

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 Committee

BILL: CS/CS/CS/SB 1030

INTRODUCER: Education Committee, Education Appropriations Committee, Judiciary Committee and Senator Wise

SUBJECT: Charter Schools

DATE: April 24, 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.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	<u>Fav/CS</u>
5.	_____	_____	<u>GO</u>	<u>Withdrawn</u>
6.	_____	_____	_____	_____

I. Summary:

This bill establishes the Florida Schools of Excellence Commission (FSE) as an independent entity with the authority to approve charter schools. The FSE is authorized to appoint an executive director and employ staff as necessary to perform its duties and responsibilities.

To retain exclusive authority over approval of charter schools in its jurisdiction, a district school board must submit a written resolution to the State Board of Education, which demonstrates that the school board has complied with specified guidelines. The bill establishes a State Board of Education review process of district school board resolutions, and authorizes other parties to challenge a grant of exclusive authority.

Subject to the State Board grant of exclusive authority to a local district school board, the bill gives the FSE the power to approve and act as a sponsor of charter schools in any district of the state without the approval of the district school board. It also gives the FSE the power to authorize municipalities, state universities, community colleges, or regional educational consortia to act as cosponsors of charter schools to serve K-12 public school students. The FSE must limit the number of charter schools that a cosponsor may approve.

In addition, the bill provides the FSE with the following authority:

- 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 required in law.

This bill does not authorize administrative review of a rejected application, but rather, provides that a decision may be appealed to the State Board of Education.

The bill provides that certain provisions of current charter school law, specifically addressing causes for renewal or termination; charter school requirements; eligible students; participation in interscholastic activities; employees; financial arrangements; exemption from statutes; facilities; and funding, including capital outlay funding, apply to the FSE, cosponsors, and charter schools under the authority of the FSE.

Subject to a State Board grant of exclusive authority to a district school board, charter schools currently sponsored by school districts maintain the same relationship with school districts unless the following occurs:

- The charter applies to the FSE and the charter contract will expire prior to the creation of the new charter; or
- A sponsor school board rescinds or waives the obligations of an existing charter, in which case the charter is then eligible to apply to the FSE.

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 charter 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 any third party contractual obligations of the charter school if the charter is terminated or not renewed.

This bill creates section 1002.335 and substantially amends section 1002.33 of the 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 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:

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 April 14, 2006).

¹² Chapter 96-186, L.O.F.

¹³ Section 1002.33(1), F.S.

- 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, 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 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;
- 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

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.

Sponsor Liability

Currently, s. 1002.33, F.S., is silent regarding 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 sponsor of a charter school immune from liability. 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 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 student safety and welfare.²² Duties assigned to the district sponsor, the Court indicated, include ensuring academic accountability, monitoring revenues and expenditures, and approving and monitoring the charter agreement.

Waiver of Sovereign Immunity

Similarly, 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 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

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), *vacated on other grounds*, 2006 WL 858507 (April 4, 2006).

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.

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

III. Effect of Proposed Changes:

The bill changes the authority to approve charter schools for K-12 public school students by creating the Florida Schools of Excellence Commission (FSE) as an independent entity with the authority to approve charter schools statewide. The FSE is to operate under the supervision of the State Board of Education and in collaboration with the Department of Education.

The bill grants the FSE the power to approve contracts for the creation and operation of charter schools in any school district in the state without approval of the local district school board. In addition, the FSE may authorize any municipality, state university, community college, and regional educational consortium to cosponsor charter schools to serve K-12 public school students in any school district in the state without local district school board approval.

The State Board of Education (State Board), however, may grant the local district school board the exclusive control to determine charter school approval regarding location and operation in its own district.

State Board of Education Determination of Exclusive Authority

The exclusive authority procedure established in this bill is as follows:

- **Written Resolution:** Beginning with fiscal year 2007-2008, a district school board must submit a written resolution to the State Board indicating the intent to retain exclusive authority which evidences fair and equitable treatment for the previous four years through the following:
 - Full compliance with the provisions of current charter law, including accounting practices; requirements allowing a charter school to purchase certain services; the absence of a school district ban on charter schools and the absence of district-wide charter school enrollment limits; and compliance with State Board orders; and
 - Charter school assistance with local bond authority to meet facilities needs; a pro rata share distribution of federal and state grants, under certain circumstances; the provision of adequate staff and other resources to serve charter schools at a cost that does not exceed the cost to the district; and the provision of adequate educational choice programs under the “No Child Left Behind Act of 2001”;
- **Challenge:** A party may challenge a grant of exclusive authority by filing a notice of challenge with the State Board within 30 days after the grant of exclusive authority;
- **Response:** The school district has an opportunity to appear and respond in writing.
- **Decision:** The State Board is required to make a determination within 60 days after receipt of the notice of challenge.

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).

The State Board is prohibited from granting exclusive authority where a school district without a history of approval cannot at least show that no approvable application has come before it.

This bill clarifies that if a local school district does not retain exclusive authority, concurrent authority is shared with the FSE. Each entity is responsible for monitoring and overseeing its respective charter schools.

The State Board of Education is to approve recommendations for FSE appointments as follows: three appointees by the Governor, one of whom is the Commissioner of Education, two appointees by the Senate President, and two appointees by the House of Representatives Speaker. Recommendations must include at least two eligible nominees for any appointment to the FSE.

