

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HBs 1259 & 1301 PCSCB for HB 1259 & HB 1301 Education

SPONSOR(S): Schools & Learning Council; Flores and Legg

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council	12 Y, 2 N	White/Eggers	Cobb
1) Policy & Budget Council		Martin	Hansen
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Council Substitute for HBs 1259 and 1301 amends law relating to the Deferred Retirement Option Program (DROP). Under the bill, charter school instructional personnel and public school teachers for certain prekindergarten students, if authorized by their employer, may extend DROP participation up to 96 months.

The bill also amends law regulating charter schools and charter technical career centers (CTCCs) by:

- Requiring use of Department of Education (DOE)-developed applications and evaluation instruments by charter schools and CTCCs and requiring the DOE to develop CTCC applicant training.
- Providing that a grant or denial of district exclusivity to authorize charter schools lasts four fiscal years.
- Reducing the requirements for a 15-year charter renewal option.
- Allowing students to receive an interdistrict transfer to a charter school when good cause is shown.
- Providing parents and the public with greater student performance information when a charter school does not receive a school grade or a school improvement rating.
- Prohibiting nepotism in charter schools and CTCCs and establishing standards of conduct for governing board members, related to gifts, business transactions, and conflicting employment relationships.
- Providing indicators of risk for financial difficulty for charter schools and CTCCs, requiring implementation of corrective action plans when indicators exist, and requiring the Commissioner of Education to determine when charter schools or CTCCs are in a state of financial emergency.
- Revising provisions relating to the timing of state and federal funding payments to charter schools.
- Requiring each school board to determine an equitable amount of two-mill revenue for charter schools within its district and providing charter schools with certain class size reduction fixed capital outlay funding.

The Florida Retirement System will not experience a negative impact due to the increased DROP provisions of the bill. However, increasing the participation time for an additional three years will increase payroll costs to the employer, since the DROP payroll contribution rate is greater than the normal cost rate. The bill will also reduce the total amount of two-mill revenue and class size reduction fixed capital outlay funds available to traditional public schools within the school district, while increasing the amount of this revenue that is received by charter schools. The fiscal impact of this provision on districts and charter schools is indeterminate, however, as the amount that each school board will determine to be "equitable" is unknown. The administrative workload on DOE associated with the bill is expected to have an insignificant fiscal impact.

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

STORAGE NAME: h1259a.PBC.doc
DATE: 4/11/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty-- The bill subjects charter school and charter technical career center employees to statutory provisions prohibiting nepotism and conflicts of interests by state officers and employees.

Empower Families-- The bill requires charter schools that do not receive a school grade and charter alternative schools that do not receive a school improvement rating to report student performance comparison data to the parents of students enrolled in a charter school, the district in which the charter school is located, and the charter school governing board.

B. EFFECT OF PROPOSED CHANGES:

Florida Retirement System & Public School Personnel

Chapter 121, F.S., establishes the Florida Retirement System (FRS). The FRS is administered by the Division of Retirement within the Department of Management Services,¹ and is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.² It also has participating employees from 151 cities and 186 independent special districts.³

Public school instructional personnel⁴ are classified as Regular Class members of the FRS.⁵ The normal retirement date for a Regular Class member is attained when the employee completes at least six years of creditable service and reaches 62 years of age, or completes 30 years of creditable service, regardless of age.⁶

A charter school may elect to be either a private or public employer. If it is a public employer, it may participate in the FRS by applying for "covered group" status under s. 121.021(34), F.S. If approved, its employees are compulsory members of the FRS.⁷

DROP: In 1997, the Legislature established the Deferred Retirement Option Program (DROP).⁸ The DROP allows a retirement-eligible employee to continue working while the employee's monthly retirement benefit is placed in the System Trust Fund where it accumulates tax-deferred interest. Upon termination of employment, the participant receives the total DROP amount, and also begins to receive original normal retirement benefits.⁹

¹ Section 121.025, F.S.

² Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/>>.

³ *Id.*

⁴ Current Florida law defines "instructional personnel" to include personnel such as (a) classroom teachers; (b) student personnel service staff such as guidance counselors, social workers, career specialists, and school psychologists; (c) librarians/media specialists; (d) other instructional staff members such as such as primary specialists, learning resource specialists, instructional trainers, and certain adjunct educators; and (e) education paraprofessionals. This definition encompasses personnel serving grades kindergarten through 12. Section 1012.01(2)(a)-(e), F.S.

⁵ Section 121.021(12), F.S.

⁶ Section 121.021(29)(a), F.S.

⁷ Section 1002.33(12)(i), F.S. (Section 1002.34(12)(e), F.S., provides similar authorization to charter technical career centers).

⁸ Chapter 97-154, L.O.F.

⁹ Section 121.091(13), F.S.

All state employees, including school district employees, who are eligible to retire, have the option of participating in the DROP.¹⁰ The standard DROP period is a maximum of 60 calendar months; however, the following personnel may extend the DROP period to a maximum of 96 months:

- Instructional personnel of the Florida School for the Deaf and the Blind who are authorized to extend the DROP period by its Board of Trustees; and
- K-12 instructional personnel employed by a district school board who are classified as classroom teachers; student personnel service staff; librarians/media specialists; or other instructional staff and who are authorized to extend the DROP period by the district school superintendent.¹¹

School district prekindergarten instructional personnel are eligible to participate in the DROP, but are not eligible for a DROP extension. Likewise, charter school employees are eligible to participate in the DROP, but are not eligible for a DROP extension.

Effect of Bill: The bill amends s. 121.091(13), F.S., to allow the following personnel to extend their participation in the DROP up to 96 months:

- Classroom teachers for prekindergarten students funded under s. 1011.62, F.S., which governs Florida Education Finance Program (FEFP) operating funds for public schools, if authorized by the district school superintendent.
- Instructional personnel and classroom teachers for prekindergarten students funded under s. 1011.62, F.S., who are employed by a charter school that participates in the FRS, if authorized by the governing board.

