

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 Appropriations

BILL: CS/SB 102

INTRODUCER: Community Affairs Committee and Senator Burgess

SUBJECT: Matters of Great Governmental Concern

DATE: April 14, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------------|-----------------|-----------|--------------------|
| 1. | <u>Paglialonga</u> | <u>Ryon</u> | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Dale</u> | <u>Sadberry</u> | <u>AP</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 102 creates section 16.65, Florida Statutes, which establishes a system wherein the Attorney General, as the state’s chief legal officer, is responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern. The bill defines a “matter of great governmental concern” as any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in fifteen or more counties in this state.

The bill endows the Legislature with authority to declare a matter to be a matter of great governmental concern by concurrent resolution. The Legislature also has the authority to amend or rescind such resolution. A declaration of a matter of great governmental concern provides the Attorney General with the sole authority to file a civil proceeding on behalf of the affected governmental entities in the state unless and until that declaration is rescinded by the Legislature.

Under the bill, the Attorney General may take any legal action he or she determines is in the public interest as long as such action is not inconsistent with the terms or provisions of the Legislature’s resolution declaring the matter to be a matter of great governmental concern. When a matter is declared a matter of great governmental concern, the Attorney General is expressly provided the following procedural rights in state or federal court civil litigation:

- May institute or intervene in any legal proceeding, including any pending appeal;
- May consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest;

- A declaration operates to abate or stay any relevant civil proceeding filed by a governmental entity unless and until the Attorney General takes action in such proceeding; and
- Any statute of limitations under Florida law affecting a claim by a governmental entity is tolled for the declaration's pendency or one year, whichever is shorter.

The bill provides that public officials and employees involved in a matter of great governmental concern have to furnish relevant assistance and information to the Attorney General, including notice of any pending civil proceeding related to a matter of great governmental concern.

The bill requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms of a settlement agreement. Also, any settlement or resolution of a civil proceeding by a governmental entity taken after a declaration without the Attorney General's consent is void.

The bill states that the Department of Legal Affairs is exempt from section 120.57(3), Florida Statutes, for purposes relevant to a matter of great governmental concern.

The bill also provides a procedure for an attorney to receive from any recovery reasonable attorney fees and costs incurred in connection with representing a governmental entity before the Attorney General issues a declaration. The bill describes the various criteria a court must consider when calculating the amount of any reasonable attorney fees.

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Executive Branch and Cabinet

Like the federal system, Florida's state government is divided into three branches: the executive branch, the legislative branch, and the judicial branch. The governor of Florida is the chief executive of Florida and the State's chief administrative officer responsible for the planning and budgeting for the State and serves as chair when the governor and the Florida Cabinet sit as a decision-making body in various constitutional roles. The governor has the power to execute Florida's laws and to call out the state militia to preserve the public peace, being commander-in-chief of the State's military forces that are not in active service of the United States.¹

Florida is unique among U.S. states in its cabinet-style government. Members of the Florida Cabinet are independently elected and have equal footing with the governor on issues under the Cabinet's jurisdiction. The Cabinet consists of the attorney general, the commissioner of agriculture, and the chief financial officer. Along with the governor, each member carries one vote in the cabinet decision-making process. In the event of a tie, the side of the governor is the prevailing side. Cabinet elections are held every four years, on even-numbered years not divisible by four (such as 2018, 2022, etc.).²

¹ Article IV, Sections 1 and 4, of the Florida Constitution.

² Article IV, Sections 1 and 4, of the Florida Constitution.

The State Attorney General

The Florida attorney general is the State's chief legal officer. The attorney general is responsible for and the head of the Department of Legal Affairs.³ As with other elected statewide offices in Florida, the attorney general is limited to serving two consecutive four-year terms. The attorney general is second (behind the lieutenant governor) in the line of succession to the Governor of Florida's office.⁴

Roles and Functions of the Attorney General

The Attorney General has various roles and functions within Florida's government and legal system. These responsibilities are outlined in the Florida Constitution and state statute. The Attorney General performs the following responsibilities:⁵

- Defends the constitutionality of statutes duly enacted by the Legislature;
- Issues formal legal opinions at the request of various public officials on questions relating to the application of state law;
- Is responsible for protecting Florida consumers from various types of fraud and enforcing the state's antitrust laws;
- Protects Floridians in Medicaid fraud cases;
- Defends the state in civil litigation cases;
- Represents the people of Florida when criminals appeal their convictions in state and federal courts; and
- Administers programs to assist victims of crime.

