

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7171 CS PCB CI 06-04 Charter Schools

SPONSOR(S): Choice & Innovation Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Choice & Innovation Committee	7 Y, 0 N, w/CS	Kooi	Kooi
1) Education Appropriations Committee	15 Y, 3 N, w/CS	Eggers	Hamon
2) Education Council			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill sets forth legislative findings regarding the benefits and challenges of the state's charter schools and provides legislative intent to establish a state-level commission to sponsor and support charter schools and to authorize municipalities, state universities, community colleges, and regional consortia as cosponsors of charter schools throughout the state.

The bill establishes the Florida Schools of Excellence Commission whose members are appointed by the State Board of Education through recommendations by the Governor, the President of the Senate, and the Speaker of the House of Representatives, and provides for funding, and an executive director and staff. It further provides a list of powers and duties of the commission, including the power to sponsor charter schools, the power to approve the cosponsors listed above to cosponsor charter schools, and duties relating to support of those approved charter schools and cosponsors.

The bill sets forth timelines, processes and criteria for the review, approval, denial, termination, and non-renewal of cosponsors. It also provides timelines as well as rights and obligations to be included in an agreement negotiated and entered into by the commission and its various individual cosponsors.

The bill incorporates by reference a number of subsections within current charter school law including, but not limited to, provisions relating to receiving, reviewing and approving or denying charter school applications. It also provides for the appellate rights of denied applicants. It further allows existing charter schools previously approved and chartered through a district school board to apply and contract with the commission or one of its cosponsors as long as the charter school is free of further contractual obligations with the district school board.

The bill requires the commission to annually report to the State Board of Education and provides rulemaking authority to the State Board of Education.

The bill appropriates \$420,747 from the General Revenue Fund to the Department of Education to administer this act. The bill will have a significant, but indeterminate fiscal impact. Please see the FISCAL ANALYSIS section of this analysis.

The bill may involve constitutional issues which are discussed in detail in the CONSTITUTIONAL ISSUES section of this analysis.

The bill provides for an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7171b.EDAS.doc

DATE: 4/4/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- The bill establishes the Florida Schools of Excellence Commission under the supervision of the State Board of Education (SBE) for the development and support of charter schools. The bill provides the SBE with rulemaking authority and establishes the powers and duties of the commission. The bill would alleviate some of the administrative burden on school districts in relation to their duties to monitor charter schools. The bill increases the SBE's authority to resolve the appeals of denied charter school applicants by the commission, and also creates the authority for the commission to revoke its approval of a cosponsor after providing due process.

Safeguard individual liberty- The bill increases the options of charter school applicants to apply to the commission and cosponsoring entities. Charter school applicants will be able to access new sources of community support and expertise through this commission.

Empower families – The bill will likely lead to more charter schools in more areas and should provide increased educational options for parents and their school-aged children.

B. EFFECT OF PROPOSED CHANGES:

Background

Authorizers

Across the nation, states differ in their administration, implementation, and oversight of charter schools. Charter school authorizers are entities charged with oversight of individual charter schools. According to the Education Commission of the States (ECS) Issue Brief: *A State Policymaker's Guide to Alternative Authorizers of Charter Schools*, during the 2004-05 school year, there were over 800 charter school authorizers across the country, 700 of those being local school boards.¹ Alternative forms of charter school governance have received significant attention in the recent past due to the growing recognition that authorizers are vital components to the success of charter schools. Examples of alternative authorizers include independent special-purpose charter boards, intermediate or regional educational entities, and mayors.

The authorizer's functions include, but are not limited to, continuous monitoring of charter schools so that they are able to deal with issues that arise at an early stage, ensuring academic and financial accountability, offering technical assistance such as workshops or providing referrals, advocating to agencies on behalf of the charter school to reduce school burdens, and garnering community support.² According to ECS, during the development of initial state charter school laws, the charter school authorizer's role was overlooked.

