

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 51 Charter Schools

SPONSOR(S): Early Learning & Elementary Education Subcommittee, McClain and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	12 Y, 4 N	Sleap	Kiner
2) PreK-12 Appropriations Subcommittee	12 Y, 3 N	Bailey	Potvin
3) Early Learning & Elementary Education Subcommittee	12 Y, 5 N, As CS	Sleap	Brink
4) Education & Employment Committee			

SUMMARY ANALYSIS

To address the needs of educational capacity, workforce qualifications, and career education opportunities that may extend beyond a school district's boundaries, the bill:

- Authorizes state universities and Florida College System (FCS) institutions to solicit applications and sponsor charter schools upon approval by the Department of Education (DOE).
- Provides that a state university sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands and a FCS sponsored charter school may serve students from any county within the colleges' service area to meet workforce demands.
- Authorizes a FCS institution that operates an approved teacher preparation program to operate additional charter schools.
- Provides that the board of trustees of a sponsoring state university or FCS institution charter school is a local educational agency for the purpose of receiving federal funds and accepting responsibility for all requirements in that role.
- Provides that students attending a state university or FCS institution sponsored charter school are not included in the school district's grade calculation.
- Establishes operational funding and capital outlay funding formulas for charter schools sponsored by a state university or FCS institution.
- Provides accountability for all charter school operators by requiring the DOE, in collaboration with charter school sponsors and operators, to develop a sponsor evaluation framework and report results in its annual charter school application report.
- Allows a charter lab school to be established under Florida State University at the Tyndall Air Force Base.
- Revises charter school application reporting requirements and submission dates.
- Revises requirements for modifying a charter school's curriculum in certain circumstances.
- Authorizes a charter exceptional student education center to replicate in certain circumstances and limits the administrative fee a school district may withhold for such a school.
- Authorizes charter schools to provide career and professional academies.
- Revises requirements for enrollment limitations and preferences for a charter school and requirements for expanding enrollment at high-performing charter schools.
- Provides for a direct appeal in a charter dispute if a party wants to bypass mediation.
- Revises the procedures for immediately terminating a charter school.
- Provides for the award of attorney fees and costs in certain circumstances.

The fiscal impact of the bill is indeterminate. See Fiscal Comments.

The bill takes effect on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter School Sponsors

Present Situation

All charter schools in Florida are tuition-free public schools within the state's public education system.¹ Charter schools are created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools in return for a commitment to higher standards of accountability.² 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."³ During the 2019-2020 school year, over 329,000 students were enrolled in 673 charter schools in Florida.⁴

Several types of entities may sponsor charter schools:

- School districts may sponsor charter schools.⁵
- State universities may sponsor charter lab schools.⁶
- District school boards, Florida College System (FCS) institution boards of trustees, or an association of one or more of each may sponsor a charter technical career center.⁷

A sponsor's responsibilities include:

- approving or denying charter school applications;
- overseeing each sponsored charter school's progress toward the goals established in the charter;
- monitoring the revenues and expenditures of the charter school;
- ensuring that the charter school participates in the state's education accountability system; and
- intervening when a sponsored charter school demonstrates deficient student performance or financial instability.⁸

A sponsor provides various administrative services to charter schools in its purview, including contract management; full-time equivalent (FTE) and student achievement data reporting; exceptional student education program administration; eligibility and reporting for the National School Lunch Program; test administration, including payment of the costs of state- or school district-required assessments; processing of teacher certification data; and student information services.⁹ As compensation for services provided, a sponsor may withhold an administrative fee of up to 5 percent of each charter school's total operating funds, based upon weighted FTE students, and up to 2 percent for a high-performing charter school.¹⁰ For a charter school that serves 75 percent or more exceptional education students, the calculated percentage must be based on unweighted FTE students.¹¹

¹ Section 1002.33(1), F.S. Florida's first charter school law was enacted in 1996. Chapter 96-186, L.O.F., initially codified at s. 228.056, F.S., re-designated in 2002 as s. 1002.33, F.S.

² Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (Oct. 2020), available at <http://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-oct-2020.pdf> [hereinafter *Charter School Fact Sheet*].

³ Section 1002.33(2)(a)1., F.S.

⁴ *Charter School Fact Sheet*, supra note 2.

⁵ Section 1002.33(5)(a)1., F.S.

⁶ Sections 1002.32(2) and 1002.33(5)(a)2., F.S.

⁷ Section 1002.34(3)(b), F.S.

⁸ Section 1002.33(5)(b), F.S.

⁹ Section 1002.33(20)(a)1., F.S. see also, Florida Attorney General Opinion, AGO 2013-04, stating that the administrative fee includes costs to administer state-required or district-required student assessments, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/D20AD30420BB793B85257B3C0052B3A6>.

¹⁰ Section 1002.33(20)(a)2.a.-b., F.S.

¹¹ Section 1002.33(20)(a)2., F.S.

