

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1005 Charter Schools
SPONSOR(S): State & Community Colleges & Workforce Policy Committee, Nelson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 278

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	State & Community Colleges & Workforce Policy Committee	8 Y, 0 N, As CS	White	White
2)	State & Community Colleges & Workforce Appropriations Committee	(W/D)		
3)				
4)				
5)				

SUMMARY ANALYSIS

The Committee Substitute for HB 1005 (bill) amends law regulating charter schools and charter technical career centers (CTCCs) by:

- Adding requirements for charter school and CTCC applicants to attend training prior to filing an application.
- Requiring charter schools and CTCCs to file Department of Education (DOE) developed monthly financial statements with its sponsor
- Establishing indicators of risk for financial difficulty, requiring corrective action plans when indicators exist, requiring the Commissioner of Education to determine if the schools are in a state of financial emergency, and requiring schools found to be in a state of financial emergency to implement financial recovery plans.
- Prohibiting nepotism in charter schools and CTCCs and establishing standards of conduct for governing board members, related to gifts, business transactions, and conflicting employment relationships.
- Providing greater student performance data to parents and the public for charter schools that are not graded or rated.
- Adding requirements for the use of DOE-developed: applications by charter schools and CTCCs; and evaluation instruments and charter and charter renewal documents by sponsors.
- Providing that the Commissioner of Education may terminate a charter for a charter school based on good cause shown by the sponsor.
- Adding that charter schools may offer enrollment preferences to students who live in a community operated by a home owner’s or condominium association if the association permits the school to use a portion of its common area.
- Providing that a sponsor may not deny a charter because the applicant has not yet secured space, equipment, or personnel, if the applicant indicates approval is necessary to raise funds.
- Specifying that charter schools are subject to the constitutional class size requirements.
- Requiring the DOE to develop a process for the assessment of sponsor services to charter schools and to annually report the outcomes of the assessment to the State Board of Education.
- Permitting charter schools to expend fixed capital outlay funding for the purchase or lease of equipment and for payment of property and casualty insurance premiums.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Florida Charter Schools:

In 1996, the Legislature enacted s. 228.056, F.S., Florida's first charter school law.¹ Charter schools are nonsectarian, public schools that operate under a performance contract, referred to as a "charter," with its sponsor. The charter frees the school from many regulations applicable to traditional public schools in order to encourage the use of innovative learning methods, while holding the school accountable for academic and financial results.² Charter schools may be sponsored by a district school board, community college or university, municipality or, in the case of a charter lab school, by a state university.³

Charter schools are subject to the same academic performance accountability requirements applicable to traditional public schools. Thus, its students must take the Florida Comprehensive Assessment Test (FCAT) and the schools are graded annually.⁴

Since 1996, the number of charter schools in Florida has grown from five to 387 during the 2008-2009 school year.⁵ Charter schools served 105,239 students during the 2007-2008 school year.⁶

Overview of Florida Charter Technical Career Centers

A charter technical career center (CTCC) is a public school or a public technical center that is operated under a charter granted by a district school board, a community college board of trustees, or a combination of one or more of each of these entities. Like charter schools, CTCC operations are governed by a charter. Among other things, the charter must establish policies for measuring student performance, reporting of student data, and conflicts of interest. Three CTCCs have been established since the CTCC statute was enacted in 1999: (a) First Coast Technical Institute, St. John's County, 1999; (b) Flagler/Volusia Advanced Technology Center, Volusia County, 2001; and (c) Lake Technical Center, Lake County, 2004.⁷

¹ Chapter 96-186, L.O.F., *initially codified* as § 228.056, F.S., *redesignated in 2002* as § 1002.33, F.S.

² Section 1002.33(1), (2), (7), (9) (16), & (17), F.S.

³ Section 1002.33(5)(a), F.S.

⁴ Section 1002.33(9)(l)1., F.S.

⁵ Florida Department of Education, Florida Charter School List by District, http://www.floridaschoolchoice.org/Information/Charter_Schools/Directory/default.aspx (last accessed March 21, 2009).

⁶ Florida Department of Education, Florida's Charter Schools, (August 2008) *available at*: http://www.floridaschoolchoice.org/information/charter_schools/files/fast_facts_charter_schools.pdf/.

⁷ Section 1002.34, F.S.

