

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Education Pre-K - 12

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BILL: SB 830

INTRODUCER: Senator Stargel

SUBJECT: School Choice

DATE: February 1, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	<b>Pre-meeting</b>
2.			AED	
3.			AP	

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**I. Summary:**

SB 830 expands charter school and virtual instruction accountability and flexibility, and creates a new High-Impact Charter School Network.

More specifically, the bill:

- Revises charter school application, sponsor oversight, student eligibility, and funding requirements.
- Expands authority for High-Performing charter schools to replicate and streamlines initial and continuing high-performing status requirements.
- Creates a High-Impact Charter Network, provides for an application for the designation, enables operation in critical needs areas, and requires review of financial and student assessment performance.
- Revises virtual instruction requirements to automatically terminate an approved provider's contract if the provider earns two consecutive school grades of "F" or school improvement ratings of "unsatisfactory."

The bill provides an effective date of July 1, 2016.

**II. Present Situation:**

The present situation for the relevant portions of SB 830 is discussed in the Effect of Proposed Changes Section of this analysis.

**III. Effect of Proposed Changes:**

SB 830 expands school choice accountability and flexibility related to existing charter schools, high-performing charter schools, and virtual instruction.

## Charter Schools

### *Overview*

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor, which is typically a school district.<sup>1</sup> Charter schools are exempt from many laws and regulations applicable to traditional public schools to encourage the use of innovative learning methods.<sup>2</sup> One of the guiding principles of charter schools is to “meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state’s public school system.”<sup>3</sup> The terms and conditions for the operation of the school are set forth in a performance contract or “charter.”<sup>4</sup>

The bill modifies charter school requirements related to the application processes, sponsor oversight, student eligibility, and funding.

### *Application Process*

#### **Present Situation**

The law establishes an application process for establishing a new charter school.<sup>5</sup> An applicant must submit a charter school application to the sponsor.<sup>6</sup> The sponsor must review and approve or deny the application.<sup>7</sup> The law requires sponsors and applicants to use a standard charter school application and application evaluation instrument.<sup>8</sup> The standard application is designed to enable the sponsor to evaluate the applicant’s educational plan, organizational plan, financial viability, and business plan.<sup>9</sup>

Charter school sponsors evaluate a variety of factors when considering an application to open a charter school.<sup>10</sup> The standard application requires the applicant to:<sup>11</sup>

- List each proposed member of the charter school’s governing board and his or her background and qualifications.
- Indicate to what extent the governing board will contract with a management company, summarize the company’s history operating charter schools, and list other charter schools managed by the company along with student achievement and financial performance data of such schools.

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<sup>1</sup> Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.

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

<sup>3</sup> Section 1002.33(2)(a)1, F.S.

<sup>4</sup> Section 1002.33(6)(h), F.S.

<sup>5</sup> Section 1002.33(6)(a), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 1002.33(6)(a), (7), (8), (9), F.S.

<sup>11</sup> *Id.*

### **Effect of Proposed Changes**

The bill requires the charter school application to contain a list and school grades of all charter schools currently or previously operated by the applicant, applicant group, or proposed management company.

The bill also requires the sponsor to consider the performance of all charter schools currently or previously operated by the applicant, applicant group, or proposed management company; thus increasing the transparency of such information.

### ***Sponsor Oversight***

#### **Present Situation**

Florida law tasks sponsors (typically school boards) with authorizing new charter schools and providing continuing oversight of each charter school in the school district.<sup>12</sup> The law establishes several processes designed to enable the sponsor to perform these roles, including:

- Authority to review and approve or deny charter school applications.<sup>13</sup>
- Authority to enforce the terms and conditions of the charter agreement.<sup>14</sup>
- Annual reporting of student achievement and financial information by each charter school to the sponsor.<sup>15</sup>
- Sponsor monitoring of annual financial audits<sup>16</sup> and monthly financial statements submitted by charter schools in the school district.<sup>17</sup>
- Interventions for remedying unsatisfactory academic performance and financial instability.<sup>18</sup>
- Authority to close charter schools for academic or financial failure; poor management; violations of law; or child health, safety, and welfare violations.<sup>19</sup>

The sponsor is required to terminate a charter if the charter schools earns two consecutive grades of “F” unless:

- The school was established to turn around the performance of district public school.
- The charter school serves a student population the majority of which resides in a school zone served by a district public school that earned a grade of “F” in the year before the charter school opened, and the charter school earns at least a grade of “D” in its third year of operation.
- The State Board of Education grants the charter school a 1- year, one-time waiver of termination, if the charter school that has been in operation for less than 5 years demonstrates that the learning gains of its students on statewide assessments are comparable to or better than the learning gains of similarly situated students enrolled in nearby district public schools.

