

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 135 CS Charter Schools
SPONSOR(S): Greenstein
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1030

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------------------|-----------------|----------------|
| 1) <u>Choice & Innovation Committee</u> | <u>7 Y, 0 N, w/CS</u> | <u>Hunker</u> | <u>Kooi</u> |
| 2) <u>Civil Justice Committee</u> | <u>7 Y, 0 N</u> | <u>Shaddock</u> | <u>Bond</u> |
| 3) <u>Education Appropriations Committee</u> | <u>18 Y, 0 N</u> | <u>Eggers</u> | <u>Hamon</u> |
| 4) <u>Education Council</u> | <u>9 Y, 0 N</u> | <u>Hunker</u> | <u>Cobb</u> |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

This bill provides that a district school board sponsor of a charter school will not be held liable for civil damages for actions or omissions committed by the charter school's governing board, its officers, or employees.

This bill also provides that the sponsor's duty to monitor a charter school may not be used as the basis for a lawsuit against the sponsor. However, a school district sponsor remains subject to tort liability for acts or omissions under the sponsor's direct authority. This bill further insulates a school district from assumption of contractual debts of the charter school to cover all contracts made between the charter school governing body and a third party.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill reduces the contractual liability of school district sponsors for the contracts of charter schools.

B. EFFECT OF PROPOSED CHANGES:

Background

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, F.S.) frees a charter school from many regulations created for traditional public schools while holding such a charter school accountable for academic and financial results.

Current Law

School Board Sponsor Liability

Section 1002.33, F.S. 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. In *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 noted the district sponsor's statutory duties involve ensuring academic accountability, monitoring revenues and expenditures, and approving and monitoring the provisions of the charter agreement. The court specifically ruled that s.1002.33, F.S. 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

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. Florida's Fourth District Court of Appeal recently affirmed that certain discretionary, planning-level decisions of a school board remain immune from tort liability.⁴

Contract Liability

In the event of a non-renewal or termination of a charter, s. 1002.33, F.S. currently prevents a district from assuming any of the charter school's debts for service contracts, except where the district and the

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

² *Id.* at 1349-50.

³ *Orlando v. Broward County*, 920 So. 2d 54 (Fla. 4th DCA 2005) (quoting *Cir Ct. of the Twelfth Jud. Cir. v. Dep't of Natural Resources*, 339 So. 2d 1113, 1114 (Fla. 1976).

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)).

charter school governing board previously agreed in detail in writing that the district would assume the debt.

Effect of Bill

This bill codifies the court's ruling in *P.J.* 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. The bill further provides 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.

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 legislative intent *not* to waive sovereign immunity for such duties.

This bill expands the contract limitation to include all contractual debts of the charter school, not just those for services. Finally, the bill includes a provision that school district sponsors remain subject to liability for acts or omissions under the sponsor's direct authority as described in s. 1002.33, F.S.

C. SECTION DIRECTORY:

Section 1, amends s. 1022.33, F.S. relating to charter schools.

Section 2, provides an effective date of July 1, 2006.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."⁵ In *Kluger v. White*,⁶ the Florida Supreme Court held that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show an overpowering public necessity to abolish the right and no alternative method of meeting such public necessity.⁷

Based on the ruling by the court in *P.J. v. Gordon* it does not appear that a person has a cause of action to sue a school board for the torts of a charter school. To the extent that this bill merely codifies existing law, it may not implicate the access to court provision.

B. RULE-MAKING AUTHORITY:

None.

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.

⁵ See generally 10A Fla. Jur. 2d, Constitutional Law, ss. 360-69.

⁶ *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

⁷ *Kluger* at 4.