



K – 20 Competitiveness Subcommittee

Wednesday, January 25, 2012

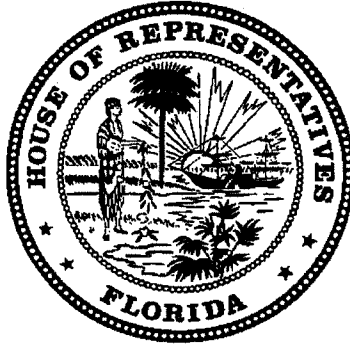
8:30 AM – 10:45 AM

17 - HOB

Meeting Packet

**Dean Cannon
Speaker**

**Erik Fresen
Chair**



AGENDA

K-20 Competitiveness Subcommittee

January 25, 2012

8:30 AM – 10:45 AM

17 HOB - Morris Hall

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bill(s):
 - HB 61 Public Broadcasting Program System by Clarke-Reed
 - HB 543 Parental Involvement and Accountability in the Public Schools by Stargel
 - HB 1059 Background Screening for Noninstructional Contractors on School Grounds by Perry
- IV. Consideration of the following bill with proposed committee substitute:

PCS for HB 431 Joint Use of Public School Facilities
- V. Closing Remarks and Adjournment

HB 61

2012

1 A bill to be entitled
 2 An act relating to the public broadcasting program
 3 system; amending s. 1001.26, F.S.; including certain
 4 television stations licensed by the Federal
 5 Communications Commission for which support and
 6 funding may be given; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (a) of subsection (1) and paragraph
 11 (c) of subsection (2) of section 1001.26, Florida Statutes, are
 12 amended to read:

13 1001.26 Public broadcasting program system.—

14 (1) There is created a public broadcasting program system
 15 for the state. The department shall administer this program
 16 system pursuant to rules adopted by the State Board of
 17 Education. This program system must complement and share
 18 resources with the instructional programming service of the
 19 Department of Education and educational UHF, VHF, ITFS, and FM
 20 stations in the state. The program system must include:

21 (a) Support for existing Corporation for Public
 22 Broadcasting qualified program system educational radio and
 23 television stations, ~~and~~ and new stations meeting Corporation for
 24 Public Broadcasting qualifications and providing a first service
 25 to an audience that does not currently receive a broadcast
 26 signal or providing a significant new program service as defined
 27 by rule by the State Board of Education, and nondenominational
 28 television stations licensed as of July 1, 2012, by the Federal

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29 | Communications Commission as full-power educational broadcast
 30 | stations.

31 | (2)

32 | (c) The department is authorized to provide equipment,
 33 | funds, and other services to extend and update both the existing
 34 | and the proposed educational television and radio systems of
 35 | tax-supported and nonprofit, corporate-owned facilities. All
 36 | stations funded must be qualified by the Corporation for Public
 37 | Broadcasting or be nondenominational television stations
 38 | licensed as of July 1, 2012, by the Federal Communications
 39 | Commission as full-power educational broadcast stations. New
 40 | stations eligible for funding shall provide a first service to
 41 | an audience that is not currently receiving a broadcast signal
 42 | or provide a significant new program service as defined by State
 43 | Board of Education rules. Funds appropriated to the department
 44 | for educational television and funds appropriated to the
 45 | department for educational radio may be used by the department
 46 | for either educational television or educational radio, or for
 47 | both.

48 | Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61 Public Broadcasting Program System

SPONSOR(S): Clarke-Reed

TIED BILLS: IDEN./SIM. **BILLS:** SB 120

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|------------------|---|
| 1) K-20 Competitiveness Subcommittee | | Beagle <i>GB</i> | Ahearn <i>gm</i> |
| 2) PreK-12 Appropriations Subcommittee | | | |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

The bill expands eligibility for state funding for educational television to include "nondenominational full-power educational television stations licensed by the Federal Communications Commission (FCC) as of July 1, 2012." The bill further authorizes the Florida Department of Education (DOE) to provide funding, equipment, or other services to such television stations. New stations eligible for funding must provide:

- A first service to an audience that is not currently receiving a broadcast signal; or
- A significant new program service as defined by State Board of Education rule.

Based upon FCC data regarding Florida television stations licensed as full-power educational television stations, the net impact of the bill is the possible addition of up to four currently existing television stations to the 14 stations that currently receive state funding for educational television.

The Corporation for Public Broadcasting (CPB) provides federal grants to eligible television stations. Stations that receive these grants comprise the national public television broadcasting system. Florida law establishes a statewide public broadcasting system (PBS) to provide state support for, among other things, educational television. The Florida PBS is administered by DOE. The law requires DOE to provide support to:

- Educational television stations currently funded by CPB; and
- New stations, i.e., stations not funded by CPB, which meet CPB's qualifications for funding. In order to receive funding, a new station must provide:
 - A first service to an audience not currently served by PBS; or
 - A significant new program service as defined by State Board of Education rule.

Florida's PBS consists of 14 television stations, each of which is also funded by CPB. Florida's 14 PBS television stations provide 99 percent coverage to the state. The 2011-12 General Appropriations Act provided a total \$3,996,811 in General Revenue for PBS television stations. This appropriation was vetoed by the Governor.

The bill does not have a fiscal impact on state or local governments; however, it expands eligibility for state funding for educational television to include additional stations. If new stations are determined to be eligible, the bill will reduce the total amount of funding received by each eligible television station. See Fiscal Comments.

Because the bill does not define "nondenominational" and contains other drafting issues, DOE's ability to determine whether nondenominational full-power educational television stations are eligible for state funding is impaired. See Drafting Issues and Other Comments.

The bill takes effect July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0061.KCOS.DOCX

DATE: 1/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Television Broadcasting

The federal Public Broadcasting Act establishes the Corporation for Public Broadcasting (CPB) to support, among other things, the establishment of a national system of public television broadcasting.¹ CPB receives an annual appropriation from Congress and provides federal grants to eligible television stations.² Stations that receive CPB grants comprise the national public television broadcasting system. In order to qualify for a FY 2012 CPB grant, a television station must have received a grant in FY 2011 and operate under a "noncommercial educational license granted by the Federal Communications Commission (FCC)." CPB's requirement that television stations be prior grant recipients, in effect, limits further expansion of the national public television broadcasting system.³

Florida law establishes a statewide public broadcasting system (PBS) to provide state support for, among other things, educational television. The PBS is administered by the Florida Department of Education (DOE).⁴ DOE is authorized to provide equipment, funding, and other services to eligible television stations.⁵ The law requires DOE to provide support to:

- Educational television stations currently funded by CPB; and
- New stations, i.e., stations that are not funded by CPB, which meet CPB's qualifications for funding. In order to receive funding, a new station must provide:
 - A first service to an audience not currently served by PBS; or
 - A significant new program service as defined by State Board of Education rule.⁶

Florida's PBS consists of 14 television stations, each of which is an existing CPB-funded educational television station.⁷ DOE interprets state law as authorization to limit further expansion of the PBS "after having determined a sufficient number of stations exist [to achieve] statewide coverage."⁸ Florida's 14 PBS television stations provide 99 percent coverage to the state. Three such stations serve

¹ 47 U.S.C. s. 396(a)(1) and (g)(1)(C). CPB is also responsible for the national system of public radio. *Id.*

² 47 U.S.C. s. 396(k)(3) and (6).

³ Corporation for Public Broadcasting, *FY2012 Television Community Service Grant General Provisions and Eligibility Criteria*, at 4 (2012), available at http://www.cpb.org/stations/grants/tv/generalprovisions/cpb_12TV_CSG_GeneralProvisions.pdf. [hereinafter *TCSG 2012*]. Although other grants are administered by CPB, the Television Community Service Grant is the primary source of federal funding for public television. Corporation for Public Broadcasting, *Appropriation Request and Justification for FYs 2012 and 2014*, at 6 (Feb. 2011), available at http://www.cpb.org/appropriation/justification_12-14.pdf.

⁴ Section 1001.26(1), F.S. The Florida PBS also includes public radio. *Id.*

⁵ Section 1001.26(2)(c), F.S. Educational television and radio stations owned by 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 may also request Public Education and Capital Outlay funds. Section 1013.18, F.S.

⁶ Section 1001.26(1)(a) and (2)(c), F.S.

