

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7009 PCB CIS 13-01 Charter Schools

**SPONSOR(S):** Appropriations Committee, Choice & Innovation Subcommittee, Moraitis, Jr.

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee	8 Y, 5 N	Ammel	Fudge
1) Appropriations Committee	13 Y, 10 N, As CS	Heflin	Leznoff
2) Education Committee			

### SUMMARY ANALYSIS

The bill includes several provisions that increase charter school accountability and transparency, including, but not limited to:

- Prohibiting a charter school, upon termination of the charter, from expending more than \$10,000 without prior written permission from the sponsor, unless such expenditure was included within the annual budget submitted to the sponsor or is for reasonable attorney's fees and costs during the pendency of an appeal.
- Prohibiting employees of the charter school or the charter management organization and their spouses, from serving on the charter school governing board.
- Clarifying provisions for high-performing charter schools and systems by aligning qualifications of high-performing systems with high-performing schools, requiring the Commissioner of Education to annually review and approve such status; outlining provisions for losing that status; and providing timelines for contract modification requests.
- Prohibiting the governing board or related entity of a charter school that is subject to academic or financial corrective action, from submitting additional applications to open new charter schools until the conditions of the academic or financial corrective action are satisfactorily resolved.

The bill also includes several provisions to expand charter school growth and flexibility, such as:

- Requiring the Department of Education to adopt a standard contract and contract renewal that cannot be amended, appended or otherwise altered by the sponsor.
- Allowing charter applicants to submit a draft charter by May 1 each year and receive district feedback prior to final submission on August 1.
- Allowing all charter schools to determine their own capacity and enrollment caps and allowing them to increase those caps under certain circumstances.
- Providing statutory clarification that provisions affecting instructional personnel contracts, do not apply to charter schools under certain circumstances.
- Clarifying that district K-12 educational facilities not being used for K-12 educational purposes must be made available to charters, and requiring the charter school to pay maintenance costs of the facility.
- Authorizing out-of-state operators to qualify for high-performing status to operate schools or systems in Florida under certain circumstances; requiring the State Board of Education to adopt the review and qualification process in rule.
- Enabling the Florida College System institutions that provide teacher preparation programs to operate charter schools serving PreK-12<sup>th</sup> grades under certain circumstances.

The bill has no fiscal impact on state government.

The bill takes effect July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

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 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 s. 501(c)(3) of the Internal Revenue Code status organizations<sup>7</sup> may operate a charter school.<sup>8</sup>

### Charter School Accountability

#### Present Situation

Florida law establishes several requirements designed to hold charter schools accountable both financially and academically, including:<sup>9</sup>

- A detailed application and rigorous review and approval process.<sup>10</sup>
- The execution and maintenance of charter agreements between the charter school and its sponsor.<sup>11</sup>
- Annual reporting,<sup>12</sup> annual financial audits,<sup>13</sup> and sponsor monitoring of monthly financial statements.<sup>14</sup>
- Participation in statewide assessments and Florida’s school grading system.<sup>15</sup>
- Interventions for unsatisfactory academic performance and financial instability.<sup>16</sup>
- Reporting of student performance information to parents and the public.<sup>17</sup>

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<sup>1</sup> In the 2012-13 school year, there are currently 574 charter schools operating in 44 of Florida’s 67 school districts and at two state universities. Charter schools currently serve over 200,000 students. Florida Department of Education, *Charter Schools Program Fast Facts Report* (November 2012) available at [http://www.floridaschoolchoice.org/Information/Charter\\_Schools/](http://www.floridaschoolchoice.org/Information/Charter_Schools/) (last visited January 29, 2013).

<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> Sections 218.39, 218.503, 1002.33, and 1002.345, F.S. Charter technical career centers are subject to many of the same accountability requirements as charter schools. There are three charter technical career centers operating in Florida – the Advanced Technology College in Volusia County, the First Coast Technical College in St. Johns County, and the Lake Technical Center in Lake County. See 218.39, 218.503, 1002.34, and 1002.345, F.S.; Florida Department of Education, *List of Charter Technical Career Centers* (2012), available at <http://www.fldoe.org/workforce/pdf/chartertechnicalcenterlist.pdf>.

<sup>10</sup> Section 1002.33(6), F.S.

<sup>11</sup> Section 1002.33(6)(h) and (7), F.S.

<sup>12</sup> Section 1002.33(9)(g), F.S.

<sup>13</sup> Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

<sup>14</sup> Section 1002.33(9)(g), F.S.

<sup>15</sup> Section 1002.33(7)(a)4. and (16)(a)2., F.S.

<sup>16</sup> Sections 1002.33(9)n. and 1002.345, F.S.

<sup>17</sup> Section 1002.33(21)(b) and (23), F.S.

