

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 431 Joint Use of Public School Facilities

**SPONSOR(S):** Nehr and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 808 (Compare)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee	13 Y, 0 N, As CS	Valenstein	Ahearn
2) Rulemaking & Regulation Subcommittee			
3) Civil Justice Subcommittee			
4) Education Committee			

### SUMMARY ANALYSIS

In an effort to address the obesity epidemic, the bill encourages each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on public school property and to increase the number of joint-use agreements a district school board enters into with local governments or private organizations. A public access policy should outline the outdoor recreation and sports facilities that are open to the public and the hours the facilities are open. A joint-use agreement should set forth the terms and conditions for the shared use of outdoor recreation and sports facilities on public school property.

The Department of Education (DOE) is required to develop and post on its website a model joint-use agreement; develop and post on its website criteria for the acceptance of grants for implementing joint-use agreements; and post links to, or copies of, the public access policies and joint-use agreements submitted by a district school board.

The bill also grants a district school board immunity from liability for civil damages for personal injury, property damage, or death that occurs on a public school property that the district has opened up to the public, through public access policies or joint-use agreements, unless gross negligence or intentional misconduct on the part of the district school board is a proximate cause of the damage, injury, or death.

Currently, the county and municipalities located within the geographic area of a school district must enter into an interlocal agreement with the district school board. Within the agreement, the parties must jointly establish the specific ways the entities will coordinate their growth and development plans and processes. The agreement must also 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. Some district school boards currently authorize, through their interlocal agreements, public access to sports and recreational facilities on school campuses.

See FISCAL COMMENTS.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Overweight Children and Adults**

##### **Present Situation**

The Centers for Disease Control and Prevention (CDC) estimate 33.9% of American adults are obese and another 34.4% are overweight, and more than 12.5 million children and adolescents are obese.<sup>1</sup> The prevalence of obesity among children and adolescents has almost tripled since 1980.<sup>2</sup>

The Surgeon General estimates 300,000 deaths per year may be attributed to obesity and reports individuals who are obese have a 50-100% increased risk of premature death from all causes, when compared to individuals with a healthy weight.<sup>3</sup>

One of the reasons proffered by the CDC for the increasing rates of obesity is the lack of safe and appealing places to play or be active. According to the CDC, many communities are built in ways that make it difficult or unsafe to be physically active. For some families, getting to parks and recreation centers may be difficult, and public transportation may not be available. For many children, safe routes for walking or biking to school or play may not exist. According to the Department of Health and Human Services and the CDC, less than half of Florida's youth have access to parks, community centers and sidewalks in their neighborhood. Also, youth without access to opportunities for physical activity during nonschool hours are less likely to be as physically active as their peers.<sup>4</sup>

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

In an effort to address the obesity epidemic, the bill encourages each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on public school property and to increase joint-use agreements between district school boards and local governments or private organizations. A public access policy should outline the outdoor recreation and sports facilities that are open to the public and the hours the facilities are open. A joint-use agreement should set forth the terms and conditions for the shared use of outdoor recreation and sports facilities on public school property. The bill requires that within 30 days of adopting a public access policy or entering into a joint-use agreement, a district school board must submit a copy of the policy or agreement to the DOE.

#### **Interlocal Agreements**

##### **Present Situation**

Currently, the county and municipalities located within the geographic area of a school district must enter into an interlocal agreement with the district school board. Within the agreement, the parties must jointly establish the specific ways they will coordinate their growth and development plans and processes. The agreement must also include a process for determining where and how joint use of

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<sup>1</sup> Centers for Disease Control and Prevention, *Obesity and Overweight*, <http://www.cdc.gov/nchs/fastats/overwt.htm> (last visited Jan. 15, 2012); Centers for Disease Control and Prevention, Data and Statistics, *Obesity rates among all children in the United States*, <http://www.cdc.gov/obesity/childhood/data.html> (last visited Jan. 15, 2012).

<sup>2</sup> Centers for Disease Control and Prevention, Data and Statistics, *Obesity rates among all children in the United States*, <http://www.cdc.gov/obesity/childhood/data.html> (last visited Jan. 15, 2012).

<sup>3</sup> Office of the Surgeon General, *Overweight and Obesity: Health Consequences*, [http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact\\_consequences.htm](http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_consequences.htm) (last visited Jan. 15, 2012).

