

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 1420

INTRODUCER: Senator Flores

SUBJECT: Charter Schools

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dew	Sikes	ED	Pre-meeting
2.			AED	
3.			AP	

I. Summary:

SB 1420 revises provisions regarding charter school applications, employee and board member criminal history checks, and virtual instruction programs. Specifically, the bill:

- Requires a sponsor to receive and consider a charter school application submitted at any time during the calendar year.
- Allows another verification option for criminal history checks for charter school employees and governing board members.
- Specifies a high-performing charter school may submit two applications to establish a new charter school to be opened at a time determined by the high-performing charter school, with conditions.
- Authorizes a virtual charter school to provide part-time virtual instruction and contract with any public or charter school to provide any course the virtual school cannot otherwise provide.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Charter Schools

Charter schools are public schools that operate under a performance contract (charter),¹ which frees them from many regulations created for traditional public schools while holding them accountable for academic and financial results.² The charter between the charter school

¹ Section 1002.33(5)(a), F.S.

² Section 1002.33(7), F.S.

governing board and the charter school sponsor details the school's mission, program, goals, students served, methods of assessment, and ways to measure success.³

A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.⁴ Additionally, a state university may grant a charter to a developmental research (laboratory) school.⁵

In the 2018-2019 school year, over 313,000 students were enrolled in 658 charter schools in 47 Florida school districts.⁶

Charter School Applications

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of this state.⁷

A sponsor receives and reviews all charter school applications⁸ and must, within 90 calendar days of receipt, approve or deny the application by majority vote.⁹ Charter applicants are required to prepare and submit an application on a standard form prepared by the Department of Education (DOE), which application contains information a sponsor may require and:¹⁰

- Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
- Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
- Contains goals and objectives for improving student learning and measuring that improvement.
- Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level.
- Contains an annual financial plan for each year requested by the charter for operation of the school for up to five years.
- Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor must consider in deciding whether to approve or deny the application.

³ Florida Department of Education, *FAQ, What are charter schools?* <http://fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml> (last visited Jan. 14, 2020).

⁴ Section 1002.33(5)(a)1., F.S.

⁵ Section 1002.32, F.S. Such school must be considered a charter lab school. Section 1002.33(5)(a)2., F.S.

⁶ Florida Department of Education, *Florida's Charter Schools* (Sept. 2019), available at <http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2019.pdf>.

⁷ Section 1002.33(3)(a), F.S.

⁸ Section 1002.33(6)(b), F.S.

⁹ Section 1002.33(6)(b)3.a., F.S.

¹⁰ Section 1002.33(6)(a), F.S. Charter school applications are incorporated into State Board of Education Rule 6A-6.0786, F.A.C.

- Documents, for the establishment of a virtual charter school, that the applicant has contracted with a provider of virtual instruction services in accordance with law.¹¹

A sponsor must receive and consider charter school applications received on or before February 1 of each year in order 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.¹² A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment.¹³

High-Performing Charter Schools

A charter school is considered a high-performing charter school if it:¹⁴

- Received at least two school grades of "A" and no school grade below "B" during each of the previous three school years or received at least two consecutive school grades of "A" in the most recent two school years.
- Received an unqualified opinion on each required annual financial audit¹⁵ in the most recent three fiscal years for which such audits are available, or two most recent fiscal years if the charter school earns two consecutive grades of "A."
- Did not receive a financial audit that revealed one or more of the financial emergency conditions specified in law¹⁶ in the most recent three fiscal years for which such audits are available, or two most recent fiscal years if the charter school earns two consecutive grades of "A."

There are currently 213 charter schools in the state designated as high-performing charter schools.¹⁷

High-Performing Charter School Applications

An application submitted by a high-performing charter school or a high-performing charter school system may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:¹⁸

- The application of a high-performing charter school does not materially comply¹⁹ with the charter school application requirements or, for a high-performing charter school system, the

¹¹ Section 1002.45(1)(d), F.S.

¹² Section 1002.33(6)(b), F.S. A sponsor may receive and consider applications after February 1, if it chooses. *Id.*

¹³ *Id.*

¹⁴ Section 1002.331(1), F.S.

¹⁵ Any local governmental entity, district school board, charter school, or charter technical career center that will not undergo a financial audit for that fiscal year by the Auditor General must have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds. Section 218.39(1), F.S.

¹⁶ Section 218.503(1), F.S.

¹⁷ Florida Department of Education, *Active High Performing Schools* (Dec. 18, 2019), available at <http://app4.fldoe.org/CSA/PostToWeb/ManageSearch.aspx>.

¹⁸ Section 1002.33(6)(b)3.b., F.S.

¹⁹ Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. Section 1002.33(6)(b)3.b., F.S.

application does not materially comply with high-performing charter school system application requirements specified in law;²⁰

- The charter school proposed in the application does not materially comply with charter school requirements specified in law;²¹
- The proposed charter school's educational program does not substantially replicate²² that of the applicant or one of the applicant's high-performing charter schools;
- The applicant has made a material misrepresentation or false statement, or concealed an essential or material fact during the application process; or
- The proposed charter school's educational program and financial management practices do not materially comply with the charter school requirements specified in law.

