

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7083 PCB CIS 14-01 PCB CIS 14-01 School Choice

SPONSOR(S): Choice & Innovation Subcommittee, Diaz, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1528

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|----------|---------|--|
| Orig. Comm.: Choice & Innovation Subcommittee | 8 Y, 4 N | Beagle | Fudge |
| 1) Education Appropriations Subcommittee | 8 Y, 5 N | Seifert | Heflin |
| 2) Education Committee | | | |

SUMMARY ANALYSIS

This bill revises the charter school application and charter approval processes by:

- Requiring the State Board of Education to adopt the DOE-developed standard charter and charter renewal contracts in rule, which sponsors and applicants must use thereafter.
- Revising the contents of the application and charter so that issues currently reserved for charter negotiations are decided upon by the sponsor during the application process.

The sponsor must review the application and base its decision to approve or deny the application upon the expanded application criteria. If the sponsor approves the application, the approved application is incorporated into the standard charter, with certain limited issues reserved for charter negotiations. The applicant and sponsor may negotiate additional terms after the standard charter is approved. The charter school may open and operate during the pendency of such negotiations.

This bill creates new opportunities for high-performing charter school operators to establish quality charter schools in Florida, including charter schools in hard-to serve areas. The bill authorizes an out-of-state entity that successfully operates a system of charter schools to apply and qualify for high-performing charter school system status. The state board must adopt rules specifying a process and criteria for evaluating out-of-state entities for "high-performing" status. Eligibility criteria must be aligned with the priorities specified in the federal Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools, which emphasizes student achievement. Additionally, the bill shifts the focus of the state's program for replicating quality charter schools towards meeting school district needs for innovative school choice options and serving areas served by struggling traditional public schools.

The bill also clarifies that:

- Sponsors need not provide hearings and appeals to charter schools that are terminated for earning two consecutive school grades of "F."
- For purposes of determining eligibility for capital outlay funding, a charter school must have no financial emergency conditions on its most recent annual financial audit.
- Sponsors must make facilities available to charter schools if the facility or property has previously been used for K-12 education purposes and is no longer used to support public education.

The bill does not have a fiscal impact on state or local governments. See Fiscal Comments.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter School Applications and Charter Contracts

Background

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor, which is typically a school district.¹ Florida law exempts charter schools from many laws and regulations applicable to traditional public schools to encourage the use of innovative learning methods.² The terms and conditions for the operation of the school are set forth in a performance contract or “charter.”³

The law establishes a two-step process for establishing a new charter school – an application process and charter negotiations.⁴ The Legislature has revised the charter school application and charter negotiation processes numerous times since Florida’s first charter school law was enacted in 1996.⁵ These revisions include establishing predictable timelines for both processes, standardizing application criteria and review standards, and facilitating resolution of charter negotiation disputes. These revisions have sought to devise predictable processes that enable sponsors to rigorously evaluate charter school applications while minimizing barriers that prevent approved charter schools from opening on time. These revisions include:

- Six revisions to application submission deadlines;⁶
- Allowing the sponsor and applicant to mutually agree to extend the application approval deadline;⁷
- Three revisions to charter negotiation deadlines;⁸
- Requiring the Department of Education (DOE) to mediate charter negotiation disputes;⁹ and
- Requiring sponsors and applicants to use a DOE-developed standard charter school application and application evaluation instrument.¹⁰

Most recently, the Legislature addressed the charter school application and charter negotiation processes in 2013, with legislation that:

- Prohibited sponsors from rejecting applications submitted before the August 1st submission deadline.

¹ Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.; *see, e.g.*, Florida Department of Education, *Florida Charter School List by District*, http://www.floridaschoolchoice.org/Information/Charter_Schools/Directory/default.aspx (last visited Jan 17, 2014). The law authorizes school districts to sponsor charter schools; state universities to sponsor charter lab schools; and school districts, Florida College System (FCS) institutions, or a consortium of school districts or FCS institutions to sponsor a charter technical career center. Sections 1002.32(2), 1002.33(5)(a)1. and 2., and 1002.34(3)(b), F.S.

² Section 1002.33(2)(b)3. and (16), F.S.

³ Section 1002.33(6)(h) and (7), F.S.

⁴ Section 1002.33(6) and (7), F.S.

