

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/CS/SB 1224

INTRODUCER: Governmental Oversight and Accountability Committee; Education Committee and Senator Farmer

SUBJECT: Charter Schools

DATE: April 11, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Sikes</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1224 creates s. 1001.241, F.S., to require each charter school principal, charter school governing board member, and charter school chief financial officer to hold a credential, which must certify the individual's core competence in the administration of a charter school. The bill requires the Department of Education (DOE) to approve one or more third-party credentialing entities to establish and administer the credentialing process.

The bill also:

- Eliminates the requirement that an applicant submit an application by February 1 to open a charter school eighteen months later at the beginning of the school year. The bill allows an applicant submitting an application by February 1 to open a charter school at the beginning of the next school year.
- Prohibits specified charter school entities and employees and their relatives from submitting an application to open a charter school for 5 years if specified acts of misconduct caused the termination or nonrenewal of the charter, or 10 years in case of the individual's criminal conviction for certain crimes.
- Clarifies that charter school instructional and non-instructional personnel must file fingerprints and pass a background check in any school district in which one of the charter governing board's charter schools is located, and that the background check is valid in all school districts in perpetuity.

- Authorizes a virtual charter school to provide part-time instruction and be a virtual instruction program provider if approved by the DOE.

The bill takes effect January 1, 2020.

## II. Present Situation:

### Charter School Formation

Charter schools are public schools that operate under a performance contract with a sponsor.<sup>1</sup> A district school board or a state university may sponsor a charter school.<sup>2</sup> An entity seeking to open a charter school must apply to the sponsor, who must review or deny the application.<sup>3</sup> To ensure financial accountability, the standard charter school application requires:<sup>4</sup>

- A list of each proposed member of the charter school's governing board and his or her background and qualifications;
- A financial plan containing anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends; and
- A full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

A sponsor must receive and consider charter school applications received on or before February 1 of each year for charter schools to be opened 18 months later at the beginning of the school district's school year, or to be opened at a time determined by the applicant.<sup>5</sup>

Approved charter schools and sponsors execute a written contract called a "charter." The charter governs the operating terms of the charter school. The charter must ensure financial accountability by including:<sup>6</sup>

- A reasonable demonstration of the professional experience or competence of the individuals hired to perform the financial and administrative management of the school;
- A description of internal audit procedures and controls; and
- Asset and liability projections.

In the 2017-2018 school year, 655 charter schools served 295,814 students across 47 school districts in Florida.<sup>7</sup>

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<sup>1</sup> Section 1002.33(7), F.S.

<sup>2</sup> Section 1002.33(5), F.S.

<sup>3</sup> Section 1002.33(6)(b), F.S.

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

<sup>5</sup> Section 1002.33(6)(b), F.S. A sponsor may receive and consider applications after February 1, if it chooses. *Id.*

<sup>6</sup> Section 1002.33(7)(a), F.S.

<sup>7</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *Fact Sheet: Florida's Charter Schools* (2018), available at <http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2018.pdf>.

## **Charter School Financial Accountability Requirements**

After a charter has been approved, a charter school must continue to comply with financial accountability requirements. The requirements include:<sup>8</sup>

- Maintaining all financial records in a manner comparable to other Florida public schools;<sup>9</sup>
- Providing an annual financial report performed by a certified public accountant or auditor;<sup>10</sup>
- Providing a monthly financial statement summary sheet with a balance sheet;<sup>11</sup>
- Adopting and maintaining an annual operating budget;<sup>12</sup> and
- Publishing the school's annual budget and its annual independent fiscal audit on its website.<sup>13</sup>

## **Qualifications of Charter School Employees**

### ***Background Screening***

All charter school instructional and non-instructional personnel, including members of a charter school governing board, must undergo the same background screening required of public school personnel by filing their fingerprints with the district school board.<sup>14</sup> For any employee who has direct contact with students, a charter school must conduct an employment history check of each of the individual's previous employers and conduct the required screening through the use of the educator screening tools.<sup>15</sup> Failure to comply with these requirements results in the termination of a charter.<sup>16</sup>