- Compliance with ethical standards for employees and governing board members.<sup>18</sup>

Parental choice also holds charter schools accountable. Parents choose whether to enroll their children in a charter or traditional public school. Dissatisfied parents of charter school students may withdraw them from the school. This creates an incentive for the charter school to provide quality educational programs for its students. Parental choice also fosters healthy competition between charter schools and traditional public schools, improving the performance of both.<sup>19</sup>

Each charter school must enter into a performance contract with its sponsor, known as a charter. The charter lists specific objectives that the charter school must meet to remain in operation. 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>20</sup>

When a charter school is terminated or not renewed, the law requires reversion of state and federal funds. Unencumbered public funds revert to the sponsor while unencumbered capital outlay funds and federal charter school program grant funds revert to the department to be redistributed among eligible charter schools. The charter school is responsible for all debts of the charter school, and the district may not assume the debt from any contract made between the governing body of the school and a third party, unless previously agreed upon in writing by both parties.<sup>21</sup>

Charter schools that qualify for a school grade are graded annually.<sup>22</sup> In addition, charter schools are required to submit an annual report to its sponsor. At a minimum, each charter school's annual report must include student achievement and financial data, the facilities currently used or planned for use by the school, and descriptive information about the charter school's personnel.<sup>23</sup>

A charter school that earns two consecutive grades of "F" may qualify for one of three exceptions to mandatory termination. The first two exceptions provide charter schools that specifically target hard-to-serve students with an additional year to raise student performance. A charter school may qualify for one of these exceptions if:

- It is in its first three years of operation and serves a student population in the same school zone as a failing public school. Such a charter school must earn at least a grade of "D" by year three. In year four and thereafter, the exception no longer applies to the charter school.
- The state board grants the charter school a waiver of termination. To obtain a waiver, the charter school must demonstrate that the learning gains of its students on statewide assessments are comparable or better than the learning gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for one year and may only be granted once. Charter schools that have been in operation for more than five years are not eligible for a waiver.<sup>24</sup>

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<sup>18</sup> Section 1002.33(24) and (26), F.S.

<sup>19</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *Florida's Charter Schools: A Decade of Progress* (Nov. 2006), available at [http://www.floridaschoolchoice.org/information/charter\\_schools/files/Charter\\_10Year\\_Book.pdf](http://www.floridaschoolchoice.org/information/charter_schools/files/Charter_10Year_Book.pdf).

<sup>20</sup> Section 1002.33(8)(a), F.S.

<sup>21</sup> Section 1002.33(8)(e) and (f), F.S.

<sup>22</sup> Sections 1002.33(7)(a)4. and (9)(k)1. and 1008.34(3), F.S. Charter schools that are classified as alternative schools may choose to receive a school improvement rating in lieu of a school grade. Section 1008.341, F.S.

<sup>23</sup> Section 1002.33(9)(k), F.S. The sponsor must submit the report to the Commissioner of Education. *Id.*

<sup>24</sup> Section 1002.33(9)(n)4.b.-c., F.S.

The third exception applies to traditional public schools that are reconstituted as charter schools pursuant to the differentiated accountability process. The law governing differentiated accountability controls in such cases.<sup>25</sup>

Members of the charter school governing board are subject to specific standards of conduct for public officers, employees of agencies, local governmental attorneys, voting conflicts and disclosure of financial interests.<sup>26</sup> The law requires disclosure of the identity of all relatives employed by the charter school who are related to individuals with certain decision making authority, including governing board members.<sup>27</sup> Governing board members are required to participate in governance training approved by the Department of Education which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.<sup>28</sup>

### Effect of Proposed Changes

The federal government imposed additional requirements on state agencies receiving grants under the United States Department of Education's Charter Schools Program during the 2011-12 legislative session. One of the new requirements is as follows:

3. State law, regulations, or other policies in the State where the applicant is located require that –

B) Authorized public chartering agencies use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA as the most important factor when determining to renew or revoke a school's charter.<sup>29</sup>

In accordance with this federal requirement, the bill requires the sponsor to make student academic achievement for all students the most important factor when determining whether or not to renew or terminate a charter. Charter schools may still be terminated or non-renewed for any of the following grounds: failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance; failure to meet generally accepted standards of fiscal management; violation of law; or other good cause shown.

The bill requires each charter school to maintain an internet website that enables the public to obtain information regarding the school, its personnel, and its programs. The website must include information or online links to information regarding any entity who owns, operates, or manages the school, including any nonprofit or for-profit entity; the names of all governing officers and administrative personnel of the entity; and any management fees the school pays to the entity. The information or online links must be prominently displayed and easily accessible to visitors of the website.

Once a charter school receives a notice of nonrenewal or termination it must obtain prior written approval from the sponsor before expending more than \$10,000, unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract or such expenditure is necessary to cover expenses related to reasonable attorney fees and costs during pendency of an appeal.

