

By the Committees on General Government Appropriations; and
Judiciary; and Senator Baker

601-05037-09

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1 A bill to be entitled
2 An act relating to the limitation of liability of
3 water management districts; amending s. 373.1395,
4 F.S.; applying the limitation of liability of a water
5 management district to the water areas of the
6 district; providing that certain commercial activities
7 do not terminate the limitation of liability of a
8 water management district; providing that the
9 protections, immunities, and limitations of liability
10 provided to a water management district apply
11 regardless of whether any claimant or person was
12 engaged in an outdoor recreational purpose at the time
13 of an accident or occurrence; providing liability
14 protection to an owner of private land used as an
15 easement or other right by a water management district
16 for the purpose of providing access to lands or water
17 areas that the water management district makes
18 available to the public for outdoor recreational
19 activities; defining the term "park area, district or
20 other lands, or water areas"; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 373.1395, Florida Statutes, is amended
26 to read:

27 373.1395 Limitation on liability of water management
28 district with respect to areas made available to the public for
29 recreational purposes without charge.-

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30 (1) The purpose of this section is to encourage water
31 management districts to make available land, water areas, and
32 park areas to the public for outdoor recreational purposes by
33 limiting their liability to persons going thereon and to third
34 persons who may be damaged by the acts or omissions of persons
35 going thereon.

36 (2) Except as provided in subsection (6) ~~(4)~~, a water
37 management district that provides the public with a park area or
38 other land or water area for outdoor recreational purposes, or
39 allows access over or the use of district or other lands or
40 water areas for recreational purposes, owes no duty of care to
41 keep that park area, district or other lands, or water areas
42 ~~land~~ safe for entry or use by others or to give warning to
43 persons entering or going on that park area, district or other
44 lands, or water areas ~~land~~ of any hazardous conditions,
45 structures, or activities thereon. A water management district
46 that provides the public with a park area, district or other
47 lands, or water areas ~~land~~ for outdoor recreational purposes, or
48 that allows access over or the use of a park area, district or
49 other lands, or water areas, does not, by providing that park
50 area, district or other lands, or water areas or by allowing
51 access over or the use of that park area, district or other
52 lands, or water areas ~~or land~~, extend any assurance that such
53 park area, district or other lands, or water areas ~~are or land~~
54 ~~is~~ safe for any purpose, does not incur any duty of care toward
55 a person who goes on that park area, district or other lands, or
56 water areas ~~or land~~, and is not responsible for any injury to
57 persons or property caused by an act or omission of a person who
58 goes on that park area, district or other lands, or water areas

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59 ~~er-land~~. This subsection does not apply if there is any charge
60 made or usually made for entering or using the park area,
61 district or other lands, or water areas ~~er-land~~, or if any
62 commercial or other activity from which profit is derived from
63 the patronage of the public, excluding the temporary sale of
64 food, beverages, plants, or tee shirts at temporary special
65 events or nonprofit organizational activities associated with
66 temporary special events, is conducted on such park area,
67 district or other lands, or water areas ~~er-land~~ or any part
68 thereof.

69 (3) (a) This section applies to any park area, district or
70 other lands, or water areas whether the person goes on as an
71 invitee, licensee, or trespasser or otherwise.

72 (b) The protections, immunities, and limitations of
73 liability provided in this section to water management districts
74 apply regardless of whether any claimant or person was engaged
75 in an outdoor recreational purpose at the time of an accident or
76 occurrence and applies to park areas, district or other lands,
77 and water areas actually used by the public for recreational
78 activities regardless of whether the park area, district or
79 other lands, or water areas were made available to the public at
80 the time of the accident or occurrence.

81 (4) ~~(3)~~ (a) Except as provided in subsection (6) ~~(4)~~, a water
82 management district that leases any land or water area to the
83 state for outdoor recreational purposes, or for access to
84 outdoor recreational purposes, owes no duty of care to keep that
85 land or water area safe for entry or use by others or to give
86 warning to persons entering or going on that land or water of
87 any hazardous conditions, structures, or activities thereon. A

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88 water management district that leases a land or water area to
89 the state for outdoor recreational purposes does not, by giving
90 such lease, extend any assurance that such land or water area is
91 safe for any purpose, incur any duty of care toward a person who
92 goes on the leased land or water area, and is not responsible
93 for any injury to persons or property caused by an act or
94 omission of a person who goes on the leased land or water area.

95 (b) This subsection applies to any person going on the
96 leased land or water area whether the person goes as an invitee,
97 licensee, trespasser, or otherwise.

98 (5) If a water management district has secured an easement
99 or other right that is being used for the purpose of providing
100 access through private land to lands or water areas that the
101 water management district provides or makes available to the
102 public for outdoor recreational purposes, the owner of the
103 private land is covered by the liability protection provided in
104 s. 375.251 with regard to the use of such easement by the
105 general public or by employees and agents of the water
106 management district or other regulatory agencies.

107 (6)-(4) This section does not relieve any water management
108 district of any liability that would otherwise exist for gross
109 negligence or a deliberate, willful, or malicious injury to a
110 person or property. This section does not create or increase the
111 liability of any water management district or person beyond that
112 which is authorized by s. 768.28.

113 (7)-(5) ~~The term "outdoor recreational purposes,"~~ As used in
114 this section, the term:

115 (a) "Outdoor recreational purposes" includes activities
116 such as, but not limited to, horseback riding, hunting, fishing,

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117 bicycling, swimming, boating, camping, picnicking, hiking,
118 pleasure driving, nature study, water skiing, motorcycling, and
119 visiting historical, archaeological, scenic, or scientific
120 sites.

121 (b) "Park area, district or other lands, or water areas"
122 includes, but is not limited to, all park areas, district or
123 other land, right of ways, and water areas that the water
124 management district controls, possesses, or maintains, or in
125 which the water management district has a property or other
126 interest, whether in fee simple, easement, leasehold, contract,
127 memorandum of understanding, or otherwise.

128 Section 2. This act shall take effect July 1, 2009.