Florida College System & State University Charter Schools

FCS institutions are statutorily authorized to operate charter schools that offer secondary education¹² and allow students to obtain an associate degree¹³ upon graduation from high school. Students have full access to all college facilities, activities, and services. Such a charter school must be sponsored by the school board or boards within the FCS institution’s service area.¹⁴ If a FCS institution offers a teacher preparation program, it may operate one charter school for students in kindergarten through grade 12, implementing innovative blended learning instructional models for students in kindergarten through grade 8.¹⁵

There are 11 FCS charter schools operating in Florida:¹⁶

School District Sponsor	Charter School(s)	Affiliated FCS Institution
Charlotte	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Lee	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Manatee	State College of Florida Collegiate School	State College of Florida Manatee-Sarasota
Martin	Clark Advanced Learning Center	Indian River State College
Okaloosa	Collegiate High School at Northwest Florida State College	Northwest Florida State College
Polk	Polk State College Collegiate High School	Polk State College
	Chain of Lakes Collegiate High School	
	Polk State Lakeland Gateway to College Charter High School	
Pinellas	St. Petersburg Collegiate High School	St. Petersburg College
	St. Petersburg Collegiate High School North Pinellas	
Sarasota	State College of Florida Collegiate School-Venice	State College of Florida Manatee-Sarasota

District school boards, FCS institution boards of trustees, or an association of one or more of each are authorized in law to sponsor a charter technical career center.¹⁷ There is only one charter technical center operating in the state, Lake Technical College, sponsored by the Lake County school board.¹⁸

State universities are authorized to establish “charter lab schools.”¹⁹ Unlike developmental research schools (lab schools),²⁰ charter lab schools operate under a charter and are not required to be established by the nearest state university.²¹ In considering an application to establish a charter lab

¹² In this context, the term “secondary education” is synonymous with “middle or high school” (grades 6 through 12). Generally, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. *see s. 1003.01(2), F.S. (definition of “school”).*

¹³ Associate degrees include the associate in arts, associate in science, and associate in applied science degrees. *See Rule 6A-14.030(3)-(5), F.A.C.*

¹⁴ Section 1002.33(5)(b)4., F.S.; *see also s. 1000.21(3)(a)-(bb), F.S.*

¹⁵ Section 1002.33(5)(b)4., F.S.

¹⁶ Email from Alexis Calatayud, Legislative Affairs, Florida Department of Education, RE: HB 51 (Feb. 24, 2021) [hereinafter FCS Charter Schools & SUS Charter Lab Schools].

¹⁷ Section 1002.34(3)(b), F.S.

¹⁸ Florida Department of Education, *Charter Technical Centers Annual Report (2019-2020)*, at 5, available at <http://www.fldoe.org/core/fileparse.php/9904/urlt/charterreview20.pdf>.

¹⁹ Section 1002.33(5)(a)2., F.S.

²⁰ Section 1002.32(2), F.S.

²¹ Section 1002.33(5)(a)2., F.S.; *see also s. 1002.32(2), F.S.*

school, a state university must consult with the district school board of the county in which the school is located. If a state university does not act on or denies the application, the applicant may appeal such decision to the State Board of Education (SBE).²²

There are three state university sponsored charter lab schools operating in Florida:²³

State University Sponsor	Charter School(s)
Florida Atlantic University	Florida Atlantic University/St. Lucie Public Schools Palm Pointe Research School
Florida State University	Florida State University Schools The Pembroke Pines Florida

Effect of Proposed Changes

To address the needs of educational capacity, workforce qualifications, and career education opportunities that may extend beyond a school district's boundaries, the bill authorizes state universities and FCS institutions to solicit applications and sponsor charter schools upon approval by the Department of Education (DOE). A state university or FCS institution may, at its discretion, deny an application for a charter school.

The bill provides that a state university-sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands. Additionally, a FCS institution-sponsored charter may exist in any county within its service area to meet workforce demands; however, a charter school currently operated by a FCS institution is not eligible to be sponsored by a FCS institution until its existing charter with the school district expires. A FCS institution-sponsored charter school may offer postsecondary programs leading to industry certifications for eligible charter school students.

The bill deletes the limitation that a FCS institution that operates an approved teacher preparation program operate no more than one charter school, allowing a FCS institution to operate additional charter schools that serve students in kindergarten through grade 12 and providing that the students served may be in any school district within the service area of the FCS institution. The requirement that the school implement an innovative blended learning instructional model for students in kindergarten through grade 8 is deleted.

The bill specifies that a charter's racial/ethnic balance must reflect that of nearby public schools rather than public schools located geographically within the district to address state university and FCS sponsored charter schools which may serve students from multiple school districts.

The bill prohibits a FCS institution from reporting FTE for any students participating in FCS-sponsored charter schools who receive FTE funding through the FEFP.

The bill specifies that a board of trustees of a sponsoring state university or FCS institution is the local education agency for all charter schools it sponsors. As the local education agency, the sponsor may receive federal funds and accepts full responsibility for local education agency requirements and the schools it oversees. A student is enrolled in a charter school that is sponsored by a state university or FCS institution may not be included in the calculation of the school district's grade.