Currently, charter schools earning two consecutive grades of "F" may request a waiver from the State Board of Education. The bill reduces the number of days a charter school has to file a waiver request from 30 to 15. Additionally, the bill clarifies that the waiver must be submitted within 15 days of the Department's official release of school grades and not after school grade appeals. These measures will expedite the waiver requests and hearings.

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<sup>25</sup> Section 1002.33(9)(n)4.a., F.S.; s. 1008.33(4)(b)3. and (e), F.S.

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

<sup>27</sup> Section 1002.33(7)(a)18., F.S.

<sup>28</sup> Section 1002.33(9)(j)4., F.S.

<sup>29</sup> Email, Florida Department of Education, Independent Education and Parental Choice (Jan. 11, 2013). See The Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, Title VIII (P.L. 112-10).

Employees of the charter school and the charter management organization or their spouses, may not serve as members of the charter school governing board.

## **Charter School Application Process**

### Present Situation

A person or entity wanting to open a charter school must submit an application on the model application form prepared by the Department of Education.<sup>30</sup> Sponsors shall receive and review all applications that are received on or before August 1 of each calendar year for charter schools that will open at the beginning of the next school year or upon a date agreed to by the sponsor and the charter applicant. Before approving or denying an application, the sponsor must allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the application.<sup>31</sup>

### Effect of Proposed Changes

The bill prohibits a sponsor from refusing to accept a charter application prior to August 1. To promote collaboration between the sponsor and the applicant, the bill allows applicants to submit a draft application on May 1 each year and requires districts to review and provide feedback to the applicant as to any potential grounds for denial within 60 days of receipt of the draft application. This allows applicants to rectify any major issues prior to final submission and affords the district more time for review of applications that are submitted early.

The bill requires the applicant to disclose whether or not they were a member of a charter school governing board or some other person with decision making authority for a charter school that was subject to a corrective action plan or financial emergency plan. The applicant must describe the circumstances surrounding that plan and the resolution of the plan. A governing board member or other related entity of a charter school under a current corrective action plan or financial recovery plan is not eligible to apply to open a new charter school.

## **Contractual Agreements**

### Present Situation

Upon approval of an application, the sponsor and the charter school must set forth the terms and conditions for the operation of the school in a written contractual agreement called a charter. The sponsor has 60 days to provide an initial contract to the charter school. The sponsor and the charter school then have 75 days to negotiate and notice the contract for final approval.<sup>32</sup> Several school districts have included in their charters a requirement that charter schools have a certificate of occupancy (CO) 30 days prior to the first day of school and if charter schools fail to meet that deadline, it constitutes an automatic termination of the charter. As a result, some charter applicants were required to re-submit applications and work through the approval and contract process again.<sup>33</sup>

In the case of a contract dispute, the Department of Education must provide mediation services. If the Commissioner of Education determines that the dispute cannot be settled through mediation, it may be appealed to an administrative law judge appointed by the Division of Administrative Hearings.<sup>34</sup>

Currently, sponsor policies may not apply to charter schools, unless they are mutually agreed to by both the sponsor and the charter school.<sup>35</sup> These policies may or may not be incorporated into the

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<sup>30</sup> Section 1002.33(6)(a), F.S.

<sup>31</sup> Section 1002.33(6)(b), F.S.

<sup>32</sup> Section 1002.33(6)(h), F.S.

<sup>33</sup> Telephone interview with Charter Schools Director, Florida Department of Education (Jan. 24, 2013).

<sup>34</sup> Section 1002.33(6)(h), F.S.

<sup>35</sup> Section 1002.33(5)(b)1.d., F.S.

contract. If not, and the sponsor subsequently revises such policies, the charter school may become subject to new provisions that were not mutually agreed to at the onset.

Current law stipulates that charter schools operated by a municipality or other public entity or a private, not-for-profit, s. 501(c)(3) status corporation are eligible for a 15-year charter upon approval of the district school board, if the purpose is to facilitate access to long-term financial resources for charter school construction.<sup>36</sup>

In 2009, the Legislature required the Department of Education to adopt State Board of Education rules to implement, among other documents, charter and charter renewal formats for use by all charter sponsors and charter schools.<sup>37</sup>

A charter may be modified, only during its initial term or any renewal term, upon the recommendation of the sponsor or the charter school's governing board and upon approval of both parties to the agreement.<sup>38</sup>

### Effect of Proposed Changes

Currently, the charter contracts utilized by sponsors vary from district to district. This variety lengthens the contract negotiation timeline and affects a charter school's ability to open on time. The bill requires the state board to adopt in rule a standard charter contract and prohibits a sponsor from omitting, supplementing, amending or otherwise altering the standard charter contract.<sup>39</sup> By standardizing the charter contract, the best practices used throughout the state may be incorporated thereby streamlining the contracting process. Moreover, the amount of time necessary to produce an initial contract and negotiate the final contract will be reduced. Consequently, the bill reduces the number of days for an initial contract from 60 to 30 and the number of days for negotiations from 75 to 40.