With regard to prekindergarten teachers, the bill's requirement that they be teachers of students funded under s. 1011.62, F.S., will result in only authorizing prekindergarten teacher of students with disabilities to participate in the DROP extension. Voluntary prekindergarten teachers in public or charter schools will not receive this authorization as their students are not funded under that section.

The bill also removes redundant and obsolete text in s. 121.091(13), F.S.

Florida Charter Schools and Charter Technical Career Centers

Charter Schools: In 1996, the Legislature enacted s. 228.056, F.S., Florida's first charter school law.¹² Charter schools are nonsectarian, public schools that operate under a performance contract, referred to as a "charter," with its sponsor. The charter frees the school from many regulations applicable to traditional public schools in order to encourage the use of innovative learning methods, while holding the school accountable for academic and financial results.¹³

Charter schools currently in existence are sponsored by a district school board or, in the case of a charter lab school, by a state university.¹⁴ In 2006, the Legislature created a new option for sponsorship with the establishment of the Florida Schools of Excellence Commission (FSEC).¹⁵ In a district that has not been granted the exclusive authority to approve charter schools,¹⁶ the FSEC may sponsor charter schools and approve municipalities, state postsecondary institutions, and regional educational consortia to act as charter school cosponsors.¹⁷

¹⁰ Section 121.091(13)(a), F.S.

¹¹ *Id.*

¹² Chapter 96-186, L.O.F., *initially codified* as s. 228.056, F.S., *redesignated in 2002* as s. 1002.33, F.S.

¹³ Section 1002.33(1), (2), (7), (9) (16), and (17), F.S.

¹⁴ Section 1002.33(5)(a), F.S.

¹⁵ Chapter 2006-302, L.O.F., *codified at* s. 1002.335, F.S. (providing that the FSEC is an independent state-level authorizer of charter schools, appointed by the State Board of Education based upon recommendations from the Governor, Senate President, and House Speaker).

¹⁶ For Fiscal Year 2007-2008, the State Board of Education granted exclusivity to three districts: Orange, Polk, and Sarasota County School Boards.

¹⁷ Section 1002.335(4)(a), F.S.

Since 1996, the number of charter schools in Florida has grown from five to 358 during the 2007-2008 school year. These schools are currently serving 104,319 students.¹⁸ Charter schools are open to all students residing within the district. Enrollment preference may be given to siblings of current charter school students or children of a charter school employee or governing board member. A charter school may limit enrollment¹⁹ in order to target specified student populations.²⁰

Charter Technical Career Centers: A charter technical career center (CTCC) is a public school or a public technical center that is operated under a charter granted by a district school board, a community college board of trustees, or a combination of one or more of each of these entities. Like charter schools, CTCC operations are governed by a charter. Among other things, the charter must establish policies for measuring student performance, reporting of student data, and conflicts of interest. Three CTCCs have been established since the CTCC statute was enacted in 1999: (a) First Coast Technical Institute, St. John's County, 1999; (b) Flagler/Volusia Advanced Technology Center, Volusia County, 2001; and (c) Lake Technical Center, Lake County, 2004.²¹

Application Process and Evaluation: 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 Florida law. The application must contain statutorily specified information and must be submitted by August 1st of each year, unless the sponsor chooses a later date.²²

The Department of Education (DOE) is required to develop a model charter school application, charter agreement, and charter renewal document. Sponsors are encouraged, but not required to use these documents.²³ The DOE must also offer training and technical assistance to charter school applicants, which addresses business plan development, startup cost estimation, enrollment projection, and available state and federal funding.^{24 25} Applicants are not required to attend training.

Statute does not specify a process for evaluating charter school applications; however, the DOE has developed and posted an evaluation process on its website. It provides that each charter school application should be reviewed, and each applicant should be interviewed, by an evaluation team comprised of sponsor staff and/or external experts who collectively have education, business, non-profit, financial, legal, and organizational expertise. The team is to rate the applicant using the DOE Application Evaluation Instrument and to submit its recommendations to the sponsoring board.²⁶

For CTCCs, statute provides that a district school board or community college board of trustees, or a consortium of one or more of each, may file a CTCC application which must address statutorily specified information.²⁷ Statute governing CTCCs does not require the DOE to develop a model application for a CTCC, training for CTCC applicants, or an evaluation instrument.

¹⁸ Online Charter School Directory, DOE, January 2008, *available at*:

http://www.floridaschoolchoice.org/information/charter_schools/files/fast_facts_charter_schools.pdf/

¹⁹ Section 1002.33(10), F.S.

²⁰ Demographically, charter school student populations are very similar to traditional public school student populations, with the exception that traditional public schools serve a larger percentage of free or reduced price lunch eligible students (45.8 percent) than charter schools (35.2 percent). Data provided by the DOE based on Survey Two final data for the 2006-2007 school year.

²¹ Section 1002.34, F.S.

²² Section 1002.33(3)(a) and (6)(a), F.S.

²³ Section 1002.33(21), F.S.

²⁴ Ch. 2006-190, s. 1, L.O.F., *codified at* s. 1002.33(6)(g) and (21), F.S.

²⁵ The DOE conducted a charter school applicant training most recently on July 17, 2007, for applicants wishing to start schools in the 2008-2009 school year. Such trainings are made accessible year round and statewide via the web and, according to DOE representatives, will be offered annually each summer. See DOE, Office of Independent Education and Parental Choice, Training Opportunities *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/ Additionally, some districts provide their own applicant training.

²⁶ See DOE, Office of Independent Education and Parental Choice, Overview of the Florida Charter School Application Process and Florida Charter School Application Evaluation Instrument *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/

²⁷ Section 1002.34(4), F.S.

Effect of bill: The bill adds requirements for: (a) charter school and CTCC applicants to use an application developed by the DOE; (b) the DOE to develop training and technical assistance for CTCC applicants; and (c) charter school and CTCC sponsors to evaluate applications using an evaluation instrument developed by the DOE.

