

Council Substitute for House Bill No. 787

An act for the relief of Brian Daiagi by the South Florida Water Management District; authorizing and directing the South Florida Water Management District to compensate Brian Daiagi for personal injuries that he suffered due to the negligence of the South Florida Water Management District; providing a limitation on attorney's fees, lobbying fees, costs, and other similar expenses relating to the claim; providing an effective date.

WHEREAS, on the morning of August 10, 1992, Brian Daiagi, a 20-year-old single resident of Broward County, was traveling on a dirt bike westbound on the shoulder of Griffin Road with Richard Truntz, an off-duty police officer with the Hollywood Police Department, who was also on a dirt bike, and

WHEREAS, across the shoulder of the road, hidden in tall grass and unbeknownst to both of them, was a drainage culvert that ran perpendicular to and across the shoulder of the road on which they were traveling, and

WHEREAS, this drainage culvert that was placed on land owned by the South Florida Water Management District had been there for many years and, at one point, Bell South was to have erected a security fence around the drainage culvert, having obtained permission to lay telephone cables on the road shoulder, but Bell South ultimately failed to erect the security fence, and

WHEREAS, despite having notice that the security fence had not been erected, the South Florida Water Management District did not act to protect or warn of the hidden drainage culvert, and

WHEREAS, on August 10, 1992, at approximately 3:00 p.m., when the two riders were returning to Brian Daiagi's home, Richard Truntz was unable to get his dirt bike out of first gear and could ride only very slowly and suggested that Brian ride ahead and meet him later at Mr. Daiagi's house, and

WHEREAS, while wearing a helmet and full protective gear and traveling at approximately 25 m.p.h., Brian Daiagi drove his dirt bike into the hidden drainage culvert, and

WHEREAS, Mr. Daiagi had never ridden his dirt bike in the area where the accident occurred, and had moved to this western area of Broward County approximately 3 weeks prior to the accident, and

WHEREAS, the drainage culvert cannot be seen with the naked eye and was completely obscured by long grass along the road, and

WHEREAS, the South Florida Water Management District is responsible for cutting the grass in this area, and

WHEREAS, testimony at the trial of the case indicated that the grass was at least “knee high” and obscured the culvert from ordinary view, and Richard Truntz testified that he would also have driven into the culvert except for the fact that he was traveling in first gear and was able to stop 2 feet short of the culvert only by breaking hard, and

WHEREAS, the South Florida Water Management District acknowledged during the trial that it had knowledge that “passers-by” used the road shoulder and took the position that Brian Daiagi was “an invitee” on the premises, and

WHEREAS, Brian Daiagi sustained a crush fracture to his spine, was rendered a paraplegic as a result of the incident, was paralyzed from the waist down, and, according to Dr. Barth Green who treated Mr. Daiagi for his injuries, will always be confined to a wheelchair within a reasonable degree of medical probability, and

WHEREAS, the specific injuries include a T10-T11 fracture with complete paraplegia below the navel; comminuted fracture of the vertebrae at T11; multiple fractures of the spine at L1, L2, L3, and L4; posttraumatic stress disorder; depression; pain secondary to the spinal cord injury; bowel dysfunction; nonfunctioning bladder that requires 24-hour catheterization; and complete sexual impotence, and

WHEREAS, there was no testimony that Brian Daiagi was speeding at the time of the accident and the South Florida Water Management District claimed that Mr. Daiagi was not looking where he was going, and

WHEREAS, the trial court allowed the jury to visit the scene of the accident and the jury agreed by their verdict that the drainage culvert was completely obscured and could not be seen and, at the time the jury visited the site, the grass was above knee level, and

WHEREAS, an engineer and accident reconstructionist who was called by Mr. Daiagi as an expert witness testified that Mr. Daiagi’s speed, based upon where he was found on the other side of the culvert, was approximately 25.6 m.p.h., requiring 90 feet in which to stop, at which distance Mr. Daiagi could not have seen the culvert, and

WHEREAS, at the time of the accident, Mr. Daiagi was working in a jewelry store and is now 36 years of age and lives in western Broward County, and

WHEREAS, a verdict was rendered in the case on September 29, 2000, finding that the South Florida Water Management District was 80-percent negligent in causing the injuries sustained by Brian Daiagi, and awarding damages totaling \$4,344,000, which took into account a finding of 20-percent comparative negligence by Mr. Daiagi, and

WHEREAS, the verdict was later reduced by the trial court due to collateral source payments pursuant to health insurance, resulting in an amended final judgment entered by the trial court on May 10, 2001, in the amount of \$4,008,616.63, and

WHEREAS, the South Florida Water Management District appealed the verdict to the Fourth District Court of Appeals and the verdict was upheld in a unanimous opinion by the appellate court on July 17, 2002, Case Number 4D01-1918, 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 Florida Water Management District is authorized and directed to appropriate from funds of the district not otherwise appropriated and to draw a warrant in the amount of \$3,908,616.63, payable to Brian Daiagi, to compensate him for personal injuries and damages suffered as a result of the negligence of the South Florida Water Management District.

Section 3. This award is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injury to Brian Daiagi. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

Approved by the Governor May 19, 2008.

Filed in Office Secretary of State May 19, 2008.