

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 Education Pre-K - 12 Committee

BILL: SB 1546

INTRODUCER: Senator Thrasher

SUBJECT: Charter Schools

DATE: March 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Pre-meeting
2.	_____	_____	HE	_____
3.	_____	_____	BEA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Authority is expanded for state universities and state colleges to approve charter schools. University- and community college-approved charter schools, other than lab schools, would enter into charter contracts with the local school district. This bill also increases grade levels available to community colleges to develop charter schools with school districts, from secondary schools, to kindergarten through grade 12 programs.

The Charter School Appeal Commission and the Charter School Review Panel are abolished, and a substitute appeal process is provided through the creation of the Charter School Review and Appeals Panel (Panel). As in current law, the State Board of Education (Board) decision to approve or deny an application is not subject to the administrative process and represents final action, with judicial review in the district court of appeal. The process for charter school non-renewals and terminations, however, adds administrative review, at the option of the school, which would then result in a final order issued by the sponsor and subject to judicial review.

This bill establishes the designation of “high performing charter schools”, provides qualifications and outlines benefits. High performing charter school systems are also created.

Greater flexibility for charter schools-in-the-workplace is provided.

The bill removes the requirement of a charter school to provide transportation for its students.

This bill establishes the College Preparatory Boarding Academy Pilot Program to serve at-risk students.

OPPAGA is required to compare charter school with traditional school funding, and recommend improvements to accountability and equity.

This bill substantially amends sections 163.3180, 196.1983, 1002.32, 1002.33, 1002.34, 1002.345, 1011.68, 1012.32, and 1013.62 of the Florida Statutes. The bill creates one undesignated section of law.

II. Present Situation:

Approved Sponsors of Charter Schools

Local school districts may approve and sponsor charter schools and universities may sponsor charter lab schools.¹ However, current law limits the number of charter lab schools eligible for state funding that may be authorized to one per university, except for certain charter lab schools authorized prior to June 1, 2003.² Additionally, community colleges may work with local school districts to develop charter schools but are limited to approval of secondary programs.³

Process for Appeal of Application Denials and Nonrenewal or Termination of a Charter

No later than 30 calendar days after receipt of a denial, the applicant may appeal the decision to the State Board of Education (Board), with notice to the sponsor. Upon receipt of notice of the appeal from the Board, the Commissioner of Education (COE) is required to convene a meeting of the Charter School Appeal Commission to make recommendations to the Board about the appeal. The Board must decide no more than 90 calendar days after the appeal is filed, and the sponsor is bound by the decision. The Board's decision is not subject to the ch. 120, F.S., administrative process, and represents, instead, final action, subject to judicial review in the appropriate district court of appeal.⁴

Besides issuing recommendations in applicant appeal cases, the Charter School Appeal Commission assists the COE and the Board in non-renewal and termination cases.⁵ In addition to other grounds, a sponsor may non-renew, or terminate a charter for failure to meet generally accepted standards of fiscal management.⁶ At least 90 days before renewing or terminating a charter, the sponsor must provide written notification and notice that the school may request an informal hearing, to be held by the sponsor within 30 days of request receipt. The applicant is authorized to then follow the appellate process established for denials of new applicants.

Charter School Training

The Department of Education (DOE) is required to offer or arrange for training and technical assistance to charter school applicants in business development, expenses and income. Charter school applicants are required to participate in training, either at the DOE or through a qualifying sponsor program.⁷

¹ s. 1002.33(5), F.S.

² s. 1002.32(2), F.S. The previously authorized charter schools are Florida State University Charter Lab K-12 School in Broward County, Florida Atlantic University (FAU) Charter Lab 9-12 High School in Palm Beach County, and FAU Charter Lab K-12 School in St. Lucie County.

³ s. 1002.33(5)(b)4., F.S.

⁴ s. 1002.33(6)(c), F.S.

⁵ s. 1002.33(6)(e), F.S.

⁶ s. 1002.33(8)(a)2., F.S.

⁷ s. 1002.33(6)(f)2., F.S.

Term of Operation for Charter Schools

The initial term of a charter is 4 to 5 years. Charter schools operated by a municipality, charter lab schools, and charters operating under a private not-for-profit s. 501(c)(3) corporation are eligible for an initial term of up to 15 years.⁸

Charter School Review Panel

The DOE staffs and convenes a Charter School Review Panel to review charter school issues, practices and policies, for the purpose of making recommendations to the Legislature, the DOE, charter schools and school districts for improving operations and oversight.⁹

III. Effect of Proposed Changes:**Additional Authorizers of Charter Schools**

This bill authorizes state universities and state colleges to approve charter schools that are not lab schools. University- and community college-approved charter schools, other than lab schools, must enter into a charter contract with the local school district. However, the bill does not explicitly repeal the cap in s. 1002.32(2), F.S. Accordingly, it is unclear whether the additional schools authorized by a state university would be eligible for state funding. Additionally, it is unclear who the sponsor of a charter school is in the situation when the university or state college approves the charter school.

