

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 277 Joint Use of Public School Facilities

SPONSOR(S): Spano

TIED BILLS: **IDEN./SIM. BILLS:** SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	13 Y, 0 N	Beagle	Fudge
2) Civil Justice Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

Florida law requires each county and municipality located within the geographic area of a school district to enter into an interlocal agreement with the district school board to coordinate their respective growth and development plans and processes. These agreements must include a process for determining where and how school board or local government facilities can be shared for mutual benefit and efficiency. Some school boards currently authorize, through their interlocal agreements, public access to sports and recreational facilities on school campuses.

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 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. School boards must submit public access policies and joint-use agreements to the Department of Education (DOE) within 30 days of adopting such policy or agreement. School boards must create a process that enables parties seeking a joint-use agreement with the school district to appeal to the district school superintendent if negotiations fail.

DOE is required to develop a model joint-use agreement and criteria for the acceptance of grants for implementing joint-use agreements and post on its website the model agreement, links to or copies of all public access policies and joint-use agreements submitted by school boards, and the grant criteria.

The bill also grants a school board immunity from liability for civil damages for personal injury, property damage, or death occurring on public school property it opens for public use through a public access policy or joint-use agreement, during hours reserved for such use, unless gross negligence or intentional misconduct on the part of the school board is a proximate cause of the damage, injury, or death. The bill does not affect liability for incidents occurring during school hours or school-related or -sponsored activities.

This bill does not have a fiscal impact on state and local governments. See Fiscal Comments.

The bill requires school boards to create a process that enables parties seeking a joint-use agreement with the school district to appeal to the superintendent if negotiations fail. This provision does not align with the respective roles and responsibilities assigned to boards and superintendents by Florida law. See Drafting Issues or Other Comments.

The bill requires DOE to develop grant criteria for the acceptance of grants for implementing joint-use agreements, but does not specify whether state funding will be provided for the grants or whether DOE or another entity is responsible for administering such grants. See Drafting Issues or Other Comments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Overweight Children and Adults

The Centers for Disease Control and Prevention (CDC) estimates that 35.9% of American adults are obese and another 33.3% are overweight, and approximately 17% (or 12.5 million) of children and adolescents aged 2-19 are obese. The prevalence of obesity among children and adolescents has almost tripled since 1980.¹ The Surgeon General estimates 300,000 deaths per year may be attributed to obesity and reports that individuals who are obese have a 50-100% increased risk of premature death from all causes, when compared to individuals with a healthy weight.²

According to the CDC, youth who have access to opportunities for physical activity during nonschool hours have higher overall levels of physical activity and are less likely to be overweight or obese. CDC cites increasing access to safe and appealing places to play and be active as one strategy communities can employ to combat youth obesity. CDC's research indicates that less than half of Florida's youth have access to parks and community centers in their neighborhood.³

Public Access to Public School Facilities

Florida law broadly authorizes district school boards and the boards of trustees of Florida College System institutions, state universities, and the Florida School for the Deaf and the Blind to allow the public access to educational facilities and grounds for any legal assembly or as community use centers or voting precincts.⁴ Additionally, the law specifically requires each county and municipality located within the geographic area of a school district to enter into an interlocal agreement with the district school board to coordinate their respective growth and development plans and processes. Among other things, the interlocal agreement must include a process for determining where and how the school boards and local governments can share facilities for mutual benefit and efficiency.⁵ Some district school boards currently authorize, through their interlocal agreements, public access to sports and recreational facilities on school campuses. The specific details related to such access, such as the hours the facility will be open and which party is liable for any damages or injuries sustained on the property, are contained in a separate "joint-use" agreement.⁶

According to DOE, school district facilities personnel have informally expressed support for providing public access to recreation and sports facilities. However, such personnel indicate that reaching a joint-use agreement to provide such access is highly dependent on variables related to individual facilities. Thus, agreements are typically considered on a facility-by-facility basis. Such personnel cite premises liability concerns; additional costs for supervision, custodial services, utilities, and wear and tear on

¹ Centers for Disease Control and Prevention, *Obesity and Overweight*, <http://www.cdc.gov/nchs/fastats/overwt.htm> (last visited Jan. 2, 2014); 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. 2, 2014).

² Office of the Surgeon General, *Overweight and Obesity: Health Consequences*, http://www.surgeongeneral.gov/library/calls/obesity/fact_consequences.html (last visited Jan. 2, 2014).

³ Centers for Disease Control and Prevention, *Overweight and Obesity: A Growing Problem*, <http://www.cdc.gov/obesity/childhood/problem.html> (last visited Jan. 2, 2014); 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.

⁴ Section 1013.10, F.S.; see also s. 1013.01(3), F.S. (defines "Board").

