

Bill No. SB 2744

Barcode 234270

CHAMBER ACTION

Senate

House

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The Committee on Education Pre-K - 12 (Wise) recommended the following amendment:

Senate Amendment (with title amendment)

On page 12, between lines 21 and 22,

insert:

Section 3. Subsections (1) and (4), paragraphs (b), (c), (e), and (f) of subsection (6), paragraphs (b) and (c) of subsection (7), paragraph (1) of subsection (9), paragraphs (b) and (c) of subsection (17), and paragraphs (d) and (e) of subsection (18) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.--

(1) AUTHORIZATION.--Charter schools shall be part of the state's program of public education. All charter schools in Florida are public schools. Charter schools are established to provide a flexible, innovative, and accountable public education to students in the state. A charter school may be formed by creating a new school or converting an existing public school to charter status. A public school may not use

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1 the term charter in its name unless it has been approved under
2 this section.

3 (4) UNLAWFUL REPRISAL.--

4 (a) No district school board, or district school board
5 employee who has control over personnel actions, shall take
6 unlawful reprisal against another district school board
7 employee because that employee is either directly or
8 indirectly involved with an application to establish a charter
9 school. As used in this subsection, with respect to a district
10 school board or a district school board employee, the term
11 "unlawful reprisal" means an action taken by a district school
12 board or a school system employee against an employee who is
13 directly or indirectly involved in a lawful application to
14 establish a charter school, which occurs as a direct result of
15 that involvement, and which results in one or more of the
16 following: disciplinary or corrective action; adverse transfer
17 or reassignment, whether temporary or permanent; suspension,
18 demotion, or dismissal; an unfavorable performance evaluation;
19 a reduction in pay, benefits, or rewards; elimination of the
20 employee's position absent of a reduction in workforce as a
21 result of lack of moneys or work; or other adverse significant
22 changes in duties or responsibilities that are inconsistent
23 with the employee's salary or employment classification. No
24 sponsor or sponsor's staff shall take unlawful reprisal
25 against a charter school that is operating under a charter
26 with the sponsor. As used in this subsection, with respect to
27 a sponsor or a sponsor's staff, the term "unlawful reprisal"
28 means an action taken by a sponsor or a sponsor's employee
29 that directly or indirectly impacts the operations and funding
30 of the charter school, submission of required reports, or the
31 school's compliance with the charter. The following procedures

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1 shall apply to an alleged unlawful reprisal that occurs as a
 2 consequence of an employee's direct or indirect involvement
 3 with an application to establish a charter school or a charter
 4 school's operation:

5 1. Within 60 days after the date upon which a reprisal
 6 prohibited by this subsection is alleged to have occurred, an
 7 employee or school may file a complaint with the Department of
 8 Education.

9 2. Within 3 working days after receiving a complaint
 10 under this section, the Department of Education shall
 11 acknowledge receipt of the complaint and provide copies of the
 12 complaint and any other relevant preliminary information
 13 available to each of the other parties named in the complaint,
 14 which parties shall each acknowledge receipt of such copies to
 15 the complainant.

16 3. If the Department of Education determines that the
 17 complaint demonstrates reasonable cause to suspect that an
 18 unlawful reprisal has occurred, the Department of Education
 19 shall conduct an investigation to produce a fact-finding
 20 report.

21 4. Within 90 days after receiving the complaint, the
 22 Department of Education shall provide the district school
 23 superintendent of the complainant's district and the
 24 complainant with a fact-finding report that may include
 25 recommendations to the parties or a proposed resolution of the
 26 complaint. The fact-finding report shall be presumed
 27 admissible in any subsequent or related administrative or
 28 judicial review.

