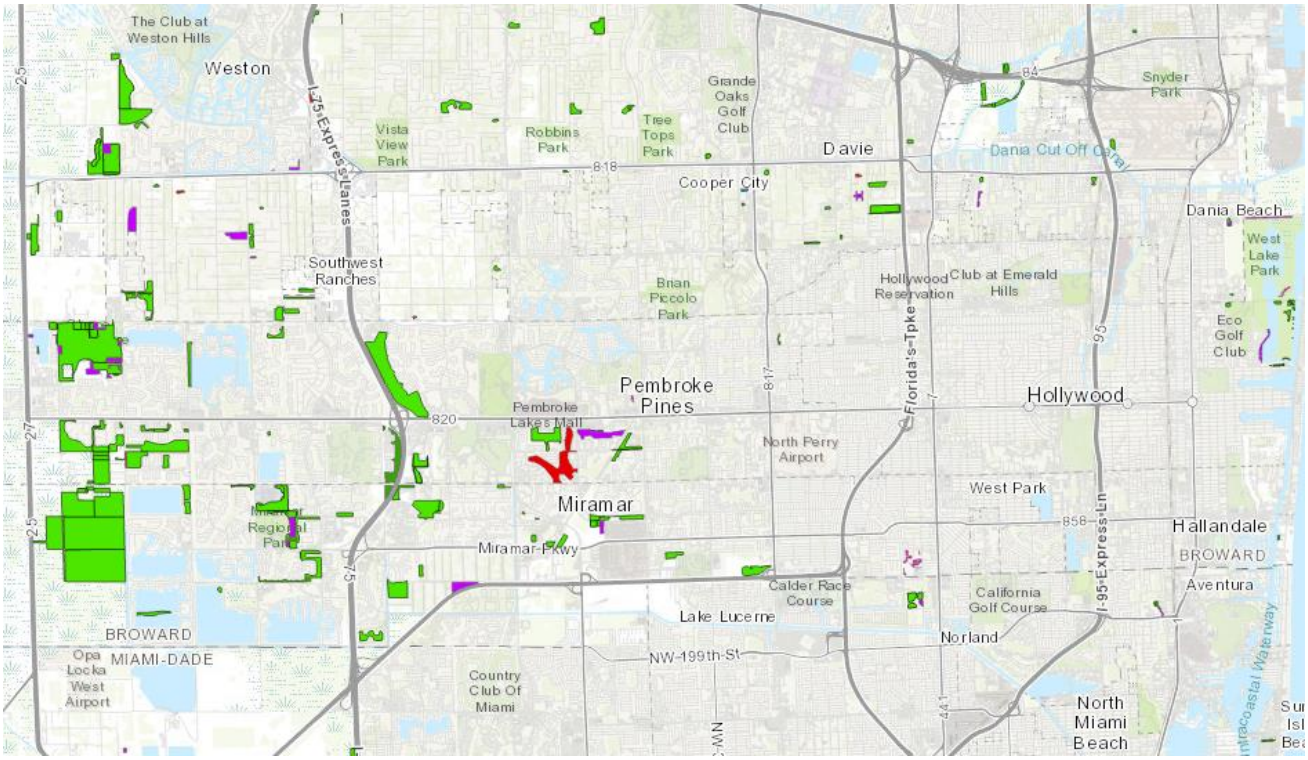
Florida's water management districts are responsible for administering water resources at a regional level.[12] Their core focus is on water supply (including alternative water supply and the water resource development projects identified in a district's regional water supply plans), water quality, flood protection and floodplain management, and natural systems.[13]



Water management districts have numerous conservation easements for various purposes, including stormwater management. These conservation easements may be located in urban or rural areas. GIS maps are available that show the location of water management conservation easements.[14] The map on the

[7] *Id.* A conservation easement may be acquired in the same manner as other interests in property, except by eminent domain, which includes condemnation. Conservation easements are not unassignable to other governmental bodies or agencies, charitable organizations, or trusts for lack of benefit to a dominant estate. Section 704.06(2), F.S.
[8] FLA. CONST. art. X, s. 18.
[9] Section 704.06(4), F.S.
[10] Section 193.501(5), F.S.
[11] *Id.*
[12] DEP, *Water Management Districts*, https://floridadep.gov/owper/water-policy/content/water-management-districts (last visited Mar. 19, 2025); *see also* s. 373.069, F.S. (dividing the state into water management districts).
[13] *Water Management Districts, supra* note 13; s. 373.535(1)(a)2., F.S.
[14] *See, e.g.*, South Florida Water Management District, *ArcGIS Regulation Conservation Easements*, https://geoportal.sfwmd.gov/portal/home/item.html?id=dfea071df8534163bfe7c0d9538bed7e (last visited Mar. 19, 2025);

below shows examples of water management district conservation easements in and around Miramar, FL, some of which may be affected by this bill.



A water management district's governing board may release any easement, reservation, or right-of-way interests conveyed to the district if the interest has no present or apparent future use under the terms and conditions determined by the board.[15] For example, the St. Johns River Water Management District provides that property owners may request the release of a regulatory conservation easement on their land in exchange for mitigation credits or another piece of property.[16] Following receipt of the offer, the district's staff determine whether to recommend approval or denial of the request. The determination is based on whether the district would receive an exchange of property that has an equal or greater ecological value than the property being released, or whether the requestor would purchase mitigation credits providing an equal or greater ecological value in exchange for the release.[17]

Southwest Florida Water Management District, *ArcGIS SWFWMD Conservation Easements*, https://hub.arcgis.com/datasets/FDEP::swfwmd-conservation-easements/about (last visited Mar. 19, 2025); St. Johns River Water Management District, *SJRWMD-owned Conservation Easement*, https://www.arcgis.com/home/item.html?id=66d4b93879b14b81b0af5c47fec20e68 (last visited Mar. 19, 2025).

