

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Appropriations Committee

BILL: CS/CS/SB 1030

INTRODUCER: Education Appropriations Committee, Judiciary Committee and Senator Margolis

SUBJECT: Charter Schools

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	<u>Fav/1 amendment</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Golden</u>	<u>Newman</u>	<u>EA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill establishes the Florida Schools of Excellence Commission as an independent, state-level charter school authorizing entity. The commission is authorized to appoint an executive director and to employ staff as necessary to perform its duties and responsibilities.

The bill gives the commission the power to approve charter schools to serve K-12 public school students in any district of the state without the approval of the district school board. It also gives the commission the power to authorize only municipalities, state universities, community colleges, or regional educational consortia to approve charter schools to serve K-12 public school students.

In addition, the bill provides the commission with authority to: authorize and act as a sponsor of charter schools; approve or deny charter school applications; renew or terminate charters; monitor and annually review charter school performance; monitor the financial management of charter schools; recommend statutory changes regarding standards for cosponsors; uniformly administer charter schools; and perform all the duties of sponsors as provided in s. 1002.33 (5)(b) and (20), F.S.

Applications by cosponsors shall begin no later than January 21, 2007. The commission shall have the authority to limit the number of charter schools that a cosponsor may approve. Application denial shall not be subject to Chapter 120, F.S. but may be appealed to the State Board of Education.

The bill provides that subsections of s. 1002.33, F.S. pertaining to the charter; causes for renewal or termination; charter school requirements; eligible students; participation in interscholastic

extracurricular activities; employees; financial arrangements; exemption from statutes; funding; facilities; and capital outlay funding shall apply to the commission, cosponsors, and charter schools under the authority of the commission.

Charter schools currently sponsored by school districts shall remain as such unless they choose to apply to the commission or one of its cosponsors if the charter expires prior to establishing the new charter. School boards may also rescind or waive the obligations of an existing charter for purposes of the charter school's application to the commission.

This bill grants district school board and university sponsors of charter schools immunity from civil liability under state law for the following:

- Personal injury, property damage, or death due to an act or omission of an officer, employee, agent, or governing body of the school; and
- Employment actions taken by an officer, employee, agent, or governing body of the charter school.

This bill specifies that the sponsor's duties to monitor the charter school do not form the basis for a private cause of action, nor do they constitute a waiver of sovereign immunity by the sponsor. The language limits the immunity for sponsors provided by the bill to private causes of action for acts or omissions not under the sponsor's direct authority.

This bill reduces the liability of the school district sponsor of a charter school for obligations of that school if it does not have its charter renewed or has its charter terminated. Current law prohibits the sponsoring district from assuming debt for contracts for services between the charter school and a third party. The bill would revise this provision so that the sponsoring district is prohibited from assuming such debt for all contracts between a school and a third party.

The bill has an unspecified appropriations consequence.

This bill creates section 1002.335, Florida Statutes and substantially amends section 1002.33, Florida Statutes.

II. Present Situation:

History of Charter Schools

Charter schools are public schools, created through a charter with a public organization, such as the state or a local school district.¹ The charter serves as a contractual agreement that links accountability with performance, often through student scores on state assessment tests.² Issuance of a charter comes with a specified term of operation, typically from three to five years.³ Thereafter, the charter is subject to renewal. The state of Minnesota was the first to pass a charter school law in 1991, and to establish a charter school in 1992.⁴ Today, 41 states, the District of Columbia, and Puerto Rico have charter school laws, although the majority of all charter schools are concentrated in a handful of states.⁵ These are Arizona, California, Florida, Texas, and Michigan.⁶ Estimates for the current numbers of charter schools range from 2,996 to 3,400 charter schools.⁷

Although terminology relating to charter schools differs among state laws, some terms have common meanings. An authorizer or sponsor is generally understood to refer to “the entity that approves the proposed school and issues the charter.”⁸ An organizer refers to the entity that initially proposes the school and assumes responsibility for its day-to-day operation and performance.⁹

Charter Schools in Florida

The Florida Legislature authorized charter schools in 1996,¹⁰ and the state’s first five charter schools opened later that year. In 2006, the number of charter schools has grown to 333 schools. Enrollment rolls for the 2005-2006 school year show in excess of 92,000 Florida students attending charter schools. For the 2005-2006 school year, more than 50 new charter schools have opened.¹¹

Statutory Requirements for Charter Schools in Florida

The Legislature authorized charter schools in Florida with the passage of HB 403 in 1996.¹² Section 1002.33, F.S., provides that all charter schools in the state are public schools, which may

¹ Suzanne E. Eckes and Jonathan A. Plucker, *Charter Schools and Gifted Education: Legal Obligations*, 34 JLEDUC 421, 423 (July 2005).

