

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

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

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	11 Y, 6 N, As CS	Beagle	Mizereck

SUMMARY ANALYSIS

This bill requires 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. The bill revises 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.

Additionally, the bill authorizes an out-of-state entity that successfully operates a system of charter schools elsewhere in the United States 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. If awarded "high-performing" status, such a system may utilize the streamlined application process for replicating high-performing charter schools to establish new charter schools in Florida. For the first three years of operation, such schools receive the same reduction in administrative fees for sponsor-provided services granted to high-performing charter schools. Additionally, the bill provides that existing limits on replication of high-performing charter schools do not apply if the mission of the proposed charter school is to serve school district needs for innovative school choice options or areas served by struggling traditional public schools. In all other cases, existing limits apply.

Among other things, the bill:

- Clarifies that charter schools that are terminated for earning two consecutive school grades of "F" are not entitled to hearings or appeals.
- Revises criteria triggering automatic termination of a state-approved virtual provider's contract.
- Clarifies the conditions in which sponsors must make facilities available to charter schools and authorizes sponsors to charge rent for such use.
- Revises the criteria that charter school systems must meet in order to serve as a local education agency for federal funding purposes.

The bill does not have a fiscal impact on state government. District school boards that allow charter schools to use district facilities may charge rent for such use. Additionally, the bill requires funding to follow the student when he or she withdraws from a charter school and enrolls in another public school in the school district, or vice versa.

Charter schools established by an out-of-state high-performing charter school system receive a reduction in administrative fees for sponsor provided services in the first three years of operation. The bill also expands charter schools' ability to form cooperative agreements with other educational institutions in order to pool resources for shared objectives. See Fiscal Analysis & Economic Impact.

The bill takes effect July 1, 2014.

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

STORAGE NAME: h7083c.EDC

DATE: 4/7/2014

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
<ul style="list-style-type: none"> • Mission, Guiding Principles, & Purpose • Student Population • Educational Program • Curriculum • Evaluation of Student Performance • Exceptional Students • English Language Learners • Student Discipline 	<ul style="list-style-type: none"> • Governance • Management • Education Service Providers • Human Resources • Student Recruitment & Enrollment 	<ul style="list-style-type: none"> • Facilities • Transportation • Food Service • Budget • Financial Management • Start-Up Plan

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.

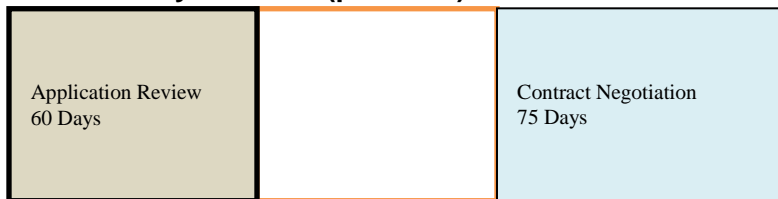
Generally speaking, the statutorily prescribed contents for both applications and the charter are incorporated into the model charter school application. Thus, many of the major issues concerning the operation of the charter school are considered by the sponsor before approving or denying the application. 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
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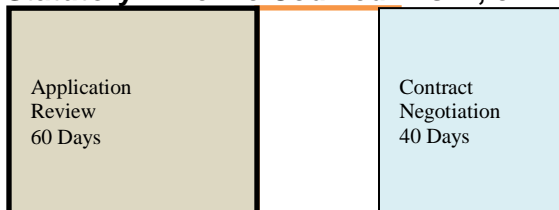
Old Statutory Timeline (pre-2013)



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.
- 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.

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 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 law does not specifically require a sponsor to consider past financial failure of an applicant's charter schools in approving or denying an application. The bill requires each charter school applicant to disclose in its application the name of each proposed governing board member and name and sponsor of any charter school for which the individual served as a board member. Furthermore, the application must indicate whether such a board member served on the board of any charter school that was terminated by the sponsor or closed voluntarily for financial reasons. If a majority of the proposed charter school's board members served together on the board of such a school, the sponsor may deny the application. This provision seeks to prevent the same governing board that managed a financially failed charter school from establishing new charter schools.

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.

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 opinion²⁶ on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.²⁷

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.²⁸ 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.²⁹

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.³⁰

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.³¹

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.³² High-performing charter school systems may also receive a reduction in the administrative fees in very limited circumstances.³³

²⁶An unqualified audit opinion means that the charter school’s financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

²⁷ Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

²⁸ Section 1002.332(1), F.S.

²⁹ 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.

³⁰ Sections 1002.331(5) and 1002.332(2)(a), F.S.

³¹ Section 1002.331(2), F.S.

³² Section 1002.33(20)(a)3., F.S.

