

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1323 CS Charter Schools
SPONSOR(S): Attkisson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	7 Y, 0 N, w/CS	Hassell	Aldis
2) Education Appropriations Committee		Hamon	Hamon
3) Education Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill makes the following changes related to charter schools:

- Revises the purpose of charter schools.
- Revises application process to convert to charter status.
- Revises the application process and review of a charter school.
- Expands requirements of sponsors to provide assistance to charter schools; revises time period for applicants and sponsors to agree on charter's provisions.
- Provides criteria for automatic charter renewal; provides for non-renewal and termination of a charter by a sponsor.
- Provides notification requirements of auditors when discovering a state of financial emergency or deficit financial position; provides follow-up requirements of charters after such notification.
- Requires district school boards to make timely payments to charters; authorizes the State Board of Education to impose fines or withhold lottery funds.
- Allows for negotiation of an administrative fee withheld by the school district at a maximum of 5%.
- Provides expansion of exceptional education services provided by districts to charters.
- Clarifies that a start-up charter school is required to utilize facilities in compliance with the Florida Building Code.
- Revises capital outlay funding for charters for schools.
- Revises information requirements of the Department of Education (DOE); requires DOE to conduct an annual survey; requires DOE to regularly convene a Charter School Review Panel.
- Extends educator professional liability coverage to all full-time charter school instructional personnel.
- Eliminates priority given to transitioning students of military families.
- Provides transportation funding to eligible charter schools.
- Provides that the act shall take effect upon becoming law.

The fiscal impact on state government is indeterminate. See FISCAL COMMENTS for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Department of Education (DOE) to staff the Charter School Review Panel, create a standard charter format and charter renewal format to be used as guidelines by charter school sponsors, and conduct an annual survey of charter school governing boards to determine their satisfaction with services received from its sponsor and the DOE.

B. EFFECT OF PROPOSED CHANGES:

Section 1002.33, F.S., authorizes charter schools. Charter schools are public schools operated pursuant to a performance contract (or charter) that frees them from many of the statutes and rules that govern traditional public schools, but which holds the school accountable for academic and financial results.

Currently, all charter schools are a part of Florida's program of K-12 public education. A public school may not use the term "charter" in its name unless it has been approved under s. 1002.33, F.S. Charter schools may be formed by creating a new school or converting an existing public school to a charter status.

Purpose of Charter Schools

The statutory purpose of charter schools is to improve student learning and academic achievement, increase learning opportunities of all students, create new professional opportunities for teachers, encourage the use of innovative learning methods, and measure learning outcomes.¹ Currently, charter schools may fulfill the following purposes: create innovative measurement tools, provide rigorous competition within the public school district, expand the capacity of the public school system, and mitigate the educational impact created by the development of new residential dwelling units.

The bill provides that the purpose of charter schools must be to either improve student learning and academic achievement or increase learning opportunities for all students with emphasis on low-performing students. Additionally, this bill expands the list of purposes that a charter school may fulfill to include the options of creating new professional opportunities for teachers, encouraging the use of innovative learning methods, and requiring the measurement of learning outcomes

Application for Charter Status

Currently, 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 the laws of this state.² Alternatively, a public school that has been in operation for at least two years may convert to a charter school pursuant to an application by the district school board, the principal, teachers, parents, and/or the school advisory council.³

The bill clarifies that a public school-within-a-school that is designated as a school by the district school board may also submit an application to convert to charter status. Also, the bill provides that a district school board that denies an application for a conversion charter school is required to provide written notice of the denial to the applicants within 10 days, rather than the current law requirement of 30 days notice, after the meeting in which the district school boards denied the application.

¹ s. 1002.33(2)(b), F.S.

² s. 1002.33(3), F.S.

³ *Id.*

Sponsor Duties

Currently, only a district school board may sponsor a charter school in the county where the district school board has jurisdiction.⁴ However, a state university may grant a charter to a lab school in which case the university is considered to be the charter lab school's sponsor.⁵ Sponsor duties include, but are not limited to, monitoring and reviewing the charter school's progress towards the established goals, monitoring the charter school's revenues and expenditures, and ensuring that the charter school participates in the state's education accountability system.⁶

The bill requires sponsors to provide assistance to charter schools in scheduling fire code inspections upon the request of the charter schools. Charter schools graded "D" or "F" are required to appear before the sponsor at a formal meeting at least once a year and to present information regarding each deficient contract provision and the corrective strategy being implemented by the charter school. Also, the sponsor is required to communicate at the meeting, and in writing to the director, the services provided to the school to help the school address the deficiencies.