The bill requires that any sponsor policies that the charter school and sponsor agree to be incorporated into the final charter (contract). If the sponsor subsequently amends such policies, they must be presented to the charter school and if agreed to, amended into the charter. This allows the charter school to review the new policies and determine whether or not the policies are in the best interest of the charter school.

The bill specifically prohibits a sponsor from requiring a charter school to have a CO prior to 15 days before the first day of school and clarifies that the administrative law judge does have final order authority to rule on issues outlined in Section 1002.33(6)(h), F.S.<sup>40</sup>

Charter schools and sponsors are provided more flexibility when negotiating long-term charters (beyond the initial 4 or 5 years), by removing the need to demonstrate that the long-term charter is necessary to facilitate access to long-term financial resources for construction.

The bill clarifies that modifications to the charter may include, but not be limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board and are physically located on the same campus. It also allows this type of modification to occur outside the normal contract renewal period.

The bill aligns timelines for sponsor review and approval of a charter modification requested by a high-performing charter school with the timelines established for a charter school. The sponsor, upon receipt of such request, has 40 days to provide an initial charter to the high-performing charter school,

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<sup>36</sup> Section 1002.33(7)(a)12, F.S.

<sup>37</sup> Section 7, ch.2009-214, L.O.F.

<sup>38</sup> Section 1002.33(7)(c), F.S.

<sup>39</sup> See State Board of Education Rule 6A-6.0786, F.A.C. and Form Number IEPC-M3, Florida Model Charter Contract Format, available at <https://www.flrules.org/gateway/ruleNo.asp?id=6A-6.0786> (last visited January 29, 2013).

<sup>40</sup> In the Division of Administrative Hearings Case No. 12-0087, Renaissance Charter School, INC., Petitioner, vs. Leon County School Board, Respondent, it was determined that, "The statute does not specify whether the order of the administrative law judge is a final or a recommended order."

and then the sponsor and high-performing charter school have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

## **Student Eligibility, Enrollment and Capacity**

### Present Situation

Charter schools must enroll all eligible students who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, the school must conduct a random selection and enroll students accordingly.<sup>41</sup>

Currently, the capacity of a charter school is determined annually by the charter school governing board in conjunction with the sponsor, unless the charter school has obtained high-performing status pursuant to s. 1002.331, F.S. The sponsor may not require a high-performing charter school to waive its right to determine its capacity or require an enrollment cap as a condition of approval or renewal of a charter.<sup>42</sup> Charter schools with high-performing status are also allowed to increase their enrollment once per year by up to 15 percent more than the capacity identified in the charter.<sup>43</sup>

### Effect of Proposed Changes

The bill requires that the lottery process be observed by the sponsor or a third party mutually agreed to by the charter school and sponsor.

The bill allows all charter schools the ability to determine capacity, without sponsor input, and to determine their own student enrollment. Moreover, the sponsor may not require any charter school to waive its rights to determine its own enrollment as a condition to approve or renew a charter. Finally, the sponsor may not require the charter school to enroll, or identify the specific students it will enroll, prior to the start of the school year as a condition of approval or renewal of a charter.

## **Exemption from Statutes – Teacher Compensation**

### Present Situation

Charter schools are generally exempt from the Florida K-20 Education Code (Chapters 1000-1013, F.S.), unless compliance with a particular statute is specifically required by law.<sup>44</sup> In 2011, the Legislature enacted the Student Success Act (Act), which required school districts and charter schools to implement reforms to educator compensation, performance evaluations, and contracts. These reforms were designed for implementation by traditional public schools; however, charter schools are required to implement them in the same manner as school districts.<sup>45</sup> As an unintended result, some school districts have interpreted the Act to require charter schools to implement the same employment policies as traditional public schools, even though implementation of a particular policy requires a complete structural shift from a private sector employment model to a model designed for public employers.<sup>46</sup>

### Effect of Proposed Changes

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<sup>41</sup> Section 1002.33(10)(b), F.S.

<sup>42</sup> Section 1002.33(10)(h), F.S.

<sup>43</sup> Section 1002.331(2)(a), F.S.

<sup>44</sup> Section 1002.33(16), F.S.

<sup>45</sup> Chapter 2011-1, L.O.F. There are 224 charter schools participating in Florida's Race to the Top grant. These charter schools will be implementing reforms to performance evaluations and compensation systems. Florida Department of Education, *LEA Approval Status List*, <http://www.fldoe.org/arra/Racetothetop-archive.asp> (last visited Feb. 27, 2012).

