

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: Proposed Committee Bill 7040

INTRODUCER: Education Pre-K-12 Committee

SUBJECT: Charter Schools

DATE: February 3, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides for the following:

- Establishes specific indicators of risk for financial difficulty for charter schools and provides a corrective action plan to assist these schools;
- Allows a sponsor to terminate a charter when a charter school exhibits one or more financial emergency conditions for two consecutive years;
- Prohibits nepotism in charter schools for employment and promotion policies;
- Establishes standards of conduct for charter school governing board members, including requirements related to the solicitation and acceptance of gifts, business transactions, and conflicting employment or contractual relationships;
- Limits funding to charter schools that exceed the class size requirements in law;
- Provides parents and the public with student performance information when a school does not receive a school grade or a school improvement rating.

This bill substantially amends sections 11.45, 218.501, 218.503, 1002.33, 1002.335, and 1002.34, and creates section 1002.345 of the Florida Statutes.

II. Present Situation:

Charter Schools in Florida

Florida law specifies that all charter schools are considered public schools.¹ Charter schools are formed through the creation of a new school or the conversion of an existing public school.² A

¹ s. 1002.33(1), F.S.

² *Id.*

charter, or the written contractual agreement between the sponsor and applicant, establishes terms and conditions of operation.³ According to the Department of Education (DOE), there are 358 charter schools operating in the state for the 2007-2008 school year.

Existing charter schools are sponsored by a district school board or a state university, in which case the charter school was converted from a lab school to a charter lab school. Sponsors are responsible for monitoring the charter school, reviewing revenues and expenditures, and ensuring innovation and consistency with state education goals, including the state accountability system.⁴ Charter lab school applications are subject to review by the state university in consultation with the district school board in that jurisdiction.⁵ District school boards that have been granted exclusive jurisdiction over charter schools in their districts review and approve or deny all charter school applications.⁶

Alternatively, charter school applicants may apply to the Florida Schools of Excellence Commission (FSEC) in instances in which the district school board has not received the status of exclusivity. The FSEC is an independent state-level authorizer of charter schools, appointed by the Governor, Senate President, and House Speaker.⁷ The FSEC is permitted to enter into co-sponsorships with municipalities, state universities, community colleges, and regional educational consortia.⁸

Financial Emergencies Act

The Financial Emergencies Act is designed to promote financial responsibility, provide assistance for meeting essential services without interruption, and to improve local financial management procedures for local governmental entities, school boards, and charter schools.⁹ Should one of specific financial conditions occur or appear likely to occur in a charter school (e.g., failure to pay short-term loans within the same fiscal year in which due or failure to make bond debt service or other long-term debt payments when due, as a result of a lack of funds),¹⁰ the charter school must notify the sponsor and the Legislative Auditing Committee. The sponsor may require that a financial recovery plan be prepared by the charter school governing board to resolve the emergency.

Reports on Charter Schools

Office of Program Policy Analysis & Government Accountability (OPPAGA)

OPPAGA conducted a study in 2005 that focused on two areas relating to charter schools:

- A comparison of Florida's process of establishing charter schools with other states; and
- The financial performance of charter schools, including improvements in financial management.¹¹

³ s. 1002.33(6)(i), F.S.

⁴ s. 1002.33(5)(b), F.S.

⁵ s. 1002.33(6)(h), F.S.

⁶ s. 1002.33(6)(b), F.S.

⁷ s. 1002.335(3)(a), F.S. The FSEC was created in 2006; ch. 2006-302, L.O.F.

⁸ s. 1002.335(4)(a)1. and 2., F.S.

⁹ ss. 218.50-218.504, F.S.

¹⁰ s. 218.503(1), F.S., specifies these conditions.

¹¹ OPPAGA, *Charter School Application Requirements Are Reasonable; Financial Management Problematic*, Report No. 05-11 (2005).

