

receiving such services to indemnify and hold the school board harmless from all liability stemming from such use of its school buses.

The bill does not appear to have a fiscal impact on state or local governments. **(See Fiscal Analysis & Economic Impact Statement).**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

Interlocal Agreements: Statute authorizes two or more public agencies, including district school boards, to enter into interlocal agreements with other public agencies for the joint use of services and facilities.¹ An interlocal agreement may provide:

- That one or more of the parties will administer or execute the agreement;
- That one or more of the parties will provide all or part of the services; and
- The manner in which such services will be provided.

An interlocal agreement may also provide for the mutual exchange of services without payment or any contribution other than such services.² Each party to an interlocal agreement must possess the authority to take the action called for in the agreement.³

House Bill 445 authorizes public agencies to provide for the use or maintenance of facilities or equipment by interlocal agreement, thereby expanding the permissible uses for such agreements. The bill provides that an interlocal agreement may provide for compensation on a cost reimbursement basis or on the basis of educational benefits received by the employees of a party or students of the public agency.

Powers of District School Boards: Currently, the Florida Constitution,⁴ as implemented by the Florida K-20 Education Code,⁵ grants district school boards both express and discretionary powers. Prior to 1978, district school boards were charged with “responsibility for the organization and control of the public schools of the district” and their powers were limited to those expressly provided in statute.⁶ In 1978, the Legislature expanded the powers of district school boards to include discretionary powers:

In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power for educational purposes except as otherwise provided by the state constitution or law.⁷

¹ See s. 163.01, F.S. (defining “public agency” to include, among other things, a state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected public officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States).

² Section 163.01(6), F.S.

³ Section 163.01(4), F.S.

⁴ Fla. Const. Art. IX, § 4(b).

⁵ See s. 1000.01(1), F.S. (providing that Chapters 1000-1013, F.S., shall be known as the Florida K-20 Education Code).

⁶ Section 230.03(2), F.S. (1978)(This section was repealed and transferred to s. 1001.32, F.S., by Chapter 2002-387, L.O.F.); See also *Harvey v. Board of Public Instruction for Sarasota County*, 101 Fla. 273, 276 (Fla. 1931); *Buck v. McLean*, 115 So.2d 764, 765 (Fla. Dist. Ct. App. 1 1959).

⁷ Chapter 78-86, L.O.F.

The 1978 legislation defined “educational purpose” to mean, “any activity or power exercised in the establishment and maintenance of courses, classes, institutions, and services adequate to meet the educational needs of all citizens of the district.”⁸

These provisions were amended again in 1983. The definition of “educational purpose” and language conditioning a school board’s exercise of its discretionary powers on whether the action serves an “educational purpose” were deleted. Provisions authorizing a school board to exercise any power “*except as otherwise provided by the State Constitution or law*” were amended to provide that such powers may be exercised unless “*expressly prohibited by the State Constitution or general law.*”⁹

Despite these revisions, the Attorney General (AG) has maintained the requirement that a school board’s exercise of discretionary powers must serve a direct educational purpose.¹⁰ The AG has construed the 1983 revisions as not superseding “all other laws relating to or vesting powers in the State Board of Education.”¹¹ In so reasoning, the AG has maintained that school board discretionary powers must be “consistent and in harmony” with the constitutional and statutory powers granted to the State Board of Education.¹² Subsequent AG opinions reiterate this stance.¹³

District school boards may enter into interlocal agreements with other public agencies for services or use of facilities if there is express statutory authority or if the agreement serves an educational purpose. Some school boards have been prevented from entering into agreements that may have resulted in more cost effective and efficient use of public resources because the purpose of the agreement was determined to be non-educational.¹⁴ The bill amends s. 1003.02(1), F.S., to specifically authorize a district school board to provide transportation of students, rent buildings as part of its school facilities program, and provide maintenance to school plants by interlocal agreement pursuant to s. 163.01, F.S.