<sup>46</sup> Brief for School Board of Orange County, at 12-13, *Response to the State Board of Education in Appeal by Renaissance Charter School, Orlando* (Dec. 12, 2011)(on file with committee). For example, at least one school district has interpreted the Act's contract and workforce reduction provisions to prohibit charter schools from employing teachers on an at-will basis. *Id.*

The bill makes several changes to clarify the extent to which charter schools must comply with the Act's educator compensation, performance evaluation, and contracting requirements. The bill clarifies that provisions related to instructional personnel workforce reductions and contracts do not apply to charter schools, unless the school awards contracts and such contracts are for a term longer than one year. Charter schools must award annual salary adjustments to instructional personnel based upon annual performance evaluation results (like traditional public schools). However, flexibility is provided to determine salary supplements and other methods of compensation.<sup>47</sup>

The bill clarifies the meaning of "substantive requirements" by requiring that a charter school's evaluation instrument comply with subsection (2), (3), and (7) of s. 1012.34, F.S. Thus, charter schools must develop a performance evaluation that differentiates among four performance levels, supports effective instruction and student learning growth, is designed to improve instructional quality, and uses student data from multiple sources. The evaluation must be conducted at least once per year, personnel must be fully informed of the criteria and procedures prior to evaluation, the individual's supervisor must conduct the evaluation, and the evaluator may amend an evaluation based on specific assessment data. Charter schools must also comply by using the state approved student growth formula and requirements for measuring student growth in courses without statewide assessments.<sup>48</sup> The net effect of the bill's educator compensation, performance evaluation, and contracting provisions is to require charter schools to adopt employment policies that incorporate key concepts promoted by the Act, while providing flexibility to shape these policies in a manner that fits the charter school context.

For purposes of interpreting Education Code statutes that a charter school is required to comply with, the bill equates a charter school's principal with a district school superintendent and a governing board with a school board. Thus, for example, when a charter school must comply with a statutory provision that imposes a duty on school boards, the charter school's governing board must perform the duty.

## **Federal Funding Reimbursement**

### Present Situation

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),<sup>49</sup> Title I programs for disadvantaged students,<sup>50</sup> and Title II programs for improving teacher quality.<sup>51</sup> Typically, federal education programs are structured so that funding flows from the federal government to a state educational agency,<sup>52</sup> which then awards subgrants to local education agencies (LEA) within the state.<sup>53</sup> 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>54</sup>

Each federal education program has unique policy goals and expenditure, record keeping, and annual financial and performance accountability reporting requirements.<sup>55</sup> Federal regulations provide

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<sup>47</sup> For example, the Act's salary schedule provisions provide opportunities for teachers to earn salary supplements based upon assignment to a Title I school or low-performing school. Charter school teachers are not assigned to schools in the same manner as teachers employed by a school district and many charter schools are single-school operations. Teachers in a charter school that does not meet these criteria, or that is not part of a system of charter schools that includes schools that meet these criteria, have no opportunity to earn these salary supplements. *See, e.g.,* s. 1012.27(1), F.S.

<sup>48</sup> Section 1012.34(2), (3), and (7), F.S.

<sup>49</sup> 20 U.S.C. s. 1411(e).

<sup>50</sup> 20 U.S.C. s. 6301 et. seq.

<sup>51</sup> 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c)-(d), F.S.

<sup>52</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>53</sup> *See* 20 U.S.C. ss. 1412(a) and 1413(a).

<sup>54</sup> Section 1002.33(17)(c), F.S.

<sup>55</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).



penalties for grantees and subgrantees<sup>56</sup> that fail to comply with grant requirements. These penalties include withholding, suspension, or termination of grant funds or designation as a “high risk” grantee.<sup>57</sup>

Federal law requires school districts to ensure that charter schools receiving federal funds comply with federal grant requirements.<sup>58</sup> School districts typically address issues related to a charter school’s compliance with federal grant requirements in the charter.<sup>59</sup> In addition, Florida law provides several mechanisms which enable school districts to provide financial oversight of charter schools. Charter schools must submit annual financial reports,<sup>60</sup> provide for an annual financial audit,<sup>61</sup> and submit to the district monthly financial statements.<sup>62</sup> Among other things, a charter school’s annual financial audit must include violations of law, contract provisions, or grant agreements.<sup>63</sup>

According to the DOE, school districts distribute federal funds directly to charter schools, provide in-kind services in lieu of funds, or use a combination of both methods. School districts use a variety of methods to distribute federal funds directly to charter schools, including directly advancing funds, reimbursing expenditures, or making purchases on behalf of charter schools.<sup>64</sup>

### Effect of Proposed Changes

The bill requires a sponsor to monthly reimburse a charter school for expenditures of federal funds, unless another method of disbursing federal funds is mutually agreed to by the charter school and sponsor. The charter school must provide invoices evidencing expenditures to the sponsor at least 30 days before the monthly reimbursement date set by the sponsor. Charter schools that choose to receive federal funds on a reimbursement basis must comply with applicable state and federal requirements governing use of federal funds. In order to receive federal funds on a reimbursement basis, a charter school must submit to the sponsor for approval a plan outlining the charter school’s use of federal funds. Allowing charter schools to receive federal funds on a reimbursement basis provides charter schools with greater autonomy regarding purchases made with federal funds, while enabling the sponsor to oversee the charter school’s compliance with state and federal requirements governing use of such funds.