[15] Section 373.096, F.S.

[16] St. Johns River Water Management District, *Conservation Easements*, https://www.sjrwmd.com/permitting/conservation-easements/#FAQ-16 (last visited Mar. 19, 2025).

[17] *Id*. An example involving a state agency releasing a conservation easement occurred in 2024 when the Florida Fish and Wildlife Conservation Commission (FWC) approved a partial release of a conservation easement in the Split Oak Forest Wildlife and Environmental Area for the proposed route of the Osceola Parkway Extension. FWC staff worked with the surrounding counties to identify alternatives that would minimize and mitigate the anticipated impacts and ensure a net positive conservation benefit. These alternatives include donation of conservation lands and funds for restoration and management in exchange for the partial release of the Split Oak conservation easement. FWC, *Split Oak Forest Wildlife and Environmental Area Conservation Easement Release*, 2-5 (Dec. 2023), available at https://myfwc.com/media/32632/7e-

Ad Valorem Taxation

The ad valorem tax, or "property tax," is an annual tax levied by a local government. The State Constitution prohibits the state from levying ad valorem taxes on real and tangible personal property, and instead authorizes local governments, including counties, school districts, and municipalities to levy ad valorem taxes.[18] Special districts may also be given this authority by law.[19]

The property appraiser annually determines the "just value"[20] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[21] Tax bills are mailed in November of each year, and payment is due by March 31.[22] The tax is based on the taxable value of property as of January 1 of each year.[23]

Tax Assessment of Lands Subject to Conservation Easements

When a landowner conveys the development right in real property by conservation easement to the governing board of any public agency, the Board of Trustees of the Internal Improvement Trust Fund, or certain charitable corporations or trusts, or a covenant has been executed and accepted by the Board of Trustees or charitable corporation or trust, the lands will be assessed as follows:

- If the covenant or conveyance extends for 10 or more years from January 1 in the year the assessment is made, the property appraiser must consider only factors related to the value of the land's present use, as restricted by any covenant or conveyance, in valuing the land for tax purposes.[24]
- If the covenant or conveyance is for less than 10 years, the land must be assessed based on the just value of the property, recognizing the nature and length of any restriction placed on the land's use by the covenant or conveyance.[25]

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presentation-splitoakforest.pdf; FWC, *FWC secures conservation benefit with the partial release of easements at Split Oak Forest WEA*, https://myfwc.com/news/all-news/split-oak-524/ (last visited Mar. 19, 2025).

[18] FLA. CONST. art. VII, s. 1(a).

[19] FLA. CONST. art. VII, s. 9.

[20] Property must be valued at "just value" for purposes of property taxation, unless the State Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

[21] *See* s. 192.001(2), (16), F.S. (defining the terms "assessed value of property" and "taxable value," respectively). In arriving at just valuation, property appraisers must take the following factors into account: the present cash value of the property; the highest and best use to which the property can be expected to be put in the immediate future and the present use of the property; the property's location; the size of the property; the cost of the property and the present replacement value of any improvements to the property; the condition of the property; the income of the property; and the net proceeds of the sale of the property after certain deductions. Section 193.011, F.S.

[22] Sections 197.322 and 197.333, F.S.

[23] Section 192.042, F.S.

[24] Section 193.501(3)(a), F.S.

[25] Section 193.501(3)(b), F.S. In arriving at just valuation, property appraisers must take the following factors into account: the present cash value of the property; the highest and best use to which the property can be expected to be put in the immediate future and the present use of the property; the property's location; the size of the property; the cost of the property

Mitigation Banking

Mitigation banking refers to the practice of buying and selling the wetland ecological value equivalent of the complete restoration of one acre with the intent to mitigate unavoidable wetland impacts within a defined region.[26] The mitigation bank is the site itself and a wetland ecological value equivalent is equal to one mitigation credit.[27] The agencies permitting the mitigation bank determine the number of potential credits available in the bank.[28]

The Uniform Mitigation Assessment Method (UMAM) is the method used to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits.[29] UMAM is a standardized procedure for assessing the ecological functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss.[30] UMAM evaluates functions through consideration of an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, and mitigation risk.[31] This standardized methodology is also used to determine the degree of improvement in the ecological value of proposed mitigation bank activities.[32]

III. Effect of Proposed Changes:

The bill amends s. 704.06, F.S., regulating the creation, acquisition, and enforcement of conservation easements, to require a water management district to release a conservation easement, upon application by the fee simple owner of a parcel of land that is subject to a conservation easement, if all of the following conditions are met:

- The land subject to the easement is less than 15 acres and is bordered on three or more sides by impervious surfaces.
- Any undeveloped adjacent parcels of land are less than 15 acres and similarly bordered on three or more sides by impervious surfaces.
- The land contains no historical, architectural, archaeological, or cultural significance.
- The applicant has secured sufficient mitigation credits using the uniform mitigation assessment method from a mitigation bank in Florida to offset the loss of wetlands located on the land subject to the conservation easement.

The bill also provides that upon the water management district's release of the conservation easement, the ad valorem taxes on the property must be based on the just value of the property,

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and the present replacement value of any improvements to the property; the condition of the property; the income of the property; and the net proceeds of the sale of the property after certain deductions. Section 193.011, F.S.

[26] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Mar. 12, 2025).

[27] *Id*.

[28] *Id*.

