

**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

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BILL: SB 376

INTRODUCER: Senator Simmons

SUBJECT: Charter School Funding

DATE: February 20, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Graf	ED	<b>Favorable</b>
2.			AED	
3.			AP	

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**I. Summary:**

SB 376 substantively restructures charter school capital outlay funding model to dedicate a source of funding by repurposing the discretionary millage revenue for charter schools to apply to charter school capital outlay expenditures. Additionally, the bill:

- Requires school districts to distribute shared local capital outlay funds on a monthly basis, and if the local capital outlay funds are not available, the school district must provide the funds from another funding source.
- Prohibits charter schools from receiving capital outlay funds unless the charter school can demonstrate that the funds will not be used for personal financial enrichment.
- Adds additional criteria for charter schools to demonstrate that seventy-five percent or higher percent of their student population is eligible for free or reduced price school lunch.
- Limits the ability of a charter school governing board to only use charter school capital outlay funds at the charter school that generated the funding.

The bill takes effect July 1, 2017.

**II. Present Situation:**

**Charter School Capital Outlay**

Funding for charter school capital outlay is primarily authorized via appropriated state funds.<sup>1</sup> Key concepts are eligibility for funding, a funding allocation methodology, and allowable funding uses.<sup>2</sup>

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<sup>1</sup> Section 1013.62, F.S.

<sup>2</sup> *Id.*

### ***Eligibility***

To be eligible for charter school capital outlay funding, a charter school must:<sup>3</sup>

- Have been in operation for 2 or more years,<sup>4</sup> 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 chain<sup>5</sup> of a charter school within the same school district that is currently receiving charter school capital outlay funds, have been accredited by the Commission on Schools of the Southern Association of Colleges and Schools, or serve students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b), F.S.
- Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1), F.S., for the most recent fiscal year for which such audits are available.
- Have satisfactory student achievement<sup>6</sup> based on state accountability standards applicable to the charter school.
- Have received final approval from its sponsor pursuant to s. 1002.33, F.S., for operation during that fiscal year.
- Serve students in facilities that are not provided by the charter school's sponsor.

A charter school is not eligible for a funding allocation if it was created by the conversion of a public school and operates in facilities provided by the charter school's sponsor for a nominal fee, or at no charge, or if it directly or indirectly operated by the school district.<sup>7</sup>

### ***Allocation***

Prior to the 2016 Legislative session, the allocation methodology required the use of a priority-based funding system comprised of the following:<sup>8</sup>

- First priority is given to those charter schools that received capital outlay funding in the 2005-2006 fiscal year. These schools receive the same per-student amount received in the 2005-2006 fiscal year for the lesser number of students enrolled in the current year or the number of students enrolled in the 2005-2006 school year.
- Second, after calculating first priority funding, remaining funds are allocated with the same per-student amount to those schools not included in the first priority allocation and to those schools in the first priority allocation with growth in excess of 2005-2006 fiscal year student enrollments.
- Third, any excess funds remaining after the first and second priority calculations are allocated among all eligible charter schools.

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<sup>3</sup> Section 1013.62(1)(a), F.S.

<sup>4</sup> Chapter 2016-237, L.O.F., effective July 1, 2016, reduced the eligibility period from 3 years to 2 years.

<sup>5</sup> Rule 6A-2.0020, F.A.C., provides that a charter school may be considered part of an expanded feeder chain if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding.

<sup>6</sup> Rule 6A-2.0020, F.A.C., provides that the eligibility requirement for student achievement must be determined in accordance with the language in the charter contract and the charter school's current school improvement plan if the school has a current school improvement plan. A charter school receiving an "F" grade designation through the state accountability system, as defined in s. 1008.34, F.S., must not be eligible for capital outlay funding for the school year immediately following the designation. *Id.*

<sup>7</sup> Section 1013.62(1)(b), F.S.

