

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 7009	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Education Committee, Appropriations Committee, Choice & Innovation Committee, Moraitis and others	76 Y's	42 N's
COMPANION BILLS:	(CS/SB 1630)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 7009 passed the Senate on May 1, 2013, and subsequently passed the House on May 2, 2013. The bill includes several provisions that increase charter school accountability and transparency, including, but not limited to:

- Prohibiting a charter school, upon notification of nonrenewal, closure, or termination of its charter from certain expenditures and providing the sponsor with a clawback power to recover funds expended in violation of law.
- Requiring sponsors to submit to DOE specific information for each application received to be compiled in a summary report regarding the number of applications received, approved, denied and withdrawn each year.
- Prohibiting employees of the charter school or the charter management organization and their spouses, from serving on the charter school governing board.
- Requiring DOE to develop a proposed statewide standard charter contract by consulting and negotiating with school districts and charter schools and to provide it to the Governor, the Speaker of the House of Representatives, and the President of the Senate by November 1, 2013.

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

- Allowing charter applicants to submit a draft charter by May 1 each year, with an application fee, and to receive district feedback on material deficiencies by July 1, prior to final submission on August 1.
- Allowing high-performing charter schools to determine their own capacity and enrollment caps and allowing them to increase those caps under certain circumstances.
- Authorizing school districts to enter into interlocal agreements with local, state, and federal agencies to issue permits if the charter school so chooses.

The calculation of class size compliance for a school or program that is a public school of choice is based on the average number of students at the school level.

A district innovation school of technology is a school that has, on a schoolwide basis, adopted and implemented a blended learning program. Such schools must enter into a performance contract with the State Board of Education in exchange for specific statutory flexibilities.

The bill prohibits a student assigned to a teacher that is rated as "needs improvement" or "unsatisfactory" to be assigned to a similarly rated teacher the following school year.

Full implementation of online assessments for Next Generation Sunshine State Standards in English/language arts and mathematics is contingent upon an independently verified load test of the technology infrastructure, connectivity, and capacity of all public schools and school districts.

The bill has no fiscal impact on state government.

The bill was approved by the Governor on June 28, 2013, ch. 2013-250, L.O.F. The effective date of the bill is July 1, 2013.

I. SUBSTANTIVE INFORMATION

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

STORAGE NAME: h7009z1.CIS

DATE: July 1, 2013

A. EFFECT OF CHANGES:

Charter schools¹ are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a “charter.”² The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.³ One of the guiding principles of charter schools is to meet high standards of student achievement and increase parental choice and student learning opportunities.⁴

A charter school may be sponsored by a district school board or, in the case of a charter lab school, by a state university.⁵ Each charter school is administered by a governing board.⁶ State universities, Florida College System (FCS) institutions, municipalities, and private, nonprofit s. 501(c)(3) of the Internal Revenue Code status organizations⁷ may operate a charter school.⁸

Charter School Accountability

Present Situation

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

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

¹ 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/ (last visited January 29, 2013).

² Section 1002.33(7), F.S.

³ Section 1002.33(2) and (16), F.S.

⁴ Section 1002.33(2), F.S.

⁵ Section 1002.33(5)(a), F.S.

⁶ Section 1002.33(9)(h)-(j), F.S.

⁷ 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).

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

⁹ 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>.

¹⁰ Section 1002.33(6), F.S.

¹¹ Section 1002.33(6)(h) and (7), F.S.

¹² Section 1002.33(9)(g), F.S.

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

¹⁴ Section 1002.33(9)(g), F.S.

¹⁵ Section 1002.33(7)(a)4. and (16)(a)2., F.S.

¹⁶ Sections 1002.33(9)n. and 1002.345, F.S.

¹⁷ Section 1002.33(21)(b) and (23), F.S.

- Compliance with ethical standards for employees and governing board members.¹⁸

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.¹⁹

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.²⁰

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.²¹

Charter schools that qualify for a school grade are graded annually.²² 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.²³

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.²⁴

¹⁸ Section 1002.33(24) and (26), F.S.

¹⁹ 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.

²⁰ Section 1002.33(8)(a), F.S.

²¹ Section 1002.33(8)(e) and (f), F.S.

²² 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.

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

²⁴ 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.²⁵

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.²⁶ 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.²⁷ 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.²⁸

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.²⁹

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 s. 1002.33, 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.