29 5. If the Department of Education determines that
 30 reasonable grounds exist to believe that an unlawful reprisal
 31 has occurred, is occurring, or is to be taken, and is unable

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1 to conciliate a complaint within 60 days after receipt of the
 2 fact-finding report, the Department of Education shall
 3 terminate the investigation. Upon termination of any
 4 investigation, the Department of Education shall notify the
 5 complainant and the district school superintendent of the
 6 termination of the investigation, providing a summary of
 7 relevant facts found during the investigation and the reasons
 8 for terminating the investigation. A written statement under
 9 this paragraph is presumed admissible as evidence in any
 10 judicial or administrative proceeding.

11 6. The Department of Education shall either contract
 12 with the Division of Administrative Hearings under s. 120.65,
 13 or otherwise provide for a complaint for which the Department
 14 of Education determines reasonable grounds exist to believe
 15 that an unlawful reprisal has occurred, is occurring, or is to
 16 be taken, and is unable to conciliate, to be heard by a panel
 17 of impartial persons. Upon hearing the complaint, the panel
 18 shall make findings of fact and conclusions of law for a final
 19 decision by the Department of Education.

20
 21 It shall be an affirmative defense to any action brought
 22 pursuant to this section that the adverse action was
 23 predicated upon grounds other than, and would have been taken
 24 absent, the employee's or school's exercise of rights
 25 protected by this section.

26 (b) In any action brought under this section for which
 27 it is determined reasonable grounds exist to believe that an
 28 unlawful reprisal against an employee has occurred, is
 29 occurring, or is to be taken, the relief shall include the
 30 following:

31 1. Reinstatement of the employee to the same position

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1 held before the unlawful reprisal was commenced, or to an
2 equivalent position, or payment of reasonable front pay as
3 alternative relief.

4 2. Reinstatement of the employee's full fringe
5 benefits and seniority rights, as appropriate.

6 3. Compensation, if appropriate, for lost wages,
7 benefits, or other lost remuneration caused by the unlawful
8 reprisal.

9 4. Payment of reasonable costs, including attorney's
10 fees, to a substantially prevailing employee, or to the
11 prevailing employer if the employee filed a frivolous action
12 in bad faith.

13 5. Issuance of an injunction, if appropriate, by a
14 court of competent jurisdiction.

15 6. Temporary reinstatement to the employee's former
16 position or to an equivalent position, pending the final
17 outcome of the complaint, if it is determined that the action
18 was not made in bad faith or for a wrongful purpose, and did
19 not occur after a district school board's initiation of a
20 personnel action against the employee that includes
21 documentation of the employee's violation of a disciplinary
22 standard or performance deficiency.

23 (c) In any action brought under this section for which
24 it is determined reasonable grounds exist to believe that an
25 unlawful reprisal against a charter school has occurred, is
26 occurring, or is to be taken, the relief shall include the
27 following:

28 1. Immediate cease and desist of the sponsor's
29 policies and practices impairing the school's operations.

30 2. Compensation, if appropriate, for lost funding to
31 the school caused by the unlawful reprisal.

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1 3. Payment of reasonable costs, including attorney's
2 fees, to a substantially prevailing school.

3 4. Issuance of an injunction, if appropriate, by a
4 court of competent jurisdiction.

5 5. Issuance of an order granting immediate transfer of
6 the charter to an alternate charter school sponsor willing to
7 accept the transfer of the charter sponsorship duties.

8 (6) APPLICATION PROCESS AND REVIEW.--Charter school
9 applications are subject to the following requirements:

10 (b) A sponsor ~~district school board~~ shall receive and
11 review all applications for a charter school. Beginning with
12 the 2007-2008 school year, a sponsor ~~district school board~~
13 shall receive and consider charter school applications
14 received on or before August 1 of each calendar year for
15 charter schools to be opened at the beginning of the school
16 district's next school year, or to be opened at a time agreed
17 to by the applicant and the sponsor. A charter school is
18 exempt from the requirements of s. 1001.42(4)(f) and shall
19 mutually agree with its sponsor on the school's calendar year
20 district school board. A sponsor ~~district school board~~ may
21 receive applications later than this date if it chooses. A
22 sponsor may not charge an applicant for a charter any fee for
23 the processing or consideration of an application, and a
24 sponsor may not base its consideration or approval of an
25 application upon the promise of future payment of any kind.

