

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 26, 1998 Revised: \_\_\_\_\_

Subject: Charter Schools

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Hill</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Woodruff</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

### I. Summary:

This bill emphasizes that charter schools are public schools and adds district school boards to the list of those eligible to submit proposals to a district school board for converting public schools to charter schools.

The bill provides an appeal process to an administrative law judge for all disputes subsequent to the approval of a charter application, with the exception of a charter school application denial which is appealed to the State Board of Education. It requires the Department of Education to provide mediation services prior to the appeal for a hearing, upon the request of either party.

The bill doubles the number of newly created charter schools or existing public schools which may convert to charter schools. It removes the cap on the number of charter schools that any organization may operate.

The bill permits students covered in an interdistrict agreement to attend charter schools in the district and allows charter schools to limit enrollment to target students in a charter-school-in-the-workplace and students residing within a reasonable distance of the charter school.

The bill lengthens the initial term of a charter to 3, 4, or 5 years and permits renewals for 5-year periods rather than 3-year periods.

The bill provides that employees of a conversion charter school must remain public employees for all purposes, unless they choose not to do so. The bill precludes school districts from requiring the resignations of teachers who decide to work in a charter school.

The bill revises the administrative fee provisions and specifies certain services that the sponsor must provide to the charter schools at no additional fee.

The bill creates charter schools-in-the-workplace and provides requirements and tax exemption.

The bill establishes requirements for charter schools to obtain funds allocated from the Charter Schools Capital Outlay Trust Fund which would be created by SB 1184.

The bill requires the contract between the charter school and its sponsor to contain a lien provision to allow that if the school terminates operations, the sponsor can recover funds used to renovate, repair or remodel the school's facilities.

The bill provides for the reversion to the ownership of the district school board any unencumbered funds and all equipment and property purchased with public funds, should the charter school be non-renewed or terminated.

This bill substantially amends section 228.056 and creates section 228.0561 of the Florida Statutes.

## **II. Present Situation:**

Charter schools are public schools that operate under a performance contract with a public sponsor. Charter schools are free from many state and local regulations and mandates, but are held accountable for the academic and financial performance of the school and its students. As of August 1997, a total of 28 states and Washington, D.C. had statutory authorization for charter schools. Over 750 charter schools are in operation nationwide. Each state's law provides for operational funding for charter schools. Only Arizona and Minnesota currently provide capital outlay funding for charter schools.

### **Florida's Charter School Law**

Florida's charter school law, s. 228.056, F.S., was enacted in 1996. Six charter schools were approved between the July 1, 1996, effective date of the law and the late August start of the 1996-97 school year. This school year 33 newly created charter schools are serving approximately 3,000 students. No public school conversions are operational at this time, but two conversion charter schools have been approved for the upcoming school year. The Department of Education, Office of Public School Choice projects a total of 65 to 70 charter schools will be serving 7,500 students in non-district facilities in the 1998-99 school year. Approximately 95 charter school applications are currently pending.

The following paragraphs describe how s. 228.056, F.S., provides for the formation, funding, operation, and accountability of charter schools.

## **Sponsors**

Each district school board may sponsor charter schools within its district by granting a charter to a newly formed school (or “start-up”) or to an existing public school that converts to a charter school. A state university, after consulting with the local school board, may grant a charter to convert the university’s developmental research school to a charter school.

## **Charter School Applicants and Operators**

An individual, teachers, parents, a group of individuals, a municipality, or a legal entity authorized under the laws of this state may apply for a charter to establish and operate a start-up charter school. The principal, teachers, parents, and/or the school advisory council of a public school may apply for a charter to convert that school to a charter school. Proposals for converting an existing public school must have the support of at least 50 percent of teachers employed at the school and 50 percent of the parents whose children attend the school.

