

**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 Appropriations Subcommittee on Education

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**BILL:** PCS/CS/SB 1420 (183484)

**INTRODUCER:** Appropriations Subcommittee on Education; Education Committee; and Senator Flores

**SUBJECT:** Charter Schools

**DATE:** February 17, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dew</u>	<u>Sikes</u>	<u>ED</u>	<b>Fav/CS</b>
2.	<u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1420 revises provisions regarding charter school applications, employee and board member criminal history checks, and virtual instruction programs. Specifically, the bill:

- Requires a sponsor to receive and consider a charter school application submitted at any time during the calendar year.
- Specifies a high-performing charter school may submit two applications to establish a new charter school to be opened at a time determined by the high-performing charter school, with conditions.
- Authorizes a virtual charter school to provide part-time virtual instruction to students who were enrolled at a public school the prior year and contract with any public or charter school to provide any course the virtual school cannot provide.
- Authorizes a charter school to transfer unrestricted current or capital assets from state resources to other charter schools operated by the not-for-profit or municipal entity within the state, rather than being limited to other charter schools within the school district.

The bill does not have an impact on state revenues or expenditures. However, the provision of the bill allowing a charter school to transfer state assets to a charter school in another district would authorize local taxpayer funds intended for one district to financially support charter schools in a different district. See Section V.

The bill takes effect July 1, 2020.

## II. Present Situation:

### Florida Charter Schools

Charter schools are public schools that operate under a performance contract (charter),<sup>1</sup> which frees them from many regulations created for traditional public schools while holding them accountable for academic and financial results.<sup>2</sup> The charter between the charter school governing board and the charter school sponsor details the school's mission, program, goals, students served, methods of assessment, and ways to measure success.<sup>3</sup>

A district school board may sponsor a charter school in the county in which the district school board has jurisdiction.<sup>4</sup> Additionally, a state university may grant a charter to a developmental research (laboratory) school.<sup>5</sup>

In the 2018-2019 school year, over 313,000 students were enrolled in 658 charter schools in 47 Florida school districts.<sup>6</sup>

### *Charter School Applications*

An application for a new charter school may be made by an individual, a teacher, a parent, a group of individuals, a municipality, or a legal entity organized under the laws of this state.<sup>7</sup>

A sponsor receives and reviews all charter school applications<sup>8</sup> and must, within 90 calendar days of receipt, approve or deny the application by majority vote.<sup>9</sup> Charter applicants are required to prepare and submit an application on a standard form prepared by the Department of Education (DOE), which application contains information a sponsor may require and:<sup>10</sup>

- Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
- Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
- Contains goals and objectives for improving student learning and measuring that improvement.
- Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level.

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<sup>1</sup> Section 1002.33(5)(a), F.S.

<sup>2</sup> Section 1002.33(7), F.S.

<sup>3</sup> Florida Department of Education, *FAQ, What are charter schools?* <http://fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml> (last visited Jan. 14, 2020).

<sup>4</sup> Section 1002.33(5)(a)1., F.S.

<sup>5</sup> Section 1002.32, F.S. Such school must be considered a charter lab school. Section 1002.33(5)(a)2., F.S.

<sup>6</sup> Florida Department of Education, *Florida's Charter Schools* (Sept. 2019), available at <http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2019.pdf>.

<sup>7</sup> Section 1002.33(3)(a), F.S.

<sup>8</sup> Section 1002.33(6)(b), F.S.

<sup>9</sup> Section 1002.33(6)(b)3.a., F.S.

<sup>10</sup> Section 1002.33(6)(a), F.S. Charter school applications are incorporated into State Board of Education Rule 6A-6.0786, F.A.C.

