

By Senator Clary

4-6-04

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

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

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

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

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

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

9 WHEREAS, Mr. Daiagi had never ridden his dirt bike in
10 the area where the accident occurred, and had moved to this
11 western area of Broward County approximately 3 weeks prior to
12 the accident, and

13 WHEREAS, the drainage culvert cannot be seen with the
14 naked eye and was completely obscured by long grass along the
15 road, and

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

18 WHEREAS, testimony at the trial of the case indicated
19 that the grass was at least "knee high" and obscured the
20 culvert from ordinary view, and Richard Truntz testified that
21 he would have also driven into the culvert except for the fact
22 that he was traveling in first gear and was able to stop 2
23 feet short of the culvert by breaking hard, and

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

28 WHEREAS, Brian Daiagi sustained a crush fracture to his
29 spine, was rendered a paraplegic as a result of the incident,
30 was paralyzed from the waist down, and, according to Dr. Barth
31 Green who treated Mr. Daiagi for his injuries, will always be

1 confined to a wheelchair within a reasonable degree of medical
2 probability, and

3 WHEREAS, the specific injuries include a T10-T11
4 fracture with complete paraplegia below the belly button;
5 comminuted fracture of the vertebrae at T11; multiple
6 fractures of the spine at L1, L2, L3, and L4; posttraumatic
7 stress disorder; depression; pain secondary to the spinal cord
8 injury; bowel dysfunction; nonfunctioning bladder that
9 requires 24-hour catheterization; and complete sexual
10 impotence, and

11 WHEREAS, there was no testimony that Brian Daiagi was
12 speeding at the time of the accident and the South Florida
13 Water Management District claimed that Mr. Daiagi was not
14 looking where he was going, and

15 WHEREAS, the trial court allowed the jury to visit the
16 scene of the accident and the jury agreed by their verdict
17 that the drainage culvert was completely obscured and could
18 not be seen and, at the time the jury visited the site, the
19 grass was above knee level, and

20 WHEREAS, an engineer and accident reconstructionist who
21 was called by Mr. Daiagi as an expert witness testified that
22 Mr. Daiagi's speed, based upon where he was found on the other
23 side of the culvert, was approximately 25.6 m.p.h., requiring
24 90 feet in which to stop, at which distance Mr. Daiagi could
25 not have seen the culvert, and

26 WHEREAS, at the time of the accident, Mr. Daiagi was
27 working in a jewelry store and is now 30 years of age and
28 lives in western Broward County, and

29 WHEREAS, a verdict was rendered in the case on
30 September 29, 2000, finding that the South Florida Water
31 Management District was 80 percent negligent in causing the

1 injuries sustained by Brian Daiagi, and awarding damages
2 totaling \$4,344,000, which took into account a finding of 20
3 percent comparative negligence by Mr. Daiagi, and

4 WHEREAS, the verdict was later reduced by the trial
5 court due to collateral source payments pursuant to health
6 insurance, resulting in an amended final judgment entered by
7 the trial court on May 10, 2001, in the amount of
8 \$4,008,616.63, and

9 WHEREAS, the South Florida Water Management District
10 appealed the verdict to the Fourth District Court of Appeals
11 and the verdict was upheld in a unanimous opinion by the
12 appellate court on July 17, 2002, Case Number 4D01-1918, NOW,
13 THEREFORE,

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

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

19 Section 2. The South Florida Water Management District
20 is authorized and directed to appropriate from funds of the
21 county not otherwise appropriated and to draw a warrant in the
22 amount of \$4,008,616.63, payable to Brian Daiagi to compensate
23 him for personal injuries and damages suffered in the accident
24 that occurred on June 18, 1998.

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

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29 SENATE SUMMARY

30 Provides for the relief of Brian Daiagi for injuries
31 caused by negligence of the South Florida Water
Management District.