The Office of the Attorney General also houses and oversees other officials and departments. The Solicitor General is a position within the Office of the Attorney General. The Solicitor General is appointed by and serves at the pleasure of the Attorney General. The Solicitor General oversees civil and criminal appeals involving the State and has the authority to decide whether the State should appeal a case to the Florida Supreme Court, United States Supreme Court, or the Eleventh Circuit Court of Appeal, as well as the authority to decide whether the State should file or join an amicus brief in state or federal court.⁶

Furthermore, the Attorney General appoints the Statewide Prosecution from a list of nominees selected by the Florida Supreme Court Judicial Nominating Commission. The Statewide Prosecutor serves four years terms and acts as the agency head for eight offices throughout the state that targets widespread criminal activities throughout Florida, including identity theft, drug trafficking, and gang activity.⁷

³ Article IV, Sections 10, of the Florida Constitution.

⁴ Article IV, Sections 4, of the Florida Constitution.

⁵ See generally Office of Attorney General Ashley Moody Website, available at: <http://www.myfloridalegal.com/> (last visited Mar. 27, 2021).

⁶ Office of Attorney General, Role of Solicitor General, available at: <http://myfloridalegal.com/pages.nsf/main/a0cb91c5c403a0f385256cc6007a3808!OpenDocument> (last visited Mar. 27, 2021).

⁷ Office of Attorney General, Office of Statewide Prosecution, available at: <http://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited Mar. 27, 2021).

The Office of the Attorney General also houses the Florida Commission on the Status of Women, the Council on the Social Status of Black Men and Boys, and the Office of Civil Rights, which investigates and takes legal action against civil rights violations.⁸

Attorney General Common Law Powers

In addition to the Attorney General's variety of constitutional and statutory powers, courts have ruled that state attorney generals have broad legal powers under common law. The common law provides the Attorney General with authority to intervene in matters of compelling public interest. Under common law, the Attorney General has the power and duty to prosecute all actions necessary to protect and defend the state's property and revenue.⁹ Moreover, in Florida, the attorney general is in many respects judicial in character and is clothed with considerable discretion. This considerable discretion includes the Attorney General's power to institute litigation on his or her own initiative.¹⁰

In the case of *State of Fla. ex rel. Shevin v. Exxon Corp.*, the U.S. Court of Appeals for the Fifth Circuit ruled that the Attorney General of Florida retains common-law powers, and in the absence of an express legislative provision to the contrary, the Attorney General's common law powers prevail.¹¹

The Doctrine of Parens Patriae¹²

The sovereign role of states and the exercise of police power is to promote the people's health, safety, and welfare. In service of this sovereign responsibility, states may vindicate their interest in the citizenships' welfare through a legal action referred to as *parens patriae*. The Latin phrase *Parens patriae* means "parent of the country." Under this legal action, states may recover costs or damages incurred because of behavior that threatens the state's citizenry's health, safety, and welfare.¹³

American courts have uniformly recognized a state's authority to sue as *parens patriae*. In this legal action, the state alleges that a defendant's misbehavior harmed the state's interest in protecting its citizens and its interest in enforcing civil and criminal law. More specifically, *parens patriae* actions have been ruled appropriate for suits seeking to abate public nuisances, maintain access to energy sources, halt price-fixing, and enforce state anti-trust laws. In the United States, *parens patriae* actions were greatly expanded over the 1900s and have been described as an increasingly popular vehicle for state attorneys general to vindicate their constituents' rights.¹⁴

⁸ Office of Attorney General Ashley Moody Website, *available at*: <http://www.myfloridalegal.com/> (last visited Mar. 27, 2021).

⁹ *See Thompson v. Wainwright*, 714 F.2d 1495, 1500–1501 (11th Cir.1983)

¹⁰ *See State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

¹¹ *See id.*

¹² *See generally* Richard P. Ieyoub & Theodore Eisenberg, *State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae*, 74 Tul. L.Rev. 1859 (2000).

