

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7029 PCB CIS 16-01 School Choice

**SPONSOR(S):** Education Appropriations Subcommittee, Choice & Innovation Subcommittee, Cortes

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee	10 Y, 3 N	Dehmer	Healy
1) Education Appropriations Subcommittee	11 Y, 2 N, As CS	Seifert	Heflin

### SUMMARY ANALYSIS

The bill creates the Florida Institute for Charter School Innovation to provide technical assistance and support to charter school applicants and sponsors; conduct research on policy and practice related to charter school authorizing, accountability, instructional practices, finance, management, and operations; approve replication of high-performing charter schools to contract with district school boards and provide opportunities for aspiring teachers to experience teaching in schools of choice.

The bill strengthens charter school accountability and student access to quality charter schools by:

- Clarifying that a sponsor shall consider a charter school applicant's, governing board member's, and any education services provider's past performance operating charter schools when deciding to approve or deny an application.
- Authorizing a charter school that has been granted a charter to defer opening for up to two years to conduct facilities planning.
- Requiring charter schools to begin submitting monthly financial statements upon approval of the charter contract to enable the sponsor to begin monitoring the school's financial health earlier in time.
- Clarifying that charter schools that earn two consecutive grades of "F" are automatically terminated.
- Removing the limit on replication of high-performing charter schools if the charter school is created to serve high-need areas or school district needs.
- Prohibiting a charter school with financial emergency conditions noted in its most recent annual audit from receiving capital outlay funding.
- Creating a High-Impact Charter Network status for charter operators serving educationally disadvantaged students, defining eligibility criteria, and providing incentives for qualifying operators.
- Authorizing a high-performing charter school to submit an application to replicate its school to the Florida Institute for Charter School Innovation.

The bill revises charter school funding provisions to:

- Clarify that charter schools do not have to adopt the school district's research-based reading plan in order to receive the research-based reading allocation.
- Specify the amount and distribution of Florida Education Finance Program (FEFP) funds based on projected and actual enrollment in a charter school.
- Authorize a nonprofit organization or municipality that operates a charter school to use unrestricted surplus or unrestricted net assets for K-12 educational purposes for other schools they operate in the district.
- Prohibit the sponsor from delaying payments to charter schools based upon the timing of receipt of local funds.

In addition, the bill removes the statutory eligibility requirements for enrollment in public K-12 virtual education, which currently limit virtual education options available to certain students who did not attend public school in the previous school year. The bill also revises criteria triggering automatic termination of a state-approved virtual instruction provider's contract and removal from the list of state approved providers.

See fiscal impact on state government. The estimated fiscal impact on the FEFP to fund the expansion of student eligibility for public virtual education is \$2,374,420. The estimated fiscal impact to fund the Florida Institute for Charter School Innovation is \$750,000 in addition to the funding received in Fiscal Year 2015-2016. This fiscal impact of these two items will be addressed as part of the House fiscal plan for fiscal year 2016-2017.

The bill takes effect July 1, 2016.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h7029a.EDAS

**DATE:** 1/12/2016

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Charter School Authorizing and Oversight**

##### **Present Situation**

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor, which is typically a school district.<sup>1</sup> Charter schools are exempt from many laws and regulations applicable to traditional public schools to encourage the use of innovative learning methods.<sup>2</sup> The terms and conditions for the operation of the school are set forth in a performance contract or “charter.”<sup>3</sup>

Florida law tasks sponsors with authorizing new charter schools and providing continuing oversight of each charter school in the school district. The law establishes several processes designed to enable the sponsor to perform these roles, including:

- Authority to review and approve or deny charter school applications.<sup>4</sup>
- Authority to enforce the terms and conditions of the charter agreement.<sup>5</sup>
- Annual reporting of student achievement and financial information by each charter school to the sponsor.<sup>6</sup>
- Sponsor monitoring of annual financial audits<sup>7</sup> and monthly financial statements submitted by charter schools in the school district.<sup>8</sup>
- Interventions for remedying unsatisfactory academic performance and financial instability.<sup>9</sup>
- Authority to close charter schools for academic or financial failure; poor management; violations of law; or child health, safety, and welfare violations.<sup>10</sup>

“*The Florida Principles and Standards for Quality Charter School Authorizing*” are a set of guidelines for sponsor authorizing and oversight of charter schools. The “*Principles and Standards*” are a collaborative effort by the Florida Department of Education (DOE), the National Association of Charter School Authorizers (NACSA), sponsors, and charter school stakeholders. Sponsor adherence to the “*Principles and Standards*” is voluntary. The “*Principles and Standards*” emphasize the critical role that sponsors play in evaluating the viability of charter school proposals and holding approved charter schools to high standards of quality.<sup>11</sup>

The law establishes an application process for establishing a new charter school. An applicant<sup>12</sup> must submit a charter school application to the sponsor.<sup>13</sup> The sponsor must review and approve or deny the

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<sup>1</sup> Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S. The law authorizes school districts to sponsor charter schools; state universities to sponsor charter lab schools; and school districts, Florida College System (FCS) institutions, or a consortium of school districts or FCS institutions to sponsor a charter technical career center. Sections 1002.32(2), 1002.33(5)(a)1. and 2., and 1002.34(3)(b), F.S.

<sup>2</sup> Section 1002.33(2)(b)3. and (16), F.S.

<sup>3</sup> Section 1002.33(6)(h) and (7), F.S.

