

**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 Appropriations

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BILL: CS/CS/SB 758

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Diaz

SUBJECT: Education

DATE: February 25, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palazesi</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Grace</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Grace</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 758 creates the Charter School Review Commission (CSRC) within the Florida Department of Education. Under the bill, the CSRC:

- Consists of seven members, selected by the Commissioner of Education, and subject to confirmation by the Senate.
- Is provided the same powers as a sponsor in regard to reviewing and approving charter schools. If a charter school is approved, the district school board of the school district where the proposed charter school will be located must be the sponsor and supervisor of the proposed charter school.
- Decisions may be appealed to the State Board of Education.

The bill revises the terms for charter renewal and the procedures and causes of nonrenewal or termination of a charter. The bill removes the requirement that any facility used as a charter school obtain a special exemption from existing zoning and land use designations. Finally, the bill requires the Office of Program Policy and Governmental Accountability to conduct an analysis of the distribution of capital outlay funds to charter schools.

The bill does not have an impact on state revenues or expenditures.

The bill takes effect on July 1, 2022.

## II. Present Situation:

### Charter Schools

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

As of the 2018-2019 school year, over 3.3 million students attend charter schools in over 44 states, representing 6.5 percent of all public school students in the United States.<sup>2</sup> Forty-four states have enacted laws that govern the operation of charter schools, authorizers, and sponsors.<sup>3</sup> Twenty of the 44 states, enacted laws that provided for more than one charter school authorizer in the state, examples of authorizers include but are not limited to, local school districts, the state department of education, an independent chartering board, and higher education institutions.<sup>4</sup>

### Charter Schools in Florida

All charter schools in Florida are public schools and are part of the state’s program of public education. In the 2020-21 school year, 341,926 students were enrolled in 687 charter schools in 47 of Florida’s school districts. Approximately 70 percent of the students served by charter schools were minorities. Hispanic students comprised 45 percent of Florida’s charter school enrollment and 19 percent were African-American students.<sup>5</sup>

### Charter School Sponsors

Under Florida law, the following entities may approve and sponsor a charter school:

- A district school board may approve a charter school in the county over which the district school board has jurisdiction.
- A state university may sponsor a charter developmental research school (charter lab school).
- A state university may, upon approval by the Florida Department of Education (DOE), solicit applications and sponsor a charter school to meet regional education or workforce demands by serving students from multiple school districts.
- A Florida College System (FCS) institution may, upon approval by the DOE, solicit applications and sponsor a charter school in any county within its service area to meet

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<sup>1</sup> Florida Department of Education, *FAQ, What are charter schools?* <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml> (last visited Nov 23, 2021).

<sup>2</sup> National Alliance for Public Charter Schools, *FAQ, How many charter schools and students are there?* <https://data.publiccharters.org/digest/charter-school-data-digest/how-many-charter-schools-and-students-are-there/> (last visited Nov. 23, 2021).

<sup>3</sup> Education Commission of the States, *50-State Comparison Charter School Policies* <http://ecs.force.com/mbdata/mbquestNB2C?rep=CS1708> (last visited Nov. 23, 2021).

<sup>4</sup> National Association of Charter School Authorizers, *Charter School Authorizers by State*, <https://www.qualitycharters.org/state-policy/multiple-authorizers/list-of-charter-school-authorizers-by-state/> (last visited Nov. 23, 2021).

<sup>5</sup> Florida Department of Education, Office of Independent Education & Parental Choice, *Fact Sheet, Florida’s Charter Schools*, (2021) available at <https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2021.pdf>.

workforce demands and may offer postsecondary programs leading to industry certifications to eligible charter school students.

- A charter school-in-the-workplace may be established when a business partner provides the school facility to be used; enrolls students based upon a random lottery that involves all of the children of employees of that business or corporation who are seeking enrollment.
- A charter school-in-a-municipality designation may be granted to a municipality that possesses a charter; enrolls students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment.

A charter school sponsor has several responsibilities, including:

- Approving or denying charter school applications.
- Overseeing each sponsored school's progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the school.
- Ensuring that the school participates in the state's education accountability system.
- Intervening when a sponsored school demonstrates deficient student performance or financial instability.

A sponsor must provide administrative and educational services and may withhold a fee of up to five percent of each charter school's total operating funds.

