

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 1528
 INTRODUCER: Senator Bradley
 SUBJECT: School Choice
 DATE: March 24, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Pre-meeting
2.			AED	
3.			AP	

I. Summary:

SB 1528 simplifies the expansion of charter schools and modifies accountability provisions related to school choice programs (i.e., charter schools and virtual education programs).

Specifically, the bill:

- Enables a charter school applicant to substantively revise its application to correct deficiencies identified by the sponsor as grounds to deny the application;
- Explicitly codifies the requirement that sponsors and charter schools must utilize a statewide, standardized charter school agreement;
- Authorizes a charter school operated by a private, nonprofit 501(c)(3) corporation to obtain a 15-year charter without demonstrating any need of the term to finance construction;
- Requires that district school-board owned property no longer being used as a school must be made available to a charter school on the same basis as other public schools;
- Prohibits a sponsor from requiring that the charter agreement limit a charter school’s enrollment or capacity to students that are enrolled before the start of the school year;
- Automatically deems a charter school established and operated by a high-performing charter school system as a high-performing charter school;
- Removes the limitation of allowing a high-performing charter schools to expand only one charter school per year, and removing the prohibition on expansion until all charter schools have qualified as high-performing;
- Authorizes a high-performing charter school system operating outside of Florida to apply to the State Board of Education for status as a high-performing charter school system in Florida; and
- Requires the State Board of Education to develop standard charter forms (i.e, application, evaluation instrument, and contract) for high-performing charter schools, high-performing charter school systems, and virtual charter schools;

The bill also:

- Automatically terminates double-F charter schools, as opposed to requiring the sponsor to terminate the charter, in certain instances;
- Requires high-performing charter schools to utilize the same appeals process as regular charter schools;
- Requires the expansion of high-performing charter schools to serve the attendance zones of schools identified in need of intervention, to meet capacity needs, and to provide innovative choice options; and
- Requires an approved provider's contract for virtual instruction programs to automatically terminate if the provider: earns two consecutive grades of "F;" earns two consecutive school improvement ratings of "Declining;" or has violated any qualification requirement.

The bill takes effect July 1, 2014.

II. Present Situation:

The present situation for the relevant provisions of the bill is discussed in the Effect of Proposed Changes Section of this bill analysis.

III. Effect of Proposed Changes:

SB 1528 simplifies the expansion of charter schools and modifies accountability provisions related to school choice programs (i.e., charter schools and virtual education programs).

Charter Schools

Charter schools are public schools that operate under a charter agreement with a sponsor.¹ A charter school is typically sponsored by a district school board.² Charter schools must organize as, or be operated by, a nonprofit organization.³

Application and Contract Provisions

Present Situation: Existing law contains separate provisions for the charter application and review process⁴, and provisions to be negotiated in development of the charter agreement.⁵

The specific provisions regarding the charter application and review process are that a person or entity wishing to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education (DOE) which:⁶

- Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school;

¹ Section 1002.33(7), F.S.

² Section 1002.33(5), F.S. However, charter schools may also be sponsored by a state university or Florida College System institution. Sections 1002.33(5)(a)2. and 4., F.S.

³ Section 1002.33(12)(i), F.S. A charter school may also be operated by a state university, Florida College System institution, municipality, or other public entity as provided for by law. Sections 1002.33(5)(a)2. and 4., 1002.33(12)(i), F.S.

⁴ See section 1002.33(6)(a), F.S.

⁵ See section 1002.33 (7)(a), F.S.

⁶ See section 1002.33(6)(a), F.S., which contains 7 subparagraphs.

- Provides a detailed curriculum plan that illustrates how students will be provided services to attain standards;
- Contains goals and objective for improving student learning and measuring that improvement;⁷
- Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher, and a separate curriculum that and strategies for students who are reading below grade level;⁸
- Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends;
- Documents that the application has participated in required training; and
- Provides additional information that a sponsor may require as an addendum to the application.

