

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 313 Premises Liability

**SPONSOR(S):** Judiciary Committee; Agriculture & Natural Resources Subcommittee; Bemby; Steube and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 802

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Caridad	Bond
2) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Deslatte	Blalock
3) Judiciary Committee	14 Y, 0 N, As CS	Caridad	Havlicak

### SUMMARY ANALYSIS

Current law provides that private property owners who offer public opportunities for outdoor recreation on their property have limited liability for incidents occurring on the land if the property owner:

- 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
- Leases the property to the state for outdoor recreational purposes.

The bill allows private property owners who provide outdoor recreational opportunities on their land to enter into written agreements with the state, as opposed to a lease, and still receive the benefit of the limitation of liability. The bill provides that the written agreement must recognize that the state is responsible for personal injury, loss, or injury resulting from the state's use of the property subject to the limitations and conditions in s. 768.28, F.S., relating to the waiver of sovereign immunity in tort actions.

The bill also provides limitation of liability protection to private landowners who make their land available to specific persons, as opposed to only the general public, for the purpose of hunting, fishing, or wildlife viewing. To benefit from this limitation of liability, the landowner must provide notice of the liability limits to the person or persons using the land in addition to the current requirement that the landowner make no profit from nor charge a fee for using the land.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Liability to Persons on Land - In General**

In tort law, a plaintiff must prove that a lawful duty exists, that the duty was breached, and that the plaintiff suffered damages as a result of the breach. Current tort law related to a landowner's duty to persons on his or her land is governed by the status of the person. There are two basic categories of persons on land: invitees and trespassers.

An invitee is a person who was invited to enter the land. Section 768.075(3)(a)1., F.S., defines invitation to mean "that the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs." A landowner owes certain duties to invitees, and can be sued in tort should the landowner fail a duty and a person is injured due to that failure. The duties owed to most invitees are: the duty to keep property in reasonably safe condition; the duty to warn of concealed dangers which are known or should be known to the property holder, and which the invitee cannot discover through the exercise of due care; and the duty to refrain from wanton negligence or willful misconduct.

A trespasser is any person who is not an invitee. This bill does not affect tort law related to trespassers.

#### **Background**

Under current law, a private property owner who provides public opportunities for outdoor recreation on his or her property has limited liability for incidents occurring on the land if the property owner:

- 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
- Leases the property to the state for outdoor recreational purposes.<sup>1</sup>

A private property owner who qualifies under one of these two categories owes no duty of care to keep the property safe for people coming on the land or using the land, and has no duty to warn anyone entering the property about hazardous conditions, structures, or activities on the land. The law also provides that the private landowner is not liable for an injury caused by the acts or omissions of others on the property. However, the statute does not relieve the landowner of liability if there is a deliberate, willful, or malicious injury to persons or property.

Under current law, if a private landowner enters into a lease with the state, he or she may benefit from the liability protections under the statute. However, he or she will not receive protection from any other type of formal agreement for use of the property (i.e. an easement), and arguably has no protection if utilizing something short of a lease (i.e. oral license).<sup>2</sup>

To participate in hunting, fishing, or other outdoor recreational activity on land leased by the state from private landowners, an individual must purchase a recreational user permit. Section 379.354(8)(h)1., F.S., provides how the fee for such a permit is calculated:

The fee for a recreational user permit shall be based upon the economic compensation desired by the landowner, game population levels, desired hunter density, and administrative costs. The permit fee shall be set by commission rule on a per-acre basis. The recreational user permit fee, less administrative costs of

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<sup>1</sup>Section 375.251, F.S.

<sup>2</sup> An easement is "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)." Black's Law Dictionary (9th ed. 2009).

up to \$30 per permit, shall be remitted to the landowner as provided in the lease agreement for each area.

Private landowners who make their land available to the general public for outdoor recreational activities are also afforded liability protection. However, this protection does not apply in instances where the landowner wishes to make the property available only to individuals or groups of individuals, instead of the general public. By contrast, other neighboring states do provide liability protection to landowners who provide limited public access.<sup>3</sup>

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.

