

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7037 PCB CIS 15-01 School Choice

SPONSOR(S): Education Appropriations Subcommittee, Choice & Innovation Subcommittee, Cortes

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee	11 Y, 1 N	Beagle	Healy
1) Education Appropriations Subcommittee	13 Y, 0 N, As CS	Seifert	Heflin
2) Education Committee		Beagle	Mizereck

SUMMARY ANALYSIS

The bill creates the Florida Institute for Charter School Innovation at the Florida State University to provide technical assistance and support to charter school applicants and sponsors; conduct research on policy and practice related to charter school authorizing, accountability, instructional practices, finance, management, and operations; and provide opportunities for aspiring teachers to experience teaching in schools of choice.

The bill strengthens charter school accountability and student access to quality charter schools by:

- Clarifying that a sponsor may consider a charter school applicant's, governing board member's, and management company's past performance operating charter schools when deciding to approve or deny an application.
- Authorizing a charter school that has been granted a charter to defer opening for up to two years to conduct facilities planning.
- Requiring charter schools to begin submitting monthly financial statements upon approval of the charter contract to enable the sponsor to begin monitoring the school's financial health earlier in time.
- Clarifying that charter schools that earn two consecutive grades of "F" are automatically terminated.
- Removing the limit on replication of high-performing charter schools if the charter school is created to serve high-need areas or school district needs.

The bill revises charter school funding provisions to:

- Clarify that charter schools do not have to adopt the school district's research-based reading plan in order to receive the research-based reading allocation.
- Specify that the reading curriculum approved by the sponsor and incorporated in its charter satisfies the research-based reading plan requirement for such allocation.
- Authorize a nonprofit organization or municipality that operates a charter school to use unrestricted surplus or unrestricted net assets of the charter school identified in an annual financial audit for other educational purposes.
- Specify that a charter school may not have financial emergency conditions noted in its most recent annual audit in order to receive capital outlay funding.
- Prohibit the sponsor from delaying payments to charter schools based upon timing of receipt of local funds.
- Allow more charter school systems to act as the local education agency for purposes of administering federal education funding.

In addition, the bill removes the statutory eligibility requirements for enrollment in public K-12 virtual education, which currently limit virtual education options available to certain students who did not attend public school in the previous school year. The bill also revises criteria triggering automatic termination of a state-approved virtual instruction provider's contract and removal from the list of state approved providers.

The bill provides an appropriation of \$4,184,000 to the Florida Education Finance Program for FY 2015-16 to fund the expansion of student eligibility for public virtual education. The bill provides an appropriation of \$1,000,000 to Florida State University to establish the Florida Institute for Charter School Innovation. See Fiscal Analysis & Economic Impact.

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter School Authorizing and Oversight

Present Situation

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor, which is typically a school district.¹ Charter schools are exempt from many laws and regulations applicable to traditional public schools to encourage the use of innovative learning methods.² The terms and conditions for the operation of the school are set forth in a performance contract or “charter.”³

Florida law tasks sponsors with authorizing new charter schools and providing continuing oversight of each charter school in the school district. The law establishes several processes designed to enable the sponsor to perform these roles, including:

- Authority to review and approve or deny charter school applications.⁴
- Authority to enforce the terms and conditions of the charter agreement.⁵
- Annual reporting of student achievement and financial information by each charter school to the sponsor.⁶
- Sponsor monitoring of annual financial audits⁷ and monthly financial statements submitted by charter schools in the school district.⁸
- Interventions for remedying unsatisfactory academic performance and financial instability.⁹
- Authority to close charter schools for academic or financial failure; poor management; violations of law; or child health, safety, and welfare violations.¹⁰

“The Florida Principles and Standards for Quality Charter School Authorizing” are a set of guidelines for sponsor authorizing and oversight of charter schools. The *“Principles and Standards”* are a collaborative effort by the Florida Department of Education (DOE), the National Association of Charter School Authorizers (NACSA), sponsors, and charter school stakeholders. Sponsor adherence to the *“Principles and Standards”* is voluntary. The *“Principles and Standards”* emphasize the critical role that sponsors play in evaluating the viability of charter school proposals and holding approved charter schools to high standards of quality.¹¹

The law establishes an application process for establishing a new charter school. An applicant¹² must submit a charter school application to the sponsor.¹³ The sponsor must review and approve or deny the

¹ Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S. The law authorizes school districts to sponsor charter schools; state universities to sponsor charter lab schools; and school districts, Florida College System (FCS) institutions, or a consortium of school districts or FCS institutions to sponsor a charter technical career center. Sections 1002.32(2), 1002.33(5)(a)1. and 2., and 1002.34(3)(b), F.S.

² Section 1002.33(2)(b)3. and (16), F.S.

³ Section 1002.33(6)(h) and (7), F.S.

⁴ Section 1002.33(6), F.S.

⁵ Section 1002.33(6)(h) and (7), F.S.

⁶ Section 1002.33(9)(k), F.S.

⁷ Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

⁸ Section 1002.33(9)(g), F.S.

⁹ Sections 1002.33(9)(n) and 1002.345, F.S.

¹⁰ Section 1002.33(8), F.S.

¹¹ Florida Department of Education, *Florida Principles & Standards for Quality Charter School Authorizing*, at 2-5 (2014), <http://www.fldoe.org/core/fileparse.php/5423/urlt/Florida-Principles-and-Standards-Final-Proof.pdf>. [Hereinafter *Principles and Standards*].