⁵ Chapter 96-186, L.O.F.

⁶ Section 1, ch. 97-207, L.O.F. (“through at least February 1st”); s. 1, ch. 99-374, L.O.F. (November 15th); s. 3, ch. 2000-306, L.O.F. (October 1st); s. 1, ch. 2003-393, L.O.F. (September 1st); s. 1, ch. 2006-190, L.O.F. (August 1st); s. 1, 2013-250, L.O.F. (Required sponsors to accept applications submitted before August 1st, authorized applicants to submit a draft application by May 1st, and required sponsors to provide feedback to applicant regarding the draft application by July 1st.)

⁷ Section 3, ch. 2000-306, L.O.F.

⁸ Section 1, ch. 97-207, L.O.F.; s. 1, ch. 2006-190, L.O.F.; s. 1, ch. 2013-250, L.O.F.

⁹ Section 1, ch. 98-206, L.O.F.; s. 1, ch. 2001-86, L.O.F., s. 1, ch. 2004-354, L.O.F.

¹⁰ Section 1., 2009-214, L.O.F.

- Authorized applicants to submit a draft application to the sponsor on or before May 1st, which the sponsor must review and provide feedback to the applicant regarding material deficiencies in the application by July 1st.
- Shortened the timeframe for beginning charter negotiations from 60 to 30 days after approval of the application.
- Shortened the timeframe for final approval of the charter from 75 to 40 days after beginning negotiations.

The legislation also directed DOE, in consultation with sponsors and charter school representatives, to develop and adopt in rule standard charter and charter renewal contracts. Sponsors and charter school operators would be required to use these charter documents once adopted in rule.¹¹

DOE presented its proposed standard charter and charter renewal contract to the Choice & Innovation Subcommittee on November 6, 2013. The Subcommittee also heard testimony from a panel of sponsor and charter school representatives regarding the standard charter and charter renewal contract. The standard charter and charter renewal documents have not yet been adopted in rule. Thus, sponsors and charter school operators are not required to use these charter documents.¹²

Present Situation

An applicant¹³ must submit a charter school application on a model application form developed by the DOE to the sponsor by August 1st.¹⁴ The sponsor must review and approve or deny the application within 60 days; however, the sponsor and applicant may mutually agree to extend the deadline.¹⁵ If the application is approved, the applicant and sponsor then negotiate the terms of the charter.¹⁶ If the application is denied, or the sponsor fails to act, the applicant may file an appeal with the State Board of Education, which may uphold or overturn the sponsor's denial.¹⁷

The law specifies the contents of both the charter school application and the charter. Charter school applications must:

- Demonstrate how the school will utilize the guiding principles of charter schools.¹⁸
- Provide a detailed curriculum plan aligned with the Next Generation Sunshine State Standards.
- Contain goals and objectives for improving student learning and measuring such improvement.
- Describe the reading curricula and differentiated strategies for serving students at various levels of reading ability.
- Contain an annual financial plan.¹⁹

The charter must include:

¹¹ Section 1, ch. 2013-250, L.O.F.

¹² Presentation and Panel Discussion, *Standard Charter and Charter Renewal Contract: hearing before the House Choice & Innovation Subcommittee* (Nov. 6, 2013).

¹³ An application may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law. Section 1002.33(3)(a), F.S. The school must be operated by a Florida College System institution, municipality, or nonprofit organization. While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization. Section 1002.33(12)(i), F.S.

¹⁴ Section 1002.33(6)(a), F.S.; rule 6A-6.0786, F.A.C. (model charter school applications and application evaluation instruments).

¹⁵ Section 1002.33(6), F.S.

¹⁶ Section 1002.33(6)(h), F.S.

¹⁷ Section 1002.33(6)(c), F.S.; *see also* s. 120.68, F.S. The state board's decision is a final action subject to judicial review in the district court of appeal. *Id.*

¹⁸ The legislative guiding principles for charter schools provide that they are to meet high standards of student achievement while increasing parental choice; increase learning opportunities for all students, with special emphasis on low-performing students and reading; and utilize innovative learning methods. Charter schools may also serve to provide rigorous competition to stimulate improvement in traditional public schools, expand the capacity of the public school system, mitigate the educational impact created by the development of new residential dwelling units, and create new professional opportunities for teachers, including ownership of the learning program at the school site. Section 1002.33(2), F.S.