Consequently, there is a growing recognition that effective authorizing is essential to the success of charter schools. According to ECS, many states are interested in utilizing entities other than local school boards to authorize charter schools because local school districts are often too constrained with managing, addressing, and correcting the problems of the existing public schools within their district.

¹ Hassel, Bryan, Todd Ziebarth and Lucy Steiner, *Education Commission of the States (ECS) Issue Brief: A State Policymaker's Guide to Alternative Authorizers of Charter Schools*, Denver, Co: Education Commission of the States, September 2005, p.2.

² Presentation by Mark Cannon, Executive Director of National Association of Charter School Authorizers (NASCA), to the Joint Hearing of Florida House Committee on Choice & Innovation and Pre-K-12 Education, February 8, 2005. PowerPoint presentation: *Authorizer Role in Increasing the Number of Quality Charter Schools*.

Local school district resources and personnel are limited; therefore, charter schools may not always receive the oversight and assistance that is needed to operate a successful charter school.

Florida Charter School Law

The Florida Legislature authorized charter schools in 1996. Currently, for the 2005-2006 school year, 92,158 students attend the 333 charter schools in Florida. As provided in section 1002.33, F.S., charter schools are nonsectarian public schools of choice that operate under a performance contract (a charter) with a public sponsor. Under Florida law, district school boards are the only entities that can sponsor charters, although upon appeal the State Board of Education may decide that the district school board must approve or deny an application.³ Additionally, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, and the University of Florida are currently authorized to grant charters and sponsor development research (laboratory) schools created under section 1002.32, F.S.⁴

Pursuant to current law, charter schools enter into an agreement (charter) with the local district school board that addresses all major issues involving the operation of the charter school including, but not limited to, the school's mission, students served, curriculum, methods of student academic assessment, method for conflict resolution, financial and administrative management, and the term of the charter. Pursuant to section 1002.33(16), F.S., charter schools are free from many state regulations and mandates. However, they are still held accountable to the district sponsor that grants their application and to the parents who choose them for the academic and financial performance of the school and its students.

Identified Challenges

In spite of the tremendous popularity and growth of the number of charter schools within the state, they are still faced with several challenges that make their efforts to provide innovative and high quality educational options to parents more difficult. The challenges most often cited by charter schools include financial deficits, particularly among new schools, district provision of administrative services, and a lack of communication and support among charter schools and school districts.

The number of charter schools with a financial deficit⁵ increased from 18% in 1999-00 to 29% in 2002-03.⁶ New charter schools, schools that have been in existence for 1-2 years, have the highest deficit rate among charter schools at approximately 38%, whereas charter schools that have been in existence for 3-4 years and 5-7 years have a deficit rate of 20% and 21%, respectively.⁷

Charter schools face considerable financial difficulties related to start-up and facilities related costs, inaccurate enrollment projections, lack of financial management practices, and lack of economies of scale. These challenges put charter schools at risk for chronic financial deficits. Furthermore, the frequent lack of expertise in education budgeting and finance and lack of familiarity with government accounting conventions can lead to an inability to generate complete, accurate, and timely financial

³ Sections 1002.33(5),(6), F.S.

⁴ Section 1002.32(2), F.S., provides that for the purpose of state funding, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, and the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school.

⁵ As determined in the Auditor General's Report Number 2005-054, charter schools operating with an end-of-year financial deficit are those charter schools that ended the year with a deficit of unreserved balance in their general fund (for statements using the governmental model) or deficit unrestricted net assets in their unrestricted fund (for statements using the not-for-profit model); Office of Program Policy Analysis and Government Accountability (OPPAGA) Report Number 05-11: *Charter School Application Requirements Are Reasonable; Financial Management Problematic*, March 2005, p. 8.

⁶ Presentation by Jane Fletcher, Staff Director, Education, of OPPAGA, to the Joint Hearing of Florida House Committee on Choice & Innovation and Pre-K-12 Education, February 8, 2005. PowerPoint presentation: *Charter School Review*.