## **Application Process**

Each district school board must accept charter school applications until at least February 1 for charter schools that would open the next school year. A school board may accept applications after that date. The school board, by a majority vote, must either approve or deny a charter school application within 60 days after receipt. Approval criteria are based on the contents of the charter agreement prescribed by s. 228.053(9), F.S. If an application is approved, the sponsor and applicant must agree to a contract (i.e., the charter) within 6 months after an application is approved; otherwise, the charter is automatically denied. When the school board denies an application, the board must, within 10 days, provide the good cause reasons for denial in writing.

## **Appeal Process**

A charter school applicant may appeal to the State Board of Education if the charter school application is denied. The appeal must be filed within 30 days after the district school board’s decision. The appellant must give the school board written notice of the appeal. The district school board may submit a response to the state board, but must do so within 30 days after receiving the appeal notice. The state board must, by majority vote, accept or reject the district school board’s decision within 60 days after receiving an appeal. The state board may reject an appeal submission that does not meet the state board’s procedural rules for the appeals process. In that instance, the appellant has 15 days to submit a revised appeal. If the original appeal was filed within 30 days after denial by the school board and the appeal is subsequently rejected by the state board on procedural grounds, it is considered timely filed.

When an appeal is filed, the district school board must act upon the state boards’ recommendation within 30 days after receiving the recommendation. The district school board may refuse to implement the state board’s recommendation only for good cause (i.e., the district determines by competent substantial evidence that implementing the state board’s recommendation would be

contrary to the best interests of the pupils or the community). The district school board's action on the state board's recommendation is a final action subject to judicial review.

### **Number of Charter Schools**

The potential number of charter schools varies based on district enrollment. Large school districts (100,000 or more students) may grant charters to seven start-ups and seven conversion charter schools. Medium-sized districts (50,000 to 99,999 students) may charter five of each. Small districts (less than 50,000 students) may authorize three start-ups and three conversion charter schools. The conversion of a developmental research school to a charter school does not count toward district caps. A district school board may sponsor more charter schools, but must first obtain a waiver of its cap from the State Board of Education.

The statute limits the number of charter schools that may be operated by a single organization. An organization may not hold a charter for more than one elementary, one middle, and one high school charter in a school district and may hold no more than 15 charters statewide.

### **Eligible Students**

Each charter school must be open to any student residing in the school district in which the charter school is located. A conversion charter school must give enrollment preference to students who would have otherwise attended the public school that became the charter school. Any charter school may give enrollment preference to a sibling of a student enrolled in the charter school or to the child of an employee of the charter school.

A charter school may limit enrollment only to target: (1) students within specific age groups or grade levels; or, (2) students who are considered to be at risk of dropping out of school or academic failure, including exceptional education students.

The charter agreement must indicate how the charter school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district. In addition to these statutory requirements, district school boards must ensure that public schools within the district comply with federal desegregation requirements.

### **The Charter**

The sponsor and charter school governing body must enter into a written contractual agreement which specifies the terms and conditions for the operation of a charter school. Prior to doing so, a public hearing must be held to ensure community input. The terms and conditions of the agreement must include:

- The school's mission, students to be served, ages and grades to be included.
- The focus of the curriculum, instructional methods and techniques.

- The current baseline standard of achievement, outcomes to be achieved and method of measurement.
- The methods used to identify the educational strengths and needs of students and to determine how well educational goals and performance standards are met by the students. At a minimum, students attending the charter school must participate in the statewide assessment program.
- In secondary charter school, the method for determining that a student has met the state's high school graduation requirements.
- A method for resolving conflicts between the school's sponsor and governing body.
- Student admission and dismissal procedures and the school's code of student conduct.
- Methods by which the school will achieve a racial and ethnic balance reflecting the community the charter school serves or within the racial/ethnic range of other public schools in the same school district.
- The financial and administrative management of the school.
- The manner in which the school will be insured and terms of insurance coverage.
- The term of the charter, not to exceed 3 years, and provisions for cancellation of the charter upon insufficient progress toward attaining student achievement objectives.
- Provision for cancellation of the charter for insufficient progress.
- The facilities to be used and their location.
- The qualifications to be required of teachers.
- The governance structure of the charter school, and whether it will be a private or public employer.
- An implementation timetable.
- Alternative arrangements for current students and teachers who choose not to participate in a conversion charter school.