### ***Charter School Application Process***

Any person or entity that is seeking to open a charter school must prepare and submit an application on the Model Florida Charter Application, prepared by the DOE, to the intended sponsor. The charter school application must:

- Demonstrate how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
- Provide a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
- Contain goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.
- Describe 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. A sponsor shall deny an application if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.
- Contain an annual financial plan for each year requested by the charter for operation of the school for up to five years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.
- 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 such charter

schools, which the sponsor shall consider in deciding whether to approve or deny the application.

- Contain additional information a sponsor may require, which shall be attached as an addendum to the charter school application described in this paragraph.

Upon receipt of the application the sponsor must review and evaluate the application using the standard Model Charter School Application Evaluation Instrument, and must within 90 calendar days approve or deny the application by majority vote. If the sponsor denies a charter school application or fails to act on an application, the charter school applicant may appeal to the State Board of Education (SBE) and must notify the sponsor of the appeal. Upon the SBE receipt of the appeal, the Commissioner of Education (commissioner) must convene a meeting of the Charter School Appeal Commission. The SBE must, by a majority vote, accept or reject the appeal submission no later than 90 calendar days after the appeal is filed. The SBE's decision is a final action subject to judicial review in the District Court of Appeal.<sup>6</sup>

In 2020, 60 percent of the approximately 60 charter school applications were approved. This is an increase from the 45.7 percent approval rate for approximately 90 applications in 2019.<sup>7</sup>

### ***Charter School Appeal Commission***

The Charter School Appeal Commission (commission) was established to assist the commissioner and the SBE with a fair and impartial review of appeals by applicants whose charter applications have been denied, whose charter contracts have not been renewed, or whose charter contracts have been terminated by their sponsors. The commissioner appoints the members of the commission, of which one-half of the must represent sponsors and one-half must represent charter schools who are currently operating in Florida. The commission provides a written recommendation to the SBE as to whether the appeal should be upheld or denied.

### ***The Charter Agreement***

The terms and conditions for the operation of a charter school are set forth by the sponsor and the charter school applicant in a contractual agreement called the charter. The initial term of the charter is for 5 years, excluding two planning years. The charter may be renewed under a 15-year charter if the charter school(s) have been operating for a minimum of 3 years and is demonstrating exemplary academic programming and fiscal management. The 15-year charter must be granted to a charter school that has received a school grade of "A" or "B" in 3 of the past 4 years and is not in a state of financial emergency.

A sponsor may choose not to renew or terminate the charter if the sponsor finds that one of the following exists:

- Failure to participate in the state's education accountability system created in s. 1008.31, F.S. as required in this section, or failure to meet the requirements for student performance stated in the charter.
- Failure to meet generally accepted standards of fiscal management.

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<sup>6</sup> Section 1002.33, F.S.

<sup>7</sup> Florida Department of Education, Office of Independent Education & Parental Choice, *Fact Sheet, Florida's Charter Schools*, (2021) available at <https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2021.pdf>.

- Material violation of law.
- Other good cause shown.

### ***Charter School Facilities***

Charter schools, with the exception of conversion charter schools, are not required to comply, but may choose to comply, with the State Requirements for Educational Facilities of the Florida Building Code adopted pursuant to s. 1013.37, F.S. A library, community service, museum, performing arts, theatre, cinema, church, FCS institution, college, and university facilities may provide space to charter schools within their facilities under their preexisting zoning and land use designations without obtaining a special exception, rezoning, or a land use change.<sup>8</sup> If a charter school is housed in a facility that is not one of the eight facilities specified in statute the charter school facility would be required to obtain a special exception, have the facility rezoned, or receive a land use change.

### **District School Tax – Charter School Capital Outlay**

In order to receive funds under the Florida Education Finance Program for the operation of schools, a district school board must levy the millage<sup>9</sup> set for its required local effort from property taxes. A school district's millage rate may not exceed the amount certified by the commissioner as the minimum millage rate necessary to provide the district required local effort for the current year.<sup>10</sup> In addition to the required local effort millage levy, each district school board may levy a nonvoted operating discretionary millage. The Legislature annually prescribes in the General Appropriations Act the maximum amount of operating discretionary millage a district may levy.<sup>11</sup>

In addition to the maximum millage levy for the required local effort and the nonvoted operating discretionary millage, each school board may levy not more than 1.5 mills against the taxable value for school purposes for charter schools and for district schools to fund, in part:

- New construction, and remodeling, renovation, maintenance, and repair of existing school plants or leased facilities.
- The purchase, lease-purchase, or lease of school buses.
- The purchase, lease-purchase, or lease of new and replacement equipment, including computer hardware and software for instructional purposes.
- Lease and lease-purchase agreements for educational facilities.
- Costs directly related to compliance with state and federal environmental regulations.
- The cost of the opening day collection for the library media center of a new school.<sup>12</sup>

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<sup>8</sup> Section 1002.33, F.S.