<sup>4</sup> Section 1002.33(6), F.S.

<sup>5</sup> Section 1002.33(6)(h) and (7), F.S.

<sup>6</sup> Section 1002.33(9)(k), F.S.

<sup>7</sup> Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

<sup>8</sup> Section 1002.33(9)(g), F.S.

<sup>9</sup> Sections 1002.33(9)(n) and 1002.345, F.S.

<sup>10</sup> Section 1002.33(8), F.S.

<sup>11</sup> Florida Department of Education, *Florida Principles & Standards for Quality Charter School Authorizing*, at 2-5 (2014), <http://www.fldoe.org/core/fileparse.php/5423/urlt/Florida-Principles-and-Standards-Final-Proof.pdf>. [Hereinafter *Principles and Standards*].

<sup>12</sup> An application may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law. Section 1002.33(3)(a), F.S. The school must be operated by a Florida College System institution, municipality, or

application.<sup>14</sup> The law requires sponsors and applicants to use a standard charter school application and application evaluation instrument. The standard application is designed to enable the sponsor to evaluate the applicant's educational plan, organizational plan, financial viability, and business plan.<sup>15</sup>

The law does not expressly require a sponsor to evaluate an applicant's, governing board member's, or management company's past performance operating charter schools.<sup>16</sup> However, the standard application requires the applicant to:

- List each proposed member of the charter school's governing board and his or her background and qualifications.
- Indicate if the governing board will contract with a management company, summarize the company's history operating charter schools, and list other charter schools managed by the company and student achievement and financial performance data of such schools.<sup>17</sup>

Additionally, the "*Principles and Standards*" encourage sponsors to evaluate the past history of existing operators and management companies operating charter schools and conduct applicant interviews and other due diligence to examine the applicant's experience and ability to operate charter schools.<sup>18</sup>

After approval of the charter by the sponsor, the charter school must begin operation at the beginning of the upcoming school year. The sponsor may waive this requirement for good cause.<sup>19</sup> Additionally, the law prohibits a sponsor from requiring a charter school's governing board to have a certificate of occupancy for its facility earlier than 15 days before the first day of school.<sup>20</sup>

Among other oversight processes, charter schools must submit monthly financial statements for review by the sponsor. If a financial statement reveals a deteriorating financial condition,<sup>21</sup> the sponsor and charter school governing board must develop a corrective action plan.<sup>22</sup> The sponsor may choose to terminate or not renew the charter school's charter if financial deficiencies noted in the corrective action plan are not corrected within one year or if the school exhibits one or more financial emergency conditions<sup>23</sup> for two consecutive years.<sup>24</sup> The date by which a newly established charter school must

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nonprofit organization. While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization. Section 1002.33(12)(i), F.S.

<sup>13</sup> Section 1002.33(6)(a), F.S.; rule 6A-6.0786, F.A.C. (model charter school application and application evaluation instrument).

<sup>14</sup> Section 1002.33(6), F.S. If the application is approved, the applicant and sponsor then negotiate the terms of the charter. If the application is denied, or the sponsor fails to act, the applicant may file an appeal with the State Board of Education, which may uphold or overturn the sponsor's denial. Section 1002.33(6)(c) and (h), F.S.; *see also* s. 120.68, F.S. The state board's decision is a final action subject to judicial review in the district court of appeal. *Id.*

<sup>15</sup> *See* Florida Department of Education, *Model Florida Charter School Application* (May 2012), [http://www.fldoe.org/core/fileparse.php/7700/urlt/IEPC\\_M1.pdf](http://www.fldoe.org/core/fileparse.php/7700/urlt/IEPC_M1.pdf) [hereinafter *Model Application*].

<sup>16</sup> *See* s. 1002.33(6)(a), F.S.

<sup>17</sup> *Compare* s. 1002.33(6)(a), (7), (8), (9), F.S. with *Model Application*, *supra* note 15, at 11 and 14.

<sup>18</sup> *Principles and Standards*, *supra* note 11, at 2-5 and 9-10.

<sup>19</sup> Section 1002.33(6)(b)5., F.S.

<sup>20</sup> Section 1002.33(7)(a)13., F.S.

<sup>21</sup> A deteriorating financial condition is a circumstance that significantly impairs the ability of a charter school to generate enough revenue to meet its expenditures without causing the occurrence of a financial emergency condition. Deteriorating financial conditions include, without limitation, circumstances in which actual enrollment is 70 percent less than the enrollment projection for which its annual budget is based, enrollment is insufficient to generate enough revenue to meet expenditures, actual expenses exceed budgeted expenses for a period of three months or more and there are insufficient reserves to compensate, or an unbudgeted financial event occurs and there are insufficient reserves to compensate. Section 1002.345(1)(a)3., F.S.; rule 6A-1.0081(2)(a), F.A.C.

<sup>22</sup> Sections 1002.33(9)(g)3. and 1002.345(1)(b)-(f), F.S.; rule 6A-1.0081, F.A.C. A high-performing charter school may submit quarterly rather than monthly financial statements. Section 1002.331(2)(c), F.S.

<sup>23</sup> A financial emergency exists when any one of the following conditions occurs due to lack of funds: (1) Failure to pay short-term loans or make bond debt service or other long-term debt payments when due; (2) Failure to pay uncontested claims from creditors within 90 days after the claim is presented; (3) Failure to timely transfer taxes withheld from employees or employer or employee contributions for federal social security, pension, or retirement plans; and (4) Failure for one pay period to pay wages, salaries, or retirement benefits. Section 218.503(1)(a)-(d), F.S.