A charter may be renewed in increments of 1, 2, or 3 years by a mutual agreement of the parties. A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor and the approval of both parties to the agreement. At the end of the term of a charter, the sponsor may choose not to renew the charter, or may, during the term of the charter, terminate the charter for any of the following grounds: failure to meet the requirements for students performance stated in the charter; failure to meet generally accepted standards of fiscal management; violation of law; or other good cause shown. At least 90 days prior to renewing or terminating a charter, the sponsor is required to notify the governing body of the charter school, in writing, of the proposed action. The school's governing body may, within 14 days after receiving the notice, request an informal hearing before the sponsor, which must take place within 30 days. The charter school's governing body may, within 14 days of receiving the sponsor's decision to terminate or refuse to renew the charter, appeal the decision pursuant to the charter school application appeal process established by s. 228.056(4), F.S. A charter may, however, be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened. The school district in which the charter school is located will assume the operation of the school under those circumstances.

Upon receipt of the annual report of each charter school, the Department of Education is required to provide to the State Board of Education, the Commissioner of Education, the President of the Senate, and the Speaker of the House of Representatives, an analysis and comparison of the overall performance of charter school students versus comparable public school students in the district as determined by norm-referenced assessment tests currently administered in the school district and, as appropriate, statewide assessment tests.

### **Legal Status**

Charter schools must organize as nonprofit organizations. If a charter is granted, this provision forces already established organizations to form a separate nonprofit organization to operate and be accountable for the charter school. This provision does not require reorganization prior to submitting a charter school application.

### **Employees of Charter Schools**

A charter school may be either a public or private employer. Employer status and governance must be addressed in the charter. As a public employer, the charter school may participate in the Florida Retirement System (FRS). If the charter school participates in the FRS, its employees are compulsory members of the FRS. Individuals or groups of individuals who contract their services to the charter school, and teachers who are part of a partnership or cooperatives that subcontracts with the charter school are not public employees.

Employees have the option to collectively bargain. When a public school converts, the charter school employees may bargain through an established bargaining unit or as a separate bargaining unit, whichever is appropriate. If they bargain through an established unit, their contract must be distinctly separate from the established district collective bargaining contract.

District employees may take leave to become charter school employees, with approval of employing school board, or the school district may provide for alternative leave arrangements consistent with chapter 231. During leave of absence, seniority with the district may be maintained. Benefit programs may continue for employees on leave of absence from the school district, if the charter school and the district agree to this arrangement and its financing.

Teachers employed by or under contract to a charter school must be certified as required by chapter 231, F.S. A charter school may, however, employ or contract with skilled selected noncertified personnel to provide instructional services or to assist instructional staff members as teachers aides in the same manner as defined in chapter 231, F.S. The qualifications of teachers must be disclosed to parents. A charter school is required to employ or contract with employees who have been fingerprinted as provided in s. 231.02, F.S.

### **Charter School Funding**

Charter schools are funded similarly to other public schools in the state, but do not receive capital outlay funds. Charter school students are eligible for the same funding as other public school students enrolled in basic or special programs and are entitled to a proportionate share of categorical funds available through the Florida Education Finance Program (FEFP), except for capital outlay funds. If the district school board is providing programs or services to students through federal funds, the district must provide federal funding to the charter school to ensure the same level of service for any charter school student that meets federal eligibility requirements. Each school district may withhold a portion of the charter school's funding to offset administrative costs related to the charter school. The amount withheld cannot exceed actual administrative costs or 5 percent of the charter school's funding, whichever is less.