<sup>9</sup> Section 200.001, (3)(a)-(e), F.S. defines school millage rates in five categories: nonvoted required school operating millage, nonvoted discretionary school operating millage, voted district school operating millage, nonvoted district school capital improvement millage and voted district school debt service millage.

<sup>10</sup> Section 1011.71(1), F.S. The state average millage was set at 3.606; for the 67 school districts the approved millage varied from 3.734 (Suwannee) to 1.486 mills (Monroe). Florida Department of Education, *2021-22 Funding for Florida School Districts (2021)*, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf> at 4.

<sup>11</sup> Section 1011.71(1), F.S. The maximum nonvoted discretionary millage which may be levied pursuant to s. 1011.71(1), F.S., by district school boards in Fiscal Year 2021-2022 is 0.748 mills. Specific Appropriation 90, ch. 2021-36, L.O.F.

<sup>12</sup> Section 1011.71(2), F.S.

For the 2021-2022 fiscal year, charter school capital outlay funding consists of state funds appropriated in the 2021-2022 General Appropriations Act. Beginning in fiscal year 2022-2023, if funds appropriated through the Charter School Capital Outlay Allocation are less than the average charter school capital outlay funds per unweighted full-time equivalent (FTE) student for the 2018-2019 fiscal year, multiplied by the estimated number of charter school students for the applicable fiscal year and adjusted by changes in the Consumer Price Index, charter schools must also receive a portion of the revenue from the 1.5 discretionary millage levied by the school district.<sup>13</sup> For fiscal year 2021-2022, school districts are not required to share revenue from the 1.5 discretionary millage levy because the Legislature appropriated \$182,864,353 in the Charter School Capital Outlay Allocation,<sup>14</sup> which meets the funding requirement for charter schools in Florida law. School districts are not prohibited from sharing any 1.5 discretionary millage revenue with charter schools, but the amount appropriated in fiscal year 2021-2022 does not require a school district to do so.<sup>15</sup>

### **The Office of Program Policy Analysis and Government Accountability**

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is a research arm of the Florida Legislature. OPPAGA was created by the Legislature in 1994 to help improve the performance and accountability of state government. OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.<sup>16</sup>

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

This bill establishes the Charter School Review Commission (CSRC) and modifies provisions relating to charter school sponsors and facilities. The bill also directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an analysis of the distribution of capital outlay funds to charter schools.

#### **Charter School Review Commission**

The bill creates s. 1002.3301, F.S., to establish the CSRC within the Florida Department of Education, which may solicit, review, and approve applications for charter schools that are overseen by district school boards. The Commissioner of Education is required to select seven members for the CRSC who have charter school experience, subject to confirmation by the Senate. The CRSC members must be appointed to four year terms. However, for the purpose of achieving staggered terms, the bill requires that for initial appointments to the CSRC 3 members must be appointed to 2-year terms and 4 members must be appointed to 4-year terms.

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<sup>13</sup> Section 1013.62, F.S.

<sup>14</sup> Specific Appropriation 19, s. 2, ch. 2021-036 L.O.F.

<sup>15</sup> Florida Department of Education, *2021-22 Funding for Florida School Districts (2021)*, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf> at 4.

<sup>16</sup> The Office of Program Policy Analysis and Government Accountability, *About OPPAGA*, <https://oppaga.fl.gov/About> (last visited Nov. 30, 2021).

The bill provides the CSRC with the same powers and duties that charter school sponsors currently have in Florida law with regards to reviewing and approving charter schools.<sup>17</sup> However, the bill requires the district school board to serve as the sponsor of and supervisor for the new charter school.<sup>18</sup> The charter school applicant is required to submit the application to the school district where the proposed charter school will be located within 3 days after submitting the application to the Charter School Revision Commission. School districts are allowed to provide feedback, in a format prescribed by the department, to the commission on the proposed charter school application. Further, the school district is required to contract with the new charter school within 30 calendar days after the CSRC's decision. The bill specifies that decisions of the CRSC are subject to the current appeals process provided in law.

