

## FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/SB 1546

**FINAL HOUSE FLOOR ACTION:**

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**SPONSOR:** Sen. Thrasher (Rep. Stargel)

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/CS/HB 7195

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### SUMMARY ANALYSIS

CS/CS/CS/SB 1546 passed the House on May 4, 2011, and subsequently passed the Senate on May 4, 2011. The bill was approved by the Governor on June 27, 2011, chapter 2011-232, Laws of Florida, and becomes effective July 1, 2011. The bill enables charter schools that demonstrate exemplary academic achievement and financial management to be deemed high-performing charter schools. A high-performing charter school is authorized to increase its enrollment once per year by up to 15 percent; add grade levels not already served; receive a modification or renewal of its charter for a term of 15 years; consolidate multiple high-performing charter schools under a single charter; and submit quarterly financial statements to its sponsor. Additionally, the bill establishes a new application process to enable high-performing charter schools to replicate their successful charter school models. The bill limits the grounds for denying such applications and provides for direct appeal of application denials to the State Board of Education. A high-performing charter school that fails to sustain academic achievement will lose its high-performing charter school status.

The bill also enables entities which operate at least three high-performing charter schools in Florida and demonstrate sustained academic achievement and financial management by all schools operated by the entity to be deemed a high-performing charter school system.

Additionally, the bill:

- Eliminates the informal hearing process for charter terminations and nonrenewal and requires the sponsor to provide a formal hearing, if requested by the charter school's governing board;
- Authorizes new enrollment preferences applicable to charter schools-in-the-workplace, charter schools-in-a-municipality, children of active-duty military personnel, and children who complete a Voluntary Prekindergarten Education program provided by a charter school;
- Requires the Commissioner of Education to appoint enough members to the Charter School Appeals Commission as necessary to avoid conflicts of interest;
- Requires each charter school's governing board to appoint a representative who resides in the school district and requires the board to hold at least two public meetings per school year;
- Establishes student transfer and federal grant accountability requirements for charter schools operated under the same governing board as separate schools in shared facilities;
- Repeals the Charter School Review Panel;
- Authorizes a charter school system to serve as its own local educational agency for federal funding purposes, if certain criteria are met; and
- Directs the Department of Education to provide information related to discretionary millage for capital outlay, federal funding provided to charter schools, and sponsor-provided administrative services.

The bill has a fiscal impact on state government. See Fiscal Comments.

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

## I. SUBSTANTIVE INFORMATION

### EFFECT OF CHANGES:

#### Present Situation

Charter schools<sup>1</sup> are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a “charter.”<sup>2</sup> The charter exempts the school from many regulations applicable to traditional public schools in order to encourage the use of innovative learning methods.<sup>3</sup> One of the guiding principles of charter schools is to meet high standards of student achievement and increase parental choice and student learning opportunities.<sup>4</sup>

A charter school may be sponsored by a district school board or, in the case of a charter lab school, by a state university.<sup>5</sup> Each charter school is administered by a governing board.<sup>6</sup> State universities, Florida College System (FCS) institutions, municipalities, and private, nonprofit 501(c)(3) status organizations<sup>7</sup> may operate a charter school.<sup>8</sup> In many cases, a charter school’s governing board contracts with a private, for-profit management company to provide management services on its behalf. Management companies provide, among other things, curriculum development, administrative, business, compliance, personnel, and student recruiting services.<sup>9</sup>

#### Charter School Applications

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.<sup>10</sup> Charter school applicants must participate in training provided by the Department of Education (DOE) or, under specified circumstances, by the sponsor before filing an application to establish a new charter school.<sup>11</sup> The training must include instruction in accurate financial planning and good business practices.<sup>12</sup>

A charter school application must be submitted by August 1st of each year for charter schools to be opened at the beginning of the following school year, unless the sponsor chooses a later date. Among other things, the application must include:

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<sup>1</sup> In the 2009-10 school year, 410 charter schools were operating in 43 of Florida’s 67 school districts and at two state universities. Charter schools served 137,196 students in that year. Florida Department of Education, *Charter Schools Program*, at 1 (Aug. 2010), available at, [https://www.floridaschoolchoice.org/Information/Charter\\_Schools/files/fast-facts\\_charter\\_schools.pdf](https://www.floridaschoolchoice.org/Information/Charter_Schools/files/fast-facts_charter_schools.pdf).

<sup>2</sup> Section 1002.33(7), F.S.

<sup>3</sup> Section 1002.33(2) and (16), F.S.

<sup>4</sup> Section 1002.33(2), F.S.

<sup>5</sup> Section 1002.33(5)(a), F.S.

<sup>6</sup> Section 1002.33(9)(h)-(j), F.S.

<sup>7</sup> The internal revenue code defines a 501(c)(3) status organization as a private, nonprofit organization that is organized exclusively for religious, scientific, literary, or educational purposes or for the purpose of promoting amateur sports or for preventing cruelty to animals or children. These organizations are exempt from federal income taxes. 26 U.S.C. s. 501(c)(3).