⁷ *Id.*

data making the identification and assistance of charter schools with deteriorating financial conditions even more challenging.⁸

Under Florida law, a school district sponsor is required to provide 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. The school district providing these services is authorized to withhold up to 5% of the charter school's per student funding as payment for the provision of these services.⁹ Many charter schools complain that some districts are not providing all of the statutorily required services, and districts often question whether the 5% administrative fee generates an adequate amount of money for school districts to fulfill their responsibilities to charter schools.

Perhaps the biggest challenge facing the success of charter schools today is communication among charter schools and school districts. School district attitudes toward charter schools as well as their provision of services and communication has, in many cases, improved since Florida's first charters were opened approximately ten years ago. Nevertheless, there may always be a certain degree of tension involved in the relationships of school districts and charter schools due to the inherently adversarial nature of such relationships.¹⁰ This tension is problematic given the fact that cooperation between the two parties is often critical in providing a high quality education to charter school children.

Effects of Proposed Changes

Establishment of a state-level charter school commission

The bill sets forth findings related to the contributions made by charter schools throughout the state, specifically, the valuable role charter schools play in providing high quality options to parents and their children, and the importance of charter schools in improving student performance and the quality of all public schools.

It states legislative intent to establish a state-level commission that will place its sole focus on the development and support of charter schools. It indicates legislative intent to seek the support and partnership of entities such as municipalities, universities, community colleges and regional educational consortia as cosponsors of charter schools for the purpose of accessing new sources of community support and expertise.

The bill establishes the Florida Schools of Excellence Commission (commission) under the supervision of the State Board of Education and authorizes the following appropriations:

- Three positions and \$165,000 in approved salary rate,
- \$214,630 from recurring general revenue funds for salaries and benefits,
- \$199,238 from recurring general revenue funds for expenses, and
- \$5,700 from nonrecurring general revenue.
- \$1,179 in recurring general revenue funds for transfer to the Department of Management Services for the Human Resource Services Statewide Contract.

The bill authorizes the commission to seek and utilize funds through private donations as well as public and private grants to assist in the startup. The bill authorizes the commission or cosponsor of a charter school approved pursuant to this act to retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.

⁸ *Id.* at 1.

⁹ Section 1002.33(20), F.S.

¹⁰ See Alachua County response to charter school survey conducted by the Florida Association of District School Superintendents

The bill provides that the commission be composed of seven members appointed by the Governor (3), the President of the Senate (2), and the Speaker of the House of Representatives (2), and requires that such appointments be made by September 1, 2006. The member terms are staggered one and two year terms initially, and then set at two years thereafter. A process for filling vacancies is also provided.

The bill requires monthly meetings of the commission and encourages the commission to schedule its first meeting no later than October 1, 2006. It provides for the appointment of an executive director to employ staff to handle the necessary administrative support for the commission.

Commission powers and duties

The bill gives the commission the power to review applications and approve and sponsor charter schools. It also provides the commission with the power to terminate or not renew their sponsored charter schools. The requirements and process provided for the commission's review of charter applications is the same as that required of school districts' review of current charter applications as set forth in section 1002.33(6), F.S. The process and causes for termination are as set forth in section 1002.33(8), F.S., which is the current provision for termination and non-renewal of school district sponsored charter schools.

The bill empowers the commission to authorize municipalities, state universities, community colleges, and regional consortia to review, approve, and deny charter school applications. These entities would then act as cosponsors of charter schools. It also provides the commission with authority to terminate or not renew the cosponsors that it approves.