¹⁹ Section 1002.33(6)(a), F.S. The law also requires the applicant to document in the application its participation in pre-application training. However, this training was changed from pre- to post-application training in 2011. *Id.*; s. 3, ch. 2011-232, L.O.F.

- The students to be served, including ages and grade levels.
- The curriculum’s focus and instructional methods to be used.
- Baseline standards of student academic achievement, outcomes to be achieved, and methods of measurement to be used.
- The method for determining the strengths and needs of students and whether they are meeting educational goals.
- In secondary charter schools, a method for determining whether students have met high school graduation requirements.
- The method for resolving conflicts between the governing body and the sponsor.
- Admission and dismissal procedures and the school’s student conduct code.
- Methods for achieving a racial/ethnic balance reflective of the community served.
- The financial and administrative management of the school, including experience required for management positions and a description of internal audit controls.
- Asset and liability projections.
- A description of plans to identify various risks, reduce losses, and ensure student and faculty safety.
- The term of the charter and an agreement that the charter may be cancelled if the school has made insufficient progress with student achievement.
- The facilities to be used.
- Teacher qualifications, governance structure, and timetables for implementing each element of the charter.
- Full disclosure of all charter school employees who are relatives of charter school officials and employees who have decision making authority over charter school operations.
- Provisions for implementing high-performing charter school benefits if the charter school is designated as “high-performing.”²⁰

Uniform statewide use of the model charter school application and application evaluation instrument began in August 2010 for applications proposing new charter schools to be opened in the 2011-12 school year.²¹ The model application and application evaluation instrument are intended to provide a uniform set of charter school application review and approval standards. The model application is comprised of 19 total criteria divided among three main topic headings: educational plan, organizational plan, and business plan. The model application specifies the types of information that the applicant must include in its application to satisfy each criterion.²²

Model Charter School Application Criteria

| Educational Plan | Organizational Plan | Business Plan |
|--|------------------------------------|------------------------|
| • Mission, Guiding Principles, & Purpose | • Governance | • Facilities |
| • Student Population | • Management | • Transportation |
| • Educational Program | • Education Service Providers | • Food Service |
| • Curriculum | • Human Resources | • Budget |
| • Evaluation of Student | • Student Recruitment & Enrollment | • Financial Management |

²⁰ Section 1002.33(7), F.S.

²¹ Telephone interview with Florida Department of Education, Charter School Director (Aug. 4, 2011). The model application and application evaluation instrument were adopted in rule in October 2010. Anticipating adoption of this rule, DOE advised sponsors to use these tools for charter school applications to be submitted in August 2010. *Id.*; see rule 6A-6.0786, F.A.C.

²² Florida Department of Education, *Model Florida Charter School Application* (Oct. 2010), available at http://www.floridaschoolchoice.org/information/Charter_schools/files/Model_Charter_Application.pdf [hereinafter *Model Application*]; Florida Department of Education, *Florida Charter School Application Evaluation Instrument*, at 1 (Oct. 2010) [hereinafter *Evaluation Instrument*]. The state board has also adopted model charter school applications and evaluation instruments for virtual charter schools and high-performing charter school replications. See rule 6A-6.0786, F.A.C.

Performance

- Exceptional Students
- English Language Learners
- Student Discipline

- Start-Up Plan

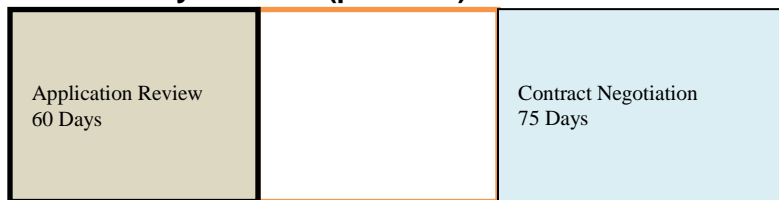
Generally speaking, the statutorily prescribed contents for both applications and the charter are incorporated into the model charter school application. Thus, many of the major issues concerning the operation of the charter school are considered by the sponsor before approving or denying the application. Certain issues are not typically finalized until after the application is approved, e.g., securing a school facility and recruiting students and school staff. Thus, the model application merely requires that a plan for finalizing such issues be presented in the application.²³