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

⁶ See, e.g., *Interlocal Agreement between Pinellas County, Florida, et al. and the School Board of Pinellas County, Florida*, at 4 (2012), available at www.pinellascounty.org/Plan/pdf_files/1906_IA.pdf [hereinafter *Pinellas County Agreement*].

fields and equipment; and potential reductions in revenues available for facilities operation and maintenance as barriers to expanding joint-use of, and public access to, facilities.⁷

District school boards are not limited to partnering with governmental entities in joint-use agreements. If authorized by the school board's interlocal agreements, boards may establish joint-use agreements with private entities. 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.⁸

School District Liability

Landowner Liability

A plaintiff who is injured on another person's land may sue the landowner in tort if the landowner breached a duty of care owed to the plaintiff and the plaintiff suffered damages as a result of the landowner's breach.⁹ A landowner's duty to persons on his or her land is governed by the status of the injured person. There are two primary categories of persons on land – invitees and trespassers. The status of the person is generally a question of fact to be determined by the jury.¹⁰

An invitee is a person who was invited to enter the land.¹¹ Florida law 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."¹² 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 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.¹³

A trespasser is any person who is not an invitee. The only duty a landowner owes to a trespasser is to avoid willful and wanton injury; however, if the presence of the person is discovered, then there is also a duty to warn of known dangerous conditions not readily apparent to ordinary observation.¹⁴ This bill does not affect tort law related to trespassers.

Sovereign Immunity

When 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

⁷ Florida Department of Education, *Legislative Bill Analysis for HB 431* (2012). 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." *Pinellas County Agreement*, *supra* note 6, at 4.

⁸ 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 18-19 (Aug. 2003), available at <http://www.opaga.state.fl.us/Summary.aspx?reportNum=03-41>.

⁹ 74 Am. Jur. 2d Torts s. 7 (2013).

¹⁰ *Post v. Lumney*, 261 So.2d 146, 147 (Fla. 1972). A third category of persons is "licensee." A licensee is one who enters the property of another for his or her own convenience or benefit, whose tolerance on the property is tolerated or permitted, but not invited, either expressly or by reasonable implication. Such a person is often referred to as an "uninvited licensee," whose legal status is between trespasser and invitee. Mail carriers and persons crossing business premises at a time when the business is closed are examples of licensees. 41 Fla. Jur 2d Premises Liability s. 51 (2013). A landowner owes a licensee the duty to refrain from wanton negligence or willful misconduct that would injure such person, avoid intentionally exposing such person to danger, and to warn of any known dangerous or defective conditions that would not be open to ordinary observation by the licensee. 41 Fla. Jur 2d Premises Liability s. 53 (2013).

¹¹ *Post*, 261 So.2d at 147-148.

¹² Section 768.075(3)(a)1., F.S.

¹³ See, e.g., *Dampier v. Morgan Tire & Auto, LLC*, 82 So.3d 204, 205 (Fla. 5th DCA 2012).

¹⁴ 41 Fla. Jur 2d Premises Liability s. 59 (2013).

fact establish a limited waiver of sovereign immunity for tort liability for state agencies or subdivisions.¹⁵ School districts are a state agency or subdivision for purposes of sovereign immunity.¹⁶ 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 \$300,000.¹⁷ 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.¹⁸

Effect of Proposed Changes

The bill specifies legislative findings indicating that greater public access to recreation and sports facilities is necessary to reduce the impact of obesity on personal health and health care expenditures and that tax-payer funded public school playgrounds, fields, tracks, courts, and other outdoor recreation and sports facilities should be used to provide the public with accessible opportunities for physical activity. Accordingly, 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 during nonschool hours when a school-sponsored or school-related activity is not occurring 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. School boards must submit public access policies and joint-use agreements to DOE within 30 days of adopting such policy or agreement.

The bill requires district school boards to create a process that enables parties seeking a joint-use agreement with the school district to appeal to the superintendent if negotiations fail. This appeal provision is not consistent with the respective roles and responsibilities of boards and superintendents set forth in Florida law. The law establishes school boards as the primary decision-making body for school district affairs, with the superintendent acting as chief executive.¹⁹ A district school superintendent is responsible for recommending to the school board actions, policies, and rules he or she considers necessary for the efficient operation of the district school system. Such actions, policies, and rules may only be enacted with the school board's approval at a publicly noticed board meeting.²⁰ It is also questionable that failed negotiations by parties to a prospective joint-use agreement constitute an appealable action without the matter first being heard and voted on by the school board at a publicly noticed board meeting. See Drafting Issues and Other Comments.

DOE must develop a model joint-use agreement and criteria for the acceptance of grants for implementing joint-use agreements and post on its website the model agreement, links to or copies of all public access policies and joint-use agreements submitted to DOE by district school boards, and the grant criteria. However, the bill does not specifically require submission and posting of joint-use agreements that predate the bill's effective date, if enacted. Thus, it is unclear whether such agreements will be submitted to DOE by school districts and posted on the DOE website. The bill also does not specify whether state funding will be provided for the grants or whether DOE or another entity will be responsible for administering such grants. See Drafting Issues and Other Comments.

¹⁵ 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."

¹⁶ The term "state agencies or subdivisions" 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.