The bill limits the authority of community colleges that may authorize additional charter schools to state colleges. It is unclear why community colleges should not also have the same authority to approve new charter schools as a state college.

This bill expands authority granted to community colleges to develop charter schools with school districts from secondary schools to students from kindergarten through grade 12. While the original restriction in law may have been designed to prevent community college mission creep, the bill contemplates that community colleges could run effective K-12 charter schools.

The Charter School Review and Appeals Panel (Panel)

The bill abolishes the Charter School Appeal Commission and the Charter School Review Panel and creates an entity that merges the functions of the two entities. The new Charter School Review and Appeals Panel (Panel) is established to make recommendations on appeals from charter schools applicants. Additionally, the Panel would hear appeals of a sponsor's decision to terminate or non-renew an existing charter. The recommendation of the Panel is not binding on the State Board of Education (Board). The Board's decision is not subject to chapter 120, F.S., and represents final action, with judicial review in the appropriate district court of appeal.

The Panel membership is revised to consist of member-appointments by the Senate President, House Speaker, Governor and the Commissioner of Education (COE) (in contrast to the existing structure of the Appeal Commission, which is appointed by the COE.)

⁸ s. 1002.33(7)(a)12., F.S.

⁹ s. 1002.33(22), F.S.

This bill adds administrative hearings, and ch. 120, F.S., process, to the non-renewals and termination process, at the charter school governing body's request. If requested, an administrative law judge will issue a recommended order, and the sponsor shall issue a final order. The order is then appealable to the appropriate district court of appeal. As in current law, the sponsor must assume operation of the school following an immediate termination of the charter. However, the bill adds that the sponsor is not obligated to assume operation of the school if the continued operation of the school would materially threaten the physical health, safety, or welfare of the students. Conversely, the bill authorizes attorney's fees and costs to the charter school if the sponsor fails to assume operation of the school and the charter school prevails on appeal.

High Performing Charter Schools and High Performing Charter School Systems

This bill establishes the designation of "high performing charter schools" provided that the following minimum standards exist and are maintained:

- For the last three years the school received an "A" or "B" school grade, received an unqualified opinion on each financial audit, and did not receive a financial audit that revealed a condition warranting a determination of financial emergency, except for charter schools-in-the-workplace, if the audit finds that money is available to cover the deficiency or it does not result in a deteriorating financial condition; and
- The school has operated for less than three years as part of a high performing charter school system. These schools are eligible for capital outlay funds in their first year without having to comply with statutory requirements operating and being governed by a board in-state at least three years, holding SACs accreditation, having financial stability, and other factors. Additionally, it appears that these schools would have immediate high-performing status.

Benefits available to high performing charter schools include flexibility to annually increase student enrollment by up to 25 percent above the authorized cap, add grade levels, offer voluntary prekindergarten, and be eligible for 15-year renewals. The initial term of other types of charters is fixed at five years. The bill does not reference the statutory requirement that charter school meet the class size requirements at the school level.¹⁰

Other benefits to high-performing schools are that they have to comply with training once and submit quarterly financial statements rather than the current monthly filing requirements for charter schools.

This bill establishes "high-performing charter school system" with the following attributes:

- Operates at least three high-performing charter schools in the state;
- Has received, among schools, a minimum average "B" grade during the last three years for all schools started by the system;
- Has not had a school with financial emergency status; and

¹⁰ s. 1002.33(16)(b)3., F.S.

- Has not had a school with an “F” grade for the last two years for any school that the system started.

While under the designation of a high-performing charter school system, the system is authorized to create new charter schools in any district in the state which substantially replicates one or more of the provider’s existing high-performing schools. A local school district is limited in its ability to deny these applications only if good cause is shown that the operator failed to meet specific statutory requirements, which are that it be nonsectarian; admit students under general statutory eligibility requirements; be accountable to its sponsor for performance; not charge tuition or fees; and comply with health, safety, civil rights law and antidiscrimination provisions. Financial conditions are not addressed. Initial charters run for a term of 15 years, with the first three years constituting the status of high-performing. This status makes the school immediately eligible for capital outlay funding.

It may be challenging for local school boards, the Department of Education and the Auditor General to keep pace with the changing status of a school or system that becomes high-performing and loses that status, regarding the accompanying change in requirements. For example, it is unclear what would happen to projects partially started with capital outlay funding for a new school that loses high-performing status in its first three years of operation. This is also the case for schools that don’t start as high-performing but accrue that status.

Other Charter Provisions

This bill expands enrollment preference for students associated with certain charter schools. Specifically, employees of a business partner or residents of a municipality for a charter school-in-the-workplace and residents of a municipality that operate a charter school-in-a-municipality

This bill expands the current prohibition on requiring resignations from teachers desiring to teach in charter schools to instructional personnel, school administrators and educational support employees. Sponsors are prohibited from requiring charter school governing board members to reside in the district, and must allow management to represent the charter school on the governing board if approved pursuant to the school’s governing documents.