A high-performing charter school may submit an application in any school district in the state to establish and operate a new charter school that will substantially replicate its educational program.²³

The Commissioner of Education (commissioner), upon request by a charter school, must verify that the charter school meets the specified criteria and provide a letter to the charter school and the sponsor stating that the charter school is a high-performing charter school. The commissioner must also annually determine whether a high-performing charter school continues to meet the specified criteria.²⁴ An application submitted by a high-performing charter school must include the verification letter provided by the commissioner.²⁵

If the sponsor denies an application submitted by a high-performing charter school or a high-performing charter school system, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based on identified criteria, supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the DOE. The applicant may appeal the sponsor's denial of the application to the State Board of Education (SBE).²⁶ If the sponsor fails to act on the application within 90 days after receipt, the application is deemed approved.²⁷

²⁰ Section 1002.332(2)(b), F.S.

²¹ Section 1002.33(9)(a)-(f), F.S.

²² An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools. Section 1002.33(6)(b)3.b., F.S.

²³ Section 1002.331(3)(a)1., F.S. A high-performing charter school may not establish more than two charter schools within the state in any year. However, a high-performing charter school may establish more than one charter school within the state in any year if it operates in the area of a persistently low-performing school and serves students from that school. Section 1002.331(3)(b), F.S.

²⁴ Section 1002.331(4), F.S.

²⁵ Section 1002.331(3)(a)1., F.S.

²⁶ Section 1002.33(6)(b)3.c., F.S. An applicant may appeal any denial of that applicant's application or failure to act on an application to the SBE no later than 30 calendar days after receipt of the sponsor's decision or failure to act, and must notify the sponsor of its appeal. The SBE must by majority vote accept or reject the decision of the sponsor no later than 90 calendar days after an appeal is filed. The SBE must remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The SBE's decision is a final action subject to judicial review in the district court of appeal, and the sponsor must act upon the decision of the SBE within 30 calendar days after it is received. Section 1002.33(6)(c), F.S.

²⁷ Section 1002.331(3)(a)2., F.S.

Charter School Employees

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.²⁸ Each employee and contracted personnel with direct student contact is required to undergo a state and national background screening by electronically filing a complete set of fingerprints with the Florida Department of Law Enforcement.²⁹ 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.³⁰

Charter School Funding and Financial Requirements

Students enrolled in a charter school are funded the same as students enrolled in other public schools in the school district, regardless of sponsorship.³¹ Funding for students enrolled in a charter school is based on the sum of the school district's operating funds from the Florida Education Finance Program (FEFP)³² and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy, divided and multiplied by the appropriate numbers of weighted full-time equivalent students.³³ Total funding for each charter school is recalculated during the year to reflect the state's revised calculations under the FEFP and the actual weighted full-time equivalent students reported by the charter school.³⁴ Each charter school reports its student enrollment to the sponsor as required by law, and the sponsor includes each charter schools' enrollment in the district's report of student enrollment.³⁵ Charter schools are entitled to their proportionate share of categorical program funds for eligible students and programs.³⁶

Charter schools are required to maintain and provide financial information through:³⁷

- Ensuring that the charter school has retained the services of a certified public accountant or auditor for the annual financial audit, who shall submit the report to the governing body according to the requirements defined by law.³⁸
- Reviewing and approving the audit report, including audit findings.
- Maintaining a website that enables the public to obtain information regarding the school, including the school's annual budget and its annual independent fiscal audit.³⁹

²⁸ The employment screening tools consist of the Professional Practices' Database of Disciplinary Actions Against Educators; and the Department of Education's Teacher Certification Database. Section 1001.10(5), F.S.

²⁹ Section 1002.421(1)(m), F.S.

³⁰ Sections 1002.33 and 1012.315, F.S.

³¹ Section 1002.33(17), F.S.

³² See s. 1011.62, F.S.

³³ 1002.33(17)(b), F.S.

³⁴ *Id.*

³⁵ Section 1002.33(17)(a), F.S.

³⁶ Florida Department of Education, *FAQ, How are charter school operations funded?* <http://fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.shtml> (last visited Jan. 14, 2020).

³⁷ Section 1002.33(9)(j)2.-3., F.S.

³⁸ Section 1002.345, F.S.

³⁹ Section 1002.33(9)(p)1., F.S.

For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit may be used for other charter schools operated by the not-for-profit or municipal entity within the school district.⁴⁰

Virtual Instruction Programs

Virtual instruction programs provide instruction in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.⁴¹ DOE annually publishes online a list of providers approved to offer virtual instruction programs.⁴² The DOE-published list includes five approved virtual instruction providers for the 2018-2019 school year.⁴³

All students, including home education and private school students, are eligible to participate in any of the following:⁴⁴

- School district operated part-time or full-time kindergarten through grade 12 virtual instruction programs;⁴⁵
- Full-time virtual charter school instruction;⁴⁶
- Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state;⁴⁷ or
- Virtual instruction provided by the Florida Virtual School.⁴⁸

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 12.⁴⁹ A virtual charter school may provide instruction by:⁵⁰

- 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 FEFP.⁵¹

⁴⁰ Section 1002.33(18)(b), F.S.