The provisions to be negotiated into the charter agreement are more substantial.⁹ These provision state that the major issues involving the operation of a charter school must be considered in advance and written into the charter.¹⁰ The charter must address, and criteria for approval of the charter (i.e. approval of the contract itself, not the application), are based on numerous provisions that are generally similar to or reiterate the application requirements, except in more detail.¹¹

Effect of the Bill: The bill moves the majority of the requirements in the “charter” section of the law to the “application” section of law. One effect is to ensure that all pertinent information is contained in the charter application, which will help reduce the likelihood of unexpected issues being discovered during the contract negotiation process. Another effect is that because the bill provides that the application is automatically incorporated in the contract by reference, and that the application is deemed settled for purposed of negotiating the charter, contract negotiations will likely be more streamlined.

Ability to Correct Application Deficiencies

Present Situation: Once an application is submitted, sponsors generally do not allow updates to the application, except that the applicant may make technical or nonsubstantive changes before the sponsor’s final decision.¹² “Before approving or denying the final application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographic, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.”¹³

⁷ These goals and objectives must indicate how much academic improvement student are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction. *Id.*

⁸ A sponsor must deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research. *Id.*

⁹ See section 1002.33(7)(a), F.S.

¹⁰ Section 1002.33(7), F.S.

¹¹ See section 1002.33(7)(a), F.S., which contains 19 subparagraphs, as compared to the 7 subparagraphs specified for s. 1002.33(6)(a), F.S.

¹² Section 1002.33(6)(b), F.S.

¹³ *Id.*

Effect of the Bill: The bill allows the applicant to make substantive modifications after filing the application with the sponsor to “address any deficiencies identified by the sponsor as cause to deny the final application.” These modifications could address substantive issues such as curriculum, management structure, management company organization, and grade-levels.

Standard Charter Contract Formats

Present Situation: In previous years, the DOE had been required to develop a model charter contract format that sponsors and applicants could choose to use.¹⁴ The State Board of Education’s (SBE) rulemaking authority consisted of adopting rules to implement a charter and charter renewal formats.¹⁵ The format is essentially a table of contents for a charter agreement.¹⁶

During the 2013 Legislative session, the Legislature required DOE to develop a proposed, statewide, standard charter school contract, and provide it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2013.¹⁷ The SBE’s rulemaking authority was also changed to reflect that the SBE shall adopt rules to implement a standard charter and charter renewal contracts.

Effect of the Bill: The bill locks-in the requirement that the sponsor and charter school must utilize the statewide, standard charter school contract. After approval of the application, the sponsor must provide the charter school with the contract. The contract shall consist of the approved application, any addenda, and additional elements specified in law. Provisions of the charter contract that are inconsistent with or prohibited by law are void and unenforceable.

Matters included in the approved application and addenda are deemed settled for purposes of negotiating the charter. However, the parties may agree to address such matters after approval of the charter. Once the sponsor has voted upon and approved the standard charter contract, the sponsor and applicant have the right to negotiate additional terms, as necessary.

The charter school may open and operate during the pendency of any negotiation, mediation, or administrative proceeding.

Term of Initial Charter for Private, Nonprofit s. 503(c)(3) Corporation

Present Situation: The initial term of a charter shall be for 4 or 5 years.¹⁸ However, charter schools that are operated by a municipality, other public entity, or charter lab school, are eligible

¹⁴ Section 1002.33(27), F.S. (2012).

¹⁵ *Id.*

¹⁶ See Department of Education, *Florida Model Charter Contract Format*, available at https://www.floridaschoolchoice.org/Information/Charter_Schools/files/IEPC_M3_new_April2012.pdf.

¹⁷ See sections 2 and 8, ch. 2013-250, L.O.F., Department of Education, *Proposed Statewide, Standard Charter School Contract* (on file with the Senate Committee on Education). The proposed, statewide, standard charter is much more comprehensive than the existing DOE model charter contract format; however, it still recognizes and protects charter school autonomy and flexibility. See *Proposed Statewide, Standard Charter School Contract*, sections 1.B.4. and C. of the Miscellaneous Provisions, compare Department of Education, *Florida Model Charter Contract Format*, available at https://www.floridaschoolchoice.org/Information/Charter_Schools/files/IEPC_M3_new_April2012.pdf.