A charter school is required to employ certified teachers.<sup>17</sup> A person is ineligible for an educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts students who participate in a state scholarship program if the person has been convicted of certain qualified offenses.<sup>18</sup>

Additionally, a charter school is required to disqualify any instructional personnel and school administrators from employment in any position that requires direct contact with students if the personnel are ineligible for such employment based on conviction of certain qualified offenses.<sup>19</sup>

### ***Training Qualifications***

Each governing board member must complete training approved by the Department of Education (DOE), including instruction focusing on government in the sunshine, conflicts of interest, ethics, and financial responsibility.<sup>20</sup> Every public school supervisor, principal, and administrator

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

<sup>9</sup> *Id.* at (g)1.a.

<sup>10</sup> *Id.* at (g)2.

<sup>11</sup> *Id.* at (g)3.

<sup>12</sup> *Id.* at (h).

<sup>13</sup> Section 1002.33(9)(p)1., F.S.

<sup>14</sup> Section 1012.32(2)(b), F.S.

<sup>15</sup> Section 1002.33(12)(g)4., F.S.

<sup>16</sup> Sections 1002.33(8), (12)(f) and (12)(g)1, F.S.

<sup>17</sup> Section 1002.33(12)(f), F.S.

<sup>18</sup> Section 1012.315, F.S.

<sup>19</sup> Sections 1002.33 and 1012.315, F.S.

<sup>20</sup> Section 1002.33(9)(j)4., F.S.

must hold the required certificate through state-approved training.<sup>21</sup> Charter school principals and equivalent personnel are not required to possess the state-approved certifications required of their public school counterparts.

The governing board of a charter school must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.<sup>22</sup> The policies must require all instructional personnel and school administrators to complete training on the standards and report alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student.<sup>23</sup>

### **Florida Virtual Charter Schools**

A “virtual instruction program” is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.<sup>24</sup> DOE annually publishes online a list of providers approved to offer virtual instruction programs.<sup>25</sup> The DOE-published list includes five approved virtual instruction providers for the 2018-2019 school year.<sup>26</sup>

A school district may enter into an agreement with a virtual charter school to provide full-time virtual instruction for students in kindergarten through grade 12.<sup>27</sup> A virtual charter school may provide instruction by:<sup>28</sup>

- Contracting with the Florida Virtual School.
- Contracting with a DOE-approved provider.
- Entering into an agreement with a school district to allow the participation of the virtual charter school’s students in the school district’s virtual instruction program. The school district providing virtual instruction shall report full-time equivalent students for a virtual instruction program or a virtual charter school to DOE, and funding shall be provided through the Florida Education Finance Program.<sup>29</sup>

In the 2017-2018 school year, 1,937 students received instruction from virtual charter schools in Florida.<sup>30</sup> Seven virtual charter schools currently operate in Florida.<sup>31</sup>

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<sup>21</sup> Section 1012.55(1)(b), F.S.

<sup>22</sup> Section 1002.33(12)(g)3., F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 1002.45(1)(a)2., F.S.

<sup>25</sup> Section 1002.45(2), F.S. (Requiring DOE to publish online a list of approved virtual instruction providers and setting forth qualifications for approval as a virtual instruction provider.)

<sup>26</sup> Florida Department of Education, School Choice, *List of Approved Program and Course Providers*, available at <http://www.fldoe.org/schools/school-choice/virtual-edu/approved-provider-resources/approved-providers/> (last visited Mar. 27, 2019).

<sup>27</sup> Section 1002.45(1)(c), F.S.

<sup>28</sup> Section 1002.45(1)(d), F.S.

<sup>29</sup> Section 1002.45(7)(e)

<sup>30</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *Fact Sheet*, (2018) available at <http://cdn.fldoe.org/core/fileparse.php/5606/urlt/Virtual-Sept.pdf>.

<sup>31</sup> Email, Florida Department of Education (Mar. 27, 2019).