The bill provides that the school district boards are not liable for damages resulting from the acts or omissions of the charter school's governing board, agents, or employees unless such act or omission was based upon requirements or policies of the district school board. Additionally, the DOE is required to conduct an annual survey of charter school governing boards to determine their satisfaction with services received from their sponsor and the DOE and report the survey results to the State Board of Education (SBE).

Application Process and Review

Section 1002.33(6), F.S., provides for the application process and review of a charter school. Charter school applications are prepared by the person or entity wishing to open the charter school and are submitted and considered by a district school board on or before September 1 of each calendar year. District school boards are required to approve or deny an application by majority vote within 60 calendar days after the application is received, unless the applicant and the school board mutually agree to postpone the vote to a specific date. If the district school board fails to act on the application, the applicant may appeal to the SBE. When an application is denied the district school board is required to articulate in writing the specific reasons based upon good cause for denying the application.

Current law provides charter school applicants with procedures for appeal to the Charter School Appeal Commission if the charter has been denied, not renewed, or terminated or if mediation has failed to resolve disputes over contract negotiations.⁷ The Charter School Appeal Commission may receive and review documents forwarded to the SBE, gather other applicable information regarding the appeal, and make a written recommendation to the commissioner.⁸ Decisions by the Charter School Appeal Commission are not subject to the provisions of the Administrative Procedures Act. The SBE must consider the commissioner's recommendation; however, the SBE is not bound by the recommendation.⁹

Subsequent to the approval of the charter school application, the DOE is required to provide mediation services for any dispute relating to the charter's provisions and any dispute relating to the approved charter, except for disputes relating to charter school application denials.¹⁰ A dispute, except a dispute

⁴ s. 1002.33(5), F.S.

⁵ *Id.*

⁶ s. 1002.33(5)(b), F.S.

⁷ s. 1002.33(6), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

pertaining to charter school application denial, may be appealed to an administrative law judge if the Commissioner of Education determines that the dispute cannot be settled through mediation.¹¹

The bill provides that beginning with the 2006-2007 school year, the deadline for submission of the charter school application is changed from September 1 to August 1. Also, the bill clarifies that the district school board and the applicant may temporarily postpone the vote on a charter school application, if mutually agreed upon and in writing. If the district school board denies an application the board must provide the applicant and the DOE with supporting documentation stating the specific reason for denying the charter application.

The bill removes the provision that allows disputes over contract negotiations that have not been resolved through mediation to go before the Charter School Appeal Commission, and also clarifies that an administrative law judge may not rule on issues relating to the denial of an application or on issues relating to the termination or nonrenewal of a charter.

The bill directs the DOE to offer training and technical assistance to charter school applicants on issues related to the financial and business side of charter school operation and must address estimating start-up costs, projecting enrollment, and identifying the types and amounts of state and federal financial assistance the charter school will be eligible to receive.

Charter Agreement

A charter is a written contractual agreement setting forth the terms and conditions for the operation of a charter school. Current law requires that major issues involving the operation of a charter school are to be considered in advance and written into the charter that is signed by the sponsor and the governing body of the charter school.¹² The initial term of a charter may be 3, 4, or 5 years, and charter schools that are operated by a municipality or other public entity and charter lab schools are eligible for a charter for a term of up to 15 years, subject to annual review and termination.¹³

The bill provides that applicants and sponsors have 3 months, rather than the current law requirement of 6 months, to mutually agree on the provisions of the charter. The bill requires that the proposed charter must be provided to the charter school at least 7 days prior to the vote of the sponsor. Also, the bill establishes an initial charter term of 4 or 5 years and provides that charter schools operated by private, not-for-profit, s. 501(c)(3) status corporations are eligible for a charter term up to 15 years, subject to the approval of a district school board.

Current law provides that a charter is to be renewed every 5 years if the criteria¹⁴ has been successfully accomplished and if none of the grounds for nonrenewal were documented. Also, charter schools that are in operation for a minimum of 2 years and demonstrate exemplary academic programming and fiscal management are eligible for a 15-year charter renewal, subject to annual review and termination.¹⁵

The bill provides that a charter is to be automatically renewed if the criteria¹⁶ has been successfully accomplished and if none of the grounds for nonrenewal were documented. Additionally, the bill provides that the 15-year charter renewal shall be granted if the school has received a grade of "A" or "B" in 3 of the past 4 years and is not in a state of financial emergency or a deficit financial position.