<sup>8</sup> Section 1002.33(5)(b)4., (12)(i), and (15)(b)-(c), F.S.

<sup>9</sup> Telephone interview with Charter Schools Director, Florida Department of Education (March 17, 2011); Florida Department of Education, *Charter Schools – FAQs*, [https://www.floridaschoolchoice.org/information/charter\\_schools/faqs.asp](https://www.floridaschoolchoice.org/information/charter_schools/faqs.asp) (last visited March 17, 2011).

<sup>10</sup> Section 1002.33(3)(a), F.S.

<sup>11</sup> Section 1002.33(6)(f), F.S. The sponsor may provide applicant training if the training meets or exceeds DOE’s training standards. *Id.*; rule 6A-6.0785, F.A.C. (charter school applicant training standards).

<sup>12</sup> Section 1002.33(6)(f), F.S.

- A detailed curriculum plan aligned with the Next Generation Sunshine State Standards;
- Goals for improving student learning and measuring improvement;
- The curriculum and strategies for teaching reading to students who are below, at, or above grade level; and
- An annual financial plan for each year of operation requested (up to five years) that sets forth the school's anticipated funds and assets, a spending plan, and sound fiscal policies for managing the school.<sup>13</sup>

A sponsor must approve or deny a charter school application, based upon good cause, within 60 days of receipt. If denied, the sponsor must provide to the applicant and DOE written notice stating the grounds for denial within ten days of its decision. There is no requirement that a charter school applicant be provided an opportunity to correct technical errors in its application before a decision on approval or denial is made.<sup>14</sup>

Application denials may be appealed to the State Board of Education. The Charter School Appeal Commission (CSAC) reviews charter school appeals filed with the state board, arising from the denial of charter applications or nonrenewal or termination of charter contracts.<sup>15</sup> CSAC must review the appeal and make a written recommendation to the state board as to whether it should be upheld or denied. The state board must consider the CSAC's recommendation, but is not bound by it when making its final decision.<sup>16</sup> Florida law requires the Commissioner of Education to appoint an equal number of charter school and sponsor representatives to CSAC. The commissioner, or his or her designee, serves as the chair of the commission.<sup>17</sup>

## Charters

Upon approving a charter school application, the sponsor must deliver a charter to the applicant within 60 days, and the applicant and sponsor then have 75 days to negotiate its contents.<sup>18</sup> Among other things, the charter includes:

- The curriculum;
- The grade levels and ages of students served;
- Baseline standards of student academic achievement, goals to be achieved, and the methods for measuring achievement of those goals;
- The financial and administrative management of the school and a description of internal audit controls;
- Asset and liability projections; and
- An agreement that the charter may be cancelled if the school fails to make sufficient progress towards student achievement goals.<sup>19</sup>

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<sup>13</sup> Section 1002.33(6)(a) and (b), F.S.

<sup>14</sup> Section 1002.33(6)(b)3., F.S.

<sup>15</sup> Section 1002.33(6)(e)1., F.S. Additionally, if mediation fails to resolve a contractual dispute between a charter school and its sponsor regarding matters negotiated separately from the charter, an appeal may be made for a dispute resolution hearing before the commission. Section 1002.33(20)(b), F.S.

<sup>16</sup> Section 1002.33(6)(e)2., F.S.

<sup>17</sup> Section 1002.33(6)(e)3., F.S.; Florida Department of Education, *Charter School Appeal Commission: Membership Information* (2010), available at [http://www.floridaschoolchoice.org/information/Charter\\_schools/files/CSAC\\_Member\\_Info.pdf](http://www.floridaschoolchoice.org/information/Charter_schools/files/CSAC_Member_Info.pdf).

<sup>18</sup> Section 1002.33(6)(h), F.S.

<sup>19</sup> Section 1002.33(7)(a), F.S.

The initial term of a charter must be four or five years; however, if approved by the district school board, a charter school operated by a municipality or private nonprofit corporation may receive a charter for a term of up to 15 years.<sup>20</sup> Florida law also provides opportunities for charter schools that demonstrate exemplary academic performance and financial management to be granted a long-term charter renewal. A sponsor:

- May grant a 15-year charter renewal to a charter school: (a) that has operated for at least three years; (b) that demonstrates exemplary academic programming and financial management; and (c) for which none of the grounds for nonrenewal have been documented.
- Must grant a 15-year charter renewal to a charter school that meets the above criteria, receives a school grade of “A” or “B” in three out of four years, and is not in a state of financial emergency or deficit position.<sup>21</sup>

A sponsor may terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state’s education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of financial management;
- A violation of law; or
- Other good cause shown.<sup>22</sup>