<sup>8</sup> Section 1013.62(1)(b), F.S. (2015)

- Each charter school's capital outlay allocation must not exceed 1/15<sup>th</sup> of the statutory cost per student station specified in s. 1013.64(6)(b), F.S.<sup>9</sup>

In the 2016 Legislative session, the allocation methodology was changed to eliminate the prioritization system weighted toward older schools and create a new method in which charter school capital outlay funds are allocated by using a weighted funding approach to provide additional funds to charter schools that serve high proportions of students eligible for free and reduced price lunch or students with disabilities, or both. More specifically:<sup>10</sup>

- All eligible charter schools must receive a standard base amount of funds per FTE derived from the gross capital outlay funding amount appropriated for charter schools.
- Charter schools must receive an additional 25 percent of the standard base amount if the school has either of the following criteria:
  - A 75 percent or greater free and reduced lunch enrollment;<sup>11</sup> or
  - A 25 percent or greater with disabilities as defined in State Board of Education rule and consistent with the requirements of the Individuals with Disabilities Education Act.
- Charter schools that meet both criteria must receive an additional 50 percent of the standard base amount.
- The statutory requirement that each charter school's capital outlay allocation must not exceed 1/15<sup>th</sup> of the statutory cost per student station was repealed.

For the 2016-2017 school year, of the 535 charter schools that received capital outlay:<sup>12</sup>

- 353 (66%) did not meet either criteria.<sup>13</sup>
- 136 (25%) met the 75% or more free and reduced lunch enrollment criteria.
- 31 (6%) met the 25% or more ESE enrollment criteria.
- 15 (3%) met both criteria.<sup>14</sup>

The Department of Education (DOE) must distribute capital outlay funds monthly, beginning in the first quarter of the fiscal year, based on 1/12<sup>th</sup> of the amount DOE reasonably expects the charter school to receive during that fiscal year.<sup>15</sup> The Commissioner of Education

<sup>9</sup> Section 1013.62(1)(c), F.S. (2015)

<sup>10</sup> Section 14, ch. 2016-237, L.O.F.

<sup>11</sup> On December 7, 2016, the Department of Education filed a Notice of Development of Rulemaking for Rule 6A-6.0020, F.A.C., which contained draft language identifying an additional method to determine the funding allocation for eligibility charter schools by adding an equivalent percentage of schools that are eligible under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010. Florida Department of State, Florida Administrative Code & Florida Administrative Register, Notice 18347761, [https://www.flrules.org/Gateway/View\\_notice.asp?id=18347761](https://www.flrules.org/Gateway/View_notice.asp?id=18347761) (last visited Feb. 16, 2017).

<sup>12</sup> Department of Education, *Charter School Fixed Capital Outlay, Senate Appropriations Subcommittee on Pre K-12 Education, February 8, 2017, available at [http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket\\_3613.pdf](http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3613.pdf), at 16. For 2016-2017, 535 of 654 (82%) charter schools received capital outlay funds. *Id.* at 15.*

<sup>13</sup> The criteria are a school with a 75 percent or greater free and reduced lunch enrollment, or a 25 percent or greater with disabilities as defined in State Board of Education rule and consistent with the requirements of the Individuals with Disabilities Education Act. Section 1013.62(1)(c)1., F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 1013.62(2)(b), F.S.

(Commissioner) must adjust subsequent distributions as necessary to reflect each charter school's recalculated allocation.<sup>16</sup>

### *Authorized Uses of Funds*

Capital outlay funds may be used by a charter school's governing board for the following purposes:<sup>17</sup>

- Purchase of real property.
- Construction of school facilities.
- Purchase, lease-purchase, or lease of permanent or relocatable school facilities.
- Purchase of vehicles to transport students to and from the charter school.
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of 5 years or longer.
- Effective July 1, 2008, purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support schoolwide administration or state-mandated reporting requirements.
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- Purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.