<sup>24</sup> Section 1002.345(5), F.S.

begin submitting financial statements typically follows the first payment of state education funds to the charter school, which occurs in July before the start of the school year.<sup>25</sup>

Beginning in 2013, sponsors were required to submit an annual report to the DOE with the following information:

- The number of draft applications received on or before May 1 and each applicant's contact information.
- The number of final applications received on or before August 1 and each applicant's contact information.
- The date each application was approved, denied, or withdrawn.
- The date each final contract was executed.

The DOE must post a compiled annual report on its website by November 1 of each year.<sup>26</sup> In the report, the DOE concluded that “. . . district practices regarding charter schools vary widely,” and there were two notable findings:

- Three districts accounted for nearly half of the state's total number of applicants.
- Approval rates among districts differed markedly.<sup>27</sup>

### **Effect of Proposed Changes**

The bill establishes the Florida Institute for Charter School Innovation to advance charter school accountability, quality, and innovation by:

- Providing support and technical assistance to charter school applicants and sponsors;
- Researching and analyzing the circumstances that lead to specific charter school closings in order to provide guidance and technical assistance on best practices to future applicants and sponsors.
- Researching and analyzing best practices among sponsors and, based upon those results, create and conduct professional development for sponsors.
- Connecting aspiring teachers to opportunities to experience teaching in schools of choice; and
- Conducting research and developing and promoting best practices for charter school accountability, authorizing, financing, management and operations, and instructional practices.

The primary mission of the institute is to provide technical assistance and support to charter school applicants and sponsors. Technical assistance to applicants should include developing innovative charter school proposals. An applicant would be able to engage the institute for assistance not only in developing its written application, but also in acquiring the financial and operational knowledge and skills necessary to operate a charter school. In this regard, the institute could benefit both applicants and sponsors by increasing the quality of charter school proposals, while also helping to discourage applicants with poorly developed proposals or qualifications from submitting applications for sponsor review. Technical assistance to sponsors should include gathering and researching best practices among sponsors; developing professional development trainings for sponsors, and assisting sponsors in implementing *Florida Principals & Standards for Quality Charter School Authorizing*.

The bill requires the Commissioner of Education to appoint a director of the institute to oversee implementation of the institute's mission. The institute must annually submit a report of its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Among other things, the report must provide specific recommendations for improving the institute's ability to fulfill its mission and changes to statewide charter school policy. The bill also requires the institute to

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<sup>25</sup> Rule 6A-1.0081, F.A.C. The sponsor and charter school governing board must mutually agree to the date by which the financial statements are to be submitted. *Id.*

<sup>26</sup> Section 1002.33(5)(b)1.k, F.S.

<sup>27</sup> Florida Department of Education, *Annual Authorizer Report – 2013* at 1, <http://www.fldoe.org/schools/school-choice/charter-schools/authorizers/annual-authorizer-reports.stml>.

provide for an annual financial audit by a certified public account and submit the audit to the Auditor General and the State Board of Education.

Each charter school applicant must disclose in its application the name of each applicant, governing board member, and proposed education services provider; the name and sponsor of any charter school operated by such parties that closed and the reason for closure; and the academic and financial history of such charter schools. The sponsor must consider the past history of these entities in deciding to approve or deny the application. This change makes clear that sponsors have authority to evaluate the applicant's history operating charter schools and aligns the law with the standard application currently in use and guidelines provided by the *"Principles and Standards."*

Additionally, the bill requires a charter school's governing board to begin submitting financial statements to the sponsor upon approval of the charter contract. This will enable the sponsor to monitor a newly created charter school's finances earlier, thereby strengthening the sponsor's ability to assess the school's financial readiness to begin serving students. Accordingly, the sponsor would have greater ability to identify deteriorating financial conditions and take corrective action to remedy financial deficiencies.

Currently, after approval of the charter by the sponsor, the charter school must begin operation at the beginning of the upcoming school year. The sponsor may waive this requirement for good cause.<sup>28</sup> The bill allows a charter school that has been granted a charter to defer opening for up to two years to conduct facilities planning. The charter school must provide written notice of such deferral to the sponsor and parents of enrolled students at least 30 calendar days before the first day of school. Among other things, this change will enable a charter school more time to acquire adequate facilities if difficulties securing facilities arise.

## **High-Performing Charter Schools**

### **Present Situation**

Charter schools and operators of systems of charter schools with a track record of academic excellence and financial stability may earn "high-performing" status.<sup>29</sup> A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of "A" and no school grade below "B;"
- Has received an unqualified opinion<sup>30</sup> on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.<sup>31</sup>

A high-performing charter school system (system) may be operated by a municipality or other public entity that is authorized by Florida law to operate a charter school; a private, not-for-profit, s. 501(c)(3) status corporation; or a private for-profit corporation.<sup>32</sup> In order to earn "high-performing" status, a system must, in the previous three-year period:

- Operate at least three high-performing charter schools in Florida;
- Have at least 50 percent of its charter schools designated as "high-performing" and no charter school receiving a school grade of "D" or "F;" and
- Not receive an annual financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida.<sup>33</sup>

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<sup>28</sup> Section 1002.33(6)(b)5., F.S.

