

By Senator Sebesta

16-27-03

1                                   A bill to be entitled  
2           An act for the relief of Joseph G. Donahey,  
3           Jr., and Tena Donahey, his spouse; providing an  
4           appropriation to compensate them for injuries  
5           received by Joseph Donahey, Jr., and for  
6           damages sustained by Mr. and Mrs. Donahey as a  
7           result of the negligence of the Board of  
8           Regents of the State of Florida; providing an  
9           effective date.

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11           WHEREAS, Joseph G. Donahey, Jr., a circuit judge of the  
12           State of Florida, has for years suffered a continually  
13           worsening condition of the back which caused him significant  
14           pain and suffering and was beginning to affect his ability to  
15           serve as a circuit judge, and

16           WHEREAS, Joseph G. Donahey, Jr., consulted with his  
17           personal physician and was referred by his personal physician  
18           to Dr. David W. Cahill, who was reputed to be skilled in  
19           orthopedic surgery, and

20           WHEREAS, Joseph G. Donahey, Jr., consulted with Dr.  
21           Cahill and was advised that a surgical procedure could be  
22           performed on his back which would probably significantly  
23           improve the condition of his back, and

24           WHEREAS, Joseph G. Donahey, Jr., consented to surgery  
25           by Dr. David W. Cahill, to be conducted at Tampa General  
26           Hospital in Tampa, Florida, and

27           WHEREAS, Joseph G. Donahey, Jr., was advised that the  
28           surgery would likely last approximately 4-1/2 hours, and

29           WHEREAS, unknown to Joseph G. Donahey, Jr., Dr. Cahill  
30           was performing such surgery as an employee of the Board of  
31           Regents of the State of Florida, and

1           WHEREAS, the surgery was performed on January 11, 1999,  
2 at Tampa General Hospital, and

3           WHEREAS, unknown to Joseph G. Donahey, Jr., the surgery  
4 was not performed solely by David W. Cahill but, in fact, was  
5 performed in part by a different doctor, who was only a  
6 resident physician employed by the University of South Florida  
7 and who, as part of his training, was employed by the Board of  
8 Regents and received training by observing and participating  
9 in surgery conducted by Dr. David W. Cahill, a professor at  
10 the University of South Florida, and

11           WHEREAS, unknown to Joseph G. Donahey, Jr., the  
12 anesthesiologist was also a resident student at the University  
13 of South Florida and, as such, performed anesthesiology  
14 services on patients who were being operated on by Dr. Cahill  
15 and others while under only partial supervision by a  
16 board-certified anesthesiologist who was a professor at the  
17 University of South Florida, and

18           WHEREAS, the surgery lasted for approximately 10 hours,  
19 instead of the estimated 4-1/2 hours, during which time Dr.  
20 David W. Cahill supervised or performed surgery on two other  
21 patients in addition to Joseph G. Donahey, Jr., and

22           WHEREAS, by reason of the length and complexity of the  
23 surgery, the blood pressure of Joseph G. Donahey, Jr., was  
24 kept at a minimal level for an excessive period of time and  
25 was not adequately monitored by the anesthesiologist, and  
26 whole blood of Joseph G. Donahey, Jr., which was available to  
27 the doctors was not appropriately used; and, as a result of  
28 both of these events, negligently performed by employees or  
29 agents of the Board of Regents, Judge Donahey was injured, and

30           WHEREAS, as a result of the actions of the agents of  
31 the Board of Regents and the above-described surgery, Judge

1 Joseph G. Donahey, Jr., became permanently blind in both eyes,  
2 and

3 WHEREAS, the employees and agents of the Board of  
4 Regents knew or, by the exercise of reasonable care, should  
5 have known that there were numerous reports of blindness  
6 occurring in situations of excessively long surgeries and knew  
7 or should have known, by reason of such fact, that special  
8 care and monitoring should be undertaken regarding the blood  
9 pressure of the patient while undergoing surgery and, further,  
10 that surgical procedures involving operations at two levels of  
11 the spine, as in the case of Judge Donahey, would unduly  
12 lengthen the surgery time and, therefore, should not be  
13 attempted when it was possible to do such surgical procedures  
14 in two surgeries, and

15 WHEREAS, although agents of the Board of Regents were  
16 knowledgeable about such risks of blindness, they failed to  
17 warn or notify Joseph G. Donahey, Jr., of the risks involved  
18 and to seek his informed consent to such surgeries under such  
19 circumstances, and

