



Choice & Innovation Subcommittee

Tuesday, January 14, 2014

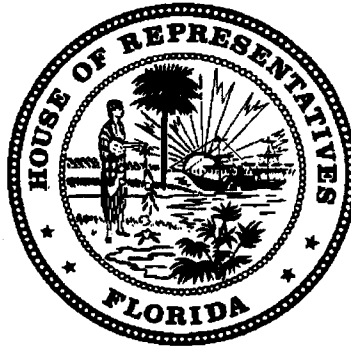
9:00 AM – 11:00 AM

306 HOB

Meeting Packet

**Will Weatherford
Speaker**

**Michael Bileca
Chair**



AGENDA

Choice & Innovation Subcommittee
Tuesday January 14, 2014
9:00 a.m. – 11:00 a.m.
306 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bills:
 - HB 277 Joint Use of Public School Facilities by Spano
 - HB 319 Maximum Class Size by Moraitis
- IV. Closing Remarks and Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Choice & Innovation Subcommittee

Start Date and Time: Tuesday, January 14, 2014 09:00 am
End Date and Time: Tuesday, January 14, 2014 11:00 am
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 277 Joint Use of Public School Facilities by Spano
HB 319 Maximum Class Size by Moraitis


Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by a member who is not a member of the subcommittee shall be 6:00 pm, Monday, January 13, 2014.

By request of the Chair, all subcommittee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Monday, January 13, 2014.

NOTICE FINALIZED on 01/07/2014 16:17 by Flynn.Kaley

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		Beagle GB	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.

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 district school boards, and the grant criteria.

The bill also grants a district school board immunity from 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, unless gross negligence or intentional misconduct on the part of the school board is a proximate cause of the damage, injury, or death.

This bill does not have a fiscal impact on state and local governments. See Fiscal 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) 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 for 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 163.3177(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

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.oppaga.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).

Legislature the right to waive the state's immunity in part or in full by general law. The Legislature did in fact establish a limited waiver of sovereign immunity for liability for tort 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 also requires school boards to create a process for appeal to the district school superintendent should negotiations with a school board fail. The state constitution establishes district school boards as the primary decision making body for school district affairs, with the superintendent acting as chief executive.¹⁹ Proposed school board actions, policies, and rules may only be enacted with the advice and counsel of the school board at a publicly noticed board meeting.²⁰ Provisions allowing a party seeking a joint-use agreement with the school board to appeal to the superintendent when negotiations fail appear to be inconsistent with board's decision-making function. It is also questionable that failed negotiations by parties to a prospective joint-use agreement constitutes an appealable board action without the matter first being heard by and voted on by the 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 effective date of this bill, if enacted. Thus, it is unclear whether such

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.

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.

The bill changes the standard for 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 the public, through public access policies or joint-use agreements, 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

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.²² 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:

None.

2. Expenditures:

See Fiscal Comments.

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 Section 768.28(5), F.S.

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.²³ 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:

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.

²³ Memorandum, Florida School Boards Association, Inc. (Jan. 18, 2012).
STORAGE NAME: h0277.CIS.DOCX
DATE: 1/7/2014

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 44-51: The state constitution establishes district school boards as the primary decision making body for school district affairs, with the superintendent acting as chief executive.²⁴ Florida law charges district school superintendents with 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 advice and counsel of the school board at a publicly noticed board meeting.²⁵ Provisions allowing a party seeking a joint-use agreement with the school board to appeal to the superintendent when negotiations fail appear to be inconsistent with the board's decision making role. It is also questionable that failed negotiations by parties to a prospective joint-use agreement constitutes an appealable board action without the matter first being heard by 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

Not applicable.

²⁴ Article IX, ss. 4 and 5, Florida Constitution.

²⁵ Sections 1001.372, 1001.41, 1001.49, and 286.011, F.S.