In comparing Florida's charter school requirements to other states, researchers concluded that Florida's application requirements are extensive, but reasonable, in that they provide critical information to sponsors in determining whether a school would be academically and financially successful.¹²

Nonetheless, OPPAGA expressed concern over a growing number of charter schools experiencing financial difficulties. Reasons cited include:

- High facilities cost;
- Inaccurate enrollment projection;
- Inadequate expertise in financial management; and
- The small size of some charter schools.¹³

Schools operated by education management organizations (EMO) tended to show higher rates of financial deficits. OPPAGA noted that although federal start-up funding may be available, most states, including Florida, do not provide start-up funding for charter schools. For 2002-2003, about 50 percent of the Florida charter schools whose audits disclosed unreserved fund balance deficits were in their first two years of operation. This appears to correlate with high start-up and facilities costs in the beginning of a school's operation.¹⁴

Researchers reported little financial management experience among charter school staff, particularly in governmental accounting practice. Small charter schools begin at a disadvantage, as they operate without the benefit of economies of scale. Charter schools managed by EMOs represented almost 50 percent of charter schools with unreserved fund balance deficits in 2002-2003, although only 22 percent of Florida's 300 charter schools operating that year were managed by outside companies.¹⁵

Pursuant to OPPAGA's recommendations, the Legislature enacted additional accountability provisions:¹⁶

- The DOE is required to provide technical assistance to charter school applicants;
- The charter school governing body must review and approve the audit report, including monitoring financial recovery plans, if present;
- The DOE is required to develop a uniform, online accountability report for the charter schools to complete annually;
- Financial emergency conditions apply to charter schools; and
- The governing board is required to attend governance training approved by the DOE that includes sunshine laws, conflicts of interest, ethics, and financial responsibility.

OPPAGA recently completed an update to the 2005 report, which noted that there are additional steps that would further improve charter school financial management and performance, including:

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ A recent Auditor General report indicates that a number of EMO's have forgiven debt, thereby contributing to a reduction of schools in financial deficit.

¹⁶ ch. 2006-190, L.O.F.

- Strengthening reporting and technical assistance requirements for charter schools experiencing financial emergencies;
- Developing a financial monitoring system to identify and assist financially struggling charter schools earlier;
- Requiring that charter school applicants receive training and technical assistance during the application process; and
- Requiring charter schools to work with their sponsors to reconcile charter school cost information to audited figures to make the program cost information comparable to the financial information reported by other public schools.¹⁷

The report also recommended that the Legislature consider clarifying the conflict of interest prohibitions for charter schools, since the current provisions in law are not uniformly applied to charter schools.¹⁸

*Auditor General*¹⁹

The Auditor General noted the following findings in its recent report on charter schools in operation during the 2005-2006 fiscal year:

- 14 of the 340 charter schools during that year closed;
- Five of the remaining 326 charter schools that were in operation for FY 2005-2006 did not file audit reports as of the date of the report;
- About 25 percent, or 79 of the 321 charter schools that filed an audit reported a deficit unreserved fund balance as of June 30, 2006;²⁰
- 54 charter schools did not file an audit in a timely manner;
- Audit reports for 20 charter schools revealed findings of material weaknesses in internal controls;
- Audit reports for 15 charter schools included a statement by a Certified Public Accountant (CPA) questioning the schools' ability to continue operating; and
- 73 charter schools met one or more financial emergency conditions.

The Auditor General indicated that for 51 charter schools, the CPA expressed a concern that the school did not adequately separate certain duties and responsibilities. Therefore, the charter school's ability to adequately protect assets was compromised, thereby increasing the chances that errors or fraud would not be timely discovered.

¹⁷ OPPAGA, *Steps Taken to Improve Charter School Financial Management and Performance Accountability; Additional Action Needed*, Report No. 08-04, January 2008.

¹⁸ *Id.*

¹⁹ Auditor General, *Report on Significant Findings and Financial Trends in Charter School and Charter Technical Career Center Audit Reports Prepared by Independent Certified Public Accountants For the Fiscal Year Ended June 30, 2006*, Report No. 2008-018 (2007).

²⁰ *Id.* The Auditor General noted that the 25 percent represents a slight decline from prior year (28 percent), and explained it as follows: nine of the charter schools reporting deficits last year closed; financial emergency conditions provided in statute took effect; and some charter schools eliminated deficits through debt forgiveness or fee modification by management companies. Fund balance information for three charter schools was not identifiable because the balances were reported in combined financial statements.