- Contains an annual financial plan for each year requested by the charter for operation of the school for up to five years.
- Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor must consider in deciding whether to approve or deny the application.
- Documents for the establishment of a virtual charter school that the applicant has executed with a provider of virtual instruction services, in accordance with law.<sup>11</sup>

A sponsor must receive and consider charter school applications received on or before February 1 of each year in order for charter schools to be opened 18 months later at the beginning of the school district's school year, or to be opened at a time determined by the applicant. A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment.<sup>12</sup>

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

A charter school is considered a high-performing charter school if it:<sup>13</sup>

- Received at least two school grades of "A" and no school grade below "B" during each of the previous three school years or received at least two consecutive school grades of "A" in the most recent two school years.
- Received an unqualified opinion on each required annual financial audit<sup>14</sup> in the most recent three fiscal years for which such audits are available, or two most recent fiscal years if the charter school earns two consecutive grades of "A."
- Did not receive a financial audit that revealed one or more of the financial emergency conditions specified in law<sup>15</sup> in the most recent three fiscal years for which such audits are available, or two most recent fiscal years if the charter school earns two consecutive grades of "A."

There are currently 213 charter schools in the state designated as high-performing charter schools.<sup>16</sup>

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<sup>11</sup> Section 1002.45(1)(d), F.S.

<sup>12</sup> Section 1002.33(6)(b), F.S. A sponsor may receive and consider applications after February 1, if it chooses. *Id.*

<sup>13</sup> Section 1002.331(1), F.S.

<sup>14</sup> Any local governmental entity, district school board, charter school, or charter technical career center that will not undergo a financial audit for that fiscal year by the Auditor General must have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds. Section 218.39(1), F.S.

<sup>15</sup> Section 218.503(1), F.S.

<sup>16</sup> Florida Department of Education, *Active High Performing Schools* (Dec. 18, 2019), available at <http://app4.fldoe.org/CSA/PostToWeb/ManageSearch.aspx>.

### High-Performing Charter School Applications

An application submitted by a high-performing charter school or a high-performing charter school system may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:<sup>17</sup>

- The application of a high-performing charter school does not materially comply<sup>18</sup> with the charter school application requirements or, for a high-performing charter school system, the application does not materially comply with high-performing charter school system application requirements specified in law;<sup>19</sup>
- The charter school proposed in the application does not materially comply with charter school requirements specified in law;<sup>20</sup>
- The proposed charter school's educational program does not substantially replicate<sup>21</sup> that of the applicant or one of the applicant's high-performing charter schools;
- The applicant has made a material misrepresentation or false statement, or concealed an essential or material fact during the application process; or
- The proposed charter school's educational program and financial management practices do not materially comply with the charter school requirements specified in law.

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>22</sup>

The Commissioner of Education (commissioner), upon request by a charter school, must verify that the charter school meets the specified criteria and provide a letter to the charter school and the sponsor stating that the charter school is a high-performing charter school. The commissioner must also annually determine whether a high-performing charter school continues to meet the specified criteria.<sup>23</sup> An application submitted by a high-performing charter school must include the verification letter provided by the commissioner.<sup>24</sup>

If the sponsor denies an application submitted by a high-performing charter school or a high-performing charter school system, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based on identified criteria, supporting its denial of the

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<sup>17</sup> Section 1002.33(6)(b)3.b., F.S.

<sup>18</sup> Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. Section 1002.33(6)(b)3.b., F.S.

<sup>19</sup> Section 1002.332(2)(b), F.S.

<sup>20</sup> Section 1002.33(9)(a)-(f), F.S.

<sup>21</sup> An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools. Section 1002.33(6)(b)3.b., F.S.

<sup>22</sup> Section 1002.331(3)(a)1., F.S. A high-performing charter school may not establish more than two charter schools within the state in any year. However, a high-performing charter school may establish more than one charter school within the state in any year if it operates in the area of a persistently low-performing school and serves students from that school. Section 1002.331(3)(b), F.S.

<sup>23</sup> Section 1002.331(4), F.S.

