

**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 Education

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BILL: CS/SB 536

INTRODUCER: Education Committee and Senator Diaz

SUBJECT: Charter Schools

DATE: January 14, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Sikes	ED	<b>Fav/CS</b>
2.			AED	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 536 establishes the High-Performing Charter School Council, appointed by the Commissioner of Education, to review charter school applications submitted by high-performing charter schools and by high-performing charter school systems and recommend approval or denial to the State Board of Education (SBE). Approval by the SBE requires development of a charter between the sponsor and the applicant.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2020.

**II. Present Situation:**

Charter schools are public schools that operate under a performance contract, or a “charter,” which frees them from many regulations created for traditional public schools while holding them accountable for academic and financial results. The charter contract between the charter school governing board and the sponsor details the school’s mission, program, goals, students served, methods of assessment, and ways to measure success.<sup>1</sup>

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<sup>1</sup> Florida Department of Education, *FAQ, What are charter schools?*, <http://www.fl DOE.org/schools/school-choice/charter-schools/charter-school-faqs.stml> (last visited Mar. 22, 2019).

Under current law, a district school board may sponsor a charter school in the county over which the district school board has jurisdiction.<sup>2</sup> Additionally, a state university may grant a charter to a developmental research (laboratory) school<sup>3</sup> and must be considered to be the school's sponsor.<sup>4</sup> Such school must be considered a charter lab school.<sup>5</sup>

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

### **Charter School Application Process**

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.<sup>7</sup>

A sponsor receives and reviews all charter school applications<sup>8</sup> and, within 90 calendar days of receipt, must by majority vote approve or deny the application.<sup>9</sup> All charter applicants must prepare and submit an application on a standard application form prepared by the Department of Education (DOE), which:<sup>10</sup>

- 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.
- Contains additional information a sponsor may require.

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<sup>2</sup> Section 1002.33(5)(a)1., F.S.

<sup>3</sup> Section 1002.32, F.S.

<sup>4</sup> Section 1002.33(5)(a)2., F.S.

<sup>5</sup> *Id.*

<sup>6</sup> 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>.

<sup>7</sup> Section 1002.33(3)(a), F.S.

<sup>8</sup> Section 1002.33(6)(b), F.S.

<sup>9</sup> Section 1002.33(6)(b)3.a., F.S.

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

- For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services in accordance with the law.<sup>11</sup>

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>12</sup>

***Application by a High-Performing Charter School or High-Performing Charter School System***

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:<sup>13</sup>

- The application of a high-performing charter school does not materially comply<sup>14</sup> with the charter school application requirements or, for a high-performing charter school system, the application does not materially comply with high-performing charter school system application requirements specified in law;<sup>15</sup>
- The charter school proposed in the application does not materially comply with charter school requirements specified in law;<sup>16</sup>
- The proposed charter school's educational program does not substantially replicate<sup>17</sup> 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.

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.<sup>18</sup>

<sup>11</sup> Section 1002.45(1)(d), F.S.

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

<sup>13</sup> Section 1002.33(6)(b)3.b., F.S.

<sup>14</sup> 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.

<sup>15</sup> Section 1002.332(2)(b), F.S.

<sup>16</sup> Section 1002.33(9)(a)-(f), F.S.

<sup>17</sup> 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.

<sup>18</sup> 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,

## High Performing Charter Schools and Charter School Systems

### *High Performing Charter Schools*

A charter school is a high-performing charter school if it:<sup>19</sup>

- Received at least two school grades of “A” and no school grade below “B” during each of the previous 3 school years or received at least two consecutive school grades of “A” in the most recent 2 school years.
- Received an unqualified opinion on each required annual financial audit<sup>20</sup> in the most recent 3 fiscal years for which such audits are available, or 2 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 law<sup>21</sup> in the most recent 3 fiscal years for which such audits are available, or 2 most recent fiscal years if the charter school earns two consecutive grades of “A.”

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.<sup>22</sup> If the sponsor fails to act on the application within 90 days after receipt, the application is deemed approved.<sup>23</sup>

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.<sup>24</sup> An application submitted by a high-performing charter school must include the verification letter provided by the commissioner.<sup>25</sup>

There are currently 213 charter schools in the state designated as high-performing charter schools.<sup>26</sup>

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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.

<sup>19</sup> Section 1002.331(1), F.S.