Application Process and Evaluation

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 Florida law. The application must contain statutorily specified information and must be submitted by August 1st of each year, unless the sponsor chooses a later date.⁸

The Department of Education (DOE) is required to develop a model charter school application, charter agreement, and charter renewal document. Sponsors are encouraged, but not required to use these documents.⁹ The DOE must also offer training and technical assistance to charter school applicants, which addresses business plan development, startup cost estimation, enrollment projection, and available state and federal funding.¹⁰ Applicants are not required to attend training. Statute does not specify a process for evaluating charter school applications, nor does it require that the DOE develop a model evaluation instrument.

Statute specifies that a sponsor may approve a charter for a charter school before the applicant has secured space, equipment, or personnel if the applicant indicates that approval is necessary to raise funds.¹¹

For CTCCs, statute provides that a district school board or community college board of trustees, or a consortium of one or more of each, may file a CTCC application which must address statutorily specified information.¹² Statute governing CTCCs does not require the DOE to develop a model application for a CTCC, training for CTCC applicants, or an evaluation instrument.

Effect of Bill: The bill amends s. 1002.33(6), F.S., relating to charter schools, and s. 1002.34(4), (5), and (6), relating to CTCCs, to require charter school and CTCC applicants to attend training conducted by the DOE before filing an application. Such training must include instruction in accurate financial planning and good business practices. A sponsor may require an applicant to attend training provided by it, rather than the DOE, if such training meets or exceeds DOE training standards. If a charter school applicant is a management company or nonprofit organization, the school principal, if he or she has been employed, and a qualified representative of the company or organization must attend the training. The application must document that the applicant has participated in required training.

The bill also adds requirements for: (1) charter school and CTCC applicants to use a model application developed by the DOE; (2) the DOE to develop training and technical assistance for CTCC applicants; (3) charter school and CTCC sponsors to evaluate applications using an evaluation instrument developed by the DOE; and (4) sponsors to use DOE-developed charter and charter renewal documents.

Finally, the bill provides that a sponsor shall deny a charter because the applicant has not secured space, equipment, or personnel if the applicant indicates approval is necessary to raise funds.

Termination of Charter for a Charter School

A sponsor may terminate or not renew the charter for a charter school for any of the following reasons: (1) failure to participate in the state's education accountability system or meet the requirements for student performance stated in the charter; (2) failure to meet generally accepted standards of fiscal management; (3) violation of law; or (4) other good cause shown.¹³ A sponsor must provide 90-days' written notice to the charter school prior to termination or non-renewal. The sponsor must conduct an

⁸ Section 1002.33(3)(a) & (6)(a), F.S.

⁹ Section 1002.33(21), F.S.; See Florida Department of Education, Model Florida Charter School Application available at http://www.floridaschoolchoice.org/Information/Charter_Schools/files/Model_Charter_App.pdf.

¹⁰ Section 1, ch. 2006-190, L.O.F., codified at s. 1002.33(6)(g) and (21), F.S.

¹¹ Section 1002.33(5)(b), F.S.

¹² Section 1002.34(4), F.S.

¹³ Section 1002.33(8), F.S.

informal hearing within 30 days after receiving a request for hearing.¹⁴ The charter school may appeal the results of the proceeding to the Charter School Appeals Commission.¹⁵

A charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened. The sponsor must provide notice of the termination to the charter school's governing body and principal and the DOE and must clearly identify in writing the specific grounds for the termination.¹⁶ Under these circumstances, the school district is to assume operation of the school.¹⁷ In July 2007, the District Court of Appeals for the 4th Circuit held that immediate charter terminations were subject to the due process protections provided by the Administrative Procedure Act (APA) as set forth in ch. 120, F.S.¹⁸ The Supreme Court reversed this holding on February 27, 2009, holding that the APA does not apply to immediate charter terminations.¹⁹

Effect of bill: The bill amends s. 1002.33(8)(a), F.S., to limit a sponsor's current authority to not renew or terminate a charter for "other good cause shown." Under the bill, the sponsor is instead authorized to show "other good cause" to the Commissioner of Education, who may then terminate the charter on that basis. The bill also clarifies that an immediate charter termination is not subject to an informal hearing under s. 1002.33(8)(b), F.S., or a hearing under the APA.

Charter School Governing Board Training

Legislation adopted in 2007 requires governing board members of charter schools to participate in governance training approved by the DOE that includes instruction on government in the sunshine, conflicts of interest, ethics, and financial responsibility.²⁰ State Board of Education (SBE) rule requires governing board members to annually participate in this training on or before August 1st of each year.²¹

Effect of Bill: The bill amends s.1002.33(9)(j)4., F.S., to specify that members of a governing board shall not be required to attend governance training more than once every three years.

