

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2434

SPONSOR: Committee on Education and Senator Kirkpatrick

SUBJECT: Charter Schools

DATE: April 12, 1999                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hill</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill amends the statute governing the creation and operation of charter schools to:

- Allow submission of charter school applications until at least November 15, rather than February 1, prior to the school year in which the proposed school would begin operating.
- Require interdistrict transfers for students to attend charter schools.
- Require charters to document more specifically how student progress will be measured.
- Allow up to 15-year charters for schools operated by a municipality and a 15-year charter for charter schools that demonstrate exemplary academic and fiscal management.
- Allow a charter school operated by a municipality to give enrollment preference to students residing within the municipality.
- Allow a municipality to receive a single charter to operate a feeder pattern of charter elementary, middle and high schools.
- Prohibit charter schools from knowingly employing individuals who were dismissed for just cause by a district school board or who resigned from a district to avoid disciplinary action.
- Require school districts to distribute federal funds to charter schools within five months of opening or experiencing an enrollment increase.
- Establish a Charter School Review Panel.
- Revise charter school capital outlay funding and eligibility criteria and delete provisions that allowed Public Education Capital Outlay funds to be allocated to, shared with, and used by charter schools for any capital outlay purpose .

The bill also requires each school district to report the number of students applying for and attending the district's public schools of choice.

This bill substantially amends the following sections of the Florida Statutes: 228.056, 228.0561, 228.057, and 235.42.

## **II. Present Situation:**

### **Florida's Charter School Law**

Florida's charter school law, s. 228.056, F.S., was enacted in 1996. Since that time, the number and enrollment of charter schools have increased dramatically. In 1996-97, five charter schools served 600 students; in 1997-98, 33 charter schools served 3,000 students; and in the Fall of 1998, over 11,000 students were attending 74 of the 85 charter schools approved for operation in 1998-99. Two municipalities (North Fort Lauderdale and Pembroke Pines) began operating charter schools this school year.

Charter schools are public schools. They are free from many state and local mandates but are held accountable for the academic and financial performance of the school and its students. Each charter school operates under a charter, which is a performance contract with its sponsor. To continue operating, a charter school must successfully meet the academic and operational goals set by its charter.

### **Sponsors**

Each district school board may sponsor charter schools within its jurisdiction by granting a charter authorizing a newly created charter school or the conversion of an existing public school to charter status. A state university may sponsor a charter school by authorizing the conversion of the university's developmental research school to charter status.

### **Applicants and Operators**

Applications to establish and operate a new school as a charter school may be submitted to a district school board by an individual, teachers, parents, a group of individuals, a municipality or a legal entity authorized under the laws of this state. Proposals to convert an existing public school (or school-within-a-school) to a charter school must be submitted by the district school board or by the principal, teachers, parents, and/or the school advisory council of the public school or school-within-a-school. Conversion proposals must be supported by at least 50 percent of teachers employed at the school and 50 percent of the parents whose children attend the school.

### **Application Process**

School boards must accept applications until February 1 for charter schools proposing to open the next school year, but may accept applications after that date. A school board, by a majority vote, must either approve or deny applications within 60 days of receipt. Within 10 days after denying an application, the board must provide, in writing, the good cause reasons for denial. Within 6 months after an application is approved, the sponsor and applicant must agree to the provisions of the contract (i.e., the charter). If agreement is not reached, the charter is automatically denied.

### **Appeals Process**

After an application is approved, the Department of Education must provide mediation services to help resolve disputes about the charter agreement. If the Commissioner determines that disputed issues cannot be settled by mediation, the dispute may be appealed to an administrative law judge appointed by the Division of Administrative Hearings.

When a charter school application is denied, the applicants may appeal to the State Board of Education. Appeals must be filed within 30 days after the district school board's decision.

Appellants must provide the school board written notice of the appeal. Any response by the district school board must be submitted to the state board within 30 days after receiving notice of the appeal. Within 60 days after receiving an appeal, the state board must, by majority vote, accept or reject the district school board's decision. The state board may reject an appeal submission that does not meet procedural rules governing the appeals process. Appellants have 15 days to submit a revised appeal. An appeal rejected on procedural grounds will be considered timely filed if the original appeal was filed within 30 days after denial by the school board.

The district school board must act upon the state board's recommendation within 30 days after it is received. The district school board may only fail to act in accordance with the state board's recommendation only for good cause (i.e., the district determines by competent substantial evidence that implementing the state board's recommendation would be contrary to the best interests of the pupils or the community). The district school board's action on the state board's recommendation is a final action subject to judicial review.

