

STORAGE NAME: h4135s1a.go

DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 4135

RELATING TO: Education (Charter Technical Career Centers)

SPONSOR(S): Committee on Community Colleges and Career Prep, Representative Lynn and others

COMPANION BILL(S): CS/SB 2074(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY COLLEGES AND CAREER PREP YEAS 4 NAYS 3
- (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (3) EDUCATION APPROPRIATIONS

I. SUMMARY:

This bill creates the authority for a school district or community college to sponsor a charter technical career center, largely consistent with the authority to operate a charter school granted in s. 228.056, F.S. The fiscal impact of this bill is indeterminate. This bill is permissive in nature, therefore the fiscal impact would be largely determined by the extent that school districts and community colleges choose to participate.

Committee on Governmental Operations' concerns regarding this bill:

- Provides that an "independent school" is not eligible for status as a center. That term is not a defined term. What is probably meant is that "nonpublic schools" are not eligible.
- Defines "sponsor" on page 4, and again on page 6.
- Requires that a center "organize" as a nonprofit organization and adopt a name and *corporate* seal. An entity must "incorporate" pursuant to Ch. 617, F.S., in order to gain nonprofit status in Florida.
- Exempts a center "from all statutes of the Florida School Code except provisions pertaining to civil rights and to student health, safety, and welfare, *or as otherwise required by law.*" The Code includes, for example, ch. 232, F.S., dealing with compulsory school attendance. Does this mean school attendance at centers is not required? What chapters of the Code are applicable/inapplicable is unclear and how existing law could "otherwise require" centers to comply is equally uncertain. (Charter School law provides similarly vague language but does expressly provide that their exemption does not include exemption from the public records or public meetings laws, which this bill does not provide.)
- Authorizes a center to contract "for services with an *individual*, partnership, or a cooperative." Why not with, for example, corporations or associations? Provides that "[s]uch persons¹ contracted with are not public employees." It appears that a center can contract with, for example, *individual* instructional and administrative staff not currently a public school or community college teacher or administrator, inasmuch as the bill provides that a center may select its own employees, including uncertificated teachers. Does this mean that if there is an "individual contract" with a staff member, that staff member is not a public employee? (Whereas those employees procured through contracts with a "public educational agency" would be considered public employees?)

See "Comments" section for additional concerns.

II. SUBSTANTIVE RESEARCH:

¹ "Person", although otherwise defined in ch. 1, F.S., with a broader meaning, is apparently limited in this context to "individual, partnership, or a cooperative."

A. PRESENT SITUATION:

Current law (s. 228.056, F.S.) provides for elementary and secondary charter schools but does not address postsecondary charters. Section 228.056, F.S., was enacted in 1996 to authorize the operation of nonsectarian charter schools within the public school system, either through the creation of a new school or converting an existing public school to charter status. Community colleges cannot currently participate with school districts on a charter basis.

Exemption from Statutes

Charter schools are exempt from all statutes of the Florida School Code, except those pertaining to civil rights and student's health, safety, and welfare. Charter schools are subject to the anti-discrimination provisions of s. 228.2001, F.S., public records, public meetings, and public inspections requirements, and are subject to an annual financial audit in a manner similar to that of a school district.

Charter

Section 228.056, F.S., provides for an application process where district school boards are required to receive charter school applications and approve or deny a charter school application, determined by a majority vote of the school board. Section 228.056, F.S., also provides an appeals process for charter school applicants to appeal a denial to the State Board of Education. The state board is required to, by majority vote, accept or reject the district school board's decision.

Legal Entity

Charter schools are required to organize as nonprofit organizations.

Facilities

Section 235.435(6)(b), F.S., states that unless granted a waiver under s. 235.4351, F.S., a district school board may use funds from the Public Education Capital Outlay and Debt Service Trust Fund or the School District and Community College District Capital Outlay and Debt Service Trust Fund for new construction of educational plant space only if the costs per student station meets certain thresholds. 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 are made available to other public schools in the district.

Employees

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). Employees have the option to collectively bargain. 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, Florida Statutes. A charter school may, however, employ or contract with skilled selected non-certified personnel to provide instructional services or to assist instructional staff members as teachers aides in the same manner as defined in chapter 231.

Funding

Statute specifies that funds for students in charter schools are generated in the same manner as students enrolled in other public schools

B. EFFECT OF PROPOSED CHANGES:

District school boards, community colleges, or a consortium of each, would be authorized to sponsor charter technical career centers (CTCC) for secondary or postsecondary vocational education. This would be similar to the charter school authority granted to school districts in s. 228.056, F.S. The ability to charter would allow the school district or community college to provide greater flexibility in meeting local demands for vocational education.

Charter

District school boards, community colleges, or a consortium of each would be authorized to sponsor a CTCC in the county over which the board has jurisdiction. A community college may be authorized to sponsor a CTCC in more than one county since community college boards of trustees, in some cases, have jurisdiction over multiple counties. Independent schools would not be eligible to become a CTCC.