Charter School Admissions

Charter schools are open to all students residing within the district. Enrollment preference may be given to siblings of current charter school students or children of a charter school employee or governing board member. A charter school may limit enrollment in order to target statutorily specified student populations.²²

Effect of Bill: The bill amends s. 1002.33(10)(d), F.S., to provide that charter schools may also provide an enrollment preference to students who reside in a community operated by a homeowner's or condominium association if the association permits the charter school to utilize a portion of the association's common area.

Charter School Class Size Compliance:

In 2002, voters amended Article IX, s. 1 of the Florida Constitution to set forth specific maximum class size limits for core curricula courses in public school classrooms. The amendment requires that, by the 2010-2011 school year, the maximum number of students that may be assigned to a teacher is: (1) 18 students in grades PK-3; (2) 22 students in grades 4-8; and (3) 25 students in grades 9-12.

Florida law establishes a schedule for measuring class size compliance in core curricula courses, which provides that class size shall be measured at the:

- District level for each of the three grade groupings during Fiscal Years (FYs) 2003-2006.
- School level for each of the three grade groupings in FYs 2006-2009.

¹⁴ Section 1002.33(8)(b), F.S.

¹⁵ Section 1002.33(6)(f), F.S.

¹⁶ Section 1002.33(8)(d), F.S.

¹⁷ *Id.*

¹⁸ *Survivors Charter Schools, Inc. v. School Bd. of Palm Beach County*, 968 So. 2d 39 (Fla. 4th D.C.A. 2007).

¹⁹ *School Bd. of Palm Beach County v. Survivors Charter Schools, Inc.*, 34 Fla. L. Weekly S251 (Fla. Feb 27, 2009).

²⁰ Chapter 2007-234, s. 5, L.O.F., codified at s. 1002.33(9)(k)4., F.S.

²¹ Rule 6A-6.0784, F.A.C.

²² Section 1002.33(10), F.S.

- Individual classroom level for each of the three grade groupings in FY 2009-2010 and thereafter.²³

During the 2003 Regular Session, early versions of the class size legislation expressly exempted such programs as charter schools, the Florida Virtual School, Advanced Placement, and other instruction from the meaning of “core curricula.”²⁴ The legislation that ultimately passed, however, contained a broader definition of “core curricula,” which until recently has been interpreted to include charter schools; thus, requiring charter schools to comply with the class size limits.²⁵

On December 17, 2008, the Division of Administrative Hearings (DOAH) held that the DOE lacked statutory authority to require charter schools to comply with class size limits. The DOAH’s opinion cites s. 1002.33(16)(a), F.S., which exempts charter schools from most education statutes. According to the opinion, statute does not specify that charter schools are subject to the class size statute, s. 1003.03, F.S., and as such, charter schools are exempt from compliance with class size requirements.²⁶

Effect of Bill: The bill amends the charter school statute, s. 1002.33(16)(a), F.S., to provide that charter schools must comply with the constitutional class size limits.

Charter School Sponsor Services

Sponsors of charter schools are required to provide administrative and educational services that include: contract management; full-time equivalent (FTE) student and data reporting; exceptional student education program administration; administration and reporting for federal programs; test administration for the FCAT and other assessments; processing of teacher certification data; and student information services.²⁷ In exchange for the provision of these services, sponsors are authorized to withhold an administrative fee of up to five percent of charter school operating fund disbursements.²⁸ The fee may only be assessed on charter school enrollment up to 500 students. For enrollment over 500, the difference between the total administrative fee calculation and the allowable administrative fee may only be used by the charter school’s governing body for capital outlay purposes.²⁹ Currently, there are no requirements for the assessment of a sponsor’s provision of services to its charter schools.

Effect of Bill: The bill amends s. 1002.33(20)(a), F.S., to require the DOE to develop a process, which must be adopted by the State Board of Education in rule, to annually assess the provision of services by a charter school sponsor. The process must include: a survey to be completed by each charter school, which shall allow the school to identify its satisfaction with its sponsor’s services and any areas of noncompliance with this paragraph; and an opportunity for each sponsor to respond the survey results. The DOE is required to annually report the outcomes of this assessment to the State Board of Education.

Nepotism and Conflicts of Interests

Florida’s charter school and CTCC statutes do not regulate charter school governing board members or employees regarding nepotism or conflicts of interest. Depending on the school’s organizational structure, its governing board and/or employees may be subject to various state and federal laws governing nepotism and conflicts of interest for public officers and employees or nonprofit organizations. If the charter school or CTCC is operated by a municipality, the Code of Ethics for Public Officers and Employees in ch. 112, F.S., governs.

