

**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 Appropriations Subcommittee on Pre-K - 12 Education

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BILL: PCS/CS/SB 984

INTRODUCER: Appropriations Subcommittee on Pre-K-12 Education; Education Committee and Senator Bean and others

SUBJECT: Shared Use of Public School Playground Facilities

DATE: April 18, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 984 provides legislative intent to increase the number of school districts that open their playground facilities to community use outside of school hours to improve public access to recreational facilities and reduce the impact of obesity, diabetes, and other chronic diseases on personal health and health care expenditures. Specifically, the bill:

- Establishes a Shared Use Task Force to identify barriers in creating shared use agreements and make recommendations to facilitate the shared use of school facilities generally and in high-need communities, specifies membership of the task force, and requires the task force to submit a report to the Legislature by October 1, 2017.
- Requires the Department of Education (DOE) to provide technical assistance to school districts regarding the shared use of school facilities.
- Specifies DOE responsibilities relating to funding for the shared use of recreational facilities.

The bill does not impact state revenues or expenditures. SB 2500, the Senate General Appropriations Act for Fiscal Year 2017-2018, does not provide an appropriation to the DOE for the short-term grants authorized in the bill.

The bill takes effect on July 1, 2017.

## II. Present Situation:

### Impact of Obesity on Personal Health

The Centers for Disease Control and Prevention (CDC) estimates that 70.7 percent of adults in America are overweight, including 37.9 percent who are obese,<sup>1</sup> and 12.7 percent who have diabetes.<sup>2</sup> The CDC also estimates that 20.6 percent of children age 12-19, 17.4 percent of children age 6-11, and 9.4 percent of children age 2-5, are obese.<sup>3</sup> The CDC finds that obesity disproportionately affects children from low-income families.<sup>4</sup> The National Institutes of Health warns that being overweight or obese substantially raises the risk of death from hypertension, dyslipidemia, type 2 diabetes, coronary heart disease, stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, and endometrial, breast, prostate, and colon cancers.<sup>5</sup>

The estimated annual medical cost of obesity in the U.S. was \$147 billion in 2008; the annual medical costs for people who are obese were \$1,429 higher than those of normal weight.<sup>6</sup>

The CDC has issued a policy statement advocating joint use (or shared use) agreements to increase resident's access to safe physical activity resources.<sup>7</sup>

### Playground Facilities

Florida law authorizes a district school board, a Florida College System institution board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind to allow public access for use of educational facilities and grounds for public assemblies, community use centers, or voting locations.<sup>8</sup>

Additionally, the law requires that a county and municipality within the geographic areas of a school district enter into an interlocal agreement with the district a school board that jointly establishes the specific ways in which the plans and processes of the district school board and the

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<sup>1</sup> U.S. Department of Health and Human Services, *Health, United States, 2015* (May 2016), at 200, available at <https://www.cdc.gov/nchs/data/abus/abus15.pdf#053>. The estimates are for 2013-2014.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Centers for Disease Control and Prevention, *Obesity Prevalence Among Low-Income, Preschool-Aged Children, United States, 1998-2008*, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5828a1.htm> (last visited March 31, 2017).

<sup>5</sup> National Institutes of Health, *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (September, 1998), at xi, available at [https://www.nhlbi.nih.gov/files/docs/guidelines/obesity\\_guidelines\\_archive.pdf](https://www.nhlbi.nih.gov/files/docs/guidelines/obesity_guidelines_archive.pdf).

<sup>6</sup> Eric A. Finkelstein, Justin G. Trogon, Joel W. Cohen and William Dietz, *Annual Medical Spending Attributable To Obesity: Payer-And Service-Specific Estimates*, *Health Affairs* 28, no.5 (2009):w822-w831doi: 10.1377/hlthaff.28.5.w822 originally published online July 27, 2009, available at <http://content.healthaffairs.org/content/28/5/w822.full.pdf+html>.

<sup>7</sup> Centers for Disease Control and Prevention, *Joint Use Agreements*, available at <https://www.cdc.gov/nccdphp/dch/pdfs/health-equity-guide/health-equity-guide-sect-4-1.pdf>.

<sup>8</sup> Section 1013.10, F.S. Section 1013.01, F.S., defines a board as a district school board, a Florida College System institution board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind.

local governments are to be coordinated.<sup>9</sup> The interlocal agreement must include a process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.<sup>10</sup> In these agreements, school boards and local governments, recognizing the value of shared use school facilities, may provide for a separate agreement developed for each instance of co-location and shared use, which addresses legal liability, operating and maintenance costs, scheduling of use, and facility supervision or any other issues that may arise from co-location and shared use.<sup>11</sup>

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

The doctrine of sovereign immunity precludes bringing suit against the government without its consent.<sup>12</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>13</sup>

Article X, s. 13 of the Florida Constitution authorizes the Legislature to waive sovereign immunity. Accordingly, via s. 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>14</sup>

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<sup>9</sup> Sections 163.31777(1), F.S., and 1013.33(1), F.S.

<sup>10</sup> Section 163.31777(2)(g), F.S.

<sup>11</sup> See e.g., Santa Rosa County Commission, City Council of Milton and Gulf Breeze, Town Council of the Town of Jay, and the School Board of Santa Rosa County, *Interlocal Agreement for Public School Facility Planning*, at 10-11, available at <https://sites.santarosa.k12.fl.us/admin/files/PropAmndIntrlcAgr010312wSigs.pdf>.

