

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 51 Education

SPONSOR(S): Education & Employment Committee and Early Learning & Elementary Education Subcommittee, McClain and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 1028

FINAL HOUSE FLOOR ACTION: Y's 79

N's 37

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/SB 1028 passed the Senate on April 26, 2021. The bill was amended in the House on April 27, 2021, and was returned to the Senate. The bill was amended in the Senate on April 28, 2021 and returned to the House. The House concurred in the Senate amendment and further amended the bill before returning to the Senate. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on April 28, 2021. The bill includes portions of CS/HB 281, CS/HB 1025, CS/HB 1031, CS/HB 1061, CS/HB 1119, CS/HB 1423, and CS/HB 1475.

The bill:

- Authorizes Florida's state universities and Florida College System institutions to solicit applications and sponsor charter schools to serve students from multiple school districts to meet regional education or workforce demands.
- Provides accountability for all charter school operators by requiring the Department of Education (DOE), in collaboration with charter school sponsors and operators, to develop a sponsor evaluation framework and report results in its annual charter school application report.
- Exempts a university that establishes a lab school to serve families of a military installation from the limitation of operating one lab school per university.
- Revises charter school application reporting requirements and submission dates.
- Authorizes a charter exceptional student education center to replicate in certain circumstances.
- Revises requirements for enrollment limitations and preferences for a charter school.
- Provides for a direct appeal in a charter dispute if a party wants to bypass mediation.
- Revises the procedures for immediately terminating a charter school.
- Provides for the reduction of charter school sponsor administrative fees and the award of attorney fees and costs in certain circumstances.
- Revises the eligibility for a charter school to be considered high-performing and allows such a school to submit two applications at a time to replicate its high-performing charter school.
- Authorizes certain schools of hope to report its students to the DOE directly, rather than through a school district.
- Authorizes a school of hope to provide for background screening for their employees and governing board members and to be eligible to receive charter school capital outlay funding.
- Authorizes certain school board committees to meet by video conference.
- Requires public schools to provide information on water safety courses and swim lessons.
- Establishes a tuition reimbursement rate for school district career center dual enrollment.
- Authorizes an academically high-performing school district to provide up to two days of virtual instruction.
- Authorizes a parent or guardian to retain their K-5 public school student for the 2021-2022 school year, provided that such request is made for academic reasons.
- Establishes the Fairness in Women's Sports Act, requiring certain teams and sports sponsored by secondary and postsecondary public educational institutions to be designated on the basis of a student's biological sex established at birth as evidenced by the student's birth certificate.

The fiscal impact of the bill is indeterminate. See Fiscal Comments.

The bill was approved by the Governor on June 1, 2021, ch. 2021-35, L.O.F., and will become effective on July 1, 2021, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Charter School Sponsors

Present Situation

All charter schools in Florida are tuition-free public schools within the state's public education system.¹ Charter schools are created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools in return for a commitment to higher standards of accountability.² One of the guiding principles of charter schools is to "meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system."³ During the 2019-2020 school year, over 329,000 students were enrolled in 673 charter schools in Florida.⁴

Several types of entities may sponsor charter schools:

- School districts may sponsor charter schools.⁵
- State universities may sponsor charter lab schools.⁶
- District school boards, Florida College System (FCS) institution boards of trustees, or an association of one or more of each may sponsor a charter technical career center.⁷

A sponsor's responsibilities include:

- approving or denying charter school applications;
- overseeing each sponsored charter school's progress toward the goals established in the charter;
- monitoring the revenues and expenditures of the charter school;
- ensuring that the charter school participates in the state's education accountability system; and
- intervening when a sponsored charter school demonstrates deficient student performance or financial instability.⁸

A sponsor provides various administrative services to charter schools in its purview, including contract management; full-time equivalent (FTE) and student achievement data reporting; exceptional student education program administration; eligibility and reporting for the National School Lunch Program; test administration, including payment of the costs of state- or school district-required assessments; processing of teacher certification data; and student information services.⁹ As compensation for services provided, a sponsor may withhold an administrative fee of up to 5 percent of each charter school's total operating funds, based upon weighted FTE students, and up to 2 percent for a high-performing charter school.¹⁰ For a charter school that serves 75 percent or more exceptional education students, the calculated percentage must be based on unweighted FTE students.¹¹

¹ Section 1002.33(1), F.S. Florida's first charter school law was enacted in 1996. Chapter 96-186, L.O.F., initially codified at s. 228.056, F.S., re-designated in 2002 as s. 1002.33, F.S.

² Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (Oct. 2020), available at <http://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-oct-2020.pdf> [hereinafter *Charter School Fact Sheet*].

³ Section 1002.33(2)(a)1., F.S.

⁴ *Charter School Fact Sheet*, supra note 2.

⁵ Section 1002.33(5)(a)1., F.S.

⁶ Sections 1002.32(2) and 1002.33(5)(a)2., F.S.

⁷ Section 1002.34(3)(b), F.S.

⁸ Section 1002.33(5)(b), F.S.

⁹ Section 1002.33(20)(a)1., F.S. see also, Florida Attorney General Opinion, AGO 2013-04, stating that the administrative fee includes costs to administer state-required or district-required student assessments, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/D20AD30420BB793B85257B3C0052B3A6>.

¹⁰ Section 1002.33(20)(a)2.a.-b., F.S.

¹¹ Section 1002.33(20)(a)2., F.S.

FCS institutions are statutorily authorized to operate charter schools that offer secondary education¹² and allow students to obtain an associate degree¹³ upon graduation from high school. Students have full access to all college facilities, activities, and services. Such a charter school must be sponsored by the school board or boards within the FCS institution's service area.¹⁴ If a FCS institution offers a teacher preparation program, it may operate one charter school for students in kindergarten through grade 12, implementing innovative blended learning instructional models for students in kindergarten through grade 8.¹⁵

There are 11 FCS charter schools operating in Florida:¹⁶

School District Sponsor	Charter School(s)	Affiliated FCS Institution
Charlotte	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Lee	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Manatee	State College of Florida Collegiate School	State College of Florida Manatee-Sarasota
Martin	Clark Advanced Learning Center	Indian River State College
Okaloosa	Collegiate High School at Northwest Florida State College	Northwest Florida State College
Polk	Polk State College Collegiate High School	Polk State College
	Chain of Lakes Collegiate High School	
	Polk State Lakeland Gateway to College Charter High School	
Pinellas	St. Petersburg Collegiate High School	St. Petersburg College
	St. Petersburg Collegiate High School North Pinellas	
Sarasota	State College of Florida Collegiate School-Venice	State College of Florida Manatee-Sarasota

District school boards, FCS institution boards of trustees, or an association of one or more of each are authorized in law to sponsor a charter technical career center.¹⁷ There is only one charter technical center operating in the state, Lake Technical College, sponsored by the Lake County school board.¹⁸

State universities are authorized to establish "charter lab schools."¹⁹ Unlike developmental research schools (lab schools),²⁰ charter lab schools operate under a charter and are not required to be

¹² In this context, the term "secondary education" is synonymous with "middle or high school" (grades 6 through 12). Generally, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. See s. 1003.01(2), F.S. (definition of "school").

¹³ Associate degrees include the associate in arts, associate in science, and associate in applied science degrees. See Rule 6A-14.030(3)-(5), F.A.C.

¹⁴ Section 1002.33(5)(b)4., F.S.; see also s. 1000.21(3)(a)-(bb), F.S.

¹⁵ Section 1002.33(5)(b)4., F.S.

¹⁶ Email from Alexis Calatayud, Legislative Affairs, Florida Department of Education, RE: HB 51 (Feb. 24, 2021) [hereinafter FCS Charter Schools & SUS Charter Lab Schools].

¹⁷ Section 1002.34(3)(b), F.S.

¹⁸ Florida Department of Education, *Charter Technical Centers Annual Report* (2019-2020), at 5, available at <http://www.fldoe.org/core/fileparse.php/9904/urlt/charterreview20.pdf>.

¹⁹ Section 1002.33(5)(a)2., F.S.

²⁰ Section 1002.32(2), F.S.

established by the nearest state university.²¹ In considering an application to establish a charter lab school, a state university must consult with the district school board of the county in which the school is located. If a state university does not act on or denies the application, the applicant may appeal such decision to the State Board of Education (SBE).²²

There are three state university sponsored charter lab schools operating in Florida:²³

State University Sponsor	Charter School(s)
Florida Atlantic University	Florida Atlantic University/St. Lucie Public Schools Palm Pointe Research School
Florida State University	Florida State University Schools The Pembroke Pines Florida

Effect of the Bill

To address the needs of educational capacity, workforce qualifications, and career education opportunities that may extend beyond a school district's boundaries, the bill authorizes state universities and FCS institutions to solicit applications and sponsor charter schools upon approval by the Department of Education (DOE). A state university or FCS institution may, at its discretion, deny an application for a charter school.

The bill provides that a state university-sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands. Additionally, a FCS institution-sponsored charter may exist in any county within its service area to meet workforce demands; however, a charter school currently operated by a FCS institution is not eligible to be sponsored by a FCS institution until its existing charter with the school district expires. A FCS institution-sponsored charter school may offer postsecondary programs leading to industry certifications for eligible charter school students.

The bill deletes the limitation that a FCS institution that operates an approved teacher preparation program operate no more than one charter school, allowing a FCS institution to operate additional charter schools that serve students in kindergarten through grade 12 and providing that the students served may be in any school district within the service area of the FCS institution. The requirement that the school implement an innovative blended learning instructional model for students in kindergarten through grade 8 is deleted.

The bill specifies that a charter's racial/ethnic balance must reflect that of nearby public schools rather than public schools located geographically within the district to allow for state university and FCS sponsored charter schools to serve students from multiple school districts.

The bill prohibits a FCS institution from reporting FTE for any students participating in FCS-sponsored charter schools who receive FTE funding through the FEFP.

The bill specifies that a board of trustees of a sponsoring state university or FCS institution is the local education agency for all charter schools it sponsors. As the local education agency, the sponsor may receive federal funds and accepts full responsibility for local education agency requirements and the schools it oversees. A student that is enrolled in a charter school that is sponsored by a state university or FCS institution may not be included in the calculation of the school district's grade.

²¹ Section 1002.33(5)(a)2., F.S.; *see also* s. 1002.32(2), F.S.

²² Section 1002.33(6)(g), F.S.

²³ FCS Charter Schools & SUS Charter Lab Schools, *supra* note 16.

To provide accountability for all charter school operators, the bill requires the DOE, in collaboration with charter school sponsors and operators, to develop a sponsor evaluation framework that must address, at a minimum:

- a sponsor's strategic vision for charter school authorization and progress towards that vision;
- alignment of the sponsor's policies and practices to best practices for charter school authorization;
- academic and financial performance of all operating charter schools overseen by the sponsor; and
- the status of charter schools authorized by the sponsor, including approved, operating, and closed schools.

The bill requires the DOE to compile the results of the evaluation framework, by sponsor, and add them to its annual charter school sponsor report.

The bill exempts a university that establishes a lab school to serve families of a military installation²⁴ that is within the same county as a branch campus that offers programs from the university's college of education from the limitation of operating one lab school per university.

The bill aligns school grade offerings for the charter lab school at Florida Atlantic University as a K-12 school to current practice.

Establishing a Charter School

Present Situation

Application

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.²⁵ While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization.²⁶

An applicant must submit a charter school application on a standard application form developed by the DOE.²⁷ As of 2018, charter school applications must be submitted to the sponsor by February 1 for a charter school to open 18 months later or at a time determined by the applicant. A sponsor may not refuse to receive a charter school application submitted before February 1 and may receive an application submitted later than February 1 if it chooses.²⁸ The charter school application must:

- demonstrate how the school will utilize the guiding principles;²⁹
- provide a detailed curriculum plan aligned with the Next Generation Sunshine State Standards;
- contain goals and objectives for improving student learning and measuring such improvement;
- describe the reading curricula and differentiated strategies for serving students at various levels of reading ability;

²⁴ 10 U.S.C. s 2801. A "military installation" means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control.

²⁵ Section 1002.33(3)(a), F.S.

²⁶ Section 1002.33(12)(i), F.S.

²⁷ Rule 6A-6.0786, F.A.C.; *see also* Florida Department of Education, Model Florida Charter School Application, *Form IEPC-M1*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference/> (last visited April 13, 2021).

²⁸ Section 1002.33(6)(b), F.S.

²⁹ The legislative guiding principles for charter schools provide that they are to meet high standards of student achievement while increasing parental choice, to increase learning opportunities for all students, with special emphasis on low-performing students and reading, and to utilize innovative learning methods. Charter schools may also serve to provide rigorous competition to stimulate improvement in traditional public schools, expand the capacity of the public school system, mitigate the educational impact created by the development of new residential dwelling units and create new professional opportunities for teachers, including ownership of the learning program at the school site. Section 1002.33(2), F.S.

