

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 1030

INTRODUCER: Judiciary Committee and Senator Margolis

SUBJECT: Charter Schools

DATE: March 23, 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>EA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

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 expands the immunity for school districts sponsoring a charter school that does not have its charter renewed or that 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 would revise the language so that the sponsoring district is immune from liability for *all* contracts between a school and third party.

This bill 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.<sup>1</sup> The charter serves as a contractual agreement that links accountability with performance, often through student scores on state assessment tests.<sup>2</sup> Issuance of a charter comes with a specified term of operation, typically from three to five years.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> These are Arizona, California, Florida, Texas, and Michigan.<sup>6</sup> Estimates for the current numbers of charter schools range from 2,996 to 3,400 charter schools.<sup>7</sup>

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.”<sup>8</sup> An organizer refers to the entity that initially proposes the school and assumes responsibility for its day-to-day operation and performance.<sup>9</sup>

### Charter Schools in Florida

The Florida Legislature authorized charter schools in 1996,<sup>10</sup> and the state’s first five charter schools opened later that year. In 2006, the number of charter schools had 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 opened.<sup>11</sup>

### Statutory Requirements for Charter Schools in Florida

The Legislature authorized charter schools in Florida with the passage of HB 403 in 1996.<sup>12</sup> Section 1002.33, F.S., provides that all charter schools in the state are public schools, which may

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

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

<sup>3</sup> Eckes and Plucker, *supra* note 1.

<sup>4</sup> *Id.* at 422.

<sup>5</sup> *Id.*

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

<sup>7</sup> *Id.*; see also Gajendragadkar, *supra* note 2, at 144.

<sup>8</sup> Eckes and Plucker, *supra* note 1, at 422 (FN1).

<sup>9</sup> *Id.*

<sup>10</sup> Chapter 96-186, L.O.F.

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

<sup>12</sup> Chapter 96-186, L.O.F.

be formed by opening a new school or converting an existing public school.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

A sponsor may differ from the original applicant. 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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup> In addition to

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<sup>13</sup> Section 1002.33(1), F.S.

<sup>14</sup> Section 1002.33(2)(a), F.S.

<sup>15</sup> Section 1002.33(3)(a), F.S.

<sup>16</sup> Section 1002.33(3)(b), F.S.

<sup>17</sup> Section 1002.33(5)(a), F.S.

<sup>18</sup> Section 1002.33(5)(b), F.S.

<sup>19</sup> Section 1002.33(6)(h), F.S.

other issues, the document is required to address cancellation of the charter if inadequate progress is made by the school.<sup>20</sup>

### **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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> 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 state entities, and 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

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<sup>20</sup> Section 1002.33(7)(a)12, F.S.

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

<sup>22</sup> *Id.* at 1349-50.

<sup>23</sup> Section 768.28(1) and (5), F.S.

<sup>24</sup> Section 1002.33(12)(h), F.S.

<sup>25</sup> Section 1001.72(5), F.S.

per incident is limited to a specified formula set out in statute.<sup>26</sup> Additionally, the courts have consistently treated district school boards as political subdivisions of the state.<sup>27</sup>

### III. Effect of Proposed Changes:

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.<sup>28</sup> Both district school board and university sponsors of charter schools will have immunity from civil liability in lawsuits based upon the following grounds:

- 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.<sup>29</sup> The bill serves as a clear legislative intent *not* to waive sovereign immunity for sponsors based upon their monitoring duties.

This bill expands the immunity for school districts sponsoring a charter school that does not have its charter renewed or that 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.

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<sup>26</sup> 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."

<sup>27</sup> *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).

<sup>28</sup> 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.

<sup>29</sup> *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).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**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 that 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.

## C. Government Sector Impact:

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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