To provide accountability for all charter school operators, the bill requires the DOE, in collaboration with charter school sponsors and operators, to develop a sponsor evaluation framework that must address, at a minimum:

- a sponsor's strategic vision for charter school authorizing and progress towards that vision;
- alignment of the sponsor's policies and practices to best practices for charter school authorizing;

²² Section 1002.33(6)(g), F.S.

²³ FCS Charter Schools & SUS Charter Lab Schools, *supra* note 16.

- academic and financial performance of all operating charter schools overseen by the sponsor; and
- the status of charter schools authorized by the sponsor, including approved, operating, and closed schools.

The bill requires the DOE to compile the results of the evaluation framework, by sponsor, and add them to its annual charter school sponsor report.

The bill exempts Florida State University from the one charter lab school per university requirement for the purpose of establishing a K-12 charter lab school at Tyndall Air Force Base.

Establishing a Charter School

Present Situation

Application

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law.²⁴ While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization.²⁵

An applicant must submit a charter school application on a standard application form developed by the DOE.²⁶ As of 2018, charter school applications must be submitted to the sponsor by February 1 for a charter school to open 18 months later or at a time determined by the applicant. A sponsor may not refuse to receive a charter school application submitted before February 1 and may receive an application submitted later than February 1 if it chooses.²⁷ The charter school application must:

- demonstrate how the school will utilize the guiding principles;²⁸
- 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;
- disclose 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 each charter school operated by the applicant;
- contain additional information required by the sponsor; and
- for a virtual charter school, document that the applicant has contracted with a provider for virtual instruction services.²⁹

The sponsor may require the applicant to submit additional information as an addendum to the application.³⁰

²⁴ Section 1002.33(3)(a), F.S.

²⁵ Section 1002.33(12)(i), F.S.

²⁶ Rule 6A-6.0786, F.A.C.; *see also* Florida Department of Education, Model Florida Charter School Application, *Form IEPC-M1*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference/> (last visited March 16, 2021).

²⁷ Section 1002.33(6)(b), F.S.

²⁸ The legislative guiding principles for charter schools provide that they are to meet high standards of student achievement while increasing parental choice, to increase learning opportunities for all students, with special emphasis on low-performing students and reading, and to 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.

²⁹ Section 1002.33(6)(a), F.S.

³⁰ *Id.*

A sponsor must approve or deny a charter school application within 90 calendar days of receipt, unless an extension of the deadline is mutually agreed to by the sponsor and applicant.³¹ If an application is denied, the sponsor must within 10 calendar days provide specific written reasons, based upon good cause, for its denial to the applicant and the DOE.³² The applicant has 30 calendar days to file an appeal with the SBE after the denial of or failure to act upon an application.³³ The Charter School Appeal Commission is required to convene and make recommendations to the SBE regarding the appeal.³⁴ The state board's decision is a final action subject to judicial review in the District Court of Appeal.³⁵

Application Reporting

A charter school sponsor is required to submit an annual report to the DOE summarizing the following:

- The number of draft applications received on or before May 1 and each applicant's contact information.
- The number of final applications received on or before August 1 and each applicant's contact information.
- The date each application was approved, denied, or withdrawn.
- The date each final contract was executed.³⁶

The DOE must compile the reported sponsor information into an annual report, by district, and post it on its website by November 1 each year.³⁷

Establishing a Charter School

After a charter school application is approved, the initial startup must commence with the beginning of the public school calendar year for the district in which the charter is granted³⁸ or to be opened at a time determined by the applicant.³⁹ The charter school may defer opening for up to 3 years to provide adequate time for facilities planning. Written notice of intent to defer opening must be provided to parents at least 30 days before the first day of school.⁴⁰

The terms of the charter must be negotiated by the applicant and sponsor using the standard charter contract within 30 days after approval of the application.⁴¹ Any term of a proposed charter contract that differs from the standard charter contract is presumed to be a limitation on charter school flexibility.⁴² The parties then have 40 days to negotiate and finalize the charter.⁴³

The DOE must provide mediation services for any dispute relating to an approved charter, except a dispute regarding an application denial.⁴⁴ If the Commissioner of Education determines the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge.⁴⁵

³¹ Section 1002.33(6)(b)3.a., F.S.

³² *Id.*

³³ Section 1002.33(6)(c)1., F.S.

³⁴ *Id.* See also Florida Department of Education, *Charter School Appeal Commission*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-appeal/csac-members.shtml> (last visited March 16, 2021).

³⁵ Section 1002.33(6)(c)-(d), F.S.; see also s. 120.68, F.S.

³⁶ Section 1002.33(5)(b)1.k.(I)-(II), F.S.

³⁷ Section 1002.33(5)(b)1.k.(III), F.S.; see also Florida Department of Education, *Annual Authorizer Report 2019* (2019), available at <http://www.fldoe.org/core/fileparse.php/9905/urlt/19-AuthorizerReport.pdf>.

³⁸ Section 1002.33(6)(b)5., F.S.

³⁹ Section 1002.33(6)(b), F.S.

⁴⁰ Section 1002.33(6)(b)5., F.S.