School District Sponsorship Exclusivity: On or before March 1st of each year, a district school board may present a written resolution to the SBE indicating that it wishes to retain the exclusive authority to sponsor charter schools within its boundaries.²⁸ If granted, the FSEC may not approve charter schools within the district.²⁹

A party may challenge the SBE's *grant* of exclusive authority by filing a notice of challenge with the SBE that describes the reasons for the challenge within 30 days following the SBE's decision. The SBE's decision to *grant or deny* exclusivity is not subject to challenge under the Administrative Procedure Act; however, this decision is final action subject to review by the district court of appeal.³⁰

Exclusivity may not be granted to a district that has never approved a charter school, unless it has never received an approvable application.³¹ Exclusivity is to be granted if the SBE determines that the district has provided fair and equitable treatment to its charter schools during the past four years. To make this determination, the SBE is to consider input from charter schools within the district and a district resolution that addresses statutorily specified factors.³² SBE rule provides that a grant of exclusivity lasts from July 1st of the year in which granted until June 30th of the next calendar year.³³

For Fiscal Year (FY) 2007-2008, 41 school districts filed applications for exclusivity with the SBE. Three districts withdrew their applications prior to consideration³⁴ and the remaining 38 applications were considered by the SBE during its September and October 2007, meetings. The SBE granted exclusivity to three districts,³⁵ denied exclusivity to eight districts on grounds that they did not have a history of sponsoring charter schools,³⁶ and denied exclusivity to the remaining 27 districts on grounds that they had not satisfied 100 percent of the factors constituting fair and equitable treatment of charter schools.³⁷

Effect of Bill: The bill eliminates the necessity for districts to annually apply for exclusivity. Instead, the bill provides that school districts may apply on March 1, 2008, to the SBE for exclusivity in FY 2008-2009. A grant or denial of exclusivity at that time will last for four FYs. Thereafter, applications for exclusivity may not be made again until the March 1st preceding FY 2012-2013, and every four FYs thereafter.

Fifteen-Year Charter Renewal: In order to facilitate long-term financing for charter school construction, a sponsor:

1. May grant a 15-year charter renewal to a charter school that: (a) has operated for at least three years; and (b) demonstrates exemplary academic programming and fiscal management. Such a long-term charter is subject to annual review and may be terminated during its term.³⁸

²⁸ Section 1002.335(5)(c), F.S.

²⁹ Section 1002.335(5)(i), F.S.

³⁰ Section 1002.335(5)(f), F.S.

³¹ Section 1002.335(5)(g), F.S.

³² Section 1002.335(5)(e), F.S.; Rule 6A-6.0783, F.A.C.

³³ Rule 6A-6.0783, F.A.C.

³⁴ Applications were withdrawn by the school districts in Brevard, Citrus, and Santa Rosa Counties.

³⁵ Orange, Polk, and Sarasota County School Boards.

³⁶ Baker, Charlotte, Clay, DeSoto, Gilchrist, Hardee, Jefferson, and Suwannee County School Boards.

³⁷ Bay, Broward, Collier, Duval, Escambia, Flagler, Gadsden, Hernando, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Martin, Miami-Dade, Monroe, Nassau, Osceola, Palm Beach, Pasco, Pinellas, St. Johns, St. Lucie, Sumter, Volusia, and Wakulla.

³⁸ Section 1002.33(7)(b)1., F.S.

2. **Must** grant a 15-year charter renewal to a charter school that meets the requirements expressed in Number 1. above, and that receives a school grade of “A” or “B” in three out of four years.³⁹ If granted, a long-term charter is subject to annual review and may be terminated for specified reasons under s. 1002.33(8), F.S., that include failure to participate in the state’s education accountability system, failure to meet generally accepted standards of fiscal management, a violation of law, or other good cause.⁴⁰

Effect of bill: The bill reduces the school grade requirements necessary to trigger the mandatory offering of a 15-year charter renewal option. Under the bill, such option must be offered to a charter school that: (a) has operated for at least three years; (b) has received a school grade of at least a “C” during the past three years; and (c) demonstrates exemplary fiscal management. The bill retains the provision that such a long-term charter renewal is subject to annual review and may be terminated for specified reasons under s. 1002.33(8), F.S., during its term.

Annual Progress Reports: Current law requires the DOE to develop an online accountability report to be completed by charter schools. It must be easy to utilize and contain demographic information, student performance data, financial accountability information, facilities information, and personnel data. Statute prohibits the DOE from requiring a charter school to provide information that is duplicative and already in its possession.⁴¹ This online report must be annually provided to the DOE.

Effect of Bill: The bill deletes the provision that prohibits the DOE from requiring a charter school to provide information that is duplicative or already in its possession. Further, the bill provides that the charter school must be able to directly access, complete, and correct school data and information in the online accountability report, and it requires the sponsor to review the report before its final submission to the DOE.

Enrollment Eligibility: District school boards are statutorily authorized to enter into interdistrict agreements with adjoining districts to establish school attendance areas composed of territory lying within each district.⁴² Charter schools are statutorily authorized to enroll students who reside in the school district where the school is located, as well students who are covered by an interdistrict agreement.⁴³ With regard to charter school students, statute further states that an **eligible** student shall be allowed an interdistrict transfer to a charter school based on good cause.⁴⁴

Effect of Bill: The bill removes the authorization for students to attend a charter school pursuant to an interdistrict agreement; instead, it provides that **any** student, not only “eligible students” as in current law, shall be allowed an interdistrict transfer to attend a charter school based on “good cause.” The term “good cause” is defined by the bill as including, but not limited to, geographic proximity to a charter school in a neighboring school district. Accordingly, under the bill, it appears that, regardless of the existence of an interdistrict agreement, any student evidencing “good cause” may receive an interdistrict transfer to attend a school in a district other than his/her district of residence.