A charter school must provide to the sponsor a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance in the format prescribed by the Governmental Accounting Standards Board.

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, is necessary to cover expenses related to reasonable attorney fees and costs during pendency of an appeal, or is for

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

²⁶ Section 1002.33(26), F.S.

²⁷ Section 1002.33(7)(a)18., F.S.

²⁸ Section 1002.33(9)(j)4., F.S.

²⁹ 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).

reasonable fees and costs to conduct an independent audit. The audit must be completed within 30 days of the notice of nonrenewal, closure, or termination.

The bill prohibits charter schools from executing contracts that contain an acceleration clause requiring the expenditure of funds based upon closure, or notification of nonrenewal or termination. It further prohibits charter schools from entering into contracts with employees that extend beyond the terms of the school's contract with its sponsor. The bill provides sponsors with clawback authority, in the event a charter school violates contract restrictions.

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.

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.³⁰ 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.³¹

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 material deficiencies by July 1. 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. Sponsors may approve the draft application. Draft applications require a \$500 application fee.

The bill also requires sponsors to submit the following data to the DOE annually:

- The number of draft applications received on or before May 1, by applicant;
- The number of applications received on or before August 1, by applicant;
- The date each application was approved, denied, or withdrawn;
- The date the final contract was executed.

Data submitted will be from the prior school year. DOE will compile a summary report, by district, and post the report on its website by November 1 each year.

³⁰ Section 1002.33(6)(a), F.S.

³¹ Section 1002.33(6)(b), F.S.

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.³² 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.³³

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.³⁴

Currently, sponsor policies may not apply to charter schools, unless they are mutually agreed to by both the sponsor and the charter school.³⁵ These policies may or may not be incorporated into the 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.³⁶

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.³⁷

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.³⁸

Effect of Proposed Changes

The department has developed a format for a charter contract that must be utilized by charter school sponsors. The format adopted by the department is a bulleted list that does not provide further detail for either the sponsor or charter school beyond that enumerated in current law. As a result, charter contracts utilized by sponsors vary widely from district to district. This lack of consistency among districts lengthens a charter schools negotiation timeline and often impedes a charter school's ability to open on time.

The bill requires the state board to adopt a standard contract in rule and send the proposed charter contract to the Governor, the Speaker of the House of Representatives, and the President of the

³² Section 1002.33(6)(h), F.S.

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

³⁴ Section 1002.33(6)(h), F.S.

³⁵ Section 1002.33(5)(b)1.d., F.S.

³⁶ Section 1002.33(7)(a)12. F.S.

³⁷ Section 7, ch.2009-214. L.O.F.

³⁸ Section 1002.33(7)(c), F.S.

Senate by November 1, 2013. The department must consult with school districts and charter schools when drafting the proposed standard contract.

Sponsors would be required to utilize the standard contract once adopted by rule, thereby increasing consistency among school districts. However, because the bill does not prohibit sponsors from adding to or modifying the charter as necessary, charter contracts may vary in content. The bill provides that any provision in a contract that is inconsistent with or prohibited by the law is void and unenforceable. The bill also reduces the number of days a sponsor has to propose an initial charter contract from 60 to 30 days and the number of days for negotiating such contract from 75 to 40.

The bill requires that, if a sponsor subsequently amends any agreed upon sponsor policy, the version of the policy in effect at the time the charter was executed, or any modification thereof, shall remain in effect, and the sponsor may not hold the charter school responsible for any new provisions until the revised policy is mutually agreed upon.

The bill specifically prohibits a sponsor from requiring a charter school to have a temporary CO or 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.³⁹

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, 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.⁴⁰

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.⁴¹ 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.⁴²

Sponsors are held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In order to facilitate an accurate budget projection, within 15 calendar days after receipt of an application, the sponsor shall

³⁹ In the Division of Administrative Hearings Case No. 12-0087 [hereinafter *DOH 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."

⁴⁰ Section 1002.33(10)(b), F.S.

⁴¹ Section 1002.33(10)(h), F.S.