<sup>24</sup> Section 1002.331(3)(a)1., F.S.

application and must provide the letter of denial and supporting documentation to the applicant and to the DOE. The applicant may appeal the sponsor's denial of the application to the State Board of Education (SBE).<sup>25</sup> If the sponsor fails to act on the application within 90 days after receipt, the application is deemed approved.<sup>26</sup>

### ***Charter School Funding and Financial Requirements***

Students enrolled in a charter school are funded the same as students enrolled in other public schools in the school district, regardless of sponsorship.<sup>27</sup> Funding for students enrolled in a charter school is based on the sum of the school district's operating funds from the Florida Education Finance Program (FEFP)<sup>28</sup> and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy, divided and multiplied by the appropriate numbers of weighted full-time equivalent students. Total funding for each charter school is recalculated during the year to reflect the state's revised calculations under the FEFP and the actual weighted full-time equivalent students reported by the charter school.<sup>29</sup> Each charter school reports its student enrollment to the sponsor as required by law, and the sponsor includes each charter schools' enrollment in the district's report of student enrollment.<sup>30</sup> Charter schools are entitled to their proportionate share of categorical program funds for eligible students and programs.<sup>31</sup>

Charter schools are required to maintain and provide financial information through:<sup>32</sup>

- Ensuring that the charter school has retained the services of a certified public accountant or auditor for the annual financial audit, who shall submit the report to the governing body according to the requirements defined by law.<sup>33</sup>
- Reviewing and approving the audit report, including audit findings.
- Maintaining a website that enables the public to obtain information regarding the school, including the school's annual budget and its annual independent fiscal audit.<sup>34</sup>

For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit may be used for other charter schools operated by the not-for-profit or municipal entity within the school district.<sup>35</sup>

<sup>25</sup> Section 1002.33(6)(b)3.c., F.S. An applicant may appeal any denial of that applicant's application or failure to act on an application to the SBE no later than 30 calendar days after receipt of the sponsor's decision or failure to act, and must notify the sponsor of its appeal. The SBE must by majority vote accept or reject the decision of the sponsor no later than 90 calendar days after an appeal is filed. The SBE must remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The SBE's decision is a final action subject to judicial review in the district court of appeal, and the sponsor must act upon the decision of the SBE within 30 calendar days after it is received. Section 1002.33(6)(c), F.S.

<sup>26</sup> Section 1002.331(3)(a)2., F.S.

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

<sup>28</sup> Section 1011.62, F.S.

<sup>29</sup> Section 1002.33(17)(b), F.S.

<sup>30</sup> Section 1002.33(17)(a), F.S.

<sup>31</sup> Florida Department of Education, *FAQ, How are charter school operations funded?* <http://fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.shtml> (last visited Jan. 14, 2020).

<sup>32</sup> Section 1002.33(9)(j)2.-3., F.S.

<sup>33</sup> Section 1002.345, F.S.

<sup>34</sup> Section 1002.33(9)(p)1., F.S.

<sup>35</sup> Section 1002.33(18)(b), F.S.

## Virtual Instruction Programs

Virtual instruction programs provide instruction in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.<sup>36</sup> DOE annually publishes online a list of providers approved to offer virtual instruction programs.<sup>37</sup> The DOE-published list includes five approved virtual instruction providers for the 2018-2019 school year.<sup>38</sup>

All students, including home education and private school students, are eligible to participate in any of the following:<sup>39</sup>

- School district operated part-time or full-time kindergarten through grade 12 virtual instruction programs;<sup>40</sup>
- Full-time virtual charter school instruction;<sup>41</sup>
- Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state;<sup>42</sup> or
- Virtual instruction provided by the Florida Virtual School.<sup>43</sup>

A school district may enter into an agreement with a virtual charter school to provide full-time virtual instruction for students in kindergarten through grade 12.<sup>44</sup> A virtual charter school may provide instruction by:<sup>45</sup>

- Contracting with the Florida Virtual School.
- Contracting with a DOE-approved provider.
- Entering into an agreement with a school district to allow the participation of the virtual charter school's students in the school district's virtual instruction program. The school district providing virtual instruction shall report full-time equivalent students for a virtual instruction program or a virtual charter school to DOE, and funding shall be provided through the FEFP.<sup>46</sup>

Seven virtual charter schools currently operate in the state for the 2019-2020 school year and generate 3,748 full-time equivalent (FTE) enrollment for funding through the FEFP.<sup>47</sup>

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<sup>36</sup> Section 1002.45(1)(a)2., F.S.

<sup>37</sup> Section 1002.45(2), F.S.

