

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

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

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

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**BILL:** CS/SB 1328

**INTRODUCER:** Education Pre-K -12 Committee and Senator Boyd

**SUBJECT:** Charter School Capital Outlay Funding

**DATE:** April 5, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	<b>Fav/CS</b>
2.			AED	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1328 modifies provisions related to charter school capital outlay funding. The bill provides a five-year glide path of local sharing with eligible charter schools that are operated by a not-for-profit entity in the largest school districts.

Additionally, the bill clarifies that for a district school board resolution to levy a sales surtax for capital projects, the calculation for sharing revenues with charter schools must be based on capital outlay full-time equivalent enrollment. This applies to resolutions adopted after July 1, 2023.

The bill has a significant negative fiscal impact on state revenues and expenditures. The bill has a significant negative fiscal impact on certain school districts. See section V.

The bill is effective July 1, 2023.

**II. Present Situation:**

**District School Tax – Capital Outlay**

School districts receive financial support from local, state, and federal sources. Local revenue for school support is derived almost entirely from property taxes levied by Florida’s 67 counties, each of which constitutes a school district.

In addition to the required and discretionary millage levy for school district and charter school operations, 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>1</sup>

The school board in each county may levy a voted discretionary sales surtax at a rate that may not exceed 0.5 percent.<sup>2</sup> The resolution for the ballot must include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax. The resolution must include a statement that the revenues collected must be shared with eligible charter schools based on their proportionate share of the total school district enrollment.<sup>3</sup>

The resolution providing for the imposition of the surtax must set forth a plan for use of the surtax proceeds for:<sup>4</sup>

- Fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of five or more years.
- Any land acquisition, land improvement, design, and engineering costs.
- Any purchase, lease-purchase, lease, or maintenance of school buses which have a useful life expectancy of five or more years.
- The costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district.
- Service of bond indebtedness to finance projects authorized in law.

### **Charter School Capital Outlay**

Charter schools are tuition-free public schools created through an agreement or “charter” that provides flexibility relative to regulations created for traditional public schools.<sup>5</sup> All charter schools in Florida are public schools and are part of the state’s public education system.<sup>6</sup> During the 2021-2022 school year, 361,939 students were enrolled in 703 charter schools in 47 Florida districts.<sup>7</sup> Florida’s charter schools serve 51 percent low-income students statewide. Seventy percent of the students attending charter schools in the 2021-2022 school year were minorities.

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<sup>1</sup> Section 1011.71(2), F.S.

<sup>2</sup> Section 212.055(6)(a), F.S.

<sup>3</sup> Section 212.055(6)(b), F.S.

<sup>4</sup> Section 212.055(6)(c), F.S.

<sup>5</sup> Florida Department of Education, Office of Independent Education & Parental Choice, *Fact Sheet Florida’s Charter Schools* (September 2022), available at <https://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2022.pdf>.

<sup>6</sup> Section 1002.33(1), F.S.

<sup>7</sup> Florida Department of Education, Office of Independent Education & Parental Choice, *Fact Sheet Florida’s Charter Schools* (September 2022), available at <https://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2022.pdf>.

Hispanic students comprised 45 percent of Florida's charter school enrollment, and 19 percent were African-American students.<sup>8</sup>

For the 2022-2023 fiscal year, charter school capital outlay funding consists of state funds appropriated in the 2022-2023 General Appropriations Act (GAA). Beginning in fiscal year 2023-2024, charter school capital outlay funding must consist of state funds, when such funds are appropriated in the GAA, and revenue resulting from the school district discretionary millage authorized in s. 1011.71(2), F.S., if the amount of state funds appropriated for charter school capital outlay in any fiscal year is less than the average charter school capital outlay funds per unweighted full-time equivalent 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 issued by the United States Department of Labor from the previous fiscal year.<sup>9</sup>

In addition to the appropriated state funds for charter school capital outlay, the law authorizes, but does not require, school districts to share the discretionary 1.5 mills revenue with charter schools.<sup>10</sup> It is unknown the extent to which school districts currently share such revenue as the Department of Education (DOE) does not collect this data.

The Legislature has fully funded charter school capital outlay with state funds in Fiscal Years 2018-2019 through 2022-2023.<sup>11</sup> The estimated amount of funding required for Fiscal Year 2023-2024 is \$213.4 million.