A sponsor must provide 90-days’ written notice to the charter school prior to termination or non-renewal. The charter school’s governing board may request an informal hearing with the sponsor and may appeal an adverse decision to the state board.<sup>23</sup> A charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened. An informal hearing is not required, but the sponsor’s decision may be appealed to the state board. When a charter is immediately terminated, the sponsor must assume operation of the school.<sup>24</sup>

### Student Enrollment

The student capacity of a charter school is annually determined by the governing board, in conjunction with the sponsor.<sup>25</sup> Prospective students must apply for enrollment in the charter school and, if the number of applications exceeds the school’s capacity, a random lottery must be used to determine which students are enrolled.<sup>26</sup> Florida law authorizes all charter schools to give an enrollment preference to the siblings of current charter school students, children of a member of the charter school governing board, or children of charter school employees.<sup>27</sup>

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<sup>20</sup> Section 1002.33(7)(a)12., F.S.

<sup>21</sup> Section 1002.33(7)(b)1. and 2., F.S. Fifteen-year charters granted in this manner are subject to annual review by the sponsor and may be terminated on grounds currently specified in statute. *Id.*; see *infra* text accompanying note 22 (grounds for termination or nonrenewal of charter).

<sup>22</sup> Section 1002.33(8)(a), F.S.

<sup>23</sup> Section 1002.33(8)(b) and (c), F.S.

<sup>24</sup> Section 1002.33(8)(d), F.S.

<sup>25</sup> Section 1002.33(10)(h), F.S.

<sup>26</sup> Section 1002.33(10)(b), F.S.

<sup>27</sup> Section 1002.33(10)(d), F.S.

A charter school-in-the-workplace must enroll students based upon a random lottery that involves all children seeking enrollment whose parents are employed by the school's business partner.<sup>28</sup> Similarly, a charter school-in-a-municipality must enroll students based upon a random lottery that involves all children seeking enrollment whose parents are residents of the municipality.<sup>29</sup> Florida law authorizes a charter school-in-the-workplace and a charter school-in-a-municipality to limit enrollment to children of employees and children of residents, respectively. However, the law does not expressly state that a charter school-in-the-workplace or charter school-in-a-municipality may grant an *enrollment preference* to these students.<sup>30</sup>

Approximately 38 charter schools participate in the Voluntary Prekindergarten Education (VPK) program.<sup>31</sup> Florida law does not authorize charter schools to grant an enrollment preference to children who complete a VPK program provided by the school during the previous year. Thus, such children must reapply for admission and participate in the random lottery in order to enroll in kindergarten at the charter school.<sup>32</sup>

### Academic and Financial Accountability

Florida law establishes several requirements to hold charter schools accountable both financially and academically.<sup>33</sup> Among other things, charter schools must submit annual financial reports,<sup>34</sup> provide for an annual financial audit,<sup>35</sup> and submit to the sponsor monthly financial statements.<sup>36</sup> A charter school's annual financial audit must include any findings regarding material weaknesses in internal control; significant deficiencies in internal control; violations of law, contract provisions, or grant agreements; or abuse that may have a material effect on the charter school's financial statements.<sup>37</sup> Like traditional public schools, charter schools are graded annually and charter school students must take the Florida Comprehensive Assessment Test (FCAT) and statewide standardized end-of-course assessments.<sup>38</sup>

### Effect of Proposed Changes

The bill establishes high-performing charter school qualifications and benefits and a high-performing charter school system designation to reward these schools and systems for exemplary academic

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<sup>28</sup> Section 1002.33(15)(b), F.S. Charter schools-in-the-workplace are sponsored by district school boards in partnership with a company or business. The business partner provides the school facility to be used. *Id.* Two charter schools-in-the-workplace operated in Florida during the 2009-10 school year. Email, Florida Department of Education, Legislative Affairs Director (Aug. 19, 2010).

<sup>29</sup> Section 1002.33(15)(c), F.S. Charter schools-in-a-municipality are sponsored by district school boards in partnership with a municipality. *Id.* Eleven charter schools-in-a-municipality operated in Florida during the 2009-10 school year. Email, Florida Department of Education, Legislative Affairs Director (Aug. 19, 2010).

<sup>30</sup> Section 1002.33(10)(d) and (e)3., F.S.

<sup>31</sup> Email, Agency for Work Force Innovation, Office of Early Learning (March 9, 2011). These charter schools are listed in the Agency for Workforce Innovation's (AWI) provider database as public school providers. According to AWI, some charter schools may be providing the program as private providers; however, AWI's current data collection practices do not include a data element for distinguishing charter schools from other private providers. *Id.*

<sup>32</sup> See s. 1002.33(10)(b) and (d), F.S.

<sup>33</sup> Sections 218.39, 218.503, 1002.33, and 1002.345, F.S.

<sup>34</sup> Section 1002.33(9)(g), F.S.

<sup>35</sup> Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.

