

By the Committee on Judiciary; and Senators Bradley, Galvano, Bean, and Gibson

590-01488-15

201522c1

1 A bill to be entitled

2 An act for the relief of Joseph Stewart and Audrey
3 Stewart on behalf of their son, Aubrey Stewart, by the
4 City of Jacksonville; providing for an appropriation
5 to compensate Aubrey Stewart for injuries and damages
6 sustained as a result of the negligence of the City of
7 Jacksonville; providing a limitation on the payment of
8 fees and costs; providing for repayment of Medicaid
9 liens; providing an effective date.

10
11 WHEREAS, on June 27, 2011, Aubrey Stewart, who was 15 years
12 of age, briefly left his home at 1512 Dyal Street in
13 Jacksonville, and

14 WHEREAS, the tree across the street from Aubrey Stewart's
15 home, where he lives with his parents, Joseph and Audrey
16 Stewart, was owned by the City of Jacksonville, and

17 WHEREAS, a large tree limb, extending across Dyal Street,
18 fell from the tree and crushed Aubrey Stewart, resulting in
19 life-threatening injuries and leaving him paralyzed, and

20 WHEREAS, the City of Jacksonville had received four
21 complaints about the dangerous condition of the tree before the
22 tree limb crushed Aubrey Stewart, yet failed to act, and

23 WHEREAS, the City of Jacksonville's records confirm that 9
24 months before the accident, on September 7, 2010, the Stewarts'
25 neighbor complained to the city about several trees along Dyal
26 Street which needed to be trimmed due to falling tree limbs, and

27 WHEREAS, the City of Jacksonville's records confirm that a
28 few days later, Joseph Stewart also filed a complaint with the
29 city about two trees in dangerous condition on Dyal Street, and

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30 WHEREAS, the City of Jacksonville's records confirm that
31 the city received an additional complaint on January 6, 2011,
32 about a falling tree limb that struck a car, and the city's Risk
33 Management Division investigated the claim and subsequently paid
34 for the damage to the car, but failed to address the dangerous
35 trees, and

36 WHEREAS, the City of Jacksonville's records confirm that on
37 May 13, 2011, a neighbor called the city and reported that one
38 of the trees that was the subject of previous complaints had
39 fallen in the road and was blocking traffic, and the city
40 responded by removing only the fallen debris, failing to remedy
41 the continued and known dangerous condition, and

42 WHEREAS, despite these four complaints, the City of
43 Jacksonville took no action to address the dangerous tree on
44 Dyal Street until almost a month after a limb from that tree
45 crushed and critically injured Aubrey Stewart, and

46 WHEREAS, as a result of the foregoing incident, Aubrey
47 Stewart sustained multiple injuries, including, but not limited
48 to, multiple spinal fractures with a complete spinal cord
49 injury, an open pelvic fracture wound, a complex anal
50 laceration, a left lateral buttocks wound, a large perineal
51 wound, and multiple abscesses, and

52 WHEREAS, Aubrey Stewart spent 5 months in the Shands'
53 Pediatric Intensive Care Unit, where he underwent approximately
54 a dozen surgeries to stabilize his condition, and spent an
55 additional month at Brooks Rehabilitation, and

56 WHEREAS, Aubrey Stewart is now paralyzed and confined to a
57 wheelchair, depends on others for many daily life activities,
58 and must wear diapers and use a catheter and colostomy bag, and

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59 WHEREAS, the City of Jacksonville recognizes the potential
60 for a sizeable jury verdict in favor of Aubrey Stewart, given
61 the liability and damages stemming from the city's negligence,
62 and

63 WHEREAS, during court-ordered mediation on May 8, 2013, the
64 City of Jacksonville agreed to pay \$200,000 under the statutory
65 limits of liability set forth in s. 768.28, Florida Statutes,
66 within 60 days and then \$3.3 million, to be paid in installments
67 in order to minimize any potential financial impact on the city,
68 and

69 WHEREAS, the negotiated settlement agreement was designed
70 with the claim bill process specifically in mind, is in the best
71 interest of all parties involved, and was passed unanimously by
72 the Jacksonville City Council on July 23, 2013, and

73 WHEREAS, the City of Jacksonville fully supports the
74 passage of this claim bill, NOW, THEREFORE,

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

77
78 Section 1. The facts stated in the preamble to this act are
79 found and declared to be true.

80 Section 2. The City of Jacksonville is authorized and
81 directed to appropriate from funds of the city not otherwise
82 appropriated and to draw a warrant in the sum of \$1.2 million,
83 less the amount paid for repayment of Medicaid liens, payable to
84 the Aubrey Javaris Stewart Special Needs Trust, by the first
85 November 1 after the passage of this act as compensation for
86 injuries and damages sustained as a result of the negligence of
87 the City of Jacksonville. In addition, the City of Jacksonville

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88 is further authorized and directed to appropriate from funds of
89 the city not otherwise appropriated and to draw a warrant in the
90 sum of \$1 million payable to the Aubrey Javaris Stewart Special
91 Needs Trust, 1 year from the first payment; the sum of \$600,000,
92 1 year from the second payment; and the sum of \$500,000, 1 year
93 from the third payment, for a total of \$3.3 million as
94 compensation for injuries and damages sustained as a result of
95 the negligence of the City of Jacksonville.

96 Section 3. The amount paid by the City of Jacksonville
97 pursuant to s. 768.28, Florida Statutes, and the amount awarded
98 under this act are intended to provide the sole compensation for
99 all present and future claims arising out of the factual
100 situation described in the preamble to this act which resulted
101 in the injuries and damages to Aubrey Stewart, and to release
102 the city from any further liability. The total amount paid for
103 attorney fees, lobbying fees, costs, and other similar expenses
104 relating to this claim may not exceed 25 percent of the amount
105 awarded under this act.

106 Section 4. The City of Jacksonville shall pay to the Agency
107 for Health Care Administration the amount due under s. 409.910,
108 Florida Statutes, before disbursing any funds to the claimant.
109 The amount due to the agency shall be equal to all unreimbursed
110 medical payments paid by Medicaid up to the date that this bill
111 becomes a law.

112 Section 5. This act shall take effect upon becoming a law.