### **Number of Charter Schools**

The potential number of newly created or conversion charter schools is limited to: no more than 28 in school districts with 100,000 or more students, no more than 20 in districts with 50,000 to 99,999 students, and no more than 12 in districts with less than 50,000 students. The conversion of a developmental research school to a charter school is not counted toward these caps. An organization may not hold more than 15 charters statewide.

### **Eligible Students**

Each charter school must be open to any student covered by an interdistrict agreement or residing in the school district in which the charter school is located. A conversion charter school must give enrollment preference to students who would have otherwise attended the public school that became the charter school. Any charter school may give enrollment preference to a sibling of a student enrolled in the charter school or to the child of an employee of the charter school.

A charter school may limit enrollment only to target students who are: (1) within specific age groups or grade levels; (2) considered at risk of dropping out of school or academic failure, including exceptional education students; (3) enrolling in a charter school-in-the-workplace; or, (4) residing within a reasonable distance of the charter school. Students with handicapping conditions or those served in programs for English Speakers of Other Languages must have an equal opportunity for being selected to enroll in a charter school.

A school's charter must address how the charter school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools within the school district. The procedures for selecting students must ensure compliance with applicable federal desegregation requirements.

### **The Charter**

The sponsor and charter school governing body, after a public hearing to ensure public input, must develop and sign a written contract specifying the terms and conditions of the charter school's operations. The terms and conditions of the contractual agreement must include:

- The school's mission, students to be served, ages and grades to be included.

- The focus of the curriculum, instructional methods and techniques.
- The current baseline standard of achievement, outcomes to be achieved and method of measurement.
- The methods used to identify students' educational strengths and needs and to determine how well students meet educational goals and performance standards. At a minimum, students attending the charter school must participate in the statewide assessment program.
- In a secondary charter school, the method for determining that a student has met the state's high school graduation requirements.
- A method for resolving conflicts between the school's sponsor and governing body.
- Student admission and dismissal procedures and the school's code of student conduct.
- Methods by which the school will achieve a racial and ethnic balance reflecting the community the charter school serves or within the racial/ethnic range of other public schools in the school district.
- The financial and administrative management of the school.
- The manner in which the school will be insured and, if required, the terms of liability insurance coverage.
- The initial term of the charter, which must be 3 to 5 years.
- Provision for canceling the charter for insufficient progress toward the school's student achievement objectives.
- The facilities to be used and their location.
- The qualifications to be required of teachers.
- The charter school's governance structure and whether it will be a private or public employer.
- An implementation timetable.
- Alternative arrangements for current students and teachers who choose not to participate in a conversion charter school.

A charter may be renewed every 5 years if the sponsor determines that terms of the charter have been met. A charter may be modified during its initial term or upon renewal if recommended by the sponsor and approved by both parties to the agreement. The sponsor may choose not to renew the charter, or may terminate a charter prior to expiration for failure to meet student performance requirements set by the charter; failure to meet generally accepted standards of fiscal management; violation of the law; or other good cause shown. The statute prescribes timelines for providing written notice of a sponsor's intent not to renew or to terminate a charter and for an informal hearing by the sponsor.

The sponsor may terminate a charter immediately if good cause has been shown or if the health, safety, or welfare of the students is threatened. Under that circumstance, the local school district will operate the school.

### **Legal Status**

Each charter school must organize as, or be operated by, a nonprofit organization.

### **Employees of Charter Schools**

Each charter school selects its own employees and may contract with its sponsor for the services of personnel employed by the sponsor.

A charter school may be either a public or private employer. Employer status and governance must be addressed in the charter. As a public employer, the charter school may participate in the Florida Retirement System (FRS). If the charter school participates in the FRS, all of its employees must participate in the FRS. Individuals or groups of individuals who contract their services to the charter school, and teachers who are part of a partnership or cooperative that subcontracts with the charter school are not public employees.

Charter school employees may bargain collectively. Employees of a conversion charter school remain public employees, unless they choose not to do so.

District employees may take leave to become charter school employees, with approval of employing school board, or the school district may provide for alternative leave arrangements consistent with chapter 231. During leave of absence, seniority with the district may be maintained. Benefit programs may continue for employees on leave of absence from the school district, if the charter school and the district agree to this arrangement and its financing.

Charter school employees are subject to the same fingerprinting and background check applicable to public school employees who have direct contact with students. Teachers employed by or under contract to a charter school must be certified as required by chapter 231, F.S. That chapter and s. 228.056, F.S., allow charter schools, like school districts, to employ or contract with skilled noncertified personnel to provide instructional services or to assist instructional staff members. Each charter school must tell parents about teachers qualifications.