1 A bill to be entitled

2 An act relating to the joint use of public school
 3 facilities; creating s. 1013.105, F.S.; providing
 4 legislative findings; encouraging each district school
 5 board to adopt written policies to promote public
 6 access to outdoor recreation and sports facilities on
 7 school property, to increase the number of joint-use
 8 agreements, and to develop and adopt policies and
 9 procedures for an appeal process if negotiations for a
 10 joint-use agreement fail; providing duties of district
 11 school boards and the Department of Education;
 12 creating s. 768.072, F.S.; providing immunity from
 13 liability for a district school board that adopts
 14 public access policies or enters into a joint-use
 15 agreement except in instances of gross negligence or
 16 intentional misconduct; providing application;
 17 providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 1013.105, Florida Statutes is created
 22 to read:

23 1013.105 Joint use of public school facilities.-

24 (1) The Legislature finds that greater access to
 25 recreation and sports facilities is needed to reduce the impact
 26 of obesity on personal health and health care expenditures. The

27 Legislature further finds that public schools are equipped with
 28 taxpayer-funded playgrounds, fields, tracks, courts, and other
 29 outdoor recreation and sports facilities that offer easily
 30 accessible opportunities for physical activity for residents of
 31 the community.

32 (2) Each district school board is encouraged to:

33 (a) Adopt written policies to promote public access to the
 34 outdoor recreation and sports facilities on public school
 35 property during nonschool hours when a school-sponsored or
 36 school-related activity is not occurring. A public access policy
 37 should outline the outdoor recreation and sports facilities that
 38 are open to the public and the hours the facilities are open.

39 (b) Increase the number of joint-use agreements entered
 40 into with a local government or a private organization. A joint-
 41 use agreement should specify the terms and conditions for the
 42 shared use of outdoor recreation and sports facilities on public
 43 school property.

44 (c) Develop and adopt policies and procedures providing
 45 for an appeal process in which a party seeking to enter into a
 46 joint-use agreement with a school district pursuant to this
 47 section may file an appeal with the district school
 48 superintendent if the negotiations for such joint-use agreement
 49 fail. The decision of the district school superintendent with
 50 regard to the appeal process for joint-use agreements does not
 51 constitute final agency action for purposes of chapter 120.

52

53 Within 30 days after adopting a public access policy or entering
 54 into a joint-use agreement, a district school board shall submit
 55 a copy of the policy or agreement to the Department of
 56 Education.

57 (3) The Department of Education shall:

58 (a) Develop a model joint-use agreement and post the model
 59 agreement on its website.

60 (b) Post on its website links to or copies of all public
 61 access policies and joint-use agreements submitted to the
 62 department by a district school board.

63 (c) Develop criteria for the acceptance of grants for
 64 implementing joint-use agreements and post the criteria on its
 65 website.

66 Section 2. Section 768.072, Florida Statutes, is created
 67 to read:

68 768.072 Limitation on public school premises liability.-

69 (1) A district school board is not liable for civil
 70 damages for personal injury, property damage, or death that
 71 occurs on a public school property that the district school
 72 board has opened to the public through public access policies or
 73 joint-use agreements under s. 1013.105 unless gross negligence
 74 or intentional misconduct on the part of the district school
 75 board is a proximate cause of the injury, damage, or death.

76 (2) This section does not affect liability for injury,
 77 damage, or death that occurs during school hours or during a
 78 school-related or school-sponsored activity.

HB 277



2014

79 | (3) This section does not waive sovereign immunity beyond
80 | the limited waiver in s. 768.28.