²³ Section 1003.03, F.S.; §1003.01(14), F.S., defines “core curricula courses” to include mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms. § 1003.01(15), F.S., defines “extracurricular courses” to mean all courses that are not defined as “core-curricula courses,” which may include, but are not limited to, physical education, fine arts, performing fine arts, and career education.

²⁴ See House Bill 703 (2003); House of Representatives Staff Analysis for House Bill 703, March 20, 2003, p. 3.

²⁵ Section 2, ch. 2003-391, L.O.F.

²⁶ *The Renaissance Charter School, Inc. v. Dept. of Ed.*, 2008 WL 5269932 (Fla. Div. Admin. Hrgs. 2008).

²⁷ Sections 1002.33(20), F.S.

²⁸ Section 1002.33(20)(a), F.S.

²⁹ Sections 1002.33(20)(a) , F.S.

Nepotism: Florida law prohibits the employment of relatives by state agencies, the legislative and judicial branches, counties, cities, and other political subdivisions. A public official who serves in one of these government entities, and who is vested with the authority to appoint, employ, promote, or advance individuals, may not exercise such authority to the benefit of a relative.³⁰ These provisions apply to any position with the entity in which the official is serving and any position that he or she exercises jurisdiction or control over.³¹

Charter schools sponsored by a municipality are subject to the nepotism prohibition. In contrast, state universities and community colleges are expressly exempted from these prohibitions. Thus, a charter school or CTCC operated by such an entity is also exempt.³²

Conflicts of Interest: Florida law prohibits public officers, agency employees, and local government attorneys from: (1) using their position for private gain; (2) purchasing, renting, or leasing any realty, goods or services for their agency from a business entity in which they have a material interest; and (3) entering into business relationships with an entity that is regulated by or does business with the agency for which they serve.³³ County, municipal, or other local public officials are also prohibited from voting on matters in which they, or a relative or business associate, stand to achieve private gain from the vote's outcome.³⁴ Charter schools operated by a municipality are subject to these provisions.

If the charter school or CTCC is operated by a nonprofit entity, Florida law provides that transactions between a nonprofit corporation and one or more of its directors, or to entities controlled or influenced by a director, may be void or voidable unless: (1) the relationship or interest is disclosed or known to the board of directors; (2) the relationship or interest is disclosed or known to the members entitled to vote on the contract or transaction; or (3) the contract or transaction is fair and reasonable to the corporation at the time it is authorized.³⁵

Effect of Bill: In order to more clearly and uniformly address nepotism and conflict of interest issues for charter schools and CTCCs, the bill amends provisions of law to specifically identify prohibitions that will apply to all charter school and CTCC governing board members and personnel.

As a condition of receiving a charter, the bill requires in ss. 1002.33(7)(a)18. and 1002.34(4)(m), F.S. charter school and CTCC applicants to disclose in the charter the names of relatives that will be employed by the charter school or CTCC. Under the bill, personnel in charter schools and CTCCs are prohibited from knowingly recommending or engaging in the appointment, employment, promotion, or advancement of an person into a position at a work location if such will create a situation in which one employee will be responsible for the direct supervision of, or exercise jurisdiction or control over, another employee who is a relative. The Commissioner or the charter school's sponsor is permitted to grant a waiver of this prohibition if it would cause an undue hardship to students or seriously disrupt a charter school's operations.

For purposes of this provision, the bill defines the terms:

- "Charter school personnel" as meaning a charter school owner, president, chair or member of the governing board, superintendent, principal, assistant principal, or any other personnel with the authority to appoint, employ, promote, or advance the school's employees.
- "Relative" to mean a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, half brother, half sister, and specified in-law and step-relatives.

³⁰ Section 112.3135(1), F.S. "Relative" is defined to mean an individual who is "related to a public official as 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."

³¹ Section 112.3135(2)(a), F.S.

³² Section 112.3135(1), F.S.

³³ Section 112.313(2), (3), & (7), F.S.

³⁴ Section 112.3143(3), F.S.

³⁵ Section 617.0832(1), F.S.

The nepotism prohibitions in s. 112.3135, F.S., apply to charter school personnel in schools operated by municipalities or other public entities.

With regard to conflicts of interests, the bill subjects members of the governing board of a charter school or CTCC, including those operated by private entities, to the same requirements that apply to public employees for the solicitation and acceptance of gifts, business transactions, and conflicting employment or contractual relationships in s. 112.313(2), (3) and (7), F.S. It also allows a board member, as current law allows a public employee or officer, to seek a waiver from the governing board, under s. 112.313(12), F.S., after providing full disclosure of a transaction or relationship, from the provisions for business transactions and conflicts of interest.