School Grades: Charter schools are subject to the same academic performance accountability requirements applicable to traditional public schools. Thus, charter school students must take the Florida Comprehensive Assessment Test (FCAT) and charter schools are graded annually.⁴⁵

Florida’s School Grading System requires the Commissioner of Education to prepare an annual performance report for each school and school district based primarily on student FCAT performance.⁴⁶

³⁹ Section 1002.33(7)(b)2., F.S.

⁴⁰ *Id.*

⁴¹ Section 1002.33(9)(l), F.S.

⁴² Section 1001.42(4), F.S.

⁴³ Section 1002.33(10)(a), F.S.

⁴⁴ *Id.*

⁴⁵ Section 1002.33(9)(l)1., F.S.

⁴⁶ Section 1008.34(1) and (3), F.S.

A school's grade is determined based on student achievement scores, student learning gains, and improvement of the lowest quartile of students.⁴⁷ Schools are graded on a scale of "A" to "F."⁴⁸ Alternative schools⁴⁹ receive a school improvement rating, but may elect to receive a school grade.⁵⁰

In order to receive a grade, a school must have at least 30 students with valid FCAT reading and math scores from the current and previous year.⁵¹ Schools that do not meet these criteria do not receive a school grade. Further, a school that tests fewer than 90 percent of its students may receive a school grade of "I," or "incomplete," unless the DOE determines that its data accurately reflects that school's progress.⁵² According to DOE representatives, these rules were established in order to ensure that a school's grade was based on a statistically valid sample size.⁵³

School Grades and School Improvement Ratings: The bill provides reporting requirements for the DOE and each charter school that does not receive a school grade or a school improvement rating, to the extent that the information does not compromise a student's privacy.

The DOE must provide charter schools that are not graded or rated, but which serve at least ten students who participate in the statewide assessment, with student performance data, including student learning gains. Each charter school must report this data to the parents of a student enrolled in a charter school, the school district, and the governing board. Additionally, the DOE is required to compare the performance data of: (a) each charter school that is not graded or rated with that of traditional public schools in the district where the charter school is located and other charter schools in the state; and (b) each charter alternative school that is not graded or rated with all alternative schools in the state. The performance and comparison data must be made available by the charter school to the public.

Nepotism and Conflicts of Interests: Florida's charter school statute does not regulate charter school governing board members or employees regarding conflicts of interest. Depending on the school's organizational structure, its governing board and/or employees may be subject to various state and federal laws governing conflicts of interest for public officers and employees or nonprofit organizations.

If the charter school is operated by a municipality, the Code of Ethics for Public Officers and Employees in ch. 112, F.S., governs. Under the Code, public officers, agency employees, and local government attorneys are prohibited from: using their position for private gain; purchasing, renting, or leasing any realty, goods or services for their agency from a business entity in which they have a material interest; and entering into business relationships with an entity that is regulated by or does business with the agency for which they serve.⁵⁴

If the charter school is operated by a nonprofit entity, Florida law provides that transactions between a nonprofit corporation and one or more of its directors, or to entities controlled or influenced by a director, may be void or voidable unless: (a) the relationship or interest is disclosed or known to the board of directors; (b) the relationship or interest is disclosed or known to the members entitled to vote on the contract or transaction; or (c) the contract or transaction is fair and reasonable to the corporation at the time it is authorized.⁵⁵

⁴⁷ Section 1008.34(3)(a), F.S.

⁴⁸ Section 1008.34(2), F.S.

⁴⁹ An alternative school provides dropout prevention and academic intervention under s. 1003.53, F.S.

⁵⁰ Section 1008.341, F.S.

⁵¹ Rule 6A-1.09981(3)(c) and (4)(a) and (b), F.A.C.

⁵² Rule 6A-1.09981(9)(b), F.A.C.

⁵³ Telephone conference with DOE representatives in July 2007.

⁵⁴ Section 112.313, F.S.

⁵⁵ Section 617.0832(1), F.S.

Effect of Bill – In order to more clearly and uniformly address nepotism and conflict of interest issues for charter schools and CTCCs, the bill amends provisions of charter school law to specifically identify prohibitions that will apply to all charter school and CTCC governing board members and personnel.

Nepotism: As a condition of receiving a charter, the bill requires charter school and CTCC applicants to disclose the names of relatives that will be employed by the charter school or CTCC. This requirement for full disclosure is also a part of the charter.

The bill prohibits personnel in charter schools and CTCCs that are operated by a private entity from supervising a relative, unless the governing board of the charter school unanimously waives this prohibition. Such waiver must be annually reported in by the governing board to the sponsor and reported in the school's annual report to the DOE. For purposes of this provision, the bill defines the terms:

- “Charter school personnel” as meaning a charter school owner, president, chair or member of the governing board, superintendent, principal, assistant principal, or any other personnel with the authority to appoint, employ, promote, or advance the school’s employees.
- “Relative” to mean a father, mother, son, daughter, brother, sister, husband, wife, half brother, half sister, and specified in-law and step-relatives.
- “Supervise” to mean the appointment, employment, promotion, or advancement of an individual or recommendation of the appointment, employment, promotion, or advancement of an individual.

The nepotism prohibitions in s. 112.3135, F.S., apply to charter school personnel in schools operated by municipalities or other public entities. A violation of s. 112.3135, F.S., subjects these personnel to the penalties specified in s. 112.317, F.S.

Conflicts of Interest: Members of the governing board of a charter school or CTCC, including those operated by private entities, are subject to the same requirements that apply to public employees for the solicitation and acceptance of gifts, business transactions, and conflicting employment or contractual relationships in s. 112.313(2), (3) and (7), F.S. The bill also allows a board member, as current law allows a public employee or officer, to:

- Seek a waiver from the governing board, under s. 112.313(12), F.S., after providing full disclosure of a transaction or relationship, from the provisions for business transactions and conflict of interest.
- Be subject to the exemption in s. 112.313(15), F.S., which authorizes a public officer, under specified circumstances, to maintain an employment relationship with a tax exempt organization that does business with the officer’s agency.

