

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill reduces the liability of school district sponsors for the acts or omissions of charter schools.

Promotes Personal Responsibility – This bill increases personal accountability by providing that charter schools (and not the school district sponsors) will retain sole responsibility for the charter schools' acts and omissions.

B. EFFECT OF PROPOSED CHANGES:

Charter schools are public schools that operate under a performance contract, or a “charter” entered into with a sponsoring school district. The charter school statute (s. 1002.33) frees them from many regulations created for traditional public schools while holding them accountable for academic and financial results.

School Board Sponsor Liability

Currently, s. 1002.33 is silent with respect to whether a sponsor school district can be held liable for the acts and omissions of charter schools or their agents, employees or governing board.

However, in the case of *P.J. v. Gordon*, the United States District Court for the Southern District of Florida ruled that the school board's statutory responsibilities for approving the school's charter and monitoring its implementation do not subject it to civil liability for actions and omissions relating to the day-to-day management of the charter school.¹ The court specifically noted that s.1002.33 imposes no duty on the school board sponsor to monitor or supervise the hiring, training or supervision of the charter school's employees or to ensure that the charter school maintains adequate procedures for ensuring the safety and welfare of its students.²

The court noted that the district sponsor's statutory duties involve ensuring academic accountability, monitoring revenues and expenditures, and approving and monitoring the provisions of the charter agreement.

This bill would codify the court's ruling with regard to the district's immunity from suit for day-to-day operations (acts and omissions) of a charter school as well as employment actions of a charter school. It would then go further and also provide the district with protection from any private cause of action based on the monitoring responsibilities of the district with regard to any charter school it sponsors.

Sovereign Immunity

Article X, section 13 of the Florida Constitution provides “absolute immunity for the state and its agencies absent waiver by legislative enactment or a constitutional amendment.”³ Section 768.28(5), F.S., provides a limited waiver of the state's sovereign immunity by making the state and its agencies and subdivisions liable for tort claims in the same manner and to the same extent as a private individual under the circumstances. Despite s. 768.28(5)'s waiver, Florida's Fourth District Court of Appeals

¹ P.J. v. Gordon, 359 F.Supp. 2d 1347, 1351 (SD Fla. 2005).

² *Id.* at 1349-50.

³ Orlando v. Broward County, --- So. 2d ---, 2005 WL 3478364, at *2 (Fla. 4th Dist. Ct. App. 2005) (quoting Cir Ct. of the Twelfth Jud. Cir. v. Dep't of Natural Resources, 339 So. 2d 1113, 1114 (Fla. 1976).

recently determined that certain discretionary, planning-level decisions of a school board remain immune from tort liability.⁴

In the context of charter schools, to the extent a sponsor school district's monitoring duties may be properly characterized as "discretionary" or "planning-level," they may already be immune from tort liability under the doctrine of sovereign immunity. The bill serves as a clear legislative intent *not* to waive sovereign immunity for such duties.

Contract Liability

In the event of a non-renewal or termination of a charter, s. 1002.33 currently prevents a district from assuming any of the charter school's debts for service contracts, except where the district and the charter school governing board previously agreed in detail in writing that the district would assume the debt. This bill expands this limitation to include all contractual debts of the charter school, not just those for services.

Actions and Omissions Under the Sponsor's Direct Authority

The committee substitute includes a provision that clarifies that school district sponsors remain subject to liability for acts or omissions under the sponsor's direct authority as described in s. 1002.33.

C. SECTION DIRECTORY:

Section 1. Amends s. 1022.33 relating to charter schools; provides that the sponsor of a charter school shall not be liable for civil damages for certain actions; provides that the duty to monitor a charter school shall not give rise to a private cause of action; expands a school district's immunity from assumption of contractual debts.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁴ *Id.* (citing *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010, 1022 (Fla. 1979)(holding that although s. 768.28 evinces the intent of the legislature to waive sovereign immunity on a broad basis, nevertheless, certain "discretionary" governmental functions remain immune from tort liability)).

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 7, 2006, the Choice and Innovation Committee adopted one amendment and reported the bill favorably with a Committee Substitute (CS). The amendment narrowed the scope of the expression of intent not to waive sovereign immunity.