¹³ *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758 (S.D.Miss. 2014).

¹⁴ *See Mississippi ex rel. Hood*, 876 F.Supp.2d 758 (S.D.Miss. 2014).

A *parens patriae* action by a state is typically reserved for breaches of duty or inflictions of damages on a statewide scale, warranting civil state involvement in litigation. A state is not permitted to enter a controversy as a nominal party to forward individual citizens' claims. But it may act as the representative of its citizens in original actions where the injury alleged affects the general population of a state in a substantial way.¹⁵ *Parens patriae* actions are disfavored where the injury falls “on a small group of citizens who are likely to challenge” the harm directly. But where “a great many citizens ... are faced with increased costs aggregating millions of dollars per year” and “cannot be expected to litigate [the issue] given that the amounts paid by each consumer are likely to be relatively small, *parens patriae* suits are appropriate. *Parens patriae* statutes are most common in the antitrust and consumer protection contexts.¹⁶

Procedural Limits to Attorney General Common Law Powers in Litigation

Although the Attorney General has broad authority to litigate matters in the public interest, courts have ruled that the Attorney General must still abide by relevant judicial procedures and rules. In the case of *Bondi v. Tucker*, Florida’s First District Court of Appeal ruled that when the Attorney General does appear in court as a party litigant, he or she is subject to the same rules of judicial procedure which other litigants must observe. In this case, Attorney General Bondi failed to participate as a party in the lower tribunal proceedings and was denied the ability to invoke appellate proceedings individually. In its decision, the court expressly recognizes that courts maintain discretion to enforce judicial procedure even when the Attorney General is involved.¹⁷

Instances of State Involvement in Civil Litigation

Petroleum Products Overcharges

In *Hawaii v. Standard Oil*, the state of Hawaii brought a complaint against companies involved in the petroleum industry, alleging defendants violated the Sherman Act, 26 Stat. 209, 15 U.S.C. s 1, by entering into unlawful contracts; by conspiring and combining to restrain trade and commerce in the sale, marketing, and distribution of refined petroleum products; and by attempting to monopolize and actually monopolizing trade and commerce in the petroleum industry.¹⁸

The State sought to recover damages in three distinct capacities. First, the state claimed it suffered damages in its proprietary capacity for overcharges for petroleum products sold to the State itself. Second, as *parens patriae*, Hawaii sought similar damages for overcharges paid by the State's citizens. Third, the state looked to recover damages as the representative of all purchasers in Hawaii for the overcharges.¹⁹

In this case, the Supreme Court held that the State of Hawaii could seek damages for its citizens via a *parens patriae* suit alleging antitrust violations.²⁰

¹⁵ *Maryland v. Louisiana*, 451 U.S. 725, 737, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981)

¹⁶ *See id.*

¹⁷ *Bondi v. Tucker*, 93 So.3d 1106 (Fla. 1st DCA 2012).

¹⁸ *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251 (1972).

¹⁹ *Id.*

²⁰ *Hawaii*, 405 U.S. 251 (1972).

Liquid Crystal Display Price-fixing

In the case of *Mississippi ex rel. Hood v. AU Optronics Corp.*, the Attorney General of Mississippi filed a state court *parens patriae* suit on behalf of the State of Mississippi against manufacturers, marketers, sellers, and distributors of liquid crystal display (LCD) panels, alleging that defendants engaged in a price-fixing scheme in violation of Mississippi Consumer Protection Act (MCPA) and Mississippi Antitrust Act (MAA).²¹

The State sought the following relief: (1) a permanent injunction prohibiting the defendants from continuing to engage in anti-competitive behavior; (2) civil penalties of \$10,000 per LCD panel product sold in Mississippi during the relevant time period, pursuant to the MCPA; (3) civil penalties of up to \$2,000 per month, per defendant for violations of the MAA during the relevant time period; (4) restitution to the State for its own losses caused by purchasing LCD panel products during the relevant time period; (5) restitution to the State on behalf of its citizens and local governments who suffered losses by purchasing LCD panel products during the relevant time period; (6) punitive damages; and (7) other relief including costs of court, pre- and post-judgment interest, and attorney's fees.²²