<sup>4</sup> Centers for Disease Control and Prevention, *Overweight and Obesity: A Growing Problem*, <http://www.cdc.gov/obesity/childhood/problem.html> (last visited Jan. 15, 2012); Department of Health and Human Services and Centers for Disease Control and Prevention, State Indicator Report on Physical Activity, 2010, at 3 and 13, available at [http://www.cdc.gov/physicalactivity/downloads/PA\\_State\\_Indicator\\_Report\\_2010.pdf](http://www.cdc.gov/physicalactivity/downloads/PA_State_Indicator_Report_2010.pdf).

either school board or local government facilities can be shared for mutual benefit and efficiency.<sup>5</sup> Usually, interlocal agreements provide general information related to sharing facilities, but not specific details. The specific details related to sharing facilities, such as, the hours the facility will be open and which entity will be liable for any damages or injuries sustained on the property, are contained in a joint-use agreement.

Some district school boards currently authorize, through their interlocal agreements, public access to sports and recreational facilities on school campuses. In fact, according to DOE, school district facilities staff members have informally expressed support for shared use of facilities. However, the school district staff members report that reaching agreements for shared use is highly dependent on variables related to individual facilities. For this reason, while a district school board may have a general policy to allow public access and shared use of facilities, agreements for shared or public use of facilities are typically considered on a facility-by-facility basis.<sup>6</sup>

For example, the Pinellas County interlocal agreement with the School Board of Pinellas County, among others, authorizes the parties to establish an agreement “for each instance of collocation and shared use to address legal liability, operating and maintenance costs, scheduling of use, and facility supervision or any other issues that may arise from collocation or shared use.”<sup>7</sup>

According to the DOE, school district facilities planners have noted the following barriers to expanding joint-use of and public access to facilities: premises liability concerns; additional costs for supervision, custodial services, utilities, and wear and tear on fields and equipment; and forecasts of continued reductions in revenues available for facilities operation and maintenance.<sup>8</sup> Additionally, one school district risk manager reported that the school board has directed the development of a policy to prohibit public use of outdoor school grounds and facilities during periods of darkness.<sup>9</sup> The bill does not specifically address access during daylight hours; however, the bill does not prohibit a school district from establishing such a policy.

School districts are not limited to partnering with governmental entities in joint-use agreements. Pursuant to the terms of the school district’s interlocal agreements, school districts may establish joint-use agreements with private entities.<sup>10</sup> For example, in 2003, a Best Financial Management Practices Review of the Duval County School District stated that the school district had established 47 joint-use agreements with the City of Jacksonville, the YMCA, and various community groups for the use of school facilities.<sup>11</sup>

When establishing an interlocal agreement, the law requires district school boards and local governments to consider, among other things, allowing students to attend the school located nearest their homes when a new housing development is constructed, including attendance at a school located in an adjacent county; consider the effects of the location of public education facilities, including the

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<sup>5</sup> Sections 163.31777(1) and (2)(g) and 1013.33(2)(a) and (3)(g), F.S.

<sup>6</sup> Staff of the Florida Department of Education, *2012 Agency Legislative Bill Analysis for HB 431* (2012).

<sup>7</sup> The Pinellas County interlocal agreement states, “The collocation and shared use of facilities are important to the Parties. The Parties will look for opportunities to collocate or share the use of each Parties’ facilities. Opportunities for collocation and shared use will be considered for libraries, parks, recreational facilities, community centers, auditoriums, learning centers, museums, performing arts centers, stadiums, healthcare and social services, schools, and other uses and facilities as may be determined appropriate. An agreement will be developed for each instance of collocation and shared use to address legal liability, operating and maintenance costs, scheduling of use, and facility supervision or any other issues that may arise from collocation or shared use.” *Interlocal Agreement between Pinellas County, Florida, et al. and the School Board of Pinellas County, Florida*, at 4 (2007), available at [http://pinellascounty.org%2FPlan%2Fpdf\\_files%2F1906\\_IA.pdf&ei=XLnnTs\\_aMo2-tgesjcWdCg&usg=AFQjCNFODeQ20Nfba1IH5mNDHW3u39EyHg&sig2=PIUZ5STd6Q-LR9U\\_yiZf1w](http://pinellascounty.org%2FPlan%2Fpdf_files%2F1906_IA.pdf&ei=XLnnTs_aMo2-tgesjcWdCg&usg=AFQjCNFODeQ20Nfba1IH5mNDHW3u39EyHg&sig2=PIUZ5STd6Q-LR9U_yiZf1w). The term of the interlocal agreement is 5 years. *Id.* at 11.