⁴¹ Section 1002.33(7) and (7)(b), F.S. The standard charter contract must incorporate the approved application and any addenda approved with the application.; See also Rule 6A-6.0786, F.A.C. and Florida Department of Education, *Florida Standard Charter Contract*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference/> (last visited March 16, 2021).

⁴² Section 1002.33(7), F.S. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals.

⁴³ Section 1002.33(7)(b), F.S.

⁴⁴ *Id.*

⁴⁵ *Id.*

The initial term of a charter is 5 years, excluding 2 planning years.⁴⁶ The charter must include:

- the students to be served, including ages and grade levels;
- the curriculum focus and instructional methods to be used;⁴⁷
- baseline standards of student academic achievement, outcomes to be achieved and methods of measurement to be used;⁴⁸
- the method for determining the strengths and needs of students and whether they are meeting educational goals⁴⁹ and for secondary charter schools,⁵⁰ the method to determine a student has satisfied the requirements for high school graduation;
- 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;
- 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; and
- provisions for implementing high-performing charter school benefits if the charter school is designated as "high-performing."⁵¹

The charter may be modified during its initial term or any renewal term upon recommendation of the sponsor or the charter school's governing board, to which both parties agree.⁵² The charter may be renewed at the end of its term if a program review conducted by the sponsor demonstrates that the goals and criteria stated in the charter have been met and that none of the grounds for nonrenewal have occurred.⁵³

Student Enrollment

Prospective students must apply for enrollment in a charter school, and if the number of applications exceeds the school's capacity, a random lottery must be used to determine which students are enrolled.⁵⁴ A charter school may give enrollment preference to the following specific student populations:⁵⁵

- Students who are siblings of a student enrolled in the charter school.
- Students who are the children of a member of the governing board of the charter school.

⁴⁶ Section 1002.33(7)(a)(12), F.S. (2018).

⁴⁷ The charter must ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction to students who are reading below grade level. Additionally, to provide students with access to diverse instructional delivery models, charter schools may implement blended learning courses. Section 1002.33(7)(a)2.a.-b., F.S.

⁴⁸ The district school board is required to provide academic student performance data for students coming from the district school system to the charter, as well as rates of academic progress of comparable students populations in the district. Section 1002.33(7)(a)3. (flush-left provisions at the end of (a)3.c.).

⁴⁹ Students in charter school must, at a minimum, participate in Florida's statewide assessments. Section 1002.33(7)(a)4., F.S.

⁵⁰ In this context, the term "secondary education" is synonymous with "middle or high school" (grades 6 through 12). Generally, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. *See s. 1003.01(2)*, F.S. (definition of "school").

⁵¹ Section 1002.33(7), F.S.

⁵² Section 1002.33(7)(d), F.S.

⁵³ Section 1002.33(7)(c)1., F.S.

⁵⁴ Section 1002.33(10)(b), F.S.

⁵⁵ Section 1002.33(10)(d)1.-7., F.S.

- Students who are the children of an employee of the charter school.
- Students who are the children of:
 - An employee of the business partner of a charter school-in-the-workplace or a resident of the municipality in which the charter school is located; or
 - A resident or employee of a municipality that operates a charter school-in-a-municipality or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.
- Students who have successfully completed a voluntary prekindergarten education (VPK) program provided by the charter school or the charter school's governing board during the previous school year.
- Students who are the children of an active duty member of any branch of the United States Armed Forces.
- Students who attended or are assigned to failing schools and have received an opportunity scholarship to enroll and attend a higher performing school.⁵⁶

A charter school may also limit the enrollment process in order to target the following student populations:

- students within specific age groups or grade levels;
- students considered at risk of dropping out of school or academic failure, to include exceptional education students;
- children of employees of the business partner who seek to enroll in a charter school-in-the-workplace or children of municipal residents who seek to enroll in a charter school-in-a-municipality;
- students residing within a reasonable distance of the charter school;
- students who meet reasonable academic, artistic or other eligibility standards established by the charter school;
- students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor; or
- students living in a development in which a business entity provides the school facility and related property having an appraised value of at least \$5 million to be used as a charter school to mitigate the educational impact created by the development of new residential dwelling units; such students are entitled to no more than 50 percent of the student stations at the school.⁵⁷

Causes for Nonrenewal or Termination

A charter school sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter, but may terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or failure to meet the charter's requirements for student performance.
- Failure to meet generally accepted standards of fiscal management.
- Material violation of law.
- Other good cause shown.⁵⁸

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal, except that a charter may be terminated immediately if the sponsor sets forth particular facts and circumstances indicating an immediate and serious danger to the health, safety or welfare of the students.⁵⁹ The sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE of an immediate termination.⁶⁰ The governing board is entitled to a formal

⁵⁶ Section 1002.38(2), F.S.

⁵⁷ Section 1002.33(10)(e), F.S.

⁵⁸ Section 1002.33(8)(a)1.-4., F.S.

⁵⁹ Section 1002.33(8)(b) and (c), F.S.