¹⁷ Section 768.28(5), F.S.

¹⁸ Section 768.28(9), F.S.

¹⁹ Article IX, ss. 4 and 5, Florida Constitution.

²⁰ Sections 1001.372, 1001.41, 1001.49, and 286.011, F.S.

The bill raises the standard of liability for district school boards from negligence to gross negligence or intentional misconduct under certain circumstances. 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 public use, through public access policies or joint-use agreements, during times reserved for such use, unless gross negligence or intentional misconduct on the part of the district school board is a proximate cause of the damage, injury, or death.²¹ The new standard of liability does not apply to incidents occurring during school hours or during school-related or -sponsored activities or to the other party to a joint-use agreement.

Generally speaking, a gross negligence standard requires a plaintiff to show that the landowner acted or failed to act with conscious indifference to the potential harm that may befall others. It is a course of conduct that a reasonable, prudent person would know is very likely to result in injury to another.²² In contrast, a plaintiff seeking damages for ordinary negligence need only show that the landowner failed to exercise reasonable care to protect persons on his or her land.²³

District school boards already have the authority to adopt public use policies and enter into joint-use agreements that include provisions regarding public use of recreation and sports facilities. However, provisions changing the liability standard from negligence to gross negligence or intentional misconduct, may encourage more 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 made 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 ordinary negligence. The existence of gross negligence or intentional misconduct is usually a determination made by the jury in a particular case. Nothing in the bill prevents a suit from being filed against the board; therefore, a school board may still incur litigation costs.

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.²⁴ The bill makes clear that this sovereign immunity still applies.

B. SECTION DIRECTORY:

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, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²¹ While Art. 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," and the Florida Supreme Court has in the past found that this provision limits the ability of the Legislature to amend tort law, the court in *Abdin v. Fischer*, held that 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. 374 So.2d 1379 (Fla. 1979).

²² 38 Fla. Jur 2d Negligence s. 35 (2013).

²³ 38 Fla. Jur 2d Negligence s. 4 (2013).

²⁴ Section 768.28(5), F.S.

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill encourages, but does not require, district school boards 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. Opening more school recreational facilities to the public may enable cities and counties to reduce spending on the development and maintenance of public parks and recreation areas; however, increased public use may increase “wear and tear” on school recreational facilities, thereby increasing a board’s oversight, repair, and maintenance costs.²⁵ The bill does not prohibit district school boards from addressing any anticipated financial issues within a public access policy or joint-use agreement.

The bill limits a district school board’s liability for civil damages for personal injury, property damage, or death occurring on public school property it opens to the public through a public access policy or joint-use agreement. A plaintiff will only receive damages if the injury, damage, or death was caused by gross negligence or intentional misconduct on the part of the school board. Therefore, an injured party will not be able to recover damages for an injury sustained due to ordinary negligence. The bill does not change the cap on damages for recovery in a tort action against the state or a subdivision, which is \$200,000 for any one person or one incident and with all recovery related to one incident limited to a total of \$300,000.

While the bill provides school boards immunity from liability except in the case of gross negligence or intentional misconduct, the existence of gross negligence or intentional misconduct is usually a determination made by the jury in a particular case. Nothing in the bill prevents a suit from being filed against the board; therefore, a school board may still incur litigation costs.

The bill requires DOE to develop a model joint-use agreement and criteria for the acceptance of grants for implementing joint-use agreements submitted to DOE by district school boards and post on its website the model agreement, links to or copies of all public access policies and joint-use agreements, and the grant criteria. These requirements are anticipated to be accomplished within departmental resources. Accordingly, no impact on state expenditures is expected.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁵ Memorandum, Florida School Boards Association, Inc. (Jan. 18, 2012).
STORAGE NAME: h0277a.CIS
DATE: 1/14/2014

Not applicable. This bill does not appear to require counties or municipalities to spend funds of take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 44-51: Provisions allowing a party seeking a joint-use agreement with the school board to appeal to the superintendent when negotiations fail are not consistent with the respective roles and responsibilities of boards and superintendents set forth in Florida law. The law establishes district school boards as the primary decision-making body for school district affairs, with the superintendent acting as chief executive.²⁶ District school superintendents are responsible for recommending to the school board actions, policies, and rules he or she considers necessary for the efficient operation of the district school system. Such actions, policies, and rules may only be enacted with the school board's approval at a publicly noticed board meeting.²⁷ It is also questionable that failed negotiations by parties to a prospective joint-use agreement constitute an appealable action without the matter first being heard and voted on by the board at a publicly noticed board meeting.

Lines 63-65: The bill requires DOE to develop grant criteria for the acceptance of grants for implementing joint-use agreements, but does not specify whether state funding will be provided for the grants or whether DOE or another entity is responsible for administering such grants.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²⁶ Article IX, ss. 4 and 5, Florida Constitution.

²⁷ Sections 1001.372, 1001.41, 1001.49, and 286.011, F.S.