

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: SPB 7006

INTRODUCER: For consideration by the Environmental Preservation and Conservation Committee

SUBJECT: Landowner Liability

DATE: October 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill expands the limitation of liability protection for landowners that allow any person to use their land for hunting, fishing, or wildlife viewing as long as the landowner provides notice to the person or persons using the land of their liability limits, and makes no profit or charges a fee for using the land. Additionally, the bill expands the limitation of liability protection for private landowners who enter into written agreements with the State.

The bill amends s. 375.251, of the Florida Statutes.

II. Present Situation:

Private landowners who enter into “lease” agreements with the State to provide outdoor recreational activities on their lands have limited liability protection. For example, private property owners who provide public opportunities for outdoor recreation on their property have, under s. 375.251, F.S., limited liability for incidents occurring on the land as long as the property owner:

- a. does not charge for entry to the property nor conduct commercial or other activity where profit is derived from public patronage on any part of the property; or,
- b. leases the property to the State for outdoor recreational purposes.

If a private property owner qualifies under one of these two categories, he or she owes no duty of care to keep the property safe for people coming on the land or using the land, nor to give warning to anyone entering the property about hazardous conditions, structures, or activities on the land. Furthermore, if one of these two conditions are met, the law provides that the private

landowner is not liable for injury to people on the property caused by the acts or omissions of others on the property.

The law does not relieve the landowner of liability if there is deliberate, willful, or malicious injury to persons or property.

Outdoor recreational purposes include, but are not limited to hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.

Limitation of Liability Protection for Private Landowners Who Enter Into Written Agreements with the State Providing Outdoor Recreational Activities on Their Lands

If a private landowner enters into an agreement with the State to provide recreational opportunities on his/her land, and the agreement is anything other than a lease then the law does not afford the private landowner these liability protections. As an example, the Florida Fish and Wildlife Conservation Commission (FWC) enters into leases with private landowners for the purpose of facilitating scheduled dove hunts. The only purpose of the lessor/lessee relationship is to avail the private party of the liability protection provided by s. 375.251, F.S. As mentioned above, this arrangement creates obligations and rights that exceed what is necessary to accomplish the specific goal of offering the dove hunts to the public. If the FWC entered into another type of agreement, other than a lease, however, private property owners would lack the benefit of the limitation of liability provided by s. 375.251, F.S.

FWC would like to provide outdoor recreational activities on privately owned lands that would not require the degree of legal control and complexity of a lease, for example a day-long youth hunt or a weekend fishing derby. In some instances, use or management agreements, contracts for services, or easements would be more appropriate arrangements between the private landowner and the State. When a landowner enters into a lease with the State, he or she gives the State a possessory interest in the property (the intent and right to occupy or exercise control over the piece of property). The other mentioned types of arrangements, however, give less of the private landowners' property rights to the State, and do not give the State a possessory interest in the land. For instance, if a landowner grants the State an easement to property, the State then has a limited right to use the property of the landowner for a specific purpose. The State would only exercise as much control over the property as is necessary to use the easement – a much more limited *nonpossessory* interest in the land. According to the FWC, the State would also benefit from these alternative types of arrangements because the parties would not be subject to landlord/tenant law, creating certain obligations on the part of both the landowner and the State.

Limitation of Liability Protection to Private Landowners Who Allow Any Person to Use Their Land for Hunting, Fishing, or Wildlife Viewing

Under current law, private landowners who make their land available to the public for outdoor recreational activities are also afforded liability protection. This protection does not apply, however, for individuals or groups of individuals. For example, if a landowner allows a troop of boy scouts to come onto his/her property to kayak, but does not want to allow anyone in the

general public to have the same access, he/she may be liable if one of the boy scouts is injured while on the property.

According to the FWC,¹ other southeastern states provide landowner liability protection to landowners who allow people other than the general public to use their land for recreational purposes. Following are some of those States' laws:

Georgia: "Except as specifically recognized by or provided in Code Section 51-3-25, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes." (Section 51-3-22, Georgia Code) (Note: The exception provided in the law is for either willful or malicious failure to warn against a dangerous use, condition, structure, or activity, or where the landowner charges for use of the land, except when the owner has entered into a lease on the land with the state.)