⁶⁰ Section 1002.33(8)(c), F.S.

hearing with an administrative law judge (ALJ), who must issue a final order to the sponsor.⁶¹ The governing board may appeal the final order in the District Court of Appeal.⁶² Under these circumstances, the sponsor must assume operation of the charter school throughout the pendency of the hearing.⁶³

Award of Attorney Fees and Costs

Current law provides the award of reasonable attorney fees and costs to the prevailing party in a dispute between a sponsor and a charter schools, including:

- A dispute arising under the charter;⁶⁴
- the termination or nonrenewal of a charter school;⁶⁵ and
- disputes relating to contracts for goods and services separate from the charter.⁶⁶

For a charter school that is terminated immediately due to an immediate and serious danger to the health, safety, or welfare of the school's students, the sponsor must assume operation of the charter school during any hearing to dispute the termination.⁶⁷ Failure by the sponsor to assume and continue operation of the charter school must result in the awarding of reasonable costs and attorney's fees to the charter school if the charter school prevails on appeal.⁶⁸

Effect of Proposed Changes

Application

The bill repeals an obsolete August 1 application deadline and specifies that each sponsor's report to the DOE must reflect the applications it receives by the February 1 deadline, which became effective in 2018. Since the law allows an applicant to determine the time at which the charter school will open, the bill deletes conflicting language that requires the school's opening to coincide with the beginning of the school district's school calendar.

The bill repeals the requirement that a charter school sponsor report on draft applications it receives and revises the date by which a sponsor must annually report the number of applications it receives from August 31 to November 1. Accordingly, the bill revises the date by which the DOE annually reports the number of applications on its website from November 1 to January 15.

Charter Contract

The bill authorizes a charter school to immediately appeal any formal or informal decision by a sponsor in a dispute regarding a charter contract to an administrative law judge. The appeal may occur if either the charter school or the sponsor do not wish to mediate the decision and indicates such a decision in writing.

⁶¹ *Id.*

⁶² Section 1002.33(8)(d), F.S.

⁶³ Section 1002.33(8)(c), F.S. The administrative law judge must award the prevailing party reasonable attorney fees and costs incurred during the administrative proceedings and any appeals.

⁶⁴ Section 1002.33(7)(b), F.S.

⁶⁵ Section 1002.33(8)(b), F.S.

⁶⁶ Section 1002.33(20)(b), F.S.

⁶⁷ Section 1002.33(8)(c), F.S.

⁶⁸ *Id.*; See also *Championship Academy of Distinction at Davie, Inc. v. Broward County School Board*, Case No.20-4344F (Fla. DOAH Dec. 17, 2020). The final order denied the petitioners entitlement to attorney's fees and costs under s. 1002.33(c) finding that the fee provision under 1002.33(8)(b), F.S. is substantive, rather than procedural, and as such, it cannot be included among the procedures set forth in paragraph (b) that have been incorporated into s. 1002.33(8)(c), F.S.

The bill specifies that changes to a charter school's curriculum consistent with state standards and necessary to implement blended learning are deemed approved in terms of modifications to the charter, unless the sponsor determines in writing that the curriculum is inconsistent with state standards.

Enrollment

The bill expands the enrollment preference for students who complete the VPK program provided by the charter school to include students who complete the program at a provider with which the charter school has a written agreement.

The bill applies the enrollment limitation that a charter school built by a housing developer may use for students within the development if either the developer or its affiliated business entity or charity contributes to the construction, formation, acquisition, or operation of the charter school. This limitation will also apply to other charter schools and charter school facilities provided for by these entities so long as they have a combined value of at least \$5 million. The bill specifies that students in the development are entitled to 50 percent of these seats.

Termination

In the case of an immediate termination of a charter school, the bill requires the sponsor to provide the facts and circumstances supporting the termination in writing. They must demonstrate that an immediate and serious danger exists to the charter school's students, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary.

The bill authorizes a charter school sponsor to seek an injunction in circuit court to prohibit continued operation of a charter school if continued operation of the school would materially threaten the health, safety, or welfare of the students.

The bill removes the requirement for a sponsor to assume and continue operation of a charter school pending a hearing on the school's immediate termination.

Award of Attorney Fees and Costs

The bill revises requirements for awarding reasonable attorney fees and costs in disputes relating to charter schools by:

- authorizing the prevailing party in the appeal of a charter school application denial to file an action with the Division of Administrative Hearings to recover reasonable attorney's fees and costs incurred during the denial and any appeals; and
- requiring an ALJ to award reasonable fees and costs to the prevailing party in any injunction, administrative proceeding, or appeal arising from the immediate termination of a charter school, rather than only to the charter school in situations where the sponsor does not assume and continue operation of the school.