- contain an annual financial plan;
- disclose 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 each charter school operated by the applicant;
- contain additional information required by the sponsor; and
- for a virtual charter school, document that the applicant has contracted with a provider for virtual instruction services.³⁰

The sponsor may require the applicant to submit additional information as an addendum to the application.³¹

A sponsor must approve or deny a charter school application within 90 calendar days of receipt, unless an extension of the deadline is mutually agreed to by the sponsor and applicant.³² If an application is denied, the sponsor must within 10 calendar days provide specific written reasons, based upon good cause, for its denial to the applicant and the DOE.³³ The applicant has 30 calendar days to file an appeal with the SBE after the denial of or failure to act upon an application.³⁴ The Charter School Appeal Commission is required to convene and make recommendations to the SBE regarding the appeal.³⁵ The state board's decision is a final action subject to judicial review in the District Court of Appeal.³⁶

Application Reporting

A charter school sponsor is required to submit an annual report to the DOE summarizing the following:

- The number of draft applications received on or before May 1 and each applicant's contact information.
- The number of final applications received on or before August 1 and each applicant's contact information.
- The date each application was approved, denied, or withdrawn.
- The date each final contract was executed.³⁷

The DOE must compile the reported sponsor information into an annual report, by district, and post it on its website by November 1 each year.³⁸

Establishing a Charter School

After a charter school application is approved, the initial startup must commence with the beginning of the public school calendar year for the district in which the charter is granted³⁹ or to be opened at a time determined by the applicant.⁴⁰ The charter school may defer opening for up to 3 years to provide

³⁰ Section 1002.33(6)(a), F.S.

³¹ *Id.*

³² Section 1002.33(6)(b)3.a., F.S.

³³ *Id.*

³⁴ Section 1002.33(6)(c)1., F.S.

³⁵ *Id.* See also Florida Department of Education, *Charter School Appeal Commission*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-appeal/csac-members.shtml> (last visited April 13, 2021).

³⁶ Section 1002.33(6)(c)-(d), F.S.; see also s. 120.68, F.S.

³⁷ Section 1002.33(5)(b)1.k.(I)-(II), F.S.

³⁸ Section 1002.33(5)(b)1.k.(III), F.S.; see also Florida Department of Education, *Annual Authorizer Report 2019* (2019), available at <http://www.fldoe.org/core/fileparse.php/9905/urlt/19-AuthorizerReport.pdf>.

³⁹ Section 1002.33(6)(b)5., F.S.

⁴⁰ Section 1002.33(6)(b), F.S.

adequate time for facilities planning. Written notice of intent to defer opening must be provided to parents at least 30 days before the first day of school.⁴¹

The terms of the charter must be negotiated by the applicant and sponsor using the standard charter contract within 30 days after approval of the application.⁴² Any term of a proposed charter contract that differs from the standard charter contract is presumed to be a limitation on charter school flexibility.⁴³ The parties then have 40 days to negotiate and finalize the charter.⁴⁴

The DOE must provide mediation services for any dispute relating to an approved charter, except a dispute regarding an application denial.⁴⁵ If the Commissioner of Education determines the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge.⁴⁶

The initial term of a charter is 5 years, excluding 2 planning years.⁴⁷ The charter must include:

- the students to be served, including ages and grade levels;
- the curriculum focus and instructional methods to be used;⁴⁸
- baseline standards of student academic achievement, outcomes to be achieved and methods of measurement to be used;⁴⁹
- the method for determining the strengths and needs of students and whether they are meeting educational goals⁵⁰ and for secondary charter schools,⁵¹ the method to determine a student has satisfied the requirements for high school graduation;
- the method for resolving conflicts between the governing body and the sponsor;
- admission and dismissal procedures and the school's student conduct code;
- methods for achieving a racial/ethnic balance reflective of the community served;
- the financial and administrative management of the school, including experience required for management positions and a description of internal audit controls;
- asset and liability projections;
- a description of plans to identify various risks, reduce losses and ensure student and faculty safety;
- an agreement that the charter may be cancelled if the school has made insufficient progress with student achievement;
- the facilities to be used;
- teacher qualifications, governance structure and timetables for implementing each element of the charter;
- full disclosure of all charter school employees who are relatives of charter school officials and employees who have decision making authority over charter school operations; and

⁴¹ Section 1002.33(6)(b)5., F.S.

⁴² Section 1002.33(7) and (7)(b), F.S. The standard charter contract must incorporate the approved application and any addenda approved with the application.; *See also* Rule 6A-6.0786, F.A.C. and Florida Department of Education, *Florida Standard Charter Contract*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference/> (last visited April 13, 2021).

⁴³ Section 1002.33(7), F.S. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals.

⁴⁴ Section 1002.33(7)(b), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 1002.33(7)(a)(12), F.S. (2018).

⁴⁸ The charter must ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction to students who are reading below grade level. Additionally, to provide students with access to diverse instructional delivery models, charter schools may implement blended learning courses. Section 1002.33(7)(a)2.a.-b., F.S.

⁴⁹ The district school board is required to provide academic student performance data for students coming from the district school system to the charter, as well as rates of academic progress of comparable students populations in the district. Section 1002.33(7)(a)3. (flush-left provisions at the end of (a)3.c.).

⁵⁰ Students in charter school must, at a minimum, participate in Florida's statewide assessments. Section 1002.33(7)(a)4., F.S.

⁵¹ In this context, the term "secondary education" is synonymous with "middle or high school" (grades 6 through 12). Generally, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. *See s. 1003.01(2)*, F.S. (definition of "school").

- provisions for implementing high-performing charter school benefits if the charter school is designated as “high-performing.”⁵²

The charter may be modified during its initial term or any renewal term upon recommendation of the sponsor or the charter school’s governing board, to which both parties agree.⁵³ The charter may be renewed at the end of its term if a program review conducted by the sponsor demonstrates that the goals and criteria stated in the charter have been met and that none of the grounds for nonrenewal have occurred.⁵⁴

Interlocal Agreements

To support a charter school in its development, construction, or operation, a school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and any other activities for necessary permits, licenses, and other permissions for the charter school.⁵⁵ A charter school may use, but is not required to use, a school district for these services.⁵⁶ The interlocal agreement must include, but is not limited to, the identification of fees the charter schools will be charged for such services.⁵⁷

Student Enrollment

Prospective students must apply for enrollment in a charter school, and if the number of applications exceeds the school’s capacity, a random lottery must be used to determine which students are enrolled.⁵⁸ A charter school may give enrollment preference to the following specific student populations:⁵⁹

- Students who are siblings of a student enrolled in the charter school.
- Students who are the children of a member of the governing board of the charter school.
- Students who are the children of an employee of the charter school.
- Students who are the children of:
 - An employee of the business partner of a charter school-in-the-workplace or a resident of the municipality in which the charter school is located; or
 - A resident or employee of a municipality that operates a charter school-in-a-municipality or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.
- Students who have successfully completed a voluntary prekindergarten education (VPK) program provided by the charter school or the charter school’s governing board during the previous school year.
- Students who are the children of an active duty member of any branch of the United States Armed Forces.
- Students who attended or are assigned to failing schools and have received an opportunity scholarship to enroll and attend a higher performing school.⁶⁰

A charter school may also limit the enrollment process in order to target the following student populations:

- students within specific age groups or grade levels;

⁵² Section 1002.33(7), F.S.

⁵³ Section 1002.33(7)(d), F.S.

⁵⁴ Section 1002.33(7)(c)1., F.S.

⁵⁵ Section 1002.33(5)(b)5., F.S.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Section 1002.33(10)(b), F.S.

⁵⁹ Section 1002.33(10)(d)1.-7., F.S.

⁶⁰ Section 1002.38(2), F.S.

- students considered at risk of dropping out of school or academic failure, to include exceptional education students;
- children of employees of the business partner who seek to enroll in a charter school-in-the-workplace or children of municipal residents who seek to enroll in a charter school-in-a-municipality;
- students residing within a reasonable distance of the charter school;
- students who meet reasonable academic, artistic or other eligibility standards established by the charter school;
- students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor; or
- students living in a development in which a business entity provides the school facility and related property having an appraised value of at least \$5 million to be used as a charter school to mitigate the educational impact created by the development of new residential dwelling units; such students are entitled to no more than 50 percent of the student stations at the school.⁶¹

Causes for Nonrenewal or Termination

A charter school sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter, but may terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or failure to meet the charter's requirements for student performance.
- Failure to meet generally accepted standards of fiscal management.
- Material violation of law.
- Other good cause shown.⁶²

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal, except that a charter may be terminated immediately if the sponsor sets forth particular facts and circumstances indicating an immediate and serious danger to the health, safety or welfare of the students.⁶³ The sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE of an immediate termination.⁶⁴ The governing board is entitled to a formal hearing with an administrative law judge (ALJ), who must issue a final order to the sponsor.⁶⁵ The governing board may appeal the final order in the District Court of Appeal.⁶⁶ Under these circumstances, the sponsor must assume operation of the charter school throughout the pendency of the hearing.⁶⁷

Award of Attorney Fees and Costs

Current law provides the award of reasonable attorney fees and costs to the prevailing party in a dispute between a sponsor and a charter schools, including:

- A dispute arising under the charter;⁶⁸
- the termination or nonrenewal of a charter school;⁶⁹ and
- disputes relating to contracts for goods and services separate from the charter.⁷⁰

⁶¹ Section 1002.33(10)(e), F.S.

⁶² Section 1002.33(8)(a)1.-4., F.S.

⁶³ Section 1002.33(8)(b) and (c), F.S.

⁶⁴ Section 1002.33(8)(c), F.S.

⁶⁵ *Id.*

⁶⁶ Section 1002.33(8)(d), F.S.

⁶⁷ Section 1002.33(8)(c), F.S. The administrative law judge must award the prevailing party reasonable attorney fees and costs incurred during the administrative proceedings and any appeals.

⁶⁸ Section 1002.33(7)(b), F.S.

⁶⁹ Section 1002.33(8)(b), F.S.

⁷⁰ Section 1002.33(20)(b), F.S.

For a charter school that is terminated immediately due to an immediate and serious danger to the health, safety, or welfare of the school's students, the sponsor must assume operation of the charter school during any hearing to dispute the termination.⁷¹ Failure by the sponsor to assume and continue operation of the charter school must result in the awarding of reasonable costs and attorney's fees to the charter school if the charter school prevails on appeal.⁷²

Effect of the Bill

Application

The bill repeals an obsolete August 1 application deadline and the current February 1 application deadline, thereby permitting a charter school to submit and require each sponsor to receive and consider, charter school applications during the year. Additionally, the bill repeals the opening date of a charter school as occurring 18 months later while retaining current law that a school's opening occur at a time determined by the applicant. Since the law allows an applicant to determine the time at which the charter school will open, the bill deletes conflicting language that requires the school's opening to coincide with the beginning of the school district's school calendar. The bill revises the charter school sponsor's report to the DOE requiring the report to reflect the applications the sponsor receives during the school year and up to August 1.

The bill repeals the requirement that a charter school sponsor report on draft applications it receives and revises the date by which a sponsor must annually report the number of applications it receives from August 31 to November 1. Accordingly, the bill revises the date by which the DOE annually reports the number of applications on its website from November 1 to January 15.

The bill authorizes a prevailing party in a charter school application dispute to file an action with the Division of Administrative Hearings to recover reasonable attorney fees and costs incurred during the denial of the application and any appeals.

The bill requires a school district which does not implement the decision of the District Court of Appeal regarding an appealed charter school application, to reduce the administrative fee the sponsor is authorized to charge to one percent for all charter schools operating in the school district. The school district must file a monthly report detailing the reduction in the amount of administrative fees withheld. Once the written contractual agreement, or charter is executed, the sponsor may resume withholding the full amount of administrative fees, however, the sponsor may not recover any fees that would have otherwise accrued during the period of noncompliance with the District Court of Appeal decision. The bill authorizes a charter school which had administrative fees withheld as a result of such a sponsor violation to recover attorney fees and costs.

Charter Contract

The bill authorizes a charter school to immediately appeal any formal or informal decision by a sponsor in a dispute regarding a charter contract to an administrative law judge. The appeal may occur if either the charter school or the sponsor do not wish to mediate the decision and indicates such a decision in writing.

⁷¹ Section 1002.33(8)(c), F.S.

⁷² *Id.*; See also *Championship Academy of Distinction at Davie, Inc. v. Broward County School Board*, Case No.20-4344F (Fla. DOAH Dec. 17, 2020). The final order denied the petitioners entitlement to attorney's fees and costs under s. 1002.33(c) finding that the fee provision under 1002.33(8)(b), F.S. is substantive, rather than procedural, and as such, it cannot be included among the procedures set forth in paragraph (b) that have been incorporated into s. 1002.33(8)(c), F.S.

The bill specifies that changes to a charter school's curriculum which are consistent with state standards are deemed approved in terms of modifications to the charter, unless the sponsor and the DOE determines in writing that the curriculum is inconsistent with state standards.

Interlocal Agreements

The bill provides that notwithstanding any other provision of law, an interlocal agreement established to assist in the development of a charter school which prohibits or limits the creation of a charter school within the geographic borders of the school district, is void and unenforceable.

Enrollment

The bill expands the enrollment preference for students who complete the VPK program provided by the charter school to include students who complete the program at a provider with which the charter school has a written agreement.

The bill applies the enrollment limitation that a charter school built by a housing developer may use for students within the development if either the developer or its affiliated business entity or charity contributes to the construction, formation, acquisition, or operation of the charter school. This limitation will also apply to other charter schools and charter school facilities provided for by these entities so long as they have a combined value of at least \$5 million. The bill specifies that students in the development are entitled to 50 percent of these seats.