The sponsor would designate a CTCC for an initial term not to exceed 5 years. Charters would be able to be renewed for 5 more years. The initial term for a charter school may not exceed 3 years, and can be renewed in increments of 1, 2, or 3 years. Sponsors would be able to place a CTCC on probation, refuse to renew a charter, or revoke a charter if a CTCC has not fulfilled a condition imposed under the charter or has violated a provision of the charter. This is similar to the provisions for charter schools. The sponsor would develop procedures and guidelines for these actions. The sponsor would be required to give written notice of the intent not to renew a charter at least 12 months before it would expire. The 12 month notice requirement could be seen as lengthy. Charter school language in s. 228.056, F.S., requires 90 days notification of intent not to renew.

Sponsor

The sponsor would have to review applications for CTCC, and approve or deny the applications. The sponsor would be able to condition the granting of a charter on the center's taking certain action or maintaining certain conditions. The applicant would bring an appeal of a denial to the State Board of Education, which would vote to accept or reject the decision of the sponsor. The sponsor would then be required to act upon the State Board recommendation, unless it determines by competent substantial evidence that approving the recommendation would be contrary to law or the best interest of the student. This appeals process is similar to the process for charter schools under s. 228.056 (4), F.S.

Legal Entity

A CTCC would be required to organize as a nonprofit organization with powers to implement its charter. Charter schools are also required to be nonprofit organizations.

Eligible Students

A CTCC would be required to be open to all students on a space available basis. Criteria to evaluate prospective students would have to be outlined in the charter. This provision is similar to the eligibility requirements for students in charter schools, although charter schools may restrict their enrollment to targeted student populations such as students at risk for dropping out of school.

Employees

Employees would be able to collectively bargain. A CTCC could be either a public or private employer. As a public employer, CTCC employees would be able to participate in the Florida Retirement System. A teacher or administrator would be able to take a leave of absence to work in a CTCC with the approval of the school district or community college. Employees on leave of absence would retain seniority accrued and would continue to be covered by the benefit programs of the school district or community college if agreed to in the charter.

Teachers who are considered qualified by the CTCC would be exempt from state certification requirements. This provision would be inconsistent with current charter school provisions.

Facilities

A CTCC could be located in any suitable location, including part of an existing public school, community college building, or worksite. The facility must meet the State Uniform Building Code for Public Educational Facilities Construction. K-12 public school funds, and/or community college public school funds would be able to be used for construction of a CTCC facility. The ability to use K-12 and community college public school funds for construction could be seen by some as detrimental. Some may be concerned that there is not enough public school funds for facilities currently, or that this bill would grant authority to spend public school operating funds on construction of a CTCC, thereby reducing funds available for traditional K-12 or community college operations. Others may support using public school funds for a CTCC because it serves the public purpose of education in a more flexible manner.

Exemption from Statutes

Much like a charter school, a CTCC would be exempt from certain provisions of the Florida School Code. The charter school provision in s. 228.056 (11), F.S., states that a charter school is NOT exempt from public records and public meetings requirements. This bill does not contain the same reference to these requirements, nor does it expressly exempt them from sunshine law requirements.

Funding

The school board or community college, and other participating public education partners would pay directly to the CTCC an amount agreed upon in the charter. A CTCC would also be able to receive state and federal aid, as well as private donations. A CTCC would not be authorized to levy taxes or issue bonds, but would be able to charge a student tuition fee consistent with the charter and as provided in law. Community colleges and school districts are authorized to charge fees for postsecondary education, but fees are not authorized for the K-12 system.

Accountability

A CTCC would be required to report to the sponsoring school district or community college annually. The Commissioner of Education would provide an annual comparative evaluation of charter technical career centers and public technical centers to the Governor and Legislature.

Declining Enrollment Provision

The provision for the calculation of the Florida Education Finance Program which holds school districts harmless for 50% of their declining enrollment would be changed to hold harmless any decline due to a transfer of a program from a school district to a CTCC for 15% rather than 50%. The effect of this change would reduce the potential benefit to a school district for declining enrollment. However, if a district is not realizing a decline in total enrollment, this provision would have no effect.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The State Board of Education (SBE) would be authorized to make rules to administer this act.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

School boards and community college boards of trustees would have to review and approve applications for charters, and notify applicants denied approval.

The SBE would have to hear appeals of denied applicants and accept or reject the appeal.

The sponsor would be required to act on the SBE recommendation and would be able to choose not to accept it, in which case, the sponsor would have to notify the applicant in writing.

The DOE may have to provide technical assistance to applicants.

The sponsor would have to develop guidelines for the revocation and renewal of charters, and would have to notify charter institutions of intent not to renew.

The Commissioner of Education would have to prepare an annual comparative evaluation of charter technical schools and public technical schools.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Students would have the additional option of attending charter technical schools for vocational education.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 121.021, 121.051, and 236.081, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates charter technical career centers.

Section 2. Amends s. 121.021, F.S., relating to definitions for the Florida Retirement System.