81 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 319 Maximum Class Size
SPONSOR(S): Moraitis, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee		Beagle 	Fudge 
2) Education Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The Florida Constitution limits the maximum number of students that may be assigned to each teacher per classroom in core curricula courses to 18 students for prekindergarten through 3rd grade; 22 students for 4th through 8th grades; and 25 students for 9th through 12th grades. Florida law requires the Department of Education (DOE) to reduce class size categorical funding for school districts and charter schools that are out of compliance with class size requirements. The penalty is calculated at the classroom level for traditional public schools operated by school districts. The penalty for charter schools and district-operated schools of choice is calculated at the school level average. DOE must calculate the penalty for traditional public schools out of compliance as follows:

- Identify, for each grade grouping, the number of classes that exceed the maximum and the total number of students which exceeds the maximum for all classes.
- Determine the number of full-time equivalent (FTE) students which exceeds the maximum for each grade grouping.
- Multiply the total number of FTE students over the maximum for each grade grouping by the district's FTE dollar amount of the class size reduction operating categorical allocation for that year and calculate the total for all three grade groupings.
- Multiply the total number of FTE students over the maximum for all classes by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for the 2013-14 fiscal year.

A school district's class size reduction operating categorical allocation is then reduced by an amount equal to the sum of the calculations in the 3rd and 4th bullets above. Beginning in FY 2014-2015 and thereafter, the total number of FTE students over the maximum for all classes must be multiplied by 100 percent of the base student allocation adjusted by the district cost differential, thereby increasing the amount of the penalty (see 4th bullet above).

The bill revises the method for calculating the penalty for traditional public schools that fail to comply with the class size requirements by performing the calculation at the school level average instead of at the classroom level. Furthermore, the bill repeals provisions requiring that, beginning in FY 2014-2015 and thereafter, the total number of FTE students over the maximum for all classes must be multiplied by 100 percent of the base student allocation adjusted by the district cost differential. Instead, the total number of FTE students over the maximum for all classes calculated at the school level must be multiplied by 50 percent of the base student allocation adjusted by the district cost differential, which is similar to the current calculation.

School districts will continue to be held to existing limits on class size and districts that fail to meet the limits will still be required to implement a compliance plan to remedy the deficiency. However, calculation of the penalty at the school average will reduce the amount of penalties levied against school districts.

The bill does not have a fiscal impact on state government. The bill's changes to the compliance calculation for traditional public schools will likely have a positive fiscal impact on school districts. See Fiscal Impact on Local Governments.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Maximum Class Size

In 2002, voters approved the Class Size Reduction Amendment to Section 1, Article IX of the Florida Constitution.¹ The amendment requires the Legislature by the beginning of the 2010 school year to make adequate provision to ensure that there are a sufficient number of classrooms in Florida so that the maximum number of students assigned to each teacher does not exceed:

- 18 students for prekindergarten through 3rd grade;
- 22 students for 4th through 8th grades; and
- 25 students for 9th through 12th grades.

Extracurricular courses are expressly excluded from the class size mandate; thus, its requirements apply only to core curricula courses.²

Additionally, the amendment requires that the Legislature provide sufficient funds, beginning in Fiscal Year (FY) 2003-2004, for districts to reduce the average number of students in each classroom by at least two annually until the constitutionally prescribed maximum number of students is achieved.³

Under the initial implementing statute, compliance with the class size requirements was to be measured at the:

- District level for each of the three grade groupings during FYs 2003-2006.
- School level for each of the three grade groupings in FYs 2006-2008.
- Individual classroom level for each of the three grade groupings in FY 2008-2009 and thereafter.⁴

The timeframe for measuring class size at the school level was extended twice by the Legislature. In 2008, the Legislature extended school level measurement through FY 2008-2009.⁵ The next year, the Legislature extended this timeframe by one more year, thereby delaying measurement of class size at the individual classroom level until FY 2010-2011 and thereafter.⁶ Legislation enacted in 2010

¹ Section 1(a), Art. IX of the State Constitution. Florida's class size requirements originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. Florida Department of State, Division of Elections, *Florida's Amendment to Reduce Class Size*, <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=34393&seqnum=1> (last visited Jan. 7, 2014).

² See s. 1(a), Art. IX of the State Constitution and s. 1003.01(14) and (15), F.S. For purposes of measuring compliance with the class size amendment "core-curricula courses" means courses in language arts/reading, mathematics, social studies, and science in prekindergarten through grade 3; courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level and courses required for middle school promotion courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level and courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessment; exceptional student education courses; and English for Speakers of Other Languages courses. Section 1003.01(14), F.S. "Extracurricular courses" means all courses that are not defined as "core-curricula courses," which may include without limitation physical education, fine arts, performing fine arts, career education, and courses that may result in college credit. Section 1003.01(15), F.S.