The ruling in this case mainly involved whether Mississippi's claims were subject to the Class Action Fairness Act provisions and must be brought in federal court or could be brought in state court. The court in this case ultimately ruled that Mississippi's Attorney General may maintain a *parens patriae* suit in state court, to enforce Mississippi's consumer protection and antitrust laws, for the economic well-being of Mississippi's consumers and governmental entities, and that the general public exception to Class Action Fairness Act applied to prevent removal to federal court.²³

2010 Deepwater Horizon Oil Spill

On April 20, 2010, the Transocean offshore oil rig, Deepwater Horizon, under the operation of BP, exploded in the Gulf of Mexico, causing an estimated 4.9 million barrels of crude oil to spill into the ocean approximately 45 miles south of the Louisiana coast. Florida Governor Charlie Crist issued a state of emergency as a result of the spreading oil spill.²⁴

On April 4, 2016, Florida, the four other affected Gulf States, the federal government, and BP entered into a Consent Decree, "In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010" (no. 2179, M.D.L, document no. 15), that awarded civil and criminal penalties in the amount of \$20.8 billion to the United States and the five Gulf States to be paid by parties responsible for the oil spill. In a separate agreement, BP agreed to pay a total of \$4.9 billion to the five Gulf States and up to \$1 billion to local government entities for

²¹ *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758 (S.D.Miss. 2012).

²² *Id.*

²³ *Id.*

²⁴ Triumph Gulf Coast, Inc. Website, *Triumph Timeline*, available at: <https://www.myfloridatriumph.com/about/triumph-timeline/> (last visited Mar. 29, 2021).

economic damage claims related to the Deepwater Horizon incident.²⁵ In July of 2016, Attorney General Pam Bondi received the first settlement payment from BP for \$400 million.²⁶

To administer the settlement funds paid by BP, the Florida Legislature established the Triumph Gulf Coast, Inc., a nonprofit corporation created pursuant to s. 288.8013, F.S. Under s. 288.8013(2), F.S., seventy-five percent of all payments to the state pursuant to the settlement agreement with BP are transferred immediately by the Chief Financial Officer from the General Revenue Fund to the Triumph Gulf Coast Trust Fund. Triumph Gulf Coast, Inc. is responsible for allocating settlement funds by providing awards for public and private projects within each disproportionately affected county's geographic boundaries.²⁷

Opioid Epidemic

From 1999 to 2016, it is estimated 453,300 Americans have died from opioids.²⁸ The opioid epidemic was initially caused by the over-prescription of opioids in the 1990s, which led to them becoming the most prescribed class of medications in the United States. The U.S. Department of Justice has found that civil and criminal violations by opioid manufacturers substantially contributed to the opioid epidemic.²⁹

In the aftermath of this epidemic, numerous state, county, and city governments have brought civil claims against opioid manufacturers to recoup damages related to the opioid epidemic. In 2019, opioid distributors McKesson Corp., AmerisourceBergen, Cardinal Health, and drug manufacturer Teva Pharmaceuticals agreed to a \$260 million settlement with Cuyahoga and Summit counties in Ohio.³⁰ Also in 2019, an Oklahoma judge ruled that Johnson and Johnson must pay the state of Oklahoma \$572 million as damages for actions that contributed to the opioid epidemic.³¹

In Florida, Broward County, Broward Health Hospital District, and 26 other governmental entities and institutions across the state have also joined civil litigation against Purdue Pharma, Johnson & Johnson, Abbott Laboratories, and others in the prescription opioid industry. The

²⁵ Triumph Gulf Coast, Inc. Website, *Triumph Timeline*, available at: <https://www.myfloridatriumph.com/about/triumph-timeline/> (last visited Mar. 29, 2021).

²⁶ *Id.*

²⁷ Section 288.8013, F.S.

²⁸ "The Opioid Epidemic Might Be Much Worse Than We Thought". The Atlantic, February 27, 2020, available at: <https://www.theatlantic.com/health/archive/2020/02/more-people-have-died-opioids-us-thought/607165/> (last visited Mar. 29, 2021); Mohamadi A, Chan JJ, Lian J, Wright CL, Marin AM, Rodriguez EK, von Keudell A, Nazarian A (August 2018), "Risk Factors and Pooled Rate of Prolonged Opioid Use Following Trauma or Surgery: A Systematic Review and Meta-Regression) Analysis". The Journal of Bone and Joint Surgery. American Volume. 100 (15): 1332–1340.