Section 3. Amends s. 121.051, F.S., relating to optional participation in the Florida Retirement System.

Section 4. Amends s. 236.081, F.S., relating to funds for the operation of schools (FEFP calculations).

Section 5. Provides that the act take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Minimal negative impact due to costs associated with the promulgation of rules.

2. Recurring Effects:

Negligible depending on any appeals to the State Board of Education.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate. Please refer to fiscal comments.

2. Recurring Effects:

Indeterminate. Please refer to fiscal comments.

3. Long Run Effects Other Than Normal Growth:

Indeterminate. Please refer to fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate

2. Direct Private Sector Benefits:

Benefits may be realized by students that would have seamless articulation of career education opportunities.

3. Effects on Competition, Private Enterprise and Employment Markets:

A CTCC would prepare students to become employees needed by local industry.

D. FISCAL COMMENTS:

Data on fiscal impact has been requested from the Division of Community Colleges but has not yet been received. The bill is permissive in nature, therefore the fiscal impact would be largely determined by the extent that school districts and community colleges choose to participate.

The bill does not address how state funds would be generated by school districts or community colleges, or both, for students in a CTCC.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

Committee on Governmental Operations' concerns, continued from page 1:

- Provides that "as a public employer" a center may participate in certain retirement systems. It is clear from page 8 that a center may choose to "[b]e a private or a public employer." Accordingly, "if the center has chosen to operate as a public employer then it may participate in certain retirement systems.
- Provides that if the center participates in the Florida Retirement System "its *employees* are compulsory members of the Florida Retirement System." This bill does not define "employee"², and thus there is uncertainty as to who is an employee for purposes of this provision. Does "employee" include those individuals with which the center contracts for service, which the bill identifies as "not public employees", which may include uncertificated teachers? It is relatively clear from page 12 that a public school or community college teacher or administrator on leave of absence may accept employment in a center, and is thus an "employee".
- Authorizes "any person" to bring before the center's board of directors a complaint (apparently either oral or written) alleging a violation of the bill's provisions (apparently irrespective of whether that person's substantial interests have been affected). If after presenting the complaint, the person feels that the board has not adequately addressed the grievance, that person may present the complaint to the sponsoring board. The sponsoring board must investigate the complaint. The bill does not speak further as to what happens. Will there be a hearing? a final order? any time parameters within which the investigation must be conducted?
- Specifies with particularity the initial application requirements for a prospective center, timeframes for application approval/disapproval, appeal rights, final action requirements, and right to judicial review. If, however, the center seeks charter renewal (or revocation), it is subject to the "procedures and guidelines" developed by the sponsor. A questions arises as to whether rules should be promulgated pursuant to ch. 120, F.S.
- Requires written notice by the sponsor of its intent not to renew the charter at least 12 months before the charter expires. This seems a very long notice requirement especially in light of the fact that the charter school notice requirement is 90 days.
- References "department" on page 14. "Department" is not a defined term; however, considering the context of the reference, it appears to be the Department of Education.
- Requires the Commissioner of Education to provide for an annual comparative evaluation "of charter technical career centers and public technical centers". A "Charter technical career center" is defined to mean: "a public school or a public technical center operated under a charter granted by the local school board or community college district board of trustees" Since a charter technical career center can be a public technical center, the evaluation was probably intended to compare "charter technical career centers" with "noncharter public technical centers".

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 26, 1998, the Committee on Community Colleges and Career Prep considered HB 4135 and adopted two technical amendments. A technical amendment on page 14, lines 19 and 20 of the bill was adopted to provide the specific authority necessary to adopt rules for the implementation of the CTCC program in accordance with s. 120.536, F.S. A second technical amendment was adopted on page 10, line 16, to change an incorrect statutory reference. A third amendment was adopted conforming provisions of this bill relating to teachers and administrators taking a leave of absence to

² Section 121.021(11), F.S., (Florida Retirement System) defines employee to mean "any person receiving salary payments for work performed in a regularly established position..."

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work at a CTCC to the current charter school laws in s. 228.056, F.S. Additionally, minor technical changes were made by staff of Bill Drafting.

On April 15, 1998, the Committee on Governmental Operations adopted two amendments. The first amendment added "charter technical career center" to the definitions of "employer" and "covered group" which are found in s. 121.021, F.S. Cross-references to charter technical career centers were also made in s. 121.051, F.S., regarding optional participation in the Florida Retirement System. Cross-reference was also made to charter technical career centers in s. 121.112, F.S., regarding purchase or retirement credit. Additionally, current law -- which allows, for purposes of retirement, the purchase of creditable service for periods of public or nonpublic, **nonsectarian** employment performed in the state -- was amended to remove the requirement that employment be nonsectarian. The second amendment eliminated the provision that allowed any person to bring a complaint alleging violation of the bill's provisions. (Chapter 120, F.S., would nevertheless apply to persons whose substantial interests were affected by the center's actions.)

VII. SIGNATURES:

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