



HB 0689

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A bill to be entitled
An act relating to the City of Neptune Beach; providing for the relief of Tommy Cusick, a minor; providing for an appropriation to compensate him for injuries and damages sustained due to the negligence of the City of Neptune Beach; providing for attorney's fees and costs; providing an effective date.

WHEREAS, on August 5, 1998, Tommy Cusick, a minor, sustained injuries in Futch Park in Neptune Beach, a park that was owned and maintained by the City of Neptune Beach and that was open to members of the public, including minors, and

WHEREAS, prior to August 5, 1998, the City of Neptune Beach placed a park bench constructed of recycled plastic that was as hard as concrete beneath a large tree in Futch Park, and

WHEREAS, prior to August 5, 1998, the City of Neptune Beach had actual knowledge that children, including Tommy Cusick, a minor, repeatedly climbed the tree and that boards had been nailed onto the tree to facilitate climbing, and

WHEREAS, at least one of the city's employees, prior to August 5, 1998, was of the opinion that the bench posed a hazard to any child that might fall from the tree, expressed those concerns to his superiors who had authority to remove the bench, and recommended that the bench be removed from underneath the tree, but the bench was not removed, and

WHEREAS, on August 5, 1998, Tommy Cusick, a minor, who was eight years old at the time, fell from the tree, struck the bench while falling, and sustained injuries as a result of striking the bench, which injuries included a shattered upper jaw, the loss of six teeth, and severe lip lacerations that



HB 0689

2003

31 required corrective surgery, and

32 WHEREAS, the jury found that the City of Neptune Beach had
33 been negligent and that the negligence constituted 80 percent of
34 the legal cause of the injuries and damages to Tommy Cusick, and

35 WHEREAS, pursuant to an amended final judgment entered on
36 May 1, 2001, the court awarded damages in the amount of
37 \$181,387.51, with postjudgment interest accruing at the legal
38 rate through the date of payment, to Tommy Cusick, a minor, by
39 and through his parent and natural guardian, Terri Cusick, and

40 WHEREAS, postjudgment interest on the unpaid balance
41 through March 4, 2003, is \$15,007.90, and

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

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

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

50 Section 2. The City of Neptune Beach is authorized and
51 directed to appropriate from funds of the city not otherwise
52 appropriated and to draw a warrant in the sum of \$96,395.41
53 payable to Terri Cusick, as parent and natural guardian of Tommy
54 Cusick, a minor, for the benefit of Tommy Cusick, a minor, as
55 compensation for injuries and damages sustained. After payment
56 of statutory attorney's fees and costs, the balance shall be
57 paid into the guardianship account established for Tommy Cusick.

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