[29] *See* s. 373.414(18), F.S. (identifying UMAM as "an exclusive and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters").

[30] DEP, *The Uniform Mitigation Assessment Method (UMAM)*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment (last visited Mar. 19, 2025).

[31] *Id*.

[32] *Id*.

and the property may be used for development that is consistent with the zoning designation of the adjacent lands.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Water management districts may experience a negative fiscal impact from the loss of the value of conservation easements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 704.06 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Rodriguez

40-00792A-25 20251142__

A bill to be entitled

An act relating to the release of conservation easements; amending s. 704.06, F.S.; requiring certain water management districts, upon application by the fee simple owner of a parcel subject to a conservation easement, to release the conservation easement if specified conditions are met; providing for the valuation of the property upon such release; specifying that land released from the conservation easement may be used for development consistent with certain zoning; providing an effective date.

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

Section 1. Subsection (14) is added to section 704.06, Florida Statutes, to read:

704.06 Conservation easements; creation; acquisition; enforcement.—

(14)(a) Upon application by the fee simple owner of a parcel of land subject to a conservation easement to a water management district, a water management district must release the conservation easement if the following conditions are met:

1. The land subject to the easement is less than 15 acres and is bordered on three or more sides by impervious surfaces;

2. Any undeveloped adjacent parcels of land are less than 15 acres and similarly bordered on three or more sides by impervious surfaces;

3. The land contains no historical, architectural, archeological, or cultural significance; and

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4. The applicant has secured sufficient mitigation credits using the uniform mitigation assessment method from a mitigation bank located in this state to offset the loss of wetlands located on the land subject to the conservation easement.

(b) Upon the water management district's release of the conservation easement, the ad valorem taxes on the property must be based on the just value of the property, and the property may be used for development that is consistent with the zoning designation of the adjacent lands.

Section 2. This act shall take effect July 1, 2025.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1430
INTRODUCER:	Senator Collins
SUBJECT:	Postjudgment Execution Proceedings Relating to Terrorism
DATE:	March 24, 2025
REVISED:	

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

I. Summary:

SB 1430 expands current law remedies available to a victim of international terrorism to collect a civil judgment against a terrorist party or an agency or instrumentality of a terrorist. The bill authorizes creditor process to be served upon any person or entity over whom the court has jurisdiction, thereby subjecting the assets to Florida jurisdiction. A Florida court enforcing a terrorism victim's anti-terrorism judgment may garnish intangible assets wherever they are located, without territorial limitation. If these intangible assets are traceable to the terrorist judgment debtor they are subject to execution, garnishment, and turnover by a United States securities custodian or intermediary. In addition, if an electronic funds transfer is currently being held by an intermediary and either the sender or recipient is the terrorist judgment debtor or a related party, the funds are deemed to be property of the terrorist judgment debtor and subject to seizure to apply against the judgment.

The bill applies to any postjudgment execution proceeding served, or filed before, on, or after July 1, 2025, the effective date of the bill.

The bill is effective July 1, 2025.

II. Present Situation:

Civil Judgment Collections Process

The court's entry of a final judgment is not the end of a civil case. A final civil judgment awarding money damages does not automatically put money in the hands of the prevailing party, referred to as the judgment creditor. A final judgment merely gives the judgment creditor the legal right to seek out assets of the judgment debtor and forcibly sell or transfer those assets to or for the benefit of the judgment creditor. This is commonly referred to as the collections process.

There are several means for a judgment debtor to forcibly attempt to collect the judgment. The primary means of collection are:

- Execution – An "execution" is the lawful seizure of property owned by the judgment debtor to be sold at public auction. The net proceeds of an execution on property are paid to the judgment creditor to be applied against the debt. Execution applies to real property and personal property. Execution and sale are conducted by the sheriff.[1]
- Garnishment – A "garnishment" is the seizure of monies owed to the judgment debtor, which money is then paid to the judgment creditor to be applied against the debt. Common targets of a garnishment are bank accounts and wages.[2]
- Proceedings Supplementary – Proceedings supplementary is a collections tool created by statute. When any judgment creditor holds an unsatisfied judgment or judgment lien, the judgment creditor may file a motion asking for proceedings supplementary. In the proceeding, the court may issue a Notice to Appear to the judgment debtor or to any person alleged to be holding property of the judgment debtor, or to any person who may have property that was fraudulently transferred by the judgment debtor to that third party. After hearing, the court may order the sheriff to execute on property found to be owned by the judgment debtor, or found to have been fraudulently conveyed by the judgment debtor, for sale for the benefit of the judgment creditor.[3]

While collection actions are primarily focused on assets of the judgment debtor, there may be occasions where property titled or held in the name of another may be seized in payment of the judgment. This occurs where the judgment debtor has fraudulently transferred the property to a third party in an attempt to thwart collection of the judgment. It also occurs if a third party owes money to the judgment debtor or if legal title or possession of property is held by a person or entity who is conspiring with the judgment debtor to hide or conceal assets of the judgment debtor. Florida has adopted the Uniform Fraudulent Transfer Act to address these situations.[4]

Terrorism

"Terrorism" or "terrorist activity" as defined in s. 775.30, F.S., mean an activity that:

- Involves:
  - A violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
  - A violation of s. 815.06, F.S. (offenses against computer users); and
- Is intended to:
  - Intimidate, injure, or coerce a civilian population;
  - Influence the policy of a government by intimidation or coercion; or
  - Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

A person who commits the offenses specified in s. 775.30(2), F.S., in furtherance of intimidating or coercing the policy of a government, or in furtherance of affecting the conduct of a

[1] The civil execution process is governed by ch. 56, F.S.
[2] The garnishment process is generally governed by ch. 77, F.S.
[3] Section 56.29, F.S.
[4] Chapter 726, F.S.

government by mass destruction, assassination, or kidnapping, commits the crime of terrorism, a first degree felony.[5] A person who commits a violation of s. 775.30(2), F.S., which results in death or serious bodily injury commits a life felony.[6]

Civil Remedy for Victims of Acts of Terrorism

Section 772.13, F.S., authorizes a person who is injured by an act of terrorism, or by an act facilitating or furthering terrorism to pursue a cause of action for threefold the actual damages sustained. If the person prevails in the action, he or she is entitled to minimum damages in the amount of $1,000 and reasonable attorney fees and court costs in the trial and appellate courts. Federal law authorizes a similar civil cause of action for acts of terrorism under 18 U.S.C. s. 2333.