The bill also subjects board members for all charter schools and CTCCs to the voting conflict requirements in s. 112.3143, F.S. Additionally, board members of charter schools or CTCCs operated by public entities are also subjected to the requirements for public disclosure of financial interests in s. 112.3144, F.S. A violation of any of these provisions may result in subjecting board members to the penalties in s. 112.317, F.S., which include: fines; impeachment, removal, or suspension from office for officers; dismissal from employment; and reduction in, or forfeiture of, salary.

Financial Emergencies Act: The Local Governmental Entity and District School Board Financial Emergencies Act contained in Part V of ch. 218, F.S., is designed to promote financial responsibility, provide assistance for meeting essential services without interruption, and improve local financial management procedures for local governmental entities, school boards, and charter schools.⁵⁶

⁵⁶ Sections 218.50-218.504, F.S.

Under the Act, a local government entity, charter school, and district school board must notify the Legislative Auditing Committee, and as appropriate, the Governor, Commissioner of Education, or sponsor when any of the following conditions occur or will occur if action is not taken:

- Failure to pay certain debts when due, as a result of a lack of funds;
- Failure to transfer at the appropriate time due to lack of funds: employee income tax or employer and employee contributions for social security or benefit plans;
- Failure for one pay period to pay due to lack of funds: employee wages and salaries or retirement benefits; or
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial.⁵⁷

Also, when one or more of the above conditions occur for:

- A local government entity or a district school board, the Governor or the Commissioner, as appropriate, must contact the entity to determine what actions have been taken to resolve the condition and whether state assistance is needed. If assistance is needed, the local government entity or district school board is considered to be in a state of financial emergency.
- A charter school, the sponsor must contact the governing body to determine what actions have been taken to resolve the condition. The sponsor *may* require a financial recovery plan to be prepared by the governing body, which plan must prescribe actions to eliminate the condition.⁵⁸

The charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., adds that if an audit for a charter school reveals a state of financial emergency as defined in s. 218.503, F.S., it must be provided to the governing board within seven days and the sponsor and DOE must also be notified. The term “state of financial emergency,” however, is not defined in s. 218.503, F.S. The charter school statute further states that when a charter school is found to be in a state of financial emergency by a CPA or auditor that the school must file a financial recovery plan with the sponsor.

Accordingly, it appears that statute requires the CPA or auditor to determine when a charter school is in a state of financial emergency, without specifically citing the criteria upon which the CPA or auditor is to make that determination. In contrast, there must be a finding by the Governor for a local government entity or by the Commissioner of Education for a district school board that the entity or board needs state financial assistance before it is deemed to be in a state of financial emergency.

The DOE is statutorily required to develop guidelines for the development of financial recovery plans.⁵⁹ These guidelines were published in March 2007.⁶⁰

Effect of Bill: The bill adds CTCCs to the Financial Emergencies Act; thus, CTCCs will be subject to the Act’s requirements in the same manner as local government entities, school boards, and charter schools.

Further, the bill strikes the conflicting language discussed above, which is contained in the charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., and which references audit findings of an undefined state of financial emergency and requires financial recovery plans under imprecise circumstances. To better define a process for identifying charter schools and CTCCs that are experiencing financial difficulties, the bill creates s. 1002.345, F.S.

Under the new section, the following indicators of risk for financial difficulty are specified:

⁵⁷ Section 218.503(1), F.S.

⁵⁸ Section 218.503(3) and (4), F.S.

⁵⁹ Section 218.503(4) and 1002.33(7)(a)10., F.S.

⁶⁰ See *Technical Assistance Paper: Charter School Financial Recovery Plan*, DOE, No. 2007-12, March 2007.

- An end-of-year financial deficit greater than the school's combined cash and accounts receivable balances.
- A substantial decline, i.e., greater than 25 percent, in student enrollment without a commensurate reduction in expenses.
- An outstanding debt in excess of land, property, and equipment balances.
- Failure to meet specified statutory financial reporting requirements.⁶¹
- Inadequate financial controls or other adverse financial conditions not corrected in 120 days as identified through an annual audit.
- Negative financial findings in reports by the Auditor General or the Office of Program Policy Analysis and Government Accountability.

When one of these indicators occurs, a charter school or CTCC is subject to an expedited review by the sponsor and the sponsor and governing board must develop, and file with the Commissioner of Education and the FSEC, a corrective action plan. If the sponsor and board are unable to agree on the components or necessity of the plan, the State Board of Education (SBE) determines the plan.

The governing board is required to monitor the corrective action plan and annually report on its implementation status to the sponsor. If a governing board fails to implement the plan within one year, the SBE must prescribe steps for compliance. The chair of the governing board must appear before the SBE to report on the status of the plan and its effect on resolving the financial difficulties.

Further, the new section and s. 218.503(4), F.S., as amended by the bill, requires the Commissioner of Education to determine if a charter school or a CTCC needs a financial recovery plan when an audit reveals a financial emergency condition specified in s. 218.503(1), F.S., or a deficit fund balance or deficit net assets. If the Commissioner determines that a plan is needed, the charter school or CTCC is considered to be in a state of financial emergency. The governing board is responsible for annually reporting on the status of plan implementation to the sponsor.

The DOE is required to provide technical assistance to charter schools, CTCCs, governing boards, and sponsors in developing corrective action and financial recovery plans.

Finally, the bill specifies that a sponsor may choose to not renew or terminate a charter if the school or CTCC fails to correct the deficiencies in a corrective action plan within one year or if it exhibits one or more financial emergency condition specified in s. 218.503(1), F.S., for two consecutive years.