The bill indicates legislative intent to include municipalities, state universities, community colleges, and regional consortia as cosponsors of charter schools for the purpose of accessing the type of community support and resources that such entities have to offer. In setting forth the duties of the commission the bill specifically requires that the commission's cosponsoring relationship with state universities and community colleges allow for dual enrollment and a determination of the feasibility of cooperating with Centers for Autism and Related Disabilities to provide high quality educational options to parents of autistic children.¹¹

The bill sets forth numerous duties of the commission aimed at providing greater expertise in approving and developing high quality charter schools, providing responsive academic and budgetary technical support, promoting accountability, seeking private funding, and alleviating administrative burdens of school districts that currently sponsor charter schools. It incorporates the monitoring requirements of section 1002.33(5)(b), F.S., and the administrative services requirements of section 1002.33(20), F.S. for charter schools approved by the commission.¹²

Although the bill provides that cosponsors would be primarily responsible for the provision of administrative services to the charter schools they sponsor, the duties of the commission indicate an intent that the commission act as a partner with its cosponsor in providing technical assistance and access to expertise at a state and national level regarding matters such as Exceptional Student Education services, English for Speakers of Other Languages, and other specialized areas.

¹¹ Known as CARD centers, these entities are operate through several universities throughout the state, are staffed by individuals with superior expertise in dealing with autistic children, and are established under section 1004.55, F.S., to research and provide nonresidential assistance and training to parents in diagnosing, treating and educating their autistic children.

¹² As noted above, these services include: 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.

Cosponsor applications

The bill requires that the commission begin accepting applications from cosponsors that wish to submit them no later than January 31, 2007. It provides the commission with a 90-day timeline to review and approve or deny the application, though this 90-day requirement may be waived by the applicant. The January 31, 2007 starting date is intended to allow cosponsors to be approved to begin accepting charter school applications on or before September 1, 2007, as set forth in section 1002.33(6)(b), F.S.

The bill requires that the commission limit the number of charter schools that a cosponsor may approve. However, the cosponsor may apply to raise this limit at some point in the future. This will ensure that a cosponsor is able to demonstrate that it has the capacity, expertise, and commitment to approve, develop and maintain high quality charter schools before allowing the number of its charter schools to increase.

The bill requires that in order to be approved as a cosponsor, the eligible entity must provide evidence in its application that it has, or can contractually provide, the capacity and expertise necessary to provide what is required to sponsor a charter school. It requires a demonstrated commitment to raising and contributing financial resources, providing equal access to all children, maintaining a diverse student population, and focusing on low-income, low performing and underserved children. It requires articulated accountability goals and a policy to prevent conflicts of interest.

The bill states that the commission's decision whether to approve or deny a cosponsor application is not subject to the processes set forth in the Administrative Procedures Act¹³, but is instead subject to the same process set out in the current charter school statute for the appeal of charter application denials to the State Board of Education.

Cosponsor agreements

The bill requires that the commission and its cosponsors enter into an agreement which sets forth rights and obligations, many of which are set forth in the application requirements noted above. The agreement must include explanations of how facilities and assets of dissolved charter schools will be handled, and a provision requiring that the cosponsor report student enrollment to the local school district school board for funding purposes. The agreement must also include provisions requiring cosponsors to annually appear before and provide a report to the commission on its charter schools and to assist in providing commission reports to the State Board of Education.

The bill provides for discretion on the part of the commission in defining additional reasonable terms within the agreement that it deems are necessary given the unique characteristics of the particular sponsoring entity. Unique characteristics would be likely to exist in any cosponsor, and is particularly likely with different municipalities. Such characteristics may include the size of the city, the demographics of its student population, or even the demographics of the local school district and how a municipal charter might affect other schools within that school district. This provision would provide the commission with discretion in crafting an agreement that meets the unique needs of the cosponsor while still protecting the welfare and interests of children in the surrounding schools.

The bill prohibits any potential cosponsor from receiving applications prior to officially executing its cosponsor agreement with the commission. It states that the agreement must be proposed and negotiated within six months of approval of the cosponsor application as currently provided in section 1002.33(6)(h), F.S.,¹⁴ and that it shall be attached to and govern any charter school contract entered into by the cosponsor.

Cosponsor revocation

¹³ Ch. 120, F.S.

¹⁴ The bill cross references section 1002.33(6)(i), F.S., due to the fact that Section 2 of the bill rennumbers the relevant paragraph.

