

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 Education Pre-K - 12 Committee

BILL: SB 808

INTRODUCER: Senator Norman

SUBJECT: Use of Public School Grounds and Facilities

DATE: February 2, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	deMarsh-Mathues	ED	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill grants immunity from personal injury liability to public schools that implement certain public use of their property unless gross negligence is established.

Students who are not under suspension or expulsion can lawfully be on public school grounds for a physical fitness or recreation purpose without being charged with trespass.

This bill enables, and encourages, district school boards and a local government or a private organization to enter into joint use agreements regarding shared public recreational use of schools grounds and facilities.

The Department of Education (DOE) is required to develop a model joint use agreement for publication on its website, and to adopt rules on criteria for a grant application process. Upon the DOE's request, district school boards are required to provide copies of or electronic links to the joint use agreements.

This bill substantially amends sections 810.097 and 1013.10 of the Florida Statutes.

II. Present Situation:

Trespass on School Property

Section 810.097, F.S., governs trespass on school grounds or facilities. A trespass is considered to have taken place where a person enters or remains on a school campus or facility and:

- Is not there for legitimate business reasons or pursuant to any other authorization, license, or invitation; or
- Is a student currently under suspension or expulsion.¹

Trespassers are subject to a second degree misdemeanor, punishable by up to 60 days in jail and/or a maximum \$500 fine.²

A school is defined as the grounds or any facility of a kindergarten, elementary, middle, junior high, or secondary school, whether public or nonpublic.³

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.

Standards of Negligence

The standard of gross negligence, as applied to tort cases where punitive damages are sought, is defined in Florida law 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."⁴

By way of contrast, the higher standard 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.⁵

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept 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 exempt 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 s. 810.097(1), F.S.

² ss. 810.097(1), 775.082, and 775.083, F.S.

³ s. 810.097(5), F.S.

⁴ s. 768.72(2)(b), F.S.

⁵ s. 768.72(2)(a), F.S.

and \$300,000 per incident.⁶ Limits may be exceeded through the claims process, initiated through the filing of a legislative claims 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....⁷

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:

This bill specifies that students who are not under suspension or expulsion, and are on public school grounds or facilities to participate in physical fitness or recreation, are not trespassers. It is unclear what is meant by the term “student” as it is not defined. Schools are, however, defined in this section as inclusive of kindergarten through grade 12, public and private. Additionally, it is unclear whom could accompany a student onto school property for recreational reasons.

If students enter school grounds that do not attend that school and are under suspension or expulsion from another school, it is highly unlikely that anyone would know. It is also uncertain if any supervision would be provided, given the after-hours nature of the access.

Absent gross negligence, this bill extends immunity from personal injury liability to public schools that authorize public access to students for recreational purposes. Gross negligence is defined to specifically apply in this context as a lack of proper maintenance or upkeep of public school grounds and facilities or a failure to block access to a piece of equipment or area needing repair and that would create a reasonable endangerment to a student during the normal school day. The standard of gross negligence is generally considered to be a medium level of care. Among other degrees of negligence, it ranks somewhere in between ordinary, or simple negligence and culpable, or an intentional harm type of negligence. Conceptually, gross negligence is considered to exist “if the likelihood of injury to others is known by the actor to be imminent or clear and present.”⁸ Although not exactly aligned, the definition provided in this bill appears to be consistent with the prevailing standard.

Joint use agreements are encouraged between a district school board and a local government or private organization, which would establish terms and conditions for the shared public use of a public school’s grounds and facilities. The bill specifies that the joint use agreements would provide local community access. Therefore, it is unknown whether an agreement would provide

⁶ s. 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.)

⁷ s. 768.28(2), F.S.

⁸ *Personal Injury Law and Practice with Wrongful Death Actions*, West’s Florida Practice Series (6 FLPRAC s. 2:12) 2011-2012 ed.

open access or access by one group at a time for a particular location, through more of a reservation arrangement.

A grant application process is referenced in the bill. It is unclear what type of grants are anticipated. Also, the source of funding is not identified.

This bill authorizes joint agreements between the district school board and local government or a private entity. Although arguably sovereign immunity would not be waived through these contracts anyway, the clarification provided in s. 768.28(19), F.S., only mentions contracts entered into with another public entity, and this bill perhaps provides comfort language by including private entities. Even if school districts are currently immune from liability, this bill may relieve concerns regarding risk of exposure due to increased volume of persons coming on-site, and an ensuing increase in lawsuits, as the sovereign immunity waiver is not absolute and is instead capped at the amounts specified.

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 DOE would be required to develop a model joint use agreement, for publication on its website, and also provide a link to district school boards' actual joint use agreements.

It is possible that schools may incur costs to restrict access to vehicles (as is suggested in the bill), to those areas intended to serve as recreational, after hours, public access areas. However, district school boards are not required to adopt joint use agreements, nor are schools required to provide this sort of public access. 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.)

None.

B. Amendments:

None.