

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 Budget Committee

BILL: CS/CS/CS/SB 1546

INTRODUCER: Budget Committee, Committee on Higher Education, Committee on Education Pre-K-12 and Senator Thrasher

SUBJECT: Charter Schools

DATE: April 14, 2011 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|------------------|-----------|---------------|
| 1. | <u>Brown</u> | <u>Matthews</u> | <u>ED</u> | <u>Fav/CS</u> |
| 2. | <u>Brown</u> | <u>Matthews</u> | <u>HE</u> | <u>Fav/CS</u> |
| 3. | <u>Hamon</u> | <u>Meyer, C.</u> | <u>BC</u> | <u>Fav/CS</u> |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill revises statutory requirements pertaining to charter schools in Florida. The bill:

- Provides clarification that charter school training requirements apply to applicants who are approved, and that training must take place at least 30 days before the first day of school;
- Adds compliance with the ch. 120, F.S., administrative process, to the appeals process in nonrenewal and termination appeals cases;
- Assesses attorney’s fees and costs against the district when an appellant prevails in situations where:
 - A sponsor immediately terminates a school and does not assume continuing operation pending appeal; or
 - A high-performing applicant, applying under the authority of a high-performing charter school system is denied approval;
- Establishes the designation of “high performing charter schools”, provides qualifications and outlines benefits. High performing charter school systems are also designated if certain criteria are met;

- Authorizes sanctions against a district pursuant to s. 1008.32(4), F.S., where the State Board of Education finds a pattern of unlawfully denying high-performing applications;
- Provides greater flexibility for charter schools-in-the-workplace;
- Abolishes the Charter School Review Panel; and,
- Requires OPPAGA to compare charter school with traditional school funding, specifically regarding capital improvement millage distribution and the administrative fee.

This bill substantially amends section 1002.33, Florida Statutes, and makes conforming cross-reference changes to sections 163.3180, 1002.32, 1002.34, 1011.68, 1012.32, and 1013.62 of the Florida Statutes.

II. Present Situation:

Process for Appeal of Application Denials and Nonrenewal or Termination of a Charter

No later than 30 calendar days after receipt of a denial, the applicant may appeal the decision to the State Board of Education (Board), with notice to the sponsor. Upon receipt of notice of the appeal from the Board, the Commissioner of Education (COE) is required to convene a meeting of the Charter School Appeal Commission to make recommendations to the Board about the appeal. The Board must decide no more than 90 calendar days after the appeal is filed, and the sponsor is bound by the decision. The Board's decision is not subject to the ch. 120, F.S., administrative process, and represents, instead, final action, subject to judicial review in the appropriate district court of appeal.¹

Besides issuing recommendations in applicant appeal cases, the Charter School Appeal Commission assists the COE and the Board in non-renewal and termination cases.² In addition to other grounds, a sponsor may non-renew, or terminate a charter for failure to meet generally accepted standards of fiscal management.³ At least 90 days before renewing or terminating a charter, the sponsor must provide written notification and notice that the school may request an informal hearing, to be held by the sponsor within 30 days of request receipt. The applicant is authorized to then follow the appellate process established for denials of new applicants.

Charter School Training

The Department of Education (DOE) is required to offer or arrange for training and technical assistance to charter school applicants in business development, expenses and income. Charter school applicants are required to participate in training, either at the DOE or through a qualifying sponsor program.⁴

Term of Operation for Charter Schools

The initial term of a charter is 4 to 5 years. Charter schools operated by a municipality, charter lab schools, and charters operating under a private not-for-profit s. 501(c)(3) corporation are eligible for an initial term of up to 15 years.⁵

¹ s. 1002.33(6)(c), F.S.

² s. 1002.33(6)(e), F.S.

³ s. 1002.33(8)(a)2., F.S.

⁴ s. 1002.33(6)(f)2., F.S.

⁵ s. 1002.33(7)(a)12., F.S.