The bill also subjects board members for all charter schools and CTCCs to the voting conflict requirements in s. 112.3143, F.S. Additionally, board members of charter schools or CTCCs operated by public entities are also subjected to the requirements for public disclosure of financial interests in s. 112.3144, F.S.

Board members who violate any of the specified ch. 112, F.S., provisions are subject to the penalties in s. 112.317, F.S., which include: fines; impeachment, removal, or suspension from office for officers; dismissal from employment; and reduction in, or forfeiture of, salary.

Annual Audits and Financial Emergencies

Florida law requires district school boards, charter schools, and CTCCs to provide for an annual financial audit.³⁶ The Auditor General may choose to conduct the audit. If not, the entity must arrange for an audit by an independent certified public accountant (CPA).³⁷ The audit must include an examination of the school's financial statements in order to determine that its financial position, any changes in financial position, and cash flow comply with generally accepted accounting principles. It must also examine the conduct of the school's operations for compliance with legal and regulatory requirements.³⁸ The auditor must review each audit and discuss audit findings with the chair of a district school board or charter school or CTCC governing board.³⁹

The Local Governmental Entity, Charter School, and District School Board Financial Emergencies Act contained in Part V of ch. 218, F.S., is designed to promote financial responsibility, provide assistance for meeting essential services without interruption, and improve local financial management procedures for local governmental entities, school boards, and charter schools.⁴⁰ Unlike district school boards and charter schools, CTCCs are not subject to the Act.⁴¹

Under the Act, a local government entity, charter school, and district school board must notify the Legislative Auditing Committee, and as appropriate, the Governor, Commissioner of Education, or charter school sponsor when an audit reveals that one of the following conditions has occurred, or will occur, if action is not taken:

- Failure to pay short-term loans, make bond debt service, or pay long term debts when due, as a result of a lack of funds;
- Failure to pay uncontested creditor claims, as a result of lack of funds;
- Failure to transfer at the appropriate time due to lack of funds: employee income tax or employer and employee contributions for social security or benefit plans;
- Failure for one pay period to pay employee wages, salaries, or retirement benefits, as a result of lack of funds; or

³⁶ Sections 1002.33(9)(g), F.S.

³⁷ Sections 11.45(3)(c), F.S.; § 218.39(1)(e), F.S.

³⁸ Rule 10.855(2), Rules of the Auditor General.

³⁹ Section 218.39(5), F.S.

⁴⁰ Section 218.501, F.S.

⁴¹ See §§ 218.50-218.504, F.S.

- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial.⁴²

Also, when one or more of the above conditions occur for:

- A local government entity or a district school board, the Governor or the Commissioner, as appropriate, must contact the entity to determine what actions have been taken to resolve the condition and whether state assistance is needed. If assistance is needed, the local government entity or district school board is considered to be in a state of financial emergency.
- A charter school, the sponsor must contact the governing body to determine what actions have been taken to resolve the condition. The sponsor *may* require a financial recovery plan to be prepared by the governing body, which must prescribe actions to eliminate the condition.⁴³

The charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., adds that if an audit for a charter school reveals a state of financial emergency as defined in s. 218.503, F.S., it must be provided to the governing board within seven days and the sponsor and the DOE must also be notified. The term “state of financial emergency,” however, is not defined in s. 218.503, F.S. The charter school statute provides that, when a charter school is found to be in a state of financial emergency by an auditor, the school must file a financial recovery plan with the sponsor.

Accordingly, it appears that statute requires the auditor to determine when a charter school is in a state of financial emergency, without specifically citing the criteria upon which the CPA or auditor is to make that determination. In contrast, there must be a finding by the Governor for a local government entity or by the Commissioner for a district school board that the entity or board needs state financial assistance before it is deemed to be in a state of financial emergency.⁴⁴

The DOE is statutorily required to develop guidelines for the development of financial recovery plans.⁴⁵ The guidelines specify the steps the charter school governing board and sponsor must take to develop and implement the plan. Financial recovery plans must include provisions that address: (1) the school’s viability for continuing operation; (2) an assessment of current status; (3) available revenues; (4) expenditures; (5) proposed cost reductions; and (6) monitoring plan implementation and progress. These guidelines were published in March 2007.⁴⁶

Effect of Bill: The bill amends provisions in ch. 218, F.S., to add CTCCs to the Financial Emergencies Act; thus, CTCCs will be subject to the Act’s requirements in the same manner as local government entities, school boards, and charter schools. The bill also requires in ss. 1002.33(9)(g) and 1002.34(11)(f), F.S., that each charter school and CTCC provide a monthly financial statement to its sponsor. The content and form of the monthly statement must be prescribed by the DOE.

