

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 Higher Education Committee

BILL: CS/SB 1546

INTRODUCER: Committee on Education Pre-K - 12 and Senator Thrasher

SUBJECT: Charter Schools

DATE: March 30, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	Fav/CS
2.	<u>Brown</u>	<u>Matthews</u>	<u>HE</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

In addition to current authority granted to state universities to approve lab schools, this bill authorizes state universities and Florida college system institutions to approve other charter schools. These schools would enter into charter contracts with the local school district.

This bill clarifies that schools developed by state universities and Florida college system institutions are exempt from statutory contract provisions. This bill also increases grade levels available to community colleges to develop charter schools with school districts, from secondary schools, to kindergarten through grade 12 programs.

Clarification is provided that charter school training requirements apply to applicants who are approved, and that training must take place at least 30 days before the first day of school.

This bill adds compliance with the ch. 120, F.S., administrative process, to the appeals process in nonrenewal and termination appeals cases.

Attorney's fees and costs against the district are assessed when an appellant prevails in situations where:

- A sponsor immediately terminates a school and does not assume continuing operation pending appeal; or
- A high-performing applicant, applying under the authority of a high-performing charter school system is denied approval.

This bill establishes the designation of “high performing charter schools”, provides qualifications and outlines benefits. High performing charter school systems are also created.

Sanctions against a district are authorized pursuant to s. 1008.32(4), F.S., where the State Board of Education finds a pattern of unlawfully denying high-performing applications.

Greater flexibility for charter schools-in-the-workplace is provided.

The Charter School Review Panel is abolished.

This bill establishes the College Preparatory Boarding Academy Pilot Program to serve at-risk students.

This bill creates authority for blended-learning charter schools in law.

OPPAGA is required to compare charter school with traditional school funding, specifically regarding capital improvement millage distribution and the administrative fee.

This bill substantially amends sections 163.3180, 1002.32, 1002.33, 1002.34, 1011.68, 1012.32, and 1013.62 of the Florida Statutes. The bill creates one undesignated section of law.

II. Present Situation:

Approved Sponsors of Charter Schools

Local school districts may approve and sponsor charter schools and universities may sponsor charter lab schools.¹ However, current law limits the number of charter lab schools eligible for state funding that may be authorized to one per university, except for certain charter lab schools authorized prior to June 1, 2003.² Additionally, community colleges may work with local school districts to develop charter schools but are limited to approval of secondary programs.³

Process for Appeal of Application Denials and Nonrenewal or Termination of a Charter

No later than 30 calendar days after receipt of a denial, the applicant may appeal the decision to the State Board of Education (Board), with notice to the sponsor. Upon receipt of notice of the appeal from the Board, the Commissioner of Education (COE) is required to convene a meeting of the Charter School Appeal Commission to make recommendations to the Board about the appeal. The Board must decide no more than 90 calendar days after the appeal is filed, and the

¹ s. 1002.33(5), F.S.

² s. 1002.32(2), F.S. The previously authorized charter schools are Florida State University Charter Lab K-12 School in Broward County, Florida Atlantic University (FAU) Charter Lab 9-12 High School in Palm Beach County, and FAU Charter Lab K-12 School in St. Lucie County.

³ s. 1002.33(5)(b)4., F.S.

sponsor is bound by the decision. The Board's decision is not subject to the ch. 120, F.S., administrative process, and represents, instead, final action, subject to judicial review in the appropriate district court of appeal.⁴

Besides issuing recommendations in applicant appeal cases, the Charter School Appeal Commission assists the COE and the Board in non-renewal and termination cases.⁵ In addition to other grounds, a sponsor may non-renew, or terminate a charter for failure to meet generally accepted standards of fiscal management.⁶ At least 90 days before renewing or terminating a charter, the sponsor must provide written notification and notice that the school may request an informal hearing, to be held by the sponsor within 30 days of request receipt. The applicant is authorized to then follow the appellate process established for denials of new applicants.