⁷ Florida Department of Education, *Legislative Bill Analysis for SB 120 (2012)*. Florida PBS stations include WBCC-TV Cocoa Beach, WDSC-TV Daytona Beach, WGPU-TV Fort Myers, WUFT-TV Gainesville, WJCT-TV Jacksonville, WLRN-TV Miami, WPBT-TV Miami, WMFE-TV Orlando, WFSU/WFSG-TV Panama City, WSRE-TV Pensacola, WFSU-TV Tallahassee, WUSF-TV Tampa, WEDU-TV Tampa, and WXEL-TV West Palm Beach. Florida Department of Education, *Florida Public Television Stations*, http://www.floridaknowledgenetwork.org/PB/TV_Stations_text.asp (last visited Jan. 17, 2012)[hereinafter *Florida PBS*]. According to DOE, WFSU-TV Tallahassee and WFSU/WFSG-TV Panama City are treated as one station for funding purposes. Telephone interview with Program Analyst, Florida Department of Education (Jan. 17, 2012).

⁸ Florida Department of Education, *Legislative Bill Analysis for SB 120 (2012)*; Telephone interview with Program Analyst, Florida Department of Education (Jan. 17, 2012).

southeastern Florida.⁹ The 2011-12 General Appropriations Act provided a total of \$3,996,811 in General Revenue for PBS television stations. This appropriation was vetoed by the Governor.¹⁰

BECON-TV

Broward Education Communications Network (BECON-TV) is owned and operated by the School Board of Broward County and provides educational programming to the south Florida community. BECON-TV is licensed by FCC as a full-power, noncommercial educational television station.¹¹ BECON-TV is not included in the national or Florida PBS and, as such, does not receive state or CPB funding for educational television.¹² BECON-TV received line item appropriations in 2006 (\$250,000) and 2011 (\$21,000). Both appropriations were vetoed by the Governor.¹³

Effect of Proposed Changes

The bill expands eligibility for state funding for educational television to include “nondenominational full-power educational television stations licensed by the FCC as of July 1, 2012.” The bill further authorizes DOE to provide funding, equipment, or other services to such television stations. To receive funding, such television stations must provide:

- A first service to an audience that is not currently receiving a broadcast signal; or
- A significant new program service as defined by State Board of Education rule.

Thus, “nondenominational full-power educational television stations licensed by the FCC as of July 1, 2012,” may receive state funding for educational television if they can demonstrate that they will reach a new audience or provide a “significant new program service” defined in state board rule. The current PBS provides 99 percent coverage to the state and a state board rule defining “significant new program service” has not been adopted. These factors may prevent any new stations from being funded under the bill.

In addition, the bill does not define the term “nondenominational,” which may impair DOE’s ability to determine eligibility for funding. Webster’s dictionary defines “denomination” as “a religious organization whose congregations are united in their adherence to its beliefs and practices.”¹⁴ The prefix “non” implies “not” denominational. However, because the term “nondenominational” is not defined in the context of the bill, it is unclear whether it is the sponsor’s intent to generally exclude stations with religious programming or religious content or simply exclude stations that identify themselves by a specific religious affiliation, e.g., Methodists, Baptists, Roman Catholic. See Fiscal Comments and Drafting Issues and Other Comments.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.26, F.S., relating to Florida’s public broadcasting system; authorizes nondenominational full-power educational television stations licensed by the FCC as of July 1, 2012, to receive state funding for educational television if certain requirements are met.

⁹ Florida Department of Education, *Legislative Bill Analysis for SB 120* (2012).

¹⁰ Specific Appropriation 93, s. 2, ch. 2011-69, L.O.F. The amount allocated to each station is \$307,447. This amount is distributed to the 14 PBS TV stations in 13 shares because WFSU-TV Tallahassee and WFSU/WFSG-TV Panama City are treated as one station for funding purposes. Telephone interview with Program Analyst, Florida Department of Education (Jan. 17, 2012).

¹¹ BECON-TV, *About BECON*, <http://www.becon.tv/about-becon> (last visited Jan. 15, 2012). Generally speaking, educational broadcast stations are licensed only to noncommercial or nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service. 47 C.F.R. s. 73.621(a).

¹² BECON-TV holds the same type of FCC license as stations qualifying for federal CPB funds; however, it is not a prior grantee of such funds. Thus, it has been unable to gain entry into the national PBS or “meet CPB qualifications,” as required by state law for the purpose of receiving state PBS funding. See *TCSG 2012, supra*, note 3 at 4-5.

¹³ Specific Appropriation 124, s. 2, ch. 2006-25, L.O.F.; Specific Appropriation 91A, s. 2, ch. 2011-69, L.O.F. The 2006 appropriation was vetoed by then Governor Crist, and the 2011 appropriation was vetoed by Governor Scott. *Id.*

¹⁴ Merriam-Webster’s Dictionary (11th Ed. 2008).

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Based upon FCC data regarding Florida television stations licensed as full-power educational television stations, the net impact of the bill is the possible addition of up to four television stations to the 14 stations that currently receive state funding for educational television.¹⁵ The websites of three of these four television stations indicate that they provide at least some religious programming.¹⁶ The remaining station, BECON-TV, does not provide religious programming.¹⁷ The bill's requirement that a television station must be nondenominational to receive state funding may disqualify the three religious stations; however, the term nondenominational is not defined. Furthermore, nothing prevents these three stations from switching to a secular format to become eligible for state funding.

Appropriations for public television and radio stations were vetoed for FY 2011-12, including \$3,996,811 for the 14 public television stations.¹⁸ The total appropriation was to be divided into 13 shares equaling \$307,447 because WFSU-TV Tallahassee and WFSU/WFSG-TV Panama City are treated as one station for funding purposes.¹⁹ If the same amount is appropriated in FY 2012-13, the addition of one station to the current funding pool would reduce funding to approximately \$285,486 per eligible television station. If all four stations currently licensed as full-power educational television stations are funded at the FY 2011-12 level, the per-station funding amount would be \$235,106 per station.

To be eligible for state funding, a nondenominational full-power educational television station must still demonstrate that it provides a first service to an area not currently reached by the Florida PBS or a significant new program service defined in state board rule. Florida's 14 PBS television stations provide

¹⁵ Email, Federal Communications Commission, Television Licensing Staff (Oct. 28, 2011).

¹⁶ WTGL-TV Leesburg, <http://www.tv45.org/> (last visited Jan. 17, 2012); WJEB-TV Jacksonville, <http://www.wjeb.org/> (last visited Jan. 17, 2012); WTCE-TV Fort Pierce, <http://www.wtce.tv/> (last visited Jan. 17, 2012).

¹⁷ BECON-TV, *About BECON*, <http://www.becon.tv/about-becon> (last visited Jan. 15, 2012).

¹⁸ SB 2000, General Revenue funds in Specific Appropriation 93. Correspondence to the Secretary of State, May 26, 2011. See http://www.flgov.com/wp-content/uploads/budget/sb_2000_vetomessage.pdf.

¹⁹ Specific Appropriation 93, s. 2, ch. 2011-69, L.O.F.; Telephone interview with Program Analyst, Florida Department of Education (Jan. 17, 2012).

99 percent coverage to the state and a state board rule defining "new program service" has not been adopted. These factors may prevent any new stations from being funded under the bill. See Drafting Issues and Other Comments.

Under the bill, nondenominational full-power educational television stations may become eligible for funding if they are licensed by the FCC as of July 1, 2012. Thus, any television station not presently holding this type of license that obtains such a license on or before July 1, 2012, could become eligible for state funding. This may result in additional stations being added to the funding pool for educational television. See Drafting Issues and Other Comments.

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:

Lines 27 and 37: The bill does not define the term "nondenominational." Consideration might be given to adding a definition of this term to assist DOE in determining eligibility for funding.

Lines 37-47: At lines 37-39, the bill adds provisions authorizing DOE to provide funding, equipment, or other services to "nondenominational television stations licensed as of July 1, 2012, by the FCC as full power educational broadcast stations." Lines 39-43, which is existing law, state that, to be eligible for state funding, new stations must provide:

1. A first service to an audience that is not already served by PBS; or
2. A significant new program service as defined by State Board of Education.

Thus, full-power educational broadcast stations seeking state funds must satisfy one of these two eligibility criteria to receive state funding. Florida's 14 PBS television stations already provide 99 percent coverage to the state. Therefore, it is unlikely a new television station will provide service to a new audience. Furthermore, the state board has not adopted a rule defining "new program service." Thus, no criteria exist for determining if a station provides a "significant new program service."

Lines 27-30 and 37-39: Under the bill, nondenominational full-power educational television stations are eligible for state funding if they are licensed by the FCC as of July 1, 2012. FCC indicates that there are four television stations currently licensed as full-power educational television stations that do not already receive state funding for educational television. The bill leaves open the possibility that additional stations could obtain this type of license between the present and July 1, 2012, and become eligible for state funding.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

HB 543

2012

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A bill to be entitled
 An act relating to parental involvement and
 accountability in public schools; creating s.
 1008.347, F.S.; providing purpose to provide
 information and tools to parents of prekindergarten
 through grade 5 students and to set minimum standards
 for parental involvement; specifying causes for
 student underachievement; requiring shared information
 between teachers, schools, and parents; requiring
 prekindergarten through grade 5 teachers to evaluate
 parental involvement and send a parental involvement
 evaluation to parents under certain circumstances;
 requiring adoption of a process to dispute a parental
 involvement evaluation; requiring reports on parental
 involvement evaluations by district school boards and
 the Department of Education; providing for
 implementation; providing an effective date.

