

By Senator Bradley

7-00014-15

201522\_\_

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,

75

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 payable to Joseph and Audrey Stewart, as parents and guardians  
84 of Aubrey Stewart, by the first November 1 after the passage of  
85 this act as compensation for injuries and damages sustained as a  
86 result of the negligence of the City of Jacksonville. In  
87 addition, the City of Jacksonville is further authorized and

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88 directed to appropriate from funds of the city not otherwise  
89 appropriated and to draw a warrant in the sum of \$1 million  
90 payable to Joseph and Audrey Stewart, as parents and guardians  
91 of Aubrey Stewart, 1 year from the first payment; the sum of  
92 \$600,000, 1 year from the second payment; and the sum of  
93 \$500,000, 1 year from the third payment, for a total of \$3.3  
94 million as compensation for injuries and damages sustained as a  
95 result of 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.