26 1. In order to facilitate an accurate budget
27 projection process, a sponsor ~~district school board~~ shall be
28 held harmless for FTE students who are not included in the FTE
29 projection due to approval of charter school applications
30 after the FTE projection deadline. In a further effort to
31 facilitate an accurate budget projection, within 15 calendar

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1 days after receipt of a charter school application, a ~~district~~
2 ~~school board or other~~ sponsor shall report to the Department
3 of Education the name of the applicant entity, the proposed
4 charter school location, and its projected FTE.

5 2. In order to ensure fiscal responsibility, an
6 application for a charter school shall include a full
7 accounting of expected assets, a projection of expected
8 sources and amounts of income, including income derived from
9 projected student enrollments and from community support, and
10 an expense projection that includes full accounting of the
11 costs of operation, including start-up costs.

12 3. A sponsor ~~district school board~~ shall by a majority
13 vote approve or deny an application no later than 60 calendar
14 days after the application is received, unless the sponsor
15 ~~district school board~~ and the applicant mutually agree in
16 writing to temporarily postpone the vote to a specific date,
17 at which time the sponsor ~~district school board~~ shall by a
18 majority vote approve or deny the application. If the sponsor
19 ~~district school board~~ fails to act on the application, an
20 applicant may appeal to the State Board of Education as
21 provided in paragraph (c). If an application is denied, the
22 sponsor ~~district school board~~ shall, within 10 calendar days,
23 articulate in writing the specific reasons for its denial of
24 the charter application and shall provide the letter of denial
25 and supporting documentation to the applicant and to the
26 Department of Education supporting those reasons.

27 4. For budget projection purposes, the ~~district school~~
28 ~~board or other~~ sponsor shall report to the Department of
29 Education the approval or denial of a charter application
30 within 10 calendar days after such approval or denial. In the
31 event of approval, the report to the Department of Education

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1 shall include the final projected FTE for the approved charter
2 school.

3 5. Upon approval of a charter application, the initial
4 startup shall commence with the beginning of the public school
5 calendar for the district in which the charter is granted
6 unless the sponsor allows a waiver of this provision for good
7 cause.

8 (c) An applicant may appeal any denial of that
9 applicant's application or failure to act on an application to
10 the State Board of Education no later than 30 calendar days
11 after receipt of the sponsor's ~~district school board's~~
12 decision or failure to act and shall notify the sponsor
13 ~~district school board~~ of its appeal. Any response of the
14 sponsor ~~district school board~~ shall be submitted to the State
15 Board of Education within 30 calendar days after notification
16 of the appeal. Upon receipt of notification from the State
17 Board of Education that a charter school applicant is filing
18 an appeal, the Commissioner of Education shall convene a
19 meeting of the Charter School Appeal Commission to study and
20 make recommendations to the State Board of Education regarding
21 its pending decision about the appeal. The commission shall
22 forward its recommendation to the state board no later than 7
23 calendar days prior to the date on which the appeal is to be
24 heard. The State Board of Education shall by majority vote
25 accept or reject the decision of the sponsor ~~district school~~
26 ~~board~~ no later than 90 calendar days after an appeal is filed
27 in accordance with State Board of Education rule. The Charter
28 School Appeal Commission may reject an appeal submission for
29 failure to comply with procedural rules governing the appeals
30 process. The rejection shall describe the submission errors.
31 The appellant may have up to 15 calendar days from notice of

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1 rejection to resubmit an appeal that meets requirements of
2 State Board of Education rule. An application for appeal
3 submitted subsequent to such rejection shall be considered
4 timely if the original appeal was filed within 30 calendar
5 days after receipt of notice of the specific reasons for the
6 sponsor's ~~district school board's~~ denial of the charter
7 application. The State Board of Education shall remand the
8 application to the sponsor ~~district school board~~ with its
9 written decision that the sponsor ~~district school board~~
10 approve or deny the application. The sponsor ~~district school~~
11 ~~board~~ shall implement the decision of the State Board of
12 Education. The decision of the State Board of Education is not
13 subject to the provisions of the Administrative Procedure Act,
14 chapter 120.