Collecting a Judgment Against a Terrorist

Victims of terrorism currently holding unsatisfied judgments against terrorists report that their collection efforts are being hindered by the courts. Once a judgment is entered against a terrorist party, the ability to collect on the judgment is complicated by the nature of the international transactions and the complex processes such criminal organizations use to hide, launder, and transfer assets. Collection is also hindered by traditional limits on the jurisdiction of the courts and banking laws that provide for bank seizure and hold of funds related to a terrorist but do not provide a means for creditor process against the seized funds. For instance, the courts have adopted the position that a bank account has a situs, the court must have in rem jurisdiction over the bank, and the mere act of maintaining physical branch banks in Florida does not give a Florida court jurisdiction to garnish the account.[7]

III. Effect of Proposed Changes:

SB 1430 amends the statute relating to civil remedies for terrorism to increase the available remedies for a victim of terrorism to use to collect on a judgment entered against a terrorist party or associate of a terrorist party. The bill makes it easier for a victim to collect on a judgment in a postjudgment execution proceeding entered against a terrorist party under Florida law as well as under 18 U.S.C. s. 2333 or a substantially similar federal law. Further, the bill permits enforcement in any postjudgment execution proceedings against any agency or instrumentality of the terrorist party not named in the judgment pursuant to section 201(a) of the federal Terrorism Risk Insurance Act.[8]

The bill provides that creditor process issued under ch. 56, F.S., (final process) or ch. 77, F.S., (garnishment) may be served upon any person or entity over whom the court has personal jurisdiction. Under the bill, writs of garnishment issued under s. 77.01, F.S., and proceedings supplementary under s. 56.29, F.S., apply to intangible assets wherever they are located,

[5] A first degree felony is punishable by up to 30 years' imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[6] A life felony is punishable by up to life imprisonment or a term of years not exceeding life and a $15,000 fine. Sections 775.082 and 775.083, F.S.
[7] *Power Rental Op Co, LLC v. Virgin Islands Water & Power Auth*., No. 3:20-CV-1015-TJC-JRK, 2021 WL 9881137, at *8 (M.D. Fla. July 6, 2021).
[8] 28 U.S.C. s. 1610.

including bank accounts, financial assets, or other intangible property. A Florida court enforcing a terrorism victim's anti-terrorism judgment may garnish intangible assets wherever they are located, so long as the garnishee is subject to personal jurisdiction in the state of Florida. Further, the situs of any intangible assets held or maintained by or in the possession, custody, or control of a person or entity so served is deemed to be in Florida for the purposes of a final process or garnishment proceeding. Under the bill, service of a writ or notice to appear provides the court with in rem jurisdiction over any intangible assets regardless of the physical location, if any, of the assets.

The bill allows a creditor to reach a terrorist debtor's interest within a financial asset or security entitlement by legal process through the securities intermediary[9] or financial institution with whom the debtor's account is maintained. If the securities intermediary is a foreign entity, legal process may be served upon the United States securities custodian or intermediary that has reported holding or maintaining the blocked financial assets or security entitlement to the Office of Foreign Assets Control of the United States Department of the Treasury.[10] These financial assets or security entitlements are subject to execution, garnishment, and turnover by the U.S. securities custodian or intermediary.

If an electronic funds transfer ("EFT") is not completed within 5 banking days[11] and is cancelled because a U.S. intermediary financial institution has blocked the transaction in compliance with a United States sanctions program, and a terrorist party or any agency or instrumentality thereof was either the originator or the intended beneficiary of the EFT, the blocked funds are deemed owned by the terrorist party or its agency or instrumentality, and thus, are subject to execution and garnishment.

The bill is effective July 1, 2025, and applies to any postjudgment execution proceeding served or filed before, on, or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[9] A securities intermediary is defined in s. 678.1021(1)(n), F.S., as a clearing corporation or a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity. A clearing corporation is defined in s. 678.1021(1)(e), F.S., as a person that is registered as a "clearing agency" under the federal securities laws; a federal reserve bank; or any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

[10] The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. https://ofac.treasury.gov/ (last visit March 20, 2025).

[11] The 5-day period is prescribed by s. 670.211(4), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has the potential for a significant positive fiscal impact on private citizens seeking to collect judgments against an international terrorist party or affiliate thereof.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 772.13 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Collins

14-00427B-25 20251430__

A bill to be entitled

An act relating to postjudgment execution proceedings relating to terrorism; amending s. 772.13, F.S.; providing additional requirements for postjudgment execution proceedings to enforce judgments entered against terrorist parties under specified provisions; providing retroactive application of specified provisions; providing an effective date.