²⁹ Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family, Oct. 21, 2020, available at: <https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid> (last visited Mar. 29, 2021).

³⁰ Government Lawsuits Against Opioid Distributors & Manufacturers, available at: <https://www.levinlaw.com/government-opioid-lawsuit> (last visited Mar. 29, 2021).

³¹ "Oklahoma wins case against drugmaker in historic opioid trial," CNN, Aug. 27, 2019, available at: <https://www.cnn.com/2019/08/26/health/oklahoma-opioid-trial-verdict-bn/index.html> (last visited Mar. 29, 2021).

suits allege negligence, fraud, and civil conspiracy, seek millions of dollars in damages, and demand a jury trial.³²

On February 4, 2021, Attorney General Ashley Moody announced that her office secured millions of dollars for Florida through efforts to hold accountable corporations responsible for helping fuel the deadly opioid epidemic. Florida joined a coalition of 47 states, the District of Columbia, and five U.S. territories in the \$573 million action with one of the world's largest consulting firms, McKinsey & Company. The multistate action resolved investigations into the company's role in working for opioid companies to promote products that fueled the opioid epidemic. As a result, Florida will receive more than \$40 million—a majority of which will be made available for allocation by Florida lawmakers.³³

Similarly, on March 16, 2021, Attorney General Moody announced that her office secured additional funding for Florida communities from Purdue Pharma's bankruptcy plan, which is worth approximately \$7 billion in total.³⁴

III. Effect of Proposed Changes:

The bill creates s. 16.65, F.S., which establishes a system wherein the Attorney General, as the state's chief legal officer, is responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern.

The bill includes legislative findings that a single official representing governmental entities in civil proceedings in matters of great governmental concern will maximize recoveries and minimize costs. The bill states it is the intent of the Legislature to establish a procedure for use by the Attorney General in addressing matters of great governmental concern, and that the act is not intended to expand or change existing law with respect to the power and authority of the Attorney General.

The bill defines "governmental entity" to mean the state and any department, agency, political subdivision, unit of government, or school district thereof. A "matter of great governmental concern" is defined as any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in fifteen or more counties in this state.

The bill endows the Legislature with authority to declare a matter to be a matter of great governmental concern by concurrent resolution. The Legislature also has the authority to amend or rescind such resolution. A declaration of a matter of great governmental concern provides the

³² "South Florida hospitals among 27 in state suing opioid makers and sellers, Broward lawsuit says," SunSentinel, Sep. 19, 2019, available at: <https://www.sun-sentinel.com/local/broward/fl-ne-hospitals-florida-suing-opioid-makers-sellers-20190920-z6eefkmghrdshctc34xb3yngyy-story.html> (last visited Mar. 29, 2021).

³³ Attorney General Moody Secures \$40 Million for Florida from Company Marketing Opioid Medications, available at: <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/BB37C4F6FABF771D85258672005079E1> (last visited Mar. 29, 2021).

³⁴ Attorney General Moody Secures Billions for Opioid Abatement Funds from Purdue Pharma Bankruptcy Plan, available at: <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D6A7FC7B1D9774808525869A004BCDE5> (last visited Mar. 29, 2021).

Attorney General with the sole authority to file a civil proceeding on behalf of the affected governmental entities in the state unless and until that declaration is rescinded by the Legislature. Under the bill, when a matter is declared a matter of great governmental concern, the Attorney General may institute or intervene in any governmental entity legal proceeding, including any pending appeal, and may consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest, as long as such action is not inconsistent with the terms of the Legislature's resolution. The Legislature's declaration operates to abate or stay any relevant civil proceeding filed by a governmental entity unless and until the Attorney General takes action in such proceeding. A declaration by the Legislature also tolls any statute of limitations under Florida law affecting a claim by a governmental entity for the declaration's pendency or 1 year, whichever is shorter.

The bill provides that public officials and employees involved in a matter of great governmental concern have to furnish relevant assistance and information to the Attorney General, including notice of any pending civil proceeding related to a matter of great governmental concern.

The bill requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms of a settlement agreement. Also, any settlement or resolution of a civil proceeding by a governmental entity taken after a declaration without the Attorney General's consent is void.