¹⁸ Section 1002.33(7)(a)12., F.S.

for up to a 15-year charter, subject to approval of the sponsor.¹⁹ A charter school operated by a private not-for-profit, s. 501(c)(3) status corporation is also eligible for up to a 15-year charter subject to approval of the sponsor – but only to facilitate access to long-term financial resources for charter school construction.²⁰

Effect of the Bill: The bill deletes the condition precedent (i.e., to facilitate access to long-term financial resources for charter school construction) required in order for a charter school operated by a private not-for-profit, s. 501(c)(3) status corporation to be eligible for up to a 15-year charter.

Automatic Termination of Double-F Charter Schools

Present Situation: The sponsor of a charter school “shall terminate” a charter if the charter school earns two consecutive grades of “F” unless:²¹

- The charter school is established as a turn-around option;
- The charter school serves a student population the majority of which resides in a school zone served by a district public school that earned a grade of “F” in the year before the charter school opened and the charter school earns at least a grade of “D” in its third year of operation;²² or
- The SBE grants the charter school a waiver from termination, which must be requested within 15 days after the DOE official release of school grades.

Effect of Bill: The bill provides that the charter is automatically terminated (as opposed to “the sponsor shall terminate”) if the school earns a second consecutive grade of “F” after all school grade appeals are final. The exceptions in existing law continue to apply.

Charter School Facilities

Present Situation: A district school board facility or property that is available because it is surplus, marked for disposal, or otherwise unused, shall be provided for a charter school’s use on the same basis as it is made available to other public schools in the district.²³

A charter school receiving property from the school district may not sell or dispose of such property without written permission of the school district.²⁴

Effect of the Bill: If a district school board-owned facility that has previously been used for K-12 educational purposes is no longer used as a school (as opposed to “surplus, marked for disposal, or otherwise unused”), it shall be made available for a charter school’s use on the same basis as it is made available to other public schools in the district.

The charter school is responsible for the costs required to bring the facility into compliance with the current Florida Building Code and for costs required to maintain such compliance. The

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 1002.33(9)(n)4., F.S.

²² This does not apply to a charter school in its fourth year of operation and thereafter. *Id.*

²³ Section 1002.33(18)(e), F.S.

²⁴ *Id.*

charter school may choose to maintain and repair the facility at the same standard and level as any other district-operated school of similar age and condition. Maintenance and repair do not include the construction of any new building, structure, or substantial addition, extension, or upgrade to an existing facility.

The charter school may not earn capital outlay funds; however, the school district shall include the charter school's capital outlay fulltime equivalent (COFTE) student count in the district's capital outlay calculations.²⁵

Sponsor Limitation on Charter School Enrollment

Present Situation: A sponsor may not require a charter school to identify the names of students to be enrolled or to enroll those students before the start of the school year as a condition of approval or renewal of a charter.²⁶

Effect of the Bill: A sponsor may not require a charter school to identify the names of students to be enrolled or to limit enrollment or capacity to those students enrolled before the start of the school year as a condition of approval or renewal of the charter.²⁷ In other words, the bill modifies existing law to additionally prohibit the charter contract from capping student enrollment or school capacity to the number of students enrolled before the start of the school year.

High-Performing Charter Schools

High-performing charter schools are charter schools that received at least two grades of "A" and no grade below "B" during each of the previous 3 school years.²⁸ The benefits of being designated as a high-performing charter school include, but are not limited to: increasing student enrollment once per year; expanding grade levels; submit quarterly (rather than monthly) financial statements to the sponsor; consolidating multiple high-performing charter schools under a single charter; and extend the term of the charter to 15 years.²⁹

²⁵ The bill does not specify what would happen with the charter school's reported COFTE funds the district received.

²⁶ Section 1002.33(10)(i), F.S.