<sup>36</sup> Section 1002.33(9)(g), F.S.

<sup>37</sup> Section 10.856(2)(b)2.c., Rules of the Auditor General.

<sup>38</sup> Sections 1002.33(7)(a)4. and (9)(k)1., F.S. All public schools, including charter schools, which have at least 30 students with valid FCAT scores in reading for the current and prior years and at least 30 students with valid FCAT scores in mathematics for the current and prior years are assigned a school grade. Section 1008.34(3)(a)1., F.S.; rule 6A-1.09981(4), F.A.C.

performance and financial management. Additionally, the bill revises charter school application review, appeal, and applicant training requirements; revises due process requirements for charter termination and nonrenewal; authorizes new enrollment preferences; establishes requirements for charter schools operated under the same governing board as separate schools in shared facilities; repeals the Charter School Review Panel; authorizes a charter school system to serve as its own local educational agency for federal funding purposes; and requires DOE to review various issues related to charter school funding.

## High-Performing Charter Schools

### *Qualifications*

The bill establishes qualifications enabling charter schools to receive “high-performing charter school” status. A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of “A” and no school grade below “B;”
- Has received an unqualified opinion<sup>39</sup> on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.<sup>40</sup>

A charter school in the workplace satisfies audit requirements if the auditor finds that sufficient monetary resources are available to cover any reported deficiency or if the deficiency does not result in a deteriorating financial condition.<sup>41</sup>

The Commissioner of Education, upon request by a charter school, must verify that the school meets the qualifications and provide a verification letter to both the school and sponsor. Virtual charter schools are not eligible for “high-performing” status.<sup>42</sup>

Based on data from the past three years, a total of 116 charter schools meet the school grade qualifications for high-performing charter school status. Of these charter schools, 79 received three consecutive school grades of “A” and 33 received two “A’s” and one “B.” However, eight of the 116 charter schools that meet the school grade criteria would be disqualified due to a FY 2007-08 or 2008-09 audit revealing a financial emergency condition. Therefore, a total of 108 charter schools would qualify for high-performing charter school status based upon available school grade and audit data for the past three years. The total number of charter schools that currently qualify for “high performing” status may be lower, as complete audit data is not yet available for FY 2009-10 and annual audit reports for this three-year period have not been reviewed to ascertain whether the audit opinion was “unqualified.”<sup>43</sup>

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<sup>39</sup> An unqualified audit opinion means that the charter school’s financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

<sup>40</sup> A financial emergency condition includes: failure to pay short-term loans, make bond debt service or pay long-term debt payments due to lack of funds; failure to pay uncontested creditor claims within 90 days; failure to pay withheld employee income taxes; failure for one pay period to pay, wages, salaries, and retirement benefits owed; or a fund balance or total net assets deficit. Section 218.503(1), F.S.

<sup>41</sup> A “deteriorating financial condition” is a circumstance that significantly impairs the ability of a charter school to generate enough revenues to meet its expenditures without causing the occurrence of a financial emergency condition described in s. 218.503(1). Section 1002.345(1)(a)3., F.S.

<sup>42</sup> Chapter 2011-137, L.O.F., Digital Learning, authorizes the establishment of virtual charter schools.

<sup>43</sup> Email, Florida Department of Education, Office of Independent Education and Parental Choice (April 7, 2011).

## Benefits

The bill authorizes high-performing charter schools to take advantage of various benefits. A high performing charter school may:

- Increase the school's enrollment once per year by up to 15 percent of the maximum enrollment specified in the charter;
- Expand grade levels within kindergarten through grade 12 to add grade levels not already served, provided that any resulting increase in enrollment does not exceed the 15 percent limitation;
- Submit quarterly, rather than monthly, financial statements to its sponsor;
- Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the school's governing board, regardless of the charter renewal cycle; and
- Receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a lesser term at the option of the charter school, is subject to annual review by the sponsor, and may be terminated for grounds currently specified in statute.<sup>44</sup>

Newly executed charters and charters modified or renewed after a charter school receives "high-performing" status must contain provisions for implementing "high-performing" benefits. A high-performing charter school must notify its sponsor by March 1 regarding enrollment increases or grade level expansion planned for the following school year. The bill prohibits a sponsor from capping enrollment increases or requiring a charter school to waive its rights to high-performing charter school benefits as a condition of charter approval or renewal. Thus, sponsors will be held accountable for allowing high-performing charter schools to enjoy the benefits authorized by the bill.

A high-performing charter school may not increase enrollment or expand grade levels following any year in which it receives a school grade of "C." If it receives a school grade of "C" in any two years during the term of the 15-year charter, the term of the charter may be modified by the sponsor and the charter school loses "high-performing" status. High-performing charter school status may be regained by the school only after meeting the eligibility requirements in a new three-year cycle. Thus, high-performing charter schools must sustain exemplary academic performance or risk losing the benefits of "high-performing" status.