³ See s. 1(a), Art. IX of the State Constitution.

⁴ Section 2, ch. 2003-391, L.O.F., *codified at* s. 1003.03(2)(b), F.S. (2003).

⁵ Section 5, ch. 2008-142, L.O.F., *codified at* s. 1003.03(2)(b)2. and 3., F.S. (2008).

⁶ Section 14, ch. 2009-59, L.O.F., *codified at* s. 1003.03(2)(b)2. and 3., F.S. (2009).

established the compliance calculation for charter schools at the school level average. Legislation enacted in 2013 granted the same treatment to district-operated schools of choice.⁷

To implement the class size amendment, the Legislature annually appropriates funds for district operating costs.⁸ Additionally, the Legislature has appropriated funds for capital outlay (facility) needs and granted bonding authority to fund classroom construction and other capital needs related to class size reduction. Since 2003, the Legislature has appropriated more than \$25 billion toward operational expenses and \$2.5 billion in facilities funding to implement the Class Size Reduction Amendment.

Fiscal Year	Operating Funds	Fixed Capital Outlay	Total Appropriations
2003-2004 ⁹	\$468,198,634	\$600,000,000	\$1,068,198,634
2004-2005 ¹⁰	\$972,191,216	\$100,000,000	\$1,072,191,216
2005-2006 ¹¹	\$1,507,199,696	\$83,400,000	\$1,590,599,696
2006-2007 ¹²	\$2,108,529,344	\$1,100,000,000	\$3,208,529,344
2007-2008 ¹³	\$2,640,719,730	\$650,000,000	\$3,290,719,730
2008-2009 ¹⁴	\$2,809,079,054	\$0	\$2,809,079,054
2009-2010	\$2,845,578,849	\$0	\$2,845,578,849
2010-2011	\$2,913,825,383	\$0	\$2,913,825,383
2011-2012	\$2,927,464,879	\$0	\$2,927,464,879
2012-2013	\$2,983,788,477	\$0	\$2,983,788,477
2013-2014 ¹⁵	\$2,974,766,164	\$0	\$2,974,766,174
Total Year to Date Appropriations	\$25,062,713,185	\$2,533,400,000	\$27,596,113,185

Florida law requires the Department of Education (DOE) to reduce class size categorical funding for districts and charter schools that are out of compliance with class size requirements. The penalty is calculated at the classroom level for traditional public schools operated by school districts.¹⁶ The penalty for charter schools and district-operated schools of choice is calculated at the school level average.¹⁷ The penalty for traditional schools and district-operated schools of choice are combined to make a total adjustment for each district.¹⁸ DOE must calculate the penalty for traditional public schools out of compliance as follows:

- Identify, for each grade grouping, the number of classes that exceed the maximum and the total number of students which exceeds the maximum for all classes.
- Determine the number of full-time equivalent (FTE) students which exceeds the maximum for each grade grouping.
- Multiply the total number of FTE students over the maximum for each grade grouping by the district's FTE dollar amount of the class size reduction operating categorical allocation for that year and calculate the total for all three grade groupings.

⁷ Section 9, ch. 2013-250, L.O.F., *codified at* s. 1002.31(9) (schools of choice); s. 6, ch. 2010-154, L.O.F., *codified at* s. 1002.33(16)(b)3., F.S. (charter schools).

⁸ Section 1011.685, F.S. (class size reduction operating categorical fund).

⁹ Specific Appropriations 1A and 3C, s. 1, ch. 2003-397 L.O.F.; Specific Appropriations 14F & 59A, s. 2, ch. 2003-397, L.O.F.