High-Performing Charter Schools

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.⁶⁹ A high-performing charter school is a charter school that during each of the 3 previous years:

- received at least two school grades of "A" and no school grade below "B;"

⁶⁹ Section 1002.331(1), F.S.
STORAGE NAME: h0051e.ELE
DATE: 3/19/2021

- has received an unqualified opinion⁷⁰ on each annual financial audit; and
- has not received an annual financial audit that reveals a financial emergency condition.⁷¹

Initial eligibility for “high-performing” status is verified by the commissioner, upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.⁷²

High-performing charter schools may take advantage of various benefits. Among other benefits, the operator of a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates one of its high-performing charter schools.⁷³ The application process for such applications is streamlined to expedite approval.⁷⁴ A high-performing charter school may not be replicated more than twice in any given year and may not replicate again until the new charter school achieves “high-performing” status.⁷⁵ Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.⁷⁶ Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.⁷⁷

A high-performing charter school may increase the school’s enrollment once per year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect.⁷⁸ If the school chooses to expand the grade levels it serves, i.e., a K-5 school adding grade 6, the facility capacity must include any improvements to an existing facility or any new facility in which a majority of the high-performing charter school students will enroll.⁷⁹ A high-performing charter school may also expand grade levels within kindergarten through grade 12 to add grade levels not already served as long as the increase in enrollment in either case does not exceed the current facility capacity.⁸⁰

Effect of Proposed Changes

The bill revises the determination of a high-performing charter school facility’s capacity so that any expansion of enrollment, regardless of grade level expansion or where a majority of new students will be enrolled, is based on the school’s facilities at the time the expansion will take effect.

Charter School Funding

Present Situation

As with traditional public schools, charter school operations are funded through the Florida Education Finance Program (FEFP) based on student enrollment.⁸¹ Each charter school reports student enrollment to its sponsor⁸² for inclusion in the district’s report of student enrollment.⁸³ A charter school

⁷⁰ An unqualified audit opinion means that the charter school’s financial statements are materially correct.

⁷¹ Section 1002.331(1), F.S.; *see s. 218.503(1)*, F.S. (financial emergency conditions).

⁷² Sections 1002.331(4) and 1002.332(2)(a), F.S.

⁷³ Section 1002.331(3)(a)1., F.S.

⁷⁴ Section 1002.331(3)(a)2., F.S.

⁷⁵ Section 1002.331(3)(b), F.S.

⁷⁶ Section 1002.332(2)(b), F.S.

⁷⁷ Section 1002.331(2)(e), F.S.

⁷⁸ Section 1002.331(2)(a), F.S.

⁷⁹ *Id.*

⁸⁰ Section 1002.331(2)(b), F.S.

⁸¹ *See* Florida Department of Education, Charter Schools, *Frequently Asked Questions*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.shtml> (last visited Feb. 18, 2021).

⁸² A sponsor can be a district school board that approves the charter and holds the contract. Section 1002.33(5)(a)1., F.S.

⁸³ Section 1002.33(17)(a) and (b), F.S. To reflect any changes in enrollment, the charter school’s funding is recalculated during the school year based upon the October and February FTE enrollment surveys. *See s. 1002.33(17)(b)*, F.S.

is also entitled to receive its proportionate share of categorical program funds included in the FEFP, for eligible students and programs.⁸⁴

Operating funds from the FEFP are distributed by the sponsor to the charter school. Payments must be made monthly or bi-monthly, beginning with the start of a school board's fiscal year.⁸⁵ A sponsor is prohibited 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.⁸⁶

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),⁸⁷ Title I programs for disadvantaged students,⁸⁸ and Title II programs for improving teacher quality based on student eligibility.⁸⁹

Effect of Proposed Changes

The bill provides that students enrolled in a charter school sponsored by a state university or FCS institution be funded as if they are in a basic program or a special program in the school district.

The bill establishes funding for these students as the sum of the total operating funds from the FEFP for the school district in which the school is located and the General Appropriations Act (GAA), including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy; divided by total funded weighted FTE students in the school district; and multiplied by the FTE membership of the charter school.

The DOE is required to develop a tool that each state university or FCS institution sponsoring a charter school must use for purposes of calculating the funding amount for each eligible charter school student. The total obtained by the calculation must be appropriated from state funds in the GAA to the charter school.

The bill establishes a capital outlay funding formula for charter schools sponsored by a state university or FCS institution.

Exceptional Student Education Centers

Present Situation

Exceptional Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.⁹⁰ A student may not be given special instruction or services as an ESE student until after the student has been properly evaluated and found eligible.⁹¹

With regard to students with disabilities, the IDEA requires school districts to make a free appropriate public education (FAPE) available to such students ages three through 21.⁹² A FAPE must include special education and related services⁹³ that are provided by the public school system at no cost to the

⁸⁴ Section 1002.33(17)(b), F.S.; *see also* Florida Department of Education, Office of Funding and Financial Reporting, *Florida Education Finance Program 2020-21 Second Calculation* (July 17, 2020), at 3, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/2021FEFPSecondCalc.pdf>.

⁸⁵ Section 1002.33(17)(e), F.S.

⁸⁶ *Id.*

⁸⁷ Section 1002.33(17)(c), F.S.; 20 U.S.C. s. 1411(e).

⁸⁸ 20 U.S.C. s. 6301 et. seq.

⁸⁹ 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c), F.S.

