

By Senator Diaz de la Portilla

36-00145-08

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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 a  
8 limitation on the payment of fees and costs; providing an  
9 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 a  
13 dirt bike westbound on the shoulder of Griffin Road with Richard  
14 Truntz, an off-duty police officer with the Hollywood Police  
15 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 owned  
21 by the South Florida Water Management District had been there for  
22 many years and, at one point, Bell South was to have erected a  
23 security fence around the drainage culvert, having obtained  
24 permission to lay telephone cables on the road shoulder, but Bell  
25 South ultimately failed to erect the security fence, and

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

29 WHEREAS, on August 10, 1992, at approximately 3:00 p.m.,

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30 | when the two riders were returning to Brian Daiagi's home,  
31 | Richard Truntz was unable to get his dirt bike out of first gear  
32 | and could ride only very slowly and suggested that Brian ride  
33 | ahead and meet later at Mr. Daiagi's house, and

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

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

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

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

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

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

55 |       WHEREAS, Brian Daiagi sustained a crush fracture to his  
56 | spine, was rendered a paraplegic as a result of the incident, was  
57 | paralyzed from the waist down, and, according to Dr. Barth Green  
58 | who treated Mr. Daiagi for his injuries, will always be confined

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59 | to a wheelchair within a reasonable degree of medical  
60 | probability, and

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

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

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

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

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

86 |       WHEREAS, a verdict was rendered in the case on September 29,  
87 | 2000, finding that the South Florida Water Management District

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88 was 80-percent negligent in causing the injuries sustained by  
89 Brian Daiagi, and awarding damages totaling \$4,344,000, which  
90 took into account a finding of 20-percent comparative negligence  
91 by Mr. Daiagi, and

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

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

100

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

102

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

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

111 Section 3. This award is intended to provide the sole  
112 compensation for all present and future claims arising out of the  
113 factual situation described in this act which resulted in injury  
114 to Brian Daiagi. The total amount paid for attorney's fees,  
115 lobbying fees, costs, and other similar expenses relating to this  
116 claim may not exceed 25 percent of the amount awarded under this

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117 | act.

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