Section 1002.33(7), F.S., provides that the criteria for approval of the charter shall be based on list of requirements that the charter must address. These requirements include, but are not limited to the

¹¹ *Id.*

¹² s. 1002.33(7), F.S.

¹³ *Id.*

¹⁴ *See* s. 1002.33(7)(a), F.S.

¹⁵ s. 1002.33(7)(b), F.S.

¹⁶ *See* s. 1002.33(7)(a), F.S.

following: the school's mission and the students to be served; the focus of the curriculum and instructional methods and distinctive techniques to be employed; the financial and administrative management of the school; the asset and liability projections; the term of the charter providing for cancellation of the charter for insufficient student achievement progress; and an alternative arrangement for current students and current teachers of an existing public school that is being converted to charter status and who choose not to attend or teach at the charter school.

The bill requires that the charter shall ensure that if a charter school internal audit or an annual financial audit reveals a state of financial emergency¹⁷ or deficit financial position then the auditors are required to notify the charter governing board, the sponsor, and the DOE. Within 7 working days after such findings, the internal auditor is required to report such findings in the form of an exit interview to the principal or principal administrator of the charter school and the chair of the governing board. Also, the bill requires that a charter school that is found to be in a state of financial emergency file a detailed financial recovery plan with the sponsor. The DOE is required to establish guidelines for the development of recovery plans.

Nonrenewal or Termination of Charter

Current law provides that sponsors may choose not to renew the charter at the end of the charter's term if the charter school fails to participate in the state's education accountability system, fails to meet generally accepted standards of fiscal management, violates a state law, or if other good cause is shown.¹⁸

This bill specifies that a sponsor may choose not to renew a charter based on the sponsor's determination that the health, safety, and welfare of the students is threatened rather than for the current law provision of good cause shown. The bill also provides that the sponsor may choose not to renew the charter if the director of a charter school having a school performance grade of a "D" or "F" fails to appear before the sponsoring body as required.

This bill specifies that a sponsor may immediately terminate a charter based on the sponsor's determination that the health, safety, and welfare of the students is threatened rather than for the current law provision of good cause shown. If a charter is immediately terminated, the sponsor is required to notify in writing the charter school's governing body, principal, and the DOE that the charter is terminated. The bill provides for notification requirements for sponsors in the event of an immediate termination.

Charter School Requirements

Charter school requirements are identified in s. 1002.33(9), F.S. Requirements include, but are not limited to, the following: charter schools must be nonsectarian in their programs, admission policies, employment practices, and operations; charter schools must be accountable to their sponsors for performance; charter schools must meet all applicable state and local health, safety, and civil rights requirements; charter schools must provide for an annual financial audit; charter schools must maintain all financial records which constitute their accounting system; charter schools' governing boards must annually adopt and maintain an operating budget, exercise continuing oversight on charter school operations, and annually report progress to their sponsor; and charter schools must provide instruction for at least the number of days required by law.

The bill details procedural requirements a charter school must follow when a financial audit finds a state of financial emergency, including the filing of a detailed financial recovery plan with the sponsor within 30 days after receipt of the audit.

¹⁷ See s. 218.503, F.S., Determination of financial emergency

¹⁸ s. 1002.33(8), F.S.

The bill also requires a charter school sponsor to notify the DOE when it receives an application to operate a charter school, requires the DOE to maintain a database of those applicants, and provides that a sponsor may not approve an application for a charter unless the governing board and contract operator of the school have submitted a complete, accurate, and timely registration with the DOE.

Funding of Charter School Student Enrollment

Currently, students enrolled in a charter school are funded in the same way as all other public school students in the school district. Thus, each charter school must report its student enrollment to the school district and the school district must include each charter school's student enrollment in its report of student enrollment that is submitted to the state in October and February of each school year.¹⁹ Current law provides that district school boards are required to make every effort to ensure that charter schools receive timely and efficient reimbursement.²⁰

The bill provides that the district school boards are required to make timely and efficient payments and reimbursements to charter schools and allows the Commissioner of Education to withhold additional funds if districts fail to do so. Further, if a warrant for payment is not issued within 10 working days, rather than the current law requirement of 30 working days, after receipt of funding by the district school board then the district school board is required to pay the charter school the amount of the scheduled disbursement and interest at a rate of 5% per month. This changes the interest rate from 1% to 5% per month. Also, the interest rate is calculated on a daily basis on the unpaid balance from the expiration of the 10-day period until the warrant is issued.

