Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 396

INTRODUCER:	Education Committee and Senator Bean and others

SUBJECT:	Joint Use and Public Access of Public School Facilities and Joint Community Projects

DATE:	April 7, 2014	REVISED:				

	ANALYST	STAFF DIRECTOR	REFERENCE		ACTION
1.	Hand	Klebacha	ED		**Fav/CS**
2.	Stearns	Yeatman	CA		**Pre-meeting**
3.			JU		

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 396 authorizes the use of certain public school properties; authorizes the development and operation of joint community projects between a district school board and a county, municipality, or Florida College System institution; requires indemnification and insurance for a district school board; and provides that background screening requirements for certain noninstructional contractors do not apply under this law when there is no school-sponsored or school-related program or activity in progress.

II. Present Situation:

Public Use of School Facilities

Under current law, district school boards are authorized to allow public use of their educational facilities. For example:
- District school boards may permit the use of educational facilities and grounds for any legal assembly or for community use centers.[1] The district school board must adopt rules, regulations, or policies and procedures necessary to protect educational facilities and grounds when used for such purposes.[2]

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[1] Section 1013.10, F.S.
[2] *Id.*

- Prior to permitting use of its facilities, a district school board must enter into an interlocal agreement with the relevant local government.[3] The interlocal agreement must address a process for determining where and how joint use of school board facilities can be shared for mutual benefit and efficiency.[4]
- District school boards may exercise any power except as expressly prohibited by the State Constitution or general law.[5]

Limited Waiver of Sovereign Immunity

The doctrine of sovereign immunity precludes bringing suit against the government without its consent.[6] Founded on the ancient principle that "the King can do no wrong," sovereign immunity bars holding the government or its political subdivisions liable for torts of its officers or agents unless such immunity is expressly waived by statute or necessary inference from legislative enactment.[7]

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

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

Liability is limited to $200,000 by any one person, and $300,000 for the same incident or occurrence.[8]

Background Screening

In 2007, background screening for noninstructional contractors who are permitted access to school grounds when students are present was revised via the creation of s. 1012.467, F.S. This

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[3] Section 163.31777, F.S. With a few municipal exceptions, all counties, municipalities, and district school boards have entered into interlocal agreements that include provisions related to joint use of facilities. Florida Department of Education, *Senate Bill 392 Bill Analysis* (January 28, 2013).
[4] *Id.*
[5] Section 1001.32(2), F.S.
[6] *Black's Law Dictionary* 1396 (6th ed. 1990).
[7] *Id*.
[8] Section 768.28(5), F.S.

law requires a fingerprint-based criminal history check to be performed on each noninstructional contractor:[9]
- Who is permitted access to school grounds when students are present;
- Whose performance of the contract with the school or school board is not anticipated to result in direct contact with students; and
- For whom any unanticipated contact would be infrequent and incidental.

"Noninstructional contractor" means:[10]

> [A]ny vendor, individual, or entity under contract with a school or with the school board who receives remuneration for services performed for the school district or a school, but is not otherwise considered an employee of a contractor who performs services for the school district or school under the contract and any subcontractor and its employees.

III. Effect of Proposed Changes:

Public Use of School Facilities

The bill authorizes a district school board to enter into a joint-use agreement with a local government or a private organization. The bill also authorizes school boards to adopt public access policies, regarding indoor or outdoor recreation and sports facilities on public school property.

The joint-use agreement must specify the facilities to be used; dates and times of use; terms and conditions governing use; provide for the full indemnification of the district board by the local government or private organization for any damages arising from the joint use; and must require the local government or private organization to maintain liability insurance of at least $200,000 per person and $300,000 per incident to cover the indemnification.

Joint Community Projects

The bill authorizes a district school board to enter into an agreement with a county, municipality, or Florida College System institution to develop and operate joint community projects.

The joint community project agreement must specify how the project will be developed and operated; where the project will be located; that the operating entity may enter into joint-use agreements; how public access policies will be adopted; and any other provision necessary to develop and operate the joint community project.

The joint-use agreement for a joint community project must specify the facilities to be used; dates and times of use; terms and conditions governing use of such facilities; provide for the full indemnification of the district school board by the county, municipality, or Florida College System institution for any damages arising from the joint use; and must require the county,

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[9] *See* section 1012.467(2)(a), F.S.
[10] *See* section 1012.467(1)(a), F.S.

municipality, or Florida College System institution to maintain liability insurance of at least $200,000 per person and $300,000 per incident to cover indemnification.

The bill specifies that it does not waive sovereign immunity beyond the limited waiver provided in s. 768.28, F.S.

Background Screening

To avoid potential confusion regarding the applicability of background screening requirements, the bill provides that s. 1012.467, F.S., does not apply to the portion of the property made available pursuant to this section when there is no school-sponsored or school-related program or activity in progress. The applicability of s. 1012.467, F.S., is not expanded by this bill.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII.   Related Issues:

None.

VIII.   Statutes Affected:

This bill creates section 768.072 of the Florida Statutes.

IX.   Additional Information:

A.   Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 25, 2014:
- Omits provisions that were in SB 396 regarding the:
  - Information to be included in public access policies.
  - Ability to appeal unresolved joint-access agreement negotiations to the superintendent.
  - Department of Education posting joint-use agreements on its website and issuing grants to implement joint-use agreements.
  - Restriction of the limited waiver of sovereign immunity for public school property being used pursuant to the bill.
- Adds provisions to SB 396 regarding the:
  - Information to be included in joint-use agreements, including requiring the full indemnification of the district school board for any damages arising from the joint use, and requiring liability insurance of at least $200,000 per person and $300,000 per incident to cover the indemnification.
  - District school board's authority to enter into an agreement with a city, county, municipality, or Florida College System Institution to develop and operate a joint community project.
  - Exemption of s. 1012.467, F.S., relating to background screening for certain noninstructional contractors, to property used pursuant to this law when there is no school-sponsored or school-related program or activity in progress.

B.   Amendments:

None.