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

Section 1. Section 1008.347, Florida Statutes, is created
 to read:

1008.347 Parental involvement and accountability in public
 schools.-

(1) PURPOSE.-Although the school environment has a great
 impact on a child's well-being and academic success, parents and
 the home environment form the foundation of a child's present
 and future life. Without proper parental involvement in all

29 aspects of a child's life, the child's prospects to be an
 30 effective, successful member of society are greatly diminished.
 31 The purpose of this section is to provide information and tools
 32 to parents of prekindergarten through grade 5 students to enable
 33 them to have a positive impact on their child's educational
 34 success and to set minimum standards for parental involvement.

35 (2) CAUSES FOR STUDENT UNDERACHIEVEMENT.—The following
 36 conditions are identified as possible causes for a student's
 37 underachievement:

38 (a) A child is not physically prepared for the school day
 39 due to inadequate rest, improper clothing, lack of necessary
 40 school supplies, or frequent tardiness or absence.

41 (b) A child is not mentally prepared for the school day
 42 due to uncompleted homework or inadequate preparation for tests.

43 (c) Communication between parents and the teacher often
 44 occurs only when a problem has risen rather than on a consistent
 45 basis throughout the school year.

46 (3) SHARED INFORMATION.—Teachers and schools shall develop
 47 or utilize current information packets, forms, or media for
 48 sharing information with each parent with written
 49 acknowledgement of receipt. The shared information may be
 50 presented in the parent guide to successful student achievement
 51 or in the checklist of parental actions that can strengthen
 52 parental involvement in a child's educational progress, required
 53 under s. 1002.23, and includes:

54 (a) Expectations of parents with respect to a child's
 55 school attendance.

56 (b) Expectations of parents to timely respond to a
 57 teacher's request for communication.

58 (c) Expectations of parents to properly and fully complete
 59 important emergency and medical information requested.

60 (d) Expectations of parents with respect to a child's
 61 academic work, including, but not limited to, time set aside for
 62 daily homework and reading, nightly check of homework completion
 63 and preparation for tests, and signature on forms.

64 (4) ACCOUNTABILITY.—

65 (a) To help parents establish a home environment that
 66 supports the child as a student, each prekindergarten through
 67 grade 5 teacher shall monitor and evaluate the involvement of
 68 the parents of each student in his or her class. Each
 69 prekindergarten through grade 5 teacher shall evaluate the
 70 parental involvement as satisfactory, needs improvement, or
 71 unsatisfactory on each of the following criteria as defined in
 72 district school board policy:

73 1. The frequency of the student's unexcused absence and
 74 unexcused tardiness.

75 2. Parental response to requests for conferences or
 76 communication.

77 3. Parental submission of complete and correct
 78 information, including, but not limited to, emergency contact
 79 information; student immunization records; and pertinent
 80 parental contact information, which shall be on file and updated
 81 if changes occur during the school year.

82 (b) The parental involvement evaluation shall be sent
 83 along with the student's quarterly assessment to the home of the

84 | parent, which shall indicate "needs improvement" when one of the
 85 | following occurs in one quarter or "unsatisfactory" when two or
 86 | more of the following occur in one quarter:

- 87 | 1. The student has five or more unexcused absences;
- 88 | 2. The student has 10 or more instances of unexcused
 89 | tardiness;
- 90 | 3. Five or more requests for communication between the
 91 | teacher and the parent are made with no communication occurring;
 92 | or
- 93 | 4. The emergency contact information provided by the
 94 | parent is determined to be incomplete or incorrect.

95 | (5) DISPUTE PROCESS.—A parent may dispute the parental
 96 | involvement evaluation by the teacher through a process adopted
 97 | by the district school board in rule in which the principal, the
 98 | teacher, and the parent discuss how the evaluation was
 99 | determined. The discussion shall also provide information and
 100 | feedback on the steps needed to improve the parental involvement
 101 | evaluation.

102 | (6) REPORTING.—At the end of each school year, each
 103 | district school board shall prepare a report, as determined by
 104 | the State Board of Education in rule, containing data on
 105 | parental involvement evaluations, including data on evaluations
 106 | sent to parents, pursuant to subsection (4) and submit the
 107 | report to the Department of Education. Based upon the district
 108 | school board reports, the department shall prepare a final
 109 | report on parental involvement which shall be submitted by
 110 | August 1 of each year to the Governor, the President of the
 111 | Senate, and the Speaker of the House of Representatives.

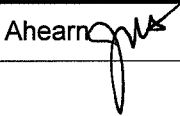
HB 543

2012

112 (7) IMPLEMENTATION.--This section shall be implemented
113 beginning with the 2013-2014 school year.
114 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 543 Parental Involvement and Accountability in the Public Schools
SPONSOR(S): Stargel and others
TIED BILLS: IDEN./SIM. BILLS: SB 944

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|-----------|--|
| 1) K-20 Competitiveness Subcommittee | | Beagle GB | Ahearn  |
| 2) PreK-12 Appropriations Subcommittee | | | |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

The bill requires each school district to inform parents of its expectations regarding parent responsiveness to teacher requests for communication; submission of accurate contact, emergency, and medical information; and oversight of their child's school attendance, completion of homework, and preparation for tests. Districts may use existing parent guides and parental involvement checklists or develop new formats for communicating this information to parents. The bill adds a requirement that parents acknowledge, in writing, receipt of parental involvement information.

The bill requires teachers of students in prekindergarten through grade 5 to evaluate each parent's involvement on a quarterly basis. Parents must be evaluated based upon the frequency of the student's unexcused absences and tardiness; responsiveness to requests for conferences or communication; and submission of accurate information, such as emergency contact information and student immunization records. Each parent must be rated satisfactory, needs improvement, or unsatisfactory and he or she must be provided with a written evaluation report. School districts must adopt, in rule, a process enabling parents to dispute an unfavorable evaluation.

School districts must annually report parental involvement evaluation data to the Department of Education (DOE). DOE must annually report this information to the Governor, President of the Senate, and Speaker of the House of Representatives. School districts must implement the bill's requirements beginning in the 2013-14 school year.

Florida law establishes several policies designed to enhance parental involvement in their children's education. Among other things, school districts must disseminate to parents a parent guide containing information regarding academic standards and assessment requirements, education choice options, available services for parents and their children, and parental involvement opportunities. School districts must also annually disseminate to parents a checklist of actions which strengthen parental involvement in their children's educational progress. Parent guides and parental involvement checklists are not required to specify expectations regarding parental involvement and parents are not required to acknowledge their receipt in writing. Additionally, there is no requirement that teachers evaluate the involvement of parents.

See Fiscal Comments.

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Parental Involvement

Overview

Research indicates that parents who are actively involved in their children's education are better prepared for school, achieve at higher levels, attend school more regularly, have better social skills, and are more likely to graduate from high school and pursue postsecondary education. The research also identifies high levels of parental involvement as a key characteristic of high-performing schools.¹ U.S. Department of Education data indicates that a parent's level of educational attainment has the greatest influence on parental involvement rates, with parents holding baccalaureate or higher degrees having significantly higher involvement rates than those with less education.²

Numerous local, state, and federal parental involvement initiatives have emerged over the years, including the formation of parent advocacy organizations,³ public relations campaigns,⁴ efforts to encourage parent volunteerism,⁵ dissemination to parents of information related to student and school performance,⁶ and policies facilitating parental input in school decision making processes.⁷ Federal education entitlements such as Title I of the Elementary and Secondary Education Act and the Head Start Program also have parental involvement components.⁸

Florida law establishes several policies designed to provide parents with access to school-level decision making processes and information regarding their child's academic progress and hold them accountable for their child's attendance in school.⁹ The law also requires parents to cooperate with school officials regarding disciplinary matters and comply with reasonable parental involvement

¹ The PEW Center on the States, *Engaged Families, Effective Pre-K: State Policies that Bolster Student Success*, at 1 (June 2010), available at http://www.pewcenteronthestates.org/uploadedFiles/PkN_Family_Engagement_FINAL.pdf?n=4141; Southwest Educational Development Laboratory, *A New Wave of Evidence: The Impact of School, Family, and Community Connections on Student Achievement*, at 24 (2002), available at <http://www.sedl.org/cgi-bin/pdfexit.cgi?url=http://www.sedl.org/connections/resources/evidence.pdf> (review of research regarding parental involvement and student success).