The bill provides the SBE authority to impose a fine, not to exceed \$10,000, or withhold lottery funds for districts that violate the procedural requirements for charter school application, termination, and non-renewal appeals regardless whether the violation effects the fairness of the appeal process or the correctness of the action taken by the district. The bill provides for procedural requirements for the imposition of such penalties. However, the SBE is required to provide the district with notice of the proposed fine and the opportunity to be heard at a subsequent meeting of the SBE prior to the imposition of the fine or withholding of lottery funds.

Services

Currently, a school district provides the following administrative and educational services to charter schools: contract management services, full-time equivalent and data reporting services, exceptional student education administration services, test administration services, processing of teacher certificate data services, and information services.²¹ Administrative fees for the above services that may be charged by the district to a charter school are 5% of the available per student FEEP funds. However, there is a cap on administrative fees that the district may charge; for schools with 501 students and above, the calculation is made only on 500. Any charter school with an enrollment of 501 or more calculates the 5% for those students over 500, but retains the calculated amount to be used only for capital outlay purposes. Goods and services provided by the school district to the charter school through the contract must be provided for no more than the actual cost.²²

The bill provides for exceptional education evaluation services in addition to the exceptional student education administration services provided for in current law. The bill allows for negotiation of the administrative fee withheld by the school district but establishes a maximum of 5%.

Facilities

¹⁹ s. 1002.33(17), F.S.

²⁰ s. 1002.33(17)(d), F.S.

²¹ s. 1002.33(20), F.S.

²² *Id.*

The bill clarifies that a start-up charter school, not the current law requirement of a charter school, is required to utilize facilities which comply with the Florida Building Code²³ except for the State Requirements for Educational Facilities (SREF). The bill requires conversion charter schools to comply with SREF if the district and the charter school have entered into a mutual management plan with sufficient funding from the district to comply with SREF.

Current law provides that any facility or a portion of the facility that is used to house an approved charter school is exempt from ad valorem taxes pursuant to s. 196.1983.²⁴ The bill specifies that the following facilities may provide space to charter schools within their facilities under their preexisting zoning and land use designations: libraries, community service facilities, museums, performing arts facilities, theatres, cinemas, churches, community colleges, colleges, and universities.

Current law provides that charter school facilities are exempt from assessments of fees for building permits and licenses and impact fees or service availability fees.²⁵ The bill additionally provides that charter school facilities are exempt from payment of fees for occupational licenses.

Any facility or property of the district school board that becomes available because it is surplus, marked for disposal, or otherwise unused is made available to the charter school on the same basis as it is made available to other public schools in the district.²⁶ The bill provides that the charter school, not the charter organizer, is required to agree to reasonable maintenance provisions that ensure that the facility is maintained in a manner similar to district school board standards.

Capital Outlay Funding

Current law provides that the year in which funds are appropriated for charter school capital outlay purposes, the Commissioner of Education is required to allocate the funds among eligible schools.²⁷ To be eligible for a funding allocation, a charter school must be in operation for 3 or more years, be an expanded feeder chain of a charter school within the same school district that is currently receiving capital outlay funds, or be accredited by the Commission on Schools of the Southern Association of Colleges and Schools; have financial stability for future operation as a charter school; have satisfactory student achievement; have received final approval from their sponsor for operation during that year; and serve students in facilities that are not provided by the charter school's sponsor.²⁸

The bill provides that for a charter school to be eligible for a funding allocation, a charter school must be one of the following:

- The same school that received capital outlay funding in 2002-2003.
- A charter school that is an expanded feeder pattern of a charter school that received capital outlay funding in 2002-2003.

The bill provides that the Commissioner of Education is required to allocate and prorate charter school capital outlay funds in the following manner, unless authorized otherwise by the Legislature:

- If an appropriation for charter school capital outlay funds is less than the 2002-2003 appropriation, the funds are required to be prorated among eligible schools, as provided for in the bill.
- If the appropriation is greater than the 2002-2003 appropriation, the funds are required to be allocated to the eligible public schools as provided for in the bill and to charter schools that have been in operation for 3 or more years, are an expanded feeder chain of a charter school within the same school district that is currently receiving capital outlay funds, or be accredited by the

²³ Pursuant to chapter 533.

²⁴ s. 1002.33(18)(c), F.S.

²⁵ Exemption from assessment of fees for building permits except as provided in s. 553.80, F.S.

²⁶ s. 1002.33(18)(f), F.S.

²⁷ s. 1013.62, F.S.