Like other public schools, each charter school's funding must be recalculated during the year to reflect revised calculations of student enrollment at each student survey period. School boards must make every effort to ensure that charter schools receive timely and efficient reimbursement of funds. The statute provides a penalty for failure to do so.

### **Transportation**

Transportation of charter school students must be provided according to the requirements of chapter 234. The governing body of the charter school may provide transportation through an agreement or contract with the district school board, a private provider, or parents. The charter school must ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

### **Facilities**

District school board facilities or properties which are available because they are surplus, marked for disposal, or are otherwise unused, may be provided for a charter school's use on the same basis as they is made available to other public schools in the district. For an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. Facilities utilized by the charter school must comply with the State Uniform Building Code for Public Educational Facilities Construction or with applicable state minimum fire protection codes as adopted by the authority in whose jurisdiction the facility is located.

If other goods and services are made available to the charter school through the contract with the school district, they are to be provided to the charter school at a rate no greater than the district's actual cost.

In the absence of any state or local capital outlay funds for facilities, equipment, lease, renovation, or maintenance of facilities, charter schools either divert a large fraction of their operating funds

to meet capital outlay needs or depend on contributions from the private sector and various fund-raising activities.

### **III. Effect of Proposed Changes:**

#### **Authorization**

The bill emphasizes that all charter schools in Florida are fully recognized as public schools.

#### **Proposal**

The bill adds the district school board to the list of entities that may submit proposals to a district school board for converting a public school to a charter school. The bill retains the current requirement that proposals to convert a public school to a charter school must be supported by at least 50% of the teachers employed at the school. The bill revises the degree of parental support that is required for conversion. A proposal to convert a public school would have to be supported by 50% of the parents *voting* whose children are enrolled at the school, rather than by 50% of the parents whose children are enrolled at the school.

#### **Appeal Process**

The bill creates an appeal process for all disputes subsequent to the approval of a charter application, with the exception of a charter school application denial. These disputes may be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The bill requires the Department of Education to provide mediation services prior to the appeal for a hearing, upon the request of either party.

#### **Number of Schools**

The bill doubles the number of newly created charter schools or existing public schools which may convert to charter schools. The number of charter schools will be unlimited. The bill also removes the restriction that no organization can hold more than one elementary, one middle, and one high school charter contract in a school district and no more than 15 charters statewide.

#### **Eligible Students**

The bill authorizes students covered in an interdistrict agreement to attend the charter schools in the district. It permits charter schools to limit enrollment to target students enrolling in a charter-school-in-the-workplace and students residing within a reasonable distance of the charter school. As provided in current law, each school's charter specifies what is considered a "reasonable distance" from the charter school. Charter schools that limit enrollment to students within a reasonable distance of the school must select such students by a random lottery. Like other charter schools, these "neighborhood" charter schools must reflect the racial/ethnic balance of the



community served or the racial/ethnic range of other public schools in the same school district. The bill requires such schools to comply with federal requirements for racial or ethnic balance.

### **The Charter**

The bill requires the initial term of a charter to be for 3, 4, or 5 years and deletes provisions limiting initial charters to a maximum of 3 years. The bill permits charters to be renewed every 5 school years, rather than in increments of 1, 2, or 3 school years. The bill makes renewal contingent upon a program review of the school which demonstrates successful accomplishment of criteria set by the school's charter.

### **Legal Status**

The bill clarifies that a charter school must be either organized or operated by a nonprofit organization. Current law requires each charter school to organize as a nonprofit organization and the governing board of that organization is accountable for complying with the charter.

### **Employees of Charter Schools**

The bill provides that employees of a conversion charter school must remain public employees for all purposes, unless they choose not to do so. Current law, however, gives the charter school governing body the option of organizing as a public or private employer; that employer status defines whether the school's employees are public or private employees. The bill states that school districts may not require resignations of teachers who decide to work in a charter school. Presumably, if an acceptable leave arrangement could not be reached between the employing district and a teacher who chooses to work in a charter school, the teacher could either voluntarily resign or the district could fire the teacher who left without approved leave.