Flexibility to increase enrollment and expand grade levels will enable high-performing charter schools to serve more students. The 15-year charter will assist these schools in making long-term investments to improve facilities and educational programs. Submission of quarterly rather than monthly financial statements recognizes the school's track record of exemplary financial management and reduces the administrative burden associated with the financial monitoring process.

As an additional benefit, a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates its educational program. The application must indicate that the charter school is "high-performing" and include the commissioner's eligibility letter. The reasons a sponsor may deny the application are limited by the bill and denial may be appealed directly to the state board. Enabling high-performing charter schools to replicate will facilitate the statewide expansion of successful charter school models.

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<sup>44</sup> See *supra* text accompanying note 22 (grounds for termination or nonrenewal of charter).

The number of new charter schools that a high-performing charter school may establish is limited to one in any given year. A high-performing charter school may not utilize this process to establish an additional charter school unless all schools previously established in this manner achieve high-performing charter school status. Thus, a high-performing charter school must demonstrate that each charter school it establishes is “high-performing” before establishing an additional school. These limitations increase the likelihood that a high-performing charter school will devote the resources necessary to establish and maintain these schools at a high level of academic and financial performance.

### High-Performing Charter School Systems

The bill establishes qualifications for high-performing charter school system status to recognize charter school systems with a track record of successful charter school operations. A high-performing charter school system is a system of charter schools operated by a municipality or other public entity that is authorized by law to operate a charter school, a private, not-for-profit, s. 501(c)(3) status corporation, or a private for-profit corporation that:

- Includes at least three high-performing charter schools in Florida, as defined in the bill;
- Has at least 50 percent of its charter schools designated as “high-performing” with no charter school receiving a school grade of “D” or “F;” and
- Has not received an annual financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida.

Upon request by the system, the Commissioner of Education must verify compliance with the eligibility requirements and provide a verification letter to the system.

Florida’s system of school improvement interventions is known as “differentiated accountability.” Low-performing schools are categorized according to the causes and severity of substandard student achievement. A school’s categorization determines the type and intensity of school improvement interventions and whether interventions are directed by the school, school district, or state.<sup>45</sup> The lowest performing schools are categorized as “Intervene schools” and receive more comprehensive interventions.<sup>46</sup> The year after a school is classified in the Intervene category, the school district must submit a plan to the state board proposing to reconstitute the school. Among other options, the school district may reconstitute the school as a charter school and contract with a charter school operator to administer the school.<sup>47</sup>

To alleviate concerns that the high academic performance standards for “high-performing” status may discourage systems from participating in school improvement efforts, the bill allows systems a period of time to improve academic performance at low-performing public schools. If a system assumes operation of an Intervene school that is converted into a charter school, that school is not considered in determining high-performing charter school system status for the first three years after the system assumes operations. The school is considered in eligibility determinations in year four and thereafter. A new charter school established in a school zone served by an Intervene school is not considered in determining eligibility if it attains and maintains a higher school grade than the Intervene school serving the zone within three years after establishment. Thus, systems are given time to turnaround low-performing schools; but must improve performance at these schools to keep “high-performing” status.

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<sup>45</sup> Section 1008.33(3)(b) and (4), F.S.; rule 6A-1.099811(3), F.A.C.

<sup>46</sup> Section 1008.33(2)(b) and (4), F.S.

<sup>47</sup> Section 1008.33(5)(a), F.S.; rule 6A-1.099811(8)(b), F.A.C.

## Charter School Applications

A charter school application submitted by a high-performing charter school may only be denied if clear and convincing evidence<sup>48</sup> demonstrates:

- Material noncompliance with application requirements related to curricula, student learning goals, reading instruction, and financial management;
- Material noncompliance with law requiring charter schools to be nonsectarian; comply with student enrollment requirements; be accountable to the sponsor; be tuition free; and meet state and local health, safety, and civil rights requirements;
- That the proposed charter school does not substantially replicate one of the applicant's high-performing charter schools;
- That the applicant misrepresented important facts or concealed information during the application process; or
- The proposed charter school's educational program, financial management practices do not materially comply with the charter school statute.

The bill defines "material noncompliance" as a failure to follow requirements or a violation of prohibitions applicable to charter school applications which is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance.

If an application submitted by a high-performing charter school is denied, the sponsor must provide the applicant and DOE with a letter of denial stating its reasoning with supporting documentation. If the applicant appeals, review by the CSAC is bypassed, and the appeal goes directly to the state board. The state board must independently review whether the sponsor based its decision upon the denial criteria established by the bill. The heightened standards for application review and appeals are intended to increase the likelihood that applications replicating high-performing charter school models will not be denied for nonmaterial reasons.

If the sponsor fails to act on an application submitted by a high-performing charter school within 60 days of submission, the application is deemed approved. The applicant and sponsor must then enter into charter negotiations.