² U.S. Department of Education, National Center for Education Statistics, *Parent and Family Involvement in Education, 2006-07 School Year*, at 9-10 (Aug. 5, 2008), available at <http://nces.ed.gov/pubs2008/2008050.pdf>. This survey is based upon U.S. Census Bureau data and considers various demographic factors, e.g., whether students are enrolled in public or private schools, parent's socioeconomic status, race, educational attainment, and status as an English speaker. Parents were asked to report whether they regularly attend school meetings, parent teacher conferences, and school events; volunteer at the school; and participate in school fundraising. *Id.*

³ See, e.g., National PTA, *Home*, <http://www.pta.org/Index.asp> (last visited Dec. 1, 2011).

⁴ See, e.g., U.S. Department of Education, *Reading Tips for Parents* (May 2003), available at <http://www2.ed.gov/parents/read/resources/readingtips/readingtips.pdf>; Public Broadcasting System, *PBS Parents: Reading and Language*, <http://www.pbs.org/parents/readinglanguage/> (last visited Dec. 1, 2011).

⁵ See, e.g., All Pro Dad, *Home*, <http://www.allprodad.com/> (last visited Dec. 1, 2011); see, e.g., Miami-Dade School District, *Become a School Volunteer*, <http://community.dadeschools.net!/svp/school-vol.asp> (last visited Dec. 1, 2011).

⁶ 20 U.S.C. s. 6311(h)(Title I of the Elementary and Secondary Education Act; school and school district report cards); s. 1008.34(5), F.S. (school report cards); see, e.g., Florida Department of Education, *2010-11 School Accountability Reports*, <http://schoolgrades.fldoe.org/> (last visited Dec. 12, 2011).

⁷ See, e.g., s. 1001.452, F.S. (district and school advisory councils).

⁸ 20 U.S.C. s. 6318 (Title I); 42 U.S.C. s. 9837a (Head Start). Generally speaking, both programs require local education agencies to have written parental involvement policies for providing family outreach, facilitating parental involvement in school activities, and providing parents with input in funding and policy decisions. *Id.*

⁹ See, e.g., s. 1001.452, F.S. (district and school advisory councils), s. 1002.23, F.S. (parent guides and parental involvement checklists), s. 1003.24, F.S. (parent obligations regarding school attendance), and s. 1008.34(5), F.S. (school accountability reports).

requests.¹⁰ Locally, public schools use various means to keep parents informed and engaged in their child's education, including websites, email newsletters and list-servs, booster clubs, and parent-teacher organizations.¹¹

School Involvement

Florida law requires each school district to implement a comprehensive parental involvement program, developed with parental input, which, among other things, addresses opportunities for parents to participate on school advisory councils and in school volunteer programs.¹² Each district public school must have an advisory council comprised of various stakeholders, including parents, students, teachers, and school administrators. School advisory councils are responsible for developing and implementing the school's improvement plan, assisting in the development of the school's budget, and assisting in determinations regarding the use of school improvement funds and school recognition awards.¹³

Access to Information

Florida law requires school districts to disseminate information to parents regarding their child's academic performance and how they can help their child succeed in school. Each school district must annually provide a written report to parents explaining their child's statewide assessment results and progress towards achieving state and district expectations for proficiency in reading, writing, science, and mathematics.¹⁴ Districts are also required to annually disseminate to parents a school report card, which must include the school's grade and other indicators of school performance.¹⁵ Additionally, the law requires school districts to annually disseminate a parent guide that includes information regarding:

- School entry, academic proficiency, and grade promotion requirements;
- Assessments, report cards, and progress reports;
- Services available for parents and their children, such as family literacy programs, mentoring, tutoring, college planning assistance, academic advisement, student counseling, and after-school programs;
- Parental involvement opportunities, such as parenting classes, adult education, school advisory councils, and school volunteer programs; and
- Rigorous academic and career education programs and educational choice options.¹⁶

School districts must also annually disseminate to parents a checklist of actions which strengthen involvement in their child's educational progress. The checklist must include parental actions that strengthen:

- The child's academic progress, citizenship, social skills, and respect for others;
- The child's achievement of high expectations and setting lifelong learning goals; and
- Communication between school and home.¹⁷

The law requires the Florida Department of Education (DOE) to develop guidelines for the parent guide and parental involvement checklist, which DOE has done by providing technical assistance, compliance rubrics, and sample documents to school districts. The State Board of Education must annually review

¹⁰ Section 1003.04(2)-(3), F.S.

¹¹ See, e.g., Florida Department of Education, *School District Websites List*, http://www.fldoe.org/schools/schoolmap/flash/schoolmap_text.asp (last visited Dec. 2, 2011); see, e.g., Leon County School District, *Desoto Trail Elementary School*, <http://www.desototrail.leon.k12.fl.us/default.aspx> (last visited Dec. 2, 2011)(This website includes links to the school's booster club, parent-teacher organization, list-serv, and other resources.)

¹² Section 1002.23(1) and (5), F.S.

¹³ Sections 1001.452(2) and 1008.36(4), F.S.

¹⁴ Section 1008.25(8)(a), F.S.

¹⁵ Section 1008.34(5), F.S.

¹⁶ Section 1002.23(2), F.S.

¹⁷ Section 1002.23(3) and (8), F.S.

each school district's compliance with parent guide and checklist requirements. School districts annually submit their parent guides and parental involvement checklists to DOE for review.¹⁸

The law does not require that parent guides or checklists specify parental responsibilities regarding student attendance, responsiveness to teacher requests for communication, provision of emergency and medical information, or oversight of their child's academic work. Parents are also not required to provide written acknowledgement of receipt of parent guides and parental involvement checklists.¹⁹

Student Attendance

State law directs district school boards to establish attendance policies defining excused or unexcused absences or tardiness. Specific criteria for determining whether an absence or tardiness is excused or unexcused are determined by the district school board.²⁰ Each student's attendance in school must be checked and recorded by the district.²¹

The parent of a minor student is responsible for ensuring the student's regular attendance in school. Parents must justify each student absence and each absence is evaluated based upon the school board's attendance policies.²² Each time a student has an unexcused absence or absence for which the reason is unknown, the school principal or his or her designee must contact the student's parent to determine the reason for the absence.²³

If a student has at least five unexcused absences or absences for which the reasons are unknown within a calendar month, or 10 such absences within 90 calendar days, the student's primary teacher must report to the school principal that the student may be exhibiting a "pattern of nonattendance."²⁴ If a student exhibits a "pattern of nonattendance," his or her teacher must report the behavior to the school principal. Unless there is clear evidence that the absences are not a pattern of nonattendance, the principal must refer the case to the school's child study team to determine whether early patterns of truancy are developing. The child study team must meet with the student's parent to determine appropriate interventions.²⁵

A parent who knowingly refuses or fails to ensure his or her child's attendance in school or cooperate with a child study team may be criminally prosecuted for a second degree misdemeanor, which is punishable by imprisonment for up to 60 days.²⁶ In addition to imprisonment, the court may require the parent to participate in an approved parent training class, attend school with the student, perform community service hours at the school, or participate in counseling or other services.²⁷

Effect of Proposed Changes

The bill acknowledges the importance of parents and the home environment in a child's present and future success and specifies as causes of student underachievement inadequate rest, improper clothing, lack of necessary school supplies, frequent tardiness or absence, lack of mental preparation for the school day due to uncompleted homework or inadequate test preparation, and infrequent

¹⁸ Section 1002.23(2), (3), (7), (8), and (9), F.S.; Florida Department of Education, *Family and School Partnership Act*, <http://www.fldoe.org/family/fspsa.asp> (last visited Dec. 12, 2011)(This website includes DOE's technical assistance, guidelines, and review procedure for parent guides and checklists.).

¹⁹ See s. 1002.23, F.S.

²⁰ Section 1003.24, F.S. (flush-left provisions at end of section).

²¹ Section 1003.23, F.S.

²² Section 1003.26, F.S.

²³ Section 1003.26(1)(a), F.S.

²⁴ Section 1003.26(1)(b), F.S.

²⁵ Section 1003.26(1)(c), F.S.

²⁶ Sections 1003.24 and 1003.27(2) and (7)(a), F.S.

²⁷ Section 1003.27(7)(a)3., F.S. A parent may not, however, be held responsible for the student's nonattendance when an absence was authorized by the head of the school; without the parent's knowledge or consent; due to the parent's financial inability to provide necessary clothing for the student; or due to the student's sickness, injury, or other insurmountable condition. Section 1003.24(1)-(3), F.S.

communication between parents and teachers. The bill states that its purpose is to provide information and tools to parents of prekindergarten through grade 5 students which enable them to positively impact their child's educational success and to set minimum standards for parental involvement.