### **Charter School Funding**

The bill allows each school district to charge an administrative fee of 5% and deletes provisions that limit the fee to the actual cost of administering the contract or 5 percent, whichever is less. The bill requires the sponsor provide certain administrative and educational services to charter schools at no additional fee, including contract management services, FTE and data reporting, exceptional student education administration, test administration, processing of teacher certificate data, and information services.

Current law requires school boards to make every effort to ensure that charter schools receive timely and efficient reimbursement. The bill specifies that this timely and efficient reimbursement includes processing paperwork required to access special state and federal funding for which the charter school may be eligible.

In order to maximize the use of state funds, the bill requires school districts to allow charter schools to participate in the sponsor's bulk purchasing program if applicable.

### **Transportation**

Currently, each charter school must ensure that transportation is not a barrier to equal access for students residing within a reasonable distance of the charter school. The bill requires the sponsor to cooperate with the charter school in making arrangements that ensure that transportation is not a barrier.

### **Facilities**

If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, the board must provide it for a charter school's use on the same basis as it is made available to other public schools in the district. Previously, this was a district option.

### **Charter Schools-in-the-Workplace**

The bill creates charter schools-in-the-workplace with the legislative intent of increasing business partnerships in education, reducing school and classroom overcrowding, and offsetting the high costs for educational facilities construction. In order to establish a charter school-in-the-workplace, a business partner must provide the school facility, enroll students based upon a random lottery which involves all of the eligible children of employees of that business or corporation who are seeking enrollment, and enroll students according to the racial/ethnic balance reflective of the community or other public schools within the district. Any part of a facility that is used as a public charter school will be exempt from ad valorem taxation as long as it is used as a public school. This would not provide a tax exemption to the entire facility or property where a charter school-in-the-workplace is located.

### **Charter Schools Capital Outlay Funding**

The bill provides for the allocation of funds to charter schools from the Charter Schools Capital Outlay Trust Fund. The trust fund would be created by SB 1184. To receive an allocation from the trust fund, a charter school must have received final approval from its sponsor pursuant to s. 228.056, F.S. to operate during that fiscal year and must serve students in facilities that are not provided by the charter school's sponsor. Simply submitting an application or having an application approved would not qualify an applicant for these funds. A conversion charter school is not eligible for an allocation if it operates in facilities provided by its sponsor for a nominal fee or at no charge.

Each eligible charter school's allocation will be determined by multiplying the school's projected student enrollment by one-thirtieth of the maximum cost per student station specified in s. 235.435(6)(b), for an elementary, middle, or high school, as appropriate. The referenced costs per student station are \$11,600 for an elementary school, \$13,300 for a middle school, and \$17,600 for a high school, subject to annual inflationary adjustments. Using one-thirtieth of the prescribed

values would generate \$387 per student for a charter elementary school, \$443 per student for a charter middle school, and \$587 per student for a charter high school.

The Commissioner of Education will allocate funds among eligible charter schools and distribute funds on a pro rata basis if appropriations from the trust fund are insufficient. In the first quarter of the fiscal year, distributions will be based on each charter school's projected enrollment; subsequent distributions will be adjusted to reflect actual enrollments. The Commissioner must establish procedures for submitting and approving funding requests, procedures for documenting expenditures, as well as, intervals and procedures for determining the projected and actual enrollment of eligible charter schools.

Each charter school's governing body may use allocations from the Charter Schools Capital Outlay Trust Fund for any capital outlay purpose that is directly related to the functioning of the charter school, including:

- Purchase of real property;
- Construction, renovation, repair, and maintenance of school facilities;
- Purchase, lease-purchase, or lease of permanent or relocatable school facilities; and
- Purchase of vehicles to transport students to and from the charter school.

The annual legislative budget request of the Department of Education must include a request for funding from the Charter Schools Capital Outlay Trust Fund. The request must be based on the projected student enrollment of charter schools that meet the bill's eligibility requirements.