Senate Interim Project 2008-120²¹

The report reviewed charter school financial management, governance, student academic performance, school grading, and class size compliance and suggested changes for consideration by the Legislature, including the following:

- Codify specific indicators that identify charter schools at risk of financial difficulty or insolvency;
- Provide an expedited review when charter schools are in financial difficulty, prior to a financial emergency determination;
- Provide specific measures to correct the problems;
- Codify existing financial planning tools in statute and require all charter school applicants and reviewing sponsors to use them;
- Provide that once exclusivity is granted, the district school board would have a rebuttable presumption of retaining this status beyond one year;
- Limit operating appropriations for Full-Time Equivalent (FTE) for charter schools to the designated class size limits;
- Prohibit members of independent charter school boards from receiving compensation for services; and
- Require charter schools that do not receive a school grade to disclose comparative information to parents and the public about the school's academic performance.

III. Effect of Proposed Changes:

Financial Management

Application Process and Review

Prior to filing a charter application, applicants for charter schools and charter technical career centers must participate in the training provided by the Department of Education (DOE). Specifically, the training involves financial planning, including developing business plans, estimating costs and income, projecting enrollment, and identifying state and federal funding sources. Documentation of the training must be included in the application. Sponsors must use the standard evaluation form developed by the DOE. These provisions are intended to offer a greater degree of assistance to applicants and more uniformity among sponsors during the review process.

Indicators of Financial Weaknesses and Emergencies

Currently, there is no systematic process for detecting charter schools and charter technical career centers that are experiencing financial difficulties other than an end of the year audit. The bill establishes indicators of risk for financial difficulty, such as an end-of-year financial deficit, a substantial decline in student enrollment without a commensurate reduction in expenses, and insufficient revenues to pay current operating expenses. When one of these conditions occurs, a charter school and a charter technical career center are subject to an expedited review by the sponsor, which may include 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 must monitor corrective

²¹ *Charter School Accountability*, Interim Project, November 2007.

action plans and annually report to the sponsor the status of the corrective actions specified in the plan.

The SBE must prescribe the steps required for compliance when a governing board fails to implement the plan within one year. 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. The DOE would provide technical assistance to charter schools and centers and their governing boards and sponsors for corrective action and financial recovery plans.

Charter Technical Career Centers

Under the bill, charter technical career centers are subject to the Financial Emergencies Act, which currently only applies to local governments, district school boards, and charter schools.

Causes for Nonrenewal or Termination of Charter

The bill provides additional grounds for not renewing or terminating a charter to include when a charter school or center fails to correct the deficiencies in a corrective action plan within one year or exhibits one or more financial emergency conditions for two consecutive years.

Class size

Student to teacher class size ratios, as designated by grade level groupings, start with the 2010-2011 school year, pursuant to s. 1, Art. IX of the State Constitution.²² To meet the constitutional requirement by that date, s. 1003.03(2), F.S., provides for a phased-in implementation, beginning with calculations assessed at the average school district level, then school level, and finally, by fiscal year 2008-2009, calculation at the individual classroom level.²³ The bill provides that the number of students eligible for funding in a charter school is no more than the number of students provided for in the class size caps in the state constitution, beginning in 2010-2011, and in s. 1003.03(2), F.S. Charter schools will not be funded for students who exceed these caps.

Standards of Conduct²⁴

Nepotism

As a condition of receiving a charter, applicants must disclose the names of relatives that will be employed by the charter school or center. This requirement for full disclosure is also a part of the charter.

Personnel in charter schools or charter technical career centers that are operated by a private entity may not employ or promote a relative if he or she exercises jurisdiction or control over the individual. Additionally, the prohibition applies to governing board members and their relatives. Similarly, the bill prohibits a relative from accepting employment or a promotion if the decision is made or advocated by his or her relative. These provisions do not apply when an action is limited to the approval of a budget.