To be eligible for charter school capital outlay funding, a charter school must:<sup>12</sup>

- Have been in operation for two or more years and:
  - Be governed by a governing board established in Florida for two or more years which operates both charter schools and conversion charter schools within the state;
  - Be part of an expanded feeder chain<sup>13</sup> with an existing charter school in the district that is currently receiving charter school capital outlay funds;
  - Be accredited by a regional accrediting association as defined by State Board of Education rule;
  - Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace; or
  - Be operated by a hope operator pursuant to s. 1002.333, F.S.
- Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1), F.S., for the most recent fiscal year for which such audit results are available;

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<sup>8</sup> Florida Department of Education, Office of Independent Education & Parental Choice, *Fact Sheet Florida's Charter Schools* (September 2022), available at <https://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2022.pdf>.

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

<sup>10</sup> Section 1011.71(2), F.S.

<sup>11</sup> Chapters 2017-70, 2018-9, 2019-115, 2020-111, 2021-36, and 2022-156 Laws of Fla.

<sup>12</sup> Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(d), F.S.

<sup>13</sup> A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to s. 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.

- Have satisfactory student achievement based upon the state accountability standards applicable to charter schools;<sup>14</sup>
- Have received final approval from its sponsor pursuant to s. 1002.33, F.S., for operation during that fiscal year; and
- Serve students in facilities that are not provided by the charter school sponsor.

State funds for charter school capital outlay are allocated to eligible charter schools based on each school's weighted full-time equivalent (FTE) enrollment. Charter schools receive a weight of 1.0 per FTE student, with an additional weight for schools that meet one or both of the following criteria:<sup>15</sup>

- Seventy-five percent or more of the school's students are eligible for free or reduced-price lunch; and
- Twenty-five percent or more of the school's students are students with disabilities.

Schools that meet only one of the above criteria receive capital outlay funding weighted at 1.25, and schools that meet both criteria receive capital outlay funding weighted at 1.5. Eligible schools that do not meet either of the criteria receive capital outlay funding weighted at 1.0.<sup>16</sup>

If a charter school or charter lab school is nonrenewed or terminated, any unencumbered funds and all equipment and property purchased with public funds, including charter school capital outlay funds, revert to the ownership of the district school board or the state university, as appropriate. Any reversions focus on recoverable assets (equipment, property, etc.) but not on intangible or irrecoverable costs (e.g., rental or leasing fees, normal maintenance, and limited renovations).<sup>17</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>18</sup>

### ***OPPAGA Charter School Funding Report***

In 2022, the Legislature directed OPPAGA to analyze the current methods used to distribute capital outlay funds and specified federal program funds to traditional public schools and charter

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<sup>14</sup> State board rule allows "satisfactory student achievement" to be determined in accordance with a charter contract; however, a charter school that earns a school grade of "F" is not eligible for capital outlay funding for the school year immediately following the designation. Rule 6A-2.0020(4), F.A.C.

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

<sup>16</sup> Section 1013.62(2)(b), F.S.

<sup>17</sup> Section 1013.62(5), F.S.

<sup>18</sup> The Office of Program Policy Analysis and Government Accountability, *About OPPAGA*, <https://oppaga.fl.gov/About> (last visited March 31, 2023).

schools.<sup>19</sup> The law further directed OPPAGA to recommend changes to provide an equitable allocation of these funds to all public schools.

OPPAGA's analysis focused on the two largest local sources and the largest state source of public capital outlay funds representing 78.8 percent of the total funding available for capital outlay: District Local Capital Improvement Tax, School District Local Sales Tax, and Charter School Capital Outlay, which together, accounted for \$4.4 billion of capital outlay expenditures in Fiscal Year 2020-21.<sup>20</sup>

To ensure that the most pressing construction, renovation, repair, and maintenance needs are addressed regardless of the type of public school a student attends, OPPAGA recommends distributing capital outlay funding to charter schools based on demonstrated need. School districts are already required<sup>21</sup> to conduct a plant survey of traditional public schools at least every five years. By including charter school facilities as part of this district plant survey, school districts can work with charter schools to evaluate and prioritize the use of capital outlay funds from all sources to fund the most urgent capital projects and maintenance needs for both charter schools and traditional public schools.<sup>22</sup>

### III. Effect of Proposed Changes:

CS/SB 1328 amends s. 1013.62, F.S., to provide a five-year glide path of local sharing with eligible charter schools that are operated by a not-for-profit entity in the largest school districts.

The bill requires school boards that levy the authorized discretionary millage and have a combined total of all capital outlay full-time equivalent membership and total unweighted full-time equivalent students of eligible charter schools which exceeds 100,000 to share an amount of their eligible local funds with eligible charter schools that are operated by a not-for-profit entity.