Termination

In the case of an immediate termination of a charter school, the bill requires the sponsor to provide the facts and circumstances supporting the termination in writing. They must demonstrate that an immediate and serious danger exists to the charter school's students, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary.

The bill authorizes a charter school sponsor to seek an injunction in circuit court to prohibit continued operation of a charter school if continued operation of the school would materially threaten the health, safety, or welfare of the students.

The bill removes the requirement for a sponsor to assume and continue operation of a charter school pending a hearing on the school's immediate termination.

Award of Attorney Fees and Costs

The bill revises requirements for awarding reasonable attorney fees and costs in disputes relating to charter schools by requiring an ALJ to award reasonable fees and costs to the prevailing party in any injunction, administrative proceeding, or appeal arising from the immediate termination of a charter school, rather than only to the charter school in situations where the sponsor does not assume and continue operation of the school.

High-Performing Charter Schools

Present Situation

Charter schools and operators of systems of charter schools with a track record of academic excellence and financial stability may earn "high-performing" status.⁷³ A high-performing charter school is a charter school that during each of the 3 previous years:

- received at least two school grades of "A" and no school grade below "B;"

⁷³ Section 1002.331(1), F.S.

- has received an unqualified opinion⁷⁴ on each annual financial audit; and
- has not received an annual financial audit that reveals a financial emergency condition.⁷⁵

Initial eligibility for “high-performing” status is verified by the commissioner, upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.⁷⁶

High-performing charter schools may take advantage of various benefits. Among other benefits, the operator of a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates one of its high-performing charter schools.⁷⁷ The application process for such applications is streamlined to expedite approval.⁷⁸ A high-performing charter school may not be replicated more than twice in any given year and may not replicate again until the new charter school achieves “high-performing” status.⁷⁹ Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.⁸⁰ Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.⁸¹

A high-performing charter school may increase the school’s enrollment once per year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect.⁸² If the school chooses to expand the grade levels it serves, i.e., a K-5 school adding grade 6, the facility capacity must include any improvements to an existing facility or any new facility in which a majority of the high-performing charter school students will enroll.⁸³ A high-performing charter school may also expand grade levels within kindergarten through grade 12 to add grade levels not already served as long as the increase in enrollment in either case does not exceed the current facility capacity.⁸⁴

Effect of the Bill

The bill revises the criteria for identifying a high-performing charter school to include a charter school that receives the required school grades based on the years that the school received a school grade⁸⁵ or a charter school which receives funding through the National Fund of the Charter School Growth Fund,⁸⁶ and has received no school grade lower than a “C” during each of the previous 3 school years for which the school received a grade.

The bill revises the determination of a high-performing charter school facility’s capacity so that any expansion of enrollment, regardless of grade level expansion or where a majority of new students will be enrolled, is based on the school’s facilities at the time the expansion will take effect.

The bill allows a high-performing charter school to submit two applications at a time, instead of two per year, for a charter school to be opened at a time determined by the high-performing charter school.

⁷⁴ An unqualified audit opinion means that the charter school’s financial statements are materially correct.

⁷⁵ Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

⁷⁶ Sections 1002.331(4) and 1002.332(2)(a), F.S.

⁷⁷ Section 1002.331(3)(a)1., F.S.

⁷⁸ Section 1002.331(3)(a)2., F.S.

⁷⁹ Section 1002.331(3)(b), F.S.

⁸⁰ Section 1002.332(2)(b), F.S.

⁸¹ Section 1002.331(2)(e), F.S.

⁸² Section 1002.331(2)(a), F.S.

⁸³ *Id.*

⁸⁴ Section 1002.331(2)(b), F.S.

⁸⁵ Pursuant to the DOE Emergency Order No. 2020-EO-1, the spring administration of K-12 statewide, standardized assessments for the 2019-2020 school year was canceled and accountability measures reliant on the assessment data, such as school grades, were not calculated for the 2019-2020 school year. See Florida Department of Education, *Emergency Order No. 2020-EO-1*, at 3-4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

⁸⁶ Charter School Growth Fund, *Apply for Funding*, <https://chartergrowthfund.org/apply-for-funding/> (last visited April 12, 2021).

Subsequent applications may be submitted so long as each previous charter school application is withdrawn or has commenced operation instead of upon each school being designated high-performing.

Charter School Funding

Present Situation

As with traditional public schools, charter school operations are funded through the Florida Education Finance Program (FEFP) based on student enrollment.⁸⁷ Each charter school reports student enrollment to its sponsor⁸⁸ for inclusion in the district's report of student enrollment.⁸⁹ A charter school is also entitled to receive its proportionate share of categorical program funds included in the FEFP, for eligible students and programs.⁹⁰

Operating funds from the FEFP are distributed by the sponsor to the charter school. Payments must be made monthly or bi-monthly, beginning with the start of a school board's fiscal year (FY).⁹¹ A sponsor is prohibited from delaying payment of any portion of a charter school's funding based upon the timing of receipt of local funds by the school board.⁹²

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),⁹³ Title I programs for disadvantaged students,⁹⁴ and Title II programs for improving teacher quality based on student eligibility.⁹⁵

Effect of the Bill

The bill provides that students enrolled in a charter school sponsored by a state university or FCS institution be funded as if they are in a basic program or a special program in the school district.

The bill establishes funding for these students as the sum of the total operating funds from the FEFP for the school district in which the school is located and the General Appropriations Act (GAA), including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy; divided by total funded weighted FTE students in the school district; and multiplied by the FTE membership of the charter school.

The DOE is required to develop a tool that each state university or FCS institution sponsoring a charter school must use for purposes of calculating the funding amount for each eligible charter school student. The total obtained by the calculation must be appropriated from state funds in the GAA to the charter school.

The bill establishes a capital outlay funding formula for charter schools sponsored by a state university or FCS institution.

⁸⁷ See Florida Department of Education, Charter Schools, *Frequently Asked Questions*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.shtml> (last visited May 10, 2021).

⁸⁸ A sponsor can be a district school board that approves the charter and holds the contract. Section 1002.33(5)(a)1., F.S.

⁸⁹ Section 1002.33(17)(a) and (b), F.S. To reflect any changes in enrollment, the charter school's funding is recalculated during the school year based upon the October and February FTE enrollment surveys. See s. 1002.33(17)(b), F.S.

⁹⁰ Section 1002.33(17)(b), F.S.; see also Florida Department of Education, Office of Funding and Financial Reporting, *Florida Education Finance Program 2020-21 Second Calculation* (July 17, 2020), at 3, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/2021FEFPSecondCalc.pdf>.

⁹¹ Section 1002.33(17)(e), F.S.

⁹² *Id.*

⁹³ Section 1002.33(17)(c), F.S.; 20 U.S.C. s. 1411(e).

⁹⁴ 20 U.S.C. s. 6301 et. seq.

⁹⁵ 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c), F.S.

Schools of Hope

Present Situation

In 2017, the Legislature established the Schools of Hope Program to provide students in areas of persistently low-performing schools the opportunity to access a high-quality education designed to close the opportunity gap and increase student achievement.⁹⁶ A school of hope is defined as a charter school operated by a hope operator to serve students from one or more persistently low-performing schools; is located within the attendance zone of the persistently low-performing school or within a five mile radius of the school, whichever is greater; and is a Title I eligible school.⁹⁷

A hope operator may also open a school of hope in a “Florida Opportunity Zone,” which is a population census tract that has been designated by the Treasury as a Qualified Opportunity Zone pursuant to the federal Tax Cuts and Jobs Act of 2017.⁹⁸ In 2018, Governor Rick Scott nominated Florida’s 427 opportunity zone sites located throughout Florida’s 67 counties.⁹⁹ The zones were certified by the Treasury and will retain the designation for 10 years.¹⁰⁰

Under the Schools of Hope Program administered by the Florida Department of Education (DOE), a school of hope may receive additional funding for certain expenses such as funds for initial school facility leasing, hiring instructional support personnel, or acquiring supplies and educational materials, along with other expenses specified in law.¹⁰¹ Funds allocated which are not disbursed by June 30 of the FY in which the funds are allocated may be carried forward for up to 5 years.¹⁰²

A school of hope may request that the State Board of Education (SBE) designate the school as a local education agency (LEA) for the purposes of receiving federal funds. As a LEA, the school accepts the full responsibility for all LEA requirements and the schools for which it will perform local education agency responsibilities.¹⁰³ Students enrolled in a school established by a hope operator designated as a LEA are not eligible students for purposes of calculating a district’s school grade.¹⁰⁴

A school of hope must report its students to the school district for purposes of determining the school district’s full-time equivalent FTE membership in calculating the Florida Education Finance Program FEFP.¹⁰⁵

Persistently Low Performing Schools

A persistently low-performing school is a school that has earned three grades lower than a “C” in at least 3 of the previous 5 school years and has not earned a grade of “B” or higher in the most recent 2 school years. A school is also a persistently low-performing school if it was closed pursuant to the school’s turnaround option plan within 2 years after the submission of a notice of intent.¹⁰⁶ The State

⁹⁶ Section 43, ch. 2017-116, L.O.F., codified at s.1002.333, F.S.

⁹⁷ Section 1002.333(1)(c)1., F.S.

⁹⁸ Tax Cuts and Jobs Act of 2017, Pub. L. No.115-97, H.R. 1, 115th Cong. (Dec. 22, 2017)

⁹⁹ Florida Department of Economic Opportunity, Florida’s Certified Opportunity Zones (2018), *available at* <http://www.floridajobs.org/docs/default-source/communicationsfiles/fl-opportunity-zones-county-summary.pdf>; *See also* Florida Department of Economic Opportunity, Bureau of Workforce Statistics and Economic Research, *Opportunity Zones by Media Markets*, *available at* <https://deolmsgis.maps.arcgis.com/apps/webappviewer/index.html?id=4e768ad410c84a32ac9aa91035cc2375> (providing a map of each identified opportunity zone (FOZ)).

¹⁰⁰ U.S. Department of Treasury, Press Releases: Treasury, *IRS Announce Final Round of Opportunity Zone Designations* (June 14, 2018), <https://home.treasury.gov/news/press-releases/sm0414> (last visited May 10, 2021).

¹⁰¹ Section 1002.333(10), F.S.

¹⁰² Section 1002.333(10)(b), F.S.

¹⁰³ Section 1002.333(6)(a), F.S.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at (6)(g).

¹⁰⁶ Section 1002.333(1)(c), F.S.

Board of Education (SBE) must publish annually a list of persistently low-performing schools and must provide students in persistently low-performing schools with a public school that meets accountability standards.¹⁰⁷ For school year 2018-2019, the SBE's published list include 183 persistently low-performing schools.¹⁰⁸

Pursuant to the DOE Emergency Order No. 2020-EO-1, the spring administration of K-12 statewide, standardized assessments for the 2019-2020 school year was canceled and accountability measures reliant on the assessment data, such as school grades, were not calculated for the 2019-2020 school year.¹⁰⁹

Hope Operators

A hope operator is a tax-exempt, nonprofit organization that operates three or more charter schools that serve students in grades K-12 in Florida or other states with a record of serving students from low-income families and is designated by the SBE as a hope operator.¹¹⁰ State board rule designates an entity as a hope operator if it submits a complete application and meets at least one of the following criteria:

- the entity was awarded a United States Department of Education Charter School Program grant for the Replication and Expansion of High-Quality Charter Schools pursuant to Title IV, Part C of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (20 U.S.C. 7221-7221j) within the preceding 3 years from the date the entity submits an application to the Department;
- the entity has a current and active grant award for funding through the National Fund of the Charter School Growth Fund; or
- the entity is a non-profit charter school that is selected by a district school board to turnaround the performance of a low-performing public school.¹¹¹

Designation as a hope operator is valid for 5 years from the opening of a school of hope.¹¹² Presently, Florida has designated five hope operators: Democracy Prep Public Schools, Inc., Individuals Dedicated to Excellence and Achievement (IDEA) Public Schools, the Knowledge is Power Program (KIPP) New Jersey, Mater Academy, and Somerset Academy, Inc.¹¹³ Somerset Academy, Inc. currently operates the K-12 school in Jefferson County, KIPP New Jersey currently operates KIPP Miami Liberty Academy, and IDEA Public Schools will open two K-12 schools in the Fall of 2021 in Hillsborough County.¹¹⁴

Facilities

A school of hope must use facilities that comply with the Florida Building Code, except for the State Requirements for Educational Facilities (SREF).¹¹⁵ A school of hope that uses school district facilities must comply with SREF only if the school district and the hope operator have entered into a mutual management plan for the reasonable maintenance of such facilities, as specified in law.¹¹⁶

¹⁰⁷ Section 1002.333(11)(d), F.S.

¹⁰⁸ Florida Department of Education, Florida School Accountability Reports, *Persistently Low-Performing Schools* (2019), available at <http://fldoe.org/core/fileparse.php/18534/urlt/PLPSchools19.xls>.

¹⁰⁹ Florida Department of Education, *Emergency Order No. 2020-EO-1*, at 3-4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

¹¹⁰ Section 1002.333(2), F.S.

¹¹¹ Rule 6A-1.0998271(2)(b), F.A.C.

¹¹² Section 1002.333(3), F.S.

¹¹³ Florida Department of Education, *Schools of Hope*, <http://www.fldoe.org/schools/school-choice/other-school-choice-options/schools-of-hope/> (last visited May 10, 2021).