<sup>20</sup> 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.

<sup>21</sup> Section 218.503(1), F.S.

<sup>22</sup> 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.

<sup>23</sup> Section 1002.331(3)(a)2., F.S.

<sup>24</sup> Section 1002.331(4), F.S.

<sup>25</sup> Section 1002.331(3)(a)1., F.S.

<sup>26</sup> Florida Department of Education, *Active High Performing Schools* (Dec. 18, 2019), available at <http://app4.fldoe.org/CSA/PostToWeb/ManageSearch.aspx>.

### *High-Performing Charter School Systems*

A high-performing charter school system means an entity<sup>27</sup> that:<sup>28</sup>

- Operated at least three high-performing charter schools in the state during each of the previous 3 school years;
- Operated a system of charter schools in which at least 50 percent of the charter schools were designated as high-performing charter schools, and no charter school earned a school grade of “D” or “F” in any of the previous 3 school year, with exceptions identified in law;<sup>29</sup> and
- Did not receive a financial audit that revealed one or more of the financial emergency conditions specified in law<sup>30</sup> in the most recent 3 fiscal years for which such audits are available.

A high-performing charter school system may replicate its high-performing charter schools in any school district in the state. The applicant must submit an application using the standard application form prepared by the DOE which:<sup>31</sup>

- Contains goals and objectives for improving student learning and a process for measuring student improvement.
- Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 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 when deciding whether to approve or deny the application.

If the sponsor fails to act on the application within 90 days after receipt, the application is deemed approved.

The commissioner must verify all charter schools served by an entity, verify that the entity meets the specified criteria, and provide a letter to the entity stating that it is a high-performing charter school system. The commissioner must annually determine whether a high-performing charter school system continues to meet specified criteria.<sup>32</sup> An application submitted by a high-performing charter school system must include the verification letter provided by the commissioner.<sup>33</sup>

There are currently three entities identified as high-performing charter school systems, with an additional entity expected to be designated shortly.<sup>34</sup>

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<sup>27</sup> “Entity” means a municipality or other public entity that is authorized by law to operate a charter school; a private, nonprofit corporation with tax-exempt status under s. 501(c)(3) of the Internal Revenue Code; or a private, for-profit education management corporation. Section 1002.332(1)(a), F.S.

<sup>28</sup> Section 1002.332(1)(b), F.S.

<sup>29</sup> Section 1002.332(1)(b)2.a. and b., F.S.

<sup>30</sup> Section 218.503(1), F.S.

<sup>31</sup> Section 1002.332(2)(b), F.S.

<sup>32</sup> Section 1002.332(2)(a), F.S.

<sup>33</sup> Section 1002.332(2)(c), F.S.

<sup>34</sup> Email, Florida Department of Education (Dec. 18, 2019).

### III. Effect of Proposed Changes:

CS/SB 536 modifies s. 1002.33, F.S., to create the High-Performing Charter School Council (council),<sup>35</sup> to review charter school applications submitted by high-performing charter schools and by high-performing charter school systems and recommend approval or denial to the State Board of Education (SBE). The bill maintains an application process similar to current law, but requires a high-performing charter school and a high-performing charter school system to submit an application directly to the council rather than to the sponsor.

The bill requires the Commissioner of Education (commissioner) to appoint a sufficient number of members to the council to ensure a fair and impartial review of applications. Additionally:

- Of the members reviewing an application, one-half must represent currently operating charter schools and one-half must represent sponsors.
- At least one of the members representing charter schools must be from a high-performing charter school or a high-performing charter school system.
- The commissioner or a named designee must chair the council.
- Members serve without compensation but may be reimbursed for travel and per diem expenses in conjunction with their service.

The bill requires that applications submitted to the council by high-performing charter schools and by high-performing charter school systems must comply with the application format developed by the Department of Education (DOE). The bill also establishes an application process, which includes the following:

- The applicant must provide a copy of the application to the sponsor within 3 days after it is submitted to the council.
- The council must review applications using an evaluation instrument developed by the DOE, and must consider the requirements specified in law for all charter school applications in making its recommendation to approve or deny an application.<sup>36</sup>
- The council must consider applications received on or before February 1 of each calendar 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. The council may receive an application submitted after February 1 if the council chooses. The council must allow an applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantial corrections and clarifications if such errors may cause the council to recommend denial of the application.
- A sponsor must provide input to the council within 15 days after receiving a copy of the final application submitted to the council. The sponsor must articulate in writing the specific reasons, based on good cause shown, for its recommendation for denial or approval of the application, which must be included in the application provided to the SBE. The sponsor must also provide to the applicant supporting documentation regarding the recommendation.