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

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

<sup>14</sup> Section 1002.33(6)(h) and (7), F.S.

<sup>15</sup> Section 1002.33(9)(k), F.S.

<sup>16</sup> Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

<sup>17</sup> Section 1002.33(9)(g), F.S.

<sup>18</sup> Section 1002.33(9)(n), F.S.

<sup>19</sup> Section 1002.33(8), F.S.

### **Effect of Proposed Changes**

The bill provides that a charter school's charter is automatically terminated if the school earns two consecutive grades of "F" after all school grades are final.<sup>20</sup> The sponsor is required to notify in writing the charter school's governing board, the charter school principal, and the department when the charter is automatically terminated. The sponsor's letter of termination is a final order subject to appeal pursuant to s. 120.68, F.S.<sup>21</sup> In effect, school districts will be required to immediately close "FF" charter schools, bypassing the possibility for the charter school to remain open throughout the duration of the traditional charter contract termination process.

The bill continues to require the charter school to be governed by existing dissolution procedures and prohibitions on expenditures when the charter is automatically terminated pursuant to this provision.

### ***Student Eligibility***

#### **Present Situation**

A charter school must be open to any student covered in an interdistrict agreement or residing in the school district in which the charter school is located.<sup>22</sup> The charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building.<sup>23</sup> In such case, all applicants shall have an equal chance of being admitted through a random selection process.<sup>24</sup>

A charter school may give enrollment preference to populations of students who:<sup>25</sup>

- Are siblings of a student enrolled in the charter school.
- Are the children of a:
  - Member of the governing board of the charter school.
  - Employee of the charter school.
  - Employee of the business partner of a charter school-in-the-workplace or a resident of the municipality in which such charter school is located.
  - Resident of a municipality that operates a charter school-in-a-municipality.
- Have successfully completed a voluntary prekindergarten education program provided by the charter school or the charter school's governing board in the previous year.
- Are the children of an active member of any branch of the United States Armed Forces.

### **Effect of Proposed Changes**

The bill provides that a charter school may not deny the application or continued enrollment of a student based on the student's current or prior academic performance, including grade retention. In effect, the provision explicitly prohibits a charter school from considering these factors when selecting applicants for enrollment.

<sup>20</sup> The bill retains the current exceptions in law.

<sup>21</sup> Section 120.68, F.S., specifies the provisions in the Administrative Procedures Act for appellate review of final agency action.

<sup>22</sup> Section 1002.33(10)(a), F.S.

<sup>23</sup> Section 1002.33(10)(b), F.S.

<sup>24</sup> *Id.* A charter school may also limit the enrollment process only to target specified populations. Section 1002.33(10)(e), F.S.

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

However, the bill creates new, additional, categories of enrollment preferences for charter schools for students who are currently enrolled or were enrolled during the prior school year in a public school that earned a grade of “F” or that earned three consecutive grades of “D” or who are zoned for such school.

### ***FEFP Categorical Program Funds and Payments***

#### **Present Situation**

Charter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program (FEFP). Current law specifically includes transportation and the Florida digital classroom allocation as examples of these categorical program funds.<sup>26</sup>

District school boards are required to make timely and efficient payment and reimbursement to charter schools.<sup>27</sup> The payment is to be issued no later than 10 working days after the district school board receives a distribution of funds.<sup>28</sup>

#### **Effect of Proposed Changes**

The bill adds the research-based reading allocation to the list of categorical program funds specified in law as examples of categorical program funds that school districts must proportionately share with eligible charter schools. In effect, the bill clarifies that school districts must proportionally share the research-based reading allocation with eligible charter schools.

The bill establishes specific payment cycles and amounts of funds to charter schools on a monthly or bimonthly basis, based on the district’s fiscal year. A district school board is prohibited from delaying payment to a charter school if receipt of local funds is delayed. In effect, charter schools will receive funding on specific dates, which may not be delayed by the school district.

### ***Capital Outlay Funding***

#### **Present Situation**

To be eligible for a capital funding allocation, and charter school must:<sup>29</sup>

- Meet one of the following criteria:
  - Have been in operation for 3 or more years;
  - Be governed by a governing board established in the state for 3 or more years which operates both charter schools and conversion charter schools within the state;
  - Be an expanded feeder pattern chain of a charter school within the same school district that is currently receiving capital outlay funds;
  - Have been accredited by the Commission on Schools of the Southern Association of Colleges and Schools; or

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<sup>26</sup> Section 1002.33(17)(b), F.S.