¹⁰ Specific Appropriation 6, s. 1, ch. 2004-268, L.O.F.; Specific Appropriations 28A & 82, s. 2, ch. 2004-268, L.O.F.

¹¹ Specific Appropriation 5, s. 1, ch. 2005-70, L.O.F.; Specific Appropriation 74, s. 2, ch. 2005-70, L.O.F.

¹² Specific Appropriation 7, s. 1, ch. 2006-25, L.O.F.; Specific Appropriations 38A & 92, s. 2, ch. 2006-25, L.O.F.

¹³ Specific Appropriation 30, s. 2, ch. 2008-1, L.O.F.; Specific Appropriations 3 & 7, s. 1, ch. 2007-326, L.O.F.; Specific Appropriations 35 & 35A, s. 2, ch. 2007-326, L.O.F.; Specific Appropriation 7, s. 1, ch. 2007-72, L.O.F.; Specific Appropriations 36 & 87, s. 2, ch. 2007-72, L.O.F.

¹⁴ Specific Appropriation 6, s. 1, ch. 2008-152, L.O.F.; Specific Appropriation 82, s. 2, ch. 2008-152, L.O.F.

¹⁵ See Class Size Reduction Amendment, Florida Department of Education, *available at*, <http://www.fldoe.org/classsize/>.

¹⁶ Section 1003.03(4)(a), F.S.

¹⁷ Section 1002.31(9), F.S. (schools of choice); s. 1002.33(16)(b)3., F.S. (charter schools).

¹⁸ Florida Department of Education, *Memorandum to District School Superintendents and Charter School Directors, 2013-2014 School Class Sizes and Process and Time for Appeals*, at 2 (Dec. 4, 2013), *available at* <http://www.fldoe.org/ClassSize/pdf/1314cscm.pdf>.

- Multiply the total number of FTE students over the maximum for all classes by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for the 2013-14 FY.

A school district's class size reduction operating categorical allocation is then reduced by an amount equal to the sum of the calculations in the 3rd and 4th bullets above. Beginning in FY 2014-2015 and thereafter, the total number of FTE students over the maximum for all classes must be multiplied by 100 percent of the base student allocation adjusted by the district cost differential, thereby increasing the amount of the penalty (see 4th bullet above).¹⁹

The reduced amount is the lesser of DOE's calculation or the undistributed balance of the district's class size reduction operating categorical allocation. If a district made appropriate efforts to reduce class sizes but still failed to achieve compliance or an emergency caused noncompliance, the commissioner is authorized to recommend an alternative transfer amount for approval by the Legislative Budget Commission. Once the reduced amount is determined, the commissioner must prepare a reallocation of the funds made available to districts that have fully met the class size requirements by calculating an amount that is up to five percent of the base student allocation multiplied by the total district FTE students. The reallocation total may not exceed 25 percent of the total funds reduced.²⁰

Districts that fail to comply with the class size requirements must submit a plan by February 15, certified by the district school board, which describes the actions the district will take in order to be in compliance by October of the following year. For districts that submit the plan by the required deadline, the funds remaining after the reallocation calculation must be added back to the district's class size reduction operating categorical allocation based on each qualifying district's proportion of the total reduction for all qualifying districts for which a reduction was calculated. The amount added back may not be greater than the amount that was reduced.²¹

History of Class Size Transfer (& Reallocation) Calculation for <u>Traditional</u> Public Schools				
		Pre-Appeals	Post-Appeals	After Plan
District	2003-04	\$21,488,179	\$1,479,948	
District	2004-05	\$11,354,475	\$1,076,719	
District	2005-06	\$5,222,735	\$496,059	
School	2006-07	\$7,836,834	\$3,273,943	
School	2007-08	\$5,330,411	\$333,302	
School	2008-09	\$1,396,108	\$0	
School	2009-10	\$1,912,030	\$267,263	
Classroom	2010-11	\$40,795,637	\$31,305,124	\$7,826,281
Classroom	2011-12	\$58,749,605	\$43,407,465	\$10,851,866
Classroom	2012-13	\$26,965,789	\$22,698,784	\$5,674,696
Classroom	2013-14	Not	Available	

¹⁹ See Section 1003.03(4), F.S.