⁹⁰ Section 1003.57(1)(b), F.S.; Rule 6A-6.03411(1)(m) and (n), F.A.C.

⁹¹ Section 1003.57(1)(c), F.S.; *see also* Rule 6A-6.0331, F.A.C.

⁹² 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

⁹³ "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and

parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).⁹⁴

An ESE center is a separate public school to which nondisabled students ages six through 21 years of age do not have access to.⁹⁵ For school accountability purposes, an ESE center school is one which is specifically designed to meet the needs of students with disabilities and in which all students in attendance in grades K-12 are identified as students with a disability.⁹⁶ Each ESE center must choose to receive a school grade based on student performance on statewide standardized assessments or to receive a school improvement rating.⁹⁷ An ESE center school that does not choose to receive a school grade must be assigned a school improvement rating of Commendable, Maintaining, or Unsatisfactory annually, and the school must assess at least 80 percent of their eligible students to receive a school improvement rating.⁹⁸

The school improvement rating is calculated using student learning gains on statewide, standardized English Language Arts and Mathematics assessments for all eligible students who are enrolled in the school and who have assessment scores, concordant scores, or comparable scores for the preceding school year.⁹⁹

The overall school improvement rating is calculated based on the percentage of possible points, 100 points are available for each component, earned by each school.¹⁰⁰ A school's overall improvement rating based, on applicable points earned, are as follows:

School Improvement Ratings		
Total Points Earned	Rating	Student Performance
50% or higher	Commendable ¹⁰¹	A significant percentage of the students attending the school are making learning gains. ¹⁰²
26-49%	Maintaining ¹⁰³	A sufficient percentage of the students attending the school are making learning gains. ¹⁰⁴
25% or less	Unsatisfactory ¹⁰⁵	An insufficient percentage of the students attending the school are making learning gains. ¹⁰⁶

A school that tests less than 90 percent of its students may not earn a rating higher than maintaining.¹⁰⁷

Effect of Proposed Changes

mobility services, and medical services for diagnostic or evaluation purposes.” “Related services” also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

⁹⁴ 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

⁹⁵ Section 1003.57(1)(a)1.a., F.S.

⁹⁶ Rule 6A-1.099828(2)(b), F.A.C.

⁹⁷ Section 1008.3415, F.S.; *see also* s. 1008.34(3)(a), F.S.

⁹⁸ Rule 6A-1.099822(3)(c)-(d), F.A.C.

⁹⁹ Section 1008.341(3), F.S.

¹⁰⁰ *Id.* at (4)(b)1.

¹⁰¹ Rule 6A-1.099822(4)(b)2.a., F.A.C.

¹⁰² Section 1008.341(2)(a), F.S.

¹⁰³ Rule 6A-1.099822(4)(b)2.b., F.A.C.

¹⁰⁴ Section 1008.341(2)(b), F.S.

¹⁰⁵ Rule 6A-1.099822(4)(b)2.c., F.A.C.

¹⁰⁶ Section 1008.341(2)(c), F.S.

¹⁰⁷ *Id.* at (3)(d).

The bill authorizes a charter school that is an ESE center and has two consecutive ratings of “maintaining” or higher to replicate its educational programs in the same manner as a high-performing charter school.¹⁰⁸ The bill also reduces the administrative fee the sponsor of the charter ESE center may withhold from up to 5 percent to up to 2 percent for enrollment of up to an including 250 students.

Career and Professional Academies

Present Situation

Each school board must operate at least one high school career and professional academy and have as part of its 3-year strategic plan the implementation of an academy or a career-themed course in at least one middle school in the district.¹⁰⁹ Two or more school districts may collaborate in the development of the strategic plan and jointly offer an academy or career-themed courses.¹¹⁰

The goals of a career and professional academy and career-themed courses are to:

- increase student academic achievement and graduation rates through integrated academic and career curricula;
- prepare graduating high school students to make appropriate choices relative to employment and future educational experiences;
- focus on career preparation through rigorous academics and industry certification;
- raise student aspiration and commitment to academic achievement and work ethics through relevant coursework;
- promote acceleration mechanisms, such as dual enrollment or articulated credit, so that students may earn postsecondary credit while in high school; and
- support the state’s economy by meeting industry needs for skilled employees in high-skill, high-wage, and high-demand occupations.¹¹¹

An academy may be offered as a school-within-a-school or as part of an existing high school that provides courses in one or more occupational clusters. Students attending the school are not required to attend the academy. An academy may also be offered as a total school configuration providing multiple academies, each structured around an occupational cluster. In this case, each student attending the school also attends an academy.¹¹²

Each career course offered in a career and professional academy and each career-themed course offered by a secondary school must lead to industry certification or postsecondary credit. If the passage rate on an industry certification examination that is associated with an academy or a career-themed course falls below 50 percent, the 3-year strategic plan must be amended to include specific strategies to improve the passage rate of the academy or career-themed course.¹¹³

Current law does not expressly authorize charter schools to offer career and professional academies.

Effect of Proposed Changes

The bill authorizes charter schools to provide career and professional academies.