<sup>29</sup> Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

<sup>30</sup> An unqualified audit opinion means that the charter school's financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

<sup>31</sup> Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

<sup>32</sup> Section 1002.332(1), F.S.

<sup>33</sup> Section 1002.332(1), F.S. Exceptions to the eligibility criteria apply if the system operates a charter school established to turn around a chronically low-performing traditional public school and for charter schools opened to serve areas served by a low-performing traditional public school. Section 1002.33(1)(b)2., F.S.

Initial eligibility for “high-performing” status is verified by the Commissioner of Education, upon request by a charter school or system. Thereafter, the commissioner must annually verify continued eligibility.<sup>34</sup>

High-performing charter schools may take advantage of various benefits. Among other benefits, the operator of a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates one of its high-performing charter schools. The application process for such applications is streamlined to expedite approval.<sup>35</sup> A high-performing charter school may not be replicated more than once in any given year and may not replicate again until the new charter school achieves “high-performing” status.<sup>36</sup> Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.<sup>37</sup> Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.<sup>38</sup>

As of November 2015, 167 charter schools in 32 school districts and 1 state university were designated as “high-performing” and three systems were designated as high-performing systems – Doral, Inc., McKeel Academy, and Plato. Doral, Inc. is comprised of six charter schools, five of which are high-performing charter schools. McKeel Academy is comprised of three charter schools, each of which is a high-performing charter school. Plato is comprised of seven charter schools, five of which are high-performing charter schools.<sup>39</sup>

### **Effect of Proposed Changes**

Currently, a high-performing charter school may only replicate once in a given year, and may not replicate again until the newly created charter school achieves “high-performing” status, which takes at least three years. The bill provides that this limit does not apply to high-performing charter schools replicated to serve the attendance area of a traditional public school identified as in need of intervention and support under Florida’s system of school improvement and accountability or to meet needs identified by school districts. In all other cases, existing limits apply. This change expands the ability of high-performing charter schools to provide parental school choice in underserved areas or partner with school districts to meet specific district needs.

The bill provides that a charter school, whose initial application, as a high-performing school, is denied by the sponsor, shall be exempt from the administrative fee requirement. Additionally, the bill provides that a high-performing charter school may submit an application to replicate its school and program in any school district to the Florida Institute for Charter School Innovation. The institute must deny or approve the application within 60 days after receipt of the application. An applicant that is approved must work with the district to develop and execute a contract. If an application is denied, the applicant may appeal to the State Board of Education. This process is similar to *Sch. Bd. of Volusia Cty. v. Acads. of Excellence, Inc.*, where the court held that the state board approval of a previously denied charter application was constitutional because the school board retained authority over the operation, control and supervision of the charter school.<sup>40</sup> The approval of an application is just the beginning of the process to open a charter school.<sup>41</sup> Once the charter application has been granted, the school board still has control over the process because the applicant and the school board must agree on the provisions of the charter.<sup>42</sup> The Florida Institute of Charter School Innovation only approves or denies

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<sup>34</sup> Sections 1002.331(5) and 1002.332(2)(a), F.S.

<sup>35</sup> Section 1002.331(2), F.S.

<sup>36</sup> Section 1002.331(3)(b), F.S.

<sup>37</sup> Section 1002.332(2), F.S.

<sup>38</sup> Section 1002.331(4), F.S.

<sup>39</sup> Email, Office of Independent Education and Parental Choice (Nov. 16, 2015).

<sup>40</sup> 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008), *But see Duval Cty Sch Bd. v. State, Bd. of Educ.*, 998 So. 2d 641 (Fla. Dist. Ct. App. 2008)(holding that the Excellence Commission’s authority over charter schools was unconstitutional because it usurped the district’s power to operate, control and supervise charter schools).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

applications for replication of high-performing charter schools, while the contracting school board retains authority over the operation, control and supervision of the charter school.

Legislation enacted in 2013 required the commissioner to annually determine a charter school's or charter school system's continued eligibility for "high-performing" status. A high-performing charter school or charter school system may maintain its "high-performing" status, unless the commissioner determines that the charter school or system no longer meets the eligibility criteria enumerated in law, one of which requires that the school not receive a grade below a "B". Current language also provides for removal of a charter school's "high-performing" status if it receives a school grade of "C" in any two years during the term of the 15-year charter. Because a high-performing school loses its status once its grade falls below a "B," the provisions regarding consequences for receiving a "C" are obsolete. Accordingly, the bill repeals provisions regarding consequences for "C" grades.

The bill outlines specific timelines for modifications to a high-performing charter school's charter and clarifies that it can be for an additional 15 years or a 15-year renewal. The sponsor has 30 days after a charter school receives its high-performing designation to provide a charter renewal to the charter school. A charter school and sponsor have 20 days to negotiate and notice the charter contract for final approval by the sponsor. The proposed contract must be provided to the charter school at least 7 calendar days prior to the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. Any dispute goes directly to the Division of Administrative Hearings.

The bill creates a High Impact Charter Network status for the charter operators serving educationally disadvantaged students. A qualifying entity must be a non-profit organization under s. 501(c)(3) that successfully operates a system of charter schools that serve primarily educationally disadvantaged students as defined in the Elementary and Secondary Education Act. The entity must apply to the state board for status as a High-Impact Charter Network. The bill requires the state board to adopt rules prescribing the process for determining eligibility as a High-Impact Charter Network which must include a review of all schools currently and previously operated by the entity in the areas of student achievement and financial performance.