¹¹⁴ Email from Alexis Calatayud, Legislative Affairs, Florida Department of Education, RE: Hope Operators (March 15, 2021).

¹¹⁵ Section 1002.333(7)(a), F.S.

¹¹⁶ *Id.*

Each school district must provide to the DOE, no later than October 1, a list of all underused, vacant, or surplus facilities owned or operated by the school district.¹¹⁷ A hope operator establishing a school of hope may use an educational facility identified by a school district at no cost or at a mutually agreeable cost not to exceed \$600 per student.¹¹⁸ A hope operator that uses a facility owned or operated by a school district may not sell or dispose of the facility without the written permission of the school district.¹¹⁹

Financial Accountability

Like other charter schools, a school of hope must provide for an annual audit.¹²⁰ The Auditor General may choose to conduct the audit. If not, the school must arrange for an audit by an independent certified public accountant.¹²¹ The audit must:

- examine the school's financial statements to determine if its financial position and any changes in financial position comply with generally accepted accounting principles;
- examine the school's operations to determine compliance with legal and regulatory requirements; and
- examine any additional financial information necessary to comply with generally accepted accounting principles.¹²²

Each school of hope must file a copy of its audit report with the sponsor, the district school board, if not the sponsor, the Auditor General and the DOE.¹²³

Generally, each charter school must also submit a monthly financial statement summary sheet to the charter's sponsor.¹²⁴ The monthly summary sheet must include a balance sheet and a statement of revenue, expenditures, and changes in fund balance in a governmental funds format prescribed by the Governmental Accounting Standards Board.¹²⁵ The sponsor must review the financial statement summary to determine if the school exhibits a deteriorating financial condition.¹²⁶ The law allows a school of hope to submit its financial statement summary sheet on a quarterly basis, rather than monthly.¹²⁷

Effect of the Bill

The bill revises the definition of a persistently low-performing school to be a school that has earned three grades lower than a "C" in at least 3 of the previous 5 years in which the school received a grade. This change would allow a school to be designated as persistently low performing even if it does not receive a school grade for one or more of the school years during a 5-year period.

¹¹⁷ Section 1002.333(7)(d), F.S.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Sections 218.39(1)(e) & (f) and 1002.33(9)(j)1. & 2., F.S.

¹²¹ Sections 11.45(3)(c) and 218.39(1)(e) & (f), F.S.

¹²² Chapter 10.850 Audits of Charter Schools and Charter Technical Career Centers, *The Florida Virtual Schools, and Virtual Instruction Program Providers* (effective June 30, 2020), Rule 10.855(2), Rules of the Auditor General, available at https://flauditor.gov/pages/pdf_files/10_850.pdf.

¹²³ Section 218.39(10), F.S.

¹²⁴ Section 1002.33(9)(g)3., F.S. A high-performing charter school may submit quarterly rather than monthly financial statements. Section 1002.331(2)(c), F.S. Pursuant to Rule 6A-1.0081, F.A.C., DOE adopted two monthly financial statement forms for use by charter schools. Florida Department of Education, *Government Accountability and Standards Board (GASB) Monthly Financial Form (Form IEPC-F1) and Non-Profit Monthly Financial Form (Form IEPC-F2)*, available at <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference> (last visited May 10, 2021).

¹²⁵ *Id.*

¹²⁶ Section 1002.33(9)(g)3., F.S.

¹²⁷ Section 1002.333(6)(h), F.S.

The bill authorizes a nonprofit entity that operates more than one school of hope through a performance-based agreement with a school district to be designated as a LEA by the DOE. A nonprofit entity designated as a LEA is authorized to report its students to the DOE according to procedures and timelines established by the DOE. A school of hope which has not been designated as a LEA must continue to report its students to the school district.

A school of hope operated by a nonprofit entity designated as a LEA may meet the requirements of an annual financial audit by having the school's operator submit to each school district in which the operator operates a school of hope the following:

- a concise, uniform, quarterly financial statement summary sheet that contains a balance sheet summarizing the revenue, expenditures, and changes in fund balances for the entity and for its schools of hope within the school district; and
- an annual financial audit of the nonprofit which includes all schools of hope the LEA operates within the state and complies with the requirements provided in law regarding audits of a school board.

The bill authorizes a school of hope operated by a nonprofit entity designated by the DOE as an LEA to use unrestricted current and capital assets identified in the required annual financial audit at any school of hope operated by the LEA within the same district.

The bill revises facility reporting requirements for identifying educational facilities that may be used by a school of hope. The bill requires the DOE to provide to school districts a list of all underused, vacant, or surplus facilities owned or operated by the school district, as reported in the Florida Inventory of School Houses by January 1 each year. A school district may provide evidence of any errors or omissions to the DOE within 30 days after the list is provided. By April 1 of each year, the DOE must update and publish a final list of all underused, vacant, or surplus facilities owned or operated by each school district, based on the updated information provided.

Charter School Capital Outlay Funding

Present Situation

Capital outlay funds may be used by a charter school's governing board for the:

- purchase of real property;
- construction of school facilities;
- purchase, lease-purchase or lease of permanent or relocatable school facilities;
- purchase of vehicles to transport students to and from the charter school;
- renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer;
- purchase, lease-purchase, or lease of computer and device hardware and operating system software necessary for gaining access to or enhancing the use of electronic and digital instructional content and resources;
- payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities;
- purchase, lease-purchase or lease of driver's education vehicles, motor vehicles used for the maintenance or operation of plants and equipment, security vehicles, or vehicles used in storing or distributing materials and equipment; and
- payment of the cost of the opening day collection for the library media center of a new school.

To be eligible for charter school capital outlay funding, a charter school must:

- be in operation for at least 2 years;
- be governed by a governing board established in Florida for 2 or more years which operates both charter schools and conversion charter schools within the state;

- be part of an expanded feeder chain¹²⁸ with an existing charter school in the district that is currently receiving charter school capital outlay funds;
- be accredited by a regional accrediting association as defined by state board rule; or
- serve students in facilities that are provided by a business partner for a charter school-in-the-workplace.¹²⁹

In addition, a charter school must:

- have an annual audit that does not reveal a financial emergency for the most recent FY for which such audit results are available;¹³⁰
- have satisfactory student achievement based upon the state accountability standards applicable to charter schools;¹³¹
- have received final approval from its sponsor for operation during that FY; and
- serve students in facilities that are not provided by the charter school sponsor.¹³²

Capital outlay funds appropriated by the Legislature in the General Appropriations Act are allocated to eligible charter schools by the DOE based on a methodology specified in law.¹³³ For FY 2020-2021, the Legislature appropriated \$169.6 million for charter school capital outlay funding.¹³⁴ As of March 2021, 610 charter schools received capital outlay disbursements from the DOE.¹³⁵

Effect of the Bill

The bill authorizes a charter school operated as a school of hope to be eligible to receive charter school state capital outlay funding.

Personnel Background Screening

Each person who seeks educator certification in Florida must be fingerprinted and undergo a state and national criminal history background screening by a district school board or the DOE.¹³⁶ If a background screening reveals a criminal history, or if an applicant for certification acknowledges a criminal history, the applicant's records must be assigned to DOE's Office of Professional Practices Services (OPPS) for review and determination of eligibility for certification.¹³⁷

¹²⁸ A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to s. 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.

¹²⁹ Section 1013.62(1)(a).1.a.-e., F.S.

¹³⁰ The definition of financial emergency is provided in s. 218.503(1), F.S.

¹³¹ Section 1013.62(1)(a)3., F.S.; rule 6A-2.0020, F.A.C. A charter school that receives a grade of "F," two consecutive grades lower than a "C" or a school improvement rating of "Unsatisfactory" is not eligible for capital outlay funding. *See also, Florida Assoc. of Independent Charter Schools vs. Florida Dept. of Education, Case No. 17-1986RP, available at <https://www.doah.state.fl.us/ROS/2017/17001986.pdf>.*

¹³² Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(b), F.S.

¹³³ Section 1013.62(2)(a)-(e), F.S.

¹³⁴ Specific appropriation 21, s. 2, ch. 2020-21, L.O.F.

¹³⁵ Florida Department of Education, *Charter School Capital Outlay 2020-21*, available at <http://www.fldoe.org/finance/fco/charter-school-capital-outlay/index.stml> (last visited May 10, 2021).

¹³⁶ Section 1012.56(10)(a), F.S.

¹³⁷ Section 1012.56(2)(d), F.S. The OPPS administers a state-level grievance process. The OPPS investigates alleged misconduct by educators in Florida who hold an educator's certificate and pursues disciplinary actions against the certificates of educators found to have committed acts of misconduct. *See* Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited May 10, 2021).

Instructional and non-instructional personnel hired or contracted to fill positions that require direct contact with students in any charter school are required to undergo background screening¹³⁸ by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.¹³⁹ Current law provides a list of disqualifying criminal offenses for educator certification or employment in any position that requires direct contact with students in a charter school.¹⁴⁰ Instructional and non-instructional personnel who are hired must be rescreened every 5 years.¹⁴¹

Effect of the Bill

The bill authorizes instructional personnel and non-instructional personnel who are hired or contracted to fill positions in any school of hope as well as members of the governing board of a school of hope, to complete background screening requirements by filing with the school a set of fingerprints taken by an authorized law enforcement agency, an employee of the charter school or school district who is trained to take fingerprints, or by any other entity recognized by the Florida Department of Law Enforcement.

Exceptional Student Education Centers

Present Situation

Exceptional Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.¹⁴² A student may not be given special instruction or services as an ESE student until after the student has been properly evaluated and found eligible.¹⁴³

With regard to students with disabilities, the IDEA requires school districts to make a free appropriate public education (FAPE) available to such students ages three through 21.¹⁴⁴ A FAPE must include special education and related services¹⁴⁵ that are provided by the public school system at no cost to the parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).¹⁴⁶

An ESE center is a separate public school to which nondisabled students ages six through 21 years of age do not have access to.¹⁴⁷ For school accountability purposes, an ESE center school is one which is specifically designed to meet the needs of students with disabilities and in which all students in attendance in grades K-12 are identified as students with a disability.¹⁴⁸ Each ESE center must choose to receive a school grade based on student performance on statewide standardized assessments or to receive a school improvement rating.¹⁴⁹ An ESE center school that does not choose to receive a school grade must be assigned a school improvement rating of Commendable, Maintaining, or Unsatisfactory

¹³⁸ Section 1002.33(12)(g)1.

¹³⁹ Section 1012.32(2)(b), F.S.

¹⁴⁰ Section 1012.315, F.S.

¹⁴¹ Section 1012.56(10)(b), F.S.

¹⁴² Section 1003.57(1)(b), F.S.; Rule 6A-6.03411(1)(m) and (n), F.A.C.

¹⁴³ Section 1003.57(1)(c), F.S.; *see also* Rule 6A-6.0331, F.A.C.

¹⁴⁴ 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

¹⁴⁵ "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

¹⁴⁶ 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

¹⁴⁷ Section 1003.57(1)(a)1.a., F.S.

¹⁴⁸ Rule 6A-1.099828(2)(b), F.A.C.

¹⁴⁹ Section 1008.3415, F.S.; *see also* s. 1008.34(3)(a), F.S.

annually, and the school must assess at least 80 percent of their eligible students to receive a school improvement rating.¹⁵⁰

The school improvement rating is calculated using student learning gains on statewide, standardized English Language Arts and Mathematics assessments for all eligible students who are enrolled in the school and who have assessment scores, concordant scores, or comparable scores for the preceding school year.¹⁵¹

The overall school improvement rating is calculated based on the percentage of possible points, 100 points are available for each component, earned by each school.¹⁵² A school's overall improvement rating based, on applicable points earned, are as follows:

School Improvement Ratings		
Total Points Earned	Rating	Student Performance
50% or higher	Commendable ¹⁵³	A significant percentage of the students attending the school are making learning gains. ¹⁵⁴
26-49%	Maintaining ¹⁵⁵	A sufficient percentage of the students attending the school are making learning gains. ¹⁵⁶
25% or less	Unsatisfactory ¹⁵⁷	An insufficient percentage of the students attending the school are making learning gains. ¹⁵⁸

A school that tests less than 90 percent of its students may not earn a rating higher than maintaining.¹⁵⁹

Effect of the Bill

The bill authorizes a charter school that is an ESE center and has two consecutive ratings of "maintaining" or higher to replicate its educational programs in the same manner as a high-performing charter school.¹⁶⁰ The bill also reduces the administrative fee the sponsor of the charter ESE center may withhold from up to 5 percent to up to 2 percent for enrollment of up to and including 250 students.

Career and Professional Academies

Present Situation

Each school board must operate at least one high school career and professional academy and have as part of its 3-year strategic plan the implementation of an academy or a career-themed course in at

¹⁵⁰ Rule 6A-1.099822(3)(c)-(d), F.A.C.

¹⁵¹ Section 1008.341(3), F.S.

¹⁵² *Id.* at (4)(b)1.

¹⁵³ Rule 6A-1.099822(4)(b)2.a., F.A.C.

¹⁵⁴ Section 1008.341(2)(a), F.S.

¹⁵⁵ Rule 6A-1.099822(4)(b)2.b., F.A.C.

¹⁵⁶ Section 1008.341(2)(b), F.S.

¹⁵⁷ Rule 6A-1.099822(4)(b)2.c., F.A.C.