Use of School Buses for Public Purposes: Under current law, district school boards are required to provide public school students with transportation to school or school activities.¹⁵ School boards are also authorized to use school buses for other specified public purposes.¹⁶ School boards may enter into agreements with:

- A local government or certain state agencies to provide transportation services to the transportation disadvantaged¹⁷ and the elderly;
- A regional workforce board to provide transportation services to participants in welfare transition programs; and
- A nonprofit civic organization to provide transportation for school-age children to group sponsored activities.¹⁸

⁸ *Id.*

⁹ Chapter 83-324, L.O.F.

¹⁰ Op. Att’y Gen. Fla. 83-72 (1983), Op. Att’y Gen. Fla. 07-45 (2007). *See also* Florida Board of Education General Counsel’s Opinion (March 23, 1989).

¹¹ Op. Att’y Gen. Fla. 83-72 (1983).

¹² Op. Att’y Gen. Fla. 83-72 (1983). *See also* Section 1001.32(1), F.S.

¹³ *See* Op. Att’y Gen. Fla. 84-58 (1984), Op. Att’y Gen. Fla. 84-95 (1984), Op. Att’y Gen. Fla. 89-87 (1989), Op. Att’y Gen. Fla. 95-67 (1995), and Op. Att’y Gen. Fla. 99-04 (1999).

¹⁴ Op. Att’y Gen. Fla. 07-45 (2007), Florida Board of Education General Counsel’s Opinion (March 23, 1989).

¹⁵ Section 1006.21, F.S.

¹⁶ Section 1006.261, F.S.

¹⁷ Section 427.011(1), F.S. (defines “transportation disadvantaged” to mean “those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or [certain disabled or at-risk children]”).

¹⁸ Section 1006.261(1), F.S.

Agreements with local governments or state agencies must provide for full or partial reimbursement of the school board at a rate proportionate to its share of fixed and operating costs attributable to such uses.¹⁹ Agreements with nonprofit civic organizations must provide for compensation that is at least equal to the costs incurred by the board.²⁰ In all cases, the agreement must indemnify and hold the school board harmless from all liability stemming from such use of its school buses. Likewise, a local government, state agency, or nonprofit organization must carry liability insurance.²¹

The bill authorizes district school boards to enter into agreements with a local government or state agency to use school buses to assist in the provision of public transportation and for other public purposes additional to serving the transportation disadvantaged and the elderly. The bill also provides for reimbursement to school boards based upon the cost of maintenance or other activities attributable to the use of buses under the agreement. The bill requires a public agency receiving such services to indemnify and hold the school board harmless from all liability stemming from such use of its school buses.

C. SECTION DIRECTORY:

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 revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of Education (DOE), the bill may reduce revenues earned by private transportation providers resulting from the expanded use of governmentally-operated school buses for public transportation or other public purposes.²²

D. FISCAL COMMENTS:

The bill enables district school boards to contract with other public agencies for the joint use of certain public resources. Whether school districts achieve cost savings or incur additional expenses will be largely contingent on the terms of the interlocal agreement. School districts may incur additional costs

¹⁹ Section 1006.261(1)(a) and (b), F.S.

²⁰ Section 1006.261(1)(c), F.S.

²¹ Section 1006.261(2), F.S.

²² Department of Education, 2008 Bill Analysis for HB 445.

associated with insurance, overtime paid to district employees, and cost analyses and monitoring of agreements.²³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds.

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

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At lines 51-53, the bill allows a party to an interlocal agreement to receive compensation based upon the “educational benefits received by the employees of a party or students of the public agency.” Although the term “educational benefit” is used sporadically in the Florida Statutes, nowhere is the term defined. Thus, it is unclear which types of activities would be deemed “educational benefits.” The DOE bill analysis recommends the deletion of this language.²⁴

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 4, 2008, the Committee on Education Innovation and Career Preparation reported the bill favorably with one amendment. The amendment removes the ambiguous phrase “or on the basis of educational benefits received by the employees of a party or students of the public agency” at lines 51-53. Please see “Drafting Issues or Other Comments” above.

²³ *Id.*

²⁴ Department of Education, 2008 Bill Analysis for HB 445.