### **Charter School Funding**

#### Operating Funds

Charter schools are funded similarly to other public schools. Funds for students in charter school are generated in the same manner as for students in other public schools. Each charter school must report its student enrollment to the district school board by program as required by s. 236.081, F.S., the Florida Education Finance Program (FEFP). State funds (i.e., FEFP, categorical programs except capital outlay, and discretionary lottery funds), local (discretionary operating millage), and federal funds flow through the district school board to the charter school as specified in the charter. Each charter school's funding must be recalculated during the year to reflect changes in enrollment at each student survey period.

School boards must make every effort to ensure that charter schools receive timely and efficient reimbursement of funds. The statute provides a penalty for failure to do so. Each school district may withhold a portion of the charter school's funding to offset administrative costs related to the charter school. The amount withheld cannot exceed actual administrative costs or 5 percent of the charter school's funding, whichever is less.

#### Capital Outlay Funding for Charter Schools

The FY 1998-99 General Appropriations Act provided \$5 million from the Public Education Capital Outlay and Debt Service (PECO) Trust Fund for charter school capital outlay purposes. Section 228.0561, F.S., specifies how PECO appropriations for charter school capital outlay may be used. To participate in PECO funding, a charter school must serve students in non-district facilities and must have continuously operated for at least two years in the district that approved its charter. Conversion charter schools are not eligible for these funds. The statute allows school

boards to share their PECO funds with charter schools. If district PECO funds are shared, there must be an equal reduction in the charter school capital outlay allocation. Before releasing capital outlay funds to a charter school, the Department of Education must enter into a written agreement that provides for the attachment of a lien to property improved with charter school capital outlay funds. When a charter school is non-renewed or terminated, any unencumbered funds and all equipment and property purchased with public funds revert to the district school board. If funds are recovered from a lien against properties improved with charter school capital outlay funds, the recovered funds are deposited in the PECO Trust Fund.

The 1998-99 PECO appropriation for charter school capital outlay was not distributed and s. 228.0561, F.S., cannot be implemented as written. Section 228.0561, F.S., permits charter schools to use PECO funds in ways that bonded funds cannot be legally used (e.g., leasing permanent and relocatable facilities, maintaining and repairing facilities, and purchasing vehicles to transport students). This flexibility meets charter schools needs but conflicts with PECO uses set in section 9, Article XII of the State Constitution.

#### Some Districts Share School Infrastructure Thrift (SIT) Awards

The SIT Program is an incentive fund created to encourage functional, frugal school construction. Each SIT award is 50 percent of the savings realized in comparison to statutorily defined maximum costs per student station. School districts may earn SIT awards in one of two ways, through:

- Savings realized through functional, frugal construction.
- Savings realized through the operation of charter schools in non-school-district facilities.

As of March 16, 1999, approximately \$15.8 million in SIT awards had been distributed to school districts for savings realized by building schools below the maximum costs per student station. Another \$18.2 million has been distributed to school districts for charter school savings. It is estimated that SIT awards totaling more than \$44 million will be made this year for charter school savings. School districts are not required to share their SIT awards with the charter schools that generated the savings. Some school districts have shared part of their awards with charter schools. This optional sharing provides capital outlay funds for some, but not all charter schools.

#### Access to Federal Funds

Florida's charter school law requires districts to provide federal funds to charter schools for students that meet federal eligibility requirements. Access to federal funding is a problem for charter schools in Florida and throughout the country. Congress addressed this problem in Public Law 105-278, the Charter School Expansion Act of 1998, as follows:

...each state educational agency shall take such measures not later than 6 months after the date of enactment of the Charter School Expansion Act of 1998 as are necessary to ensure that every charter school receives the Federal funding for which the charter school is eligible no later than 5 months after the charter school first opens, notwithstanding the fact that the identity and characteristics of the students enrolling in that charter school are not fully determined until after that charter school actually opens. The measures shall similarly ensure that every charter school expanding its enrollment in any subsequent year of operation receives the Federal funding for which the charter school is eligible not later than 5 months after such expansion.

In 1998, the U.S. Department of Education issued guidance to state education agencies specifically allowing more flexibility when determining charter schools' eligibility for federal Title I funds during the first year of operation. Title I of the Elementary and Secondary Education Act of 1965, as amended, is the largest federally funded programs for schools. It assists schools and districts serving areas with high concentrations of low-income students. In March 1999, the U.S. Department of Education published *Accessing Federal Programs: A Guidebook for Charter School Operators and Developers*; the document may be accessed from the department's site at [www.uscharterschools.org](http://www.uscharterschools.org).