For all charter school applications, the bill requires a sponsor to allow the applicant an opportunity to correct technical deficiencies, such as typographical errors or missing signatures, if such deficiencies are identified as cause to deny the application. The sponsor must provide written notice to the applicant, who then has 7 days to correct its application. This is intended to decrease the likelihood that charter school applications will be denied based upon technical matters.

Currently, charter school applicants are required to attend training before submitting an application to establish a new charter school. DOE must provide technical assistance to applicants regarding such topics as business planning, income and cost estimating, and enrollment projections. The bill eliminates pre-application training and instead requires training only for applicants with approved charter school applications. Training and technical assistance topics are revised to reflect knowledge relevant to effective charter school management, such as cost and income accounting and school accountability and federal grant reporting.

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<sup>48</sup> "Clear and convincing evidence" is evidence that is "positive, precise, and explicit" or "evidence indicating that the thing to be proved is highly probable or reasonably certain." *Slomowitz v. E.O. Walker*, 429 So.2d 797 (Fla. 4<sup>th</sup> DCA. 1983); Black's Law Dictionary (5<sup>th</sup> Ed. 1996).

Florida law requires the Commissioner of Education to appoint an equal number of charter school and sponsor representatives to CSAC. The bill adds provisions directing the commissioner to appoint enough members to CSAC as necessary to avoid conflicts of interest.

### Charter Termination or Nonrenewal

Currently, a charter school's governing board may request an informal hearing by the sponsor when the sponsor moves to terminate or not renew its charter. The sponsor's decision may be appealed to the state board. The bill eliminates the informal hearing process and requires the sponsor to provide a formal hearing, if requested by a charter school's governing board. The sponsor may choose to provide either a direct hearing or a hearing before an administrative law judge. A final order on termination or nonrenewal is appealable to the District Court of Appeals (DCA). These new due process procedures are intended to better protect a charter school's contract rights under the charter and reduce the likelihood of arbitrary charter terminations.

Florida law currently authorizes a sponsor to immediately terminate a charter based upon good cause or if continued operation of the school threatens student health, safety, or welfare. Written notice of termination must be provided to the charter school's governing board and principal and to DOE. No hearing is required for immediate terminations, but the sponsor's decision may be appealed to the state board. The bill eliminates the "good cause" standard for immediate termination and instead requires a sponsor to state in the written notice specific facts indicating a danger to student health, safety, and welfare. The bill requires a sponsor to provide a formal hearing, if requested by the charter school's governing board. The hearing may occur after termination and is appealable to the DCA. Thus, a sponsor must state specific reasons for immediately terminating a charter and the validity of the termination will be vetted during a formal hearing.

As in current law, the sponsor must assume operation of a charter school following an immediate termination, unless continued operation of the school would materially threaten student health, safety, or welfare. The bill authorizes attorney's fees and costs to the charter school if the sponsor fails to assume operation of the school and the charter school prevails on appeal. This change increases the likelihood that the sponsor will assume operation of the school while the appeal is pending, thereby reducing the disruption imposed upon students at the school.

### Student Enrollment

Currently, charter schools may give an enrollment preference to the siblings of current charter school students, children of charter school governing board members, or children of charter school employees. The bill authorizes four new enrollment preferences applicable to charter schools-in-the-workplace, charter schools-in-a-municipality, children who complete a Voluntary Prekindergarten Education program provided by a charter school, and children of active-duty military personnel. Like the enrollment preferences currently authorized in law, all enrollment preferences created by the bill are optional.

A charter school-in-the-workplace may give an enrollment preference to children whose parents are employees of the school's business partner and children whose parents are residents of the municipality in which the school is located. Likewise, the bill authorizes a charter school-in-a-municipality to give an enrollment preference to children whose parents are residents of the municipality in which the school is located. Currently, a charter school-in-the-workplace may limit enrollment exclusively to children of employees and a charter school-in-a-municipality may limit enrollment exclusively to children of residents. The bill enables these charter schools to give a preference to these children, while still allowing other children to enroll in the school.

Additionally, the bill authorizes charter schools to give an enrollment preference to children who complete a VPK program provided by the charter school or the school's governing board during the previous year. Currently, such children must reapply for admission and participate in the random lottery in order to enroll in kindergarten at the charter school. The enrollment preference will enable these children to articulate directly into kindergarten at the charter school without reapplying and participating in the random lottery.

Legislation enacted in 2006 repealed a mandatory requirement that children of active-duty military personnel be given first preference for enrollment in charter schools.<sup>49</sup> The bill authorizes an optional enrollment preference for these children.