⁴¹ Section 1002.45(1)(a)2., F.S.

⁴² Section 1002.45(2), F.S.

⁴³ Florida Department of Education, School Choice, *List of Approved Program and Course Providers*, <http://www.fldoe.org/schools/school-choice/virtual-edu/approved-provider-resources/approved-providers/> (last visited Mar. 27, 2019).

⁴⁴ Section 1002.455, F.S.

⁴⁵ See s. 1002.45(1)(b), F.S.

⁴⁶ See s. 1002.33, F.S.

⁴⁷ See s. 1003.498, F.S.

⁴⁸ See s. 1002.37, F.S.

⁴⁹ Section 1002.45(1)(c), F.S.

⁵⁰ Section 1002.45(1)(d), F.S.

⁵¹ Section 1002.45(7)(e), F.S.

Seven virtual charter schools currently operate in the state for the 2019-2020 school year and generate 3,748 full-time equivalent (FTE) enrollment for funding through the FEFP.⁵²

III. Effect of Proposed Changes:

SB 1420 revises provisions regarding charter school applications, employee and board member criminal history checks, and virtual instruction programs. Specifically, the bill:

- Requires a sponsor to receive and consider a charter school application submitted at any time during the calendar year.
- Allows another verification option for criminal history checks for charter school employees and governing board members to complete criminal history checks.
- Specifies a high-performing charter school may submit two applications to establish a new charter school to be opened at a time determined by the high-performing charter school, with conditions.
- Authorizes a virtual charter school to provide part-time virtual instruction and contract with any public or charter school to provide any course the virtual school cannot otherwise provide.

Florida Charter Schools

Application

The bill removes the specified date by which charter school applications must be submitted and received each calendar year in order for the school to be opened the next year and prohibits a sponsor from refusing to receive a charter school application submitted any time during the calendar year. The bill also allows a charter school to be opened at a time determined by the applicant, such that the agreement of the sponsor is no longer required.

Employee Background Screening

The bill specifies that a charter school employee or governing board member who is subject to a criminal history check⁵³ must inform a school district if he or she has completed a criminal history check in another school district within the last five years. The school district is required to verify the results of the criminal history check using the shared services available through the Care Provider Background Screening Clearinghouse (clearinghouse).⁵⁴ A school district may not charge a fee for verifying the results of a charter school employee's or governing board member's criminal history check.

The Department of Education is defined as a qualified entity⁵⁵ for purposes of access to criminal history information⁵⁶ when fulfilling these duties and is required to participate in the

⁵² Email, Florida Department of Education (Jan. 17, 2020).

⁵³ Provisions for background screening are contained in s. 1012.32, F.S. Educator certification requirements are contained in s. 1012.56, F.S.

⁵⁴ The Care Provider Background Screening Clearinghouse is a secure web-based system created by the Agency for Health Care Administration in consultation with the Department of Law Enforcement. *See* s. 435.12, F.S.

⁵⁵ "Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services. Section 943.0542(1)(b), F.S.

⁵⁶ Access to criminal history information provided by the department to qualified entities is outlined in s. 943.0542, F.S.

clearinghouse. The fingerprint submission and rescreening schedule for instructional personnel certified under this section, without regard to who conducted the previous screening, is set according to the year the last screening was conducted. Specifically, rescreening is required:

- By December 31, 2020, for persons who serve in more than one county and submit fingerprints for rescreening after July 1, 2020, and persons for whom the last screening was conducted on or before December 31, 2014;
- By December 31, 2021, for persons for whom the last screening was conducted between January 1, 2015, and December 31, 2016; and
- By December 31, 2022, for persons for whom the last screening was conducted between January 1, 2017, and December 31, 2018.

Funding and Financial Requirements

The bill expands the authorized use of unrestricted current or capital assets identified in the charter school's annual financial audit by allowing these funds to be used by other charter schools operated by the not-for-profit or municipal entity within the state, rather than being limited to other charter schools within the school district. This may allow a charter school to expend its proportionate share of funding derived from local funds in another school district.

High-Performing Charter Schools

The bill applies both to high-performing charter schools that are yet to submit their applications and to those that have already had their applications approved. The bill specifies that a high-performing charter school has the option of submitting two applications for a charter school, to be opened at a time determined by the high-performing charter school. A high-performing charter school may not submit a subsequent application unless each charter school application commences operations or is otherwise withdrawn.

Virtual Charter Schools

The bill authorizes virtual charter schools to provide part-time virtual instruction, in addition to full-time instruction. The bill expands the authority under which a virtual charter school can operate by allowing a virtual charter school to:

- Be an approved virtual provider, rather than being authorized to contract with one.
- Contract with any public or charter school to provide any course that the virtual school cannot otherwise provide.

Expanding the availability of virtual charter school instruction may provide students with greater access to virtual instruction programs.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