### **Transportation**

Transportation of charter school students must be provided according to chapter 234, F.S. A charter school's governing board may transport students through an agreement or contract with the district school board, a private provider, or parents. The charter school must ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

### **Facilities**

Facilities used by charter schools must comply with the State Uniform Building Code for Public Educational Facilities Construction or with applicable locally-adopted state minimum building codes and fire protection codes. District school board facilities or properties which are available because they are surplus, marked for disposal, or are otherwise unused, may be provided for a charter school's use on the same basis as they are made available to other public schools. The district school board may not charge a conversion charter school for the lease or rental of its existing facility or for property normally inventoried to public school that converted. If a school district provides goods and services to a charter school through a contract, the district may not charge more than its actual costs.

### **Oversight and Technical Assistance**

The Department of Education assists charter school applicants, sponsors, and charter schools through its Office of Public School Choice and Charter Schools.

Section 228.056, F.S., requires the department to analyze and compare the performance of charter school students with comparable students in public school in each district and to report findings to the State Board of Education, the Commissioner of Education, the President of the Senate, and the Speaker of the House of Representatives. The student performance measures required by this section should be updated to reflect changes in the student assessment program.

### **Public School Parental Choice**

Section 228.057, F.S., requires each school district to develop a controlled open enrollment plan to increase parental choice among public schools in the district.

## **III. Effect of Proposed Changes:**

This bill revises several aspects of the charter school law (section 228.056, F.S.) and requires annual reports of student interest and participation in districts' public school parental choice programs. The following paragraphs discuss each proposed change.

**Charter School Applications**

The bill extends the period for submitting an application to operate a charter school. Each district school board and each university that operates a developmental research school must accept charter school applications through November 15, rather than February 1, of the year preceding the school year in which the charter school will begin operating.

**Charter School Enrollment**

When good cause is shown, school boards must authorize interdistrict transfers to allow eligible students to attend charter schools in other school districts. The bill does not define “good cause,” therefore, the affected school boards will decide which circumstances constitute “good cause” for an interdistrict transfer. The bill also allows a charter school operated by a municipality to give enrollment preference to students residing within the city limits of the municipality.

**Charter School Academic Progress**

Each school’s charter must define more specifically how the charter school will document students’ baseline academic achievement and measure students’ rates of academic progress. School boards will consider this information when deciding whether to grant or renew a charter.

**Initial Charters and Renewals**

A charter school operated by a municipality or other public entity may be granted an initial charter of up to 15 years, rather than the 3-year to 5-year term allowed for charter schools operated by other entities. If a charter school has been operating for at least three years with exemplary academic performance and fiscal management, the sponsor may renew the charter for a 15-year period. Other charter schools will still be renewed every five years. Charter schools with long-term charters, like all charter schools, must be reviewed annually and may be terminated during the charter if students’ health, safety, or welfare is threatened or other good cause is shown.

A municipality may submit applications to operate charter elementary, middle, and high schools in a feeder pattern. The district school board must consider each application separately, but after approving all of the applications, the school board must issue one charter for the feeder pattern schools. The bill specifies that the single charter applies to all purposes of s. 228.056, F.S. Some might interpret that provision as allowing the feeder pattern of schools to be treated as a single charter school, however that is not clearly articulated in the bill.

**Charter School Employees**

The bill allows the State Board of Education to adopt administrative rules regarding charter schools’ current authority to employ noncertified instructional staff and educational support personnel.

The bill also prohibits charter schools from knowingly employing anyone who was dismissed for just cause by any school district or who resigned from a school district in lieu of disciplinary action. It may be difficult to determine whether an individual resigned from school district employment to avoid disciplinary action or for a reason unrelated to potential disciplinary action. There may also be confusion about whether a potential charter school employee was “dismissed” for “just cause” since neither term is defined by the bill. Under existing law, a school board does not have to give any reason for not rehiring an annual contract employee since those contracts are for specific terms of service with no guarantee of continued employment.



Current law (s. 231.36, F.S.) also allows dismissal without cause during the first 97 days of employment and resignation during that period without breach of contract. Employees who hold annual or professional service contracts may be dismissed during those contracts only for just cause which includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duties, or conviction of a crime involving moral turpitude. Continuing contract employees, district administrative or supervisory staff, and school principals may be dismissed during their contracts only for charges based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude. School district employees with professional service or continuing contracts may exercise their due process rights when notified of the board's intent to terminate or not renew their contracts.

