

HB 0671

2004

1 A bill to be entitled

2 An act relating to the South Florida Water Management
3 District; providing for the relief of Brian Daiagi;
4 authorizing and directing the South Florida Water
5 Management District to compensate Mr. Daiagi for personal
6 injuries that he suffered due to the negligence of the
7 South Florida Water Management District; providing an
8 effective date.

9
10 WHEREAS, on the morning of August 10, 1992, Brian Daiagi, a
11 20-year-old single resident of Broward County, was traveling on
12 a dirt bike westbound on the shoulder of Griffin Road with
13 Richard Truntz, an off-duty police officer with the Hollywood
14 Police Department, who was also on a dirt bike, and

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

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

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

HB 0671

2004

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

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

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

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

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

47 WHEREAS, testimony at the trial of the case indicated that
48 the grass was at least "knee high" and obscured the culvert from
49 ordinary view, and Richard Truntz testified that he would have
50 also driven into the culvert except for the fact that he was
51 traveling in first gear and was able to stop 2 feet short of the
52 culvert by braking hard, and

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

57 WHEREAS, Brian Daiagi sustained a crush fracture to his
58 spine, was paralyzed from the waist down as a result of the
59 incident, and, according to Dr. Barth Green who treated Mr.

HB 0671

2004

60 Daiagi for his injuries, will always be confined to a wheelchair
 61 within a reasonable degree of medical probability, and

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

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

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

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

84 WHEREAS, at the time of the accident, Mr. Daiagi was
 85 working in a jewelry store and is now 32 years of age and lives
 86 in western Broward County, and

87 WHEREAS, a verdict was rendered in the case on September
 88 29, 2000, finding that the South Florida Water Management
 89 District was 80-percent negligent in causing the injuries

HB 0671

2004

90 sustained by Brian Daiagi and awarding damages totaling
 91 \$4,344,000, which took into account a finding of 20-percent
 92 comparative negligence by Mr. Daiagi, and

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

97 WHEREAS, the South Florida Water Management District
 98 appealed the verdict to the Fourth District Court of Appeals,
 99 and the verdict was upheld in a unanimous opinion by the
 100 appellate court on July 17, 2002, Case Number 4D01-1918, NOW,
 101 THEREFORE,

102

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

104

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

107 Section 2. The South Florida Water Management District is
 108 authorized and directed to appropriate from funds of the
 109 district not otherwise appropriated and to draw a warrant in the
 110 amount of \$4,008,616.63 payable to Brian Daiagi to compensate
 111 him for personal injuries and damages suffered as a result of
 112 the negligence of the South Florida Water Management District.

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