

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 Judiciary Committee

BILL: CS/SB 808

INTRODUCER: Committee on Education Pre-K - 12 and Senators Norman and Negron

SUBJECT: Joint Use of Public School Facilities

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	deMarsh-Mathues	ED	Fav/CS
2.	O'Connor	Cibula	JU	Favorable
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill grants immunity from personal injury liability to district school boards that implement certain public use of public school property unless gross negligence or intentional misconduct is established.

This bill facilitates, and encourages district school boards to adopt written policies on joint use agreements with local governments and private organizations regarding public use of recreational space at school grounds and facilities. District school boards are also encouraged to develop an appeals procedure for failed negotiations.

The Department of Education (DOE) is required to:

- Develop a model joint-use agreement for publication on its website;
- Post actual joint-use agreements submitted by district school boards on its website; and
- Develop criteria for a grant application process.

This bill creates sections 1013.105 and 768.072, Florida Statutes.

II. Present Situation:

Public Use of School Grounds

District school boards are authorized to allow public access for use of educational facilities and grounds for public assemblies, community use centers, or voting locations.¹

Standards of Negligence

Simple negligence is defined as doing something that a reasonable person would not do or failing to do something that a reasonable person would do under the same or similar circumstances.² The standard for gross negligence, as applied in tort cases where punitive damages are sought under Florida law, is as follows:

the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct."³

By way of contrast, the higher standard of proof of intentional misconduct requires proof that the defendant possessed:

actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.⁴

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law doctrine that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and gives the Legislature the right to waive immunity. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Accordingly, officers, employees, and agents of the state are generally immune from tort liability for damages unless certain high-level intent can be shown. However, these provisions are considered to represent a limited waiver as they allow for some recovery, currently capped at \$200,000 per person

¹ Section 1013.10, F.S.

² See Florida Standard Civil Jury Instructions, No. 401.4, available at http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#400 (last visited Feb. 15, 2012).

³ Section 768.72(2)(b), F.S.

⁴ Section 768.72(2)(a), F.S.

and \$300,000 per incident.⁵ Limits may be exceeded through the claims process, initiated through the filing of a legislative claim bill. Still, the review and award of a claim is entirely at the prerogative of the Legislature.

State agencies and subdivisions, for purposes of sovereign immunity, are defined to include:

The executive departments, the Legislature, the judicial branch, and the independent establishments of the state, including...counties and municipalities....⁶

Section 768.28(19), F.S., clarifies that the state, its agencies, and subdivisions do not waive sovereign immunity upon entering into a contractual relationship with another agency or subdivision of the state.

III. Effect of Proposed Changes:

Absent gross negligence or intentional misconduct, this bill extends immunity from civil liability for personal injury, property damage, or death to public school district boards that authorize public access for recreational purposes. Gross negligence is defined in this bill as an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting life or property.

The standard of gross negligence involves an act or omission the severity of which is in between ordinary or simple negligence and culpable or intentional misconduct. Gross negligence exists “if the likelihood of injury to others is known by the actor to be imminent or clear and present.”⁷ The definition provided in the bill for gross negligence appears to be consistent with the prevailing standard.

The immunity from liability provided to school district boards that enter into joint-use agreements is placed in the section of law that addresses torts, negligence, and sovereign immunity. Existing s. 768.28, F.S., provides a limited waiver of the sovereign immunity of the state, including school districts, for liability for damages for negligence. The effect of this bill when read together with existing s. 768.28, F.S., appears to restrict the state’s waiver of sovereign immunity for damages arising from the use of public school recreational facilities by the general public and others having a joint-use agreement to circumstances involving gross negligence or intentional misconduct, rather than simple negligence.

This bill encourages the development of an appeals process as a mechanism for mediation over failed joint-use negotiations. It is possible that a claimant could argue that a blanket refusal by a district school board to even negotiate entry into a particular agreement represents grounds for appeal.

⁵ Section 768.28(5), F.S. These amounts represent a recent increase from \$100,000 a person and \$200,000 per incident, which took effect October 1, 2011, subsequent to a change in the law during the 2010 Legislative Session (ch. 2010-26, L.O.F.)

⁶ Section 768.28(2), F.S.

⁷ *Personal Injury Law and Practice with Wrongful Death Actions*, West’s Florida Practice Series, 6 FLPRAC s. 2:12 (2011-2012 ed.) (citing *Glaab v. Caudill*, 236 So. 2d 180 (Fla. 2d DCA 1970)).

A grant application process for implementing joint use agreements is provided in the bill. However, the bill does not specify a funding source for these grants.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Education would be required to develop a model joint use agreement and grant criteria, for publication on its website, and also provide a link to district school boards' actual joint use agreements.

Superintendents would be required to preside over appeals between district school boards and parties seeking to establish joint-use agreements.

This bill appears to provide for open access to the public, subject to certain time and condition restrictions. Should supervision be envisioned, it is anticipated that there will be some cost involved in maintaining a school oversight presence after-hours. It is unknown whether such a presence would be provided by the school or by the entity availing itself of the grounds.

Schools may also incur costs for maintenance due to increased use of shared facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by the Committee on Education Pre-K – 12 on February 6, 2012:**

The committee substitute:

- Encourages district school boards to adopt written policies that outline the outdoor recreation and sports facilities that are open to the public and the hours the facilities are open;
- Encourages district school boards to adopt an appeal process for failed negotiations over joint-use agreements;
- Provides a deadline by requiring district school boards to submit a copy of a policy or a joint-use agreement to the DOE within 30 days after its adoption;
- Clarifies that the purpose of grants is for shared facility implementation and requires the DOE to develop and post grant criteria;
- Removes trespass language; and
- Places immunity from liability language in the section of law on torts and negligence; and
- Redefines the term “gross negligence” as a higher standard.

B. Amendments:

None.