² Suhrid S. Gajendragadkar, *The Constitutionality of Racial Balancing in Charter Schools*, 106 CLMLR 144, 145 (January 2006).

³ Eckes and Plucker, *supra* note 1.

⁴ *Id.* at 422.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; see also Gajendragadkar, *supra* note 2, at 144.

⁸ Eckes and Plucker, *supra* note 1, at 422 (FN1).

⁹ *Id.*

¹⁰ Chapter 96-186, L.O.F.

¹¹ See Department of Education, Office of Independent Education and Parental Choice, *Charter Schools*, available at http://www.floridaschoolchoice.org/Information/Charter_Schools/ (last visited March 18, 2006).

¹² Chapter 96-186, L.O.F.

be formed by opening a new school or converting an existing public school.¹³ Guiding principles for charter schools are provided in statute and include that charter schools must:

- Meet high standards of student success while providing parents with options to choose from diverse opportunities;
- Promote enhanced academic success and financial efficiency by balancing responsibility with accountability; and
- Supply parents with adequate information regarding their child's grade level of reading and whether their child keeps pace with learning, based on a year's worth of learning for every year enrolled at the charter school.¹⁴

Section 1002.33, F.S., authorizes various parties to apply for a new charter school, including individuals, teachers, parents, a municipality, or a legal entity organized in Florida.¹⁵ Different rules apply to *conversion* charter schools. To convert a public school to a charter school requires both application by the district school board, the principal, teachers, parents, and/or the school advisory council of a public school that has operated for at least two years, and support by at least 50 percent of the parents.¹⁶

The Charter

The charter itself is a written contractual agreement, entered into by the sponsor and applicant, which provides the terms and conditions for the operation of the charter school.¹⁷ In addition to other issues, the document is required to address cancellation of the charter if inadequate progress is made by the school.¹⁸

Sponsorship Requirements

Section 1002.33, F.S., authorizes the following entities to serve as sponsors:

- A district school board when the charter school will be in the county where the board has jurisdiction; or
- A state university that grants a charter to a lab school, which will then be designated a charter lab school.¹⁹

The sponsor of a charter school is obligated to perform the following duties:

- Monitor and review the charter school in its progress toward the goals identified in the charter;
- Monitor revenues and expenditures of the charter school;

¹³ Section 1002.33(1), F.S.

¹⁴ Section 1002.33(2)(a), F.S.

¹⁵ Section 1002.33(3)(a), F.S.

¹⁶ Section 1002.33(3)(b), F.S.

¹⁷ Section 1002.33(6) (h), F.S.

¹⁸ Section 1002.33(7)(a)12, F.S.

¹⁹ Section 1002.33(5)(a), F.S.

- Ensure that the charter is innovative and consistent with state education goals provided in statute; and
- Ensure that the charter school participates in the state's education accountability program.²⁰

Sponsor Liability

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

At common law, however, a court has found a district school board that sponsored a charter school immune from liability. 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.²¹ The court specifically noted 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.²² Duties that are assigned to the district sponsor, noted the court, include ensuring academic accountability, monitoring revenues and expenditures, and approving and monitoring the provisions of the charter agreement.