²⁰ See Section 1003.03(4), F.S.

²¹ See Section 1003.03(4), F.S.

**History of Class Size Transfer (& Reallocation) Calculation
for Charter Schools**

		Pre-Appeals	Post-Appeals	After Plan
N/A	2003-04	\$0	\$0	
N/A	2004-05	\$0	\$0	
N/A	2005-06	\$0	\$0	
School	2006-07	\$6,831,504	\$2,724,878	
School	2007-08	\$802,515	\$194,836	
N/A	2008-09	\$0	\$0	
N/A	2009-10	\$0	\$0	
School	2010-11	\$2,292,191	\$355,539	\$88,885
School	2011-12	\$3,921,323	\$652,851	\$163,213
School	2012-13	\$1,570,397	\$431,345	\$107,836
	2013-14	Not	Available	

Effect of Proposed Changes

The bill revises the method for calculating the penalty for traditional public schools that fail to comply with the class size requirements by performing the calculation at the school level average instead of at the classroom level. Furthermore, the bill repeals provisions requiring that, beginning in FY 2014-2015 and thereafter, the total number of FTE students over the maximum for all classes must be multiplied by 100 percent of the base student allocation adjusted by the district cost differential. Instead, the total number of FTE students over the maximum for all classes calculated at the school level must be multiplied by 50 percent of the base student allocation adjusted by the district cost differential, which is similar to the current calculation.

School districts will continue to be held to existing limits on class size and districts that fail to meet the limits will still be required to implement a compliance plan to remedy the deficiency. However, calculation of the penalty at the school average will reduce the amount of penalties levied against school districts.

B. SECTION DIRECTORY:

Section 1. Amends s. 1003.03, F.S., relating to maximum class size.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By calculating the penalty at the school level instead of at the class level, the amount deducted from a school district's class size reduction operating categorical will be decreased.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to maximum class size; amending s.
 3 1003.03, F.S.; calculating a school district's class
 4 size categorical allocation reduction at the school
 5 average when maximum class size requirements are not
 6 met; revising the calculation; providing an effective
 7 date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (a) of subsection (4) of section
 12 1003.03, Florida Statutes, is amended to read:

13 1003.03 Maximum class size.—

14 (4) ACCOUNTABILITY.—

15 (a) If the department determines that the number of
 16 students assigned to any individual class exceeds the class size
 17 maximum, as required in subsection (1), based upon the October
 18 student membership survey, the department shall:

19 1. ~~Identify, for each grade group, the number of classes~~
 20 ~~in which the number of students exceeds the maximum and the~~
 21 ~~total number of students which exceeds the maximum for all~~
 22 ~~classes.~~

23 ~~2.~~ Determine the number of FTE students which exceeds the
 24 maximum for each grade group calculated at the school average.

25 ~~2.3.~~ Multiply the total number of FTE students which
 26 exceeds the maximum for each grade group calculated at the

27 | school average by the district's FTE dollar amount of the class
 28 | size categorical allocation for that year and calculate the
 29 | total for all three grade groups.

30 | ~~3.4.~~ Multiply the total number of FTE students which
 31 | exceeds the maximum for all classes calculated at the school
 32 | average by an amount equal to 50 percent of the base student
 33 | allocation adjusted by the district cost differential for ~~each~~
 34 | ~~of the 2010-2011 through 2013-2014 fiscal years and by an amount~~
 35 | ~~equal to the base student allocation adjusted by the district~~
 36 | ~~cost differential in~~ the 2014-2015 fiscal year and thereafter.

37 | ~~4.5.~~ Reduce the district's class size categorical
 38 | allocation by an amount equal to the sum of the calculations in
 39 | subparagraphs 2. and 3. ~~and 4.~~

40 | Section 2. This act shall take effect July 1, 2014.