Charter School Training

The Department of Education (DOE) is required to offer or arrange for training and technical assistance to charter school applicants in business development, expenses and income. Charter school applicants are required to participate in training, either at the DOE or through a qualifying sponsor program.⁷

Term of Operation for Charter Schools

The initial term of a charter is 4 to 5 years. Charter schools operated by a municipality, charter lab schools, and charters operating under a private not-for-profit s. 501(c)(3) corporation are eligible for an initial term of up to 15 years.⁸

Charter School Review Panel

The DOE staffs and convenes a Charter School Review Panel to review charter school issues, practices and policies, for the purpose of making recommendations to the Legislature, the DOE, charter schools and school districts for improving operations and oversight.⁹

State Board of Education Oversight Authority

The State Board of Education (Board) has specific statutory oversight authority in the area of district school board performance. Upon determining that a district school board has failed to comply with law or rule, the Board has available the following sanctions:

- Report to the Legislature that the school district is unwilling or unable to comply with law or state board rule and recommend that the Legislature take action;
- Reduce the discretionary lottery appropriation until the school district is in compliance;
- Withhold the transfer of state funds, discretionary grant funds, or other funds specified as eligible for this purpose by the Legislature until in compliance;
- Declare the school district ineligible to receive competitive grants; and
- Require monthly or periodic reporting on progress related to noncompliance until corrected.¹⁰

⁴ s. 1002.33(6)(c), F.S.

⁵ s. 1002.33(6)(e), F.S.

⁶ s. 1002.33(8)(a)2., F.S.

⁷ s. 1002.33(6)(f)2., F.S.

⁸ s. 1002.33(7)(a)12., F.S.

⁹ s. 1002.33(22), F.S.

III. Effect of Proposed Changes:

Additional Authorizers of Charter Schools

This bill authorizes state universities and Florida college system institutions to approve charter schools. Schools approved in this manner must enter into a charter contract with the local school district. This bill distinguishes these schools from those for which the state universities and Florida college system institutions assume sponsorship, which are exempt from traditional charter school contract requirements, such as inclusion of a mission, students to be served, methods to achieve a representative racial and ethnic balance, incoming student achievement baseline and accountability information, and a financial management plan.

The bill does not explicitly repeal the cap in s. 1002.32(2), F.S., that was included for the purpose of clarifying state funding. Accordingly, a state university may be precluded from sponsoring multiple lab schools. Additionally, it is unclear who the sponsor of a charter school is in the situation when the university or state college approves the charter school, although it appears that it would be the local school district.

This bill expands authority granted to community colleges from current approval for secondary level charter schools to authorization of grades kindergarten through grade 12. While the original restriction in law may have been designed to prevent community college mission creep, the bill contemplates that community colleges and Florida college system schools could run effective K-12 charter schools.

Appeals Process for Non-renewals and Terminations of Charter Schools

The 90-day requirement for written notice of renewal or termination of a charter is deleted and sponsors would just be required to provide written notice at any time before the event. This bill replaces the current informal hearing process before the sponsor with an option by the charter school to select a hearing before an administrative law judge in accordance with chapter 120, F.S., to resolve disputed issues of fact. Appeals follow the same procedure as that for appeals in applicant denial cases, so that the case is appealed to the State Board of Education (Board), which then convenes the Charter School Appeals Commission for a recommendation to be made to the Board. The Board's final decision is not subject to review under ch. 120, F.S.

Regarding appeals of immediate termination cases, this bill creates an option for the charter school to request a hearing through the sponsor, as agency, pursuant to s. 120.569, F.S., at which an administrative law judge would preside in instances where material facts are in dispute. The hearing is expedited and the final order must be issued within 45 days after the date of hearing is requested. The sponsor issues the final order. Appeals of that decision follow current law and the same process as for initial denial of charter school application cases and regular termination cases. This bill requires the sponsor to assume and continue operation of the school pending appeal unless student health, safety, or welfare would be threatened. However, if a sponsor does not continue operation and a charter school prevails on appeal, the sponsor is liable for attorney's fees and costs.