For the 2016-2017 school year, charter schools identified planned expenditures as follows:<sup>18</sup>

- 92% - Purchase, lease-purchase, or lease of permanent or relocatable school facilities.
- 88% - Purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.
- 65% - Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- 65% - Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of 5 years or longer.
- 53% - Purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications.
- 27% - Construction of school facilities.
- 22% - Purchase of real property.
- 18% - Purchase of vehicles to transport students to and from the charter school.

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<sup>16</sup> *Id.*

<sup>17</sup> Section 1013.62(3), F.S.

<sup>18</sup> Department of Education, *Charter School Fixed Capital Outlay, Senate Appropriations Subcommittee on Pre K-12 Education, February 8, 2017*, available at [http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket\\_3613.pdf](http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3613.pdf), at 17.

Additionally, conversion charter schools may use capital outlay funds received through the reduction in the administrative fee provided in s. 1002.33(20), F.S., for the renovation, repair, and maintenance of school facilities that are owned by the sponsor.<sup>19</sup>

### **District School Taxes**

In addition to the maximum millage levy specified in s. 1011.71(1), F.S., each school board may levy not more than 1.5 mills against the taxable value for school purposes for district schools, including charter schools at the discretion of the school board, to fund:<sup>20</sup>

- New construction and remodeling projects, as set forth in ss. 1013.64(3)(b) and (6)(b), F.S., and included in the district's educational plant survey pursuant to s. 1013.31, F.S., without regard to prioritization, sites and site improvement or expansion to new sites, existing sites, auxiliary facilities, athletic facilities, or ancillary facilities.
- Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies pursuant to s. 1013.15(2), F.S.
- The purchase, lease-purchase, or lease of school buses.
- The purchase lease-purchase, or lease of new and replacement computer equipment; computer hardware, including electronic hardware and other hardware devices necessary for gaining access to or enhancing the use of electronic content and resources or to facilitate the access to and the use of a school district's digital classrooms plan pursuant to s. 1011.62, F.S., excluding software other than the operating system necessary to operate the hardware or device; and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support districtwide administration or state-mandated reporting requirements.
- Payments for educational facilities and sites due under a lease-purchase agreement entered into by a district school board pursuant to s. 1003.02(1)(f), F.S., or s. 1013.15(2), F.S., not exceeding, in the aggregate, an amount equal to three-fourths of the proceeds from the millage levied by a district school board pursuant to this subsection. The three-fourths limit is waived for lease-purchase agreements entered into before June 30, 2009, by a district school board pursuant to this provision.
- Payment of loans approved pursuant to ss. 1011.14, F.S., and 1011.15, F.S.
- Payment of costs directly related to complying with state and federal environmental statutes, rules, and regulations governing school facilities.
- Payment of costs of leasing relocatable educational facilities, of renting or leasing educational facilities and sites pursuant to s. 1013.15(2), F.S., or of renting or leasing buildings or space within existing buildings pursuant to s. 1013.15(4), F.S.
- Payment of the cost of school buses when a school district contracts with a private entity to provide student transportation services if the district meets the requirement of this provision:
  - The district's contract must require that the private entity purchase, lease-purchase, or lease, and operate and maintain, one or more school buses of a specific type and size that meet requirements of s. 1006.25, F.S.
  - Each school bus must be used for the daily transportation of public school students in the manner required by the school district.

<sup>19</sup> Section 1013.62(3), F.S.

<sup>20</sup> Section 1011.71(2), F.S.

- Annual payment for each such school bus may not exceed 10 percent of the purchase price of the state pool bid.
- The proposed expenditure of the funds for this purpose must have been included in the district school board's notice of proposed tax for school capital outlay as provided in s. 200.065(10), F.S.