DOE data from the 2012 charter school application cycle indicates that only 19.6 percent of charter school applications submitted by applicants were decided upon by school districts within the 60 day timeline required by law.²⁴ On November 6, 2013, DOE presented the following information on charter school application and charter approval timelines to the Choice & Innovation Subcommittee:

Application and Charter Approval Timelines²⁵

| | | | | | | | | | |
|-----|------|-----|-----|-----|-----|-----|-----|-----|-----|
| Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May |
|-----|------|-----|-----|-----|-----|-----|-----|-----|-----|

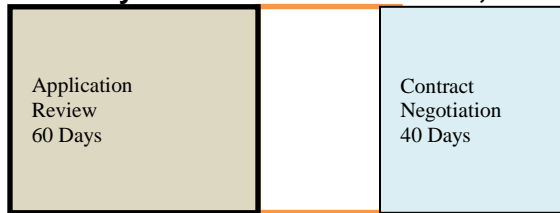
Old Statutory Timeline (pre-2013)



Actual Average Timeline for Application and Charter Approval



Statutory Timeline Codified in s. 1, ch. 2013-250, L.O.F. (Effective July 1, 2013)



Effect of Proposed Changes

The bill revises the required elements of the application and charter by transferring several issues currently required to be addressed in charter negotiations to the application process. Charter elements transferred to the application include:

- The students to be served, including ages and grade levels.
- The curriculum’s focus and instructional methods to be used.

²³ Compare s. 1002.33(6) and (7), F.S. with *Model Application supra* note 22, at 17-18 and 22.

²⁴ Email, Florida Department of Education, Director, Office of Independent Education and Parental Choice (Jan. 9, 2014).

²⁵ Presentation and Panel Discussion, *Standard Charter and Charter Renewal Contract: hearing before the House Choice & Innovation Subcommittee* (Nov. 6, 2013).

- The method for determining the strengths and needs of students and whether they are meeting educational goals.
- In secondary charter schools, a method for determining whether students have met high school graduation requirements.
- Admission and dismissal procedures and the school's student conduct code.
- Methods for achieving a racial/ethnic balance reflective of the community served.
- The financial and administrative management of the school, including experience required for management positions and a description of internal audit controls.
- A description of plans to identify various risks, reduce losses, and ensure student and faculty safety.
- Teacher qualifications, governance structure, and timetables for implementing each element of the charter.

The bill authorizes a sponsor to request additional information from the applicant, which must be incorporated into the application as an addendum. The bill also revises current law requiring a sponsor to allow the applicant an opportunity to correct technical deficiencies, e.g., typographical errors and missing signatures, and resubmit the application. Instead, this opportunity to correct and resubmit the application must be allowed for any issue the sponsor indicates as cause to deny the application.

The bill requires the state board to adopt the standard charter and charter renewal contracts in rule. Thereafter, charter school applicants and sponsors will be required to use these documents. The standard charter will consist of the approved application, any addenda, and the remaining required elements of the charter. Terms that are inconsistent with or prohibited by law are void and unenforceable. Issues decided upon by the sponsor during the application phase are deemed to be settled prior to charter negotiations; however, the applicant and sponsor may negotiate additional terms after finalizing the standard charter. The charter school may open and operate during the pendency of such negotiations. Under the bill, the following items remain as required elements of the charter:

- Baseline standards of student academic achievement, outcomes to be achieved, and methods of measurement to be used.
- The method for resolving conflicts between the governing body and the sponsor.
- The term of the charter and grounds for terminating or not renewing the charter.
- The facilities to be used.
- Full disclosure of all charter school employees who are relatives of charter school officials and employees who have decision making authority over charter school operations.
- Provisions for implementing high-performing charter school benefits if the charter school is designated as "high-performing."

The bill requires that the standard charter and charter renewal contract and model applications and application evaluation instruments specify the laws and rules from which charter schools are exempt. The bill specifically directs DOE to develop standard charters, charter renewal contracts, model applications, and application evaluation instruments for virtual charter schools and high-performing charter school replication. Such model applications and evaluation instruments already exist and are currently used by sponsors and applicants.