20 WHEREAS, if he had been informed of the risks of  
21 blindness involved, Joseph G. Donahey, Jr., would not have  
22 undergone the surgeries attempted by David W. Cahill, and

23 WHEREAS, in accordance with the Florida Medical  
24 Malpractice Act, Joseph G. Donahey, Jr., joined by his wife,  
25 Tena Donahey, filed a notice of intent to commence litigation  
26 and took statements of the physicians and the  
27 anesthesiologists involved and supported their notice of  
28 intent to commence litigation with the requisite affidavits  
29 required by law, and all of such proceedings are confidential  
30 and privileged under the Florida Statutes, and

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1           WHEREAS, the Board of Regents of the State of Florida  
2 denied liability as authorized by the Florida Medical  
3 Malpractice Act, and

4           WHEREAS, Joseph G. Donahey, Jr., filed a lawsuit  
5 against the Board of Regents of the State of Florida in the  
6 Thirteenth Judicial Circuit of Hillsborough County, Florida,  
7 and took discovery depositions of the physicians involved and  
8 obtained the records relating to the care and treatment  
9 involved and fully complied with all pretrial requirements of  
10 law, and

11           WHEREAS, the Board of Regents offered to Joseph and  
12 Tena Donahey the sum of \$100,000 each, which is the maximum  
13 amount payable under section 768.28, Florida Statutes, except  
14 pursuant to a legislative claim bill, and

15           WHEREAS, the Board of Regents submitted for signature  
16 to Joseph and Tena Donahey a proposed release that would have  
17 prevented them from seeking relief from the Legislature, and

18           WHEREAS, Joseph and Tena Donahey refused to sign a  
19 release containing such a limitation and, thereafter, executed  
20 a release to the Board of Regents which did not contain such a  
21 requirement, and

22           WHEREAS, thereafter, the Board of Regents tendered to  
23 Joseph and Tena Donahey a release that did not contain any  
24 restriction on their right to request compensation from the  
25 Legislature, and

26           WHEREAS, Joseph and Tena Donahey signed that release,  
27 and

28           WHEREAS, Joseph G. Donahey, Jr., has suffered  
29 significant mental pain and suffering and loss of the  
30 enjoyment of his life by reason of his blindness and has  
31 continued to serve as a circuit judge with great difficulty,

1 and, upon his retirement from the bench, his earning capacity  
2 either as a teacher or as a lawyer will be significantly and  
3 adversely affected by his blindness, and

4 WHEREAS, Joseph G. Donahey, Jr., has incurred economic  
5 expenses in his attempt to seek relief from his blindness not  
6 compensated by insurance, and

7 WHEREAS, Tena Donahey has suffered an economic loss by  
8 reason of her husband's injuries by her need to assist him in  
9 his daily life and has also suffered a significant loss of  
10 consortium, NOW, THEREFORE,

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. The facts stated in the preamble to this  
15 act are found and declared to be true.

16 Section 2. There is appropriated from the General  
17 Revenue Fund to the Board of Regents the sum of \$1 million for  
18 the relief of Joseph G. Donahey, Jr., for injuries and damages  
19 sustained.

20 Section 3. The Comptroller is directed to draw a  
21 warrant in favor of Joseph G. Donahey, Jr., in the sum of \$1  
22 million upon the funds of the Board of Regents in the State  
23 Treasury, and the State Treasurer is directed to pay the same  
24 out of such funds in the State Treasury.

25 Section 4. The sum of \$500,000 is appropriated from  
26 the General Revenue Fund to the Board of Regents for the  
27 relief of Tena Donahey, for injuries and damages sustained.

28 Section 5. The Comptroller is directed to draw a  
29 warrant in favor of Tena Donahey in the sum of \$500,000 upon  
30 the funds of the Board of Regents in the State Treasury, and  
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1 the State Treasurer is directed to pay the same out of such  
2 funds in the State Treasury.

3 Section 6. This act shall take effect upon becoming a  
4 law.

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7 SENATE SUMMARY

8 Provides an appropriation to compensate Joseph G.  
9 Donahey, Jr., and his spouse, Tena Donahey, for injuries  
10 sustained by Joseph G. Donahey, Jr., and for damages  
11 sustained by Mr. and Mrs. Donahey as a result of the  
12 negligence of the Board of Regents of the State of  
13 Florida.  
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