

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Judiciary Committee; K-20 Competitiveness Subcommittee; Nehr and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 808

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|------------------|------------|--|
| 1) K-20 Competitiveness Subcommittee | 13 Y, 0 N, As CS | Valenstein | Ahearn |
| 2) Judiciary Committee | 17 Y, 0 N, As CS | Bond | Havlicak |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

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.

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.

This bill may have a minimal fiscal impact on state and local governments. 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) estimates that 33.9% of American adults are obese and another 34.4% are overweight, and more than 12.5 million children and adolescents are obese.¹ The prevalence of obesity among children and adolescents has almost tripled since 1980.²

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.³

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.⁴

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

¹ 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 January 15, 2012).

² 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 January 15, 2012).

³ Office of the Surgeon General, *Overweight and Obesity: Health Consequences*, http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_consequences.htm (last visited January 15, 2012).

⁴ 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 (last visited February 10, 2012).

either school board or local government facilities can be shared for mutual benefit and efficiency.⁵ 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.⁶

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.”⁷

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.⁸ 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.⁹ 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.¹⁰ 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.¹¹

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

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

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

⁷ 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=AFQjCNFODeQ20Nfba11H5mNDHW3u39EyHg&sig2=PIUZ5STd6Q-LR9U_yiZf1w. The term of the interlocal agreement is 5 years. *Id.* at 11.

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

⁹ *Id.*

¹⁰ See *Duval County Interlocal Agreement for Public School Facility Planning*, at 10 (Nov. 2007), available at www.duvalschools.org/static/.../ILA%20FINAL%202011-30-07.pdf.

¹¹ 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 January 15, 2012).

in an adjacent county; consider the effects of the location of public education facilities, including the 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.¹²

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

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.¹⁶

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 appear to have the authority to adopt public use policies and enter into joint-use agreements that include provisions regarding public use of school facilities.

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.

The bill also requires schools boards to create a process for appeal to the district school superintendent should negotiations with a school board fail.

School District Liability

Present Situation -- Landowner Liability

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

¹² Section 1013.33(1), F.S.

¹³ Section 1013.33(2)(a), F.S.

¹⁴ Section 1013.33(4)(a), F.S.

¹⁵ Section 1013.33(2)(d), F.S.

¹⁶ Section 1013.10, F.S.; see also s. 1013.01(3), F.S. (defines "Board").

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.

Present Situation -- Sovereign Immunity

Where a government may be liable in tort, such as for landowner liability, current law limits such liability. Article X, s. 13 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.¹⁷ School districts are a state agency or subdivision for purposes of sovereign immunity.¹⁸ The statutory waiver of sovereign immunity limits the recovery in a tort action against the state or subdivision to \$200,000 for any one person or one incident and limits all recovery related to one incident to a total of \$300,000.¹⁹ 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.²⁰

Effect of Proposed Changes

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.²¹ The bill makes clear that this sovereign immunity still applies.

B. SECTION DIRECTORY:

¹⁷ 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 (Fla. 2009), 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."

¹⁸ 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.

¹⁹ Section 768.28(5), F.S.

²⁰ Section 768.28(9), F.S.

²¹ Section 768.28(5), F.S.

Section 1. Creates s. 1013.105, F.S., relating to joint use of public school facilities.

Section 2. Creates s. 768.072, F.S., relating to limitation on public school premises liability.

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

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 revenues.

2. Expenditures:

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. Accordingly, no impact on state expenditures is expected.

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 appears to have an indeterminate impact on local government expenditures. 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.²²

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.

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:

None.

²² Memorandum, Florida School Boards Association, Inc. (Jan. 18, 2012).

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:

Article 1, s. 21, Fla. Const., provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Supreme Court has in the past found that this provision limits the ability of the Legislature to amend tort law. In the leading case, the Florida Supreme Court first explained the constitutional limitation on the ability of the Legislature to abolish a civil cause of action:

We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.²³

Specific to use of public property, the courts have upheld as constitutional a statute similar to that created by the bill. Current law limits the liability of a state or local government that allows members of the public to use government-owned lands for recreational purposes.²⁴

B. RULE-MAKING AUTHORITY:

None.

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 on its website.

²³ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

²⁴ *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)

- 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.

On February 16, 2012, the Judiciary Committee adopted 2 amendments and reported the bill favorably as a committee substitute. The amendments create an appeals process regarding joint-use agreements and specify that the liability provisions of the bill are not a waiver of sovereign immunity. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.