The bill states that the Department of Legal Affairs is exempt from s. 120.57(3), F.S., for purposes relevant to a matter of great governmental concern.

The bill also provides a procedure for an attorney to receive from any recovery reasonable attorney fees and costs incurred in connection with representing a governmental entity before the Attorney General issues a declaration. The bill describes the various criteria a court must consider when calculating the amount of any reasonable attorney fees to include the following:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent, that the acceptance of the particular employment will preclude other employment by the attorney;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitation imposed by the governmental entity or the circumstances;
- The nature and length of the professional relationship with the governmental entity;
- The experience, reputation, and ability of the attorney performing the legal services; and
- Whether the fee is fixed or contingent.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article V, s. 2(a) of the Florida Constitution, grants the Florida Supreme Court the exclusive authority to adopt rules of judicial practice and procedure for actions filed in Florida.³⁵ Generally, the Legislature is empowered to enact substantive law while the Florida Supreme Court has the authority to enact procedural law.³⁶ Accordingly, a statute that creates or modifies a procedural rule of the Florida Supreme Court violates Art. II, s. 3 of the Florida Constitution, which prohibits one branch of government from exercising any powers appertaining to either of the other branches unless expressly permitted by the constitution.³⁷

The bill may implicate these constitutional provisions by containing procedural dictates that fall exclusively within the Florida Supreme Court's constitutional powers and, thus, violate the constitutional separation of powers. The bill's constitutionality likely depends on whether a court considers the bill's provisions "clearly substantive" with "incidental" procedural aspects. If so, the bill may be constitutional.³⁸

The bill also may implicate Art. I, s. 10 of the United States Constitution and Art. I, s. 10 of the Florida Constitution. Both of these constitutional provisions prohibit any law that impairs the obligation of contracts. The bill may violate these constitutional restrictions by impairing existing contractual relationships between governmental entities and private attorneys that may be affected if the Attorney General declares that a matter is a great governmental concern.³⁹

³⁵ See *Se. Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So.3d 73, 78 (Fla.2012).

³⁶ *Massey v. David*, 979 So.2d 931, 936 (Fla.2008)

³⁷ See *State v. Raymond*, 906 So.2d 1045, 1048 (Fla.2005)

³⁸ "If a statute is clearly substantive and operates in an area of legitimate legislative concern, this Court will not hold that it constitutes an unconstitutional encroachment on the judicial branch. However, where a statute does not basically convey substantive rights, the procedural aspects of the statute cannot be deemed incidental, and that statute is unconstitutional. Moreover, where this Court has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict. Finally, where a statute has some substantive aspects, but the procedural requirements of the statute conflict with or interfere with the procedural mechanisms of the court system, those requirements are unconstitutional." *Massey v. David*, 979 So.2d 931, 937 (Fla.2008)(citation and quotations omitted).

³⁹ See *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So.3d 118 (Fla.2017)(claims bill's limitation on payment of attorney fees impermissibly impaired family's preexisting contingency fee contract with law firm).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

The bill may increase state revenue as it would direct all recovery obtained in litigation on a matter of great governmental concern, with the exception of local government attorney fees in specified circumstances, to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill's current definition of a "matter of great governmental concern" appears to only apply to situations where a governmental entity suffers substantial economic loss or harm. This definition may exclude certain *parens patriae* legal actions related to the economic loss or harm suffered by the citizenry of a governmental entity and not the governmental entity itself.

VIII. Statutes Affected:

This bill creates section 16.65 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Community Affairs on March 30, 2021:

The committee substitute makes the following revisions:

- Redefines "matter of great governmental concern" to mean situations where 15 or more counties suffer economic loss or other harm, as opposed to 5 or more counties;
- Provides that the Legislature has the authority to declare, amend, or rescind a declaration for a matter of great governmental concern by concurrent resolution, as opposed to the Attorney General;
- Provides that the Attorney General may take legal action in the public interest as long as such action is not inconsistent with the terms or provisions of the Legislature's resolution declaring the matter to be a matter of great governmental concern;

- Requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern be subject to full appropriation by the Legislature; and
- Removes the statement that a declaration of a matter is a matter of great governmental concern does not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57, F.S.

B. Amendments:

None.

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