There is currently no requirement that charter schools obtain parental consent before transferring a student to another charter school operated by its governing board. The bill requires a charter school to obtain parental consent before transferring a student to another charter school with a separate Master School Identification Number.<sup>50</sup>

### Charter School Governing Boards

Florida law does not require charter school governing board members to reside in the school district where the charter school is located. Similarly, governing boards are not required to appoint an individual to represent the board locally. The bill requires each charter school's governing board to appoint a representative to facilitate parental involvement, assist stakeholders, and resolve disputes. The representative must reside in the school district where the charter school is located and may be a governing board member, charter school employee, or individual contracted to provide representation. The governing board must appoint a separate representative for each charter school it operates in the district.

Each governing board must hold at least two open public meetings in the district per school year. The charter school principal and appointed representative must be physically present at these meetings. The bill prohibits a sponsor from requiring governing board members to reside in the district if the governing board complies with these requirements. Local representation and open meetings will ensure stakeholder access and may increase involvement in charter school affairs.

### Charter School Facilities

Currently, local governments may not impose local building requirements or restrictions upon charter schools that are more stringent than those found in the Florida Building Code.<sup>51</sup> The bill clarifies that local governments are prohibited from imposing local building requirements or site development restrictions, such as parking or site size criteria, upon charter schools that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code. Additionally, local governments must treat charter schools and traditional public schools equitably when regulating facilities.

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<sup>49</sup> Section 17, ch. 2006-74, L.O.F.

<sup>50</sup> Each Florida public school is assigned a Master School Identification Number for the purposes of indexing information about the school, e.g., location, grades served, special student populations, charter or other specialty school status, etc. Among other things, these numbers are used to identify the school for funding and school accountability purposes. Florida Department of Education, *Master School Identification File: 2010-11*, Technical Assistance Paper, at 1 (March 2011), available at, <http://www.fldoe.org/eias/dataweb/tech/msid.pdf>.

<sup>51</sup> Section 1002.33(18)(a), 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, DOE, charter schools, and school districts for improving operations and oversight. The panel's membership is comprised of Commissioner of Education, legislative, and gubernatorial appointees.<sup>52</sup> The bill repeals this panel.

## Charter School Funding

Charter schools, like traditional public schools, receive federal education funding through such programs as Title I of the Elementary and Secondary Education Act (Title I)<sup>53</sup> and the Individuals with Disabilities Education Act. (IDEA).<sup>54</sup> Typically, these programs are structured so that funding flows from the federal government to a state educational agency,<sup>55</sup> which then awards subgrants to local education agencies (LEA) within the state.<sup>56</sup> Each state determines which entities may serve as LEAs.<sup>57</sup> In Florida, school districts are the LEA for district public schools, including charter schools. Federal education funds are received by the school district, which then distributes to the charter school its proportionate share of funding.<sup>58</sup>

Each federal education funding program has unique policy goals and program requirements. A LEA must submit a separate application and implementation plan for each federal program.<sup>59</sup> LEAs must have the personnel and infrastructure necessary to maintain financial, procurement, and inventory management systems that meet federal requirements.<sup>60</sup> LEAs must also comply with record keeping and annual financial and performance accountability reporting requirements.<sup>61</sup>

The bill authorizes a governing board that operates a system of charter schools to serve as its own LEA for federal funding purposes, if certain criteria are met. The system must:

- File a resolution with its sponsor and DOE;
- Have all schools in same county;
- Have a total enrollment exceeding that of at least one Florida school district;

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<sup>52</sup> Section 1002.33(22), F.S.

<sup>53</sup> 20 U.S.C. s. 1400 et. seq.

<sup>54</sup> 20 U.S.C. s. 6301 et. seq.; s. 1002.33(17)(c)-(d), F.S.

<sup>55</sup> The Florida Department of Education is Florida's state educational agency for federal funding purposes. *See* 20 U.S.C. s. 1412(a).

<sup>56</sup> *See* 20 U.S.C. ss. 1412(a) and 1413(a).

<sup>57</sup> Federal law broadly defines the term LEA to include state boards of education, state departments of education, local school boards, cities, counties, political subdivisions, public postsecondary institutions, or any other public entities that a state's law authorizes to administer public elementary and secondary schools. *See, e.g.*, 34 C.F.R. s. 77.1.

<sup>58</sup> Section 1002.33(17)(c), F.S.

<sup>59</sup> *See, e.g.*, 20 U.S.C. s. 6312 (local education agency Title I plans).

<sup>60</sup> 34 C.F.R. ss. 76.702 and 80.20-80.26 (financial management); 34 C.F.R. s. 80.36 (procurement management); 34 C.F.R. ss. 80.32 and 80.33 (inventory management).

<sup>61</sup> 34 C.F.R. ss. 76.702, 80.36, 80.32, 80.33, and 80.42 (fiscal, procurement, and inventory management records); 34 C.F.R. s. 80.41 (financial reports include status, cash transaction, and capital outlay reports). A LEA that fails to comply with the terms of a federal grant may be subject to withholding, suspension, or termination of grant funds or designated as a "high risk" grantee. 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees). Grant recipients who commit fraud may be debarred or suspended from participation in all federally funded programs. 34 C.F.R. s. 80.43(d); Exec. Order No. 12549, 34 C.F.R. s. 80.35.