¹⁵⁸ Section 1008.341(2)(c), F.S.

¹⁵⁹ *Id.* at (3)(d).

¹⁶⁰ As of March 15, 2021, there are currently 29 charter school ESE centers in operation across Florida. Email, Florida Department of Education, Bethany Swanson, Legislative Affairs, Re: Charter ESE Centers (March 15, 2021).

least one middle school in the district.¹⁶¹ Two or more school districts may collaborate in the development of the strategic plan and jointly offer an academy or career-themed courses.¹⁶²

The goals of a career and professional academy and career-themed courses are to:

- increase student academic achievement and graduation rates through integrated academic and career curricula;
- prepare graduating high school students to make appropriate choices relative to employment and future educational experiences;
- focus on career preparation through rigorous academics and industry certification;
- raise student aspiration and commitment to academic achievement and work ethics through relevant coursework;
- promote acceleration mechanisms, such as dual enrollment or articulated credit, so that students may earn postsecondary credit while in high school; and
- support the state's economy by meeting industry needs for skilled employees in high-skill, high-wage, and high-demand occupations.¹⁶³

An academy may be offered as a school-within-a-school or as part of an existing high school that provides courses in one or more occupational clusters. Students attending the school are not required to attend the academy. An academy may also be offered as a total school configuration providing multiple academies, each structured around an occupational cluster. In this case, each student attending the school also attends an academy.¹⁶⁴

Each career course offered in a career and professional academy and each career-themed course offered by a secondary school must lead to industry certification or postsecondary credit. If the passage rate on an industry certification examination that is associated with an academy or a career-themed course falls below 50 percent, the 3-year strategic plan must be amended to include specific strategies to improve the passage rate of the academy or career-themed course.¹⁶⁵

Current law does not expressly authorize charter schools to offer career and professional academies.

Effect of the Bill

The bill authorizes charter schools to provide career and professional academies.

Virtual Instruction Programs

Present Situation

Florida law establishes a variety of options to make virtual instruction accessible to K-12 students. These options include:

- full-time or part-time enrollment in a school district virtual instruction program;¹⁶⁶
- full-time enrollment in a virtual charter school;¹⁶⁷
- enrollment in individual virtual courses offered by school districts and approved by the DOE;¹⁶⁸ and

¹⁶¹ Sections 1003.493(3) and 1003.4935(1), F.S.

¹⁶² Section 1003.491(2), F.S.

¹⁶³ Section 1003.493(2), F.S.

¹⁶⁴ Section 1003.493(3)(b), F.S.

¹⁶⁵ Section 1003.493(5), F.S.

¹⁶⁶ Section 1002.45, F.S.

¹⁶⁷ Sections 1002.33(1) and 1002.45(1)(d), F.S.

¹⁶⁸ Section 1003.498, F.S.

- full-time or part-time enrollment in the Florida Virtual School (FLVS) or school district FLVS franchises.¹⁶⁹

The DOE is required to annually publish online a list of providers approved to offer virtual instruction programs in the state.¹⁷⁰ To be approved by the DOE, among other requirements specified in law,¹⁷¹ a virtual provider must document that the provider makes available to the parents and students in their virtual program specific contact information.¹⁷² The contact information must be posted and accessible online and include, but is not limited to, the following teacher-parent and teacher-student contact information for each virtual course:¹⁷³

- How to contact the instructor via phone, e-mail, or online messaging tools.
- How to contact technical support via phone, e-mail, or online messaging tools.
- How to contact the administration office via phone, e-mail, or online messaging tools.
- Any requirement for regular contact with the instructor for the course and clear expectations for meeting the requirement.
- The requirement that the instructor in each course must, at a minimum, conduct one contact via phone with the parent and the student each month.

Effect of the Bill

The bill allows a virtual charter school to offer part-time instruction and removes the requirement for a virtual instructor to conduct one contact specifically via phone with a parent and student each month. The requirement for contact still remains, but the modality of communication is not prescribed.

The bill makes conforming changes to reflect the authorization for a virtual charter school to offer part-time instruction.

Student Progression and the Impact of COVID-19

Present Situation

District school boards are required to establish a comprehensive plan for student progression from one grade to another based on the student's mastery of the Next Generation Sunshine State Standards (NGSSS), which establish the core content knowledge and skills that K-12 public school students are expected to acquire.¹⁷⁴ Among other requirements, the progression plan must:¹⁷⁵

- Emphasize student reading proficiency in grades K-3 and provide targeted instructional support for students with identified deficiencies in English Language Arts (ELA), math, science, and social studies.
- Use the results of statewide, standardized assessments and end-of-course assessments to advise high school students of any identified deficiencies and to provide appropriate preparatory instruction.
- Provide for the timely delivery of student evaluation results to a student's teachers and parents for progress monitoring in grades K-12.

¹⁶⁹ Sections 1002.37 and 1002.45(1)(a)1 and (c)1., F.S.

¹⁷⁰ Section 1002.45(2)(a), F.S.; see also Florida Department of Education, List of Approved Program and Course Providers, <https://www.fldoe.org/schools/school-choice/virtual-edu/provider-resources/approved-providers/> (last visited May 10, 2021).

¹⁷¹ Section 1002.45(2)(a)1.-10., F.S.

¹⁷² Section 1002.45(2)(a)4., F.S.

¹⁷³ Section 1002.45(a)4.a.-e., F.S.

¹⁷⁴ See ss. 1003.41 and 1008.25(2), F.S. In particular, the plan must focus progression on a student's mastery of English Language Arts, math, science, and social studies standards.

¹⁷⁵ Section 1008.25(2), F.S.

- Provide requirements and notification procedures for student participation in whole-grade promotion, midyear promotion,¹⁷⁶ or subject-matter acceleration.

Statewide, Standardized Assessments

The primary purpose of Florida's student assessment program is to provide student academic achievement and learning gains data to students, parents, and schools.¹⁷⁷ In addition to providing information for school accountability and policy development objectives, the program is also designed to:¹⁷⁸

- Assess the achievement level and annual learning gains of each student in ELA and mathematics and the achievement level in all other subjects assessed.
- Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school.¹⁷⁹

The statewide, standardized assessment program is designed and implemented by the Commissioner of Education to align with the core curricular content established in the NGSSS.¹⁸⁰ Each public school student must participate in the statewide, standardized assessment program in grades 3 through 10.¹⁸¹ Students who do not achieve a Level 3 or above on the statewide, standardized ELA assessment, the statewide, standardized Mathematics assessment, or the Algebra I end-of-course assessment must be evaluated to determine the nature of the student's difficulty, the areas of academic need, and strategies for providing academic supports to improve the student's performance.¹⁸²

Any student in kindergarten through grade 3 who exhibits a substantial reading deficiency¹⁸³ must be provided interventions immediately following the identification of the substantial deficiency.¹⁸⁴ When a student is identified with a substantial reading deficiency, Florida law requires the student's school to notify his or her parent.¹⁸⁵ The school must provide an explanation of the child's particular difficulty in reading as well as descriptions of the services available and proposed interventions designed to address the child's reading deficiency.¹⁸⁶ Additionally, the parent must be informed that if the student's substantial reading deficiency is not remediated by grade 3, the student must be retained unless a good cause exemption from retention¹⁸⁷ applies.¹⁸⁸

Students with Individual Education Plans

All students who are between the ages of 3 to 21 and have a disability¹⁸⁹ have the right to a free, appropriate public education (FAPE).¹⁹⁰ For each eligible student or child with a disability served by a

¹⁷⁶ Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level. Section 1008.25(5)(c)8., F.S.

¹⁷⁷ Section 1008.22(1), F.S.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Section 1008.22(3), F.S.

¹⁸¹ Sections 1008.22(3)(a) and 1008.25(4)(a), F.S.

¹⁸² Section 1008.25(4)(a), F.S.

¹⁸³ Identification of a substantial deficiency is based upon screening, diagnostic, progress monitoring, or assessment data; statewide assessments; or teacher observations. Section 1008.25(5)(a), F.S. See Rule 6A-6.053(12), F.A.C.

¹⁸⁴ Section 1008.25(5)(a), F.S.

¹⁸⁵ Section 1008.25(5)(c), F.S.

¹⁸⁶ Section 1008.25(5)(c)1.-3., F.S.

¹⁸⁷ See *infra* text accompanying notes 28-30.

¹⁸⁸ Section 1008.25(5)(c)4., F.S.

¹⁸⁹ Disabilities that qualify a student as an exceptional student include an intellectual disability; an autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impairment; or developmental delays from birth through 5 years old or if the student is hospitalized or homebound. Section 1003.01(3)(a), F.S.

¹⁹⁰ 20 U.S.C. s. 1412(a)(1); Section 1003.5716, F.S.

school district, an IEP or individual family support plan must be developed, reviewed, and revised.¹⁹¹ The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a Florida student with a disability.¹⁹²

In developing an IEP, the student's parent participates in the planning process with a multidisciplinary team¹⁹³ of school and district staff and other experts to consider a student's strengths and the unique academic, developmental, and functional needs of the child.¹⁹⁴ To facilitate the student's successful progression through school, a student's IEP includes statements of:¹⁹⁵

- the student's academic and functional levels of performance;
- the goals, objectives, or benchmarks for the student;
- specially designed instruction and related services, including accommodations, modifications, or supports for the student to appropriately advance toward attaining annual goals; and
- how the student's progress toward meeting annual goals will be measured and how periodic progress reports will be provided.

Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education and related services.¹⁹⁶ In addition, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.¹⁹⁷ There is no requirement that gifted students be reevaluated.¹⁹⁸

Student Retention

Florida law specifies that no student may be assigned to a grade level based solely on age or other factors that constitute social promotion.¹⁹⁹

For promotion to grade 4, a student must score a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3. The student must be retained if the student's reading deficiency is not remedied by the end of grade 3, which is demonstrated by scoring a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3.²⁰⁰

The district school board may exempt students from mandatory retention in grade 3 only for good cause.²⁰¹ Good cause exemptions are limited to students in grade 3 and may apply to students with limited English proficiency; students with disabilities; students who demonstrate an acceptable level of performance on an alternative assessment approved by the SBE or through a student portfolio; and students previously retained in grades K-3.²⁰² Any student who is promoted to grade 4 with a good cause exemption must be provided intensive reading instruction and intervention, including specialized diagnostic information and specific reading strategies for the particular student's needs.²⁰³

¹⁹¹ Rule 6A-6.03028(3), F.A.C.

¹⁹² Florida Department of Education, *Developing Quality Individual Education Plans* (2015), at 9, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

¹⁹³ The IEP team is comprised of the student's parent(s), at least 1 regular education teacher of the student (if the student is or may be participating in the regular education environment), at least 1 special education teacher of the student, a representative of the local education agency, an individual who can interpret instructional implications of evaluation results (may be the teacher or agency representative), other individuals who have knowledge or special expertise of the student at the discretion of the parent or agency, and the student when appropriate. 20 U.S.C. s. 1414(d)(1)(B).

¹⁹⁴ See 20 U.S.C. s. 1414(d)(3)(A) and (B); Section 1003.5716, F.S.; Rule 6A-6.03028(3)(g), F.A.C.

¹⁹⁵ Rules 6A-6.03028(3)(h) and 6A-6.0331(9), F.A.C.

¹⁹⁶ Rule 6A-6.0331(7), F.A.C.

¹⁹⁷ Rule 6A-6.03028, F.A.C.

¹⁹⁸ See rule 6A-6.0331, F.A.C.

¹⁹⁹ Section 1008.25(6)(a), F.S.

²⁰⁰ Section 1008.25(5)(b), F.S.

²⁰¹ Section 1008.25(6)(b), F.S.

²⁰² *Id.*

²⁰³ *Id.*

In the 2018-2019 school year, 28,178 students were promoted to grade 4 based on a good cause exemption.²⁰⁴

Based on data from the DOE,²⁰⁵ there was an overall 57 percent reduction in statewide K-5 student retention rates for the 2019-20 school year compared to the previous 5-year average. Students in grade 3 had the most significant reduction in retention rates, with a 77 percent reduction in the 2019-20 school year compared to the previous 5-year average.²⁰⁶

The retention of a student may impact the student's eligibility for participation in interscholastic athletics in high school. The Florida High School Athletic Association (FHSAA), the statutorily designated governing nonprofit for interscholastic athletics in Florida's public schools,²⁰⁷ is authorized to determine student-athlete eligibility requirements.²⁰⁸ In January 2021, in response to eligibility issues caused by student retention, the FHSAA amended its bylaw governing high school ineligibility based on age.²⁰⁹ Beginning with the 2021-2022 school year, students who turn age 19 prior to July 1 are ineligible to participate in high school interscholastic athletics.²¹⁰

COVID-19 Public Health Emergency

In response to the COVID-19 emergency, the DOE issued an Emergency Order canceling the remaining K-12 state assessments for the 2019-2020 school year.²¹¹ The order also authorized school districts and other educational entities to evaluate students for promotion, graduation, and final course grades for the 2019-2020 school year without consideration of the assessments that were canceled.²¹²

Given the cancellation of the statewide, standardized ELA assessment, the DOE advised that grade 3 student promotion decisions for the 2019-2020 school year should be made in consultation with parents, teachers, and school leaders based on the student's classroom performance and progress monitoring data.²¹³ Recognizing the important role parents play in planning their students' educations,

²⁰⁴ Florida Department of Education, *3rd Grade Promotions: Good Cause Exemption 2018-19*, Excel Report, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.shtml> (last visited May 5, 2021) (scroll to "Retentions and Non-Promotions" at the bottom of the page). Pursuant to the Florida Department of Education's Emergency Order No. 2020-EO-01, spring K-12 statewide assessment test administrations—including the grade 3 ELA assessment—for the 2019-20 school year were canceled. Therefore, grade 3 good cause exemption promotion data is not available for the 2019-20 school year. See Florida Department of Education, *Emergency Order No. 2020-EO-01* (March 23, 2020) available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

²⁰⁵ House staff analysis of the DOE's retention data. Florida Department of Education, *Retention Rates by District 2019-20*, Excel Report, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.shtml> (last visited May 5, 2021); Florida Department of Education, *Retention Rates by District 2014-15 to 2018-19*, Excel Reports, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.shtml> (last visited May 5, 2021) (retention reports for the following school years: 2014-15; 2015-16; 2016-17; 2017-18; and 2018-19).