### **Charter School Sponsors**

The bill amends s. 1002.33, F.S., to modify requirements relating to charter school sponsor duties. The bill:

- Specifies that a charter school sponsor may impose additional reporting requirements only if a charter school has been identified as having a deteriorating financial condition or financial emergency.<sup>19</sup>
- Modifies the criteria for nonrenewal or termination of a charter to:
  - Specify that a charter school must be under a deteriorating financial condition or financial emergency in order for a sponsor to not renew or terminate a charter for fiscal management.
  - Remove “other good cause shown” as a ground for the termination or nonrenewal of a charter school.
- Specifies requirements relating to charter school renewal terms, specifically the bill:
  - Requires that the charter of a charter school must be renewed for no less than a five-year term if it meets the existing requirements for renewal and has received a school grade lower than a “B” in the most recent graded school year, except as provided in law for grades of “F.”<sup>20</sup>
  - Requires that a 15-year charter renewal be granted if a charter school has received a school grade of “A” or “B” in the most recent graded school year, rather than in 3 of the past 4 years, and is not in a state of financial emergency.

### **Charter School Facilities**

The bill provides that any facility, rather than those specified in law, that houses a charter school may provide space under its current zoning and land use designations.

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<sup>17</sup> Section 1002.33, F.S. delineates the powers and duties of sponsors in regards to the charter school application process.

<sup>18</sup> *Duval County School Bd. v. State, Bd. of Educ.*, 998 So.2d 641 (Fla. 2d DCA 2008). In 2006, the Florida legislature enacted s. 1002.335, F.S., which established the “Florida Schools of Excellence Commission” as an independent, state-level entity with the power to approve and act as sponsor for charter schools throughout the State of Florida. The court found that the “Florida Schools of Excellence Commission” conflicted with article IX section 4 of the Florida Constitution.

<sup>19</sup> Section 1002.345, F.S.

<sup>20</sup> Section 1002.33, F.S.

### **Capital Outlay Funds for Charter Schools**

The bill requires OPPAGA to conduct an analysis of the current methodologies for the distribution of the capital outlay funds to charter schools and make recommendations that provides for a more equitable allocation of capital outlay funding for all public schools. The analysis must include:

- An analysis of the calculation methodology for the allocation of state funds appropriated in the General Appropriations Act under s. 1013.62(2), F.S.
- An analysis of the calculation methodology to determine the amount of revenue that a school district must distribute to a charter school under s. 1013.62(2), F.S.
- A comparison, for the most recent three years, of the charter school capital outlay amounts between the allocation of state funds and revenue that would result from the discretionary millage authorized under s. 1011.71(2) F.S.
- Other state policies and methodologies for the distribution of charter school outlay funds.

The bill requires that OPPAGA submit its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2023.

The bill takes effect on July 1, 2022.

#### **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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1002.33 of the Florida Statutes.

This bill creates section 1002.3301 of the Florida Statutes.

The bill creates an undesignated section of Florida Law.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on February 24, 2020:**

The committee substitute requires the charter school applicant to also submit the application to the school district where the proposed charter school will be located within 3 days after submitting the application to the Charter School Revision Commission. It also allows for the school district to provide feedback, in a format prescribed by the department, to the commission on the proposed charter school application.

**CS by Education on November 30, 2021:**

The committee substitute removed from the bill the provision that required the additional discretionary 1.5 millage to be part of a school district's operating discretionary millage levy.

The committee substitute requires the Office Program Policy Analysis Government Accountability (OPPAGA) to conduct an analysis of the current methodologies for the distribution of the capital outlay funds and recommend any changes to provide more equitable funding allocations of capital outlay funds for traditional and charter public schools. Specifically the bill requires that the analysis must include at a minimum:

- An analysis of the calculation methodology for the allocation of state funds appropriated in the General Appropriations Act under section 1013.62(2), F.S.

- An analysis of the calculation methodology to determine the amount of revenue that a school district must distribute to a charter school under section 1013.62(2), F.S.
- A comparison, for the most recent three years, of the charter school capital outlay amounts between the allocation of state funds and revenue that would result from the discretionary millage authorized under section 1011.71(2) F.S.
- Other state policies and methodologies for the distribution of charter school outlay funds.

The committee substitute requires that OPPAGA submit its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2023.

**B. Amendments:**

None.