The bill requires school districts to inform parents of expectations regarding their:

- Timely response to teacher requests for communication;
- Submission of accurate contact, emergency, and medical information;²⁸ and
- Oversight of their child's school attendance, completion of homework, and preparation for tests.

Districts may use existing parent guides and parental involvement checklists or develop new formats for communicating this information to parents. The bill also adds a requirement that parents acknowledge in writing receipt of parental involvement information.

Currently, parent guides and parental involvement checklists are not required to include expectations regarding parental involvement and parents are not required to acknowledge their receipt of guides and checklists. Providing this information to parents will better inform them of their obligations regarding communication, attendance, and oversight of academic work.

Currently, there is no requirement that teachers evaluate the involvement of parents. The bill requires teachers of students in prekindergarten through grade 5 to evaluate each parent's involvement on a quarterly basis and send a written evaluation to the parent with the student's quarterly assessment. Each parent must be assigned a rating of satisfactory, needs improvement, or unsatisfactory and provided with a written evaluation. The parent must be rated "needs improvement" when one of the following occurs in one quarter:

- The student has five or more unexcused absences or 10 or more instances of unexcused tardiness;
- The parent does not respond to five or more requests for communication from the teacher; or
- The emergency contact information provided by the parent is determined to be incomplete or incorrect.

If two or more of these conditions occur, the parent must be evaluated as "unsatisfactory." School districts must adopt, in rule, a process enabling parents to dispute an unfavorable evaluation in which the principal, teacher, and parent must discuss how the evaluation was determined. The process must provide feedback on how the parent can improve his or her evaluation. Parental involvement evaluations will enable schools and districts to identify parents who need assistance regarding parental involvement issues.

School districts must annually report parental involvement evaluation data to DOE. DOE must annually report this information to the Governor, President of the Senate, and Speaker of the House of Representatives. School districts must implement the bill's requirements beginning in the 2013-14 school year.

The associations representing district school boards and school superintendents, respectively, have voiced concerns that the bill will add to teacher workloads, create an adversarial relationship between parents and teachers, and unfairly burden low-income working parents.²⁹

²⁸ Upon initial entry into the public school system, parents must ensure that their child has received a medical evaluation and required immunizations. A parent may receive an exemption from such requirements if certain requirements are met, e.g., the parent objects based upon religious beliefs or obtains a written statement from a licensed physician stating medical or other specified reasons for the exemption. Section 1003.22(1)-(5), F.S. Required vaccines for kindergarten entry include Diphtheria-Tetanus-Pertussis, Hepatitis B, Measles-Mumps-Rubella, Polio, and Varicella. Section 1003.22(3), F.S.; Florida Department of Health, *Information for Parents*, http://www.doh.state.fl.us/disease_ctrl/immune/parents/index.html (last visited Jan. 11, 2011).

²⁹ Memorandum from the Florida School Boards Association (Jan. 18, 2012); Conference, House Education Policy Chief and Florida Association of District School Superintendents staff (Jan. 18, 2012).

B. SECTION DIRECTORY:

Section 1. Creates s. 1008.347, F.S., relating to parental involvement and accountability in public schools; requires school districts to inform parents of expectations regarding parental involvement; authorizes districts to use parent guides, parental involvement checklists, or other formats to communicate these expectations; requires parents to acknowledge in writing receipt of required information; requires teachers of students in prekindergarten through grade 5 to evaluate each parent's involvement; specifies criteria for evaluations; requires districts to establish an evaluation dispute process; requires school districts to annually report parental involvement evaluation data to the State Board of Education; requires DOE to annually report evaluation data to the Governor, President of the Senate, and Speaker of the House of Representatives; and requires school districts to implement the bill's requirements beginning in the 2013-14 school year.

Section 2. Provides an effective date of July 1, 2012.

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

School districts may incur costs regarding development of new parental involvement information materials or amending existing materials, collecting parent's written acknowledgement of receipt of such materials, conducting parental involvement evaluations and sending results to the parent's home on a quarterly basis, and reporting parental involvement evaluations to DOE. Total costs are indeterminate.³⁰

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.

³⁰ Florida Department of Education, *Legislative Bill Analysis for HB 543 (2011)*.

2. Other:

The bill requires teachers of students in prekindergarten through grade 5 to evaluate each parent's involvement on a quarterly basis and send a written evaluation to the parent with the student's quarterly assessment. Under Florida law, education records, as defined in the federal Family Educational Rights and Privacy Act (FERPA), are confidential and exempt from state laws which provide public access to records held by public agencies.³¹ FERPA requires public schools and school districts to obtain written consent from a parent before disclosing education records or personally identifiable information contained therein.³²

Under FERPA, education records are defined as records, files, documents, and other materials maintained by public schools and school districts which contain information *directly related to a student*. Recorded course grades, grade point averages, standardized test scores, attendance records, counseling records, and records of disciplinary actions are examples of items that are commonly considered education records under FERPA.³³ If a parental involvement evaluation is considered an educational record under FERPA, then the evaluation would be confidential and exempt from disclosure.³⁴

B. RULE-MAKING AUTHORITY:

The bill requires the State Board of Education to adopt rules regarding annual reporting by school districts of parental involvement evaluation data. The bill also requires school districts to adopt, by rule, a process which enables parents to dispute a parental involvement evaluation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the DOE bill analysis, it is possible that a parent who challenges an unsatisfactory parental involvement evaluation could seek administrative review by the Division of Administrative Hearings as a substantially affected person under s. 120.569, F.S., which can result in the award of attorney fees. Consideration should be given to including a statement exempting the determination from ch. 120, F.S.³⁵

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

³¹ Section 1002.221(1), F.S.; see Art. I, s. 24 of the Florida Constitution and ss. 119.01(1) and 119.011(12), F.S.

³² 20 U.S.C. s. 1232g(b)(1); 34 C.F.R. ss. 99.30-99.39. Florida's policy for the disclosure of education records is similar to the relevant FERPA provisions. See rule 6A-1.0955(6)(f) and (g), F.A.C.

³³ *Falvo v. Oswasso Independent School District No. 1-011*, 534 U.S. 426, 431-436 (2002).

³⁴ 20 U.S.C. s. 1232g(a)(4)(A); 34 C.F.R. s. 99.3 (definition of "education records").

³⁵ *Id.*

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A bill to be entitled
 An act relating to background screening for
 noninstructional contractors on school grounds;
 amending s. 1012.467, F.S.; requiring the Department
 of Education to approve a uniform, statewide
 identification badge to be worn by noninstructional
 contractors signifying that a contractor has met
 specified background screening requirements; requiring
 school districts to issue the identification badge to
 a qualified contractor; providing that the
 identification badge shall be recognized by all school
 districts; requiring the department to determine the
 cost to be borne by the contractor; providing an
 effective date.

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

Section 1. Subsection (8) is added to section 1012.467,
 Florida Statutes, to read:

1012.467 Noninstructional contractors who are permitted
 access to school grounds when students are present; background
 screening requirements.-

(8)(a) The Department of Education shall approve a
 uniform, statewide identification badge to be worn by
 noninstructional contractors signifying that a contractor has
 met the requirements of this section and the uniform, statewide
 level 2 screening requirements as described in s. 1012.32. The
 school district shall issue an identification badge to the

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2012

29 | contractor, which must bear a photograph of the contractor. An
 30 | identification badge shall be issued if the contractor:

31 | 1. Is a resident and citizen of the United States or a
 32 | permanent resident alien of the United States as determined by
 33 | the United States Bureau of Citizenship and Immigration
 34 | Services;

35 | 2. Is 18 years of age or older; and

36 | 3. Meets the background screening standards under s.
 37 | 435.04.

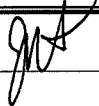
38 | (b) The uniform, statewide identification badge shall be
 39 | recognized by all school districts and must be visible at all
 40 | times a noninstructional contractor is on school grounds.

41 | (c) The Department of Education shall determine the cost
 42 | to a noninstructional contractor for receipt of the
 43 | identification badge which shall be borne by the recipient of
 44 | the badge.

45 | Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1059 Background Screening for Noninstructional Contractors on School Grounds
SPONSOR(S): Perry
TIED BILLS: IDEN./SIM. BILLS: SB 1610

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|-----------|--|
| 1) K-20 Competitiveness Subcommittee | | Beagle GB | Ahearn  |
| 2) PreK-12 Appropriations Subcommittee | | | |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

The bill requires the Department of Education (DOE) to approve a uniform, statewide identification badge signifying that a noninstructional contractor has satisfied the specified background screening requirements. The badge must include a photograph of the contractor and be recognized by each Florida school district. School districts must issue the badge to a contractor if he or she is a U.S. resident and citizen or permanent resident alien; 18 years of age or older; and meets level 2 background screening requirements. The badge must be visibly worn by all noninstructional contractors at all times while on school grounds. DOE must determine the cost that may be charged to a noninstructional contractor for the badge.