Charter School Review Panel

The DOE staffs and convenes a Charter School Review Panel to review charter school issues, practices and policies, for the purpose of making recommendations to the Legislature, the DOE, charter schools and school districts for improving operations and oversight.⁶

State Board of Education Oversight Authority

The State Board of Education (Board) has specific statutory oversight authority in the area of district school board performance. Upon determining that a district school board has failed to comply with law or rule, the Board has available the following sanctions:

- Report to the Legislature that the school district is unwilling or unable to comply with law or state board rule and recommend that the Legislature take action;
- Reduce the discretionary lottery appropriation until the school district is in compliance;
- Withhold the transfer of state funds, discretionary grant funds, or other funds specified as eligible for this purpose by the Legislature until in compliance;
- Declare the school district ineligible to receive competitive grants; and
- Require monthly or periodic reporting on progress related to noncompliance until corrected.⁷

III. Effect of Proposed Changes:**Appeals Process for Non-renewals and Terminations of Charter Schools**

The 90-day requirement for written notice of renewal or termination of a charter is deleted and sponsors would just be required to provide written notice at any time before the event. This bill replaces the current informal hearing process before the sponsor with an option by the charter school to select a hearing before an administrative law judge in accordance with chapter 120, F.S., to resolve disputed issues of fact. Appeals follow the same procedure as that for appeals in applicant denial cases, so that the case is appealed to the State Board of Education (Board), which then convenes the Charter School Appeals Commission for a recommendation to be made to the Board. The Board's final decision is not subject to review under ch. 120, F.S.

Regarding appeals of immediate termination cases, this bill creates an option for the charter school to request a hearing through the sponsor, as agency, pursuant to s. 120.569, F.S., at which an administrative law judge would preside in instances where material facts are in dispute. The hearing is expedited and the final order must be issued within 45 days after the date of hearing is requested. The sponsor issues the final order. Appeals of that decision follow current law and the same process as for initial denial of charter school application cases and regular termination cases. This bill requires the sponsor to assume and continue operation of the school pending appeal unless student health, safety, or welfare would be threatened. However, if a sponsor does not continue operation and a charter school prevails on appeal, the sponsor is liable for attorney's fees and costs.

High Performing Charter Schools and High Performing Charter School Systems

⁶ s. 1002.33(22), F.S.

⁷ s. 1008.32(4), F.S.

This bill establishes the designation of “high performing charter schools” provided that the following minimum standards exist and are maintained:

- For the last three years the school received an “A” or “B” school grade, received an unqualified opinion on each financial audit, and did not receive a financial audit that revealed a condition warranting a determination of financial emergency, except for charter schools-in-the-workplace, if the audit finds that money is available to cover the deficiency or it does not result in a deteriorating financial condition; and
- The school has operated for less than three years as part of a high performing charter school system. These schools are eligible for capital outlay funds in their first year without having to comply with statutory requirements operating and being governed by a board in-state at least three years, holding SACs accreditation, having financial stability, and other factors. Additionally, it appears that these schools would have immediate high-performing status.

Benefits available to high performing charter schools in compliance with class size include flexibility to annually increase student enrollment by up to 25 percent above the authorized cap (as determined by the governing board), add grade levels, and offer voluntary prekindergarten. These schools are also eligible for 15-year renewals. The initial term of other types of charters is fixed at five years.

Other benefits to high-performing schools are that they have to comply with training once and submit quarterly financial statements rather than the current monthly filing requirements for charter schools.

This bill establishes “high-performing charter school system” with the following attributes:

- Operates at least three high-performing charter schools in the state;
- Has received, among schools, a minimum average “B” grade during the last three years for all schools started by the system;
- Has not had a school with financial emergency status; and
- Has not had a school with an “F” grade for the last two years for any school that the system started, and has not had a school grade of “F” for 3 out of 5 years for a school that the system took over.

A system can be organized as a municipality or other public entity authorized to operate charter schools, a private, not-for-profit s. 501(c)(3) corporation, or a private for-profit corporation.

While under the designation of a high-performing charter school system, the system is authorized to create new charter schools in any district in the state which substantially replicates one or more of the provider’s existing high-performing schools. A local school district is limited in its ability to deny these applications only if good cause is shown that the operator failed to meet charter school statutory requirements, which include financial requirements. A sponsor is liable for attorney’s fees and costs if an applicant prevails upon appeal. District school boards may also be subject to s. 1008.32(4), F.S., sanctions to be determined by the State Board of Education if the Board finds that a pattern exists of unlawful denials to a system to replicate schools.

Initial charters run for a term of 15 years, with the first three years constituting the status of high-performing. This status makes the school immediately eligible for capital outlay funding.