## **Facilities for Charter Schools**

### Present Situation

Currently, if a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school’s use on the same basis it is made available to other public schools in the district.<sup>65</sup> However, there have been instances in which facilities are used for storage (some partially) or some other purpose, or not marked for disposal and

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<sup>56</sup> 34 C.F.R. s. 80.3. Federal regulations governing administration of federal education grant programs define “grantee” to mean the government to which a grant is awarded and which is accountable for the use of the funds provided, i.e. DOE. Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided, i.e., school districts. *Id.*

<sup>57</sup> 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees). Special conditions are placed upon “high risk” grantees, including payment of grant funds on a reimbursement basis; withholding of authority to proceed to subsequent grant phases until performance expectations are met; or requiring additional financial reports, project monitoring, and technical or management assistance. 34 C.F.R. s. 80.12. 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.

<sup>58</sup> 34 C.F.R. s. 80.3; 34 C.F.R. s. 300.209(b).

<sup>59</sup> Telephone interview with Florida Department of Education, Charter Schools Director (Feb. 1, 2012).

<sup>60</sup> Section 1002.33(9)(g), F.S.

<sup>61</sup> Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.

<sup>62</sup> Section 1002.33(9)(g), F.S. High-performing charter schools may submit quarterly, rather than monthly, financial statements. Section 1002.331(2)(c), F.S.

<sup>63</sup> Section 10.856(2)(b)2.c., Rules of the Auditor General.

<sup>64</sup> *Funding Report*, *supra* note 1, at 21-22.

<sup>65</sup> Section 1002.33(18)(e), F.S.

such facilities still remain unavailable to charter schools. Other districts have provided buildings, at cost, to charter schools.

### Effect of Proposed Changes

The bill clarifies that if a district school board facility or property that has previously been used for K-12 educational purposes is unused, it shall be made available to the charter school. The charter school shall not earn capital outlay funds. The charter school is responsible for maintenance fees for the facility and may choose to do this themselves or pay the school district the actual cost to maintain the facility to the same standard it would any other district operated school in similar age and condition.

## **Florida College System Institution Charter Schools**

### Present Situation

Florida College System (FCS) institutions are statutorily authorized to, in cooperation with the school board or boards within the institution's service area, develop charter schools that offer secondary education<sup>66</sup> and allow students to obtain an associate degree<sup>67</sup> upon graduation from high school. Students have full access to all college facilities, activities, and services.<sup>68</sup> According to an October 2012 survey, 3 colleges reported having charter and collegiate high schools. An additional four indicated they had a charter school.<sup>69</sup> FCS institution charter schools may not serve students in the elementary or middle grades.<sup>70</sup>

### Effect of Proposed Changes

The bill authorizes FCS institutions with approved teacher preparation programs to establish one charter school which serves students in kindergarten through grade 12. The bill further requires that charter schools offering kindergarten through grade eight under the FCS utilize a formal education program in which the student learns at least in part through online delivery of content and instruction and at least part at a supervised brick-and-mortar location away from home. This will enable FCS institutions to use these charter schools as teaching labs for prospective teachers enrolled in their teacher preparation programs.

## **High-Performing Charter Schools and Charter School Systems**

### Present Situation

Legislation enacted in 2011 established criteria for identifying charter schools and charter school systems with a track record of exemplary academic performance and financial stability.<sup>71</sup> 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 grade below "B;"
- Received an unqualified opinion<sup>72</sup> on each annual financial audit; and

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<sup>66</sup> Under Florida law, the term "secondary school" is synonymous with "high school" (grades 9 through 12). Section 1003.01(2), F.S. (definition of "school"). Generally speaking, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. Section 1003.01(2), F.S. High school grade levels served by FCS institution charter schools vary. For example, St. Petersburg Collegiate High School serves students in grades 10 through 12. St. Petersburg Collegiate High School, *Admissions*, <http://www.spcollege.edu/spchs/Admission.html> (last visited Feb. 2, 2012). In contrast, Edison State College's two collegiate high schools serve students in grades 9 through 12. *See, e.g.*, Edison Collegiate High School, *Admissions*, <http://echs.edison.edu/about/admission-process/> (last visited Feb. 2, 2012).

<sup>67</sup> Associate degrees include the associate in arts, associate in science, and associate in applied science degrees. *See* rule 6A-14.030(1)-(3), F.A.C.

<sup>68</sup> Section 1002.33(5)(b)4., F.S.