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<sup>35</sup> A "council" is an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. Section 20.03(7), F.S.

<sup>36</sup> Section 1002.33(6)(a), F.S.

The bill requires the council to recommend to approve or deny an application by majority vote no later than 30 calendar days after the final application is received, unless the council and the applicant mutually agree in writing to temporarily postpone the vote to a specific date. If the council fails to act on the application within 30 days after receipt, the application must be submitted to the SBE for action. The recommendation to the SBE must be in writing, and must include fact-based justification to the SBE as to whether an application should be approved or denied within 10 days after the council's decision. If the council recommends denial of the application, the council must state in writing the specific reasons, based on the criteria established in existing law.<sup>37</sup> The council must also provide the written recommendation and justification to the applicant and the sponsor within 10 days after making its decision. The bill specifies that the recommendation of the council is not subject to the Administrative Procedures Act (APA),<sup>38</sup> which is consistent with current law regarding charter school application decisions.<sup>39</sup>

The bill requires the SBE to accept or deny the recommendation of the council by majority vote no later than 60 calendar days after receiving the recommendation of the council, and:

- No later than 30 days after receipt of the council's decision, the sponsor and applicant may provide input to the state board regarding the council's recommendation. The commissioner shall receive and make such input available to the state board at least 7 calendar days before the date on which the recommendation by the council is considered.
- If the SBE approves an application, the sponsor must begin development of the charter within 30 days.
- If the SBE denies an application, the SBE must identify in writing the specific reasons, based upon the criteria established in law.<sup>40</sup>
- The SBE's decision is a final action subject to judicial review in the district court of appeal. The decision of the SBE is not subject to the APA.

The bill specifies that an application submitted by a high-performing charter school or a high-performing charter school system may be recommended for denial by the council or denied by the SBE only if the council or SBE demonstrates by clear and convincing evidence the provisions specified in existing law governing denial of such charter applications by a sponsor.<sup>41</sup>

The bill modifies s. 1002.331, F.S., to specify that a high-performing charter school may submit an application to replicate its educational program to the council. Additionally, the bill:

- Authorizes a high-performing charter school to submit an application to operate in any school district in the state.

<sup>37</sup> Section 1002.33(6)(b)3.b., F.S.

<sup>38</sup> In Chapter 120, Florida Statutes, the Administrative Procedure Act (APA) outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering opportunities for citizen involvement. This process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency's decision. The APA serves to protect the citizens of Florida from thousands of unauthorized rules that would otherwise be in effect. Joint Administrative Procedures Committee, *A Primer of Florida's Administrative Procedures Act*, available at <http://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf>, at 3.

<sup>39</sup> The recommendation by the Charter School Appeal Commission (commission), established in s. 1002.33(6)(e)1., F.S., and the decision by the SBE to approve or deny the commission's recommendation is not subject to the Administrative Procedures Act. Section 1002.33(6)(c)3.a. and (6)(e)2., F.S.

<sup>40</sup> Section 1002.33(6)(b)3.b., F.S.

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

- Requires the commissioner to verify the designation of a charter school as a high-performing charter school and submit a verification letter to the charter school only.

The bill modifies s. 1002.332, F.S., to specify that a high-performing charter school system that seeks to replicate its high-performing charter schools must submit an application to the council. The bill also includes the council, rather than the sponsor, as the entity that must review the information disclosure that is required to be included in the high-performing charter school system application.

The new application process established in the bill may shorten the time necessary for approval of an application by a high-performing charter school and a high-performing charter school system.

The bill takes effect on 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:**

The Department of Education may incur some costs in establishing and administering the High-Performing Charter School Council.

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 1002.332.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Education on January 13, 2020:**

The committee substitute clarifies sponsor input on an application submitted to the High Performing Charter School Council to require that the sponsor articulate, in writing, good cause reasons for a recommendation to the council to deny or approve the application, which must be included in the application provided to the State Board of Education. The sponsor must also provide to the applicant supporting documentation regarding the recommendation.

B. **Amendments:**

None.