Further, the bill strikes the conflicting language discussed above, which is contained in the charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., and which references audit findings of an undefined “state of financial emergency” and requires financial recovery plans under imprecise circumstances. To better define a process for identifying charter schools and CTCCs that are experiencing financial difficulties, the bill creates new section of law, s. 1002.345, F.S.

The new section of law establishes an expedited review process for determining the financial condition of a charter school or CTCC. The sponsor must conduct an expedited review if one of the following conditions occurs:

1. *Failure to provide for an annual audit;*

⁴² Section 218.503(1), F.S.

⁴³ Section 218.503(3) & (4), F.S.

⁴⁴ Section 218.503(3), F.S.

⁴⁵ Section 218.503(4), F.S.; §1002.33(7)(a)10., F.S.

⁴⁶ See Florida Department of Education, *Technical Assistance Paper: Charter School Financial Recovery Plan*, No. 2007-12 (March 2007) available at http://www.floridaschoolchoice.org/Information/Charter_Schools/files/Financial_Recovery_Guidelines.pdf.

2. *Failure of a charter school to comply with requirements for annual financial reporting, monthly financial statements, program cost reporting, and school accountability reporting as set forth in s. 1002.33(9), F.S., and failure of a CTCC to comply with requirements for monthly financial statements and annual accountability reports as set forth in s. 1002.334(11)(f) and (14), F.S.*
3. *A deteriorating financial condition, which is defined to mean a circumstance that significantly impairs the ability of a charter school or CTCC to generate enough revenue to meet its expenditures without causing the occurrence of a financial emergency condition under s. 218.503(1), F.S.; or*
4. *Notification that a financial emergency condition has occurred or will occur if action is not taken.*

The sponsor must notify the charter school or CTCC governing board within seven days when one of the four conditions above occurs. The sponsor and governing board must develop, and file with the Commissioner, a corrective action plan. If the sponsor and board are unable to agree on the components or necessity of the plan, the Commissioner determines the plan. If a governing board fails to implement the plan within one year, the SBE must prescribe steps for compliance. In such cases, the chair of the governing board must annually appear before the SBE to report on the implementation of the SBE's requirements.

Further, the new section requires the auditor to notify each governing board member, the sponsor, and the Commissioner within seven business days if an audit detects that one or more financial emergency conditions specified in s. 218.503(1), F.S., has occurred or will occur. The Commissioner is then required to determine under s. 218.503(4), F.S., as amended by the bill, whether the charter school or CTCC needs a financial recovery plan. If the Commissioner determines that a recovery plan is needed, the charter school or CTCC is considered to be in a state of financial emergency.

A charter school or CTCC that is determined to be in a state of financial emergency must file a financial recovery plan with its sponsor and the Commissioner within 30 days. The governing board must annually report on the status of plan implementation to its sponsor. Further, the Commissioner must annually report each charter school and CTCC that is subject to a financial recovery or corrective action plan to the SBE.

The new section also provides that a sponsor may choose to not renew or terminate a charter if the school or CTCC fails to correct the deficiencies in a corrective action plan within one year or if it exhibits one or more financial emergency conditions specified in s. 218.503(1), F.S., for two consecutive years.

Finally, the new section requires the DOE to provide technical assistance to charter schools, CTCCs, governing boards, and sponsors in developing corrective action and financial recovery plans. It also requires the SBE to adopt rules for developing financial recovery and corrective action plans, defining a deteriorating financial condition, and establishing procedures for determining a deteriorating financial condition.

School Accountability

Florida law requires the DOE to provide information information on forming, operating, and enrolling in a charter school. This information must include its model application, model charter format, and renewal format.⁴⁷

Florida's School Grading System requires the Commissioner of Education to prepare an annual performance report for each school and school district based primarily on student FCAT performance.⁴⁸ A school's grade is determined based on student achievement scores, student learning gains, and improvement of the lowest quartile of students.⁴⁹ Schools are graded on a scale of "A" to "F."⁵⁰ Alternative schools⁵¹ receive a school improvement rating, but may elect to receive a school grade.⁵²

⁴⁷ Section 1002.33(21), F.S.