15 (e) The sponsor ~~district school board~~ shall act upon
16 the decision of the State Board of Education within 30
17 calendar days after it is received. The State Board of
18 Education's decision is a final action subject to judicial
19 review in the district court of appeal.

20 (f)1. A Charter School Appeal Commission is
21 established to assist the commissioner and the State Board of
22 Education with a fair and impartial review of appeals by
23 applicants whose charter applications have been denied, whose
24 charter contracts have not been renewed, or whose charter
25 contracts have been terminated by their sponsors.

26 2. The Charter School Appeal Commission may receive
27 copies of the appeal documents forwarded to the State Board of
28 Education, review the documents, gather other applicable
29 information regarding the appeal, and make a written
30 recommendation to the commissioner. The recommendation must
31 state whether the appeal should be upheld or denied and

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1 include the reasons for the recommendation being offered. The
 2 commissioner shall forward the recommendation to the State
 3 Board of Education no later than 7 calendar days prior to the
 4 date on which the appeal is to be heard. The state board must
 5 consider the commission's recommendation in making its
 6 decision, but is not bound by the recommendation. The decision
 7 of the Charter School Appeal Commission is not subject to the
 8 provisions of the Administrative Procedure Act, chapter 120.

9 3. The commissioner shall appoint the members of the
 10 Charter School Appeal Commission. Members shall serve without
 11 compensation but may be reimbursed for travel and per diem
 12 expenses in conjunction with their service. One-half of the
 13 members must represent currently operating charter schools,
 14 and one-half of the members must represent sponsors ~~school~~
 15 ~~districts~~. The commissioner or a named designee shall chair
 16 the Charter School Appeal Commission.

17 4. The chair shall convene meetings of the commission
 18 and shall ensure that the written recommendations are
 19 completed and forwarded in a timely manner. In cases where the
 20 commission cannot reach a decision, the chair shall make the
 21 written recommendation with justification, noting that the
 22 decision was rendered by the chair.

23 5. Commission members shall thoroughly review the
 24 materials presented to them from the appellant and the
 25 sponsor. The commission may request information to clarify the
 26 documentation presented to it. In the course of its review,
 27 the commission may facilitate the postponement of an appeal in
 28 those cases where additional time and communication may negate
 29 the need for a formal appeal and both parties agree, in
 30 writing, to postpone the appeal to the State Board of
 31 Education. A new date certain for the appeal shall then be set

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1 based upon the rules and procedures of the State Board of
 2 Education. Commission members shall provide a written
 3 recommendation to the state board as to whether the appeal
 4 should be upheld or denied. A fact-based justification for the
 5 recommendation must be included. The chair must ensure that
 6 the written recommendation is submitted to the State Board of
 7 Education members no later than 7 calendar days prior to the
 8 date on which the appeal is to be heard. Both parties in the
 9 case shall also be provided a copy of the recommendation.

10 (7) CHARTER.--The major issues involving the operation
 11 of a charter school shall be considered in advance and written
 12 into the charter. The charter shall be signed by the governing
 13 body of the charter school and the sponsor, following a public
 14 hearing to ensure community input.

15 (b)1. A charter may be renewed provided that a program
 16 review demonstrates that the criteria in paragraph (a) have
 17 been successfully accomplished and that none of the grounds
 18 for nonrenewal established by paragraph (8)(a) has been
 19 documented. In order to facilitate long-term financing for
 20 charter school construction, charter schools operating for a
 21 minimum of 2 years and demonstrating exemplary academic
 22 programming and fiscal management shall receive ~~are eligible~~
 23 ~~for~~ a 15-year charter renewal. Such long-term charter is
 24 subject to annual review and may be terminated during the term
 25 of the charter.

