

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 1078

INTRODUCER: Senator Baker

SUBJECT: Water Management Districts/Limitation of Liability

DATE: February 26, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	Favorable
2.			JU	
3.			GA	
4.				
5.				
6.				

I. Summary:

This bill provides for additional limitations to the water management districts' (district) liability for activity that occurs on their land or water areas that are open, accessible or used by the public for recreational purposes without charge. Provides that the districts' limitation of liability is extinguished if an entrance charge is made or usually made by the district to the public for access to their land or water areas. Expands the districts' limitation of liability to include water areas. Provides that certain commercial activities do not extinguish the districts' limitation of liability. Provides the protections granted to districts by s. 373.1395, F.S., apply regardless of whether a person or claimant was engaged in a recreational activity at the time of the accident or occurrence. Provides that land leased to the state for recreational purposes, or for access to recreational purposes are subject to provisions that limit the districts' liability. The bill defines "outdoor recreational purposes," and "park area, district or other lands, or water areas."

This bill provides for an effective date of July 1, 2009.

This bill substantially amends s. 373.1395, F.S.

II. Present Situation:

Under s. 373.1395, F.S., the districts are subject to certain limitations of liability for opening their lands to the public for outdoor recreational purposes. It was the Legislature's intent to offer a limitation of liability to encourage the districts to allow public access to their lands. Presently, the districts owe no duty of care to the public to keep their lands safe for entry or use by the public for outdoor recreational purposes, or to warn of potentially hazardous conditions, structures or activities on that land. The districts are not responsible for injuries to person or

property that arise from an act or omission of a person who goes on any district land for outdoor recreational purposes. The districts' limitation of liability is extinguished if there is any charge made or usually made for entrance, or if any commercial or other activity is occurring that derives a profit. Persons not engaged in outdoor recreational activity or persons that are trespassing are not subject to the limitation of liability protection provided by s. 373.1395, F.S., unless the district has leased that land to the state for outdoor recreational purposes.

Generally, the common law idea of Trespass applies where a landowner has closed his or her lands to the public and has given notice that entry on to the land is not allowed and a person has entered those lands. The landowner has a duty to warn trespassers of dangerous, hidden conditions that the landowner has created. Presently, unless a district has leased land to the state for outdoor recreational purposes, trespassers or persons not engaged in outdoor recreational activities who are on district lands are not subject to the limitation of liability protection provided to the districts in s. 373.1395, F.S.

The proposed changes to this section were brought about by a court case in which a young man was riding his dirt bike down a piece of property owned by the South Florida Water Management District. The person drove his bike into a drainage ditch and was severely injured. The district claimed it was covered by the limitation of liability protection because the rider was an uninvited licensee and was injured on land that was open to the public. Both the lower court and an appeals court ruled that the rider was a trespasser and that the land in question was not open to the public, therefore, s. 373.1395, F.S., did not cover the South Florida Water Management District's land that was at the heart of the lawsuit.¹

III. Effect of Proposed Changes:

Section 1 amends s. 373.1395, F.S., in the following ways:

To expand the current limitation of liability protection given to the districts' to include their water areas, in addition to the protection already granted to their park areas and other district lands that are available to the general public.

To clarify that the districts have no duty of care and do not have to make any assurances that their land or water areas being used by the public for outdoor recreational purposes, access over or use of are safe for any purposes.

Limits the districts' liability protection when a charge is made or usually made directly by the district for access to its land or water areas. Additionally, the liability protection for the districts shall not apply when commercial or other activity that generates a profit exists on the land or water area on which an injury occurred. For the purposes of this section, commercial activity shall not include the sale of food, beverages, plants or tee shirts, nor activities done by nonprofit organizations.

¹ *South Florida Water Management District v. Daiagi*, 824 So.2d 216 (Fla. 4th DCA 2002).

Creates a new subsection to clarify that the additional liability protection shall apply on all districts' park areas, district or other land or water areas against any person regardless of whether that person is an invitee, licensee, or trespasser or otherwise.

Clarifies that the additional liability protection shall apply to the districts' for injuries sustained by a person on their land or water areas regardless of whether the injuries occurred while engaged in a recreational activity.

Applies the limitation of liability to all district land or water areas that are actually being used by the public for recreational activities regardless of whether the district has made such land or water areas available to the public.

To provide definitions for, "park area, district or other land or water areas." These include, but are not limited to, park areas, district or other land, right of ways, and water areas that the district controls, possesses, or maintains. It also includes land or water areas that the district has under fee simple, easement, leasehold contract, memorandum of understanding, or otherwise.

To make conforming changes.

Section 2 provides for an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specific fiscal impact is indeterminate; however, by limiting the civil remedies available to the public against a district if a person is injured on any district land or water area, the ability to successfully sue the districts may decrease.

C. Government Sector Impact:

The specific fiscal impact to the districts is indeterminate; however, the districts may see a drop in court costs and liability losses for injuries sustained by persons on their land or water areas.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is similar to s. 375.251, F.S. that provides limitation of liability protection to private landowners to encourage them to make their land and water areas available for use by the public.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.