Currently, there is no required uniform, statewide identification badge that signifies that a noninstructional contractor has satisfied background screening requirements.

Florida law requires individuals who work in, or provide services to, public schools and school districts to undergo a fingerprint-based state and federal criminal background check before being permitted access to school grounds. The background screening standards vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students. School district employees or contracted personnel who have a high-degree of contact with students or who have access to district funds, e.g., teachers, principals, and cafeteria workers, must satisfy level 2 screening requirements which include 51 disqualifying offenses. On the other hand, noninstructional contractors, i.e., outside vendors and contractors who do not have direct contact with students, are subject to less stringent background screening standards. Their results are screened against only nine disqualifying offenses. Additionally, some noninstructional contractors are exempt from background screening requirements.

It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors. If the former, the bill will have a significant fiscal impact on DOE. If the later, school districts currently issuing badges and charging fees for those badges will have to meet the design criteria and fee requirements established by DOE. The cost associated with school district implementation of a new badge design and fee provision is unknown. Also, a school district that does not originate the background screening and issuance of the statewide identification badge will no longer be able to issue its own badge and charge a corresponding fee.

Private sector noninstructional contractors who are currently exempt from background screening requirements will experience increased costs because the bill requires, without exception, all noninstructional contractors to wear an identification badge while on school grounds. These individuals (or their employers) will be required to pay for level 2 background screening in order to receive a badge.

See Direct Economic Impact on the Private Sector and Fiscal Comments and Drafting Issues and Other Comments.

The bill takes effect July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1059.KCOS.DOCX

DATE: 1/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background Screening

Florida law requires individuals who work in, or provide services to, public schools and school districts to undergo a fingerprint-based background screening before being permitted access to school grounds.¹ The individuals who must undergo background screening fall under three personnel classifications - instructional and noninstructional personnel,² noninstructional school district employees and contracted personnel,³ and noninstructional contractors.⁴ The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.⁵

Noninstructional contractors are vendors of services and contractors who are permitted access to school grounds when students are present, do not have direct contact with students, and are not school district employees.⁶ The noninstructional contractor's fingerprints are submitted to the Florida Department of Law Enforcement (FDLE) for statewide criminal and juvenile records checks. FDLE is responsible for forwarding the fingerprints to the Federal Bureau of Investigation (FBI) for federal criminal records checks.⁷ FDLE provides the results of the criminal records checks to the school district, which must then screen the records against a statutorily prescribed list of disqualifying offenses.⁸ Noninstructional contractors must be screened against nine disqualifying offenses.⁹

- Offenses regarding registration as a sexual offender;¹⁰
- Sexual misconduct with certain developmentally disabled clients;¹¹
- Sexual misconduct with certain mental health patients;¹²
- Terrorism;¹³
- Murder;¹⁴
- Kidnapping;¹⁵
- Offenses related to lewdness and indecent exposure;¹⁶
- Incest;¹⁷ and

¹ Sections 1012.32, 1012.465, and 1012.467, F.S. Private schools participating in educational choice scholarship programs must also submit fingerprints of employees and contracted personnel with direct student contact to FDLE. *See* ss. 943.0542 and 1002.421(2)(i), F.S.

² Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

³ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

⁴ Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁵ Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁶ Section 1012.467(1)(a) and (2)(a) and (g), F.S.

⁷ *Id.*

⁸ Section 1012.32(2), F.S. (flush-left provisions at end of subsection; instructional and noninstructional personnel); s. 1012.465(3), F.S. (noninstructional school district employees); s. 1012.467(3), F.S. (noninstructional contractors).

⁹ Section 1012.467(2)(g), F.S.

¹⁰ Section 943.0435(1)(a)1., F.S.

¹¹ Section 393.135, F.S.

¹² Section 394.4593, F.S.

¹³ Section 775.30, F.S.

¹⁴ Section 782.04, F.S.

¹⁵ Section 787.01, F.S.

¹⁶ Chapter 800, F.S.

¹⁷ Section 826.04, F.S.

- Child abuse, aggravated child abuse, or neglect of a child.¹⁸

If the noninstructional contractor has not been convicted of any of the nine disqualifying offenses, the school district may permit him or her to work on school grounds. School districts generally issue their own identification badges or proof of clearance. School districts are not currently prohibited from disqualifying a noninstructional contractor based upon additional offenses.¹⁹

Background screening is not required for noninstructional contractors who are:

- On school grounds while under the direct supervision of a school district employee or contractor who has been screened;
- Required to undergo level 2 background screening²⁰ for licensure, certification, employment, or other purposes;
- Law enforcement officers;
- Employees or medical directors of an ambulance service;
- Confined to an area where students are not permitted if the site is separated from school grounds by a chain link fence; and
- Providing pick-up or delivery services involving only brief visits on school grounds when students are present.²¹

Noninstructional contractors who are exempt from background screening must have their name searched in the FDLE and national sex offender registries. The individual may not be permitted on school grounds if he or she is identified as a sexual predator or sexual offender in the registry search. The school district may not charge the individual a fee for the search.²²

Each noninstructional contractor's fingerprints are retained in the statewide automated fingerprint identification system for five years, at which time the individual must be rescreened.²³ The statewide system enables school districts to screen noninstructional contractors who are new to the district, but who have already had a criminal history check by another district, without having to initiate a new criminal history check. In such cases, the school district checks the database to see if the noninstructional contractor has any new arrests or convictions since the initial screening.²⁴

Additionally, FDLE must periodically search all new arrest fingerprint cards received against the fingerprints retained in the system. If these periodic searches reveal a new arrest on a noninstructional contractor's record, FDLE must notify the school district that conducted the initial criminal history check.²⁵

Each noninstructional contractor must inform his or her employer (or other party to the contract) and the school district within 48 hours if he or she is arrested for any of the nine disqualifying offenses. Willful failure to do so is a third degree felony. If the employer (or other party to the contract) knows of such offense and allows the contractor access to school grounds when students are present, he or she commits a third degree felony.²⁶

¹⁸ Section 827.03, F.S.

¹⁹ Section 1012.467(4), F.S.

²⁰ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 offenses. Instructional and noninstructional personnel and noninstructional school district employees and contractors must undergo level 2 screening. *See ss.* 435.04, 1012.321012.32(2), 1012.465(1), and 1012.56(10), F.S.

²¹ Section 1012.468(2), F.S.

²² Section 1012.468(3)(a)-(b), F.S.

²³ Section 1012.467(2)(e), F.S.; Rule 11C-6.010(7), F.A.C.

²⁴ Section 1012.467(2) (d) and (7)(a) F.S.

²⁵ Section 1012.467(2)(c), F.S.; Rule 11C-6.010(4), F.A.C.

²⁶ Sections 1012.467(6), 775.082, and 775.083, F.S.

Effect of Proposed Changes

The bill requires the Department of Education (DOE) to approve a statewide identification badge signifying that a noninstructional contractor has satisfied the background screening requirements for noninstructional contractors and level 2 screening requirements. The badge must bear a photograph of the contractor. The badge must be recognized by each Florida school district and must be visible at all times a noninstructional contractor is on school grounds. School districts must issue the badge to a contractor if he or she:

- Is a U.S. resident and citizen or permanent resident alien;
- Is 18 years of age or older; and
- Meets the level 2 background screening standards.

It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors. If the former, the bill will impose significant new workload demands on DOE. If the later, school districts currently issuing badges will have to meet the design criteria established by DOE. The cost associated with school district implementation of a new badge design is unknown.

Currently, school district employees or contracted personnel who have a high-degree of contact with students or who have access to district funds, e.g., teachers, principals, cafeteria workers, district administrators, must undergo level 2 background screening. Noninstructional contractors are held to a lesser standard because they have little or no contact with students. The bill's requirement that noninstructional contractors satisfy level 2 background screening requirements in order to be issued an identification badge significantly expands existing background screening requirements. Level 2 background screening includes 51 disqualifying offenses, whereas only nine disqualifying offenses are required to be applied to noninstructional contractors.

The bill further significantly changes existing law, which exempts certain noninstructional contractors from background screening requirements, by requiring, without exception, that all noninstructional contractors wear an identification badge while on school grounds; and, additionally, that a level 2 background screening is required to receive a badge. Thus, noninstructional contractors who are currently exempt from background screening requirements altogether, e.g., those providing pick-up or delivery services involving only brief visits on school grounds when students are present, appear to have to clear a level 2 background screening in order to receive a badge.