²⁷ This provision appears to reject the conclusion in *Renaissance Charter School, Inc., v. Leon County School Board*, Case No. 12-0887 (Fla. DOAH 2012), available at <https://www.doah.state.fl.us/ROS/2012/12000887.pdf>. The issue in this case was whether the district school board had the authority to require a provision in the charter that limits a charter school's annual capacity to the number of applications received as of a date certain (March 1), and whether such proposed enrollment cap was legal under Florida law. *Id.* After considering the parties arguments, the administrative law judge issued a Recommended Order, concluding that that the district's school board's requirement did not violate charter school law. *Id.*

²⁸ Section 1002.331(1), F.S. Additionally, for the last three fiscal years for which such audits are available, a high-performing charter school must have received an unqualified opinion on its annual financial audit and did not receive a financial audit that revealed one or more financial emergency conditions. *Id.*

²⁹ Section 1002.331(2), F.S.

Appeals Process

Present Situation: Applicants may appeal the sponsor's denial of the application directly to the SBE.³⁰ The SBE must determine whether the sponsor has shown, by clear and convincing evidence, that:³¹

- The application does not materially comply with the application requirements;
- The charter school proposed in the application does not materially comply with general charter school requirements;
- The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's higher-performing charter schools;
- The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or
- The proposed charter school's educational program and financial management practices do not materially comply with requirements for charter schools.

Effect of the Bill: The applicant may appeal the sponsor's denial of the application through the Charter School Appeal Commission (i.e., like regular charter school applicants), which hears the appeal and issues a nonbinding recommendation for SBE consideration.

The clear and convincing evidence standard and identified grounds in existing law remains unchanged.

Standard Charter Forms

Present Situation: There is no specific language in law requiring a model high-performing charter school application, evaluation instrument, contract, or renewal contract.³²

Effect of the Bill: DOE must develop a model application form, standard application evaluation instrument, standard charter contract, and standard charter renewal contract uniquely tailored to a high-performing charter school. These forms will be used statewide to streamline these processes.

High-Performing Status Deemed Approved

Present Situation: A charter school is a high-performing charter school if it:³³

- Received at least 2 grades of "A" and no school grade below "B," during each of the previous 3 years;
- Received an unqualified opinion on each annual financial audit required in the most recent 3 fiscal years for which such audits are available.; and
- Did not receive a financial audit that revealed one or more financial emergency conditions in the most recent 3 fiscal years for which such audits are available.

³⁰ Section 1002.33(6)(c), F.S.

³¹ *Id.*

³² Rather, current language provides that the SBE shall adopt rules to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts

³³ Section 1002.331(1), F.S.

Effect of the Bill: A charter school that is established in Florida and operated by an entity classified as a high-performing charter school system is pre-determined to be a high-performing charter school during its first 3 years of operation. Beginning in the fourth year of operation and thereafter, such a charter school must meet existing criteria identified in the present situation to maintain the designation.

Expansion of High-Performing Charter Schools

Present Situation: A high-performing charter school may submit an application in any school district in the state to establish and operate a new charter school that will substantially replicate its educational program.³⁴

Effect of the Bill: Applications would be limited to those serving the attendance zone of a school identified in need of intervention and support, or meeting capacity needs or needs for innovative choice options identified by the district school board.

Length of Time Between Expansion of High-Performing Charter Schools

Present Situation: A high-performing charter school may not establish more than one charter school within Florida in any year.³⁵ A subsequent application may not be submitted unless each charter school established in this manner achieves high-performing charter school status.³⁶

Effect of the Bill: The bill deletes these limitations on expansion.

High Performing Charter School Systems

A high-performing charter school system is an entity that:³⁷

- Operated at least 3 high-performing charter schools in Florida during each of the previous 3 school years;
- Operated a system of charter schools in which at least 50 percent were high-performing charter schools and no charter school earned a school grade of “D” or “F” in any of the previous 3 school years;³⁸ and
- Did not receive a financial audit that revealed one or more financial emergency conditions for any charter school assumed or established by the entity in the most recent 3 fiscal years for which such audits are available.

A high-performing charter school system may replicate its high-performing schools in the same manner as a high-performing charter school.³⁹

³⁴ Section 1002.331(3), F.S.