Each of the issues transferred from the charter negotiation process to the application process is already addressed in DOE's model charter school application, which has been in use since 2010. Thus, the bill's changes to the application process better reflect existing practices. The bill minimizes the issues that must be addressed in charter negotiations by requiring use of a standard charter and incorporating issues already decided upon by the sponsor during the application phase into the charter. These changes to the application and charter negotiation processes aim to increase the likelihood that approved charter schools open on time.

Mandatory Charter Terminations

Present Situation

A sponsor may choose to 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.²⁶

The sponsor may immediately terminate a charter school's charter if conditions at the school threaten the health, safety, or welfare of students.²⁷ Due process in the form of notice and, if requested, a formal hearing and opportunity to appeal must be provided to the charter school prior to a charter termination or nonrenewal. For immediate termination of a charter school, a hearing, if requested, may occur after termination.²⁸

In addition, the law requires a sponsor to terminate the charter of a charter school that earns two consecutive school grades of "F," unless the charter school qualifies for one of three exceptions. The law is unclear whether the same due process procedures afforded to charter schools for discretionary or immediate terminations apply to mandatory terminations.²⁹

Effect of Proposed Changes

The bill clarifies that mandatory termination occurs automatically upon a charter school's receipt of a second consecutive grade of "F" becoming final, unless an exception applies. The sponsor must notify in writing the charter school's governing board, the charter school principal, and DOE. Hearings and appeals applicable to discretionary and immediate charter terminations are not applicable to mandatory terminations. The law specifies procedures for winding-down the operations of a terminated charter school, such as reverting unencumbered public funds to the sponsor and reassigning students to other district schools.³⁰ The bill specifies that these procedures apply to mandatory terminations.

Charter School Facilities

Present Situation

Currently, if a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it must be provided for a charter school's use on the same basis it is made available to other public schools in the district.³¹ According to DOE, 13 charter schools in 10 school districts presently reside in a facility provided by the district. In eight cases, the facility is provided by the district rent-free or for a nominal charge.³² There have been instances in which vacant facilities are used for storage (some partially) or some other purpose, or not marked for disposal and such facilities still remain unavailable 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 education purposes, is no longer used in support of public education, it must be made available for a charter school's use. The charter school is responsible for costs required to bring the facility into compliance with the Florida Building Code and for costs required to maintain such compliance. The

²⁶ Section 1002.33(8)(a), F.S.

²⁷ Section 1002.33(8)(d), F.S.

²⁸ Sections 1002.33(6)(c) and (8)(b)-(d), F.S.

²⁹ Generally speaking, the exceptions apply to charter schools that specifically target hard-to-serve students and to traditional public schools that are reconstituted as charter schools pursuant to the differentiated accountability process. Section 1002.33(9)(n)4., F.S.; s. 1008.33(4)(b)3. and (e), F.S.

³⁰ Section 1002.33(8)(e), (f), and (g), F.S.

³¹ Section 1002.33(18)(e), F.S.

³² Email, Florida Department of Education, Director, Office of Independent Education and Parental Choice (Jan. 14, 2014).

charter school may not earn capital outlay funds. The school district must include the charter school's capital outlay full-time equivalent student count in the district's capital outlay calculations. The charter school may choose to maintain the facility to the same standard as any other district-operated school of similar age and condition.

High-Performing Charter Schools and Charter School Systems

Present Situation

Charter schools and operators of systems of charter schools with a track record of academic excellence and financial stability may earn "high-performing" status. A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of "A" and no school grade below "B;"
- Has received an unqualified opinion³³ on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.³⁴

A high-performing charter school system (system) may be operated by a municipality or other public entity that is authorized by Florida law to operate a charter school; a private, not-for-profit, s. 501(c)(3) status corporation; or a private for-profit corporation.³⁵ In order to earn "high-performing" status, a system must, in the previous three-year period:

- Operate at least three high-performing charter schools in Florida;
- Have at least 50 percent of its charter schools designated as "high-performing" and no charter school receiving a school grade of "D" or "F;" and
- Not receive an annual financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida.³⁶

Initial eligibility for "high-performing" status is verified by the Commissioner of Education, upon request by a charter school or system. Thereafter, the commissioner must annually verify continued eligibility.³⁷

High-performing charter schools and systems may take advantage of various benefits. A high-performing charter school may:

- Increase the school's enrollment once per year over the maximum enrollment specified in the charter, as long as total enrollment does not exceed the capacity of its facility;
- Expand grade levels within kindergarten through grade 12 to add grade levels not already served, as long as total enrollment does not exceed the capacity of its facility;
- 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;
- Receive a modification of its charter to a term of 15 years or a 15-year charter renewal; and
- Submit an application in any Florida school district to establish and operate a new charter school that substantially replicates its educational program.³⁸

³³An unqualified audit opinion means that the charter school's financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

³⁴ Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

³⁵ Section 1002.332(1), F.S.