B. SECTION DIRECTORY:

¹⁰⁸ As of March 15, 2021, there are currently 29 charter school ESE centers in operation across Florida. Email, Florida Department of Education, Bethany Swanson, Legislative Affairs, Re: Charter ESE Centers (March 15, 2021).

¹⁰⁹ Sections 1003.493(3) and 1003.4935(1), F.S.

¹¹⁰ Section 1003.491(2), F.S.

¹¹¹ Section 1003.493(2), F.S.

¹¹² Section 1003.493(3)(b), F.S.

¹¹³ Section 1003.493(5), F.S.

- Section 1:** Amends s. 1002.32, F.S.; providing that the limitation on lab schools does not apply to a specified school.
- Section 2:** Amends s. 1002.33, F.S.; authorizing state universities and Florida College System institutions to solicit applications for and sponsor charter schools under certain circumstances; authorizing a state university or Florida College System institution to, at its discretion, deny an application for a charter school; revising the contents of an annual report that charter school sponsors must provide to the Department of Education; revising the date by which the department must post a specified annual report; authorizing certain parties to file an action with the Division of Administrative Hearings to recover specified fees and costs; authorizing parties to appeal without first mediating in certain circumstances; providing that certain changes to curriculum are deemed approved; providing an exception; revising the circumstances in which a charter may be immediately terminated; providing that certain information must be provided to specified entities upon immediate termination; authorizing the of award specified fees and costs in certain circumstances; authorizing a sponsor to seek an injunction in certain circumstances; revising provisions related to sponsor assumption of operation; revising provisions relating to Florida College System institutions that are operating charter schools; requiring the board of trustees of a state university or Florida College System institution that is sponsoring a charter school to serve as the local educational agency for such school; prohibiting certain charter school students from being included in specified school district grade calculations; requiring the department to develop a sponsor evaluation framework; providing requirements for the framework; deleting obsolete language; revising the student populations for which a charter school is authorized to give enrollment preference and limit the enrollment process; providing a calculation for the operational funding for a charter school sponsored by a state university or Florida College System institution; requiring the department to develop a tool for state universities and Florida College System institutions for specified purposes relating to certain funding calculations; providing that such funding must be appropriated to the charter school; providing for capital outlay funding for such schools; specifying an administrative fee for certain schools; conforming provisions to changes made by the act.
- Section 3:** Amends s. 1002.331, F.S.; revising a limitation on the expansion of high-performing charter schools.
- Section 4:** Amends s. 1003.493, F.S.; authorizing a career and professional academy to be offered by a charter school.
- Section 5:** Amends s. 1008.3415, F.S.; authorizing certain exceptional student education centers to replicate their educational programs; requiring the Commissioner of Education to verify certain information and provide a letter to specified entities.
- Section 6:** Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires that the funds for eligible university or FCS institution sponsored charter school students must be appropriated from state funds only provided in the GAA to the charter school. Currently full-time equivalent students funded in the Florida Education Finance Program (FEFP) are

funded with a combination of state and local funds. Since the eligible university- or FCS institution-sponsored charter school student will only be funded from state funds appropriated in the FEFP, there may need to be additional state funds provided to offset the potential loss of local FEFP funds; however, at this time the individual amounts cannot be determined and would vary based upon the school district and its total amount of local funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides operational funding for a charter school sponsored by a state university or FCS institution based on a calculation of total operating funds appropriated in the FEFP using the total number of weighted FTE students. Neither the number of charter schools sponsored by a state university or FCS institution that will be established nor the number of students who will enroll in these schools is known; therefore, the fiscal impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Early Learning & Elementary Education Subcommittee adopted seven amendments and reported the bill favorably as a committee substitute. The amendments:

- exempt Florida State University from the one charter lab school per university requirement for the purpose of establishing a K-12 charter lab school at Tyndall Air Force Base;
- allow a charter school to immediately appeal a decision by the sponsor in a charter dispute to an administrative law judge if either party does not wish to mediate the decision;

- specify that changes to a charter school’s curriculum necessary to implement blended learning are deemed approved, unless the curriculum is not consistent with state academic standards;
- authorize a sponsor to seek an injunction in circuit court to prohibit the continued operation of a charter school in an emergency termination if continued operation would materially threaten the health, safety, or welfare of the students;
- require a sponsor to provide in writing the facts and circumstances supporting an immediate termination of a charter due to the immediate and serious danger to the school’s students;
- provide for attorney fees and costs in certain circumstances;
- authorize a charter school to establish enrollment preference for students participating in a VPK program at a provider that has a written agreement with the charter school’s governing board;
- revise how the capacity of a high-performing charter school’s facilities is determined for purposes of expanding enrollment; and
- authorize a charter ESE center that receives two consecutive school improvement ratings of “maintaining” or higher to replicate its programs in the same manner as a high-performing charter school program, and reduces the administrative fee a sponsor may withhold from the high-performing ESE center from 5 percent to 2 percent.

The bill analysis is drafted to the committee substitute adopted by the Early Learning & Elementary Education Subcommittee.