Schools operated by a High-Impact Charter Network will receive the following incentives, provided the network maintains its status:

- Automatic eligibility for capital outlay funds;
- Waiver of the administrative fee for the provision of services by the sponsor; and
- Priority in the DOE's Public Charter School Grant Program competitions.

The bill provides that the initial High-Impact Charter Network status shall be valid for up to 4 years. For an entity seeking renewal, the state board shall review the academic and financial performance of the charter schools in accordance with the rules established to define eligibility.

## **Charter Termination or Nonrenewal**

### **Present Situation**

A sponsor may choose to terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of financial management;
- A violation of law; or
- Other good cause shown.<sup>43</sup>

The sponsor may immediately terminate a charter school's charter if conditions at the school threaten the health, safety, or welfare of students.<sup>44</sup> Due process in the form of notice and, if requested, a formal

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<sup>43</sup> Section 1002.33(8)(a), F.S.  
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hearing and opportunity to appeal must be provided to the charter school prior to a charter termination or nonrenewal. For immediate termination of a charter school, a hearing, if requested, may occur after termination.<sup>45</sup>

In addition, the law requires a sponsor to terminate the charter of a charter school that earns two consecutive school grades of “F,” unless the charter school qualifies for one of three exceptions. In general, the exceptions apply to charter schools that specifically target hard-to-serve students and to traditional public schools that are reconstituted as charter schools pursuant to Florida’s system of school improvement and education accountability.

When a charter is not renewed or is terminated, unencumbered public funds from the charter school revert to the district school board, except that capital outlay and federal charter school grant funds revert to the DOE for redistribution among eligible charter schools. Additionally, all district school board property and improvements, furnishings, and equipment purchased with public funds automatically revert to the district school board subject to satisfaction of any liens or encumbrances. The charter school’s governing board is responsible for all debts incurred by the charter school. Students enrolled in the charter school may apply to, and must be enrolled in, another public school in the school district. The law does not specifically apply these provisions to charter schools that close voluntarily.<sup>46</sup>

### **Effect of Proposed Changes**

The bill clarifies that “double “F”” termination occurs automatically when a charter school earns a second consecutive grade of “F,” after school grade appeals are final, unless an exception applies. The sponsor must notify, in writing, the charter school’s governing board, the charter school principal, and the DOE. Hearings and appeals applicable to discretionary and immediate charter terminations are not applicable to “double “F”” terminations. The bill specifies that procedures regarding reversion of public funds and property purchased with public funds apply to “double “F”” terminations, as well as, voluntary closures.

Additionally, the bill requires the governing board of a charter school that decides to cease operations voluntarily to make such determination at a public meeting and to notify the parents and sponsor of the public meeting prior to its official notice. Following the meeting, the governing board must notify the sponsor, parents of enrolled students, and the DOE in writing within 24 hours of its decision. The notice must state the charter school’s intent to continue operations or the reasons for the closure and acknowledge that the governing board agrees to follow the procedures for dissolution and reversion of public funds specified in law.

The bill also specifically applies existing law regarding dissolution of the charter school, reversion of funds, debt, and reassignment of students to voluntary closures. This change will increase the likelihood that charter schools that close voluntarily follow the law regarding reversion of public funds. It will also provide more information to sponsors and the DOE regarding the reasons leading to voluntary closure.

### **Eligible Students**

The bill provides that a charter school that has not reached capacity may be open to any student in the state and authorizes a charter school to give enrollment preference to students who attended or are assigned to a failing school.

The bill also prohibits a charter school from denying enrollment or withdrawing a student based on the student’s academic performance.

### **Charter School Cooperatives**

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<sup>44</sup> Section 1002.33(8)(d), F.S.

<sup>45</sup> Sections 1002.33(6)(c) and (8)(b)-(d), F.S.

<sup>46</sup> Section 1002.33(8)(e), F.S.

## **Present Situation**

The law authorizes charter schools to enter into cooperative agreements with other charter schools to provide planning and development, instructional, personnel administration, payroll, human resources, and evaluation and assessment services and teacher preparation and professional development.<sup>47</sup>

## **Effect of Proposed Changes**

The bill deletes the list of specific services that cooperative agreements may serve and instead states that charter schools may enter into such agreements to further any educational, operational, or administrative purposes in which participating charter schools share common interests. This change expands the ability of charter schools to collaborate and pool resources for shared objectives.

## **Distribution of Student Funding**

### **Present Situation**

Charter school students are funded through the Florida Education Finance Program (FEFP), including categorical funding such as the research-based reading instruction allocation (reading allocation).<sup>48</sup> In general, the reading allocation must be used for such purposes as providing intensive reading instruction to struggling students or to support reading teachers through professional development or utilization of reading coaches. Each school district must annually submit a plan to the DOE specifying how it will use the reading allocation.<sup>49</sup> Each charter school applicant must include in its application a reading curriculum that provides for differentiated reading instruction for students reading at or above grade level and for those reading below grade level. The curriculum must be aligned to state reading standards and grounded in scientific research. If the application is approved, the reading curriculum is incorporated into the charter school's charter.<sup>50</sup> Despite the requirement that charter schools adopt a reading curriculum as a condition of approval, some sponsors have required charter schools to use the school district's reading plan as a condition to receiving the reading allocation, and that plan is often dramatically different than the reading curriculum that the sponsor has already approved in the application and charter.<sup>51</sup>

