

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 365 Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain & Off-Road Bicycling

**SPONSOR(S):** Gonzalez

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 1 N	Darden	Miller
2) Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
3) Local & Federal Affairs Committee	17 Y, 0 N	Darden	Kiner

### SUMMARY ANALYSIS

Government entities may designate specific areas for skateboarding, inline skating, paintball, freestyle bicycling, or mountain and off-road bicycling. In those areas, the government entity is required to post a rule stating which activities are authorized in the area and that children under 17 years of age may not engage in the activity without written consent from the child's parents or legal guardians. A government entity's failure to obtain written consent may potentially create liability for injuries.

The bill repeals the requirement that a government entity obtain written consent from a parent or guardian before a child under the age of 17 can engage in skateboarding, inline skating, or freestyle bicycling in designated areas. The bill also amends the written consent requirement for paintball and mountain and off-road bicycling to require the approval of only one parent or guardian.

This bill does not have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### BACKGROUND

Under current law, governmental entities<sup>1</sup> can designate specific areas of property they own or control for skateboarding, inline skating, paintball, freestyle bicycling, or mountain and off-road bicycling.<sup>2</sup> Many of the largest cities in the state operate skateboarding and inline skating parks.<sup>3</sup> In those areas, the government entity is required to post a rule stating which activities are authorized in the area and stating that children under 17 years of age may not engage in the activity without written consent from the child's parents or legal guardians.<sup>4</sup>

Some government entities have expressed concern about the mechanics of obtaining written consent. Risk managers and attorneys representing local governments have questioned who would secure the consent from the parent and what procedures can be used to verify the information.<sup>5</sup> Governmental entities have also expressed concern over the level of liability protection provided by the assumption of risk defense, since s. 316.0085, F.S., provides that parties engaging in the activity assume the inherent risk, regardless of age, but the written consent requirement suggests the waiver is not applicable when concerning minors.<sup>6</sup>

A government entity or public employee may be held liable if there was:

- A failure to guard against or warn of a dangerous condition of which a participant does not and cannot reasonably be expected to have notice;<sup>7</sup>
- An act of gross negligence that is the proximate cause of the injury;<sup>8</sup> or
- Failure of the governmental entity to obtain written consent from parents or legal guardians before allowing a child under 17 years of age to engage in the allowed activity in the designated area, unless the child's participation is in violation of posted rules.<sup>9</sup>

Public employees or government entities are not otherwise liable for personal injuries or property damage resulting from engaging in the permitted activity.<sup>10</sup> The statute does not limit the liability for independent concessionaries and other parties, even if the party is in a contractual relationship with the governmental entity for use of the public property.<sup>11</sup>

Participants and observers in skateboarding, inline skating, paintball, freestyle bicycling, or mountain and off-road bicycling assume the "inherent risk"<sup>12</sup> of the activities, regardless of age, and are therefore legally responsible for all damages, injuries, or deaths which result.<sup>13</sup> Participants engaged in

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<sup>1</sup> "Governmental entity" includes the United States, the State of Florida, any county or municipality, or any department, agency, or other instrumentality thereof, school board, special authority, or other entity exercising governmental authority. S. 316.0085(2), F.S.

<sup>2</sup> S. 316.0085(3), F.S.

<sup>3</sup> See Joseph G. Jarret, *Skating on Thin Concrete: The Florida Legislature's Response to Skateboarders and Skaters*, FLORIDA BAR JOURNAL, November 2002, at 74. The cities of Gainesville, Jacksonville, Orlando, St. Petersburg, Tallahassee, and Tampa, among others, have constructed skate parks.

<sup>4</sup> S. 316.0085(3), F.S.

<sup>5</sup> Jarret, *supra* note 3 at 74.

<sup>6</sup> *Id.*

<sup>7</sup> S. 316.0085(5)(a), F.S.

<sup>8</sup> S. 316.0085(5)(b), F.S.

<sup>9</sup> S. 316.0085(5)(c), F.S. For mountain or off-road bicycling, the parent or legal guardian must demonstrate written consent was given before the child entered the designated area.

<sup>10</sup> S. 316.0085(4), F.S.

<sup>11</sup> S. 316.0085(6), F.S.

<sup>12</sup> S. 316.0085(2)(b), F.S. ("Inherent risk' means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding, inline skating, paintball and freestyle or mountain and off-board bicycling.").

<sup>13</sup> S. 316.0085(7)(a), F.S.

skateboarding, inline skating, paintball, or freestyle or mountain and off-road bicycling, whether in designated areas or not, are responsible for:

- Using equipment within the limits of his or her ability;<sup>14</sup>
- Using equipment as intended;<sup>15</sup>
- Maintaining control of him or herself and the equipment used;<sup>16</sup> and
- Refraining from acting in a manner that could cause or contribute to the death or injury of any person.<sup>17</sup>

Government entities are not required to eliminate or limit the inherent risk in the activity.<sup>18</sup> An insurance policy carried by a government entity which covers any activity described in the statute does not constitute a waiver of the protections provided by the statute.<sup>19</sup>

## **EFFECT OF PROPOSED CHANGES**

The bill repeals the requirement for a government entity providing a designated area for skateboarding, inline skating, or freestyle bicycling to obtain written consent from a parent or legal guardian before permitting a child under 17 years of age to engage in the allowed activity. The bill retains the written consent requirement before a child engages in paintball or mountain and off-road bicycling in a designated area.

The bill amends the written consent requirement to require only the permission of one parent or legal guardian. The bill also removes language in current law that provides that a governmental entity may not be shielded from liability if it fails to obtain written consent from a parent or legal guardian before a child under the age of 17 engages in skateboarding, inline skating, or freestyle bicycling in a designated area.

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 316.0085, F.S., relating to skateboarding; inline skating; freestyle or mountain and off-roading bicycling; paintball; definitions; liability.

Section 2: Provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

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<sup>14</sup> S. 316.0085(7)(b)(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> S. 316.0085(7)(b)(2), F.S.

<sup>17</sup> S. 316.0085(7)(b)(3), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> S. 316.0085(8), F.S.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.