³⁵ Section 1002.331(3)(b), F.S.

³⁶ *Id.*

³⁷ See Section 1002.332(1), F.S.

³⁸ Some limited exceptions applied if the entity assumes operation of a public school or establishes a new charter school served by a student population the majority of which resided in a school zone served by a public school that earned a grade of “F” or three consecutive “D” grades. *Id.*

³⁹ Section 1002.332(2)(b), F.S.

Present Situation: Entities that operate high-performing charter schools systems outside of Florida do not have statutory authority to replicate their charter schools in Florida.⁴⁰

Effect of the Bill: An entity that successfully operates a system of charter schools outside of Florida may apply to the SBE for status as a high-performing charter school system.⁴¹

The SBE shall adopt rules prescribing a process for determining whether the entity meets applicable requirements by reviewing student demographic and performance data and fiscal accountability of all schools operated by the entity. To the extent practicable, the SBE shall develop a rubric for the approval of such entities which aligns with the priorities of the federal Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools⁴²

Virtual Charter Schools

A charter school may operate a virtual charter school as a virtual instruction program to provide full-time online instruction to eligible students in kindergarten through grade 12.⁴³ A charter school must amend its charter or submit a new application to become a virtual charter school.⁴⁴ A virtual charter school may:⁴⁵

- Contract with the Florida Virtual School.
- Contract with an approved provider.
- Enter into an agreement with a school district to allow the participation of the virtual charter school's students in the school district's virtual instruction program.

Certain provisions do not apply to virtual charter schools, such as charter school facilities, capital outlay funding, the administrative fee to be paid the sponsor (except that the prohibition on sponsor charges for additional fees or surcharges no longer applies, rendering such fees or surcharges applicable), transportation requirements, and maximum class size requirements.⁴⁶

Present Situation: There is no specific language in law requiring a virtual charter school application, evaluation instrument, contract, or renewal contract.⁴⁷

Effect of the Bill: DOE must develop a model application form, standard application evaluation instrument, standard charter contract, and standard charter renewal contract uniquely tailored to a

⁴⁰ See section 1002.332, F.S.

⁴¹ Since replication requirements refer to those utilized for high-performing charter schools, the deletion of the provisions regarding the length of time between the expansion of high-performing charter schools would likewise apply to high-performing charter school systems.

⁴² See U.S. Education Department, *Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools*, <http://www2.ed.gov/programs/charter-rehqcs/index.html> (last visited March 23, 2014).

⁴³ Section 1002.33(1), F.S.

⁴⁴ *Id.*

⁴⁵ Section 1002.45(1)(d), F.S.

⁴⁶ *Id.*

⁴⁷ See sections 1002.33, 1002.45, F.S., Rather, current language provides that the SBE shall adopt rules to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts. Section 1002.33(27), F.S.

virtual charter school charter school. These forms will be used statewide to streamline these processes.

Virtual Instruction Programs

A virtual instruction program is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.⁴⁸ A school district may offer a virtual instruction program by:⁴⁹

- Contracting with the Florida Virtual School.
- Establishing a franchise of the Florida Virtual School.
- Contracting with an approved provider.
- Entering into an agreement with other school districts to allow student participation in an approved virtual instruction program in the other district.
- Establishing a school district operate part-time or full-time kindergarten through grade 12 virtual instruction program.
- Entering into an agreement with a virtual charter school.

Present Situation: An approved provider's contract must be terminated if the provider receives a school grade of 'D' or 'F' or a school improvement rating of "Declining" for 2 years during any consecutive 4 year period, or has violated any qualification requirement.⁵⁰

Effect of the Bill: An approved provider's contract is automatically terminated (as opposed to "must be terminated") if the provider earns two consecutive grades of "F," two consecutive school improvement rating of "Declining," or has violated any qualification requirement.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴⁸ Section 1002.45(1)(a)2., F.S.

⁴⁹ Section 1002.45(1)(b), F.S.

⁵⁰ Section 1002.45(8)(d), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.33, 1002.331, 1002.332, 1002.45, 1013.62, and 1003.01.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.