The bill states that the commission may revoke its approval of a cosponsor after providing due process in the form of notice and a hearing as set forth in State Board of Education rule. The approval must be revoked if, after the hearing, the commission finds that the cosponsor is not in compliance, or is not willing to comply with its cosponsor agreement.

The commission is authorized to immediately assume sponsorship of any schools that were sponsored by the revoked cosponsor. The assumption of sponsorship may remain permanent if the commission so desires, or the commission may work with the charter school and the local school district to facilitate application and approval of a charter with the district.

Charter school applications

The bill states that charter applications that are submitted to the commission or any of its approved cosponsors must contain the same information as required in section 1002.33(6), F.S. It also provides that such applications will be reviewed and approved or rejected in accordance with the terms set forth in current charter school law.¹⁵ It also sets forth timelines by which the applications must be received and reviewed, and provides for an appeal process for application denials, including review by the Charter School Appeal Commission and the State Board of Education.

The bill amends current law regarding application process and review so that in order to exercise the right to appeal a school district's application denial, a charter school must have submitted the same or a substantially similar application to the commission or one of its cosponsors. If the applicant has not yet been denied by the commission or one of its cosponsors it must file the application with one of those entities the following August and if it is denied again, the applicant will then have thirty days to file its appeal of the district's denial. This provision and the existence of multiple authorizers should significantly reduce the number of appeals as well as reducing the likelihood that a district will be forced to sponsor a charter applicant that it has rejected.

The bill allows currently existing charter schools that have been approved and operating under a charter with a school district to apply to and enter into a new contract with the commission or one of its cosponsors. However, the bill clarifies that only charter schools whose contract has expired or whose school district sponsor agrees to rescind a current contract may enter into a new contract with the commission or a cosponsor. Finally, the bill provides that a charter school that switches sponsors must be allowed to continue to utilize the facilities and equipment it has been using under its contract with the school district.

Incorporation of the charter school statute

The bill incorporates by reference, sections 1002.33(7)-(12), (14), and (16)-(19), F.S. Section 1002.33(7), F.S., deals with the numerous items and issues that must be included in a charter contract between charter schools and their sponsors. These include issues relating to mission, curriculum, instructional strategies, student performance expectations, admissions, financial and administrative management, term of the contract, facilities, teacher qualifications, governance structure, renewal, and modification.

Section 1002.33(8), F.S., sets forth the causes by which a charter contract may be revoked or not be renewed. The causes include student performance, fiscal mismanagement, violations of law and other good cause. It also provides for 90-day notice by the sponsor prior to non-renewal or revocation with the opportunity for an informal hearing upon receipt of the notice. There is also a provision for immediate revocation for good cause or to protect the health, safety and welfare of the students. Finally, this incorporated subsection provides for the disposition of remaining debts and assets of the charter school upon termination or non-renewal.

¹⁵ Section 1002.33(6), F.S., provides for the application process and review of charter schools.

Section 1002.33(9), F.S., provides requirements for charter schools, including accountability, compliance with laws and rules, annual financial audits, and other financial reporting requirements. It also requires the governing board of the charter school to exercise oversight, and report to its sponsor regarding student achievement data, financial status, facilities and personnel issues.

Section 1002.33(10), F.S., addresses the eligibility of students for enrollment at a charter school. It requires that the charter school be open to any child residing in the district and requires that random selection process be implemented if the number of applicants exceed the number of seats available. This incorporated subsection allows enrollment preference in somewhat limited circumstances and allows a charter school to limit its enrollment to target a certain student population by age, students considered to be dropout risks, charter schools in the workplace or municipality, students within a reasonable distance of the charter school, students who meet certain academic, artistic, or other eligibility standards, and students from a feeder pattern of the charter school.

Section 1002.33(11), F.S., allows charter school students to participate in interscholastic extracurricular activities at the public school to which the student would be otherwise assigned to attend.