### III. Effect of Proposed Changes:

#### Third-party Credentialing Entities

**Section 1** creates s. 1001.241, F.S., to require each charter school principal, charter school governing board member, and charter school chief financial officer to hold a credential, which must certify the individual's core competence in the administration of a charter school. The section requires the DOE to approve one or more third-party credentialing entities for the purposes of developing and administering a credentialing program for charter school principals, charter school governing board members, and charter school chief financial officers.

The section requires an approved credentialing entity to establish:

- A process to administer the certification application, award, and maintenance;
- Position-specific core competencies, certification requirements, testing instruments, and recertification requirements;
- A certification program directly related to the core competencies, with minimum requirements in each of the following categories:
  - Training;
  - On-the-job work experience;
  - Supervision;
  - Testing;
  - Biennial continuing education requirements; and
  - Annual certification renewal requirements.

Qualified training entities are approved to provide precertification training to applicants and continuing education opportunities to certified persons. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificate holder.

#### Core Competencies

The bill requires each charter school principal, governing board member, chief financial officer, or equivalent position to be certified at least 30 days before the school opens or within 30 days of the first date of employment, whichever comes first. The bill does not specify the timeline in which existing charter school personnel must earn the required certification. The credential must certify the individual's core competence in the administration of a charter school, including, but not limited to:

- Developing and adjusting business plans;
- Accurate financial planning and good business practices;
- State and federal grant and student performance accountability;
- State and federal funding sources; and
- Government in the sunshine, conflicts of interest, ethics, and financial responsibility.

#### Code of Ethics

Section 1 further provides that the credentialing entity must institute a code of ethics and disciplinary process. The entity may suspend or revoke a certificate of compliance if the

credential holder fails to adhere to the continuing education requirements. The credentialing entity shall revoke a certificate of compliance if the credential holder provides false or misleading information to the credentialing entity at any time. Moreover, the bill requires a charter school to remove a credential holder from the individual's current position and notify the credentialing entity within three business days of the individual's conviction of an offense enumerated in s. 435.04(2). The bill authorizes the DOE to review any decision by a credentialing program to deny certification or impose sanctions on an individual's certification and provides an aggrieved person thirty days to seek administrative review after completing any appeals process offered by the credentialing program.

### **Background Screening**

Section 1 subjects all applicants for a credential to level 2 background screening as provided under chapter 435.<sup>32</sup> An applicant is ineligible for a credential if the applicant has been convicted of any of 52 offenses enumerated in s. 435.04(2), F.S., and has not been issued an exemption by DOE pursuant to s. 397.4872, F.S.<sup>33</sup> The bill specifies that approved applicants receive a certificate of compliance, which terminates after one year if not renewed. Once an applicant has been fingerprinted and passed the appropriate background screening in any school district, that background screening will be valid throughout the state in perpetuity.

### **Waiting Time for School Opening**

**Section 2** amends 1002.33, F.S., to eliminate the requirement that an applicant submit an application by February 1 to open a charter school eighteen months later at the beginning of the school year. This change allows an applicant submitting an application by February 1 to open a charter school at the beginning of the next school year.

### **Nonrenewal or Termination of a Charter or Credential**

Section 2 also provides penalties if a charter is terminated or a charter school closes before the end of a school year or within 3 years after beginning operations and after a specific finding by the school district of material fraud, disregard of generally accepted accounting principles, or of intentional malfeasance by an applicant for the charter. In such a case, the charter school owner, president, governing board members, and all of their relatives, may not submit an application to open a charter school in this state for a period of 5 years after the termination of the charter or closure of the charter school. An affected party may appeal to the charter appeals commission the school district's finding of material fraud, intentional malfeasance, or disregard of generally accepted accounting principles.

The section further provides penalties if a charter school owner, president, member of the governing board, charter management organization, or education management organization is convicted of a crime including, but not limited to, fraud or financial offenses related to the

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<sup>32</sup> The provisions of ch. 435 apply to facilitate uniform employment background screening. Section 435.01(1)(b), F.S.

