

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 396

INTRODUCER: Senators Bean and Bradley

SUBJECT: Joint Use of Public School Facilities

DATE: March 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	<b>Pre-meeting</b>
2.			CA	
3.			JU	

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**I. Summary:**

SB 396 creates a new law that authorizes the establishment of public access policies and joint use agreements that provide access to the district’s outdoor recreation and sports facilities on public school property during non-school hours when a school-sponsored or school-related activity is not occurring. The bill creates a new limited waiver of sovereign immunity that applies when districts utilize these policies or agreements.

The effective date of this bill is July 1, 2014.

**II. Present Situation:**

Currently, district school boards may permit public use of its educational facilities. The Legislature’s limited waiver of sovereign immunity pursuant to s. 768.28, F.S., applies to the district when allowing this public use.

**Public Use of School Facilities**

Under current law, district school boards are authorized to allow public use of its educational facilities. For example:

- District school boards may permit the use of educational facilities and grounds for any legal assembly or for community use centers. The district school board must adopt rules, regulations, or policies and procedures necessary to protect educational facilities and grounds when used for such purposes.<sup>1</sup>

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<sup>1</sup> Section 1013.10, F.S.

- District school boards and local governments must enter into an interlocal agreement. The interlocal agreement must address a process for determining where and how joint use of school board facilities can be shared for mutual benefit and efficiency.<sup>2</sup>
- District school boards may exercise any power except as expressly prohibited by the State Constitution or general law.<sup>3</sup>

### **Limited Waiver of Sovereign Immunity**

The doctrine of sovereign immunity precludes bringing suit against the government without its consent.<sup>4</sup> Founded on the ancient principle that “the King can do no wrong,” sovereign immunity bars holding the government or its political subdivisions liable for torts of its officers or agents unless such immunity is expressly waived by statute or necessary inference from legislative enactment.<sup>5</sup>

Article X, s. 13, of the Florida Constitution, authorizes the Legislature to waive sovereign immunity. Accordingly, via Section 768.28(1), F.S., the Legislature created a limited waiver of sovereign immunity in tort:

In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

Liability is limited to \$200,000 by any one person, and \$300,000 for the same incident or occurrence.<sup>6</sup>

### **III. Effect of Proposed Changes:**

SB 396 creates a new law that authorizes the establishment of public access policies and joint use agreements that provide access to the district’s outdoor recreation and sports facilities on public school property during non-school hours when a school-sponsored or school-related activity is

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<sup>2</sup> Section 163.31777(2)(g), F.S. With a few municipal exceptions, all counties, municipalities, and district school boards have entered into interlocal agreements that include provisions related to joint use of facilities. Florida Department of Education, *Senate Bill 392 Bill Analysis* (January 28, 2013) (on file with the Senate Committee on Education).

<sup>3</sup> Section 1001.32(2), F.S.

<sup>4</sup> *Black’s Law Dictionary* 1396 (6th ed. 1990)

<sup>5</sup> *Id.*

<sup>6</sup> Section 768.28(5), F.S.

not occurring. The bill creates a new limited waiver of sovereign immunity that applies when districts utilize these policies or agreements.

### **Public Use of School Facilities**

The bill creates specific authority for district school boards to provide limited public use functions. Additionally, the bill allows district school boards to conserve resources by utilizing DOE model joint-use agreements or joint-use agreements or policies used by other district school boards. The bill provides public access to existing joint-use agreements and public access policies, which may increase public use and provide greater transparency and accountability for district school boards.