Section 1002.33(12), F.S., addresses charter school employees providing that a charter school may select its own employees and that such employees have the option to bargain collectively. It provides options as to the organization of such employees and allows them to take leave from employment with a school district while employed at a charter school without forfeiting seniority and other benefits of school district employment. It further requires that charter school teachers be certified, that charter schools and their employees are governed by the provisions of section 768.28, F.S., relating to sovereign immunity, and that employees of charter schools that are considered public employers may participate in the Florida Retirement System.

Section 1002.33(14), F.S., requires that any arrangement entered into by a charter school to borrow or secure funds must indemnify the state and the school district from liability and clarifies that such debts not obligations of the state or school district.

Section 1002.33(16), F.S., provides exemption for charter schools from numerous statutory requirements in the school code. Statutes relating to student assessment and school grades, the provision of services to student with disabilities, civil rights, and health, safety and welfare, and open meeting and public records continue to apply to charter schools.

Section 1002.33(17), F.S., provides for funding of students in charter schools. It requires that charter schools report student enrollment to their sponsor and sets forth a per student funding formula that includes Florida Education Finance Program funds, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy. It specifies an eligible charter school's entitlement to federal funds for provision of services to eligible students. It requires timely reimbursement and processing of paperwork required to access federal funding by the school district and provides for payment of interest on late reimbursements.

Section 1002.33(18), F.S., sets forth standards for charter school facilities. It specifies that charter schools may choose whether to comply with the Florida Building Code or the State Requirements for Educational Facilities. It requires charter school facilities' compliance with the Florida Fire Prevention Code, exempts them from ad valorem taxes, permit fees, building licenses, impact fees, and service availability fees. It requires that school district surplus property be made available for use by charter schools and allows the designation of impact fees for charter school facilities where the school facility is created to mitigate the impact of development.

Section 1002.33(19), F.S., provides that charter schools are eligible for charter school capital outlay funding pursuant to section 1013.62, F.S.

Charter school information and annual report

The bill requires that the commission be a source of information for parents throughout the state by maintaining information technology to allow parents to make informed educational choices for their children. It also requires the commission to provide an annual report to the State Board of Education regarding the academic performance and fiscal responsibility of all charter schools and cosponsors approved under this new section. Finally, it provides the State Board of Education with rulemaking authority necessary to facilitate the implementation of this new section.

C. SECTION DIRECTORY:

Section 1. Creates section 1002.335, F.S.; establishing the Florida Schools of Excellence Commission as a charter authorizing entity; providing legislative findings and intent; providing startup funds; providing for membership and powers and duties of the Commission; requiring collaboration with identified entities for cosponsoring of charter schools; providing approval requirements of cosponsors; providing components for and revocation of cosponsor agreements; providing for charter application and review procedures; authorizing existing charter schools to apply; providing for application of specified provisions of law; requiring access to information by parents; requiring annual report by Commission; requiring rulemaking.

Section 2. Amends section 1002.33, F.S., providing requirements for right to appeal application denial; revising provisions relating to student funding; revising provisions related to facilities.

Section 3. Authorizes appropriations and provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not impact state government revenues.

2. Expenditures:

The bill establishes the Florida Schools of Excellence Commission (commission) under the supervision of the State Board of Education and authorizes the following appropriations:

- Three positions and \$165,000 in approved salary rate,
- \$214,630 in recurring general revenue funds for salaries and benefits,
- \$199,238 in recurring general revenue funds for expenses,
- \$5,700 in nonrecurring general revenue, and
- \$1,179 in recurring general revenue funds for transfer to the Department of Management Services for the Human Resource Services Statewide Contract.

The staffing needs of the commission are likely to increase as the number of charter schools approved under the authority of the commission and its cosponsors grows.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not impact local government revenues.

2. Expenditures:

The bill would likely impact expenditures of municipalities and community colleges that chose to become cosponsors. The impact is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would not have a significant impact on the private sector.