⁴² Section 1002.331(2)(a), F.S.

report to DOE the name of the applicant, the proposed location of the charter school and its projected FTE.⁴³ The law does not require charter schools to identify a specific number of students who will enroll as a condition of contract approval. However, at least one school district has imposed an enrollment deadline on a charter school “to help the School Board appropriately plan for staffing at affected schools.”⁴⁴

Effect of Proposed Changes

The bill removes the 15% cap on enrollment increases, and allows a high-performing charter school to increase its student enrollment more than the capacity identified in the charter once per school year in an amount not to exceed the current facility capacity. Once a charter school notifies the sponsor of its intent to expand, the sponsor must modify the charter within 90 days to include the new enrollment maximum and may not make any other changes. The sponsor may deny an increase in enrollment if the commissioner has declassified the charter school as high-performing.

The bill clarifies that a sponsor may not impose an enrollment deadline by requiring a 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.⁴⁵ In 2011, the Legislature enacted the Student Success Act (Act), which required school districts to implement reforms to educator compensation, performance evaluations, and contracts. These reforms were designed for implementation by traditional public schools; however, charter schools are, by law, required to implement them as well.⁴⁶ 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 evaluation 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 learning growth in courses without statewide assessments.⁴⁷

However, 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.⁴⁸

⁴³ Section 1002.33(6)(b)1., F.S.

⁴⁴ DOAH Case No. 12-0887, at 12 & 17, The administrative law judge provided a recommended order in which it was determined that not only did the charter school have to submit student enrollments by March 1, but that number would then be used to determine the total annual enrollment for the upcoming school year.

⁴⁵ Section 1002.33(16), F.S.

⁴⁶ 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).

⁴⁷ Section 1012.34(2), (3), and (7), F.S.

⁴⁸ 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.*

Effect of Proposed Changes

The bill clarifies the extent to which charter schools must comply with the Act's educator compensation, performance evaluation, workforce reduction, and contracting requirements. For these provisions of law, the duties assigned to a district school superintendent apply to charter school administrative personnel⁴⁹, and the duties assigned to a district school board apply to a charter school governing board. The charter school governing board must designate at least one administrative person to be responsible for duties assigned to a district school superintendent.

The bill maintains the ability of charter schools to hire at-will employees as well as the ability of charter schools to suspend or dismiss contract employees during the term of the contract without cause.⁵⁰

The net effect of the bill's 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.

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 education⁵¹ and allow students to obtain an associate degree⁵² upon graduation from high school. Students have full access to all college facilities, activities, and services.⁵³ According to an October 2012 survey, 3 colleges reported having charter and collegiate high schools. An additional four indicated they had a charter school.⁵⁴ FCS institution charter schools may not serve students in the elementary or middle grades.⁵⁵

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

⁴⁹ Section 1012.01(3)(a) and (b), F.S.

⁵⁰ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 784 So. 2d 438 (Fla. 2001) The general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively. *Id.*

⁵¹ 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).

⁵² 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.

⁵³ Section 1002.33(5)(b)4., F.S.

⁵⁴ *See Charter and Collegiate High Schools in the Florida College System*, Division of Florida Colleges, Florida Department of Education available at <http://www.fldoe.org/cc/OSAS/Evaluations/pdf/FYI2011-01.pdf>

⁵⁵ Section 1002.33(5)(b)4., F.S.

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.⁵⁶ 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 opinion⁵⁷ on each annual financial audit; and
- Had not received an annual financial audit that reveals a financial emergency condition.⁵⁸

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.⁵⁹

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;⁶⁰
- 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.⁶¹

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.⁶² Such applications

⁵⁶ Sections 1 and 2, ch. 2011-232, L.O.F.

⁵⁷ 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).

⁵⁸ 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.

⁵⁹ Section 1002.332(1), F.S.

⁶⁰ 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.

⁶¹ 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.

⁶² Section 1002.331(3)(a), F.S.

may only be denied based upon limited criteria.⁶³ 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 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 Commission⁶⁴ and independently reviews whether the sponsor based its decision upon the statutory denial criteria.⁶⁵

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.⁶⁶ 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.⁶⁷ 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.⁶⁸

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. As part of the commissioner's verification of an entity's status as a high-performing system, the entity must identify all charter schools in the state which the entity has operated or provided services for the previous three years, regardless of whether the entity currently operates or provides services for the charter school. The entity must also identify the reasons the entity terminated the operation or services or grounds stated by the charter school's governing board for terminating the operation or services of the entity.

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 enumerated in law. 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

⁶³ 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).

⁶⁴ 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.