State Funding for Charter Schools: Charter school students are required to be funded in the same manner as students in traditional public schools.⁶² Operating funds for charter schools are provided via the FEFP including the district's gross state and local funds, discretionary lottery funds, and funds from the district's current operating discretionary tax levies. Each charter school must report its enrollment to its sponsor and the sponsor must include this enrollment in the district's report of student enrollment.⁶³ Annually, charter schools must complete and submit a Charter School Revenue Estimate Worksheet that is used to determine its share of FEFP funds.⁶⁴

Section 1002.33(17)(d), F.S., states that operating funds from the FEFP are to distributed by the school district to the charter school. A school district may distribute funds for up to three months based on projected FTE student membership. Thereafter, FTE membership surveys must be used monthly to determine the amount of the charter school's funding distribution. Funding distributions must be made no later than 10 working days after the school district receives state funding. If a warrant for payment is not timely issued, the school district is required to pay interest to the charter school in the amount of

⁶¹ The bill also adds a requirement in s. 1002.33(9)(g), F.S., for charter schools to provide monthly financial statements their sponsors.

⁶² Section 1002.33(17), F.S.

⁶³ Section 1002.33(17)(a), F.S.

⁶⁴ See Charter School Revenue Estimate Worksheet and Instruction *available at* <http://www.fldoe.org/fefp/chartinst.asp>.

one percent per month calculated on a daily basis from the first day that the payment is late until the payment is made.⁶⁵

Effect of Bill: The bill amends s. 1002.33(17)(b), F.S., to reiterate that state FEFP funds for a charter school must be distributed to the charter school by the district school board within 10 days after receipt from the state.

Federal Funding for Charter Schools: A charter school is entitled to receive its proportionate share of funds for federally funded programs or services provided by the school. Florida school districts act as the local education agencies for purposes of receiving federal funds for programs under Title I, the Individuals with Disabilities Act (IDEA), and the No Child Left Behind Act.⁶⁶ Funds for federal entitlement programs are received by the school district, which distributes them to eligible charter schools within the district.

Section 1002.33(17)(c), F.S., currently provides that “all federal funding for which the [charter] school is otherwise eligible, including Title I funding” must be received from the school district not later than five months after the charter school first opens and within five months after any subsequent expansion of enrollment. Additionally in s. 1002.33(17)(d), F.S., it states that distributions are to be made no later than 10 working days after the school district receives federal funding. If a warrant for payment is not timely issued, the school district is required to pay the interest to the charter school in the amount of one percent per month calculated on a daily basis from the first day that the payment is late until the payment is made.

Effect of Bill: The bill amends s. 1002.33(17)(c), F.S., to state that “all federal funding for which the [charter] school is otherwise eligible, including Title I funding and *funding under the Individuals with Disabilities Education Act*” must be provided within the time frame currently specified in statute. The bill’s addition of the IDEA as another example of federal funding to be received by charter schools does not appear to make any substantive change to current law.

Facilities: Current law provides that school district facilities or property that is surplus, marked for disposal, or otherwise unused must be provided for a charter school’s use on the same basis as it is made available to other public schools in the district. A charter school receiving such property may not sell or dispose of it without written school district permission.

Effect of bill: The bill adds a provision requiring a school district that closes a public school to make the property and facilities available to charter schools within the district for lease or purchase within 60 days. It requires the property and facilities to be used by charter schools for educational purposes. This provision, thus, requires charter schools, as opposed to traditional public schools in the district, to be given the first opportunity for lease or purchase.

Sponsor Services – Federal Lunch Program: In exchange for an up to five percent administrative fee, charter school sponsors are required to provide administrative and educational services that include: contract management; full-time equivalent (FTE) student and data reporting; exceptional student education administration; administration and reporting for federal programs; FCAT administration; processing of teacher certification data; and student information services.⁶⁷ With specific regard to the administration and reporting for federal programs, statute requires sponsors to provide, “services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school...”⁶⁸

⁶⁵ Section 1002.33(17)(d), F.S.

⁶⁶ See 20 U.S.C.A. 6312 (Title I); 20 U.S.C.A. 1411(IDEA); and 20 U.S.C.A. 7211a (NCLB).

⁶⁷ Sections 1002.33(20) and 1002.335(11)(b), F.S.

⁶⁸ Section 1002.33(20)(a), F.S.

Effect of bill: The bill adds a requirement that charter schools receive any funds due the school under the federal lunch program as soon as the charter school begins serving food under the program and that the charter school be paid at the same time and in the same manner under the program as other public schools serviced by the sponsor or school district.

Two-Mill Funds: Each school district may levy up to two-mills,⁶⁹ in addition to the operating discretionary tax levies, for school purposes. Such revenues may be used for the following purposes:

- New construction and remodeling of educational facilities;
- Maintenance, renovation, and repair of school facilities to correct building code and fire safety deficiencies;
- The purchase, lease-purchase, or lease of school buses and equipment;
- Payments for educational facilities and sites;
- Payment of loans approved under ss. 1011.14 and 1011.15, F.S.;
- Payment of costs directly related to compliance with state and federal environmental laws;
- Lease payments for relocatable educational facilities;
- Payments for school buses when the district contracts with a private entity to provide student transportation; and
- Payment of the cost of the opening day collection for the library media center of a new school.⁷⁰

In 2006, the Legislature authorized, but did not require, school districts to share two-mill funds with charter schools.⁷¹ Data indicating which school districts share two-mill funds is not collected at the state-level. Twenty-six of Florida's 67 school districts do not have charter schools. Of the remaining 42 districts with charter schools, 31 districts completed applications for charter school authorization exclusivity, which were considered by the SBE in 2007. The applications requested each district to indicate whether it shares two-mill funds for purposes of charter school facilities. Of the 31 applications, six districts represented that they share two-mill funds with charter schools.⁷²

Effect of Bill: The bill strikes the discretionary authority given to school districts under s. 1011.71(2), F.S., to share two-mill revenue with charter schools. Instead, the bill requires each school district to determine an equitable amount of two-mill revenue, which must be shared with charter schools within the district.