<sup>12</sup> *Black’s Law Dictionary* 1396 (6th ed. 1990).

<sup>13</sup> *Id.*

<sup>14</sup> Section 768.28(5), F.S.

### III. Effect of Proposed Changes:

The bill provides legislative intent to increase the number of school districts that open their playground facilities to community use outside of school hours to improve public access to recreational facilities and reduce the impact of obesity, diabetes, and other chronic diseases on personal health and health care expenditures. Specifically, the bill:

- Establishes a Shared Use Task Force to identify barriers in creating shared use agreements and make recommendations to facilitate the shared use of school facilities generally and in high-need communities; and specifies membership of the task force.
- Requires the Department of Education (DOE) to provide technical assistance to school districts regarding the shared use of school facilities.
- Specifies DOE responsibilities relating to funding for the shared use of recreational facilities.

#### DOE Responsibility (Section 1)

Section 1 requires the Department of Education (DOE) to provide technical assistance to school districts including, but not limited to:

- Individualized assistance;
- The creation of a shared use<sup>15</sup> technical assistance toolkit containing useful information for school districts; and
- The development of a publicly accessible online database of shared use resources and existing shared use agreements.<sup>16</sup>

This section requires the DOE to perform the following duties related to funding for the shared use of recreational facilities:

- Establish guidelines for funding eligibility, promote the availability of the funding statewide, provide technical assistance to applicants, evaluate applicants, determine allowable expenses, and disburse funding.
- Annually post on its website and report to the President of the Senate and the Speaker of the House of Representatives the expenditure of the short-term grant funds, including the total amount of funding distributed, the school districts that received funding, the amount of funding each school district received, and the department's evaluation results.
- Develop an application process for school districts to receive funding. The application must require that a school district:
  - Demonstrate that it has an active partnership with a local governmental agency or nonprofit organization;
  - Agree to fully implement its shared use project within the grant period;
  - Abide by the conditions for receiving assistance;
  - Provide the department with a copy of the school district's shared use agreement or shared use policy; and

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<sup>15</sup> "Shared use" is defined in the bill as allowing access to school playground facilities by community members for recreation or another purpose of importance to the community through a shared use agreement or a school district or school policy that opens school facilities for use by government or nongovernmental entities or the public.

<sup>16</sup> "Shared use agreement" is defined in the bill as a written agreement between a school district and a government or nongovernmental entity which defines the roles, responsibilities, terms, and conditions for community use of a school-owned facility for recreation or other purposes.

- Collect and provide data and other information required by the department for monitoring, accountability, and evaluation purposes.
- Give funding priority to high-need communities.<sup>17</sup> In consultation with the Shared Use Task Force, the department may establish additional criteria for funding priorities.
- Submit to the President of the Senate and the Speaker of the House of Representatives:
  - An electronic report on the grants that have been disbursed or are in the process of being disbursed, by December 31, 2017.
  - A final report on the grant disbursements by June 30, 2018.

### **Shared Use Task Force Responsibility (Section 2)**

Section 2 establishes a seven-member Shared Use Task Force (task force)<sup>18</sup> within the DOE to identify barriers in creating shared use agreements and make recommendations to facilitate the shared use of school facilities generally and in high-need communities. This section requires the DOE to appoint the following members to the task force:

- Two representatives from school districts, including 1 representative from school districts 1 through 33 and 1 representative from school districts 34 through 67;
- One representative from a public health department;
- Two representatives from community-based programs in high-need communities; and
- Two representatives from recreational organizations.

Section 2 also specifies requirements for electing a task force chair and vice chair, and conducting meetings.

This section requires the task force to submit a report of its findings and recommendations to the President of the Senate and the Speaker of the House of Representatives by October 1, 2017. Additionally, this section requires:

- The department to provide staff necessary to assist the task force; and
- The State Board of Education to adopt rules for implementing and administering the task force provisions.

The bill takes effect on July 1, 2017.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>17</sup> “High-need communities” are defined in the bill as communities in which at least 50 percent of children are eligible to receive free or reduced-price meals at the school that will be the subject of the shared use agreement.

<sup>18</sup> A “task force” means an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment. Section 20.03(8), F.S.

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 bill does not impact state revenues or expenditures. SB 2500, the Senate General Appropriations Act for Fiscal Year 2017-2018, does not provide an appropriation to the Department of Education for funding the shared use of school district recreational facilities authorized in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 1013.101 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**Recommended CS for CS by Appropriations Subcommittee on Pre-K-12 Education on April 18, 2016:**

The committee substitute clarifies the Department of Education's responsibilities relating to funding for shared use of school district recreational facilities.

**CS by Education on April 3, 2017:**

The committee substitute adds reporting requirements for the Department of Education (DOE) and modifies the reporting requirement for the Shared Use Task Force. Specifically, the committee substitute:

- Adds a provision requiring the DOE to submit to the President of the Senate and the Speaker of the House of Representatives:
  - An electronic report on the grants that have been disbursed or are in the process of being disbursed, by December 31, 2017.
  - A final report on the grant disbursements by June 30, 2018.
- Modifies the deadline for the Shared Use Task force to report its findings and recommendations to the Legislature from June 30, 2018, to October 1, 2017.

B. Amendments:

None.