²⁰⁶ *Id.*

²⁰⁷ Section 1006.20(1), F.S.

²⁰⁸ Sections 1006.20(2)(a) and (7), F.S.

²⁰⁹ J.C. Carnahan, *FHSAA adjusts cutoff date for high school athletes turning 19*, Orlando Sentinel, Jan. 25, 2021, <https://www.orlandosentinel.com/sports/highschool/os-sp-hs-fhsaa-sports-20210125-ufhfskrzbgfxtotj6krvdmwlm-story.html> (FHSAA's Representative Assembly voted to amend the bylaws and relax the birthday cut off from September 1 to July 1).

²¹⁰ *Id.* Students may appeal an eligibility determination by the FHSAA, including determinations made based on age. See FHSAA, Bylaw 10.6, available at https://fhsaa.com/documents/2020/10/1/2021_handbook_website_1001.pdf?id=292.

²¹¹ Florida Department of Education, *Emergency Order No. 2020-EO-01* (March 23, 2020), at 3-4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf>.

²¹² See *id.* at 3; see also Florida Department of Education, *Coronavirus (COVID-19): K-12 Public, Private & Charter Schools, Assessments, Accountability and Promotion*, <http://www.fldoe.org/em-response/schools.shtml> (last visited May 5, 2021).

²¹³ Florida Department of Education, *Q&A Guidance*, at Question 4, available at <http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-COVID-QA1.pdf>.

the DOE guidance also specified that parents should have the ability to request retention of their child in the current grade for the 2020-2021 year.²¹⁴ The guidance provided that the decision about retention should be made in consultation with parents, teachers, and school leaders about what is in the best interest of the child.²¹⁵

Effect of the Bill

The bill authorizes parents to request that their K-5 public school student be retained in the grade level to which the student was assigned at the beginning of the 2020-2021 school year for the 2021-2022 school year. The authority of a parent to request retention under the bill is limited to requests for the 2021-2022 school year.

The bill requires that the retention request must specify the academic reasons for retention and be submitted in writing to the school principal. The principal must consider any request received by June 30, 2021. If a request is received after the deadline, it is within the principal's discretion whether to consider the request.

When considering a retention request, the school principal is required to inform the student's teachers, collaboratively discuss any basis for agreement or disagreement with the student's parent, and maintain documentation of the discussions. Parents must be informed that retention may impact a student's eligibility for participation in high school athletic activities due to age restrictions. Ultimately, after discussion of the retention request, the parent's decision will determine whether the student is retained, but the parent is required to sign a form acknowledging the academic and athletic ramifications of retention.

As an alternative to retention, the principal, teachers, and parent may develop a customized one-year education plan designed to help a student return to grade level readiness by the end of the following school year. The plan may include supplemental educational support, services, and interventions; summer education; promotion in some courses; and midyear promotion.

If a retained student has an IEP in effect, the student's IEP team must meet to review and revise the student's IEP, as appropriate.

The bill requires school districts to report the number of students retained by parental request for all or part of the 2021-2022 school year to the DOE by June 30, 2022.

Water Safety

Present Situation

In 2020, 69 children in Florida died from an accidental drowning,²¹⁶ while 31 child drownings have occurred so far in 2021.²¹⁷ As reported by the Florida Department of Health, Florida ranked 6th in the country for unintentional drowning deaths in 2019,²¹⁸ and from 2017 to 2019, Florida had the highest

²¹⁴ *Id.* at Question 5.

²¹⁵ *Id.*

²¹⁶ Florida Department of Children and Families, *Child Fatality Prevention*, <https://www.myflfamilies.com/ChildFatality/stateresults.shtml?minage=0&maxage=18&year=2020&cause=Drowning&prior12=&verified=> (last visited May 10, 2021).

²¹⁷ *Id.*

²¹⁸ Florida Department of Health, *Drowning Prevention*, <http://www.floridahealth.gov/programs-and-services/prevention/drowning-prevention/index.html> (last visited May 10, 2021).

accidental drowning rate among the population of children ages 0 to 9, at 3.28 deaths per 100,000.²¹⁹ Nationally, drowning is the leading cause of accidental death for children ages 1 to 4.²²⁰

As one of several strategies to help prevent accidental drowning deaths, the American Academy of Pediatrics recommends that children ages 4 and older learn to swim, including through swim lessons that provide instruction on swimming techniques and water survival skills taught by instructors certified through a nationally recognized curriculum.²²¹ In Florida, many municipalities and local governments provide information for locally available swim lessons.²²² Other local governments, including Broward County, Hillsborough County, Palm Beach County, and Miami-Dade County, have provided free swim lessons for certain children.²²³

Florida's Next Generation Sunshine State Standards include instruction on water safety from kindergarten through high school, including identifying the dangers of entering a body of water without supervision, rules for safe water activities, and safety equipment and practices relating to water activities.²²⁴

Effect of the Bill

Beginning with the 2022-2023 school year, the bill requires each public school to provide to each parent of a student initially enrolling in the school information on the important role water safety education courses and swim lessons play in saving lives. The information must include local options for age-appropriate water safety courses and swim lessons that result in a certificate, including courses and lessons offered for free or at a reduced price. Schools have flexibility to provide the information electronically or in hardcopy.

The bill specifies that the information must be provided to the student, and not the parent, if the student is 18 or older or is under the age of 21 and is enrolling in adult education classes.

District School Board Governance

Present Situation

Each district school board may adopt policies and procedures necessary for the daily business operation of the district school board, including, but not limited to:

- The provision of legal services for the district school board;
- Conducting a district legislative program;
- District school board member participation at conferences, conventions, and workshops;

²¹⁹ *Id.*

²²⁰ National Drowning Prevention Alliance, *Drowning Quick Facts*, <https://ndpa.org/drowning-quick-facts/> (last visited May 10, 2021).

²²¹ American Academy of Pediatrics, *Swim Lessons: When to Start & What Parents Should Know*, <https://www.healthychildren.org/English/safety-prevention/at-play/Pages/swim-lessons.aspx> (last visited Mar. 21, 2021).

²²² See, e.g., Polk County Health Department, *2019 Polk County Swim Lesson Facilities* (2019), available at [http://polk.floridahealth.gov/files/documents/2019 Polk County Swim Lessons.pdf](http://polk.floridahealth.gov/files/documents/2019%20Polk%20County%20Swim%20Lessons.pdf); St. Petersburg Parks & Recreation, *Swim Lessons*, <http://www.stpeteparksrec.org/swimlessons/> (last visited May 10, 2021); City of Tallahassee, *Swimming Lessons*, <https://www.talgov.com/parks/aquatics-lessons.aspx> (last visited May 10, 2021).

²²³ See, e.g., Water Smart Broward, *Swim Coupon*, <https://watersmartbroward.org/programs/kids-swim-coupon/> (last visited May 10, 2021); Hillsborough County, *Free Swim Lessons, for Safety's Sake*, <https://www.hillsboroughcounty.org/en/newsroom/2019/03/29/free-swim-lessons-for-safetys-sake> (last visited May 10, 2021); Miami-Dade County, *Learn to Swim*, https://www.miamidade.gov/global/service.page?Mduid_service=ser14716214303986 (last visited May 10, 2021); Palm Beach County Drowning Prevention Coalition, *Free Lessons*, <https://discover.pbcbgov.org/drowningprevention/Pages/FreeLessons.aspx> (last visited May 10, 2021).

²²⁴ See CPALMS, *Standards Information and Resources*, <https://www.cpalms.org/Public/search/Standard#> (last visited Mar. 21, 2021).

- District school board policy development, adoption, and repeal;
- Meeting procedures, including participation via telecommunications networks, use of technology at meetings, and presentations by nondistrict personnel;
- Citizen communications with the district school board and with individual district school board members;
- Collaboration with local government and other entities as required by law; and
- Organization of the district school board, including special committees and advisory committees.²²⁵

Effect of the Bill

The bill authorizes members of special committees and advisory committees of a district school board to attend meetings in person or through the use of telecommunications networks, such as telephonic and video conferencing.

High-Performing School Districts

Present Situation

Florida recognizes and rewards school districts that demonstrate the ability to consistently maintain or improve their high-performing status through providing such districts with flexibility in meeting specific requirements.²²⁶

A school district is an academically high-performing school district if it meets the following criteria:

- earns a grade of “A” for two consecutive years;
- has no district-operated school that earns a grade of “F”;
- complies with all class size requirements;²²⁷ and
- has no material weaknesses or instances of material noncompliance noted in the annual financial audit.²²⁸

Specific requirements which high-performing school districts must meet include requirements pertaining to:

- the provision of services to students with disabilities;
- civil rights and provisions relating to discrimination;
- student health, safety, and welfare;
- the election or compensation of district school board members;
- student assessment program and the school grading system;
- financial matters with specified exemptions;
- planning and budgeting;
- public school personnel compensation and salary schedules;
- educational facilities with specified exemptions;
- instructional materials with specified exemptions;
- uniform opening date of public schools; and
- requirements specific to High-Performing School Districts.²²⁹

²²⁵ Section 1001.43(1), F.S.

²²⁶ Section 1003.621, F.S.

²²⁷ In 2002, citizens approved an amendment to the Florida Constitution that set limits on the number of students in core classes in the state's public schools. Beginning with the 2010-2011 school year, the maximum number of students in each core class would be 18 students in prekindergarten through grade 3; 22 students in grades 4 through 8; and 25 students in grades 9 through 12. Florida Department of Education, *Class Size*, <http://www.fldoe.org/finance/budget/class-size/> (last visited May 10, 2021).

²²⁸ Section 1003.621(1)(a), F.S.

²²⁹ Section 1003.621(2)(a)-(l), F.S.

Effect of the Bill

The bill authorizes a high-performing school district to provide up to two days of virtual instruction as part of the required 180 actual teaching days or the equivalent on an hourly basis each school year.²³⁰ The bill requires the day or days to be indicated on the calendar approved by the district school board.

The bill requires a high-performing school district to submit a plan for each day of virtual instruction to the DOE for approval, in a format prescribed by the DOE, with assurances of alignment to statewide student standards²³¹ before the start of each school year. Virtual instruction which is conducted in accordance with the plan approved by the DOE must be teacher-developed and aligned with the minimum term requirements for the operation of schools.

Florida Student Assistance Grant Program

Present Situation

The Florida Student Assistance Grant (FSAG) Program, created in 1972, is Florida's largest need-based grant program.²³² The FSAG Program consists of four student financial aid programs:

- FSAG Public;²³³
- FSAG Public Postsecondary Career Education;²³⁴
- FSAG Private;²³⁵ and
- FSAG Postsecondary.²³⁶

The FSAG Program is available to degree- and certificate-seeking undergraduate Florida residents who demonstrate substantial financial need and are enrolled in participating postsecondary institutions.²³⁷

A FSAG award, in combination with other financial aid, may not exceed a student's demonstrated financial need.²³⁸ Financial need is determined by the institutional cost of attendance, less the Expected Family Contribution (EFC)²³⁹ as determined by the Free Application for Federal Student Aid (FAFSA), less aid from other sources such as federal grants, state grants and institutional aid (not including loans).²⁴⁰ The program is administered by participating institutions in accordance with state board rule.²⁴¹

²³⁰ See Rule 6A-1.045111, F.A.C. SBE rule specifies that each school district that participates in the state appropriations for the Florida Education Finance Program must operate all schools for a term of 180 actual teaching days as prescribed by s. 1011.60(2), F.S., or the equivalent.

²³¹ Section 1003.41, F.S.

²³² Florida Department of Education, Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19*, at 11, available at <https://www.floridastudentfinancialaidsg.org/pdf/annualreportcurrent.pdf>; see also Florida Department of Education, Office of Student Financial Assistance, *Florida Student Assistance Grant Fact Sheet* (2020-21) available at, <https://www.floridastudentfinancialaidsg.org/PDF/factsheets/FSAG.pdf>.

²³³ Section 1009.50, F.S.

²³⁴ Section 1009.505, F.S.

²³⁵ Section 1009.51, F.S.

²³⁶ Section 1009.52, F.S.

²³⁷ Sections 1009.50, 1009.505, 1009.51, and 1009.52, F.S.

²³⁸ Florida Department of Education, Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19*, at 11, available at <https://www.floridastudentfinancialaidsg.org/pdf/annualreportcurrent.pdf>.