Currently, when a school district screens noninstructional contractors who are new to the district, but who have already had a criminal history check conducted by another district, the district uses the statewide automated fingerprint identification system. The contractor's records are checked for new arrests or convictions that may have occurred since the initial criminal history check. The school district is prohibited from charging the contractor a fee for verifying the results of his or her criminal history check,²⁷ but is not prohibited from charging a fee for issuance of a badge.

Because the bill states that the identification badge must be recognized by school districts as proof the noninstructional contractor has cleared his or her background screening, it appears to preclude a school district from disqualifying the individual for new arrests and convictions. This also would preclude a district's discretion to disqualify a noninstructional contractor based upon offenses not currently covered by level 2 screening. Furthermore, a school district that does not originate the background screening and issuance of the identification badge will no longer be able to issue its own badge and charge a corresponding fee.

²⁷ Section 1012.467(2)(f), F.S.

Furthermore, the bill does not require a noninstructional contractor, who is fired by his or her employer, or who is arrested for one of the nine disqualifying offenses,²⁸ to return the badge to the school district or employer. This may cause security concerns for school districts.

Finally, the bill requires DOE to determine the cost to a noninstructional contractor for receipt of an identification badge, which must be borne by the recipient of the badge. Currently, how much school districts charge for the identification badges vary, as does the length of time such badges are valid.

B. SECTION DIRECTORY:

Section 1. Amends s. 1012.467, F.S., relating to background screening of noninstructional contractors who are permitted access to school grounds; requires DOE to approve a statewide photo identification badge for noninstructional contractors; requires Florida school districts to accept the badge as proof of the noninstructional contractor's compliance with certain background screening requirements; provides criteria for issuance of the badge by school districts; requires DOE to determine the cost of the badge charged to noninstructional contractors.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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:

Private sector noninstructional contractors who are currently exempt from background screening requirements will experience increased costs because the bill requires, without exception, all noninstructional contractors to wear an identification badge while on school grounds. Because level 2 background screening is required to receive a badge, these individuals or their employers will be required to pay for background screenings. The cost of a state and federal criminal history check is \$43.25 and school districts are authorized to impose an additional fee which may not exceed 30 percent of this amount.²⁹

Noninstructional contractors will be charged a fee for the identification badge, as set by DOE. Currently school districts that issue identification badges set their own fee. There is no way to know at this time whether DOE's set fee will be higher or lower than that currently charged by the districts. However, the

²⁸ See *infra* text accompanying notes 19-21 for discussion of the nine disqualifying offenses.

²⁹ Florida Department of Law Enforcement, *Criminal History Record Check Fact Sheet*, at 13 (Jan. 20, 2012), available at http://www.fdle.state.fl.us/Content/getdoc/769edeba-2969-45dd-ad8f-6739dc24aded/BackgroundChecks_FAQs_01202012_Final.aspx.

bill eliminates the practice of other districts, not initially conducting the background screening and issuing the identification badge, from also requiring a badge and charging a fee.

Some noninstructional contractors who are currently eligible to work on school grounds may experience loss of employment or revenue if they are unable to clear a level 2 screening.

D. FISCAL COMMENTS:

It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors. If the former is true, the bill will have a significant fiscal impact on DOE.

Additionally, school districts that issue their own identification badges will have to retool their current system in order to issue the uniform, statewide identification badge. The costs associated with this process are indeterminate. Districts that contract this process out may incur costs associated with re-negotiating its contract.

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:

Lines 23-27: It is unclear whether the bill requires DOE to approve the issuance of a statewide identification badge to each individual noninstructional contractor who performs services for Florida's 67 school districts or if DOE is simply required to design a badge that school districts must issue to eligible contractors.

Lines 27 and 36-37: The bill requires noninstructional contractors to satisfy level 2 background screening standards in order to be issued an identification badge. This significantly expands existing background screening requirements because level 2 background screening includes 51 disqualifying offenses, whereas only nine disqualifying offense currently apply to noninstructional contractors.

Additionally, the bill does not address how long the statewide badge is valid. Currently, contractors must be rescreened every five years. However, the length of time school district issued badges are valid varies from district to district.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

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 develop written policies to promote public
 6 access to outdoor recreation and sports facilities on
 7 school property and increase joint-use agreements;
 8 providing duties of the Department of Education;
 9 creating s. 768.072, F.S.; providing immunity from
 10 liability for a district school board that adopts
 11 public access policies or enters into a joint-use
 12 agreement except in instances of gross negligence or
 13 intentional misconduct; defining the term "gross
 14 negligence"; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 1013.105, Florida Statutes is created
 19 to read:

20 1013.105 Joint use of public school facilities.-

21 (1) The Legislature finds that greater access to
 22 recreation and sports facilities is needed to reduce the impact
 23 of obesity on personal health and health care expenditures. The
 24 Legislature further finds that public schools are equipped with
 25 taxpayer-funded playgrounds, fields, tracks, courts, and other
 26 outdoor recreation and sports facilities that offer easily
 27 accessible opportunities for physical activity for residents of
 28 the community.

29 (2) Each district school board is encouraged to:
 30 (a) Adopt written policies to promote public access to the
 31 outdoor recreation and sports facilities on public school
 32 property during nonschool hours when a school-sponsored or
 33 school-related activity is not occurring. A public access
 34 policy should outline the outdoor recreation and sports
 35 facilities that are open to the public and the hours the
 36 facilities are open.

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

42

43 Within 30 days of adopting a public access policy or entering
 44 into a joint use agreement, a district school board must submit
 45 a copy of the policy or agreement to the Department of
 46 Education.

47 (3) The Department of Education shall:
 48 (a) Develop a model joint use agreement and post the model
 49 agreement on its website.

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

53 (c) Develop criteria for the acceptance of grants for
 54 implementing joint use agreements and post the criteria on its
 55 website.

56 Section 2. Section 768.072, Florida Statutes, is

57 created to read:

58 768.072 Limitation on public school premises liability.-

59 (1) A district school board is not liable for civil
 60 damages for personal injury, property damage, or death that
 61 occurs on a public school property that the district school
 62 board has opened up to the public, through public access
 63 policies or joint use agreements, under s. 1013.105, unless
 64 gross negligence or intentional misconduct on the part of the
 65 district school board is a proximate cause of the damage,
 66 injury, or death.

67 (2) As used in this section, "gross negligence" is the
 68 intentional failure to perform a manifest duty in reckless
 69 disregard of the consequences as affecting the life or property
 70 of another.

71 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 431 Joint Use of Public School Facilities

SPONSOR(S): Nehr and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 808 (Compare)

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|------------|--|
| 1) K-20 Competitiveness Subcommittee | | Valenstein | Ahearn |
| 2) Rulemaking & Regulation Subcommittee | | | |
| 3) Civil Justice Subcommittee | | | |
| 4) Education Committee | | | |

SUMMARY ANALYSIS

In an effort to address the obesity epidemic, 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 district school 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.

The Department of Education (DOE) is required to develop and post on its website a model joint use agreement; develop and post on its website criteria for the acceptance of grants for implementing joint use agreements; and post links to, or copies of, the public access policies and joint use agreements submitted by a district school board.

The bill also grants a district school board immunity from liability for civil damages for personal injury, property damage, or death that occurs on a public school property that the district 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.

Currently, the county and municipalities located within the geographic area of a school district must enter into an interlocal agreement with the district school board. Within the agreement, the parties must jointly establish the specific ways the entities will coordinate their growth and development plans and processes. The agreement must also 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. Some district school boards currently authorize, through their interlocal agreements, public access to sports and recreational facilities on school campuses.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overweight Children and Adults

Present Situation

The Centers for Disease Control and Prevention (CDC) estimate 33.9% of American adults are obese and another 34.4% are overweight, and more than 12.5 million children and adolescents are obese.¹ The prevalence of obesity among children and adolescents has almost tripled since 1980.²

The Surgeon General estimates 300,000 deaths per year may be attributed to obesity and reports individuals who are obese have a 50-100% increased risk of premature death from all causes, when compared to individuals with a healthy weight.³

One of the reasons proffered by the CDC for the increasing rates of obesity is the lack of safe and appealing places to play or be active. According to the CDC, many communities are built in ways that make it difficult or unsafe to be physically active. For some families, getting to parks and recreation centers may be difficult, and public transportation may not be available. For many children, safe routes for walking or biking to school or play may not exist. According to the Department of Health and Human Services and the CDC, less than half of Florida's youth have access to parks, community centers and sidewalks in their neighborhood. Also, youth without access to opportunities for physical activity during nonschool hours are less likely to be as physically active as their peers.⁴

Effect of Proposed Changes

In an effort to address the obesity epidemic, 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 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. The bill requires that within 30 days of adopting a public access policy or entering into a joint use agreement, a district school board must submit a copy of the policy or agreement to the DOE.