<sup>69</sup> *See Charter and Collegiate High Schools in the Florida College System*, Division of Florida Colleges, Florida Department of Education available at <http://www.fl DOE.org/cc/OSAS/Evaluations/pdf/FYI2011-01.pdf>

<sup>70</sup> Section 1002.33(5)(b)4., F.S.

<sup>71</sup> Sections 1 and 2, ch. 2011-232, L.O.F.

- Had not received an annual financial audit that reveals a financial emergency condition.<sup>73</sup>

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, nonprofit, s. 501(c)(3) of the Internal Revenue Code status corporation; or a private for-profit education management corporation that:

- Includes at least three high-performing charter schools in Florida;
- 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.<sup>74</sup>

High-performing charter schools receive various advantages. A high-performing charter school may:

- Increase the school’s enrollment once per year;
- Expand grade levels within kindergarten through grade 12 to add grade levels not already served;<sup>75</sup>
- 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.<sup>76</sup>

In addition to these advantages, a high-performing charter school may submit a charter school application to replicate its educational program in any school district in the state.<sup>77</sup> Such applications may only be denied based upon limited criteria.<sup>78</sup> If an application submitted by a high-performing charter school is denied, the sponsor must provide the applicant and the Department of Education (DOE) with a letter of denial stating its reasoning with supporting documentation. Like other application

<sup>72</sup> An unqualified audit opinion means that the charter school’s financial statements are materially correct. Telephone interview with Florida Auditor General staff (March 24, 2011).

<sup>73</sup> Section 1002.331(1), F.S. 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. A charter school in the workplace satisfies audit requirements for “high-performing” status 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. Section 1002.331(1)(c), F.S. 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. Section 1002.345(1)(a)3., F.S.

<sup>74</sup> Section 1002.332(1), F.S.

<sup>75</sup> Enrollment increases and grade level expansion may not exceed 15 percent of the student capacity authorized by the charter. Section 1002.331(2)(a) and (b), F.S.

<sup>76</sup> Section 1002.331(2), F.S. 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. *Id.* A sponsor may terminate or not renew a charter school’s charter if the school fails to participate in Florida’s accountability system; fails to meet the student performance outcomes agreed upon in the charter; fails to meet generally accepted standards of fiscal management; or violates the law. Section 1002.33(8)(a), F.S.

<sup>77</sup> Section 1002.331(3)(a), F.S.

<sup>78</sup> Section 1002.33(6)(b)3.b., F.S. An application to replicate a high-performing charter school may only be denied if clear and convincing evidence 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 and financial management practices do not materially comply with the charter school statute. *Id.* “Material noncompliance” is 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. Section 1002.33(6)(b), F.S. (flush-left provisions at end of paragraph).

denials, a high-performing charter school may appeal the sponsor's denial to the State Board of Education and the sponsor may submit a response to the appeal. The appeals process for high-performing charter school applications differs from other appeals in that the state board conducts the appeal without convening the Charter School Appeal Commission<sup>79</sup> and independently reviews whether the sponsor based its decision upon the statutory denial criteria.<sup>80</sup>

In order to receive "high-performing" status, a charter school or charter school system must request verification by the Commissioner of Education that the school meets the eligibility requirements.<sup>81</sup> The law provides for removal of a charter school's "high-performing" status if it receives a school grade of "C" in any two years during the term of the 15-year charter.<sup>82</sup> The law does not provide a process for annually reviewing a charter school's, or charter school system's, continued eligibility for "high-performing" status. Nor does it specify a process for removing the status if a school or system is no longer eligible.<sup>83</sup>

### Effect of Proposed Changes

The bill requires the commissioner to annually determine a charter school's, or charter school system's, continued eligibility for "high-performing" status. A high-performing charter school or charter school system may maintain its "high-performing" status, unless the commissioner determines that the charter school or system no longer meets the eligibility criteria. If a high-performing charter school or system fails to meet the eligibility criteria, the commissioner must notify the school or system of its declassification as "high-performing." These changes establish explicit standards for reviewing continued eligibility for "high-performing" status and for declassifying high-performing charter schools and systems that fail to meet eligibility criteria.

The bill clarifies that the high-performing charter school application appeals process is conducted in the same manner as other application appeals, except that the state board conducts the appeal without convening the Charter School Appeal Commission.<sup>84</sup> It does require the Commissioner of Education to review the appeal and make a recommendation to the State Board of Education.

The bill includes provisions by which an out-of-state entity that successfully operates a system of charter schools may qualify for high-performing status as a charter school system. The operators must apply to the State Board of Education for such status, solely for the purpose of establishing charter schools that primarily serve students in the attendance zone of a school identified as in need of intervention and support services pursuant to s. 1008.33(3)(b), F.S. The State Board of Education must adopt, by rule, a process for determining whether an entity meets the requirements by reviewing student demographic and performance data from all schools operated by the entity.