<sup>8</sup> Staff of the Florida Department of Education, *2012 Agency Legislative Bill Analysis for HB 431* (2012).

<sup>9</sup> *Id.*

<sup>10</sup> See *Duval County Interlocal Agreement for Public School Facility Planning*, at 10 (Nov. 2007), available at [www.duvalschools.org/static/.../ILA%20FINAL%2011-30-07.pdf](http://www.duvalschools.org/static/.../ILA%20FINAL%2011-30-07.pdf).

<sup>11</sup> The Florida Legislature, Office of Program Policy Analysis and Government Accountability, *Best Financial Management Practices Review of the Duval County School District*, Report No. 03-41, ch. 7 Facilities Construction, at 18, Aug. 2003, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=03-41> (last visited Jan. 15, 2012).

feasibility of keeping central city facilities viable in order to encourage central city redevelopment; and consult with state and local road departments to assist in implementing the Safe Routes to Schools Program administered by the Department of Transportation.<sup>12</sup>

Each interlocal agreement must be submitted to the Office of Educational Facilities of the Department of Education (DOE) and the state land planning agency.<sup>13</sup> The Office of Educational Facilities is required to submit any comments or concerns regarding an interlocal agreement to the state land planning agency.<sup>14</sup> Additionally the state land planning agency is required to assemble and make available model interlocal agreements.<sup>15</sup>

Additional public access to educational facilities and grounds is currently authorized in law for any legal assembly, community use centers, or voting precinct, if allowed by the district school board or the board of trustees for the Florida College System institution, the State University System institution, or the Florida School for the Deaf and the Blind. Rules, regulations, or policies and procedures must be adopted by each board to protect educational facilities and grounds when used for such purposes.<sup>16</sup>

### **Effect of Proposed Changes**

The bill encourages each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on public school property and to increase joint-use agreements between district school boards and local governments or private organizations. However, as demonstrated by Pinellas and Duval Counties, district school boards currently have the authority to adopt public use policies and enter into joint-use agreements.

The bill also requires the DOE to develop and post a model joint-use agreement on its website; develop and post criteria for the acceptance of grants for implementing joint-use agreements; and post links to or copies of each joint-use agreement received from a district school board on the DOE website. By developing and posting criteria for the acceptance of grants, the DOE may provide districts access to additional funding sources to expand public access to outdoor recreation and sports facilities on public school campuses.

### **School District Liability**

#### **Present Situation**

Article X, s. 3 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive the state's immunity in part or in full by general law. The Legislature did in fact establish a limited waiver of sovereign immunity for liability for tort for state agencies or subdivisions which includes school districts.<sup>17</sup>

The waiver of sovereign immunity limits the recovery of any one person in a tort action against the state<sup>18</sup> to \$200,000 for any one person or one incident and limits all recovery related to one incident to

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<sup>12</sup> Section 1013.33(1), F.S.

<sup>13</sup> Section 1013.33(2)(a), F.S.

<sup>14</sup> Section 1013.33(4)(a), F.S.

<sup>15</sup> Section 1013.33(2)(d), F.S.

<sup>16</sup> Section 1013.10, F.S.; *see also* s. 1013.01(3)(defines "Board").

<sup>17</sup> Section 768.28(1) and (2), F.S.; *see* Op. Att'y Gen. Fla. 78-145 (1978); *see also* *Wallace v. Dean*, 3 So.3d 1035, 1045, *citing* *Hutchins v. Mills*, 363 So.2d 818, 821 (Fla. 1st DCA 1978). "Prior to the effective date of s. 768.28(6), F.S., courts did not have subject matter jurisdiction of tort suits against the State and its agencies because they enjoyed sovereign immunity pursuant to Article X, section 13, Florida Constitution. However, by enacting s. 768.28[, F.S.,] the Legislature provided for waiver of sovereign immunity in tort actions. Therefore, pursuant to that statute, courts...now have subject matter jurisdiction to consider suits that fall within the parameters of the statute."