D. FISCAL COMMENTS:

School district sponsors of charter schools may withhold up to 5% of charter school funding for administrative overhead costs. School districts are not required to document that administrative overhead costs are equal to the amount of funds withheld. The bill would impact school districts to the extent that they would no longer be able to withhold the 5% administrative fee for providing services to charter schools that chose to contract with the commission or one of its cosponsors. However, the costs saved from no longer being responsible to provide those services should balance this reduction in revenue.

The bill authorizes the commission or cosponsor of a charter school approved pursuant to this act to retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.

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:

Section 4 of Article 9 of the State Constitution states that each county shall constitute a school district and that the district school board "shall operate, control and supervise all free public schools within the school district..." The bill allows an independent board or cosponsors in the form of municipalities, universities, community colleges, and regional consortia to authorize charter schools.

However, Section 2 of Article 9 of the State Constitution provides that the State Board of Education shall "have such supervision of the system of free public education as is provided by law." This provision requires that the State Board of Education must supervise public education in the manner and to the extent provided by the Legislature. Such language also suggests flexibility in the way the Legislature may determine how the State Board must exercise such supervision.

The Legislature has previously exercised this flexibility with the establishment of other public schools that are not under the control of school districts, including charter lab schools established under section 1002.32, F.S., the Florida Virtual School, and the Florida School for the Deaf and Blind. These other examples reflect the Legislature's authority to direct the State Board of Education's supervision of the overall "system of free public education" under Section 2 of Article 9, as opposed to the traditional school district-controlled "free public schools" referenced more specifically in Section 4 of Article 9.

The bill provides for a statewide commission that is supervised and appointed by the State Board of Education. The commission is specifically required to report to the State Board of Education

regarding the academic performance and fiscal responsibility of all charter schools approved and maintained by the commission or one of its cosponsors. The commission's rulings regarding revocation or non-renewal of cosponsors and charter schools may be appealed to the State Board of Education.

Furthermore, there is a clear nexus between school districts and municipalities, universities, community colleges, and regional consortia when it comes to the provision of education. For example section 1012.98(5), F.S., provides that school districts may coordinate their professional development programs for teachers with an educational consortium, or with a community college or university. Section 1001.42, F.S., allows districts to participate in educational consortia that are designed to provide joint programs and services to cooperating school districts.

Additionally, section 1013.355, F.S., authorizes the creation of educational facilities benefit districts pursuant to an interlocal agreement between the district school board and a municipality or other eligible local government entity. Section 1002.35, F.S., directs that the New World School of the Arts is assigned to Miami-Dade Community College, the Dade County School District, and one or more universities designated by the State Board of Education.

These are just some of the examples that provide evidence of the relationship that districts share with municipalities, universities, community colleges, and regional consortia with regard to public education throughout the state and should provide support for the proposition that further involvement by such entities would not create a conflict with Article 9 of the Constitution.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the State Board of Education.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The President of the Senate and the Speaker of the House may recommend, but may not determine or dictate who may be appointed to a board or commission that is empowered to act in more than just an advisory capacity. Consequently, the bill will need to be amended to require the recommendation of at least two or more nominees for each of the member positions that are appointed from the President's and the Speaker's recommendations.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Choice and Innovation Committee adopted two amendments and reported the PCB favorably as amended. The amendments did the following:

Amendment 1 - Clarifies that the members of the commission are appointed by the State Board of Education from recommendations provided for each vacancy by the Governor, President of the Senate and the Speaker of the House respectively.

Amendment 2 - Clarifies that current charter schools with district sponsorship may only apply to the new commission or a cosponsor if its contract with the district is expiring or if the district agrees to let them out of the contract. The amendment also clarifies that conversion charter schools may only submit an application to the commission or cosponsor with permission of the school district and gives the district control over disposition of the facilities and equipment assuming such consent is given.

On April 4, 2006, the Education Appropriations Committee adopted two amendments and reported the bill favorably as amended. The amendments did the following:

Amendment 1 – Authorizes appropriations to administer the act.

Amendment 2 – Authorizes the commission or cosponsor of a charter school approved pursuant to this act to retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.