⁴⁸ Section 1008.34(1) & (3), F.S.

⁴⁹ Section 1008.34(3)(a), F.S.; Beginning with the 2009-2010 school year, 50 percent of a high school's grade will be based on the following additional factors: high school graduation rate, student participation rate and performance in specified advanced and career courses, postsecondary readiness as measured by the ACT, SAT, or common placement test, graduation rate of certain at-risk students, and student performance on statewide standardized end-of-course assessments. See s.1008.34(3)(b)2., F.S.

In order to receive a grade, a school must have at least 30 students with valid FCAT reading and math scores from the current and previous year.⁵³ Schools that do not meet these criteria do not receive a school grade. Further, a school that tests fewer than 90 percent of its students may receive a school grade of “I,” or “incomplete,” unless the DOE determines that its data accurately reflects that school’s progress.⁵⁴ According to DOE representatives, these rules were established in order to ensure that a school’s grade was based on a statistically valid sample size.⁵⁵

Effect of Bill: The bill provides reporting requirements for the DOE and each charter school that does not receive a school grade or a school improvement rating, to the extent that the information does not compromise a student’s privacy.

The DOE must provide charter schools that are not graded or rated, but which serve at least ten students who participate in the statewide assessment, with student performance data, including student learning gains. Each charter school must report this data to: the parent of a student enrolled in, or on a waiting list for, a charter school; the school district, and the governing board. Additionally, the DOE is required to compare the performance data of: (1) each charter school that is not graded or rated to that of traditional public schools in the district where the charter school is located and other charter schools in the state; and (2) each charter alternative school that is not graded or rated with all alternative schools in the state. The performance and comparison data must be made available by the charter school on its website and via a public notice process established in SBE rule.

Charter School Fixed Capital Outlay

Section 1013.62, F.S., provides for the distribution of capital outlay funds to charter schools. Eligibility for charter school capital outlay funding is based on the following criteria:

- The school has been in operation for at least 3 years, is created as part of a feeder pattern with an existing charter school in the district, or is accredited by the Southern Association of Colleges and Schools;
- The school demonstrates financial stability;
- The school achieves satisfactory student performance;
- The school receives final approval from its sponsor; and
- The school serves students in facilities not provided by the charter school sponsor.⁵⁶

First priority for this funding is given to charter schools that received funding in 2005-2006. Charter schools that did not receive such funding may be eligible for an allocation subject to funds availability. Any funds remaining after these distributions are made are allocated among all eligible charter schools. Each school’s capital outlay allocation must not exceed 1/15th of the statutory cost per student station.⁵⁷

During the past three fiscal years, the Legislature appropriated the following amounts for charter school capital outlay funds: (a) \$27.7 million for FY 2005-2006;⁵⁸ (b) \$53.1 million for 2006-2007;⁵⁹ (c) \$54 million for 2007-2008,⁶⁰ and (d) \$55.1 million for FY 2008-2009.

Charter schools may use capital outlay funds for the purchase of real property; construction of school facilities; purchase, lease-purchase, or lease of permanent or portable school facilities; purchase of vehicles to transport students to and from the charter school; and renovation, repair, and maintenance

⁵⁰ Section 1008.34(2), F.S.

⁵¹ An alternative school provides dropout prevention and academic intervention under s. 1003.53, F.S.

⁵² Section 1008.341, F.S.

⁵³ Rule 6A-1.09981 (4), F.A.C.

⁵⁴ Rule 6A-1.09981(9)(b), F.A.C.

⁵⁵ Telephone conference with DOE representatives in July 2007.

⁵⁶ Section 1013.62(1), F.S.

⁵⁷ *Id.*

⁵⁸ 2005-2006 General Appropriations Act, Specific Appropriation 17, Chapter 2005-70, L.O.F.

⁵⁹ 2006-2007 General Appropriations Act, Specific Appropriation 28, Chapter 2006-25, L.O.F.

⁶⁰ 2007-2008 General Appropriations Act, Specific Appropriation 24, Chapter 2007-72, L.O.F.

of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.⁶¹

Effect of Bill: The bill expands the authorized uses of charter school capital outlay funds to also permit it to be expended on: (a) the purchase, lease-purchase, or lease of new and replacement equipment; and (b) payment of the cost of premiums for property and casualty insurance necessary to insure the school.

B. SECTION DIRECTORY:

Section 1. – Amending s. 11.45, F.S.; adding CTCCs to Auditor General reporting requirements; and requiring the Auditor General to adopt rules for CTCC financial reporting.