- Operate both conversion and nonconversion charter schools;
- Not contract with a for-profit management company to operate schools; and
- Accept full responsibility for all LEA requirements.

Federal law allows for the designation of charter schools as LEAs.<sup>62</sup> Twenty-five states have laws authorizing at least some charter schools to serve as their own LEA.<sup>63</sup> Two charter school systems in the state currently meet the bill's criteria for LEA status.<sup>64</sup>

Federal charter school program grant funds are awarded to states by the U.S. Department of Education. Grant funds may be used for charter school start-up activities such as marketing, curriculum development, and purchasing instructional materials and equipment. Special requirements apply to separate charter schools operated by the same governing board in shared facilities. Such charter schools may receive grant funds if the schools are "separate and distinct from each other." Grant funds must be administered separately by each charter school and grant-funded items may only be used by the recipient school's students.<sup>65</sup>

In Florida, DOE administers federal charter school program grant funds and awards them to charter schools as competitive grants. DOE takes various measures, including site visits and requiring an inventory of all items purchased with grant funds, to ensure that separate charter schools sharing facilities comply with federal requirements.<sup>66</sup> The bill requires a charter school that moves out of a facility that is shared with another charter school to provide for an audit of all equipment, educational materials and supplies, curriculum materials, and other items purchased or developed with charter school program grant funds. Such items must be transferred to the charter school's new location.

The bill directs DOE to:

- Identify school districts that distribute funds or provide facilities, renovation, or new construction with funds generated by millage for capital improvements and the use of such funds by charter schools;
- Examine the impacts of removing the school district discretion regarding the distribution of capital improvement millage to charter schools-in-a-municipality;
- Examine the costs associated with supervising charter schools and determine if the five percent administrative fee paid for sponsor-provided administrative and educational services covers the cost of such services; and
- Examine the distribution of federal education funding to eligible students who are enrolled in charter schools.

DOE must report its findings to the Governor and Legislature by January 1, 2012.

### Technical Correction

Legislation enacted in 2009 requires governing board members of a charter school operated by a municipality or other public entity to make certain financial disclosures. The legislation cross-referenced

<sup>62</sup> See, e.g., 34 C.F.R. s. 76.787.

<sup>63</sup> Education Commission of the States, *What Policymakers Need to Know: Highlights of State Charter School Laws*, (March 2010), available at, <http://www.ecs.org/clearinghouse/92/22/9222.pdf>. (AZ, AR, CA, CT, DE, DC, GA, ID, IL, IN, LA, MA, MI, MN, MO, NH, NJ, NY, OH, OK, PA, RI, TX, UT, and WI).

<sup>64</sup> Telephone interview with Florida Department of Education (April 6, 2011).

<sup>65</sup> U.S. Department of Education, *Charter Schools Program: Nonregulatory Guidance*, at 13-15 (April 2011).

<sup>66</sup> Email, Florida Department of Education (April 15, 2011).

the wrong section of law, thereby inadvertently subjecting these board members to the financial disclosure requirements for elected constitutional officers, rather than those for local officers. The bill corrects this cross-reference.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

**1. Revenues:**

None.

**2. Expenditures:**

See Fiscal Comments Section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

**1. Revenues:**

None.

**2. Expenditures:**

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

### D. FISCAL COMMENTS:

The bill allows high-performing charter schools to increase their enrollment once per year by up to 15 percent more than the capacity determined in the charter. A Public School Enrollment Estimating Conference was held April 11, 2011 to determine the impact of the bill on public school enrollment. The estimating conference adopted a full-time equivalent (FTE) enrollment impact of:

- An estimate of \$0 for FY 2011-12.
- An estimate of \$2.1 million for FY 2012-13 using the low estimate adopted by the conference of 333 FTE and an estimated \$6,300 per FTE.
- An estimate of \$2.3 million for FY 2013-14 using the low estimate adopted by the conference of 371 FTE and an estimated \$6,300 per FTE.

The bill allows high-performing charter schools to be replicated in another school district. Replication is limited to one school in the state per year. Allowing additional charter schools may increase public school enrollment which is funded through the Florida Education Finance Program (FEFP). The estimating conference adopted a FTE enrollment impact of:

- An estimate of \$0 for FY 2011-12.
- An estimate of \$3.0 million for FY 2012-13 using the low estimate adopted by the conference of 480 FTE and an estimated \$6,300 per FTE.
- An estimate of \$9.3 million for FY 2013-14 using the middle estimate adopted by the conference of 1,482 FTE and an estimated \$6,300 per FTE.

The total fiscal impact to the state is estimated to be:

- For FY 2011-12 = \$0
- For FY 2012-13 = \$3.0 million
- For FY 2013-14 = \$9.3 million