## **Charter School Funding**

### Federal Funds

If a charter school is eligible for federal funding, including Title I funding, the school's sponsor must distribute all the federal funding that the charter school is eligible for within five months after the charter school first opens or expands its enrollment. The federal funds must be distributed even if the charter school's enrollment and student characteristics are not fully determined. This change reiterates section 10301(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8061 et.seq.) as amended by Public Law 105-278, the Charter School Expansion Act of 1998.

### Charter School Capital Outlay Funds

The bill amends ss. 229.0561 and 235.42, F.S., to remove provisions that allowed Public Education Capital Outlay and Debt Service (PECO) funds to be allocated to and used by charter schools for any capital outlay purpose. This change is necessary because PECO bond proceeds cannot be legally used as authorized by s. 228.0561, F.S., due to state constitutional limits on the use of PECO and federal limits on the use of bond proceeds. To conform with these changes, the bill also: (1) deletes district school boards authority to share PECO funds with charter schools; (2) deletes the mandatory reduction in a charter school's PECO allocation when such sharing occurs; (3) requires deposits in the General Revenue Fund rather than the PECO Trust Fund if the state recovers funds after a charter school stops operating; and (4) deletes an obsolete reference to the FY 1998-1999 PECO appropriation for charter school capital outlay.

Future appropriations for charter school capital outlay will be allocated by the same formula authorized for allocating PECO to charter schools. All charter schools, except conversion charter schools operating in district facilities, will receive an amount equal to one-thirtieth of the maximum cost per student station for each student. If funds aren't sufficient to fully fund projected charter school enrollment, the Commissioner will prorate available funds among charter schools.

Charter schools will no longer have to operate for at least two years before receiving capital outlay funds. To receive these funds, a charter school must: (1) be approved to operate during the fiscal year for which the funds were appropriated; (2) serve students in facilities that are not provided by its sponsor, and (3) have a written agreement with its district school board sponsor that the charter school's unencumbered funds and equipment and property purchased with public funds will revert to the sponsor if the school's charter is terminated or not renewed.

The bill deletes the requirement for placing a lien against property improved with charter school capital outlay funds. Since most charter schools rent or lease, rather than own, the facilities they use, the current law requires liens against property improved by a charter school but owned by a third-party landlord. Existing provisions of ss. 228.056(10) and 228.0561(3), F.S., ensure the recovery of public assets and public funds when a charter school is terminated or not renewed.

#### **Oversight/Charter School Review Panel**

A 9-member Charter School Review Panel will be established to review charter school issues, practices, and policies; and recommend ways to improve charter schools' oversight, operations, business practices and relationships. The panel will make recommendations to the Legislature, the Department of Education, charter schools and school districts. The bill does not specify when this must be done. Panel members will serve 1-year terms, but may serve longer if reappointed. The President of the Senate, Speaker of the House of Representatives, and the Commissioner of Education will each appoint two panel members. The Governor will appoint three members and designate the panel's chair. The Department of Education is responsible for regularly convening the panel. The bill does not authorize compensation, per diem, or travel expenses for panel members. Existing law (s. 20.05, F.S.) authorizes the head of each department of state government to reimburse members of advisory bodies for expenses incurred in the performance of their duties pursuant to s. 112.061, F.S.

#### **Public School Parental Choice**

Each district must annually report the number of students that applied for and attended the various types of schools that give parents a choice among the district's public schools. The State Board of Education may adopt rules to implement this requirement.

This bill takes effect July 1, 1999.

#### **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:**

Banks and investors may be more willing to provide charter schools access to long-term financial resources if the school has the longer-term charter proposed by this bill (i.e., 15 years for successful charter schools and up to 15 years for those operated by a municipality.)

**C. Government Sector Impact:**

The Department of Education will incur costs of per diem and travel expenses for Charter School Review Panel . The estimated cost for travel and per diem for nine panel members and a staff is \$4770 per 2-day meeting (i.e., \$377 airfare and \$100 for 2-days per diem). Actual costs will vary based the number of meetings and attendees and actual airfare.

**VI. Technical Deficiencies:**

The bill incorrectly refers to charter schools as sponsored by municipalities. District school boards “sponsor” charter schools when they grant charters to municipalities and other entities. Page 4, lines 27 through 29 should be amended to read: A charter school operated by a municipality may give enrollment preference to students residing within the city limits of that municipality. The words “or sponsored” should be deleted on page 5, line 7.

On page 9, lines 20 and 21, the reference to 20 U.S.C. 8061 section 10306 should be corrected to read: section 10301(b) of the Elementary and Secondary Education Act of 1965 as amended by Public Law 105-278.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.