District school boards have been authorized to share local discretionary millage with charter schools since 2006.<sup>21</sup> For 2015-2016, school districts collected approximately \$60.2 million in local discretionary millage.<sup>22</sup> At least three school districts have chosen to share such funding with charter schools<sup>23</sup>; although, it is unknown to what extent districts have chosen to share such funding with charter schools.<sup>24</sup>

### III. Effect of Proposed Changes:

SB 376 substantively restructures charter school capital outlay funding model to dedicate a source of funding by repurposing the discretionary millage revenue for charter schools to apply to charter school capital outlay expenditures. Additionally, the bill:

- Requires school districts to distribute shared local capital outlay funds on a monthly basis, and if the local capital outlay funds are not available, the school district must provide the funds from another funding source.
- Prohibits charter schools from receiving capital outlay funds unless the charter school can demonstrate that the funds will not be used for personal financial enrichment.
- Adds additional criteria for charter schools to demonstrate that seventy-five percent or higher percent of their student population is eligible for free or reduced price school lunch.
- Limits the ability of a charter school governing board to only use charter school capital outlay funds at the charter school that generated the funding.

#### Charter School Capital Outlay

The bill restructures charter school capital outlay to dedicate a source of funding consisting of shared local capital outlay funding derived from the discretionary millage revenue authorized under s. 1011.71(1), F.S., while allowing the Legislature the discretion to determine whether to provide additional state appropriations.

The bill also amends eligibility requirements and the funding allocation methodology for charter school capital outlay funding.

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<sup>21</sup> Section 9, ch. 2006-190, L.O.F.

<sup>22</sup> Department of Education, *School District Capital Outlay, Senate Appropriations Subcommittee on Pre K-12 Education, February 8, 2017*, available at [http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket\\_3613.pdf](http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3613.pdf), at 6.

<sup>22</sup> *Id.*

<sup>23</sup> E-Mail, Department of Education (Feb. 17, 2017). Based on information from 2012, the DOE is aware of Sarasota, Sumter, and Franklin school districts sharing local discretionary millage with charter schools. *Id.*

<sup>24</sup> E-Mail, Department of Education (Feb. 13, 2017). The DOE does not collect information pertaining to school districts sharing the local discretionary millage with charter schools. *Id.*

### ***Eligibility***

The bill provides that the eligibility criteria for shared local capital outlay allocation is the same as that in existing law for state funds provided in the General Appropriations Act (GAA). However, the bill adds a new eligibility requirement (for both shared local capital outlay and for state funds provided in the GAA) consisting of a prohibition on personal financial enrichment.

The bill provides that it is the intent of the Legislature that the public interest be protected by prohibiting personal financial enrichment by owners, operators, managers, and other affiliated parties of charter schools. Additionally, the bill emphasizes that a charter school is not eligible for a funding allocation unless the chair of the governing board and chief administrative officer of the charter school annually certify under oath that the funds will be used solely and exclusively for constructing, renovating, or improving charter school facilities that are:

- Owned by a school district, political subdivision of the state, municipality, Florida College System institution, or state university;
- Owned by an organization, qualified as an exempt organization under s. 501(c)(3) of the Internal Revenue Code, whose articles of incorporation specify that upon the organization's dissolution, the subject property will be transferred to a school district, political subdivision of the state, municipality, Florida College System institution, or state university; or
- Owned by and leased, at a fair market value in the school district in which the charter school is located, from a person or entity that is not an affiliated party of the charter school.

The bill defines "affiliated party of the charter school" to mean:

- The applicant for the charter school pursuant to s. 1002.33, F.S.;
- The governing board of the charter school or a member of the governing board;
- The charter school owner;
- The charter school principal;
- An employee of the charter school;
- An independent contractor of a charter school or charter school governing board;
- A subsidiary corporation, a service corporation, and affiliated corporation, a parent corporation, a limited liability company, a limited partnership, a trust, a partnership, or a related party that, individually or through one or more entities:
  - Shares common ownership or control; and
  - Directly or indirectly manages, administers, controls, or oversees the operation of the charter school; or
- Any person or entity, individually or through one or more entities that share common ownership, which directly or indirectly manages, administers, controls, or oversees the operation of any of the foregoing.

