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 Committee on Environment and Natural Resources

BILL:	SB 920
INTRODUCER:	Senator Bradley
SUBJECT:	Liability of Persons Providing Areas for Public Outdoor Recreational Purposes
DATE:	February 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 920 expands the applicability of the limitation of liability for persons who make areas available to the public for outdoor recreational purposes.

- The bill amends the definition of "outdoor recreational purposes" to expressly include "traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes."
- The bill defines "state agency" as "the state or any governmental or public entity created by law," and uses the defined term in an existing subsection limiting liability for property owners who enter into written agreements with state agencies.

The bill takes effect July 1, 2021.

II. Present Situation:

Limitation of Liability for Persons Making Areas Available to the Public for Outdoor Recreational Purposes

Under general legal principles of premises liability, a property owner or occupier may be found negligent based on a duty to maintain the property in a reasonably safe condition or a duty to warn of dangerous conditions known to the owner or occupier that are not readily apparent.[1] Section 375.251, F.S., also known as the Florida Recreational Use Statute,[2] provides a limitation of liability to encourage persons to make land, water areas, and park areas available to the public for recreational purposes.[3] Under the statute, an owner or lessee who provides the public with an area[4] for outdoor recreational purposes[5] owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering the area of any hazardous conditions, structures, or activities on the area.[6] An owner or lessee who provides the public with an area for outdoor recreational purposes:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.[7]

This limitation of liability applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes.[8] Notwithstanding the inclusion of the term "public," an owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation of liability so long as the owner or lessee provides written notice of this provision to the person before or at the time of entry or posts notice of this provision conspicuously upon the area.[9]

---

[1] *See Grimes v. Family Dollar Stores of Fla., Inc*., 194 So. 3d 424, 427 (Fla. Dist. Ct. App. 2016); *see Phillips v. Republic Fin. Corp*., 157 So. 3d 320, 326 (Fla. Dist. Ct. App. 2015)(noting the "crux of a cause of action for premises liability is not the ownership of the premises, but the negligence of the possessor in permitting licensees and invitees to come unwarned to an area where they could foreseeably be injured by a dangerous condition which is not readily apparent").

[2] *See Hurst v. United States by & through Dep't of the Agric. US Forest Serv.*, 782 F. App'x 978, 979 (11th Cir. 2019).

[3] Section 375.251(1), F.S.; *see* ss. 253.42(4)(c), 373.1395(5), 589.19(4)(e)1., and 773.05, F.S. Several sections contain cross-references to the limitation of liability in s. 375.251, F.S.

[4] Section 375.251(5)(a), F.S. As used in the section, "'area' includes land, water, and park areas."

[5] Section 375.251(5)(b), F.S. As used in the section, "'outdoor recreational purposes' includes, but is not limited to, hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites."

[6] Section 375.251(2)(a), F.S.; *see Abdin v. Fischer*, 374 So. 2d 1379, 1380-1381 (Fla. 1979)(holding that s. 375.251, F.S., is constitutional because, while it alters the standard of care owed, it does not deny access to the courts).

[7] Section 375.251(2)(a), F.S.; *see City of Pensacola v. Stamm*, 448 So. 2d 39, 41-42 (Fla. Dist. Ct. App. 1984)(holding that s. 375.251, F.S., does not relieve government entities of liability as government entities are already charged with making areas available for public recreational use); *see Hurst*, 782 F. App'x at 982-983 (explaining that s. 375.251, F.S., shields the federal government from tort liability under the Federal Tort Claims Act if s. 375.251, F.S., would shield a private individual under like circumstances).

[8] Section 375.251(2)(c), F.S.; *see Fernandez v. United States*, 766 F. App'x 787, 792-794 (11th Cir. 2019)(explaining that an owner or lessee is immune from liability so long as he makes no charges in the distinct area where the injury occurred).

[9] Section 375.251(2)(b), F.S.

Section 375.251(3), F.S., provides a limitation of liability for an owner of an area who enters into a written agreement concerning the area with the state for outdoor recreational purposes.[10] Where such agreements recognize that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state's use of the area under the terms of the agreement[11], the owner owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering the area of any hazardous conditions, structures, or activities on the area.[12] An owner who has entered into such an agreement:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.[13]

This limitation of liability applies to all persons going on the area subject to the agreement, including invitees, licensees, and trespassers.[14] The Legislature intended that the agreement should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement, but an agreement, executed after July 1, 2012, that provides for compensation exceeding such costs and expenses does not subject the owner or the state to liability.[15]

Section 375.251, F.S., does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property.[16] The section does not create or increase the liability of any person.[17]

III. Effect of Proposed Changes:

Section 1 amends s. 375.251, F.S., which limits the liability of persons who make areas available to the public for outdoor recreational purposes. The bill expands the section's definition of "outdoor recreational purposes" to include "traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes." This expressly applies the section's limitation of liability to persons who make areas available to the public for the purpose of entering and exiting public lands, or lands owned or leased by a state agency, used for outdoor recreational purposes.

The bill also creates a definition for "state agency" for s. 375.251, F.S., defining it as "the state or any governmental or public entity created by law." The bill replaces the undefined term

[10] *See* ch. 2012-203, Laws of Fla.
[11] Section 768.28, F.S. The responsibility of the state recognized by the agreements described in s. 375.251(3), F.S., is subject to the limitations and conditions specified in the statutory waiver of sovereign immunity for liability for torts.
[12] Section 375.251(3)(a), F.S.
[13] *Id*.
[14] Section 375.251(3)(b), F.S.
[15] Section 375.251(3)(c), F.S. This paragraph applies only to agreements executed after July 1, 2012.
[16] Section 375.251(4), F.S.
[17] *Id*.

"state" with the defined term "state agency" in s. 375.251(3), F.S., broadening and clarifying the government entities to which that subsection applies.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The title of the bill includes "limiting liability for persons who enter into written agreements with state agencies to provide areas for public outdoor recreational purposes without charge." By expanding the definition of "outdoor recreational purposes" in s. 375.251, F.S., the bill expands the applicability of the limitation of liability throughout the section, and not just in subsection (3)

which pertains to written agreements. A title amendment is suggested to reflect that the expanded definition applies more generally throughout the section.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 375.251 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.