¹⁰ s. 1008.32(4), F.S.

High Performing Charter Schools and High Performing Charter School Systems

This bill establishes the designation of “high performing charter schools” provided that the following minimum standards exist and are maintained:

- For the last three years the school received an “A” or “B” school grade, received an unqualified opinion on each financial audit, and did not receive a financial audit that revealed a condition warranting a determination of financial emergency, except for charter schools-in-the-workplace, if the audit finds that money is available to cover the deficiency or it does not result in a deteriorating financial condition; and
- The school has operated for less than three years as part of a high performing charter school system. These schools are eligible for capital outlay funds in their first year without having to comply with statutory requirements operating and being governed by a board in-state at least three years, holding SACs accreditation, having financial stability, and other factors. Additionally, it appears that these schools would have immediate high-performing status.

Benefits available to high performing charter schools in compliance with class size include flexibility to annually increase student enrollment by up to 25 percent above the authorized cap (as determined by the governing board), add grade levels, and offer voluntary prekindergarten. These schools are also eligible for 15-year renewals. The initial term of other types of charters is fixed at five years.

Other benefits to high-performing schools are that they have to comply with training once and submit quarterly financial statements rather than the current monthly filing requirements for charter schools.

This bill establishes “high-performing charter school system” with the following attributes:

- Operates at least three high-performing charter schools in the state;
- Has received, among schools, a minimum average “B” grade during the last three years for all schools started by the system;
- Has not had a school with financial emergency status; and
- Has not had a school with an “F” grade for the last two years for any school that the system started, and has not had a school grade of “F” for 3 out of 5 years for a school that the system took over.

A system can be organized as a municipality or other public entity authorized to operate charter schools, a private, not-for-profit s. 501(c)(3) corporation, or a private for-profit corporation.

While under the designation of a high-performing charter school system, the system is authorized to create new charter schools in any district in the state which substantially replicates one or more of the provider’s existing high-performing schools. A local school district is limited in its ability to deny these applications only if good cause is shown that the operator failed to meet charter school statutory requirements, which include financial requirements. A sponsor is liable for attorney’s fees and costs if an applicant prevails upon appeal. District school boards may also

be subject to s. 1008.32(4), F.S., sanctions to be determined by the State Board of Education if the Board finds that a pattern exists of unlawful denials to a system to replicate schools.

Initial charters run for a term of 15 years, with the first three years constituting the status of high-performing. This status makes the school immediately eligible for capital outlay funding.

It may be challenging for local school boards, the Department of Education and the Auditor General to keep pace with the changing status of a school or system that becomes high-performing and loses that status, regarding the accompanying change in requirements. For example, it is unclear what would happen to projects partially started with capital outlay funding for a new school that loses high-performing status in its first three years of operation. This is also the case for schools that don't start as high-performing but accrue that status.

Blended-learning Charter Schools

This bill introduces the concept of a “blended-learning charter school” as a school that combines traditional classroom instruction with online offerings. The schools bypass the approved provider process in place for the school district virtual instruction program. Classroom courses are funded through the FEFP.

Other Charter Provisions

In requiring training participation at least 30 days before school starts, this bill clarifies that the training provisions only apply to applicants who are approved, and are not, therefore, a condition of approval.

This bill provides greater flexibility for qualifying enrollment for charter-schools-in-a-municipality or for charter schools-in-the-workplace.

This bill expands the current prohibition on requiring resignations from teachers desiring to teach in charter schools, to instructional personnel, school administrators and educational support employees.

Sponsors are prohibited from requiring charter school governing board members to reside in the district, and must allow management to represent the charter school on the governing board if approved pursuant to the school's governing documents.

The Charter School Review Panel is abolished.