Provisions of the bill related to the Charter School Trust Fund are contingent upon adoption of SB 1184 or similar legislation creating a Charter School Capital Outlay Trust Fund. If such a bill is enacted this session by a three-fifths vote of both houses, these provisions will take effect July 1, 1998.

**Provisions relating to dispersion of assets should a charter school be non-renewed or terminate.**

Two provisions are included in the bill addressing dispersion of assets. First, the contract between a charter school and its sponsor must contain a lien provision to allow the sponsor to recover funds used to renovate, repair or remodel the school's facilities, in the event the school terminates operation.

Second, the bill provides for the reversion to the ownership of the district school board any unencumbered funds and all equipment and property purchased with public funds, should the charter school be non-renewed or terminated.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The effective date of the provisions relating to the Charter School Capital Outlay Trust Funds are contingent upon passage of separate legislation creating that trust fund by a three-fifths vote of both houses of the Legislature during this session or an extension thereof. This provision is consistent with s. 19(f)(1), Art. III of the State Constitution.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The bill does not authorize any additional taxes or fees.

B. Private Sector Impact:

If funds are appropriated from the Charter Schools Capital Outlay Trust Fund, individuals and groups that operate charter schools will receive state funds for facilities and other capital outlay purposes.

C. Government Sector Impact:

This bill does not appropriate funds. If funds are appropriated from the proposed Charter Schools Capital Outlay Trust Fund, allocations will be based on the maximum costs per student station set by s. 235.435(6), F.S., which are subject to annual inflationary adjustments (i.e., for 1997: \$11,600 for an elementary school, \$13,300 for a middle school, and \$17,600 for a high school). The bill allocates one-thirtieth of those values for each charter school student enrolled in facilities that are not provided by the school's sponsor. At the 1997 maximum values, allocations would be \$387 per student for a charter elementary school, \$443 per student for a charter middle school, and \$587 per student for a charter high school. An appropriation of \$3,358,100 would be needed to provide this level of funding for the projected enrollment of 3,350 elementary, 2,600 middle, and 1,550 high school students in the approximately 70 charter schools anticipated for the 1998-99 school year. These estimates do not include conversion charter schools operating in the converted public school's facilities because such schools are not eligible for funding from the Charter Schools

Capital Outlay Trust Fund. If a school district shares a SIT award for savings realized through the operation of charter schools in non-district facilities, the recipient charter school's would receive an identical reduction in its allocation from the Charter Schools Capital Outlay Trust Fund.

School districts will be able to retain 5 percent of each charter school's operating funds for administrative expenses even if administrative costs are less than that. This could reduce operating funding for charter schools, but would reduce district paperwork associated with documenting billable costs.

The bill does not specify who would pay the costs of the proposed DOAH appeals or for the mediation services that must be provided upon request by DOE. The potential costs are not known.

#### **VI. Technical Deficiencies:**

Page 8, lines 12-14 of this bill requires employees of conversion charter schools to remain public employees, unless the employees choose not to do so. The option to choose employment status cannot be given to employees since the nature of the employer defines whether employees are public or private employees. If the intent is have school district employees retain their status as public employees when they are employed by a conversion charter school, the bill should require conversion charter schools to be organized as public employers. Under the current law, charter schools organized as public employers may receive approval to participate in the Florida Retirement System (FRS) and, in that case, all of the charter school's employees are public employees and mandatory FRS participants.

#### **VII. Related Issues:**

The 1998-99 legislative budget request of the Department of Education requests approximately \$3.75 million to provide a minimum of \$500 per charter school student for facilities and equipment needs.

Specific Appropriation 58E of SB 2500 (the FY 1998-99 General Appropriations Bill) would appropriate \$5 million from the Public Education Capital Outlay Trust Fund (PECO) for charter school construction.

#### **VIII. Amendments:**

None.