³⁶ Section 1002.332(1), F.S. Exceptions to the eligibility criteria apply if the system operates a charter school established to turn around a chronically low-performing traditional public school and for charter schools opened to serve areas served by a low-performing traditional public school. Section 1002.33(1)(b)2., F.S.

³⁷ Sections 1002.331(5) and 1002.332(2)(a), F.S.

³⁸ Section 1002.331(2), F.S.

High-performing charter schools may receive a reduction in the administrative fee for sponsor-provided services from five percent to two percent for enrollment up to and including 250 students per school.³⁹ High-performing charter school systems may also receive a reduction in the administrative fees in very limited circumstances.⁴⁰

The capacity of a high-performing charter school is determined annually by its governing board. A sponsor may not require a charter school to identify the names of students to be enrolled or to enroll those students before the start of the school year as a condition of approval or renewal of a charter.⁴¹

A high-performing charter school may not be replicated more than once in any given year and may not replicate again until the new charter school achieves “high-performing” status.⁴² Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.⁴³

According to DOE:

- As of January 2014, 147 charter schools in 32 school districts are designated as “high-performing.”
- As of January 2014, two systems are designated as high-performing systems:
 - Doral, Inc., is comprised of five charter schools, four of which are high-performing charter schools; and
 - McKeel Academy is comprised of three charter schools, each of which is a high-performing charter school.
- As of August 2013, 19 new charter schools replicating high-performing charter schools have been established in six school districts.⁴⁴

Effect of Proposed Changes

The bill replaces current limitations on the number and frequency of high-performing charter school replication. The current limit of one replication per year, with subsequent replications prohibited until the newly created charter school achieves “high-performing” status, is eliminated. Instead, a high-performing charter school may replicate an unlimited number of times in a given year, provided that replicated schools are established for the purpose of serving an attendance area served by a traditional public school identified as in need of intervention and support or to meet capacity needs or needs for innovative choice options identified by school districts. The bill also clarifies that a sponsor may not require a high-performing charter school to limit enrollment or capacity to students enrolled before the start of the school year as a condition of approval or renewal of a charter.

Currently, out-of-state entities that do not operate charter schools in Florida are ineligible for high-performing charter school system status. The bill authorizes an out-of-state entity that successfully operates a system of high-quality charter schools elsewhere in the United States to apply to the state board for high-performing charter school system status. If awarded the status, charter schools that the entity establishes in Florida are automatically deemed “high-performing” for the first three years of operation. Thus, such charter schools would receive all of the benefits available to high-performing charter schools, including ability to replicate. After three years, such a school must meet the eligibility requirements for “high-performing” status to maintain the designation.

³⁹ Section 1002.33(20)(a)3., F.S.

⁴⁰ Section 1002.33(20)(a)4. and 6., F.S. The fee is reduced from 5 percent to 2 percent for enrollments up to and including 500 students per system if the system includes both conversion charter schools and nonconversion charter schools; has all schools located in the same county; has a total enrollment exceeding the total enrollment of at least one school district in the state; has the same governing board; and does not contract with a for-profit service provider for management of school operations. *Id.*

⁴¹ Section 1002.33(10)(i), F.S.

⁴² Section 1002.331(3)(b), F.S.

⁴³ Section 1002.332(2), F.S.

⁴⁴ Email, Florida Department of Education, Director, Office of Independent Education and Parental Choice (Jan. 27, 2014).