### **Effect of Proposed Changes:**

The bill amends s. 375.251(3), F.S., to provide that a private property owner who provides outdoor recreational opportunities on his or her land may enter into other types of "written agreements" with the state, as opposed to only a lease, and still receive the liability protections under the statute. The change also allows the state to execute written agreements with landowners without taking a leasehold interest in the property where the activities are conducted. The bill specifies that the written agreement must recognize that the state is responsible for personal injury, loss, or damage resulting from the state's use of the property subject to the limitations and conditions under s. 768.28, F.S.<sup>4</sup>

The bill provides that such an agreement should not result in compensation to the landowner above reimbursement of reasonable costs or expenses for providing access to the land. However, if the compensation exceeds such costs and expenses, the landowner and state are not subject to liability. This provision only applies to agreements entered into after July 1, 2012.

This bill also revises s. 375.251(2), F.S., to provide limitation of liability protection to a private landowner who makes his or her land available to any person — not only the general public — for the purpose of hunting, fishing, or wildlife viewing. To benefit from the limitation of liability, the landowner must provide notice of the liability limits to the person or persons using the land in addition to the current requirement that the landowner make no profit from nor charge a fee for using the land. With respect to notice of the liability limits, the bill provides that the landowner must either: give written notice to an individual before or at the time he or she enters the property or post notice conspicuously on the property.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 375.251, F.S., regarding limitations on liability for private landowners who make their property available to others for outdoor recreational purposes.

Section 2 provides an effective date of July 1, 2012.

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<sup>3</sup> Georgia and Alabama provide landowner liability protection to landowners who allow people other than the general public to use their land for recreational purposes. *See, e.g.*, s. 51-2-22, GA Code ("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 warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.").

<sup>4</sup> Section 768.28, F.S., provides that in accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to a certain extent. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

### D. FISCAL COMMENTS:

There is the potential for a positive fiscal impact on the private sector in the form of reduced litigation. However, individuals using the land will be limited in the lawsuits they can bring against the landowners.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

Tort limitations may implicate judicial review under the access to courts provision of the state constitution. The Florida Supreme Court has held that the current statute does not deny access to courts.<sup>5</sup>

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that where a landowner enters into a written agreement with the state, the agreement should not result in compensation to the landowner that is greater than the reimbursement of reasonable costs and expenses associated with the agreement. However, the owner and the state are not subject to liability even if the compensation exceeds those costs or expenses. It is unclear what

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<sup>5</sup> See *Abdin v. Fischer*, 374 So.2d 1379 (Fla. 1979) (holding that s. 375.251, F.S., limiting liability of owners and lessees who provide the public with a park area for outdoor recreational purposes, is a reasonable exercise of legislative power and does not violate Art. I, s. 21, Fla. Const., regarding access to courts).

would occur if compensation exceeds the reasonable costs and expenses associated with the agreement.

The bill also provides that the written agreement must recognize that the state is responsible for personal injury, loss, or injury resulting from the state's use of the property subject to the limitations and conditions in s. 768.28, F.S., relating to the waiver of sovereign immunity in tort actions. This appears to create state liability where, otherwise, none existed.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 313 as a committee substitute (CS). The CS specifies that the written agreement must recognize that the state may be responsible for personal injury or loss of property resulting from negligence or wrongful acts or omissions of the state to the extent authorized under s. 768.28, F.S.

On February 8, 2012, the Judiciary Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Specify that a landowner who makes his land available to certain individuals must provide written notice to the individual entering the property or post notice on the property, of the liability limitations.
- Modify language concerning the state's liability when it enters into a written agreement with a landowner, to provide that the state is responsible for personal injury, loss, or damage resulting from the state's use of the property subject to the limitations and conditions in s. 768.28, F.S.
- Provide that where a landowner enters into a written agreement with the state, the agreement should not result in compensation to the landowner that is greater than the reimbursement of reasonable costs and expenses associated with the agreement. However, the owner and the state are not subject to liability even if the compensation exceeds those costs or expenses. It further provides that the provision does not apply to current agreements with landowners.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.