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

Section 1. Subsection (6) of section 772.13, Florida Statutes, is amended to read:

772.13 Civil remedy for terrorism or facilitating or furthering terrorism.—

(6)(a) In any postjudgment execution proceedings to enforce a judgment entered against a terrorist party under this section or under 18 U.S.C. s. 2333 or a substantially similar law of the United States or of any state or territory of the United States, including postjudgment execution proceedings against any agency or instrumentality of the terrorist party not named in the judgment pursuant to s. 201(a) of the Terrorism Risk Insurance Act, 28 U.S.C. s. 1610:

1. There is no right to a jury trial under s. 56.18 or s. 77.08; ~~and~~

2. A defendant or a person may not use the resources of the courts of this state in furtherance of a defense or an objection to postjudgment collection proceedings if the defendant or person purposely leaves the jurisdiction of this state or the

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United States, declines to enter or reenter this state or the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person. This subparagraph applies to any entity that is owned or controlled by a person to whom this paragraph applies;

3. Creditor process issued under chapter 56 or chapter 77 may be served upon any person or entity over whom the court has personal jurisdiction. Writs of garnishment issued under s. 77.01 and proceedings supplementary under s. 56.29 apply to intangible assets wherever located, without territorial limitation, including bank accounts as defined in s. 674.104(1)(a), financial assets as defined in s. 678.1021(1), or other intangible property as defined in s. 717.101. The situs of any intangible assets held or maintained by or in the possession, custody, or control of a person or entity so served shall be deemed to be in this state for the purposes of a proceeding under chapter 56 or chapter 77. Service of a writ or notice to appear under this section shall provide the court with in rem jurisdiction over any intangible assets regardless of the location of the assets;

4. Notwithstanding s. 678.1121, the interest of a debtor in a financial asset or security entitlement may be reached by a creditor by legal process upon the securities intermediary with whom the debtor's securities account is maintained, or, if that is a foreign entity, legal process under chapter 56 or chapter 77 may be served upon the United States securities custodian or intermediary that has reported holding, maintaining, possessing, or controlling the blocked financial assets or security

entitlements to the Office of Foreign Assets Control of the United States Department of the Treasury, and such financial assets or security entitlements shall be subject to execution, garnishment, and turnover by the United States securities custodian or intermediary; and

5. Notwithstanding s. 670.502(4), when an electronic funds transfer is not completed within 5 banking days and is canceled pursuant to s. 670.211(4) because a United States intermediary financial institution has blocked the transaction in compliance with a United States sanctions program, and a terrorist party or any agency or instrumentality thereof was either the originator or the intended beneficiary, then the blocked funds shall be deemed owned by the terrorist party or its agency or instrumentality and shall be subject to execution and garnishment.

(b) Paragraph (a) applies to any postjudgment execution proceedings, including creditor process under chapter 56 or chapter 77 served, ~~judgment collectible under state law and to any civil action~~ pending, or filed before, on, or after July 1, 2025 ~~June 20, 2023~~.

Section 2. This act shall take effect July 1, 2025.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1622
INTRODUCER:	Senator Trumbull and Senator Rouson
SUBJECT:	Recreational Customary use of Beaches
DATE:	March 24, 2025
REVISED:	

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

I. Summary:

SB 1622 repeals s. 163.035, F.S., which establishes procedures that a governmental entity must follow when attempting to establish a "recreational customary use of property." The customary use doctrine gives the public a right to use a portion of the dry sand area of a privately-owned beach.

The statutory procedures include:

- A public hearing to adopt a formal notice of intent to affected property owners, which notice alleges the existence of a recreational customary use on their properties.
- A judicial proceeding to consider whether the alleged customary use has been ancient, reasonable, without interruption, and free from dispute.

Repeal of the statute means a return to how customary use rights were determined prior to enactment of the statute:

- A governmental entity may declare the existence of a customary use and adopt a local customary use ordinance without following the procedures in s. 163.035, F.S.
- Property owners must file a lawsuit challenging the ordinance and demonstrate in court that the public does not enjoy customary use rights over their privately-owned beaches.
- Courts will apply the common law doctrine of customary use when ascertaining, on a case-by-case basis, whether the public enjoys customary use rights over privately-owned beaches.

The bill takes effect upon becoming a law.

II. Present Situation:

Customary Use

Establishment of the Customary Use Doctrine

In Florida, the public enjoys the right to access shorelines and beaches that are located below what is called the "mean high tide line." The State Constitution provides that "title to the lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people."[1] This is known as the common law public trust doctrine.

However, the beaches of the state also include land beyond what is described in the public trust doctrine. The dry sand beach located *above* the mean high water line may be owned privately, as recognized by statute.[2] In fact, the part of the beach falling landward of the mean high-water line is usually owned by the owner of the adjacent lot. The only publicly-owned part of the beach is that part falling between the mean high and low water lines, which is called the foreshore region.[3]

In the subsection of the State Comprehensive Plan addressing coastal and marine resources, the Legislature seeks to "[e]nsure the public's right to reasonable access to beaches."[4] Like other lands, the privately-owned portion of the beach may be subject to explicit or implied easements, limitations based on traditional rights of use, or common law prohibitions considered nuisances.[5] Courts have also recognized the public's ability to access and use the dry sand areas of privately-owned beaches for recreational purposes.