⁶⁵ Section 1002.33(6)(c)3.b., F.S.

⁶⁶ Sections 1002.331(5) and 1002.332(2), F.S.

⁶⁷ Section 1002.331(4), F.S.

⁶⁸ See ss. 1002.331 and 1002.332, F.S.

convening the Charter School Appeal Commission.⁶⁹ It does require the Commissioner of Education to review the appeal and make a recommendation to the State Board of Education.

Nonexclusive Interlocal Agreements

Present Situation

In addition to the charter school application, review, and approval process, charter schools must also obtain necessary permits from local governments.

Effect of Proposed Changes

The bill authorizes a school district to enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the district and to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. The agreement must identify fees that charter schools will be charged for such services that reflect the actual costs for providing such services. The services and fees are not included within the services provided under 1002.33(20).

Educator Performance and Student Assignments

Present Situation

Research indicates that teacher effectiveness is the most important school-level variable influencing student learning. Students who are taught by ineffective teachers perform at much lower levels than students demonstrating comparable ability taught by high-performing teachers. Students taught by an ineffective teacher for even one year experience long-term negative impacts on achievement.⁷⁰

Conversely, other research found that, on average, students in a class with a higher value-added teacher, for just one year, experience the following benefits:

- The net present value of their lifetime earnings is nearly \$6,400 greater.
- They are 1.7 percent more likely to attend college.
- Females are 1.7 percent less likely to have a child as a teenager.⁷¹

Additional research found that higher performing teachers, on average, help students learn two to three additional months' worth of math and reading, compared with the average teacher, and five to six months more when compared to low-performing teachers.⁷²

In Florida, the performance of classroom teachers⁷³ is annually evaluated based upon student performance and instructional practice criteria. Student performance must comprise at least 50 percent

⁶⁹ 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.

⁷⁰ Sanders and Rivers, *Cumulative and Residual Effects of Teachers on Future Student Achievement*, at 6-8 (Nov. 1996), available at <http://www.mccsc.edu/~curriculum/cumulative%20and%20residual%20effects%20of%20teachers.pdf>. Sanders and Rivers found that standardized mathematics assessment scores for students who were taught by a low-performing teacher for three consecutive years were 53 percentile points lower than those of students who were taught by a high-performing teacher for three consecutive years.

⁷¹ Greenstone, Harris, Li, Looney, and Patashnik, *A Dozen Economic Facts About K-12 Education*, at 13 (Sept. 2012), available at http://www.hamiltonproject.org/files/downloads_and_links/THP_12EdFacts_2.pdf.

⁷² The New Teacher Project (TNTP), *The Irreplaceables*, at 6, (2012), available at http://tntp.org/assets/documents/TNTP_Irreplaceables_2012.pdf

of the performance evaluation and must be measured in terms of student learning growth on statewide assessments or, for subjects and grades not tested by statewide assessments, school district-selected assessments.⁷⁴ Measurement of student learning growth for classroom teachers must be based upon students assigned to the employee over the course of three school years.⁷⁵

Instructional practice criteria for classroom teachers are based upon the state board adopted Florida Educator Accomplished Practices (FEAP). The FEAPs include such essential teaching skills as subject matter knowledge, classroom management, and lesson planning and delivery. These criteria are primarily evaluated through classroom observation.⁷⁶

Each classroom teacher is assigned one of four performance ratings:

- Highly effective;
- Effective;
- Needs improvement, or for classroom teachers in their first three years of employment who need improvement, developing; or
- Unsatisfactory.

Performance evaluation results must be used as a basis for professional development, compensation, retention, transfers, and promotions. The law authorizes a school principal to refuse the placement or transfer of a classroom teacher who is not rated effective or highly effective. However, the law does not prohibit a school district from assigning a student in consecutive school years to a classroom teacher rated unsatisfactory or needs improvement.⁷⁷

Information regarding educator performance evaluations is provided to the public annually. School districts must annually report to DOE educator performance evaluation ratings. DOE must annually post on its website the percentage of classroom teachers, other instructional personnel, and school administrators receiving each performance rating by school district and school.⁷⁸

Additionally, school districts must annually report to parents the fact that their child is assigned to a classroom teacher whose performance evaluations indicate chronic low-performance, i.e., teachers who have two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations in a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory.⁷⁹ Such evaluations become public records after one year, at which time the evaluation must be furnished to any parent or member of the public who requests it.⁸⁰