<sup>27</sup> Section 1002.33(17)(e), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 1013.62(1), F.S.

- Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace.
- Have financial stability for future operation as a charter school.
- Have satisfactory student achievement based on state accountability standards applicable to the charter school.
- Serve students in facilities that are not provided by the charter school's sponsor.

### **Effect of Proposed Changes**

The bill revises the financial stability criteria to require the charter school to have an annual audit that does not reveal one or more of the financial emergency conditions specified in law<sup>30</sup> for the most recent fiscal year for which such an audit is available. In effect, the bill provides a clearer, uniform, definition for evaluating the financial stability of a charter school when determining eligibility to receive capital outlay funds.

### **High-Performing Charter Schools**

#### ***Present Situation***

A charter school is a high-performing charter school if it:<sup>31</sup>

- Received at least two school grades of “A” and no school grade below “B,” during each of the previous three school years.
- Received an unqualified opinion on each annual financial audit in the most recent three fiscal years for which such audits are available.
- Did not receive a financial audit that revealed one or more of the financial emergency conditions in the most recent three fiscal years for which such audits are available.

A high-performing charter school may submit an application in any school district in the state to establish and operate a new charter school that will substantially replicate its educational program.<sup>32</sup> A high-performing charter school may not establish more than one charter school pursuant to this provision in any year.<sup>33</sup> Subsequent applications may not be submitted unless each charter school established in the manner achieves high-performing status.<sup>34</sup>

A high-performing charter school is authorized to:<sup>35</sup>

- Increase its student enrollment once per school year to more than the capacity identified in the charter, but student enrollment may not exceed the current facility capacity.
- Expand grade levels within kindergarten through grade 12 to add grade levels not already served if any annual enrollment increase resulting from grade level expansion is within the limit established its contract.
- Submit a quarterly, rather than a monthly, financial statement to the sponsor.

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<sup>30</sup> Section 218.503(1), F.S.

<sup>31</sup> Section 1002.331(1), F.S.

<sup>32</sup> Section 1002.331(3)(a), F.S.

<sup>33</sup> Section 1002.331(b), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Section 1002.331(2), F.S.

- Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the charter schools' governing board regardless of the renewal cycle.
- Receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a shorter term at the option of the high-performing charter school.

A high-performing charter school may not increase enrollment or expand grade levels following any school year in which it receives a school grade of "C" or below.<sup>36</sup>

If the charter school receives a school grade of "C" or below in any 2 years during the term of the charter, the term of the charter may be modified by the sponsor and the charter school loses its high-performing status.<sup>37</sup> Additionally, a high-performing charter school maintains its high-performing status until the Commissioner determines that the school no longer meets the eligibility criteria.<sup>38</sup> These two provisions have been interpreted by the judicial branch to mean that the Commissioner's determination applies only to initial eligibility requirements, while the 2 "C" provision applied to loss of status after it was granted.<sup>39</sup>

### ***Effect of Proposed Changes***

The bill provides that the limits for establishing no more than one replicating charter school per year do not apply to a charter school established:

- By a high-performing charter school in the attendance zone of a school identified as in need of intervention and support.
- To meet capacity needs.
- To meet needs for innovative choice options identified by the district school board.

The bill removes language preventing a high-performing charter school from expanding enrollment or grade levels following the school year in which the school receives a grade of "C" or below. In effect, the bill allows a high-performing charter school to continue to expand enrollment or grade levels regardless of school grade.

The bill removes language that causes a high-performing charter school to lose its high-performing status if the school receives a school grade of "C" or below in any 2 years. In effect, the standard to gain, and retain, high-performing status will be the same (i.e., the Commissioner's annual review to determine continued compliance).

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<sup>36</sup> Section 1002.331(4), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* The Commissioner of Education (Commissioner) is required to annually determine whether a high-performing charter school continues to meet the eligibility criteria. Section 1002.331(5), F.S. This provision was added to statute, effective July 1, 2013, via ch. 2013-250, L.O.F.

<sup>39</sup> *Department of Education v. Educational Charter Foundation of Florida, Inc., d/b/a Imagine Schools at South Lake*, 177 So.3d 1036 (1<sup>st</sup> DCA, 2015).

## **High-Impact Charter Network**

### ***Present Situation***

There currently is no high-impact charter network authorized under Florida law.