Section 2. – Amending s. 121.09, F.S.; authorizing specified charter school and public prekindergarten personnel to extend DROP participation from 60 to up to 96 months.

Section 3. – Amending s. 218.50, F.S.; adding CTCCs to the Financial Emergencies Act.

Section 4. – Amending s. 218.501, F.S.; adding CTCCs to the Financial Emergencies Act.

Section 5. – Amending s. 218.503, F.S.; adding CTCCs to the Financial Emergencies Act; and requiring the Commissioner of Education to determine whether a state of financial emergency exists.

Section 6. – Amending s. 218.504, F.S.; adding CTCCs to the Financial Emergencies Act.

Section 7. – Amending s. 1002.33, F.S., relating to charter schools; requiring use of specified documents developed by the DOE; revising requirements for a 15-year charter renewal; revising provisions relating to the online school accountability report; revising provisions for charter school compliance with class size requirements; revising provisions relating to interdistrict transfers; revising provisions relating to the timing of state and federal fund payments to charter schools; requiring charter schools to receive the first opportunity to purchase or lease certain district property; revising provisions relating to a state of financial emergency; prohibiting nepotism and requiring compliance with specified conflict of interest regulations; requiring quarterly financial reporting; and revising student assessment data requirements.

Section 8. – Amending s. 1002.335, F.S., relating to the FSEC; revising district school board exclusivity provisions; prohibiting nepotism and requiring compliance with specified conflict of interest regulations; and revising student assessment data requirements.

Section 9. – Amending s. 1002.34, F.S., relating to CTCCs; requiring CTCC use of specified documents developed by the DOE; requiring the DOE to develop applicant training; revising provisions for CTCC compliance with class size requirements; revising provisions relating to a state of financial emergency; and prohibiting nepotism and requiring compliance with specified conflict of interest regulations.

Section 10. – Creating s. 1002.345, F.S.; specifying requirements for charter schools and CTCCs that are experiencing financial difficulty or that are found by the Commissioner of Education to be in a state of financial emergency.

Section 11. – Amending s. 1011.71, F.S.; requiring school districts to share two-mill revenues with charter schools.

Section 12. – Amending s. 1013.61, F.S.; expanding the authorized uses of charter school fixed capital outlay.

⁶¹ Section 1013.62(2), F.S.

Section 13. – Amending s. 1013.735, F.S.; requiring charter schools to receive a specified portion of class size reduction fixed capital outlay.

Section 14. – Providing an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the DOE to perform a number of tasks to assist charter schools and CTCCs, including offering or arranging training and specific technical assistance for applicants, assisting with the development and monitoring of financial recovery plans, and providing and comparing student performance information. The DOE already provides these types of services to districts and other schools. The administrative workload associated with the bill is expected to have an insignificant fiscal impact.⁶²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

⁶² Florida Department of Education, Legislative Bill Analysis for HB 1005 (2009).

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to adopt rules for:

- Developing financial recovery and corrective action plans;
- Defining deteriorating financial conditions and establishing procedures for determining when such conditions exist;
- Specifying a notice process to be used by certain charter schools to report student performance data to the public.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the State & Community Colleges & Workforce Policy Committee adopted a proposed committee substitute (PCS) with four amendments and reported the bill favorably as a committee substitute (CS). The CS differs from the original bill as follows:

- The CS removes references to the Florida Schools of Excellence Commission.
- The CS revises the financial conditions that trigger a corrective action plan or financial recovery plan to be based on the condition having occurred or about to occur if action is not taken; whereas, the bill on provided for the trigger only if the condition occurred.
- The CS revises who must attend applicant training.
- The CS adds a requirement that sponsors use DOE-developed charters and charter renewal documents.
- The CS removes the bill's amendment to current law that allowed a sponsor to request additional information in an addendum to a DOE-developed charter school application.
- The CS adds that the DOE must specify the content, as well as the form of the monthly financial statements.
- The CS adds that governing board members shall not be required to attend governance training more than once every three years.
- The CS adds authority for charter schools to grant an enrollment preference to students living in communities controlled by certain home owner's and condominium associations.
- The CS revises current law to provide that a sponsor may not deny a charter application because the applicant has not secured space, equipment, or personnel if the applicant indicates approval is necessary to raise funds.
- The CS adds a requirement for the DOE to develop a process for assessing sponsor services.
- The CS revises the nepotism prohibition to be based on the location of the employee.
- The CS adds that charter schools may use fixed capital outlay for equipment and insurance premiums.

This analysis is drafted to the CS.