The state board must adopt rules specifying a process and criteria for evaluating out-of-state entities for “high-performing status.” Eligibility criteria established by the state board must be aligned to the priorities of the federal Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools.⁴⁵ The U.S. Department of Education awards these grants to charter school operators that demonstrate:

- Ability to increase student achievement of all students, including, educationally disadvantaged students.
- Success in closing historic achievement gaps for student subgroups, such as minority and low-income students and students with disabilities.
- Ability to produce student achievement results for low-income and other educationally disadvantaged students that are above the average for similarly situated students in the state, based upon such measures as performance on statewide tests and student attendance, retention, high school graduation, and college attendance rates.
- Consistent compliance with student safety and financial management requirements.⁴⁶

Virtual Instruction Providers

Present Situation

Currently, a state-approved virtual instruction provider’s contract must be terminated if the provider earns a school grade of “D” or “F” or a school improvement rating of “Declining” in any two years of a consecutive four year period.⁴⁷

Effect of Proposed Changes

The bill provides that a virtual instruction provider’s contract must be terminated if the provider earns two consecutive school grades of “F” or school improvement ratings of “Declining.”

Charter School Capital Outlay Funding

Present Situation

Among other things, a charter school must demonstrate that it is financially stable in order to be eligible for charter school capital outlay funding.⁴⁸ However, the law does not specify how financial stability is to be determined. DOE currently reviews a charter school’s annual financial audit to make this determination. This practice is consistent with other areas of charter school law, such as determining high-performing charter school eligibility and interventions for financially troubled schools.⁴⁹

Effect of Proposed Changes

The bill requires, for purposes of determining eligibility for capital outlay funding, that a charter school have no financial emergency conditions on its annual financial audit for the most recent fiscal for which an audit is available. Under current law, a financial emergency is determined to exist when any one of the following conditions occurs due to lack of funds:

- Failure to pay short-term loans or make bond debt service or other long-term debt payments when due;
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented;
- Failure to timely transfer taxes withheld from employees or employer or employee contributions for federal social security, pension, or retirement plans; and

⁴⁵ See 76 Fed. Reg. 40,898 (July 12, 2011).

⁴⁶ *Id.*

⁴⁷ Section 1002.45(8)(d), F.S.

⁴⁸ Section 1013.62(1)(a), F.S.

⁴⁹ See, e.g., ss. 1002.331 and 1002.345, F.S.

- Failure for one pay period to pay wages, salaries, or retirement benefits.⁵⁰

This change provides clearer guidance to DOE in determining whether a charter school is financially stable enough to merit an award of capital outlay funding.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.33, F.S., relating to charter schools.

Section 2. Amends s. 1002.331, F.S., relating to high-performing charter schools.

Section 3. Amends s. 1002.332, F.S., relating to high-performing charter school systems.

Section 4. Amends s. 1002.45, F.S., relating to virtual instruction programs.

Section 5. Amends s. 1013.62, F.S., relating to charter schools capital outlay funding.

Section 6. Provides an effective date of July 1, 2014.

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:

The bill clarifies the conditions in which sponsors must provide unused school facilities to charter schools. This may increase the ability of charter schools to use district facilities; however, the impact of this provision on a charter school's facilities costs will likely depend on the rents charged and maintenance costs associated with such use. In addition, the bill provides clearer guidance to DOE in determining whether a charter school is financially stable enough to merit an award of capital outlay funding.

The bill authorizes an out-of-state entity that successfully operates a system of high-quality charter schools elsewhere in the United States to apply to the state board for high-performing charter school system status. If awarded the status, any charter schools the entity establishes in Florida are

⁵⁰ Section 218.503(1)(a)-(d), F.S.
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automatically deemed “high-performing” for the first three years of operation, which, among other benefits, entitles them to a reduction in administrative fees for sponsor-provided services.

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:

The bill requires the state board to adopt in rule the standard charter contract and standard charter renewal contract. The state board must also adopt rules specifying a process and criteria for determining the eligibility of an out-of-state charter school system for “high-performing” status.

The existing model application forms, standard charter contracts, standard application evaluation instruments, and standard charter renewal contracts will need to be amended to identify the specific statutes and rules in which charter schools are statutorily exempted from compliance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Choice & Innovation Subcommittee adopted one amendment and reported the proposed committee bill favorably. The amendment added provisions revising accountability requirements for state-approved virtual instruction providers. Currently, such a provider’s contract must be terminated if the provider earns a school grade of “D” or “F” or a school improvement rating of “Declining” in any two years of a consecutive four year period. The amendment provides that such termination must occur if the provider earns two consecutive school grades of “F” or school improvement ratings of “Declining.”