### ***Effect of Proposed Changes***

The bill creates High-Impact Charter Networks.

A 501(c)(3) nonprofit organization that is authorized by law to operate a public charter school, that successfully operates a system of charter schools that serve primarily educationally disadvantaged students may apply to the State Board of Education (SBE) for status as a High-Impact Charter Network.

The application process must include the SBE's review of:

- School-level financial performance; and
- Statewide assessments of all charter schools currently and previously operated by the entity. The assessment review must include schoolwide and subgroup performance for the 3 most recent years, as compared to all students in other schools at the same grade level, and as compared with other schools serving similar student demographics; and
  - This assessment review may also include performance on nationally norm-referenced assessments, student attendance and retention rates, graduation rates, college attendance rates, college persistence rates, and other outcomes measures as determined by the SBE.

An entity that is designated as a High-Impact Charter Network may submit a charter school applications to district school boards to establish and operate charter schools in critical need areas. Critical need means an area that is served by one or more traditional public schools that meet at least one of the following criteria:

- Received a school grade of "D" or "F" in 4 of the preceding 5 years;<sup>40</sup> or
- Had fewer than 25% of students passing statewide, standardized in English Language Arts in the most recent year for which assessment scores are available.

If approved by the SBE, the High-Impact Charter Network status is valid for up to 4 years. If the entity seeks renewal, the SBE must review the academic and financial performance of the charter schools established in critical need areas and operated by the entity.

The bill provides that a charter school operated by a High-Impact Charter Network in a critical need area:

- Is eligible to receive capital outlay funding.
- Will have its administrative fee paid to the sponsor waived so long as the network maintains its status as a High-Impact Charter Network.

The bill required the SBE to adopt rules prescribing a process to review the application, and to administer this section.

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<sup>40</sup> The bill provides that for purposes of determining critical need areas, school grades issued for the 2014-2015 school year may not be considered.



## Virtual Instruction

### *Present Situation*

A virtual instruction program is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.<sup>41</sup> The Florida Virtual School (FLVS), school district FLVS franchises, and Florida College System institutions are approved providers.<sup>42</sup> The DOE may approve other virtual instruction providers, if certain criteria are met.<sup>43</sup>

Virtual instruction providers must align curriculum and course content to Florida's standards, offer instruction designed for the student to gain proficiency, provide each student with all necessary instructional materials, not require tuition or other registration fees, and provide certain students with all equipment necessary to participate in the virtual instruction program.<sup>44</sup> Each contract with an approved provider must contain, at a minimum, a detailed curriculum plan, methods for determining each student has met state graduation requirements, methods for resolving conflicts, contract termination provisions, and responsibility for existing debts.<sup>45</sup> Each approved provider must participate in the statewide assessment program and receive a school grade or school improvement rating, as applicable.<sup>46</sup>

A DOE-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.<sup>47</sup> In such cases, the provider must be removed from the approved provider list for at least one year. The provider may be placed back on the list after DOE determines that the provider meets the eligibility requirements and has corrected the academic performance deficiencies.<sup>48</sup>

### *Effect of Proposed Changes*

The bill renames the school improvement rating "declining" to "unsatisfactory" to conform to current school improvement rating terminology of commendable, maintaining, and unsatisfactory.

The bill also revises existing requirements to automatically terminate an approved provider's contract if the provider earns two consecutive school grades of "F" or school improvement ratings of "unsatisfactory." In effect, the bill revises termination provisions from 2 D, F, or unsatisfactory ratings in any 4 year period (e.g, school grades of D, A, B, D over four years) to

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<sup>41</sup> Section 1002.45(1)(a)2., F.S.

<sup>42</sup> Section 1002.45(1)(a), F.S.

<sup>43</sup> Section 1002.45(2), F.S.

<sup>44</sup> Section 1002.45(3), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> Section 1002.45(8)(a), F.S.

<sup>47</sup> Section 1002.45(8)(d), F.S. The school improvement rating system is based on the following ratings: Commendable (meaning a significant percentage of students attending the school are making learning gains); Maintaining (meaning a sufficient percentage of the students attending the school are making learning gains); and Unsatisfactory (meaning an insufficient percentage of students attending the school are making learning gains). Section 1008.341(a), F.S.

<sup>48</sup> *Id.*

two consecutive F or unsatisfactory ratings (e.g., school grades of F, F in consecutive years). The bill also requires DOE to automatically (e.g., immediate) terminate the contract.

The bill provides and effective date of July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.33, 1002.331, 1002.45, 1013.62.

This bill creates section 1002.333 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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