²³⁹ Expected Family Contribution (EFC) is calculated according to a formula established by law which considers a student's family size, number of family members who will attend college or career school during the year, the family's taxed and untaxed income, assets, and benefits, such as unemployment for Social Security. U.S. Department of Education, Federal Student Aid, *How Aid is Calculated*, <https://studentaid.gov/complete-aid-process/how-calculated> (last visited May 10, 2021).

²⁴⁰ *Id.*

²⁴¹ Section 1009.50(6), 1009.505(5), 1009.51(6), and 1009.52(7), F.S.; Postsecondary educational administrative responsibilities for state student aid and tuition assistance programs are outlined in rule 6A-20.002, F.A.C.

The FSAG Program provides state student assistance grants to students who meet general eligibility requirements²⁴² and qualifications specific to each program.

Florida Postsecondary Student Assistance Grant Program

The Florida Postsecondary Student Assistance Grant Program (FSAG Postsecondary) is available to students who attend eligible independent institutions²⁴³ that meet the following criteria:

- A private nursing diploma school which is approved by the Florida Board of Nursing, is located in Florida, and administers the Pell Grant;²⁴⁴ or
- An independent college or university located in Florida, which is licensed by the Commission for Independent Education (CIE), offers degrees, administers the Pell Grant and does not participate in the FSAG Private grant.²⁴⁵

An FSAG Postsecondary grant is only awarded to full-time degree seeking students (enrolled in a minimum of 12 credit hours per term, or the equivalent)²⁴⁶ who meet general requirements for student eligibility,²⁴⁷ are accepted to and attend an eligible institution.²⁴⁸ A student applying for an FSAG Postsecondary grant must apply for the Pell Grant, and any federal aid provided is considered when assessing financial resources available to the student.²⁴⁹

The total FSAG Postsecondary grant a student receives must be for the amount of demonstrated unmet need for tuition and fees and may not exceed the maximum annual award amount specified in the GAA.²⁵⁰ For FY 2020-2021, the GAA established a maximum award amount of \$3,260 to any student from FSAG Postsecondary.²⁵¹ A student is not eligible for a FSAG Postsecondary grant if demonstrated unmet need is less than \$200.²⁵² Priority of grant money may be given to students who are within one semester of completing a degree or certificate program and an institution is prohibited from awarding a grant to a student whose EFC exceeds one and one-half times the maximum Pell Grant-eligible family contribution.²⁵³

To maintain eligibility in the FSAG Postsecondary grant, a student must have earned a minimum institutional cumulative grade point average (GPA) of 2.0 on a 4.0 scale for 12 credit hours for each term the award was received.²⁵⁴ A student is eligible to receive a FSAG Postsecondary grant for nine semesters or 14 quarters of full-time enrollment.²⁵⁵

FSAG Postsecondary Reporting and Distribution Requirements

²⁴² Section 1009.40, F.S.

²⁴³ Section 1009.52(2)(a), F.S.

²⁴⁴ *Id.*, see also Florida Department of Education, Office of Student Financial Assistance, *2020-21 Institutional Eligibility Program Requirements for Participation in State Scholarship & Grant Programs*, at 2, available at https://www.floridastudentfinancialaidsg.org/pdf/Institution_Eligibility_Requirements.pdf.

²⁴⁵ *Id.*

²⁴⁶ Florida Department of Education, Office of Student Financial Assistance, *Florida Student Assistance Grant Fact Sheet* (2020-21), at 2, available at, <https://www.floridastudentfinancialaidsg.org/PDF/factsheets/FSAG.pdf>.

²⁴⁷ Section 1009.40, F.S. see also 6A-20.033(1), F.A.C.

²⁴⁸ Section 1009.52(2)(a), F.S.

²⁴⁹ Section 1009.52(2)(b), F.S.

²⁵⁰ Section 1009.52(2)(a), F.S.

²⁵¹ Specific Appropriations 7 and 74, s. 2, ch. 2020-111, L.O.F.

²⁵² Section 1009.52(2)(a), F.S.

²⁵³ Section 1009.52(2)(c), F.S. An institution may not impose additional criteria to determine a student's eligibility to receive a grant award.

²⁵⁴ Section 1009.40(1)(b)1.

²⁵⁵ Section 1009.52(2)(a), F.S. Flush left provision.

Each participating institution determines an applicant's eligibility and award amount,²⁵⁶ and reports to the DOE the students who are eligible for the FSAG Postsecondary for each academic term, including necessary demographic and eligibility date for such students.²⁵⁷

The funds appropriated for FSAG Postsecondary must be distributed to eligible institutions in accordance with a formula approved by the SBE.²⁵⁸ The formula must consider at least the prior year's distribution of funds, the number of eligible applicants who did not receive awards, the standardization of the EFC, and provisions for unused funds. The formula must account for changes in the number of eligible students across all student assistance grant programs.²⁵⁹ Institutions must comply with disbursement and remittance requirements specified in law.²⁶⁰

Each institution that receives money through the FSAG Postsecondary must prepare a biennial report, which includes a financial audit of the institution's administration of the program and a complete account of moneys for the program, submitted to the DOE by March 1 every other year.²⁶¹ The DOE may conduct its own annual or biennial audit of an institution's administration of the program and its allocated funds in lieu of the required biennial report and financial audit report.²⁶² The DOE may suspend or revoke an institution's eligibility to receive future moneys for the program or request a refund of any moneys overpaid to the institution for the program if the department finds noncompliance.²⁶³

In FY 2019-2020, the FSAG Postsecondary grant disbursed \$6.1 million dollars to 5,597 students.²⁶⁴ The average student award amount was \$1,096.66.²⁶⁵

Aviation Maintenance Schools

An Aviation Maintenance Technician School (AMTS) is an educational facility which is certified by the Federal Aviation Administration (FAA) to train aviation maintenance technicians for careers in the airline industry, in aviation maintenance facilities, and in commercial and general aviation.²⁶⁶ The FAA requires high standards of AMTS to provide the knowledge, skills, and abilities for aviation maintenance technicians.²⁶⁷ The FAA provides minimum standards for facilities, curriculum and teaching levels at an AMTS. An AMTS may be FAA-certificated for the following ratings: airframe, powerplant, or combined airframe and powerplant.²⁶⁸ The curriculum for an AMTS must be submitted and approved by the FAA initially, and subsequently for any curriculum revisions.²⁶⁹ The FAA may, at any time, inspect an AMTS

²⁵⁶ Florida Department of Education, Office of Student Financial Assistance, *Florida Student Assistance Grant Fact Sheet* (2020-21), at 4, available at, <https://www.floridastudentfinancialaidsg.org/PDF/factsheets/FSAG.pdf>.

²⁵⁷ Section 1009.52(2)(d), F.S.

²⁵⁸ Section 1009.52(4)(a), F.S.

²⁵⁹ *Id.*

²⁶⁰ *Id.* at (4)(d).

²⁶¹ *Id.* at (4)(e).

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ Florida Department of Education, Office of Student Financial Assistance, *End-of-Year Report 2019-20 Florida Student Assistance Grant Postsecondary*, at 1, available at https://www.floridastudentfinancialaidsg.org/PDF/PSI/FSAGPO_2019_2020.pdf.

²⁶⁵ *Id.* at 6.

²⁶⁶ United States Department of Transportation, Federal Aviation Administration Advisory Circular, *Certification and Operation of Aviation Maintenance Technician Schools* (June 5, 2015), at 2, available at https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_147-3B.pdf. An Aviation Maintenance Technician School must meet the requirements of 14 C.F.R. Part 147.

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 3. Florida Department of Education Curriculum Frameworks which set the standards and benchmarks for career and technical education programs for public institutions in Florida, lists the Aviation Airframe Mechanic Career Program and the Aviation Powerplant Mechanics Career Program as 1,350 clock hour programs each. Florida Department of Education, 2020-21 CTE Curriculum Frameworks, *Transportation, Distribution & Logistics*, <http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/curriculum-frameworks/2020-21-frameworks/transportation-distribution-logistics.stml> (last visited May 10, 2021).

²⁶⁹ *Id.* at 4.

to determine compliance, with an inspection normally occurring once every six months.²⁷⁰ In Florida, there are a total of 14 FAA-certified AMTS.²⁷¹

Under current law, a student attending an AMTS in Florida is not eligible to receive an FSAG Postsecondary grant.

Effect of the Bill

While current law does not require institutions certified by the FAA to be licensed by the Commission for Independent Education, the bill requires such institutions to be licensed and to have a location in Florida in order to participate in the FSAG Postsecondary.

The bill requires FSAG Postsecondary grants awarded by such eligible institutions to be made only to full-time certificate seeking students accepted at the aviation maintenance school and requires a student's eligibility for the renewal of an award to be evaluated at the end of the completion of 900 clock hours.

The bill authorizes a full-time certificate seeking student to be eligible for a FSAG Postsecondary award for up to 110 percent of the number of clock hours required to complete the program in which the student is enrolled.

The bill makes conforming changes to reflect the authorization of an AMTS program, which is conducted as a clock hour program, to participate in the FSAG Postsecondary.

Sex Specific Athletic Opportunities

Present Situation

Title IX

Title IX was enacted in 1972, nearly 50 years ago, and has been credited with facilitating the increase of girls' and women's participation in athletics. Research shows participation in sports has both immediate and long-term benefits.²⁷² For example, female athletes do better in school, are more likely to graduate high school and go to college, are less likely to engage in risky behavior, less likely to get pregnant or take drugs, and benefit from reduced risk of developing illnesses such as obesity, heart disease, osteoporosis, and breast cancer.²⁷³ In other words, increased opportunities and participation in sports for women and girls have wide impacts that go beyond sports.²⁷⁴

According to an article in *USA Today* written on the 45th anniversary of Title IX, the "number of girls playing high school sports has swelled from fewer than 300,000 in 1974 to more than 3.1 million in 2012."²⁷⁵ According to the National Collegiate Athletic Association (NCAA), 221,886 females participated

²⁷⁰ *Id.* at 12.

²⁷¹ Federal Aviation Administration, *Maintenance Schools Search-Florida*, <https://av-info.faa.gov/MaintenanceSchool.asp> (last visited May 10, 2021).

²⁷² The National Coalition for Women and Girls in Education, *Title IX and Athletics: Proven Benefits, Unfounded Objections*, available at <https://www.ncwge.org/TitleIX40/Athletics.pdf> (last visited May 10, 2021).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Haley Samsel, *Title IX Turns 45 Today. It's Impact Goes Beyond Women Playing Sports*, *USA Today*, June 23, 2017, available at <https://www.usatoday.com/story/college/2017/06/23/title-ix-turns-45-today-its-impact-goes-beyond-women-playing-sports/37433427/> (last visited May 10, 2021).

in athletics at the collegiate level in 2020.²⁷⁶ The number of females participating in athletics at the collegiate level in 1990 was 88,206.²⁷⁷ In 1982, the number was 64,390.²⁷⁸

Despite the increased rates of participation among female athletes at the collegiate level, more male athletes participate in athletics at the collegiate level overall. According to the NCAA, 282,411 male athletes participated in athletics at the collegiate level in 2020.²⁷⁹

Title IX regulations require institutions that receive federal education funds to provide equal opportunities in athletics for both sexes.²⁸⁰ Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes is considered when determining whether an institution has provided equal opportunities for both sexes.²⁸¹ With respect to scholarships, Title IX regulations require educational institutions that award athletic scholarships or grants-in-aid to provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.²⁸²

Title IX regulations also specifically authorize educational institutions to sponsor separate athletics teams for members of each sex.

Title IX provides that:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”²⁸³

According to the USDOE, Title IX applies to state and local education agencies, including, “approximately 16,500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums. Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories and possessions of the United States.”²⁸⁴

There are, however, exemptions and exceptions. For example, Title IX does not apply to the following entities in the following contexts:

- **Private Schools Controlled by Religious Organizations:** Title IX does not apply to an educational institution that is controlled by a religious organization if the application of Title IX would be inconsistent with the religious tenets of the religious organization.²⁸⁵ Title IX’s prohibition on discrimination in admissions also does not apply to private undergraduate higher education institutions.²⁸⁶

²⁷⁶ See *NCAA Sports Sponsorship and Participation Rates Database*, available at <https://www.ncaa.org/about/resources/research/ncaa-sports-sponsorship-and-participation-rates-database> (last visited May 10, 2021).

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ See U.S. Department of Education, Office of Civil Rights, *Title IX – Athletics*, available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue04.html> (last visited May 10, 2021).

²⁸¹ 34 C.F.R. § 106.41(c).

²⁸² 34 C.F.R. § 106.37(c).

²⁸³ 20 U.S.C. § 1681. State law incorporates Title IX in s. 1000.05, F.S. additionally, s. 1006.71, F.S., provides a process for enforcing Title IX at the collegiate level.

²⁸⁴ *Id.*

²⁸⁵ 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12.

²⁸⁶ 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15.