Currently, a district school board (school board) must make timely and efficient payments and reimbursements to charter schools. A school board may distribute funds to a charter school for up to 3 months based on the projected full-time equivalent student membership of the charter school. Thereafter, the results of the full-time equivalent student membership surveys are used to adjust the amount of funds distributed to the charter school. Sponsors must distribute funds to a charter school no later than 10 working days after the district school board receives a distribution of state or federal funds. If payment is not made to the charter school within 10 working days, the sponsor must also pay interest at a rate of 1 percent per month calculated daily on the unpaid balance for each day the payment is late.<sup>52</sup> One sponsor has previously indicated that it would delay disbursement of locally generated funds to charter schools until the funds were received by the school district.<sup>53</sup>

### **Effect of Proposed Changes**

The bill requires a sponsor to deny a charter application if the proposed charter school reading curriculum is not evidence-based and does not include explicit, systematic, and multisensory reading

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<sup>47</sup> Section 1002.33(13), F.S.

<sup>48</sup> Sections 1002.33(17)(a)-(b) and 1011.62, F.S. To reflect any changes in enrollment, the charter school's funding is recalculated during the school year, based upon the October and February full-time equivalent (FTE) enrollment surveys. *See s. 1002.33(17)(b)*, F.S.

<sup>49</sup> Section 1011.62(9), F.S.

<sup>50</sup> Section 1002.33(6)(a)4. and (7)(a)2.a., F.S.

<sup>51</sup> Florida Department of Education, *Legislative Bill Analysis on School Choice Priorities*, (Nov. 6, 2014).

<sup>52</sup> Section 1002.33(17)(e), F.S.

<sup>53</sup> Florida Department of Education, *Legislative Bill Analysis on School Choice Priorities*, (Nov. 6, 2014).

instructional strategies. It also prohibits sponsors from requiring charter schools to adopt the school district's reading curriculum as a condition to receiving the research-based reading allocation.

The bill clarifies that school board payments must be made monthly or bi-monthly, beginning with the start of a school board's fiscal year. Each payment must be one-twelfth (1/12) or one-twenty-fourth (1/24), as applicable. In the first two years of a charter school's operation, a school board must distribute funds for the months of July – October based on the projected full-time equivalent student membership if a minimum of 75 percent of the projected enrollment is entered into the sponsor's student information system by the first day of the current month. If less than 75 percent of the projected enrollment is entered into the sponsor's system, the sponsor shall base payments on the actual number entered into the sponsor's student information system.<sup>54</sup> This will generate a more accurate distribution of funds prior to the October student count and prevent over-funding and under-enrollment. The bill also prohibits a sponsor from delaying payment of any portion of a charter school's funding based upon the timing of receipt of local funds by the school board.

Additionally, the bill authorizes a nonprofit organization or municipality that operates a charter school that has use any unrestricted surplus or unrestricted net assets identified in its annual audit to use those funds for K-12 educational purposes for charter schools within the district operated by that nonprofit entity or municipality, while meeting expenditure requirements specific to operating funds and capital outlay funds.

## **Facilities**

### **Present Situation**

Currently, startup and conversion charter schools are not required to comply with the State Requirement for Educational Facilities pursuant to s. 1013.37, F.S. The local governing authority cannot adopt or impose any local building requirements or site-development restrictions that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code. The local governing authority must treat charter schools equitably in comparison to similar requirements, restrictions, and processes imposed upon public schools that are not charter schools.<sup>55</sup>

### **Effect of Proposed Changes**

The bill permits an aggrieved school the immediate right to bring an action in circuit court to enforce its rights against any authority who fails to comply with this section. An aggrieved school that receives injunctive relief may collect attorney fees and court cost.

## **Charter School Capital Outlay**

### **Present Situation**

To be eligible for charter school capital outlay funding, a charter school must:

- Have been in operation for at least three years, be governed by a governing board established in Florida for three or more years which operates both charter schools and conversion charter schools within the state, be part of an expanded feeder chain<sup>56</sup> with an existing charter school in the district that is currently receiving charter school capital outlay funds, be accredited by the Commission on Schools of the Southern Association of Colleges and Schools, or serve students in facilities that are provided by a business partner for a charter school-in-the-workplace;

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<sup>54</sup> Note: this language is currently found in the model charter school contract at <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference> page 20 -21 (last visited November 24, 2015).

<sup>55</sup> Section 1002.33(18)(a), F.S.

<sup>56</sup> A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to Section 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.

- Demonstrate financial stability for future operation as a charter school;
- Have satisfactory student achievement based upon the state accountability standards applicable to charter schools;
- Have received final approval from its sponsor for operation during that fiscal year; and
- Serve students in facilities that are not provided by the charter school sponsor.<sup>57</sup>

Charter school capital outlay funding is allocated based upon the following priorities:

- First priority is given to charter schools that received capital outlay funding in FY 2005-06. Such a school receives the same per-student amount that it received in FY 2005-06 up to the lesser of:
  - The actual number of students enrolled in the current year; or
  - The number of students enrolled in FY 2005-06.
- After calculating the first priority, remaining funds are allocated with the same per-student amount to:
  - Those schools not included in the first priority allocation; and
  - Those schools in the first priority allocation with growth in excess of FY 2005-06 student enrollments.