In 1974, the Florida Supreme Court established what has become known as the customary use doctrine in Florida in *City of Daytona Beach v. Tona-Rama, Inc.*[6] In *Tona-Rama*, the Court concluded that "[i]f the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption and free from dispute, such use as a matter of custom, should not be interfered with by the owner." The Court also recognized, however, that "the owner may make any use of his property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area."[7]

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[1] FLA. CONST. art X, s. 11.
[2] *See* s. 177.28, F.S. (providing, with emphasis added, that the "[m]ean high-water line along the shores of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the state in its sovereign capacity *and upland subject to private ownership*").
[3] Erika Kranz, *Sand for the People: The Continuing Controversy Over Public Access to Florida's Beaches,* 83 FLA. BAR. J. 10, 11 (Jun. 2009), available at https://www.floridabar.org/the-florida-bar-journal/sand-for-the-peoplethe-continuing-controversy-over-public-access-to-floridas-beaches/.
[4] Section 187.201(8)(b)2., F.S.
[5] *Id.*
[6] 294 So. 2d 73 (1974).
[7] *City of Daytona Beach v. Tona-Rama, Inc*., 294 So. 2d 73, 78 (1974).

In 2007, the Fifth District Court of Appeal issued its opinion in *Trepanier v. County of Volusia*,[8] which qualified the customary use doctrine as articulated by the Florida Supreme Court in *Tona-Rama.* In *Trepanier,* the appellate court said:

> While some may find it preferable that proof of these elements of custom be established for the entire state by judicial fiat in order to protect the right of public access to Florida's beaches, it appears to us that the acquisition of a right to use private property by custom is intensely local and anything but theoretical. "Custom" is inherently a source of law that emanates from long-term, open, obvious, and widely-accepted and widely-exercised practice. It is accordingly impossible precisely to define the geographic area of the beach for which evidence of a specific customary use must be shown, because it will depend on the particular geography and the particular custom at issue.[9]

The appellate court also held that a determination of customary use "requires the courts to ascertain *in each case* the degree of customary and ancient use the beach has been subject to …."[10]

Regulation of Beaches by Local Governments

The Florida Attorney General issued an opinion in 2002 addressing the regulation of the dry sand portion of beaches. The City of Destin adopted a beach management ordinance to provide for the regulation of public use and conduct on the beach. The Sheriff of Okaloosa County and the city mayor inquired about the regulation.[11]

The Attorney General issued three findings in its opinion:

- The city may regulate the beach in a reasonable manner within its corporate limits to protect the public health, safety, and welfare. This regulation must have a rational relation to, and be reasonably designed to accomplish, a purpose necessary for the protection of the public. The city may not exercise its police power in an arbitrary, capricious, or unreasonable manner. Such regulation may be accomplished regardless of the ownership of this area, with the exception of state ownership, and without regard to whether the public has been expressly or impliedly allowed to use that area of the beach by a private property owner who may hold title to the property.
- The right of a municipality to regulate and control dry sand beach property within its municipal boundaries is not dependent on the finding of the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*
- Private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of the city may use local law enforcement agencies for purposes of reporting incidents of trespass as they occur.[12]

[8] 965 So. 2d 276 (Fla. 5th DCA 2007).
[9] *Id*. at 289.
[10] *Id*. at 288 (quoting, with emphasis added, *Reynolds v. County of Volusia*, 659 So. 2d 1186, 1190-91 (Fla. 5th DCA 1995)).
[11] Op. Att'y Gen. Fla. 2002-38 (2002).
[12] *Id*.

In 2016, Walton County enacted an ordinance (the "Customary Use Ordinance") which declared that "[t]he public's long-standing customary use of the dry sand areas of all of the beaches in the County for recreational purposes is hereby protected."[13]

Except for the buffer zone described below, the ordinance prohibited any individual, group, or entity from "imped[ing] or interfer[ing] with the right of the public at large, including the residents and visitors of the County, [from] utiliz[ing] the dry sand areas of the beach that are owned by private entities" for certain specified uses, including:

- Traversing the beach.
- Sitting on the sand, in a beach chair, or on a beach towel or blanket.
- Using a beach umbrella that is 7 feet or less in diameter.
- Sunbathing.
- Picknicking.
- Fishing.
- Swimming or surfing off the beach.
- Staging surfing or fishing equipment.
- Building sand creations.[14]

However, the ordinance prohibited the public at large, including the residents and visitors of the county, from using a 15-foot buffer zone located "seaward from the toe of the dune or from any permanent habitable structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward, except as necessary to utilize an existing or future public beach access point for ingress and egress to the beach."[15] It also prohibited the use of tobacco, possession of animals, or erection or use of tents by members of the public on the privately-owned dry sand areas of the beach.[16]

The county's Customary Use Ordinance was not popular with beachfront homeowners because it interfered with their "ability to keep their private beachfront property just that, private."[17] Lionel and Tammy Alford, owners of beachfront property in the county, sued the county in federal district court seeking, among other things, a declaration that the ordinance was "*void ab initio* on grounds that customary use is a common law doctrine reserved to the courts for determination on a case-by-case basis, and therefore, the County exceeded its authority and acted *ultra vires* by legislating customary use on a county-wide basis."[18]

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[13] Walton County, Fla., Ord. No. 2017-10, ss. 1, 4 (adopted Mar. 28, 2017) (amending earlier Ord. No. 2016-23), available at https://waltonclerk.com/vertical/sites/%7BA6BED226-E1BB-4A16-9632-BB8E6515F4E0%7D/uploads/2017-10.pdf; *see also* Walton County, Fla., Ord. No. 2016-23, s. 1 (adopted Oct. 25, 2016) (the original customary use ordinance), available at https://waltonclerk.com/vertical/sites/%7BA6BED226-E1BB-4A16-9632-BB8E6515F4E0%7D/uploads/2016-23.pdf.

[14] *Id.* The ordinance defined the "dry sand area of the beach" as "the zone of unconsolidated material that extends landward from the mean high water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, whichever is more seaward." Ord. No. 2017-10, s. 2, *supra* note 13.

