

1 A bill to be entitled

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

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

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

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

27 WHEREAS, despite having notice that the security fence had
28 not been erected, the South Florida Water Management District

CS/HB 787

2008

29 | did not act to protect or warn of the hidden drainage culvert,
30 | and

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

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

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

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

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

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

54 | WHEREAS, the South Florida Water Management District
55 | acknowledged during the trial that it had knowledge that
56 | "passers-by" used the road shoulder and took the position that

57 Brian Daiagi was "an invitee" on the premises, and

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

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

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

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

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

85 | seen the culvert, and

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

89 | WHEREAS, a verdict was rendered in the case on September
90 | 29, 2000, finding that the South Florida Water Management
91 | District was 80-percent negligent in causing the injuries
92 | sustained by Brian Daiagi, and awarding damages totaling
93 | \$4,344,000, which took into account a finding of 20-percent
94 | comparative negligence by Mr. Daiagi, and

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

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

103 |

104 | Be It Enacted by the Legislature of the State of Florida:

105 |

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

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

CS/HB 787

2008

113 the negligence of the South Florida Water Management District.

114 Section 3. Any amount awarded under this act pursuant to
115 the waiver of sovereign immunity permitted under s. 768.28,
116 Florida Statutes, and this award is intended to provide the sole
117 compensation for all present and future claims arising out of
118 the factual situation described in the preamble to this act
119 which resulted in the injury to Brian Daiagi. The total amount
120 paid for attorney's fees and costs incurred by the claimant's
121 attorneys shall not exceed \$550,861.66. Payment for the
122 professional services and costs of lobbyists advocating for
123 passage of this claim shall not exceed \$40,086.16.

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