College Preparatory Boarding Academy Program

This bill establishes the College Preparatory Boarding Academy Pilot Program, a private nonprofit, to serve at-risk students through a residential remedial curriculum for middle through high school students. Eligible students are students in the 5th or 6th grade, with family income at less than 200 percent of federal poverty guidelines, and who have two of the following:

- A record of suspensions, office referrals, or chronic truancy;
- Referrals for academic intervention or a failure to achieve a proficient score on state assessments;
- The student's parent is a single parent;

- The student does not live with the custodial parent;
- The student received a referral from a school, teacher, counselor, dependency court circuit judge, or community-based care organization;
- The student's family receives a housing voucher or is public housing assistance-eligible;
- A member of the student's immediate family has been incarcerated;
- The student has been adjudicated dependent; or
- The student meets additional criteria established by the State Board of Education and the program operator.

The State Board of Education selects the private operator in consideration of the following:

- The entity will receive a public charter school for grades 6 through 12 or partners with a sponsor who will operate the school;
- The entity has success in operating a similar school; and
- The entity has the ability to finance and secure private funds for campus development.

The process is provided for State Board of Education approval and contract terms and limitations, including an initial approved capacity of 80 students with a final cap of 400 students. This bill clarifies that Medicaid billing is authorized.

This bill clarifies that the academy is a public school that is part of the state's program of education, but is also eligible for private funding. State reporting requirements are provided.

Office of Program Policy Analysis and Government Accountability (OPPAGA)

OPPAGA is required to conduct a study that compares charter school, with traditional public school, funding, with special focus on capital improvement millage and the actual cost of services provided through the five percent administrative fee. This bill requires OPPAGA to assess the amount of funds available to charter schools if districts equitably distribute capital improvement millage to all schools, including charter schools. It is unclear what is meant by equitable distribution.

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:

The provisions that expand authorization to state universities may be challenged under Article IX, section 4 of the state constitution, which provides for district school boards to operate, control and supervise all public schools in the district. The 2006 Florida Legislature established the Florida Schools of Excellence Commission (Commission) as a state-level, independent entity with the purpose of authorizing, or denying, charter school applications.¹¹ The First District Court of Appeal struck down the provision which created the Commission as facially unconstitutional.¹² In so doing, the court ruled it violative of the school district's constitutional domain over the operation, control and supervision of all schools within the district.¹³

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Charter schools and charter operators designated as high-performing may enjoy a competitive advantage over those that are not due to their performance. Schools that are newly opened under the auspices of a high-performing charter school system will benefit from immediate capital outlay funding, rather than others that are required to wait three years.

C. Government Sector Impact:

The creation of the College-Preparatory Boarding Academy Pilot Program may have a fiscal effect, as the academy would be part of the state's public funding program. The impact is indeterminate at this time. The academy would admit students beginning in August 2012, with an initial enrollment of 80 students. The academy would grow to a maximum capacity of 400 students. Proponents of the academy indicate that there would not be a fiscal impact in 2011-2012, an anticipated fiscal of approximately \$2 million in 2012-2013, and \$10 million recurring in future years.¹⁴ Academy proponents have identified federal funds such as Temporary Assistance for Needy Families (TANF), Social Services Block Grant (SSBG), and other social services funds to meet the fiscal needs.

VI. Technical Deficiencies:

None.

¹¹ ch. 2006-302, L.O.F.; s. 1002.335, F.S.

¹² *Duval County School Board v State Board of Education*, 998 So.2d 641 (1st DCA 2008).

¹³ *Id.* at 643.

¹⁴ Email correspondence from Don Winstead, on March 21, 2011, on file with the committee.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Committee on Pre-K – 12 on March 30, 2011:

This bill provides charter schools applicants with an opportunity to correct technical errors that the sponsor indicates will otherwise represent the basis for denial of the application, provided that the application is corrected in a week.

- B. **Amendments:**

None.