²⁸ *Id.*

Commission on Schools of the Southern Association of Colleges and Schools; have financial stability for future operation as a charter school; have received a school grade of "A" or "B", pursuant to s. 1008.34, F.S., during three of the last four school years; have received final approval from their sponsor for operation during that year; and serve students in facilities that are not provided by the charter school's sponsor.

The bill provides that the charter schools with long-term debt or long-term lease are the first priority for allocating the excess amount of the 2002-2003 appropriation. The excess amount is required to be prorated among these schools to the extent that the initial allocation is insufficient to provide one fifteenth of the cost-per-student station. The bill identifies the second priority to be all other eligible charter schools.

Current law provides that capital outlay funds may be used by the charter school's governing body for the following purposes: purchase of real property; construction of school facilities; purchase, lease-purchase, or lease of permanent or relocatable school facilities; purchase of vehicles for transportation of students; and renovation, repair, and maintenance of school facilities owned by the charter school or being purchased or lease-purchase by the charter school.²⁹ The bill provides that capital outlay funds may also be used for furnishing and equipping charter school facilities.

Public Information on Charter Schools

The DOE is required to provide information directly to the public and through sponsors regarding how to form and operate a charter school and how to enroll in a charter school.³⁰ The bill provides that in addition to the standard application format, the DOE is required to create a standard charter format and standard charter renewal format that are to be used as guidelines by charter school sponsors.

Charter School Review Panel and Legislative Review

The bill provides that the DOE is required to staff and regularly convene a Charter School Review Panel to review issues, practices, and policies relating to charter schools. The bill removes the requirement that the Legislature review the operation of charter schools during the 2005 Regular Session of the Legislature.

Additional Provisions

Personnel

Beginning July 1, 2006, the bill provides for educator professional liability coverage for all full-time charter school instructional personnel, requires that educator professional liability coverage be extended at cost to all part-time charter school instructional personnel, and requires that educator professional liability coverage be extended at cost to all administrative personnel.

Student Preference

The bill eliminates the priority given to transitioning students from military families on admission to charter schools.

Charter Lab Schools

²⁹s. 1013.62(2), F.S.

³⁰s. 1002.33(21), F.S.

The bill provides that a charter lab school that attempts to fulfill its requirement to have a representative student population³¹ and elects to provide student transportation to accomplish this is eligible for transportation funding pursuant to s. 1001.68, F.S.

C. SECTION DIRECTORY:

- Section 1. Amends s. 1002.33, F.S., relating to charter schools; revising the purpose of charter schools; revising charter school application process and sponsor duties; revising provisions relating to charter agreement, including nonrenewal or termination of charter; revising charter school requirements, including procedural requirements for charter schools found to be in a state of financial emergency; revising provisions relating to funding of charter school student enrollment; authorizing zoning and land use designations; revising exemptions; revising provisions relating to services and the administrative fee requirement.
- Section 2. Amends s. 218.39, F.S., adding references relating to charter schools and annual financial audit reports.
- Section 3. Amends s. 218.50, F.S., revising the short title of sections 218.50-218.504 to include charter schools.
- Section 4. Amends s. 218.501, F.S., adding a charter school reference.
- Section 5. Amends s. 218.503, F.S., adding references relating to charter schools and the determination of financial emergency.
- Section 6. Amends s. 218.504, F.S., adding references relating to charter schools and the cessation of state action.
- Section 7. Amends s. 11.45, F.S., conforming provisions relating to charter schools.
- Section 8. Amends s. 166.271, F.S., correcting cross references.
- Section 9. Amends s. 1002.32, F.S., providing that charter lab schools are eligible for transportation funding.
- Section 10. Amends s. 1003.05, F.S., removing charter school reference from assistance to transitioning students from military families.
- Section 11. Amends s. 1012.74, F.S., requiring educator professional liability insurance to cover charter school personnel.
- Section 12. Amends s. 1013.62, F.S., revising provisions related to capital outlay funding.
- Section 13. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

³¹ Pursuant to 1002.32(4), F.S.

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

See FISCAL COMMENTS section of this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Education is required to staff the Charter School Review Panel, create a standard charter format and charter renewal format, conduct an annual survey of charter school governing boards to determine their satisfaction with services received from its sponsor and the DOE, and report the survey results to the State Board of Education. The estimated costs of these requirements are indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2005, the Choice and Innovation Committee adopted a strike-all amendment and an adhering amendment offered by Representative Attkisson, and reported the bill favorably with a committee substitute. The strike-all amendment substantially revised the bill. This analysis is drawn to the committee substitute.