

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 Committee on Judiciary

BILL: SB 408

INTRODUCER: Senator Simmons

SUBJECT: Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling

DATE: February 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 408 eliminates the requirement that a government entity obtain a consent form from the parent of a child who participates in a public skate park or area set aside for the activity of freestyle bicycling as a condition of limiting the entity's liability for damages or injuries. However, under the bill and current law, the government entity can be liable for gross negligence or for failing to guard against or warn of dangerous conditions that are not apparent.

II. Present Situation:

Inherently Risky Activities on Public Property

As skateboarding and inline skating gained in popularity in Florida, citizens called for an increase in public skate parks and other facilities. Local government officials, however, declined to create these parks and set-aside areas out of concern for liability exposure. The 1999 Legislature addressed these concerns by providing immunity from liability for governmental entities that set aside areas for skateboarding, inline skating, and freestyle bicycling.¹

Today, s. 316.0085, F.S., addresses, and considers as inherently risky, the activities of skateboarding, inline skating, paintball, and bicycling, including freestyle, mountain, or off-road bicycling.² According to the statute, a governmental entity, which may include a federal, state, or local government entity, authorizes or permits a person to engage in these inherently risky activities only by posting a sign designating an area for an activity.³ The government entity is

¹ Chapter 99-133, L.O.F., expressly recognizes "that governmental owners or lessees of property have failed to make property available for [skateboarding, inline skating, and freestyle bicycling] because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities."

² Section 316.0085(2)(b), F.S.

³ Section 316.0085(2)(a) and (3), F.S.

generally immune from liability for damages or injuries to a person 17 years of age or older as a result of participating in an inherently risky activity. However, for a participant who is younger than 17 years of age, the government entity has the benefit of this limited liability only if it obtains the written consent of a parent of the child.⁴

Although existing law provides significant liability protections to government entities, a government entity can be held liable for damages or injuries if it:

- Fails to warn of a dangerous condition of which a participant cannot reasonably be expected to have notice; or
- Commits gross negligence that is the proximate cause of a participant's injury.⁵

Additionally, s. 316.0085, F.S., does not limit the liability of individuals who are negligent while participating in an inherently dangerous activity. A participant is negligent if he or she fails to:

- Act within the limits of his or her ability and the purpose and design of the equipment used;
- Remain in control of his or her equipment and himself or herself; or
- Refrain from acting in a way that may cause or contribute to death or injury of himself or herself or others.⁶

Skateboarding Injuries

In a study on admissions of children to emergency rooms from 2002-2011, researchers found an increase in children presenting with traumatic brain injuries, such as concussions from sports activities. Activities with the highest admission rates per patient seen in the emergency room for traumatic brain injury are skiing, sledding, inline skating, and skateboarding.⁷ Although researchers focused on a single children's hospital, the article also notes that nationally the number of children presenting with sport-related traumatic brain injuries increased 62 percent between 2001 and 2009.

Skate Parks

Florida has both public and private skate parks. According to the Florida League of Cities, currently 65 city or county skate parks operate around the state.⁸ Whether all governmental entities provide and require written consent forms is unknown. Although the Legislature left it to

⁴ Section 316.0085(3), F.S.

⁵ Section 316.0085(5), F.S.

⁶ Section 316.0085(7)(b), F.S.

⁷ Stephen Reinberg, *Many More Kids Visiting ER for Sports Concussions, Study Finds* (Sept. 30, 2013).

<http://www.medicinenet.com/script/main/art.asp?articlekey=174050>. Researchers collected 3,900 records of children seen in the emergency department of the Cincinnati Children's Hospital Medical Center for a sports-related brain injury. Of these, 372 cases required hospital admission.

⁸ Email correspondence with David Cruz, Florida League of Cities (Feb. 6, 2015).

governmental entities to draft the actual consent forms, questions arose regarding the format and procedure of the forms.^{9, 10}

Sovereign Immunity

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 unless the public entity expressly waives immunity.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a limited waiver of sovereign immunity. By law, liability is limited to \$200,000 per plaintiff or \$300,000 per incident.¹¹ Therefore, if the liability protections in s. 316.0085, F.S., do not apply, a plaintiff’s recovery will still be limited by the caps in the state’s waiver of its sovereign immunity. To exceed the caps, the claimant must request legislative approval through the claim bill process.¹² Whether to approve a claim bill is entirely at the discretion of the Legislature.

III. Effect of Proposed Changes:

Current law in s. 316.0085, F.S., provides immunity from liability to governmental entities who set aside designated areas for skateboarding, inline skating, paintball, and freestyle or mountain or off-road bicycling. To qualify for the immunity, the governmental entities must collect written consent forms from parents of participants younger than the age of 17. The bill preserves immunity by eliminating the requirement for governmental entities to collect written consent forms for skateboarding, inline skating, and freestyle bicycling.

The bill does not change the requirement for immunity in existing law that governmental entities collect written consent forms for participation in areas designated for paintball and mountain or off-road bicycling.

The bill does not affect the liability of a government entity that authorizes paintball or mountain or off-road bicycling on its property. To limit its liability for damages or injuries to a participant younger than 17, the government must still obtain the written consent of the child’s parent.

The bill takes effect July 1, 2015.

⁹ Joseph G. Jarret, *Skating on Thin Concrete: The Florida Legislature’s Response to Skateboarders and Skaters*, 76 FLA. B.J.74, 76 (Nov. 2002). Questions posed at a roundtable discussion in Polk County attended by public sector attorneys and risk managers include: “In terms of waivers, who will secure the consent from the parent and what procedure will be implemented to prove that the adult is a legal guardian of the state?” and “Who will draft the consent form and will the form include the acknowledgement that the child has been cleared medically to participate in such activity?” *Id.*

¹⁰ Nothing in s. 316.0085, F.S., prohibits a child from skateboarding at a skate park or engaging in inline skating without the consent of a parent. Similarly, nothing requires a government entity to collect a consent form from a child’s parent before the child may participate at a skate park. As such, the “written consent” described in s. 316.0085, F.S., appears more like a waiver or a document releasing the government entity from liability.

¹¹ Section 768.28(5), F.S.

¹² Section 768.28(5), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.¹³

If proposed legislation meets any of these criteria, a mandates analysis is required.

As written consent forms are no longer required for the activities of skateboarding, inline skating, and freestyle bicycling on public property, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

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:

The bill does not impact skate parks or facilities for inline skating on private property.

Whether removing the condition of written consent forms for immunity from liability will increase sports-related injuries and medical costs for participants is unknown.

C. Government Sector Impact:

Governmental entities that provide designated areas for skateboarding and inline skating will have no need to make available and collect written consent forms from parents of participants. Stationing a government employee at each site, providing a form, and storing the forms will no longer be necessary.

¹³ Article VII, s. 18 (a) through (c), Fla. Const.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.0085, Florida Statutes.

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.