Waiver of Sovereign Immunity

Since common law, sovereign immunity applies to the state, including state agencies or subdivisions, such that the state or an entity of the state is generally immune from liability in civil actions. Section 768.28, F.S., however, provides a waiver of sovereign immunity in tort actions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of an agency or subdivision of the state. The waiver of sovereign immunity is monetarily capped at \$100,000 per claimant or \$200,000 per incident or occurrence.²³

The charter school law provides that the governing body and employees of a charter school are granted sovereign immunity in tort actions, so that damages are capped at \$100,000 a person or \$200,000 per incident.²⁴ University boards of trustees are designated as corporations acting as instrumentalities or agencies of the state, thereby subject to sovereign immunity and the damages caps provided in statute.²⁵ Although the statutes do not expressly identify district school boards as agencies or subdivisions of the state, it is generally understood that district school boards are considered to be subject to the sovereign immunity caps. By way of example, s. 1006.24, F.S., provides that district school boards are liable for tort claims involving school buses in the same

²⁰ Section 1002.33(5)(b), F.S.

²¹ 359 F. Supp. 2d 1347, 1351 (S.D. Fla. 2005) (addressing a suit against a sponsoring district school board).

²² *Id.* at 1349-50.

²³ Section 768.28(1) and (5), F.S.

²⁴ Section 1002.33(12)(h), F.S.

²⁵ Section 1001.72(5), F.S.

way as other entities referenced in s. 768.28, F.S., except that the total liability per incident is limited to a specified formula set out in statute.²⁶ Additionally, the courts have consistently treated district school boards as political subdivisions of the state.²⁷

III. Effect of Proposed Changes:

The bill substantially changes the authority to approve charter schools for K-12 public school students by creating the Florida Schools of Excellence Commission as an independent, state-level charter school authorizing entity under the supervision of the State Board of Education and in collaboration with the Department of Education.

The bill provides the commission with the power to approve contracts for the establishment and operation of charter schools in any school district in the state without the approval of the district school board of the district in which the charter school is to be located. In addition, the independent commission is given the power to authorize any municipality, state university, community college, and regional educational consortium to approve charter schools to serve K-12 public school students in any school district in the state without approval of the district school board of the district in which the charter school is to be located.

The commission is to be appointed by the State Board of Education following recommendation for three appointees by the Governor, one of whom is to be the Commissioner of Education, two by the President of the Senate and two by the Speaker of the House. Recommendations shall include no fewer than two nominees for any appointment to the commission and shall meet specified eligibility requirements.

The commission is authorized to appoint an executive director; employ staff as necessary to perform its duties and responsibilities; and may be reimbursed for travel and per diem.

Powers and Duties of the Commission

The bill provides that the commission shall have the power to:

- Authorize and act as sponsor of charter schools, including the approval or denial of charter school applications and non-renewal or termination of charter schools.
- Authorize only municipalities, state universities, community colleges, and regional educational consortia to act as cosponsors of charter schools.
- Approve or deny Florida Schools of Excellence (FSE) charter school applications and renew or terminate charters.
- Review charter school applications and assist in the establishment of charter schools throughout the state. An FSE charter school shall exist as a public school within the state as a component of the delivery of public education within Florida's K-20 education system.
- Develop, promote, and disseminate best practices for charter schools.

²⁶ Section 1006.24(1), F.S., provides: "[T]he total liability to persons being transported for all claims or judgments of such persons arising out of the same incident or occurrence shall not exceed an amount equal to \$5,000 multiplied by the rated seated capacity of the school bus or other vehicle, as determined by rules of the State Board of Education, or \$100,000, whichever is greater."

²⁷ *Harrison v. Escambia County School Board*, 434 So. 2d 316, 320 (Fla. 1983); *Rice v. Lee*, 477 So. 2d 1009, 1010 (Fla. 1st DCA 1985); *Duval County School Board v. Kebert*, 909 So. 2d 438, 441 (Fla. 1st DCA 2005).

- Develop, promote, and require high standards of accountability for any school that applies and is granted a charter.
- Monitor and annually review and evaluate the performance of the charter schools it sponsors.
- Report student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.
- Monitor the financial management of each FSE charter school.
- Review and recommend to the Legislature any necessary revisions to statutory requirements regarding qualification and approval of municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools.
- Review and recommend to the Legislature any necessary revisions to statutory requirements regarding standards and criteria for revocation of approval of cosponsors of FSE charter schools.
- Allow state universities and community colleges that sponsor FSE charter schools to enable students to take college courses and receive high school and college credit for such courses.
- Support municipalities that express an intent to cosponsor and establish charter schools within the municipal boundaries.
- Uniformly administer high-quality charter schools.
- Work with school districts to provide administrative services to their charter schools.
- Perform all of the duties of sponsors set forth in s.1002.33 (5) (b) and (20), F.S..