The bill also expands the definition of a high-performing charter school to include schools established by operators who have obtained high performing status through the process outlined above.

### SECTION DIRECTORY:

**Section 1:** Amending s. 1002.33, F.S.; requiring policies agreed to by the sponsor and charter school to be incorporated into the charter contract; authorizing a charter school operated by a Florida College System institution to serve students in kindergarten through grade 12 if certain criteria are met;

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<sup>79</sup> The Charter School Appeal Commission (CSAC) is a body comprised of school district and charter school representatives that reviews charter school application appeals filed with the state board. 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. Section 1002.33(6)(e)1. and 2., F.S.

<sup>80</sup> Section 1002.33(6)(c)3.b., F.S.

<sup>81</sup> Sections 1002.331(5) and 1002.332(2), F.S.

<sup>82</sup> Section 1002.331(4), F.S.

<sup>83</sup> See ss. 1002.331 and 1002.332, F.S.

<sup>84</sup> Telephone interview with Charter Schools Director, Florida Department of Education (Jan. 7, 2013). In August of 2011, 44 applications were submitted by high-performing charter schools, 4 were denied and 3 appealed directly to the State Board of Education.

prohibiting the governing board or other related entity of a charter school subject to a corrective action plan or financial recovery plan from applying to open an additional charter school; providing disclosure requirements; revising provisions relating to the timely submission of charter school applications; providing requirements relating to the appeal of a denied application submitted by a high-performing charter school; requiring the use of a standard charter contract; reducing the amount of time for negotiation of a charter; revising provisions relating to the issuance of a final order in contract dispute cases; providing a restriction relating to a required certificate of occupancy; authorizing the consolidation of multiple charters into a single charter in certain circumstances; establishing student academic achievement as a priority in determining charter renewals and terminations; revising the timeline for charter schools to submit waiver of termination requests to the Department of Education; restricting expenditures upon nonrenewal or termination of a charter school; requiring a charter school to maintain specified information on a website; revising provisions relating to determination of a charter school's student enrollment; revising provisions requiring charter school compliance with statutes relating to education personnel compensation, contracts, and performance evaluations and workforce reductions; providing requirements for the reimbursement of federal funds to charter schools; requiring that certain unused or under-used school district facilities be made available to, or shared with, charter schools at no cost; requiring charter schools to cover maintenance costs for such facilities; restricting capital outlay funding; requiring the use of standard charter and charter renewal contracts and a standard evaluation instrument; providing restrictions on the employment of governing board members.

**Section 2:** Amending s. 1002.331, F.S.; providing requirements for modification of a charter; requiring the Commissioner of Education to annually review a high-performing charter school's eligibility for high-performing status; authorizing declassification as a high-performing charter school.

**Section 3:** Amending s. 1002.332, F.S.; revising requirements for classification as a high-performing charter school system; requiring the commissioner to annually review a high-performing charter school system's eligibility for high-performing status; authorizing declassification as a high-performing charter school system; allowing out-of-state operators to apply and qualify for high-performing status as a charter school system if they meet certain requirements; requiring the State Board of Education to adopt, by rule, the process for reviewing and approving such applications; expanding the definition of high-performing charter school to include schools opened by such operators.

**Section 4:** Providing an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2013, the Choice and Innovation Subcommittee reported the proposed committee bill (PCB) favorably. The PCB added provisions that:

- Allowed charter schools, upon termination or non-renewal of its charter, to also cover expenses related to reasonable attorney fees and costs during the pendency of an appeal.
- Required a charter school utilizing a district-owned facility to incur the maintenance costs. The charter school may choose to handle their own maintenance or pay the school district for actual cost to maintain the facility at a level commensurate with other similar district-owned facilities.
- Prohibited spouses of employees of the charter school and the charter school management company from being a member of the charter governing board.
- Allowed an out-of-state entity that successfully operates a system of charter schools to apply for and qualify for high-performing status as a charter school system under specific conditions. It requires the State Board of Education to adopt, in rule, a process to determine whether or not an entity meets specified requirements by reviewing student demographic and performance data from all the schools it operates.
- Expanded the definition of a high-performing charter school to include charter schools operated by qualified out-of-state entities as determined above.

The PCB removed provisions that:

- Required districts to cover maintenance costs for district-owned facilities utilized by charter schools.
- Prohibited employees of the district school board from being a member of the charter school governing board.

On March 14, 2013, the Appropriations Committee adopted one amendment and reported HB 7009 favorably. The amendment:

- Removed the provision requiring a district school board facility or property that has previously been used for K-12 educational purposes is unused, or is being utilized at less than 50 percent of its Florida Inventory of School Houses (FISH) student capacity, it shall be made available at no cost to the charter school. The amendment removed the fiscal impact to school districts previously associated with the bill.