26 2. The 15-year charter renewal ~~that may be granted~~
 27 pursuant to subparagraph 1. shall be granted to a charter
 28 school that has received a school grade of "A" or "B" pursuant
 29 to s. 1008.34 in 3 of the past 4 years and is not in a state
 30 of financial emergency or deficit position as defined by this
 31 section. Such long-term charter is subject to annual review

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1 and may be terminated during the term of the charter pursuant
2 to subsection (8).

3 (c) A charter may be modified during its initial term
4 or any renewal term upon the recommendation of the sponsor or
5 the charter school governing board and the approval of both
6 parties to the agreement. The terms of the charter, as agreed
7 upon by both parties, shall be in effect for the duration of
8 the contract.

9 (9) CHARTER SCHOOL REQUIREMENTS.--

10 (1) The governing body of the charter school shall
11 report its progress annually to its sponsor, which shall
12 forward the report to the Commissioner of Education at the
13 same time as other annual school accountability reports. The
14 Department of Education shall develop a uniform, on-line
15 annual accountability report to be completed by charter
16 schools. This report shall be easy to utilize and contain
17 demographic information, student performance data, and
18 financial accountability information. A charter school shall
19 be allowed to directly correct school data and information in
20 the on-line accountability report. The sponsor shall review
21 the report before final submission to the department ~~not be~~
22 ~~required to provide information and data that is duplicative~~
23 ~~and already in the possession of the department.~~ The
24 Department of Education shall include in its compilation a
25 notation if a school failed to file its report by the deadline
26 established by the department. The report shall include at
27 least the following components:

- 28 1. Student achievement performance data, including the
29 information required for the annual school report and the
30 education accountability system governed by ss. 1008.31 and
31 1008.345. Charter schools are subject to the same

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1 | accountability requirements as other public schools, including
 2 | reports of student achievement information that links baseline
 3 | student data to the school's performance projections
 4 | identified in the charter. The charter school shall identify
 5 | reasons for any difference between projected and actual
 6 | student performance.

7 | 2. Financial status of the charter school which must
 8 | include revenues and expenditures at a level of detail that
 9 | allows for analysis of the ability to meet financial
 10 | obligations and timely repayment of debt.

11 | 3. Documentation of the facilities in current use and
 12 | any planned facilities for use by the charter school for
 13 | instruction of students, administrative functions, or
 14 | investment purposes.

15 | 4. Descriptive information about the charter school's
 16 | personnel, including salary and benefit levels of charter
 17 | school employees, the proportion of instructional personnel
 18 | who hold professional or temporary certificates, and the
 19 | proportion of instructional personnel teaching in-field or
 20 | out-of-field.

21 | (17) FUNDING.--Students enrolled in a charter school,
 22 | regardless of the sponsorship, shall be funded as if they are
 23 | in a basic program or a special program, the same as students
 24 | enrolled in other public schools in the school district.
 25 | Funding for a charter lab school shall be as provided in s.
 26 | 1002.32.

27 | (b) The basis for the agreement for funding students
 28 | enrolled in a charter school shall be the sum of the school
 29 | district's operating funds from the Florida Education Finance
 30 | Program as provided in s. 1011.62 and the General
 31 | Appropriations Act, including gross state and local funds,

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1 discretionary lottery funds, and funds from the school
2 district's current operating discretionary millage levy;
3 divided by total funded weighted full-time equivalent students
4 in the school district; multiplied by the weighted full-time
5 equivalent students for the charter school. Charter schools
6 whose students or programs meet the eligibility criteria in
7 law shall be entitled to their proportionate share of
8 categorical program funds included in the total funds
9 available in the Florida Education Finance Program by the
10 Legislature, including transportation. Total funding for each
11 charter school shall be recalculated during the year to
12 reflect the revised calculations under the Florida Education
13 Finance Program by the state and the actual weighted full-time
14 equivalent students reported by the charter school during the
15 full-time equivalent student survey periods designated by the
16 Commissioner of Education. Florida Education Finance Program
17 funds for a charter school shall be distributed monthly to the
18 charter school by the sponsor within 10 days after receipt
19 from the state.

