SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2220

SPONSOR: Senator Jones

SUBJECT: School Board Property as Public Park

DATE: March 6, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	Favorable
2.			CP	
3.				
4.				
5.				
6.				

I. Summary:

The bill authorizes designated property owned by a district school board to be used as a public park at times when a school is not in session or when extra-curricular activities would necessitate use of the property by a school for any after-school activities. The bill exempts the school board from liability for injuries which may occur as a result of the use of the property as a public park.

This bill creates section 1013.101 of the Florida Statutes.

II. Present Situation:

Current statutory guidance

Section 1013.10, Florida Statutes, provides that, among other approved uses, a school board may permit the use of educational facilities and grounds for community use centers. The board is to adopt rules or policies and procedures necessary to protect educational facilities and grounds when used for such purposes.

Section 1013.33 (3) (g) requires that in coordinating planning with local governments, interlocal agreements on the siting of school facilities must include a process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

In section 1013.36, Florida Statutes, school boards are encouraged to locate district educational facilities proximate to urban residential areas to the extent possible, to collocate district educational facilities with other public facilities, such as parks, libraries and community centers,

to the extent possible, and to encourage using elementary schools as focal points for neighborhoods.

Many districts allow the use of recreation fields and gymnasiums for recreation league use during times when the school is not using those areas. Presently, there is no specific statutory exemption for a school board from liability when areas are used for such purposes.

Sovereign immunity

The State of Florida, its agencies and any of its subdivisions may assert sovereign immunity as a defense to any claim brought in state court. District school boards are agencies of the state and are entitled to the same degree of immunity from lawsuit in state courts as the state itself.[1]

The state's sovereign immunity may be waived by general law, however.[2] In 1973, the Legislature adopted s. 768.28, F.S., effectively waiving sovereign immunity from tort actions for itself, its agencies and its subdivisions (including district school boards). As a result, district school boards may be liable for tort claims to the same extent as private individuals, but they will not be liable for punitive damages or for interest for the period before judgment. Additionally, claims or judgments by any one person cannot exceed $100,000, and multiple claims or judgments arising from the same incident are capped at $200,000. Further damages may be sought by act of the Legislature.

III. Effect of Proposed Changes:

The bill creates section 1013.101, Florida Statutes.

The bill establishes authority for school boards and local government agencies to enter into interlocal agreements to allow school board owned property to be used at designated times as a public park.

The bill protects the school board from liability resulting from personal injuries that might occur to individuals or property while the district owned property is being used as a public park under an interlocal agreement.

The bill restricts use as a public park to times other than during school hours or when the school is otherwise using the area for after-school activities.

The bill takes effect upon becoming a law.

[1] *Buck v. McLean*, 115 So.2d 764 (1959).
[2] Article I, Section 13 of the Florida Constitution provides that, "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

SB 2220 abolishes an existing statutory right of individuals to sue district school boards for negligence under certain circumstances. Although such provisions have sometimes been adjudged unconstitutional under the Florida Constitution, the provisions of SB 2220 are very probably constitutional under applicable case law.

Art. I, Sec. 21 of the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Legislation that cuts off any means of recovery for injured parties has sometimes been found unconstitutional under this provision because it prevents persons from having "redress of any injury" as guaranteed under the Florida Constitution. In the leading case on this issue, *Kruger v. White,* the Florida Supreme Court held that the Legislature may not abolish a statutory right of action that predated the 1968 Florida Constitution[3] or a common law right of action without (1) providing a reasonable alternative to protect the rights of the people of the state to redress for their injuries or (2) showing an overpowering public necessity for the abolishment of the right, where no alternative method of meeting the public necessity can be shown.[4]

Tort actions for damages are among the earliest causes of action recognized at common law, and certainly predate the adoption of the 1968 Florida Constitution; however, common law also recognized the sovereign immunity of the state and its subdivisions. Accordingly, no right to sue the *state* existed at common law, and no such right existed in statute. The Florida Constitution afforded the Legislature the power to waive sovereign immunity from at least 1868 on, but the Florida Legislature did not do so until 1973, when it enacted s. 768.28, F.S.[5] In a case relating to a municipality's negligence that has parallels to the issues presented by SB 2220, the Florida Supreme Court found that because (1) there was no statutory right to recover for the state's negligence predating the 1968 Constitution and (2) there was no cause of action against the state at common law,

[3] *See Kluger v. White,* 281 So. 2d 1, 4 (Fla. 1973) and *Baillie v. DNR,* 632 So.2d 1114, 1118 (1st DCA Fla. 1994) (confirming that the *White* Court dated its analysis to the 1968 version of the Florida Constitution.)
[4] *Kluger v. White,* 281 So. 2d 1 (Fla. 1973).
[5] *See Cauley v. Jacksonville*, 403 So.2d 379, 381 (Fla. 1981) (stating that "[c]ommon law sovereign immunity for the state, its agencies, and counties remained in full force until section 768.28's enactment.")

the protections of Art. I, Sec. 21 as developed in the *Kruger* case were inapplicable. [6] Because of district school boards' sovereign immunity from lawsuit prior to 1973, a similar analysis with respect to the provisions of SB 2220 prohibiting tort actions on dual-use school/park property will also apply. Accordingly, SB 2220 should be permissible as a matter of state constitutional law.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows the public to use school board property designated as a public park when such use will not coincide with scheduled school uses.

C. Government Sector Impact:

The bill will allow interlocal agreements between a school board and municipal or county governments to create public parks using existing school board property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Use of facilities for school-related activities

The bill provides that areas designated for use as public parks may not be used as such during school hours or "when the school is otherwise using the area for after-school activities." Because schools may sometimes use areas that are likely candidates for park designation for activities before school, in the summer or on weekends – for example, a ball field that is used for sports practice – it may be helpful to broaden this language to provide that the designated areas may not be used as public parks when "the school is otherwise using the area for school-related activities."

Operation of negligence actions

As noted above, district school boards are not immune from tort actions and may be sued under normal circumstances for their negligence (or the negligence of their agents) that results in injuries sustained on their property. SB 2220 would operate to eliminate this tort liability, however, for injuries that occur as a result of the use of any designated portions of the property as a public park.

[6] *Cauley v. Jacksonville*, 403 So.2d 379, 385 (Fla. 1981)

As a practical matter, litigants may often be able to sue other negligent parties for injuries occurring on school board property while in use as a public park. When an injury results in whole or in part, however, from the negligence of the school district – for example, from a district's negligent failure to properly maintain playground equipment – plaintiffs will, because of the provisions of SB 2220, be cut off from any source of recovery for their injuries.

Impact on federal causes of action

The provisions of SB 2220 will not operate to abrogate an individual's rights to sue the state pursuant to federal law in federal court. Although the Eleventh Amendment to the U.S. Constitution will in most cases bar individuals from bringing suit against the state itself in federal court, the Eleventh Amendment does not protect political subdivisions of a state (including counties and school boards) from being sued in federal court.

VIII. Amendments:

None.