<sup>18</sup> The term "state" means "state agencies or subdivisions" which includes the executive departments, the Legislature, the judicial branch, and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities. Section 768.28(2), F.S.

a total of \$300,000.<sup>19</sup> When the state's sovereign immunity applies, the officers, employees, and agents of the state that were involved in the commission of the tort are not personally liable to an injured party.<sup>20</sup>

### **Effect of Proposed Changes**

Currently district school boards are protected by sovereign immunity, except to the degree waived by law, as discussed above. The bill changes the standard for liability for district school boards from negligence to gross negligence or intentional misconduct. More particularly, the bill provides a district school board immunity from liability for personal injury, property damage, or death that occurs on a public school property that the district school board has opened up to the public, through public access policies or joint-use agreements, unless gross negligence or intentional misconduct on the part of the district school board is a proximate cause of the damage, injury, or death.

The bill defines gross negligence as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. By changing the liability standard from negligence to gross negligence or intentional misconduct, the bill may encourage more district school boards to adopt public access policies or enter into more joint-use agreements, and thus, increase the number of outdoor recreation and sports facilities available to the public.

The limitation on liability established in the bill will result in a plaintiff only receiving damages for personal injury, property damage, or death that was caused by gross negligence or intentional misconduct. Therefore, an injured party will not be able to recover damages for an injury sustained due to negligence. However, the bill does not prevent a lawsuit from being filed against the district; therefore, a school district may incur costs associated with litigation.

Additionally, even if a school district's actions are found to be a proximate cause of the damage, injury, or death, the school district is protected by sovereign immunity, and the damages would be capped pursuant to law.<sup>21</sup>

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

**Section 1.** Creates s. 1013.105, F.S., relating to joint use of public school facilities; providing legislative findings; encouraging each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on school property and increase joint-use agreements; and providing duties of the Department of Education.

**Section 2.** Creates s. 768.072, F.S., relating to limitation on public school premises liability; providing for immunity from liability for a district school board that adopts public access policies or enters into a joint-use agreement except in instances of gross negligence or intentional misconduct and defining the term "gross negligence."

**Section 3.** Provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

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<sup>19</sup> Section 768.28(5), F.S.

<sup>20</sup> Section 768.28(9), F.S.

<sup>21</sup> Section 768.28(5), F.S.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Damages received by an injured party may be limited due to a school district's immunity from liability. A plaintiff will only receive damages if the injury, damage, or death was caused by gross negligence or intentional misconduct. Therefore, an injured party will not be able to recover damages for an injury sustained due to negligence.

D. FISCAL COMMENTS:

The bill requires the DOE to develop and make available a model joint-use agreement. The DOE is also required to post links to or copies of district joint-use agreements and also develop criteria for accepting grants for implementing joint-use agreements. These requirements are anticipated to be accomplished within departmental resources. No impact on expenditures is expected.

After the DOE establishes criteria for accepting grants for implementing joint-use agreements, school districts and local governments may be able to obtain additional funding through grants.

The bill encourages school districts to adopt public access policies and enter into joint-use agreements to increase public access to outdoor recreation and sports facilities on public school property. If more school recreational facilities are open to the public, cities and counties may be able to reduce spending on the development and maintenance of public parks and recreation areas; however, school districts may have a fiscal impact from the increased "wear and tear" on the facilities. Additionally, school districts anticipate needing someone to oversee the use of the school property, which may result in an additional cost to the school district, even though the bill does not require this supervision.<sup>22</sup>

While the bill provides districts immunity from liability except in cases of gross negligence or intentional misconduct, the bill does not prevent a suit from being filed against the district; therefore, a school district may incur costs associated with litigation.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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<sup>22</sup> Memorandum, Florida School Boards Association, Inc. (Jan. 18, 2012).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2012, the K-20 Competitiveness Subcommittee of the Education Committee reported the proposed committee substitute for HB 431 favorably as a committee substitute. The proposed committee substitute (PCS) differs from HB 431 in the following ways:

- The PCS removes the whereas clauses and the definitions from HB 431.
- The PCS adds a requirement that districts submit a copy of each public access policy or joint-use agreement to the DOE within 30 days of adoption of the policy or execution of the agreement.
- The PCS adds a requirement that DOE post the criteria it develops for the acceptance of grants for implementing joint-use agreements to be posted on its website.
- The PCS clarifies that liability does not exist for damages arising out of personal injury, property damage, or death that occur on school property that was open to the public, unless the gross negligence or intentional misconduct of a district school board is a proximate cause of the injury, damage, or death.
- The PCS amends the definition of “gross negligence” to be consistent with the legal definition.