

By Senator Hill

1-356-03

1 A bill to be entitled
2 An act relating to the City of Neptune Beach;
3 providing for the relief of Tommy Cusick, a
4 minor, for injuries sustained due to negligence
5 of the City of Neptune Beach; providing for
6 attorney's fees and costs; providing an
7 effective date.
8

9 WHEREAS, prior to August 5, 1998, the City of Neptune
10 Beach owned and maintained a park, called Futch Park, which
11 was open to the public, including minors, and
12 WHEREAS, prior to August 5, 1998, the City of Neptune
13 Beach placed a park bench, constructed in part of concrete,
14 beneath a large tree in Futch Park, and
15 WHEREAS, before August 5, 1998, the City of Neptune
16 Beach had actual knowledge that children, including the minor
17 Tommy Cusick, repeatedly climbed the tree and that boards had
18 been nailed onto the tree to facilitate climbing, and
19 WHEREAS, at least one of the city's employees, prior to
20 August 5, 1998, was of the opinion that the bench posed a
21 hazard to any child who might fall from the tree, expressed
22 those concerns to his superiors who had authority to remove
23 the bench, and recommended that the bench be removed from
24 underneath the tree, and yet the bench was not removed, and
25 WHEREAS, on August 5, 1998, the minor Tommy Cusick, who
26 was approximately eight years old at the time, fell from the
27 tree, struck the bench while falling, and sustained injuries
28 as a result of striking the bench, which injuries included a
29 shattered upper jaw, the loss of six teeth, and severe lip
30 lacerations that required corrective surgery, and
31

1 WHEREAS, the jury found that the City of Neptune Beach
2 had been negligent and that the negligence constituted 80
3 percent of the legal cause of the injuries to Tommy Cusick,
4 and

5 WHEREAS, pursuant to an amended final judgment entered
6 on May 1, 2001, the court awarded damages in the amount of
7 \$181,387.51, with postjudgment interest accruing at the legal
8 rate through the date of payment, to Tommy Cusick, a minor, by
9 and through his parent and natural guardian, Terri Cusick, and

10 WHEREAS, the City of Neptune Beach has paid \$100,000
11 toward this judgment pursuant to section 768.28, Florida
12 Statutes, NOW, THEREFORE,

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

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

18 Section 2. The City of Neptune Beach is authorized and
19 directed to appropriate from funds of the city not otherwise
20 appropriated and to draw a warrant in the amount of
21 \$81,387.51, plus postjudgment interest at the legal rate, to
22 compensate Terri Cusick, parent and natural guardian of Tommy
23 Cusick, a minor, for injuries sustained by Tommy Cusick due to
24 the negligence of the City of Neptune Beach. After payment of
25 statutory attorney's fees and costs, the balance shall be paid
26 into the guardianship account established for Tommy Cusick.

27 Section 3. This act shall take effect upon becoming a
28 law.