The bill also clarifies that virtual charter schools are not eligible for charter school capital outlay funding.

### ***Funding Allocation***

The bill provides that the eligibility criteria for shared local capital outlay allocation is identical to that in existing law for state funds provided in the GAA. The bill codifies existing DOE implementation of an additional method to determine the funding allocation for eligible charter

schools by adding an equivalent percentage of schools that are eligible under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010.<sup>25</sup>

The bill provides that the allocation formula for the shared local capital outlay allocation utilize a weighted funding approach to provide additional funds to charter schools who serve high proportions of students eligible for free and reduced price lunch or students with disabilities, or both. More specifically:

- An eligible charter school will receive a base allocation of 50 percent of the maximum calculated capital outlay allocation.
- Charter schools will receive an additional 25 percent of the base allocation if the school has either of the following criteria:
  - A 75 percent or more free and reduced lunch enrollment or an equivalent percentage who are eligible under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010 when the multiplier authorized under the National School Lunch Act, 42 U.S.C. s. 1759(a)(1)(F)(vii), is applied to the number of students reported for direct certification; or
  - A 25 percent or more ESE enrollment.
- Charter schools that that meet both criteria would receive an additional 50 percent of the base allocation (e.g., the maximum calculated capital outlay allocation).

The bill requires each school district to distribute 1/12<sup>th</sup> of the calculated shared local capital outlay funds to eligible charter schools on a monthly basis, beginning in the first quarter of the fiscal year. If local funds are not available, the school district must provide an equivalent amount from another funding source. If the school district is unable to provide the calculated local funds from its millage authorized pursuant to s. 1011.71(2), F.S., the school district must provide an equivalent amount to the eligible charter schools from another school district funding source. Each district must adjust payments to charter schools to reflect updated calculations of the shared local charter school allocations, as determined by the Department of Education (DOE).

The bill provides that the DOE must calculate the shared local capital outlay allocation by dividing the revenue generated from the local discretionary millage authorized under s. 1011.72(2), F.S., and levied by the school board by the sum of the district fixed capital outlay FTE and the FTE for eligible charter schools. This calculated capital outlay allocation per FTE must then be multiplied by the eligible charter school's FTE to provide a maximum calculated capital outlay allocation.

### ***Authorized Use of Funds***

The bill limits the ability of a charter school governing board to only use charter school capital outlay funds at the charter school that generated the funding.

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<sup>25</sup> On December 7, 2016, the Department of Education filed a Notice of Development of Rulemaking for Rule 6A-6.0020, F.A.C., which contained draft language identifying an additional method to determine the funding allocation for eligibility charter schools by adding an equivalent percentage of schools that are eligible under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010. Florida Department of State, Florida Administrative Code & Florida Administrative Register, *Notice 18347761*, [https://www.flrules.org/Gateway/View\\_notice.asp?id=18347761](https://www.flrules.org/Gateway/View_notice.asp?id=18347761) (last visited Feb. 16, 2017).



**District School Taxes**

The bill requires districts to share their 1.5 mills funding with eligible charter schools in the manner specified above via s. 1013.62, F.S.

The bill takes effect July 1, 2017.

**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:**

Under SB 376, school districts, for the first time, will be required to share its local discretionary millage authorized under s. 1011.71(2), F.S., with eligible charter schools. The fiscal impact upon school districts that utilize local discretionary millage is unknown at this time.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

If all charter schools that are eligible for fixed capital outlay funds in the current year remain eligible based on the revised criteria in this bill, the aggregate amount of local funds for charter school capital outlay would be roughly double the 2016-17 state appropriation of \$75 million for this purpose. Individual charter school amounts would be based on the local revenue generated by each district's discretionary capital outlay millage with the base amount being equal to half the district funds per FTE, with additional 25 percent increments for schools that meet either of the special student population criteria and the maximum amount for schools that meet the threshold levels for both criteria. This bill does not require an appropriation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1011.71 and 1013.62.

**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.