Any excess funds remaining after the first and second priority calculations are allocated among all eligible charter schools.<sup>58</sup>

### **Effect of Proposed Changes**

The bill clarifies “financial stability” by specifying that a charter school may not have financial emergency conditions noted in its most recent annual audit in order to receive capital outlay funding.

### **Other Charter School Changes**

#### **Governing Board Meetings**

Florida law requires each charter school’s governing board to hold at least two open public meetings per school year in the school district where the charter school is located. The charter school principal and a parent liaison appointed by the board must be physically present at these meetings. Governing board members are not required to attend these meetings in person.<sup>59</sup> The bill relocates the aforementioned governing board meeting provisions to a more appropriate section of the charter school statute. Additionally, the bill specifically authorizes a governing board member to attend biannual public meetings by communications media technology used in compliance with Administration Commission rules.<sup>60</sup>

#### **Alternative Teacher Certification**

A professional education competence demonstration program (PEC Program) is an alternative teacher certification pathway that enables a classroom teacher who holds a temporary certificate to obtain full

<sup>57</sup> Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(d), F.S.

<sup>58</sup> Section 1013.62(1)(b), F.S.

<sup>59</sup> Section 1002.33(7)(d), F.S. The parent liaison must reside in the school district where the charter school is located and may be a governing board member, charter school employee, or contracted individual. The governing board must appoint a separate liaison for each charter school it operates in the district. The law prohibits a sponsor from requiring governing board members to reside in the school district if the governing board complies with these requirements. *Id.*

<sup>60</sup> Florida law requires the Administration Commission to adopt uniform rules for conducting public meetings by means of communications media technology. Sections 120.54(5)(b)2. and 1002.33(7)(d), F.S.; ch. 28-109, F.A.C.

professional certification. The law requires each school district to establish a PEC Program. Establishing a PEC Program is optional for other “state-supported public schools” and private schools. PEC Programs must be approved by the DOE prior to implementation and approval is reevaluated annually.<sup>61</sup> The bill clarifies that a charter school, as a “supported public school,” may offer a PEC Program to enable its teachers on temporary certificates to obtain a professional teaching certificate.

### **Student Eligibility for Virtual Instruction**

#### **Present Situation**

Florida law establishes a variety of options to make virtual instruction accessible to students in kindergarten through grade 12. These options include:

- Full-time or part-time enrollment in a school district virtual instruction program (VIP).<sup>62</sup>
- Full-time enrollment in a virtual charter school.<sup>63</sup>
- Enrollment in individual virtual courses offered by school districts and approved by the DOE.<sup>64</sup>
- Full-time or part-time enrollment in the Florida Virtual School (FLVS) or school district FLVS franchises.<sup>65</sup>

Student enrollment in a full-time or part-time school district virtual instruction program (VIP), a full-time virtual charter school, or a school district virtual course offering is open to any student residing in the district who:<sup>66</sup>

- Attended a Florida public school during the prior year and was enrolled and reported for funding during the October and February FEFP surveys;
- Is the dependent child of a member of the United States military who, within 12 months of the parent’s permanent change of station order, transferred to Florida from another state or from a foreign country;
- Was enrolled in a school district virtual instruction program or a full-time FLVS program during the prior school year;
- Has a sibling who is currently enrolled in a school district virtual instruction program and the sibling was enrolled in such program at the end of the prior school year.
- Is eligible to enter kindergarten or first grade; or
- Is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school or FLVS.<sup>67</sup>

FLVS or a district FLVS franchise may provide full-time and part-time instruction for students in kindergarten through grade 12. However, students in kindergarten through grade 5 must meet at least one of the eligibility criteria listed above to access part-time instruction in such programs.<sup>68</sup>

<b>Eligibility for Virtual Instruction</b>							
<b>Students Not Enrolled in Public School During the Previous School Year</b>							
<b>Grade Level</b>	<b>Full-Time</b>			<b>Part-Time</b>			
	<b>FLVS</b>	<b>District VIP</b>	<b>District FLVS Franchise</b>	<b>FLVS</b>	<b>District VIP</b>	<b>District FLVS Franchise</b>	<b>District Virtual Course</b>
<b>K</b>							
<b>1</b>							
<b>2</b>							

<sup>61</sup> Section 1012.56(8)(b), F.S.; rule 6A-5.066(1)(d) and (2), F.A.C.

<sup>62</sup> Section 1002.45, F.S.

<sup>63</sup> Sections 1002.33(1) and 1002.45(1)(d), F.S.

<sup>64</sup> Section 1003.498, F.S.

<sup>65</sup> Sections 1002.37 and 1002.45(1)(a)1. and (c)1., F.S.

<sup>66</sup> Sections 1002.45(5) and 1002.455(2), F.S.

<sup>67</sup> Section 1002.455(2), F.S.

<sup>68</sup> Section 1002.37(8)(a), F.S.

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11							
12							
<b>KEY</b>							
	Student is Eligible						
	Student must meet prior public school requirement						
	No part-time virtual options for students who were not enrolled in public school during the prior year						

Consequently, students in 2nd through 5th grades are not eligible for enrollment in part-time virtual instruction unless they were enrolled in public school in the prior year or are dependent children of military personnel, or siblings.<sup>69</sup>

### Effect of Proposed Changes

The bill repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction. This change will open various virtual education options that are not currently available to students who did not attend public school in the prior year, as follows:

- Students in 6th through 12th grades may enroll in full-time school district VIP programs.
- Students in 2nd through 5th grades may enroll in part-time FLVS or district FLVS franchises.
- Students in 2nd through 12th grades may enroll in part-time school district VIP.
- Students in 2nd through 12th grades may enroll in school district virtual course offerings.