This bill provides greater flexibility for formation of charter schools-in-the-workplace.

Regarding concurrency, this bill specifies that charter school facilities are exempt from all concurrency and other impact fees. Developers who donate land or other facilities are eligible for impact fee and concurrency credits.

This bill requires sponsors to provide transportation and lunch services to charter schools at-cost. Charter schools may not be required to provide transportation for students who live more than 4 miles away and would no longer be required to provide transportation in some circumstances. This provision may represent an indeterminate fiscal savings to charter schools but may have an effect on charter school enrollment by students with free or reduced price lunch status.

College Preparatory Boarding Academy Program

This bill establishes the College Preparatory Boarding Academy Pilot Program, a private nonprofit, to serve at-risk students through a residential remedial curriculum for middle through

high school students. Eligible students are students in the 5th or 6th grade, with family income at less than 200 percent of federal poverty guidelines, and have two of the following:

- A record of suspensions, office referrals, or chronic truancy;
- Referrals for academic intervention or a failure to achieve a proficient score on state assessments;
- The student's parent is a single parent;
- The student does not live with the custodial parent;
- The student received a referral from a school, teacher, counselor, dependency court circuit judge, or community-based care organization;
- The student's family receives a housing voucher or is public housing assistance-eligible;
- A member of the student's immediate family has been incarcerated;
- The student has been adjudicated dependent; or
- The student meets additional criteria established by the State Board of Education and the program operator.

The State Board of Education selects the private operator in consideration of the following:

- The entity will receive a public charter school for grades 6 through 12 or has a partnership with a sponsor to offer a school;
- The entity has success in operating a similar school; and
- The entity has the ability to finance and secure private funds for campus development.

This bill outlines the process for State Board of Education approval and contract terms and limitations, including an initial approved capacity of 80 students with a final cap of 400 students. Medicaid is authorized.

Office of Program Policy Analysis and Government Accountability (OPPAGA)

OPPAGA is required to conduct a study that compares charter school, with traditional public school, funding, with specific focus on capital improvement millage and the five percent administrative fee, and contains recommendations for improving accountability and equity.

It is unclear how FTEs will be accounted for regarding students who intend to enroll in charter schools out-of-district.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions that authorize high-performing charter systems to replicate charter schools in school districts under a more limited good cause rebuttal, along with the provision that requires the State Board of Education to impose a model contract on a school district and charter school that fail to agree on a contract, may be challenged under Article IX, section 4 of the state constitution, which provides for district school boards to operate, control and supervise all public schools in the district. The 2006 Florida Legislature established the Florida Schools of Excellence Commission (Commission) as a state-level, independent entity with the purpose of authorizing, or denying, charter school applications.¹¹ The First District Court of Appeal struck down the provision which created the Commission as facially unconstitutional.¹² In so doing, the court ruled it violative of the school district's constitutional domain over the operation, control and supervision of all schools within the district.¹³

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Charter schools and charter operators designated as high-performing may enjoy a competitive advantage over those that are not due to their performance. Schools that are newly opened under the auspices of a high-performing charter school system will benefit from immediate capital outlay funding, rather than others that are required to wait three years.

The transportation revisions could have an effect on charter school enrollments.

C. Government Sector Impact:

The creation of the College-Preparatory Boarding Academy Pilot Program may have a fiscal effect, as the academy would be part of the state's public funding program. The impact is indeterminate at this time. The academy would admit students beginning in August 2012, with an initial enrollment of 80 students. The academy would grow up to a maximum capacity of 400 students. Proponents of the academy indicate that there would not be a fiscal impact in 2011-2012, an anticipated fiscal of approximately \$2 million, and \$10 million recurring in future years.¹⁴ Academy proponents have identified federal

¹¹ ch. 2006-302, L.O.F.; s. 1002.335, F.S.

¹² *Duval County School Board v State Board of Education*, 998 So.2d 641 (1st DCA 2008).

¹³ *Id.* at 643.

¹⁴ Email correspondence from Don Winstead, on March 21, 2011, on file with the committee.

funds such as Temporary Assistance for Needy Families (TANF), Social Services Block Grant (SSBG), and other social services funds to meet the fiscal needs.

The requirement for sponsors to provide student transportation and lunches at-cost, if requested, may adversely impact district school board sponsors who currently charge a fee for these services.

The transportation revisions could have a positive fiscal impact on charter schools.

VI. Technical Deficiencies:

While merging the Charter School Appeal Commission and Charter School Review Panel functions into the new Charter School Review and Appeals Panel (Panel), the bill inadvertently retains references to the Commissioner's role in convening the Panel, has duplicative efforts in providing notice of the Panel's recommendation to the State Board of Education, and other technical glitches.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.