³³ 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

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.³⁴

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.³⁵ Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.³⁶

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.³⁷

Effect of Proposed Changes

Currently, a high-performing charter school may replicate once in a given year, with subsequent replications prohibited until the newly created charter school achieves “high-performing” status. The bill provides that this limit does not apply to high-performing charter schools replicated to serve the attendance area of a traditional public school identified as in need of intervention and support under Florida’s system of school improvement and accountability or to meet needs identified by school districts. In all other cases, existing limits apply. This change expands the ability of high-performing charter schools to provide parental school choice in underserved areas or partner with school districts to meet specific district needs.

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, the entity may utilize the streamlined application process for replicating high-performing charter schools to establish new charter schools in Florida. Additionally, such schools receive the same reduction in administrative fees granted to high-performing charter schools. Thus, administrative fees will be reduced from five percent to two percent for enrollment up to and including 250 students per school.

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

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.*

³⁴ Section 1002.33(10)(i), F.S.

³⁵ Section 1002.331(3)(b), F.S.

³⁶ Section 1002.332(2), F.S.

³⁷ Email, Florida Department of Education, Director, Office of Independent Education and Parental Choice (Jan. 27, 2014).

Charter Schools.³⁸ 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.³⁹

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.⁴⁰

The sponsor may immediately terminate a charter school's charter if conditions at the school threaten the health, safety, or welfare of students.⁴¹ 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.⁴²

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.⁴³

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.⁴⁴ The bill specifies that these procedures apply to mandatory terminations.

³⁸ See 76 Fed. Reg. 40,898 (July 12, 2011).

³⁹ *Id.*

⁴⁰ Section 1002.33(8)(a), F.S.

⁴¹ Section 1002.33(8)(d), F.S.

⁴² Sections 1002.33(6)(c) and (8)(b)-(d), F.S.

⁴³ 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.

⁴⁴ Section 1002.33(8)(e), (f), and (g), F.S.

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.⁴⁵ 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.⁴⁶ 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 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. The bill authorizes the sponsor to charge the charter school rent of up to 10 percent of the charter school's share of Florida Education Finance Program (FEFP) operating funds for use of a district school facility.

Charter School Cooperatives

Present Situation

The law authorizes charter schools to enter into cooperative agreements with other charter schools to provide planning and development, instructional, personnel administration, payroll, human resources, and evaluation and assessment services and teacher preparation and professional development.⁴⁷

Effect of Proposed Changes

The bill authorizes charter schools to form cooperative agreements with other educational institutions, not just other charter schools. The list of specific services these agreements may address is eliminated and replaced with general authorization to form agreements to further any educational, operational, or administrative purpose. This change expands the ability of charter schools and other educational institutions to collaborate and pool resources for shared objectives.

Distribution of Student Funding

Present Situation

Florida law requires a sponsor to distribute funds to a charter school no later than 10 working days after the district school board receives a distribution of state or federal funds. If a warrant for payment is not issued within 10 working days after receipt of funding by the sponsor, the sponsor must pay to the charter school, in addition to the amount of the scheduled disbursement, interest at a rate of 1 percent per month calculated on a daily basis on the unpaid balance from the expiration of the 10 working days until such time as the warrant is issued.⁴⁸ One school district has indicated that it will delay disbursement of locally generated funds to charter schools until the funds are received by the district.⁴⁹

⁴⁵ Section 1002.33(18)(e), F.S.

⁴⁶ Email, Florida Department of Education, Director, Office of Independent Education and Parental Choice (Jan. 14, 2014).

⁴⁷ Section 1002.33(13), F.S.

⁴⁸ Section 1002.33(17)(e), F.S.

⁴⁹ Telephone Interview, Florida Department of Education, (April 3, 2014).

When a student transfers from a charter school to another public school in the school district, or vice versa, there is no requirement that student funding remaining for that survey period follow the student.

Effect of Proposed Changes

The bill requires funding to follow the student when he or she withdraws from a charter school and enrolls in another public school in the school district, or vice versa. If a student withdraws from a charter school and enrolls in another public school in the school district, the charter school must, at the end of the fiscal year, transfer to the district school board a pro rata share of the full-time equivalent student funding for the student. Likewise, the district school board must conduct such a transfer of funds to a charter school if a student withdraws from another public school in the school district and enrolls in the charter school. The amount of the funds transfer is based upon the percentage of the survey period that the student was served by each school.

Additionally, the bill prohibits a sponsor from delaying payment of any portion of a charter school's funding based upon the timing of receipt of local funds by the school board. The bill also requires the sponsor to distribute a charter school's funding allocation to a financial institution designated by the charter school, if so designated. The financial institution must hold the funds in trust for the charter school. Funds revert to the sponsor if the charter school closes.