Alabama: "An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry and use by others for hunting, fishing, trapping, camping, water sports, hiking, boating, sight-seeing, caving, climbing, rappelling or other recreational purposes or to give any warning of hazardous conditions, use of structures or activities on such premises to persons entering for the above-stated purposes, except as provided in section 35-15-3." (Section 35-15-1, Code of Alabama) (Note: The exception provided in the law does not limit the liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, cave, climb, rappel or sight-see was granted for commercial enterprise for profit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike or sight-see was granted to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises owed a duty to keep the premises safe or to warn of danger.)

Louisiana: "An owner, lessee, or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, camping, hiking, sightseeing or boating or to give warning of any hazardous conditions, use of, structure or activities on such premises to persons entering for such purposes. If such an owner, lessee or occupant give permission to another to enter the premises for such recreational purposes he does not thereby extend any assurance that the premises are safe for such purposes or constitute the person to whom permission is granted one to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to persons or property caused by any act of person to whom permission is granted. (Louisiana Civil Code section 2791(a)). Louisiana's law further states that "the limitation of liability extended by this Section to the owner, lessee, or occupant of premises shall not be affected by the granting of a lease, right of use, or right of occupancy for any recreational purpose which may limit the use of the premises to persons other than the entire public or by the posting of

¹ Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Oct. 6, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

the premises so as to limit the use of the premises to persons other than the entire public.” (Louisiana Civil Code section 2791(a)).

South Carolina: “Except as specifically recognized by or provided in s 27-3-60, an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to such persons entering for such purposes.” (Section 27-3-20, Code of Laws of South Carolina) (Note: The exception provided in the law is for either grossly negligent, willful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or where the landowner charges for use of the land, except when the owner has entered into a lease on the land with the state.)

III. Effect of Proposed Changes:

Expanding Limitation of Liability Protection to Private Landowners Who Allow Any Person to Use Their Land for Hunting, Fishing, or Wildlife Viewing

This bill would also expand s. 375.251, F.S. to provide limitation of liability protection to any private landowner who makes their land available to *any person* (not just the public generally) for the purpose of hunting, fishing, or wildlife viewing. In order for the landowner to benefit from the limitation of liability in this circumstance, he or she must provide notice to the person or persons using the land of their liability limits, and make no profit nor charge a fee for using the land.

Expanding Limitation of Liability Protection for Private Landowners Who Enter Into Written Agreements with the State Providing Outdoor Recreational Activities on Their Lands

The bill expands s. 375.251, F.S., to allow private property owners to execute a written agreement with State agencies to provide outdoor recreational opportunities. These opportunities could include hunting and fishing and maintain the limitation of liability provided in statute.

The change will enable the State to execute written agreements to expand outdoor recreational opportunities (including those for fishing, wildlife viewing, and off-highway recreational vehicle use) without taking a leasehold interest in the property where the activities are conducted. This may simplify the legal arrangement and provide better protection for the private property owner should a lawsuit arise. It will also be an additional incentive for landowners to open up their lands as it would include all agreements and not just leases.

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:

There is the potential for a positive fiscal impact on the private sector in the form of reduced litigation. The impact cannot be quantified.

Private property owners entering into these arrangements will be offered liability protection, as will private property owners who make their land available to any person to use for hunting, fishing, or wildlife viewing, when those persons using the land are made aware of the liability protection afforded the landowner under the statute.

Persons using the land owned by private parties (either when the landowners entered into written agreements with state agencies, or where the landowner provides hunting, fishing, or wildlife viewing opportunities to individuals) may have more recreational opportunities available to them. The public will be limited in the lawsuits they can bring against the landowners making their property available.

C. Government Sector Impact:

Any state agency may be able to enter into more written agreements with private property owners to provide outdoor recreational opportunities to the public under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