<sup>33</sup> The Department of Education lacks statutory authority to issue exemptions pursuant to s. 397.4872, F.S. The Department of Children and Families is authorized to issue exemptions pursuant to s. 397.4872, F.S. See s. 397.311(11), F.S.

operation of a charter school. The organization or party convicted, and all of their relatives<sup>34</sup>, may not submit an application to open a charter school in this state for a period of 10 years after such conviction.

**Section 3** amends s. 1002.45, F.S., to authorize a virtual charter school to provide part-time instruction and be a virtual instruction program provider if approved by the DOE.

**Section 4** provides that the bill takes effect January 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

Lines 466-498, the section imposing penalties in cases of school closure and criminal conviction, may encroach on certain parties' constitutional right to due process. The right to due process imparts a legal obligation on the government to treat citizens fairly and not impose itself in an arbitrary manner.<sup>35</sup> In order to determine whether a statute violates due process, the courts will determine whether the statute is reasonably related to a legitimate legislative interest, and whether the statute is arbitrary, discriminatory, or oppressive.<sup>36</sup> The portions of the bill which prohibit the relatives, to include children, siblings, cousins, and in-laws, of those who have engaged in fraud or committed a crime from applying to open a new school may impinge on those relatives' right to due process. Courts have found that rigid procedures are incompatible with due process where they

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<sup>34</sup> The term "relative" father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. Section 1002.33(24)(a)2., F.S.

<sup>35</sup> The right to due process is found in both the 5<sup>th</sup> amendment of the U.S. Constitution and Article 1, Section 9 of the Florida Constitution.

<sup>36</sup> *Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc.*, 753 So.2d 55 (Fla. 2000).

may not apply fairly to different situations.<sup>37</sup> Such a rigid rule that may affect a large number of people far removed from the misconduct is potentially unconstitutional.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may result in increased costs for charter schools associated with credentialing for principals, governing board members, and chief financial officers.

**VI. Technical Deficiencies:**

Lines 466-498 contain grammatical and scriveners' errors and should be amended for precision and clarity.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates s. 1001.241, F.S.

The bill substantially amends sections 1002.33 and 1002.45 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS/CS by Governmental Oversight and Accountability on April 10, 2019:**

- The CS removes fees for charter school administrators' credentials, which were subject to Article VII, s. 19 of the State Constitution and therefore require separate legislation.
- The CS removes the section providing that charter school administrators' fingerprints will remain valid for 3 years, and adds language providing that the background check and fingerprinting applicants to open charter schools are required to obtain will be valid across the state and in perpetuity.

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<sup>37</sup> *Caple v. Tuttle's Design-Build, Inc.*, 753 So.2d 49 (Fla. 2000).



**CS by Education on March 26, 2019:**

The committee substitute maintains provisions in the bill that require charter school principals, charter school governing board members, and charter school chief financial officers to hold a credential, which must certify the individual's core competence in the administration of a charter school. The committee substitute also:

- Requires the Department of Education (DOE) to approve one or more third-party credentialing entities to establish and administer the credentialing process.
- Eliminates the requirement that an applicant submit an application by February 1 to open a charter school eighteen months later at the beginning of the school year. The bill allows an applicant submitting an application by February 1 to open a charter school at the beginning of the next school year.
- Prohibits specified charter school entities and employees and their relatives from submitting an application to open a charter school for 5 years if specified acts of misconduct caused the termination or nonrenewal of the charter, or 10 years if specified acts of misconduct in the operation of the charter school resulted in the individual's criminal conviction.
- Clarifies that charter school instructional and non-instructional personnel must file fingerprints and pass a background check in any school district in which one of the charter governing board's charter schools is located, and that the background check is valid in all school districts for three years.
- Authorizes a virtual charter school to provide part-time instruction and be a virtual instruction program provider if approved by the DOE.
- Changes the effective date of the bill to January 1, 2020.

**B. Amendments:**

None.