Local Education Agencies

Present Situation

Charter schools, like traditional public schools, receive federal education funding through such programs as Title I of the Elementary and Secondary Education Act (Title I)⁵⁰ and the Individuals with Disabilities Education Act. (IDEA).⁵¹ Typically, these programs are structured so that funding flows from the federal government to a state educational agency,⁵² which then awards subgrants to local education agencies (LEA) within the state.⁵³

Each federal education funding program has unique policy goals and program requirements. A LEA must submit a separate application and implementation plan for each federal program.⁵⁴ LEAs must have the personnel and infrastructure necessary to maintain financial, procurement, and inventory management systems that meet federal requirements.⁵⁵ LEAs must also comply with record keeping and annual financial and performance accountability reporting requirements.⁵⁶ A LEA that fails to comply with the terms of a federal grant may be subject to withholding, suspension, or termination of grant funds or designated as a "high risk" grantee.⁵⁷ Grant recipients who commit fraud may be debarred or suspended from participation in all federally funded programs.⁵⁸

Each state determines which entities may serve as LEAs.⁵⁹ In most cases, Florida's school districts are the LEA for district public schools, including charter schools. Federal education funds are received by the school district, which then distributes to the charter school its proportionate share of funding.⁶⁰ Florida law authorizes a governing board that operates a system of charter schools to serve as its own

⁵⁰ 20 U.S.C. s. 1400 et. seq.

⁵¹ 20 U.S.C. s. 6301 et. seq.; s. 1002.33(17)(c)-(d), F.S.

⁵² The Florida Department of Education is Florida's state educational agency for federal funding purposes. *See* 20 U.S.C. s. 1412(a).

⁵³ *See* 20 U.S.C. ss. 1412(a) and 1413(a).

⁵⁴ *See, e.g.*, 20 U.S.C. s. 6312 (local education agency Title I plans).

⁵⁵ 34 C.F.R. ss. 76.702 and 80.20-80.26 (financial management); 34 C.F.R. s. 80.36 (procurement management); 34 C.F.R. ss. 80.32 and 80.33 (inventory management).

⁵⁶ 34 C.F.R. ss. 76.702, 80.36, 80.32, 80.33, and 80.42 (fiscal, procurement, and inventory management records); 34 C.F.R. s. 80.41 (financial reports include status, cash transaction, and capital outlay reports).

⁵⁷ 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees).

⁵⁸ 34 C.F.R. s. 80.43(d); Exec. Order No. 12549, 34 C.F.R. s. 80.35.

⁵⁹ Federal law broadly defines the term LEA to include state boards of education, state departments of education, local school boards, cities, counties, political subdivisions, public postsecondary institutions, or any other public entities that a state's law authorizes to administer public elementary and secondary schools. *See, e.g.*, 34 C.F.R. s. 77.1.

⁶⁰ Section 1002.33(17)(c), F.S.

LEA for federal funding purposes if it files a resolution with its sponsor and DOE, accepts full responsibility for all LEA requirements, and:

- Has all schools located in the same county;
- Has a total enrollment exceeding that of at least one Florida school district;
- Operates both conversion and nonconversion charter schools; and
- Does not contract with a for-profit management company to operate schools.⁶¹

Although both are referred to as a “charter school system,” provisions defining when a system may serve as a LEA and those defining a system for purposes of the high-performing charter school system designation are not synonymous.

Of the two charter school systems that meet the LEA criteria, only Lake Wales Charter Schools has chosen to be a LEA.

Effect of Proposed Changes

The bill revises the criteria a charter school system must meet to qualify as a LEA. Under the bill, such a system must have a total student population exceeding at least one school district and all schools in the system must have the same governing board. Criteria requiring the system to consist of both conversion and nonconversion charter schools and prohibiting the system from contracting with a management company are eliminated. The requirement that the system have all charter schools located in one county is also eliminated. Systems that operate charter schools in more than one county will have to coordinate administration of federal funding with multiple district school boards and DOE. Based upon data provided by DOE, approximately nine charter school systems have a total student population exceeding that of at least one Florida school district.⁶²

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.⁶³

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.”

Clarifying Changes

Charter School Capital Outlay

Among other things, a charter school must demonstrate that it is financially stable in order to be eligible for charter school capital outlay funding.⁶⁴ However, the law does not specify how financial stability is to be determined.⁶⁵ 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 year for which an audit is available.

⁶¹ Section 1002.33(25), F.S.

⁶² Email, Florida Department of Education, Legislative Affairs Director (March 11, 2014).

⁶³ Section 1002.45(8)(d), F.S.

⁶⁴ Section 1013.62(1)(a), F.S.

⁶⁵ See, e.g., ss. 1002.331 and 1002.345, F.S.