[15] Ord. No. 2017-10, s. 3, *supra* note 13.

[16] Ord. No. 2017-10, s. 5, *supra* note 13.

[17] Amelia Ulmer, *Ancient and Reasonable: The Customary Use Doctrine and Its Applicability to Private Beaches in Florida*, 36 J. LAND USE & ENVTL. L. 145, 159 (2020) [hereinafter "*Ancient and Reasonable*"].

[18] *Alford, et al., v. Walton County*, 2017 WL 8785115, at **1-2 (N.D. Fla. 2017).

The district court sided with the county and upheld the Customary Use Ordinance. Based on its analysis of *Tona-Rama* and *Trepanier*, the district court concluded that the county did not act outside its authority in adopting the ordinance.[19] The district court did note, however, that "property owners have a right under Florida law to *de novo* as-applied judicial review and a determination of the existence of customary use rights."[20] The decision was appealed to the U.S. Eleventh Circuit Court of Appeals, which directed, without explanation, that the district court vacate the judgment, apparently in response to arguments that the legislative invalidation of the ordinance by HB 631 (2018 Reg. Session) mooted the claim.[21]

HB 631 (2018 Reg. Session)

While the Alfords' case was pending in the U.S. Eleventh Circuit Court of Appeals, the Legislature enacted a new law, HB 631, which it codified as s. 163.035, F.S., entitled the "establishment of recreational customary use." The statute establishes a process by which a governmental entity may seek a judicial determination of the recreational customary use of private beach property.[22]

Under the statute, a governmental entity[23] may not adopt or keep in effect an ordinance or rule that is based upon the customary use of any portion of a beach above the mean high water line, unless the ordinance or rule is based upon a judicial declaration affirming recreational customary use of the beach.[24] The governmental entity may seek a judicial determination of a recreational customary use of private beach property by following the process outlined in the statute.[25]

First, the governmental entity must adopt, at a public hearing, a formal notice of intent to affirm the existence of a recreational customary use on private property. The notice must specifically identify:

- The parcels of property, or the specific portions of the property, for which the customary use affirmation is sought.
- The detailed, specific, and individual use or uses of the parcels to which the customary use affirmation is sought.
- Each source of evidence the governmental entity will rely upon to prove that the recreational customary use has been ancient, reasonable, without interruption, and free from dispute.[26]

The governmental entity must provide notice of the public hearing to the owner of each parcel of property at the address recorded in the county property appraiser's records. The notice must be:

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[19] *Id*. at *16.
[20] *Id*.
[21] *Alford v. Walton County*, 0:17-prici-15741 (11th Cir. June 27, 2018) (reflecting on the docket that the Court granted appellants' motion to vacate the district court's order and judgment concerning customary use ordinance claim); Alyson Flournoy et al., *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom and Controversy,* 25 OCEAN & COASTAL L.J. 1, 33 fn. 110 (2020).
[22] Chapter 2018-94, s. 10, Laws of Fla. (enacting CS/HB 631 (2018 Reg. Session)).
[23] The term "governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. Section 163.035(1), F.S.
[24] Section 163.035(2), F.S.
[25] Section 163.035(3), F.S.
[26] Section 163.035(3)(a), F.S.

- Provided at least 30 days before the public meeting by certified mail with return receipt requested.
- Published in a newspaper of general circulation in the area where the parcels of property are located.
- Posted on the governmental entity's website.[27]

Second, within 60 days after adopting the notice of intent, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court in the county where the subject property is located. This cause of action is similar to a declaratory judgment.[28] The governmental entity must provide notice of filing the complaint to the owner of each parcel as required above for the notice of intent. The notice must allow the owner to intervene in the proceeding within 45 days after receiving the notice. The governmental entity must also provide verification that the notice has been served to the property owners so that the court may establish a schedule for the proceedings.[29]

Proceedings under the statute are conducted *de novo,* which means anew. The court must determine whether the evidence presented by the governmental entity demonstrates that the recreational customary use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. No presumption exists regarding the existence of a recreational customary use of the property in question. The governmental entity bears the burden of proof to demonstrate that the recreational customary use exists. A parcel owner who is subject to the complaint may intervene in the proceeding as a party defendant in the proceeding.[30]

These customary use provisions do not apply to a governmental entity having an ordinance or rule that was adopted and in effect on or before January 1, 2016. Additionally, the provisions do not deprive a governmental entity from raising customary use as an affirmative defense in any proceeding that challenges an ordinance or rule that was adopted before July 1, 2018.[31]

Executive Order 18-202

Governor Rick Scott signed Executive Order 18-202 (Jul. 12, 2018) only about two weeks after HB 631 took effect.[32] In his executive order, Governor Scott directed state agencies to not adopt any rule restricting public access to any state beach having an established recreational customary use.[33] He also directed the Secretary of the Department of Environmental Protection and the Director of the Florida State Parks System to engage in "appropriate efforts" to ensure access to Florida's public beaches.[34]

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[27] *Id.*
[28] A declaratory judgment is a binding adjudication in which a court establishes the rights of the parties without requiring enforcement of its decision. It is generally used to resolve legal uncertainties for the parties. BLACK'S LAW DICTIONARY (12th ed. 2024).
[29] Section 163.035(3)(b)1., F.S.
[30] Section 163.035(3)(b)2., F.S.
[31] Section 163.035(4), F.S.
[32] Fla. Exec. Order No. 18-202 (Jul. 12, 2018), available at https://clarkpartington.com/wp-content/uploads/2024/04/EO-18-202.pdf.
[33] Fla. Exec. Order No. 18-202, *supra* note 32, s. 1.
[34] Fla. Exec. Order No. 18-202, *supra* note 32, s. 2.