The bill specifies, for the 2023-2024 fiscal year, the amount is 20 percent of the amount calculated by using the following methodology:

1. Reduce the school district's total discretionary millage revenue by the school's annual debt service obligation incurred by March 1, 2017, which has not been subsequently retired, and any amount of participation requirement pursuant to s. 1013.64(2)(a)8., which is being satisfied by revenues raised by the discretionary millage.
2. Multiply the discretionary millage amount from step one above by 20 percent.
3. Divide the school district's adjusted discretionary millage revenue by the district's total capital outlay full-time equivalent membership and the total number of unweighted full-time equivalent students of each eligible charter school to determine a capital outlay allocation per full-time equivalent student.

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<sup>19</sup> Ch. 2022-144, Laws of Fla.

<sup>20</sup> The Office of Program Policy Analysis and Government Accountability, *Charter School Funding Report 22-11* (December 2022), available at <https://oppaga.fl.gov/Documents/Reports/22-11.pdf> at vi.

<sup>21</sup> Section 1013.31, F.S.

<sup>22</sup> The Office of Program Policy Analysis and Government Accountability, *Charter School Funding Report 22-11* (December 2022), available at <https://oppaga.fl.gov/Documents/Reports/22-11.pdf> at viii.

4. Multiply the result of the calculation made from bullet three above by the total number of full-time equivalent students of each eligible charter school in the district to determine the capital outlay allocation for each charter school.

The bill specifies the amount will increase by 20 percent each year until 2027-2028, and thereafter, when 100 percent of the calculated amount is shared.

The bill requires that if the state portion and local portion are greater than the total capital outlay millage per full-time equivalent (FTE) student, the department must reduce the school district's sharing amount by the difference between total funds and the calculated amount for the total capital outlay FTE membership.

Additionally, the bill amends s. 212.055, F.S., to clarify that the calculation of each school district's enrollment for purposes of calculating the proportionate share of school capital outlay surtax must be based on capital outlay full-time equivalent enrollment (COFTE), rather than the total school district enrollment. COFTE differs from regular enrollment in that it is based on the number of students that are expected to need a physical seat in the school district. Students in virtual education programs or hospital/homebound programs would not be included. COFTE projections are used for facilities planning.

However, the bill provides that the changes in the bill that modify the calculation of student enrollment in s. 212.055(6)(b), F.S., only applies to a resolution for a school capital outlay surtax adopted on July 1, 2023, or thereafter, unless the resolution is amended or renewed.

The bill is effective July 1, 2023.

#### **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 has a significant negative fiscal impact on state revenues and expenditures. The 2023-2024 fiscal year calculation shows \$213,453,885 in nonrecurring funds from the Public Education Capital Outlay and Debt Service Trust Fund to the Department of Education for charter school capital outlay funding.

The school districts that will have to share these funds with eligible charter schools will have a significant negative fiscal impact that is indeterminate at this time. The bill will require the following school districts to share funds: Polk, Duval, Palm Beach, Orange, Hillsborough, Broward, and Miami-Dade. There are 450 charter schools located in those seven districts. Of the 450 charter schools, 219 are operated or managed by a not-for-profit entity.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 212.055 and 1013.62 of the Florida Statutes.

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

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

**CS by Education Pre-K -12 on April 4, 2023:**

The committee substitute retains the provisions in the bill related to school capital outlay surtax. The committee substitute also:

- Reverts the state calculation to the calculation outlined in current law.
- Provides a five-year glide path of local sharing with eligible charter schools that are operated by a not-for-profit entity in the largest school districts.
- Requires school boards that levy the authorized discretionary millage and have a combined total of all capital outlay full-time equivalent membership and total

unweighted full-time equivalent students of eligible charter schools which exceeds 100,000 to share an amount of their eligible local funds with eligible charter schools that are operated by a not-for-profit entity.

- Specifies, for the 2023-2024 fiscal year, the amount is 20 percent of the amount calculated under the new methodology.
- Specifies the amount will increase by 20 percent each year until 2027-2028, and thereafter, when 100% of the calculated amount is shared.
- Specifies that if the state portion and local portion are greater than the total capital outlay millage per full-time equivalent (FTE) student, the department must reduce the school district's sharing amount by the difference of total funds and the calculated amount for the total capital outlay FTE membership.

**B. Amendments:**

None.