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

Powers and Duties of the FSE

The bill grants the FSE the following powers:

- Authorize and act as a 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 FSE charter school applications and renew or terminate charters.
- Review charter school applications and assist in the establishment of charter schools throughout the state;
- Develop, promote, and disseminate best practices for charter schools;
- Develop, promote, and require high standards of accountability for charter schools;
- Monitor and annually review and evaluate the performance of 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 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 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; and
- Perform all of the duties of sponsors set forth in s. 1002.33(5)(b) and (20), F.S.

Approval of Cosponsors

This bill requires the FSE to begin to accept applications by municipalities, state universities, community colleges, and regional educational consortia by January 31, 2007. The FSE must approve or deny applications within 90 days of receipt.

The FSE must limit the number of charter schools that a cosponsor may approve, but may raise the limit previously set.

The FSE's decision to deny an application or to revoke approval of a cosponsor is not subject to Administrative Procedure Act review, 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 FSE and provide a report pursuant to s. 1002.33(9)(1), F.S., and any other reasonable terms deemed appropriate by the FSE.

The FSE may revoke a cosponsor's approval after a hearing under rules of the State Board of Education. The FSE may assume sponsorship of any charter school sponsored by the cosponsor at the time of revocation. Thereafter, the FSE 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 is subject to the same requirements as those provided in s. 1002.33(6), F.S.

Applications of Existing Charter Schools

Charter schools approved by a district school board may apply to the FSE or one of its cosponsors if their charter contract with the district school board will expire before entering into a new charter with the FSE 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 FSE or one of its cosponsors.

Application of Charter School Statutes

The bill provides that certain existing charter school laws apply, including those relating to renewal or termination of charter schools; charter school requirements; eligible students; participation in interscholastic extracurricular activities; employees; financial arrangements; exemptions from statutes; facilities; and funding, including capital outlay funding.

Application Process and Review

The bill provides that the right to appeal an application denial is contingent on the applicant having submitted the same or substantially similar application to the FSE or one of its cosponsors. Any applicant whose application is denied by the FSE or one of its cosponsors subsequent to a district school board denial, may appeal the school board's denial within 30 days after receipt of the FSE'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 FSE or one of its cosponsors by August 1 of the school year immediately following the district school board's denial.

Charter School Requirements

An FSE charter school is a public school within the state as a component of the delivery of public education within Florida's K-20 education system. In addition, the bill subjects charter schools to the same class size requirement imposed on other public schools.

Providing Immunity and Limiting Liability

This bill essentially codifies 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 would 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 a 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 expressly indicates 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.

²⁸ *P.J. v. Gordon*, *supra* note 21, at 1351.

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).

Funding for the Florida Schools of Excellence Commission

This bill provides for the following startup funding for the establishment and operation of the FSE:

- Private contributions;
- Federal and other institutional grants through the Grants and Donation Trust Fund and the Educational Aids Trust Fund; and
- The General Appropriations Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional 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...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.”

The Second District Court of Appeal reviewed a case involving a school board’s rejection of a superintendent’s recommendation for a nominee.³⁰ Statutory authority required the school board to appoint those recommended or nominated unless the school board demonstrated good cause for the rejection. The court recognized the supervisory powers granted to school boards in art. IX, sec. 4 of the State Constitution. In upholding the statute, however, the court characterized its application as limiting, rather than contravening, the constitutional grant of supervisory powers to school boards.³¹

Here, the bill establishes an independent entity with the power to approve the creation and operation of charter schools, serving K-12 public school students in any school district in the state, without district school board approval. Further, it would require district school boards to expend tax funds levied by the board to fund a school that the

³⁰ *Von Stephens v. School Board of Sarasota County*, 338 So.2d 890 (Fla. 2d DCA 1976).

³¹ *Id.* at 894.

district school board has not approved and does not control. As it appears to remove supervisory control from district school boards, it may be subject to constitutional challenge.

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, would be immune from civil suit for acts or omissions not under the sponsor's direct authority that involve an agent of the charter school. Therefore, an injured party would 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 s. 1002.335, F.S.

C. Government Sector Impact:

The Florida Schools of Excellence Commission (FSE)

This bill requires the FSE to perform identical sponsor duties as required by law. 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 local district.

As the powers and duties provided to the FSE are broad, with statewide application, it appears that the FSE does require a professional staff. The FSE 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.

Although this bill authorizes startup funding through private contributions, several trust funds, and the General Appropriations Act, neither this bill nor the proposed budget appropriates any funds for the FSE's expenses.

State Board of Education

The State Board of Education is required in this bill to implement a review process of district school board resolutions of exclusive authority. This process potentially involves

a review of the district school board's request, a challenge by another party, an opportunity to be heard by the district school board in response, and findings to be issued. This may result in a fiscal impact for the State Board for which no funding is provided in the bill.

Limitation of Liability

Sponsoring district school boards and state universities would 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.

VI. Technical Deficiencies:

The bill may have the following technical deficiencies:

- A new entity is created, which is a "cosponsor." The bill may need to be amended to clarify the differences between the duties and liabilities of "sponsors" and "cosponsors"
- It is unclear whether it is necessary for a district school board to submit a written resolution to the FSE annually to retain exclusive authority over granting charter schools.

VII. Related Issues:

None.

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.