To assist with implementing the executive order, Governor Scott also directed the Secretary and Director to:

- Establish an online reporting tool for members of the public to report any violations of their right to public beach access; identify and allocate staff to coordinate with the public in reviewing complaints; and refer any such complaints to appropriate local authorities.
- Submit a report to the Legislature, on or before December 31, 2018, regarding comments received through the public hotline.
- Serve as a liaison between local government entities and members of the public regarding the appropriate implementation of HB 631 by county and municipal governments.[35]

The Governor also urged all governmental entities not headed by an official serving at the pleasure of the Governor, including county and municipal governments, to refrain from adopting any ordinance or rule that would restrict or eliminate access to public beaches.[36]

Following the executive order, not much changed for local governments. They still had to follow the procedures in s. 163.035, F.S., to enact new customary use ordinances. And now they were "urged" to not further restrict beach access.[37]

Walton County Lawsuit

In 2018, consistent with the procedures outlined in s. 163.035, F.S., Walton County filed a complaint in circuit court seeking a declaration affirming the existence of customary uses on 1,194 private properties in the county.[38] Specifically, the complaint sought a judgment declaring that:

- The uses identified in the county's 2017 Customary Use Ordinance were recreational customary uses on each of the specific parcels listed in the complaint.
- The recreational customary uses identified in the formal notice of intent were ancient, reasonable, without interruption, and free from dispute.[39]

Litigating the case took almost 5 years. It was set to proceed with a 7-week bench trial beginning on May 22, 2023, but never did. Ultimately, the property owners who were represented by counsel and objected to the establishment of customary uses on their privately-owned beaches either:

- Obtained a dismissal with prejudice and a finding that customary uses do not exist on their beaches; or
- Negotiated a settlement agreement allowing the public a 20-foot transitory area for walking and sitting, and a finding that customary uses do not exist on their beaches.[40]

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[35] *Id.*
[36] Fla. Exec. Order No. 18-202, *supra* note 32, s. 3.
[37] *Ancient and Reasonable, supra* note 17, at 161.
[38] *In re: Affirming Existence of Recreational Customary Use on 1,194 Private Properties Located in Walton County, Florida,* Case No. 2018-CA-000547 (Fla. 1st Cir. Ct. Dec. 11, 2018) (Complaint for Declaration of Recreational Customary Use) available at http://publicfiles.surfrider.org/Legal/Complaint_for_Declaration_of_Recreational_Customary_Use_12-11-18.pdf [hereinafter "Section 163.035, F.S., Complaint"]; *see also* s. 163.035(3)(b)1., F.S. (requiring governmental entities to file a "Complaint for Declaration of Recreational Customary Use").
[39] Section 163.035, F.S., Complaint, *supra* note 38, at 44-45.
[40] *In re: Affirming Existence of Recreational Customary Use on 1,194 Private Properties Located in Walton County, Florida,* Case No. 2018-CA-000547 (Fla. 1st Cir. Ct. Feb. 14, 2024) (Final Summary Judgment on Remaining Parcels attaching

Out of the initial 1,194 properties at issue, the court only had to decide whether the public had customary use rights over 95 unrepresented properties that never objected to the litigation. Because there had been no opposition to the evidence presented by the county, the court effectively had no choice but to conclude that the public had established customary use rights over the 95 properties.[41]

III. Effect of Proposed Changes:

The bill repeals s. 163.035, F.S., which establishes procedures that a governmental entity must follow when attempting to establish a "recreational customary use of property."

As detailed above, the statutory procedures include:

- A public hearing to adopt a formal notice of intent to affected property owners, which notice alleges the existence of a recreational customary use on their properties.
- A judicial proceeding to consider whether the alleged customary use has been ancient, reasonable, without interruption, and free from dispute.

Repeal of the statute means a return to how customary use rights were determined prior to enactment of the statute:

- A governmental entity may declare the existence of a customary use and adopt a local customary use ordinance without following the procedures in s. 163.035, F.S.
- Property owners must file a lawsuit challenging the ordinance and demonstrate in court that the public does not enjoy customary use rights over their privately-owned beaches.
- Courts will apply the common law doctrine of customary use when ascertaining, on a case-by-case basis, whether the public enjoys customary use rights over privately-owned beaches.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

Settlement Agreement), available at https://clarkpartington.com/wp-content/uploads/2024/04/Final-Judgment-on-Remaining-Parcels-A5288243xA3759.pdf; *see also* Will Dunaway, Clark Partington, Attorneys at Law, *Customary Use Litigation in Walton County, Part II* (Dec. 5, 2023), https://clarkpartington.com/2023/12/05/customary-use-litigation-in-walton-county-part-ii/.

[41] *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The repeal of s. 163.035, F.S., means the upland owners of privately-owned beaches will either have to acquiesce to governmental entities' customary use ordinances or incur the legal costs associated with opposing customary uses on their particular beaches. Accordingly, the bill may have a negative fiscal impact on the upland owners of privately-owned beaches.

C. Government Sector Impact:

Under the bill, governmental entities will no longer have to follow the procedures of s. 163.035, F.S., to establish customary use rights over privately-owned beaches, which could save them the legal costs associated with litigating the issue in court. Accordingly, the bill may have a positive fiscal impact on governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 163.035 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Trumbull

2-01664A-25 20251622__

A bill to be entitled

An act relating to recreational customary use of beaches; repealing s. 163.035, F.S., relating to the establishment of recreational customary use of beaches; providing an effective date.

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

Section 1. Section 163.035, Florida Statutes, is repealed.

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

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