Governing Board Meetings

Florida law requires each charter school's governing board to hold at least two open public meetings per school year in the school district where the charter school is located. The charter school principal and a parent liaison appointed by the board must be physically present at these meetings. Governing board members are not required to attend these meetings in person.⁶⁶ The bill specifically authorizes a governing board member to attend biannual public meetings in person or by communications media technology used in compliance with Administration Commission rules.⁶⁷

Alternative Teacher Certification

A professional education competence demonstration program (PEC Program) is an alternative teacher certification pathway that enables a classroom teacher who holds a temporary certificate to obtain full professional certification.⁶⁸ The law requires each school district to establish a PEC Program. Establishing a PEC Program is optional for other "state-supported public schools" and private schools. PEC Programs must be approved by DOE prior to implementation and approval is reevaluated annually.⁶⁹ The bill clarifies that a charter school may offer a PEC Program to enable its teachers to obtain a professional teaching certificate.

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. 1012.56, F.S., relating to educator certification.

Section 6. Amends s. 1013.62, F.S., relating to charter schools capital outlay funding.

Section 7. 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:

⁶⁶ Section 1002.33(7)(d), F.S. The parent liaison must reside in the school district where the charter school is located and may be a governing board member, charter school employee, or contracted individual. The governing board must appoint a separate liaison for each charter school it operates in the district. The law prohibits a sponsor from requiring governing board members to reside in the school district if the governing board complies with these requirements. *Id.*

⁶⁷ Florida law requires the Administration Commission to adopt uniform rules for conducting public meetings by means of communications media technology. Sections 120.54(5)(b)2. and 1002.33(7)(d), F.S.; ch. 28-109, F.A.C.

⁶⁸ Section 1012.56(8)(b), F.S.; rule 6A-5.066(1)(d) and (2), F.A.C.

⁶⁹ Section 1012.56(8)(b), F.S.; rule 6A-5.066(1)(d) and (2), F.A.C.

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Provisions expanding the ability of charter schools to pool resources with other educational institutions through cooperative agreements provide charter schools with new opportunities to achieve cost savings. See Fiscal Comments.

D. FISCAL COMMENTS:

The bill requires a pro-rata transfer of student funding when a student withdraws from a charter school and enrolls in another public school in the school district, or vice versa. The amount transferred is based upon the percentage of the survey period that the student was served by each school. This provision allows the receiving school to recoup the funds it spent to educate the student from the time of the student's transfer to the end of that survey period.

The bill clarifies the conditions in which sponsors must make unused facilities available to charter schools and authorizes a sponsor to charge charter schools rent amounting to up to 10 percent of the charter school's FEFP funds. Provisions authorizing district school boards to charge rent provide sponsors with opportunities for additional revenue, as most sponsors that currently allow charter schools to use district facilities provide the facility rent free or for nominal rent. This may incentivize more sponsors to provide unused facilities to charter schools. Any cost savings to charter schools will be dependent on how the rent charged by the sponsor compares to rents charged by other landlords for comparable facilities.

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. Charter schools the entity establishes in Florida receive a reduction in administrative fees for sponsor-provided services during the first three years of operation.

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.

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."

On April 3, 2014, the Education Committee adopted eight amendments and reported the bill favorably as a committee substitute. The amendments added provisions:

- Authorizing the sponsor to deny a charter school application if a majority of the proposed charter school's board members served together on the board of a charter school that was terminated by the sponsor or closed voluntarily due to financial mismanagement.
- Authorizing a governing board member to attend biannual public board meetings in person or by communications media technology.
- Authorizing charter schools to form cooperative agreements with other educational institutions and expanding the purposes of such agreements to include any educational, administrative, or operational objectives shared by the parties.
- Authorizing the sponsor to charge a charter school rent of up to 10 percent of the charter school's FEFP funds for use of a district school facility.
- Revising the criteria enabling a charter school system to serve as LEA for federal funding purposes.
- Clarifying that a charter school may offer a professional education competence demonstration program to enable its teachers to obtain a professional teaching certificate.
- Requiring the sponsor to distribute a charter school's funding allocation to a financial institution designated by the charter school, if so designated.
- Requiring a transfer of student funding at the end of the fiscal year if a student withdraws from a charter school and enrolls in another public school in the school district, or vice versa.
- Prohibiting a sponsor from delaying payment of any portion of a charter school's funding based upon the timing of receipt of local funds by the school board.

Additionally, the amendments:

- Restored existing limits on the frequency of high-performing charter school replication and provided that the limits do not apply to charter schools replicated in an area served by a chronically low performing school or to serve needs identified by the school board. The bill removed limits on the frequency of replication but limited the purposes of replication to establishing charter schools in areas served by a chronically low performing school or to serve needs identified by the school board.
- Eliminated provisions automatically granting high-performing charter school status to new charter schools established in Florida by an out-of-state charter school system that is granted "high-performing" status by the state board. Instead, such systems may use the application process for high-performing charter school replication to establish new charter schools in Florida and such schools receive a reduction in administrative fees for the first three years of operation.

This bill analysis reflects the committee substitute, as passed by the Education Committee.