Each district school board must adopt a plan for assisting teachers teaching subject matter outside their certification area, minor field of study, or a subject area in which the teacher has demonstrated

⁷³ Classroom teachers are a sub-set of the larger personnel class known as “instructional personnel.” Instructional personnel and school administrators are evaluated annually. Instructional personnel also include guidance counselors, social workers, career specialists, school psychologists, librarians and media specialists, learning resource specialists, instructional trainers, adjunct educators, and education paraprofessionals. Section 1012.01(2)(a)-(e), F.S. School administrators are school principals, school directors, career center directors, and assistant principals. Section 1012.01(3)(a), F.S.

⁷⁴ Section 1012.34(3)(a) and (7), F.S. Newly hired teachers must be evaluated at least twice in the first year of teaching. Section 1012.34(3)(a), F.S. School districts may request approval by the Department of Education to use a student achievement measure or a combination of student learning growth and achievement when such measures are appropriate. Likewise, districts may request approval to determine appropriate measures based upon course characteristics and personnel assignments. Section 1012.34(2)(d) and (7)(c)-(d), F.S.

⁷⁵ Section 1012.34(3)(a)1.a.-b., F.S. Exceptions apply based upon personnel classification or availability of data. *Id.*

⁷⁶ Section 1012.34(3)(a), F.S.

⁷⁷ Sections 1012.28(6), F.S.

⁷⁸ Section 1012.34(1)(c), F.S.

⁷⁹ Section 1012.2315(5)(b), F.S.

⁸⁰ Section 1012.31(3)(a)2., F.S.

sufficient expertise. The plan must provide such teachers with priority consideration in professional development activities and require their participation in a certification or staff development program that addresses the competencies required for the assigned duties. The assistance plan must include duties of administrative personnel and other instructional personnel for assisting out-of-field teachers. The law requires each district school board to notify in writing the parents of students who are assigned to an out-of-field teacher.⁸¹

Effect of Proposed Changes

The bill prohibits the assignment of a student in consecutive school years to a classroom teacher of the same subject who is evaluated as unsatisfactory or needs improvement. This will decrease the likelihood of long-term negative impacts on a student's achievement resulting from repeated assignments to low-performing teachers. However, for students enrolling in an extracurricular course⁸² a parent may choose to have the student taught by a teacher who received a performance evaluation of "needs improvement" or "unsatisfactory" in the preceding school year if the student and the student's parent receives an explanation of the impact of teacher effectiveness on student learning and the principal receives written consent from the parent.

District Innovation School of Technology Program

The bill creates a district innovation school of technology program to encourage schools to engage in a whole school transformation using blended learning models in exchange for flexibility and exemption from certain statutes. Schools will operate within existing resources under a performance contract with the state board of education for a period of 5 years after which, they will be evaluated for purposes of renewal. The bill defines a district innovation school as a school that has adopted and implemented, on a school-wide basis, a blended learning program. The school must use one of the following blended learning models: flipped classroom, flex, or rotation. To enable the whole school transformation, district innovation schools are provided statutory exemptions similar to charter schools. The performance contract shall be terminated by the state board if the school receives a school grade of F for two consecutive years, the school or district fails to comply with the criteria for a district innovation school, the terms of the contract or other good cause.

Administration of Statewide, Standardized, Assessments

The bill requires that the technology infrastructure, connectivity, and capacity of all public schools and school districts that administer statewide standardized assessments, including online assessments, be load tested and independently verified as appropriate, adequate, efficient, and sustainable. The independent verification will supplement the self-reported data collected by the DOE.

Additionally, the full implementation of online (i.e., computer-based) Next Generation Sunshine State Standards in English/Language Arts and Mathematics assessments for all kindergarten through grade 12 public school students would be contingent upon an independent third party determination that the technology infrastructure, connectivity, and capacity of all public schools and school districts are verified as ready for successful deployment and implementation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁸¹ Section 1012.42(1) and (2), F.S. This reporting requirement applies to teachers who are teaching subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise. Section 1012.42(2), F.S.

⁸² Section 1003.01(15), F.S., defines "extracurricular courses" as all courses that are not defined as "core-curricula courses," which may include, but are not limited to, physical education, fine arts, performing fine arts, career education, and courses that may result in college credit.

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.