20 (c) If the sponsor ~~district school board~~ is providing
21 programs or services to students funded by federal funds, any
22 eligible students enrolled in charter schools in the school
23 district shall be provided federal funds for the same level of
24 service provided students in the schools operated by the
25 district school board. Pursuant to provisions of 20 U.S.C.
26 8061 s. 10306, all charter schools shall receive all federal
27 funding for which the school is otherwise eligible, including,
28 but not limited to, Title I funding, Individuals with
29 Disabilities Education Act funding, and all other federal
30 funds, not later than 5 months after the charter school first
31 opens and within 5 months after any subsequent expansion of

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1 enrollment.

2 (18) FACILITIES.--

3 (d) As a public school, a charter school is exempt
4 from all fees and assessments, including, but not limited to,
5 fees and assessments for building permits except as provided
6 in s. 553.80, building and occupational licenses, fire
7 inspections, and health inspections and impact fees, service
8 availability fees, and assessments for special benefits.

9 ~~Charter school facilities are exempt from assessments of fees~~
10 ~~for building permits, except as provided in s. 553.80, fees~~
11 ~~for building and occupational licenses, and impact fees or~~
12 ~~service availability fees.~~

13 (e) If a district school board facility or property is
14 available because it is surplus, marked for disposal, or
15 otherwise unused, it shall be provided for a charter school's
16 use on the same basis as it is made available to other public
17 schools in the district. When a school district closes a
18 public school, the property and facilities shall first be made
19 available within 60 days, for lease or purchase, to charter
20 schools within the district to be used for educational
21 purposes. A charter school receiving property from the school
22 district may not sell or dispose of such property without
23 written permission of the school district. Similarly, for an
24 existing public school converting to charter status, no rental
25 or leasing fee for the existing facility or for the property
26 normally inventoried to the conversion school may be charged
27 by the district school board to the parents and teachers
28 organizing the charter school. The charter school shall agree
29 to reasonable maintenance provisions in order to maintain the
30 facility in a manner similar to district school board
31 standards. The Public Education Capital Outlay maintenance

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1 funds or any other maintenance funds generated by the facility
2 operated as a conversion school shall remain with the
3 conversion school.

4 Section 4. The Legislature finds that a proper and
5 legitimate state purpose is served when employees and retirees
6 of the state and its political subdivisions, as well as the
7 dependents, survivors, and beneficiaries of such employees and
8 retirees, are extended the basic protections afforded by
9 governmental retirement systems that provide fair and adequate
10 benefits and that are managed, administered, and funded in an
11 actuarially sound manner as required by s. 14, Art. X of the
12 State Constitution and part VII of chapter 112, Florida
13 Statutes. Therefore, the Legislature determines and declares
14 that the amendment of s. 121.091, Florida Statutes, by this
15 act fulfills an important state interest.

16
17 (Redesignate subsequent sections.)

18
19

20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 1, line 14, after the semicolon,

23

24 insert:

25 amending s. 1002.33, F.S., relating to charter
26 schools; prohibiting unlawful reprisal against
27 a charter school by the school's sponsor;
28 providing for relief of a charter school;
29 providing duties of a sponsor relating to the
30 charter school application process and review;
31 revising provisions relating to charter school

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1 renewal terms; providing for monthly
2 distribution of funds to charter schools;
3 revising charter school facility fee
4 exemptions; providing for availability to
5 charter schools of public school property and
6 facilities; providing a declaration of
7 important state interest;

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