Charter School Fixed Capital Outlay: Section 1013.62, F.S., provides for the distribution of capital outlay funds to charter schools. Eligibility for charter school capital outlay funding is based on the following criteria:

- The school has been in operation for at least 3 years, is created as part of a feeder pattern with an existing charter school in the district, or is accredited by the Southern Association of Colleges and Schools;
- The school demonstrates financial stability;
- The school achieves satisfactory student performance;
- The school receives final approval from its sponsor; and
- The school serves students in facilities not provided by the charter school sponsor.⁷³

First priority for this funding is given to charter schools that received funding in 2005-2006. Charter schools that did not receive such funding may be eligible for an allocation subject to funds availability.

⁶⁹ To levy this millage, a school district must annually publish a notice of its intent, which specifies the projects such funds will be used for, and must hold a public hearing. Section 200.065(10), F.S.

⁷⁰ Section 1011.71(2)(a)-(j), F.S.

⁷¹ See Chapter 2006-190, s. 9, L.O.F., codified at s. 1011.71(2), F.S.

⁷² A summary of each application is available at: <http://www.floridaschoolchoice.org/CSStandardReview/PublicDistrictOption.aspx>

⁷³ Section 1013.62(1), F.S.

Any funds remaining after these distributions are made are allocated among all eligible charter schools. Each school's capital outlay allocation must not exceed 1/15th of the statutory cost per student station.⁷⁴

During the past three fiscal years, the Legislature appropriated the following amounts for charter school capital outlay funds: (a) \$27.7 million for FY 2005-2006;⁷⁵ (b) \$53.1 million for 2006-2007;⁷⁶ and (c) \$54 million for 2007-2008.⁷⁷

Charter schools may use capital outlay funds for the purchase of real property; construction of school facilities; purchase, lease-purchase, or lease of permanent or portable school facilities; purchase of vehicles to transport students to and from the charter school; and renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.⁷⁸

Effect of bill: The bill expands the authorized uses of charter school capital outlay funds to also include any purpose set forth in s. 1011.72(2), F.S., which specifies the authorized uses of two-mill funds by school districts. Thus, under the bill, charter school capital outlay may also be expended on: the purchase, lease-purchase, or lease of equipment; costs related to compliance with state and federal environmental laws; and cost of the opening day collection for the library media center of a new school.⁷⁹

Classrooms for Kids Program: Section 1013.735, F.S., creates the Classrooms for Kids Program, which authorizes fixed capital outlay dollars appropriated to the program to be distributed to districts based on a specified formula. The formula provides that: (a) 25 percent of the funds are to be prorated to districts based on each district's percentage of K-12 base capital FTE membership; (b) 65 percent of the funds are to be based on each district's percentage of K-12 growth capital outlay FTE membership as specified for the allocation of funds from the Public Education Capital Outlay and Debt Service Trust Fund by s. 1013.64(3), F.S.; and (c) 10 percent of funds are to be allocated among district school boards according to the allocation formula in s. 1013.64(1), F.S.

In order to increase capacity to reduce class size, districts may spend these funds on the construction, renovation, or repair of educational facilities, or the purchase of relocatables, which are in excess of projects or relocatables identified in the district's five-year work program adopted before March 15, 2003. For FYs 2003-2008, the Legislature appropriated a total of \$2.5 billion in class size reduction FCO funds with \$650 million of that amount most recently appropriated for FY 2007-2008.

Charter schools do not receive any funding under the Classrooms for Kids Program, although charter schools are required to comply with constitutional and statutory requirements for class size reduction.⁸⁰

Effect of bill: The bill amends s. 1013.735, F.S., to provide that the 25 percent portion of the Classroom for Kids Program appropriation that is currently based on each district's K-12 base capital outlay FTE membership shall also include charter school FTE membership. The bill further provides that districts must provide charter schools with their proportionate share of these funds.

C. SECTION DIRECTORY:

Section 1. -- Amending s. 11.45, F.S.; adding CTCCs to Auditor General reporting requirements; and requiring the Auditor General to adopt rules for CTCC financial reporting.

⁷⁴ *Id.*

⁷⁵ 2005-2006 General Appropriations Act, Specific Appropriation 17, Chapter 2005-70, L.O.F.

⁷⁶ 2006-2007 General Appropriations Act, Specific Appropriation 28, Chapter 2006-25, L.O.F.

⁷⁷ 2007-2008 General Appropriations Act, Specific Appropriation 24, Chapter 2007-72, L.O.F.

⁷⁸ Section 1013.62(2), F.S.

⁷⁹ Section 1011.71(2)(a)-(j), F.S.

⁸⁰ Section 1, Article IX of the Florida Constitution; s. 1003.03, F.S.

Section 2. – Amending s. 121.09, F.S.; authorizing specified charter school and public prekindergarten personnel to extend DROP participation from 60 to up to 96 months.

Section 3. – Amending s. 218.50, F.S.; adding CTCCs to the Financial Emergencies Act.

Section 4. – Amending s. 218.501, F.S.; adding CTCCs to the Financial Emergencies Act.

Section 5. – Amending s. 218.503, F.S.; adding CTCCs to the Financial Emergencies Act; and requiring the Commissioner of Education to determine whether a state of financial emergency exists.

Section 6. – Amending s. 218.504, F.S.; adding CTCCs to the Financial Emergencies Act.

Section 7. – Amending s. 1002.33, F.S., relating to charter schools; requiring use of specified documents developed by the DOE; revising requirements for a 15-year charter renewal; revising provisions relating to the online school accountability report; revising provisions relating to interdistrict transfers; revising provisions relating to the timing of state and federal fund payments to charter schools; requiring charter schools to receive the first opportunity to purchase or lease certain district property; revising provisions relating to a state of financial emergency; prohibiting nepotism and requiring compliance with specified conflict of interest regulations; requiring quarterly financial reporting; and revising student assessment data requirements.