- **Private Undergraduate Institutions of Higher Education:** Title IX's prohibition on discrimination in admissions does not apply to private institutions of undergraduate higher education.²⁸⁷
- **Public Elementary and Secondary Schools:** Title IX's prohibition on discrimination in admissions does not apply to public elementary and secondary schools.²⁸⁸
- **Schools Training Individuals for Military Services or Merchant Marine:** Title IX does not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States or the merchant marine.²⁸⁹

According to the NCAA, there are three areas where Title IX applies to athletics²⁹⁰:

- **Participation:** Title IX does not require institutions to offer identical sports but an equal opportunity to play.
- **Scholarships:** Title IX requires that female and male student-athletes receive athletics scholarship dollars proportional to their participation; and
- **Other benefits:** Title IX also requires equal treatment of female and male athletes in the following: equipment and supplies; scheduling of games and practice times; travel and daily allowance and *per diem*; access to tutoring; coaching; locker rooms, practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity and promotions; support services; and recruitment of student-athletes.²⁹¹

Federal regulations allow institutions to maintain separate athletic teams based on sex. Specifically, the Code of Federal Regulations provides the following:

"[A] recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily injury contact."²⁹²

According to Doriane Lambelet Coleman, a Duke Law Professor and All-American and National Indoor Track Champion, and Wickliffe Shreve, in sports, "there is an average 10-12% performance gap between elite males and elite females."²⁹³ Professor Coleman and Mr. Shreve further attest "biological differences between females and males explain the male and female secondary sex characteristics which develop during puberty and have life-long effects, including those most important for success in sports: categorically different strength, speed, and endurance."²⁹⁴

Professor Coleman has further written "men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and

²⁸⁷ 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15.

²⁸⁸ *Id.*

²⁸⁹ 20 U.S.C. § 1681(a)(4); 34 C.F.R. § 106.13.

²⁹⁰ See the NCAA's website on 'Title IX Frequently Asked Questions,' available at <https://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how> (last visited May 10, 2021).

²⁹¹ *Id.*

²⁹² 34 C.F.R. § 106.41(b).

²⁹³ Doriane Lambelet Coleman and Wickliffe Shreve, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*, Duke Law Center for Sports Law and Policy.

²⁹⁴ *Id.*

the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity.”²⁹⁵

Three female high school athletes have sued the Connecticut Association of Schools-Connecticut Interscholastic Athletic Conference (Association) arguing that the Association’s policy that allows biological males to compete against biological females has deprived them of track titles and scholarship opportunities.²⁹⁶ From 2017-2019, two biological males competing against biological females won 15 female state indoor or outdoor championships.²⁹⁷

Federal Legislation

117th Congress (2021 – 2022)

During the 117th Congress, the following bills were introduced (most recent first) with respect to separate sex-specific athletics teams or sports:

- S.251 (Senator Mike Lee, UT)/H.R. 426 (Representative Greg Steube, FL) – ‘Protection of Women and Girls in Sports Act of 2021’: The bill makes it a violation of federal law for a recipient of federal funds who operates, sponsors, or facilitates athletic programs or activities to permit a person whose sex is male to participate in an athletic program or activity that is designated for women or girls.²⁹⁸ The bill specifies that sex shall be recognized based solely on a person’s reproductive biology and genetics at birth.²⁹⁹

116th Congress (2019 – 2020)

During the 116th Congress, the following bills were introduced (most recent first) with respect to separate sex-specific athletics teams or sports:

- H.R. 8932 (Representative Tulsi Gabbard, HI) – ‘Protect Women’s Sports Act of 2020’: The bill makes it a violation of federal law for a recipient of federal funds who operates, sponsors, or facilitates athletic programs or activities to permit a person whose biological sex at birth is male to participate in an athletic program or activity that is designated for women or girls.³⁰⁰
- S.4649 (Senator Kelly Loeffler, GA) – ‘Protection of Women and Girls in Sports Act of 2020’: The bill makes it a violation of federal law for a recipient of federal funds who operates, sponsors, or facilitates athletic programs or activities to permit a person whose sex is male to participate in an athletic program or activity that is designated for women or girls.³⁰¹ The bill specifies that sex shall be recognized based solely on a person’s reproductive biology and genetics at birth.³⁰²

²⁹⁵ Doriane Lambelet Coleman, *Sex in Sport*, 80 Law and Contemporary Problems 63, 74 (2017) (quoting Gina Kolata, Men, Women and Speed. 2 Words: Got Testosterone?, *N.Y. Times* (Aug. 21, 2008)).

²⁹⁶ *Soule et al v. Connecticut Association of Schools, Inc. et al*, 3:20-CV-00201. See also Pat Eaton-Robb, *Girls Sue to Block Participation of Transgender Athletes*, AP News, February 12, 2020, available at <https://apnews.com/article/8fd300537131153cc44e0cf2ade3244b> (last visited May 10, 2021).

²⁹⁷ *Id.*

²⁹⁸ See H.R. 426 bill summary prepared by the Congressional Research Service, available at <https://www.congress.gov/bill/117th-congress/house-bill/426?s=7&r=54> (last visited May 10, 2021).

²⁹⁹ *Id.*

³⁰⁰ See H.R. 8932 bill summary prepared by the Congressional Research Service, available at <https://www.congress.gov/bill/116th-congress/house-bill/8932?s=3&r=7> (last visited May 10, 2021).

³⁰¹ See S.4649 bill summary prepared by the Congressional Research Service, available at <https://www.congress.gov/bill/116th-congress/senate-bill/4649> (last visited May 10, 2021).

³⁰² *Id.*

- H.R. 5702 (Representative Greg Steube, FL) – ‘Protection of Women and Girls in Sports Act of 2020’: This bill makes it a violation of federal law for a recipient of federal funds who operates, sponsors, or facilitates athletic programs or activities to permit a person whose sex is male to participate in an athletic program or activity that is designated for women or girls.³⁰³

National Collegiate Athletic Association (NCAA) Participation Policy

The NCAA has a policy that prohibits a biological male from competing on a team reserved for biological females, unless the biological male has completed one calendar year of testosterone suppression treatment related to gender transition.³⁰⁴ Such biological male may also continue to compete on a men’s team.³⁰⁵

Florida High School Athletic Association (FHSAA) Participation Policy

The FHSAA is designated by law as the governing nonprofit organization of athletics in Florida public schools.³⁰⁶ The FHSAA is not a state agency, but performs similar functions.³⁰⁷ The FHSAA is required to adopt bylaws regulating student eligibility, student residency and transfer, recruiting, health and safety, including bylaws that require all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team to satisfactorily pass a medical evaluation each year before participating in interscholastic athletic competition or engaging in any practice, tryout, workout, conditioning, or other physical activity associated with the student’s candidacy for an interscholastic athletic team, and investigations and sanctions.³⁰⁸ The bylaws of the FHSAA govern high school athletic programs in its member schools, unless otherwise specifically provided by statute.³⁰⁹

FHSAA’s bylaws state FHSAA “will not discriminate in its governance policies, programs and employment practices on the basis of age, color, disability, gender, national origin, race, religion, creed, sexual orientation or educational choice.”³¹⁰ FHSAA bylaws further state the FHSAA will conduct its activities in a manner free of gender bias and will adopt rules that enhance schools’ efforts to comply with applicable gender-equity laws.³¹¹

FHSAA bylaws³¹² on participation by gender state the following:

- **Girls on Boys’ Teams.** Girls may play on a boys’ team in a sport if the school does not sponsor a girls’ team in that sport.
- **Boys on Girls’ Teams.** Team sports that have both boys and girls are required to compete in the boys division in that sport.
- **Mixed Gender Teams.** Team sports that have both boys and girls are required to compete in the boys division in that sport.

³⁰³ See H.R. 5702 bill summary prepared by the Congressional Research Service, available at <https://www.congress.gov/bill/116th-congress/house-bill/5702> (last visited May 10, 2021).

³⁰⁴ See NCAA Inclusion of Transgender Student Athletes, pg. 13, available at https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

³⁰⁵ *Id.*

³⁰⁶ Section 1006.20(1), F.S.

³⁰⁷ *Id.*

³⁰⁸ Section 1006.20(2), F.S.

³⁰⁹ Section 1006.20(1), F.S.

³¹⁰ FHSAA Bylaw 2.7 – Nondiscrimination And Diversity, 2020-2021 FHSAA Handbook, available at https://fhsaa.com/documents/2020/10/1/2021_handbook_website_1001.pdf?id=292 (last visited May 10, 2021).

³¹¹ FHSAA Bylaw 2.4 – Gender Equity, 2020-2021 FHSAA Handbook, available at https://fhsaa.com/documents/2020/10/1/2021_handbook_website_1001.pdf?id=292 (last visited May 10, 2021).

³¹² FHSAA Bylaw 8.6 – Participation By Gender, 2020-2021 FHSAA Handbook, available at https://fhsaa.com/documents/2020/10/1/2021_handbook_website_1001.pdf?id=292 (last visited May 10, 2021).

- **Florida High School State Championship Series.** In an individual sport, girls may not participate on boys' teams in the Florida High School State Championship Series when a sport is offered in the Florida High School State Championship Series for girls.

The FHSAA has a policy that allows a student to participate in interscholastic athletics in a manner consistent with their gender identity and expression.³¹³ In order to do so, a student and the student's parent(s) or guardian(s) may work through the FHSAA procedures to seek a determination on the student's eligibility.³¹⁴ The multi-step process begins with notice to the student's school of the student's intent, along with a current transcript and registration information, birth certificate, proof of residency, participation forms, a written statement from the student, accompanied by documentation from other individuals, affirming the student's consistent identity and expression, a complete list of the student's prescribed, non-prescribed or over the counter, treatments or medications, written verification from an appropriate health-care professional (doctor, psychiatrist, or psychologist) of the student's consistent gender identification and expression, and any other pertinent documentation or information with the student or parent(s), legal guardian(s) believe are relevant and appropriate.³¹⁵

Once the student and student's parent(s) or guardian(s) have notified the student's school and submitted the required paperwork, the student's school will contact the FHSAA, which will assign a facilitator who will assist the school and student through the FHSAA's eligibility review process.³¹⁶ The first level of review consists of a review hearing before a committee which will provide a written determination of the student's eligibility.³¹⁷ If the student is deemed ineligible, the student's school, on behalf of the student, may file notice with the FHSAA executive director for a second level review.³¹⁸

Effect of the Bill

To maintain opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that result from success in athletic endeavors, the 'Fairness in Women's Sports Act' requires the designation of separate sex-specific athletics teams and sports at the secondary and collegiate levels.

The Act specifically designates interscholastic, intercollegiate, intramural, or club athletic teams or sports sponsored by a public secondary school or public postsecondary institution to be designated as one of the following based on the biological sex at birth of team members:

- Males, men, or boys;
- Females, women, or girls; or
- Coed or mixed, including both males and females.

The Act provides that a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth if the statement was filed at or near the time of the student's birth.

To ensure that females are not displaced in interscholastic athletic competitions, the Act expressly prohibits athletic teams or sports designated for females, women, or girls from being open to students of the male sex, but does not prohibit females from participating on male athletic teams.

³¹³ FHSAA Bylaw 16.8 – Gender Identity Participation, *2020-2021 FHSAA Handbook*, available at https://fhsaa.com/documents/2020/10/1/2021_handbook_website_1001.pdf?id=292 (last visited May 10, 2021).

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

The Act also provides private causes of action to any student who is deprived of an athletic opportunity, or to a school or institution that suffers harm, as a result of a violation of the Act's provisions and to a student who is subject to retaliation by a school or athletic association for reporting a violation. All such civil actions must be initiated within 2 years after the alleged harm occurred.

Additional Effects of the Bill

Provides a severability clause for the bill.

The bill makes a technical change to CS/CS/SB 52, pending such legislation becomes a law, providing for a tuition reimbursement rate for school district career center dual enrollment as the in-state resident tuition rate.

Effective upon becoming law, the bill delays the effective date of ch. 2020-28, L.O.F., regarding compensation of name image and likeness for certain athletes, by one year. This delay was further amended in CS/HB 845, restoring the original effective date of ch. 2020-28, L.O.F. as July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires that the funds for eligible university or FCS institution sponsored charter school students must be appropriated from state funds only, as provided in the GAA, to the charter school. Currently full-time equivalent students funded in the Florida Education Finance Program (FEFP) are funded with a combination of state and local funds. Since the eligible university- or FCS institution-sponsored charter school student will only be funded from state funds appropriated in the FEFP, there may need to be additional state funds provided to offset the potential loss of local FEFP funds; however, at this time the individual amounts cannot be determined and would vary based upon the school district and its total amount of local funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides operational funding for a charter school sponsored by a state university or FCS institution based on a calculation of total operating funds appropriated in the FEFP using the total number of weighted FTE students. Neither the number of charter schools sponsored by a state university or FCS institution that will be established nor the number of students who will enroll in these schools is known; therefore, the fiscal impact is indeterminate.

The bill authorizes a school operated by a statutorily-defined school of hope operator to be eligible to receive state capital outlay funds. This may increase the number of charter schools that are eligible to receive such funds which may potentially impact the amount of state capital outlay funds received by each eligible charter school.

To the extent that a school district has to reduce the administrative fee withheld from charter schools, school districts will experience a reduction in funds and charter schools will experience an increase in operating funds for a period of time until a resolution has been reached.

To the extent the bill increases student retention, it could affect the number of full-time equivalent student enrollment projected for funding as students may remain in the public K-12 system longer .

Expanding eligibility for the Florida Postsecondary Student Assistance Grant Program may affect how funds are allocated across the several Florida student assistance grants,³¹⁹ including decreased availability of funds for students already eligible for grants.

³¹⁹ Section 1009.52(4)(a), F.S.