Approval of Cosponsors

The commission shall begin to accept applications by municipalities, state universities, community colleges, and regional educational consortia no later than January 31, 2007. Applications shall be approved or denied within 90 days from receipt.

The commission shall limit the number of charter schools that a cosponsor may approve; however, the commission may raise the limit previously set.

The commission's decision to deny an application or to revoke approval of a cosponsor is not subject to Chapter 120, Florida Statutes, but may be appealed to the State Board of Education pursuant to s. 1002.33 (6), F.S..

Cosponsors must enter into an agreement that defines the cosponsor's rights and obligations including a provision requiring the cosponsor to annually appear before the commission and provide a report pursuant to s. 1002.33 (9) (1), F.S., and any other reasonable terms deemed appropriate by the commission.

The commission may revoke a cosponsor's approval after a hearing under rules of the State Board of Education. The commission may assume sponsorship of any charter school sponsored by the cosponsor at the time of revocation. Thereafter, the commission may assume permanent sponsorship of such school or may direct the school's governing body to another cosponsor or the appropriate district school board for sponsorship.

Charter School Application and Review

The application and review process shall be subject to the same requirements as those provided in s. 1002.33 (6), F.S. The bill states that “All references to a district school board in s. 1002.33 (6) (b), F.S., shall refer to the commission or its cosponsors that receive applications for review.”

Applications of Existing Charter Schools

Charter schools approved by a district school board may apply to the commission or one of its cosponsors if their charter contract with the district school board will expire prior to entering into a new charter with the commission or one of its cosponsors. Also, a district school board may agree to rescind or waive the obligations of a current charter contract to allow an application to be submitted to the commission or one of its cosponsors.

Application of Charter School Statutes

The bill states that “The provisions of s. 1002.33 (7)-(12), (14), and (16)-(19), F.S., shall apply to the commission, cosponsors, and charter schools approved pursuant to this section.” These sections address: the charter; causes for renewal or termination; charter school requirements; eligible students; participation in interscholastic extracurricular activities; employees; financial arrangements; exemption from statutes; funding; facilities; and capital outlay funding.

Application Process and Review

The bill amends s. 1002.33 (6) F.S., to add a new paragraph (d) relating to an applicants right of appeal of denial of an application for a charter by a district school board. The new provision provides that the right to appeal is contingent on the applicant having submitted the same or substantially similar application to the Florida Schools of Excellence Commission or one of its cosponsors. Any applicant whose application is denied by the commission or one of its cosponsors subsequent to its denial by a district school board may exercise its right to appeal the district school board’s denial under paragraph (c) within 30 days after receipt of the commission’s or cosponsor’s denial or failure to act on the application. The applicant forfeits its right to appeal if it fails to submit its application to the commission or one of its cosponsors by August 1 of the school year immediately following the district school board’s denial of the application.

Charter School Requirements

The bill amends s.1002.33 (9), F.S., to add a new paragraph (o) to require that a charter school shall meet the class size requirements pursuant to s. 1003.03, F.S..

Funding and Facilities

The bill amends s. 1002.33 (17) and (18), F.S., to strike “district school board” and insert “sponsor”. Subsection (17) relates to funding and subsection (18) relates to facilities.

Providing Immunity and Limiting Liability

This bill would codify the court's ruling in *P.J. v. Gordon*, with regard to the school 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.²⁸ Both district school board and university sponsors of charter schools will have immunity from civil liability in lawsuits for the following:

- Personal injury, property damage, or death due to an act or omission of an officer, employee, agent, or governing body of the charter school; and
- Employment actions taken by an officer, employee, agent, or governing body of the charter school.

Additionally, the bill specifies that the sponsor's duties to monitor the charter school do not form the basis for a private cause of action. This immunity for sponsors provided by the bill is limited to private causes of action for acts or omissions not under the sponsor's direct authority. To the extent a sponsor'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.²⁹ The bill serves as a clear legislative intent *not* to waive sovereign immunity for sponsors based upon their monitoring duties.