It may be challenging for local school boards, the Department of Education and the Auditor General to keep pace with the changing status of a school or system that becomes high-performing and loses that status, regarding the accompanying change in requirements. For example, it is unclear what would happen to projects partially started with capital outlay funding for a new school that loses high-performing status in its first three years of operation. This is also the case for schools that don't start as high-performing but accrue that status.

Other Charter Provisions

In requiring training participation at least 30 days before school starts, this bill clarifies that the training provisions only apply to applicants who are approved, and are not, therefore, a condition of approval.

This bill provides greater flexibility for qualifying enrollment for charter-schools-in-a-municipality, for charter schools-in-the-workplace, or for children of active-duty members of the military.

This bill expands the current prohibition on requiring resignations from teachers desiring to teach in charter schools, to instructional personnel, school administrators and educational support employees.

Sponsors are prohibited from requiring charter school governing board members to reside in the district, and must allow management to represent the charter school on the governing board if approved pursuant to the school's governing documents.

The Charter School Review Panel is abolished.

Office of Program Policy Analysis and Government Accountability (OPPAGA)

OPPAGA is required to conduct a study that compares charter school, with traditional public school, funding, with special focus on capital improvement millage and the actual cost of services provided through the five percent administrative fee. This bill requires OPPAGA to assess the amount of funds available to charter schools if districts equitably distribute capital improvement millage to all schools, including charter schools. It is unclear what is meant by equitable distribution.

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:

High-performing charter schools that may increase their enrollment by 25 percent and high-performing charter school systems that may replicate charter schools in other school districts may encourage non-public school students to enter the public system by enrolling at the expanded or new charter schools. Typically, roughly 10 percent of additional charter school students are drawn from private sector schools. Any such effect would not take place until the 2012-2013 school year because of statutory notification timelines.

C. Government Sector Impact:

High-performing charter schools that maintain compliance with the maximum class size requirement may increase the school's student enrollment once a year up to 25 percent, if they notify their sponsor of the increase by March 1 of the preceding school year. This provision may result in an increase in the number of students eligible to be funded in the Florida Education Finance Program beginning in the 2012-2013 fiscal year and thereafter. The number of schools that would take advantage of the enrollment growth opportunity is not known; however, based on previous charter school enrollment trends, it is likely that 10 percent of the growth in enrollment will be students who are not currently funded in the FEFP. On April 11, the Education Enrollment Estimating Conference adopted an estimate for the 25 percent public school enrollment increase of 333 FTE for 2012-2013, and 371 FTE for 2013-2014.

High-performing charter school systems may apply to establish and operate a new charter school, in any district of the state, which would replicate one or more of the systems' existing schools. Such schools will be eligible to receive charter school capital outlay funds for the first year and are exempt from the eligibility requirements for charter school capital outlay. Depending on the number of new schools established, this provision could result in a reallocation of the amount of capital outlay funds available for existing charter schools. In addition, the opening of new charter schools may also result in an increase in the number of students eligible to be funded in the Florida Education Finance Program beginning in the 2012-2013 fiscal year and thereafter. Again, roughly 10 percent of the enrollment in the new schools will be students who are not currently funded in the FEFP. On April 11, the Education Enrollment Estimating Conference adopted an estimate of additional public school enrollment resulting from replication of high-performing charter schools of 480 FTE for 2012-2013 and 1,482 FTE for 2013-2014.

The dollar impact for the 25 percent enrollment growth and the creation of new charter schools is roughly \$5.3 million for 2012-2013 and \$12.1 million for 2013-2014.

VI. Technical Deficiencies:

None.

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.)

CS by the Budget Committee on April 14, 2011:

The committee substitute removes the blending-learning charter school provision and adds children of active members of the military for charter school enrollment preference.

CS by the Committee on Higher Education on April 4, 2011:

This bill restores current law regarding the authority provided to state universities and community colleges to develop charter schools.

The College Preparatory Boarding Academy Pilot Program is removed from the bill.

CS by the Committee on Pre-K – 12 on March 30, 2011:

The committee substitute provides charter schools applicants with an opportunity to correct technical errors that the sponsor indicates will otherwise represent the basis for denial of the application, provided that the application is corrected in a week.

- B. **Amendments:**

None.