Section 8. – Amending s. 1002.335, F.S., relating to the FSEC; revising district school board exclusivity provisions; prohibiting nepotism and requiring compliance with specified conflict of interest regulations; and revising student assessment data requirements.

Section 9. – Amending s. 1002.34, F.S., relating to CTCCs; requiring CTCC use of specified documents developed by the DOE; requiring the DOE to develop applicant training; revising provisions relating to a state of financial emergency; and prohibiting nepotism and requiring compliance with specified conflict of interest regulations.

Section 10. – Creating s. 1002.345, F.S.; specifying requirements for charter schools and CTCCs that are experiencing financial difficulty or that are found by the Commissioner of Education to be in a state of financial emergency.

Section 11. – Amending s. 1011.71, F.S.; requiring school districts to share two-mill revenues with charter schools.

Section 12. – Amending s. 1013.61, F.S.; expanding the authorized uses of charter school fixed capital outlay.

Section 13. – Amending s. 1013.735, F.S.; requiring charter schools to receive a specified portion of class size reduction fixed capital outlay.

Section 14. – Providing an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill requires the DOE to perform a number of tasks to assist charter schools and CTCCs, including offering or arranging training and specific technical assistance for applicants, assisting with the development and monitoring of financial recovery plans, and providing and comparing student performance information. The DOE already provides these types of services to districts and other schools. The administrative workload associated with the bill is expected to have an insignificant fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues. Please see "Fiscal Comments" below.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All charter schools, including those operated by private entities may receive more funding due to the bill's amendments to law governing school district discretionary two-mill levies and the Classroom for Kids Program. Please see "Fiscal Comments" below.

D. FISCAL COMMENTS:

DROP: Reliable data regarding charter school teachers currently participating in the Florida Retirement System is not available; however, for each teacher eligible to participate in DROP, increasing the participation time from 60 months to 96 months, or an additional three years, will increase payroll costs to the employer, since the DROP payroll contribution rate is greater than the normal cost rate for active employees in the Regular Class. Since DROP employees are typically at the upper end of the salary scale, the cumulative effect will be to make these employees relatively more expensive to the payroll than their replacements.

According to the Department of Management Services actuarial analysis, the FRS system would not experience a negative impact to its funded status due to the increased DROP provisions of the bill.⁸¹

Two-Mill Levy: The bill requires that the two-mill discretionary levy authorized under s. 1011.71(2), F.S., include charter schools and removes current law's discretionary authorization for school boards to share two-mill revenues with charter schools. Instead, under the bill, each school board must determine an equitable amount of its two-mill revenue, which it must share with the charter schools located within

⁸¹ Department of Management Services Bill Analysis for HB 1259 dated March 13, 2008.

the district. This provision will reduce the total amount of two-mill revenue available to traditional public schools within the district, while increasing the amount of this revenue that is received by charter schools. The fiscal impact of this provision on districts and charter schools is indeterminate, however, as the amount that each school board will determine to be “equitable” is unknown.

Classrooms for Kids Program: The bill requires charter schools to receive a portion of the statewide allocation for Class Size Reduction Fixed Capital Outlay. The 2007-08 appropriation for Class Size Reduction Fixed Capital Outlay is \$650 million and is allocated based on the methodology provided in s.1013.735, F.S., which states that 25 percent shall be allocated based on the district’s share of K-12 base capital outlay full-time equivalent student membership, 65 percent shall be allocated based on the district’s share of growth capital outlay full-time equivalent student membership, and 10 percent shall be allocated for maintenance and repair of existing facilities according to the provisions of section 1013.64(1)(a), F.S. The bill adds charter schools to the distribution of the 25 percent portion based on the base capital outlay FTE and requires district school boards to provide charter schools within their district with the charter school’s proportionate share of these funds. These provisions will reduce the amount of class size fixed capital outlay available to traditional public schools within the district, but will enable charter schools to begin receiving class size capital outlay funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Auditor General to adopt rules for the financial audits of CTCCs. It also requires the SBE to adopt rules for the development of financial recovery and corrective action plans.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Facilities: The bill amends current law to require a school district that closes a public school to make the property and facilities available to charter schools within the district for lease or purchase within 60 days. School district representatives have indicated that mere closure of a public school does not necessarily mean that the district no longer wishes to utilize the property and facilities for some other educational purpose. Accordingly, consideration might be given to amending this provision of the bill so that the requirement of making the property and facilities available to charter schools is not triggered until the district school board has determined to that it no longer wishes to use the property and facilities for its own educational purposes.

Two-Mill Revenue: The bill requires each school district to determine an “equitable amount” of two-mill revenue, which must be shared with charter schools within the district. This provision raises a number of issues, as follows, which may warrant clarification:

- The term “equitable” is undefined and could generate litigation as to its meaning.

- School districts are statutorily required to conduct long-range planning for facility needs over five-, ten-, and 20-year periods. Statute specifically requires a district's five-year plan to include a financially feasible district facilities work program. Two-mill revenues are used, and often committed by districts for long-term debts owed under certificates of participation, for facility needs.⁸² Thus, it appears that statute should be amended to require district consideration of charter school facility needs when developing its long-range plans and to limit charter school use of two-mill revenues to those needs included in such plans.
- The bill does not expressly require reversion of charter school facilities financed with two-mill revenue to the school district when the charter school discontinues operations. Given such tax payer financing, it would appear desirable to amend the bill to require reversion.
- Unlike school district facilities built or renovated with two-mill revenues, charter school facilities are not required to meet School Requirements for Education Facilities (SREF).⁸³ If these facilities revert to district ownership due to a charter school closure, it would be necessary for the facilities to meet SREF standards to be utilized by the districts.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁸² See ss. 163.3177(12), 1013.35, and 1013.64, and F.S.

⁸³ Section 1002.33(18), F.S.