Most notably, this change gives students in 2nd through 5th grades who did not attend public school in the prior year the ability to enroll in part-time virtual instruction, whereas under current law, these students have no such options.

### Virtual Instruction Providers

#### Present Situation

The law designates the FLVS, school district FLVS franchises, and Florida College System institutions as “approved providers.” The law also prescribes a process in which other virtual instruction providers may obtain DOE-approval to offer services to public school districts. The DOE must annually publish a list of approved providers.<sup>70</sup> Currently, a DOE-approved virtual instruction provider’s contract must be terminated if the provider earns a school grade of “D” or “F” or a school improvement rating of “Unsatisfactory” in any two years of a consecutive four year period. In such cases, the provider must be removed from the DOE-approved provider list for a period of at least one year. Among other things, the provider may not regain “approved provider” status until it demonstrates to the DOE that academic performance deficiencies have been remedied.<sup>71</sup>

<sup>69</sup> Section 1002.455(2), F.S.

<sup>70</sup> Section 1002.45(2)(a), F.S.

<sup>71</sup> Section 1002.45(8)(d), F.S.

## **Effect of Proposed Changes**

The bill provides that a virtual instruction provider's contract must be terminated, and the provider loses "approved provider" status, if the provider earns two consecutive school grades of "F" after grade appeals are final or 2 consecutive school improvement ratings of "Unsatisfactory."

## **Acceleration Options**

The bill clarifies language for the acceleration options and allows passage of an Advanced Placement (AP) Examination to qualify for high school course credits. The bill also clarifies that a district shall allow any public or home education student not enrolled in the corresponding course to take an end-of-course assessment or AP exam during the regular administration of the assessment.

Finally, the bill clarifies language regarding the minimum term requirement for purposes of the FEFP and removes the requirement that students in a blended learning course receive the online instruction in a classroom setting at the school so more blended learning models can be utilized by public schools and students.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1002.33, F.S., relating to charter schools.

**Section 2.** Amends s. 1002.331, F.S., relating to high-performing charter schools.

**Section 3.** Creates s. 1002.333, F.S., relating to High Impact Charter Networks.

**Section 4.** Amends s. 1002.37, F.S., relating to the Florida Virtual School.

**Section 5.** Repeals s. 1002.45, F.S., relating to virtual instruction programs.

**Section 6.** Repeals s. 1003.445, F.S., relating to student eligibility for K-12 virtual instruction.

**Section 7.** Amends s. 1003.4295, F.S., relating to the Credit Acceleration program.

**Section 8.** Amends s. 1003.498, F.S., relating to school district virtual course offerings.

**Section 9.** Creates s. 1004.650, F.S., relating to the Florida Institute for Charter School Innovation.

**Section 10.** Amends s. 1011.61, F.S., relating to definitions.

**Section 11.** Amends s. 1011.62, F.S., relating to funds for operation of schools.

**Section 12.** Amends s. 1012.56, F.S., relating to educator certification.

**Section 13.** Amends s. 1013.62, F.S., relating to charter school capital outlay funding.

**Section 14.** Provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction. This change will open various virtual education options that are not currently available to students who did not attend public school in the prior year. The estimated fiscal impact on the FEFP to fund the expansion of student eligibility for public virtual education is \$2,374,420. This fiscal impact will be addressed as part of the House fiscal plan.

The bill establishes the Florida Institute for Charter School Innovation. Among other things, the institute will assist applicants in developing charter school application proposals. Performance of these activities will require the institute to hire or subcontract with individuals with expertise in such areas as school finance, governance, operations, academics and curriculum, and exceptional student education services. It is estimated that approximately 5-6 full-time staff are needed to operate the institute. Funds will also be required to hire subcontractors to review applications. Recurring funding in the amount of \$250,000 was provided in the 2015-2016 fiscal year to the Florida State University to begin the implementation of Institute. The total estimated fiscal impact for the full implementation of the Institute is \$1,000,000. An additional \$750,000 would be necessary for 2016-2017 to meet the requirements of the bill. This fiscal impact will be addressed as part of the House fiscal plan.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Provisions expanding the purposes of cooperative agreements may provide charter schools with new opportunities to pool resources and achieve cost savings.

D. FISCAL COMMENTS:

The bill clarifies that a sponsor may not require a charter school to adopt the school district's reading curriculum as a condition to receiving a share of the research-based reading allocation. This may increase the number of charter schools that receive a share of the allocation.

The bill authorizes a nonprofit organization or municipality that operates a charter school to use unrestricted surplus or unrestricted net assets of the charter school identified in an annual financial audit for K-12 educational purposes for charter schools within the district operated by the not-for-profit or municipal entity organizing or operating the charter school with the surplus. Surplus operating funds shall be used in accordance with s. 1011.62, and surplus capital outlay funds shall be used in accordance with s. 1013.62(2).

The bill provides clearer guidance to the DOE in determining whether a charter school is financially stable enough to merit an award of capital outlay funding.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 11, 2016, the Education Appropriations Subcommittee adopted an amendment and reported the bill favorably. The amendment, while not a requirement, would allow a charter school the flexibility to give enrollment preference to residents of that municipality when a municipality allows a charter school to use a school facility or portion of land owned by the municipality.