### ***Specific Public Access Policies and Joint-Use Agreements for Limited Purposes***

The bill creates s. 1013.105, F.S., which states that district school boards may:

- Develop and adopt written policies to promote access to outdoor recreation and sports facilities during non-school hours when a school-sponsored or school-related activity is not occurring. A public access policy should outline the outdoor recreation and sports facilities that are open to the public and the hours during which the facilities are open.
- Increase the number of joint-use agreements with local governments or private organizations regarding shared use of outdoor recreation and sports facilities. A joint-use agreement should specify the terms and conditions for the shared use of the outdoor recreation and sports facilities on public school property.
- Develop and adopt written policies and procedures providing for an appeal process if negotiations for joint-use agreements fail. The party seeking to enter into a joint-use agreement with a school district may file an appeal to the district superintendent.

District school boards currently have the authority to have public access policies and joint use agreements. However, the above provisions constitute specific authority (i.e., open access policies or joint use agreements) for limited functions (i.e., outdoor recreation and sports facilities on public school property during non-school hours when a school-sponsored or school-related activity is not occurring). The nexus for this specific authority, and for these limited functions, is that they are the only activities to which the new, limited waiver of sovereign immunity applies.

### ***Availability of Model and Existing Joint-Use Agreements and Public Access Policies***

The bill requires district school boards to submit to the Department of Education (DOE) a copy of its public access policy within 30 days after adoption, and a copy of joint-use agreements within 30 days of entering into the agreement. The DOE is required to:

- Develop a model joint-use agreement and post the model agreement on its website.
- Post on its website all copies of public access policies and joint-use agreement submitted to DOE by a district school board.
- Develop criteria for acceptance of grants for implementing joint-use agreements and post the criteria on its website.

These provisions may enable district school boards to save time and resources by utilizing the DOE model joint-use agreement, or the public access policies and joint-use agreements created by other district school boards.

Requiring DOE to post existing public access policies and joint-use agreements on its website may provide the public with greater knowledge of and access to these policies and agreements, enabling increased use by the public. Additionally, these postings may serve to provide the public with more transparency over and accountability for the district school board’s actions related to use of public school property.

**New Waiver of Sovereign Immunity**

The bill creates s. 768.072, F.S. Pursuant to this new law, a district school board is not liable for civil damages for personal injury, property damage, or death that occurs on a public school property that the district school board has made available to the public through public access policies or joint-use agreements under s. 1013.105, F.S. (the new substantive law created by this bill), unless gross negligence or intentional misconduct on the part of the district school board is a proximate cause of the injury, damage, or death. The new waiver does not:

- Change liability for injury, damage, or death that occurs during school hours or during a school-related or school-sponsored activity.
- Waive sovereign immunity beyond the limited waiver in s. 768.28, F.S.

The limited waiver of sovereign immunity in the new s. 768.072, F.S, while addressing similar events, is facially different from that in the existing s. 768.28, F.S. For example:

Event	Existing Law – s. 768.28, F.S.	SB 396 – s. 768.072, F.S.
Injury Suffered	<ul style="list-style-type: none"> <li>• Injury or loss of property</li> <li>• Personal injury</li> <li>• Death</li> </ul>	<ul style="list-style-type: none"> <li>• Property damage</li> <li>• Personal injury</li> <li>• Death</li> </ul>
District Conduct	<ul style="list-style-type: none"> <li>• Negligent act</li> <li>• Wrongful act</li> <li>• Omission</li> </ul>	<ul style="list-style-type: none"> <li>• Gross negligence</li> <li>• Intentional misconduct</li> </ul>
District Causation	<ul style="list-style-type: none"> <li>• Caused by</li> </ul>	<ul style="list-style-type: none"> <li>• Proximate cause</li> </ul>

With the differences between s. 768.28, F.S., and s. 768.072, F.S., it difficult to predict how s. 768.072, F.S., will be interpreted by the judicial branch, both on its own or when read *in pari materia* with s. 768.28, F.S. Additionally, it is difficult to predict how the 67 district school boards, and the numerous parties using public school property pursuant to public access policies and joint-use agreements under s. 1013.105, F.S., will likewise implement this new limited waiver of sovereign immunity.

The effective date of this bill is July 1, 2014.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 1013.105 and 768.072.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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