<sup>38</sup> Florida Department of Education, School Choice, *List of Approved Program and Course Providers*, <http://www.fldoe.org/schools/school-choice/virtual-edu/approved-provider-resources/approved-providers/> (last visited Mar. 27, 2019).

<sup>39</sup> Section 1002.455, F.S.

<sup>40</sup> Section 1002.45(1)(b), F.S.

<sup>41</sup> Section 1002.33, F.S.

<sup>42</sup> Section 1003.498, F.S.

<sup>43</sup> Section 1002.37, F.S.

<sup>44</sup> Section 1002.45(1)(c), F.S.

<sup>45</sup> Section 1002.45(1)(d), F.S.

<sup>46</sup> Section 1002.45(7)(e), F.S.

<sup>47</sup> Email from Jared Ochs, Director Legislative Affairs, Florida Department of Education (Jan. 17, 2020) (on file with the Senate Committee on Education).

### **III. Effect of Proposed Changes:**

The bill revises provisions regarding charter school applications, employee and board member criminal history checks, and virtual instruction programs. Specifically, the bill:

- Requires a sponsor to receive and consider a charter school application submitted at any time during the calendar year.
- Specifies a high-performing charter school may submit two applications to establish a new charter school to be opened at a time determined by the high-performing charter school, with conditions.
- Authorizes a virtual charter school to provide part-time virtual instruction and contract with any public or charter school to provide any course the virtual school cannot provide.

#### **Florida Charter Schools**

##### ***Application***

The bill removes the specified date by which charter school applications must be submitted and received each calendar year in order for the school to be opened the next year and prohibits a sponsor from refusing to receive a charter school application submitted any time during the calendar year. The bill also allows a charter school to be opened at a time determined by the applicant, such that the agreement of the sponsor is no longer required.

##### ***Funding and Financial Requirements***

The bill expands the authorized use of unrestricted current or capital assets identified in the charter school's annual financial audit from state resources by allowing these funds to be used by other charter schools operated by the not-for-profit or municipal entity within the state, rather than being limited to other charter schools within the school district. This will allow a charter school to transfer its proportionate share of FEFP funding derived from local and state funds based on the student FTE enrollment from one district to a charter school in a different school district.

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

The bill applies both to high-performing charter schools that are yet to submit their applications and to those that have already had their applications approved. The bill specifies that a high-performing charter school has the option of submitting two applications for a charter school, to be opened at a time determined by the high-performing charter school. A high-performing charter school may not submit a subsequent application unless each charter school application commences operations or is otherwise withdrawn.

##### ***Virtual Charter Schools***

The bill authorizes virtual charter schools to provide part-time virtual instruction to students who were enrolled in a public school the prior year in addition to full-time instruction. The bill expands the authority under which a virtual charter school can operate by allowing a virtual charter school to:

- Be an approved virtual provider, rather than being authorized to contract with one.

- Contract with any public or charter school to provide any course that the virtual school cannot otherwise provide.

Expanding the availability of virtual charter school instruction may provide students with greater access to virtual instruction programs.

The bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not have an impact on state revenues or expenditures. However, the provision of the bill allowing a charter school to transfer state assets to a charter school in another district would authorize funds intended for one district to financially support charter schools in a different district.

**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, and 1002.45.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriation Subcommittee on Education on February 13, 2020:**

The committee substitute makes the following changes to the bill:

- Specifies that part-time instruction can only be provided to students who were enrolled in a public school the prior year.
- Specifies that only the unrestricted assets from state sources are available to be provided to a charter school in another school district.

**CS by Education on January 21, 2020:**

The committee substitute removes a verification option for criminal history checks for charter school employees and governing board members, which includes removing the following:

- The requirement for charter school employees or governing board members who are subject to a criminal history check to inform a school district if he or she has completed a criminal history check in another district within the last 5 years.
- The requirement for the school district to verify the results of such criminal history check using the Care Provider Background Screening Clearinghouse.
- The requirement for the department to participate in the Care Provider Background Screening Clearinghouse and rescreening schedule.

- B. **Amendments:**

None.