This bill reduces the liability of a school district sponsor of a charter school for the obligations of that school if it does not have its charter renewed or has its charter terminated. Current language prohibits the sponsoring district from assuming debts for contracts for *services* between the charter school and a third party. The bill revises the language so that the sponsoring district is immune from liability for *all* contracts between a school and third party.

This bill takes effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁸ 359 F. Supp. 2d 1347, 1351 (S.D. Fla. 2005). This case is on appeal and is scheduled for oral argument before the Eleventh Circuit Court of Appeals on March 29, 2006.

²⁹ *Orlando v. Broward County*, 920 So. 2d 54, 56 (Fla. 4th DCA 2005) (applying *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010, 1022 (Fla. 1979) (holding that although s. 768.28, F.S., evinces the intent of the legislature to waive sovereign immunity on a broad basis, nevertheless, certain "discretionary" governmental functions remain immune from tort liability) to the context of a negligence suit against a school board).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A sponsor of a charter school, such as a district school board or state university, will be immune from civil suit for acts or omissions not under the sponsor's direct authority which involve an agent of the charter school. Therefore, an injured party will not be able to recover anything from the sponsor. The injured party could still maintain a suit against the charter school. It is unclear whether a remedy for damages would exist if the charter school is terminated, because any unencumbered public funds revert to the district school board pursuant to s. 1002.33(8)(e), F.S., in the event that the charter school is dissolved.

Private for-profit entities that provide services for the construction and operation of charter schools would likely benefit from providing services to the additional charter schools approved pursuant to Section 1002.335, F.S..

C. Government Sector Impact:**The Florida Schools of Excellence Commission**

Section 1002.335 (4) (b) 16. provides that the commission shall "perform all of the duties of sponsors set forth in s. 1002.33 (20), F.S." Services provided by sponsors include contract management; full-time equivalent and data reporting; exceptional student education administration; test administration, including payment of the cost of state-required or district required student assessments; processing of teacher certificate data; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. A total administrative fee for the provision of such services shall be calculated based upon 5 percent of the available funds defined in paragraph (17) (b) for all students. The 5 percent administrative fee is for enrollment up to and including 500 students.

The powers and duties given the commission appear to be broad, with state-wide responsibility and will require a professional staff. The commission is authorized to appoint an executive director, to employ staff as necessary to perform its duties and responsibilities, and to be reimbursed for travel and per diem. However, it is unclear whether the 5 percent administrative fee will provide sufficient resources to meet the responsibilities of the commission and the cosponsors outlined in the bill. Neither this bill nor the General Appropriations Act appropriates any funds for the commission's expenses.

See Section VII., Related Issues, regarding school district authority to expend ad valorem tax revenue for students where the district school board has no authority or responsibility.

Limitation of Liability

Sponsoring district school boards and state universities will not be liable for lawsuits (and any associated damages) based on actions taking place at a charter school that are outside of the sponsor's authority to monitor charter schools.

In addition, upon termination of a charter school, the sponsoring school district will not be liable for any debt existing between the charter school and a third party for *any* contract, not just a contract for services, as previously provided.

Section 1002.335, F.S., provides that disposition of the facilities and assets upon termination or dissolution of charter schools approved pursuant to this section shall be the responsibility of the cosponsor. Any unencumbered public funds or facilities are not required to revert to the district school board.

VI. Technical Deficiencies:

The bill creates a new entity, the "cosponsor." The bill may need to be amended to clarify the differences between the duties and liabilities of "sponsors" and "cosponsors".

VII. Related Issues:

Article IX, Section 4 of the State Constitution provides that "Each county shall constitute a school district..."; "In each school district there shall be a school board..."; and "The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes...". In addition, Article VII, Section 9 of the State Constitution provides that "counties, school districts, and municipalities shall, ... be authorized by law to levy ad valorem taxes ... for their respective purposes."

This bill establishes an "independent" entity with the "power" to approve the establishment and operation of charter schools serving K-12 public school students in any school district in the state without the approval of the district school board and would require district school boards to expend tax funds levied by the board to fund a school that the district school board has not approved and over which the board has no authority or control.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