²² The designations are: pre-K through grade three, 18 students per class; grades four to eight, 22 students per class; and grades nine to twelve, 25 students per class.

²³ s. 1003.03(2), F.S.

²⁴ For the fiscal year ended June 30, 2006, the Auditor General's findings for charter schools included 21 related-party transactions.

The nepotism requirements 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 in s. 112.317, F.S.

Conflict of Interest and Governing Board Members

Members of the governing board of a charter school or charter technical career center, 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.²⁵ Under certain circumstances, a board member may seek an exemption from the provisions for business transactions and conflict of interest. The bill also subjects board members to the voting conflict requirements.²⁶ Board members of charter schools or centers operated by public entities are explicitly subject to the requirements for public disclosure of financial interests in s. 112.3144, F.S. A violation of any of these provisions subjects governing board members to the penalties in s. 112.317, F.S.

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,²⁷ to the extent that the information does not compromise a student's privacy.²⁸

Charter schools must report information to the parents of a student at the charter school and others that includes:

- The percentage of students, by grade groupings (i.e., grades 3 to 5, grades 6 to 8, and grades 9 and 10) who score:
 - At grade level or higher on the FCAT in reading, mathematics, writing, and science; and
 - For students in the lowest 25th percentile, at Level 1 or Level 2 on the FCAT in reading, mathematics, writing, and science.
- Student performance comparisons by grade groupings for the following:
 - Charter schools without school grades or school improvement ratings compared to traditional public schools in the district in which the charter school is located and to other charter schools in the state; and
 - Charter alternative schools compared to all alternative schools in the state.

The bill requires charter schools to post this information on their website and provide for other notice to the public, as provided for in SBE rule. The Florida Schools of Excellence Commission must include a link on its website to this information.

²⁵ s. 112.313(2), (3), and (7), F.S. The business transactions in s. 112.313(3), F.S., relate to the purchase, rent, or lease of realty, goods, and services.

²⁶ s. 112.3143, F.S.

²⁷ ss. 1008.34 and 1008.341(2), F.S. For 2006-2007, 42 percent of the charter schools did not receive a school grade, compared to 14 percent of the other public schools. Of the ungraded charter schools, 8 percent received a school improvement rating (points only) for alternative schools, compared to 12 percent of the other ungraded public schools. For a school to be eligible for a school grade, it must have at least 30 eligible students with valid FCAT scores in reading and math in both current and previous years in the grade levels tested (grades 3 through 10). See Rule 6A-1.09981, F.A.C.

²⁸ Privacy of student records is provided for in s. 1002.22, relating to student records, and 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

Governance

Under the bill, a district school board that is granted the exclusive authority to authorize charter schools in the district retains this status unless it fails to meet the requirements in s. 1002.335, F.S. The board will no longer be required to annually re-submit a written resolution to the State Board of Education.²⁹ The bill presumes that a school board that has been granted exclusivity is acting in good faith in reviewing applications. A party may still challenge a school board's exclusivity status, in accordance with the procedures in law.

The bill provides for an effective date of July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under the bill, charter schools that are operated by private entities will not be funded for students who exceed the class size caps in law. For the 2007-2008 school year, three of the eight charter schools that are out of compliance with the class size requirements, after the appeals process, are operated by a private entity.³⁰

C. Government Sector Impact:

The DOE is charged with either offering or arranging training and specific technical assistance for charter technical career center applicants. Since the DOE currently provides these services to charter schools, the costs may be minimal.

²⁹ s. 1002.335(5), F.S.

³⁰ DOE, February 4, 2008.

Under the bill, charter schools that are operated by public entities will not be funded for students who exceed the class size caps in law. To the extent that those students return to a traditional public school, the bill would be revenue neutral.

VI. Technical Deficiencies:

A technical amendment is needed on line 728. The word “section” should be changed to “subsection.” A conforming amendment is needed for ss. 218.50 and 218.504, F.S., to include a reference to charter technical career centers. A technical amendment is needed for lines 757-758 to remove the reference to a member of a charter school and substitute with an individual. On line 998, the word “from” should be changed to the word “form.”

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.