Interlocal Agreements

Present Situation

Currently, the county and municipalities located within the geographic area of a school district must enter into an interlocal agreement with the district school board. Within the agreement, the parties must jointly establish the specific ways they will coordinate their growth and development plans and processes. The agreement must also include a process for determining where and how joint use of

¹ Centers for Disease Control and Prevention, *Obesity and Overweight*, <http://www.cdc.gov/nchs/fastats/overwt.htm> (last visited Jan. 15, 2012); 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. 15, 2012).

² 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. 15, 2012).

³ Office of the Surgeon General, *Overweight and Obesity: Health Consequences*, http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_consequences.htm (last visited Jan. 15, 2012).

⁴ Centers for Disease Control and Prevention, *Overweight and Obesity: A Growing Problem*, <http://www.cdc.gov/obesity/childhood/problem.html> (last visited Jan. 15, 2012); Department of Health and Human Services and 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.

either school board or local government facilities can be shared for mutual benefit and efficiency.⁵ Usually, interlocal agreements provide general information related to sharing facilities, but not specific details. The specific details related to sharing facilities, such as, the hours the facility will be open and which entity will be liable for any damages or injuries sustained on the property, are contained in a joint use agreement.

Some district school boards currently authorize, through their interlocal agreements, public access to sports and recreational facilities on school campuses. In fact, according to DOE, school district facilities staff members have informally expressed support for shared use of facilities. However, the school district staff members report that reaching agreements for shared use is highly dependent on variables related to individual facilities. For this reason, while a district school board may have a general policy to allow public access and shared use of facilities, agreements for shared or public use of facilities are typically considered on a facility-by-facility basis.⁶

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.”⁷

According to the DOE, school district facilities planners have noted the following barriers to expanding joint use of and public access to facilities: premises liability concerns; additional costs for supervision, custodial services, utilities, and wear and tear on fields and equipment; and forecasts of continued reductions in revenues available for facilities operation and maintenance.⁸ Additionally, one school district risk manager reported that the school board has directed the development of a policy to prohibit public use of outdoor school grounds and facilities during periods of darkness.⁹ The bill does not specifically address access during daylight hours; however, the bill does not prohibit a school district from establishing such a policy.

School districts are not limited to partnering with governmental entities in joint use agreements. Pursuant to the terms of the school district’s interlocal agreements, school districts may establish joint use agreements with private entities.¹⁰ 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.¹¹

When establishing an interlocal agreement, the law requires district school boards and local governments to consider, among other things, allowing students to attend the school located nearest their homes when a new housing development is constructed, including attendance at a school located in an adjacent county; consider the effects of the location of public education facilities, including the

⁵ Sections 163.31777(1) and (2)(g) and 1013.33(2)(a) and (3)(g), F.S.

⁶ Staff of the Florida Department of Education, *2012 Agency Legislative Bill Analysis for HB 431* (2012).

⁷ The Pinellas County interlocal agreement states, “The collocation and shared use of facilities are important to the Parties. The Parties will look for opportunities to collocate or share the use of each Parties’ facilities. Opportunities for collocation and shared use will be considered for libraries, parks, recreational facilities, community centers, auditoriums, learning centers, museums, performing arts centers, stadiums, healthcare and social services, schools, and other uses and facilities as may be determined appropriate. An agreement will be developed 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.” *Interlocal Agreement between Pinellas County, Florida, et al. and the School Board of Pinellas County, Florida*, 4 (2007), available at http://pinellascounty.org/%2FPlan%2Fpdf_files%2F1906_IA.pdf&ei=XLnnTs_aMo2-tgesjcWdCg&usg=AFQjCNFODeQ20Nfba11H5mNDHW3u39EyHg&sig2=PIUZ5STd6Q-LR9U_yiZflw. The term of the interlocal agreement is 5 years. *Id.* at 11.

⁸ Staff of the Florida Department of Education, *2012 Agency Legislative Bill Analysis for HB 431* (2012).

⁹ *Id.*

¹⁰ See *Duval County Interlocal Agreement for Public School Facility Planning*, 10 (Nov. 2007), available at www.duvalschools.org/static/.../ILA%20FINAL%2011-30-07.pdf.

¹¹ The Florida Legislature, 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, 18, Aug. 2003, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=03-41> (last visited Jan. 15, 2012).

feasibility of keeping central city facilities viable in order to encourage central city redevelopment; and consult with state and local road departments to assist in implementing the Safe Routes to Schools Program administered by the Department of Transportation.¹²

Each interlocal agreement must be submitted to the Office of Educational Facilities of the Department of Education (DOE) and the state land planning agency.¹³ The Office of Educational Facilities is required to submit any comments or concerns regarding an interlocal agreement to the state land planning agency.¹⁴ Additionally the state land planning agency is required to assemble and make available model interlocal agreements.¹⁵

Additional public access to educational facilities and grounds is currently authorized in law for any legal assembly, community use centers, or voting precinct, if allowed by the district school board or the board of trustees for the Florida College System institution, the State University System institution, or the Florida School for the Deaf and the Blind. Rules, regulations, or policies and procedures must be adopted by each board to protect educational facilities and grounds when used for such purposes.¹⁶

Effect of Proposed Changes

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 joint use agreements between district school boards and local governments or private organizations. However, as demonstrated by Pinellas and Duval Counties, district school boards currently have the authority to adopt public use policies and enter into joint use agreements.

The bill also requires the DOE to develop and post a model joint use agreement on its website; develop and post criteria for the acceptance of grants for implementing joint use agreements; and post links to or copies of each joint use agreement received from a district school board on the DOE website. By developing and posting criteria for the acceptance of grants, the DOE may provide districts access to additional funding sources to expand public access to outdoor recreation and sports facilities on public school campuses.

School District Liability

Present Situation

Article X, s. 3 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 fact establish a limited waiver of sovereign immunity for liability for tort for state agencies or subdivisions which includes school districts.¹⁷

The waiver of sovereign immunity limits the recovery of any one person in a tort action against the state¹⁸ to \$200,000 for any one person or one incident and limits all recovery related to one incident to

¹² Section 1013.33(1), F.S.

¹³ Section 1013.33(2)(a), F.S.

¹⁴ Section 1013.33(4)(a), F.S.

¹⁵ Section 1013.33(2)(d), F.S.

¹⁶ Section 1013.10, F.S.; *see also* s. 1013.01(3)(defines "Board").

¹⁷ 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, *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."

¹⁸ The term "state" means "state agencies or subdivisions" which 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.

a total of \$300,000.¹⁹ 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.²⁰

Effect of Proposed Changes

Currently district school boards are protected by sovereign immunity, except to the degree waived by law, as discussed above. The bill changes the standard for liability for district school boards from negligence to gross negligence or intentional misconduct. 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.

The bill defines gross negligence as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. By changing the liability standard from negligence to gross negligence or intentional misconduct, the bill may encourage more district 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 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 negligence. However, the bill does not prevent a lawsuit from being filed against the district; therefore, a school district may incur costs associated with litigation.

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.²¹

B. SECTION DIRECTORY:

Section 1. Creates s. 1013.105, F.S., relating to joint use of public school facilities; providing legislative findings; encouraging each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on school property and increase joint use agreements; and providing duties of the Department of Education.

Section 2. Creates s. 768.072, F.S., relating to limitation on public school premises liability; providing for immunity from liability for a district school board that adopts public access policies or enters into a joint use agreement except in instances of gross negligence or intentional misconduct and defining the term "gross negligence."

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁹ Section 768.28(5), F.S.

²⁰ Section 768.28(9), F.S.

²¹ Section 768.28(5), F.S.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Damages received by an injured party may be limited due to a school district's immunity from liability. A plaintiff will only receive damages if the injury, damage, or death 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 negligence.

D. FISCAL COMMENTS:

The bill requires the DOE to develop and make available a model joint use agreement. The DOE is also required to post links to or copies of district joint use agreements and also develop criteria for accepting grants for implementing joint use agreements. These requirements are anticipated to be accomplished within departmental resources. No impact on expenditures is expected.

After the DOE establishes criteria for accepting grants for implementing joint use agreements, school districts and local governments may be able to obtain additional funding through grants.

The bill encourages school districts 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. If more school recreational facilities are open to the public, cities and counties may be able to reduce spending on the development and maintenance of public parks and recreation areas; however, school districts may have a fiscal impact from the increased "wear and tear" on the facilities. Additionally, school districts anticipate needing someone to oversee the use of the school property, which may result in an additional cost to the school district, even though the bill does not require this supervision.²²

While the bill provides districts immunity from liability except in cases of gross negligence or intentional misconduct, the bill does not prevent a suit from being filed against the district; therefore, a school district may incur costs associated with litigation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

²² Memorandum, Florida School Boards Association, Inc. (Jan. 18, 2012).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.