¹² An application may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law. Section 1002.33(3)(a), F.S. The school must be operated by a Florida College System institution, municipality, or

application.¹⁴ The law requires sponsors and applicants to use a standard charter school application and application evaluation instrument. The standard application is designed to enable the sponsor to evaluate the applicant's educational plan, organizational plan, financial viability, and business plan.¹⁵

The law does not expressly require a sponsor to evaluate an applicant's, governing board member's, or management company's past performance operating charter schools.¹⁶ However, the standard application requires the applicant to:

- List each proposed member of the charter school's governing board and his or her background and qualifications.
- Indicate if the governing board will contract with a management company, summarize the company's history operating charter schools, and list other charter schools managed by the company and student achievement and financial performance data of such schools.¹⁷

Additionally, the "*Principles and Standards*" encourage sponsors to evaluate the past history of existing operators and management companies operating charter schools and conduct applicant interviews and other due diligence to examine the applicant's experience and ability to operate charter schools.¹⁸

Currently, after approval of the charter by the sponsor, the charter school must begin operation at the beginning of the upcoming school year. The sponsor may waive this requirement for good cause.¹⁹ Additionally, the law prohibits a sponsor from requiring a charter school's governing board to have a certificate of occupancy for its facility earlier than 15 days before the first day of school.²⁰

Among other oversight processes, charter schools must submit monthly financial statements for review by the sponsor. If a financial statement reveals a deteriorating financial condition,²¹ the sponsor and charter school governing board must develop a corrective action plan.²² The sponsor may choose to terminate or not renew the charter school's charter if financial deficiencies noted in the corrective action plan are not corrected within one year or if the school exhibits one or more financial emergency conditions²³ for two consecutive years.²⁴ The date by which a newly established charter school must

nonprofit organization. While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization. Section 1002.33(12)(i), F.S.

¹³ Section 1002.33(6)(a), F.S.; rule 6A-6.0786, F.A.C. (model charter school application and application evaluation instrument).

¹⁴ Section 1002.33(6), F.S. If the application is approved, the applicant and sponsor then negotiate the terms of the charter. If the application is denied, or the sponsor fails to act, the applicant may file an appeal with the State Board of Education, which may uphold or overturn the sponsor's denial. Section 1002.33(6)(c) and (h), F.S.; *see also* s. 120.68, F.S. The state board's decision is a final action subject to judicial review in the district court of appeal. *Id.*

¹⁵ *See* Florida Department of Education, *Model Florida Charter School Application* (May 2012), http://www.fldoe.org/core/fileparse.php/7700/urlt/IEPC_M1.pdf [hereinafter *Model Application*].

¹⁶ *See* s. 1002.33(6)(a), F.S.

¹⁷ *Compare* s. 1002.33(6)(a), (7), (8), (9), F.S. *with Model Application*, *supra* note 15, at 11 and 14.

¹⁸ *Principles and Standards*, *supra* note 11, at 2-5 and 9-10.

¹⁹ Section 1002.33(6)(b)5., F.S.

²⁰ Section 1002.33(7)(a)13., F.S.

²¹ A deteriorating financial condition is a circumstance that significantly impairs the ability of a charter school to generate enough revenue to meet its expenditures without causing the occurrence of a financial emergency condition. Deteriorating financial conditions include, without limitation, circumstances in which actual enrollment is 70 percent less than the enrollment projection for which its annual budget is based, enrollment is insufficient to generate enough revenue to meet expenditures, actual expenses exceed budgeted expenses for a period of three months or more and there are insufficient reserves to compensate, or an unbudgeted financial event occurs and there are insufficient reserves to compensate. Section 1002.345(1)(a)3., F.S.; rule 6A-1.0081(2)(a), F.A.C.

²² Sections 1002.33(9)(g)3. and 1002.345(1)(b)-(f), F.S.; rule 6A-1.0081, F.A.C. A high-performing charter school may submit quarterly rather than monthly financial statements. Section 1002.331(2)(c), F.S.

²³ A financial emergency exists when any one of the following conditions occurs due to lack of funds: (1) Failure to pay short-term loans or make bond debt service or other long-term debt payments when due; (2) Failure to pay uncontested claims from creditors within 90 days after the claim is presented; (3) Failure to timely transfer taxes withheld from employees or employer or employee contributions for federal social security, pension, or retirement plans; and (4) Failure for one pay period to pay wages, salaries, or retirement benefits. Section 218.503(1)(a)-(d), F.S.

²⁴ Section 1002.345(5), F.S.

begin submitting financial statements typically follows the first payment of state education funds to the charter school, which occurs in July before the start of the school year.²⁵

On January 21 and February 3, 2015, the Choice and Innovation Subcommittee heard testimony regarding quality charter school authorizing by representatives of NACSA, the Governor John Engler Center for Charter Schools at Central Michigan University, and the Colorado League of Charter Schools, among others. The presenters discussed “best practices” for evaluating the likelihood that a proposed charter school will succeed academically and financially. Among other things, the testimony emphasized that sponsor’s should evaluate an applicant’s or management company’s past history operating charter schools in deciding to approve or deny a charter school application and monitor newly approved charter schools as they prepare to open and begin serving students. This testimony also revealed potential benefits to charter school applicants, operators, and sponsors of increased collaboration, support, technical assistance, and research on best practices for charter school operations and authorizing.²⁶

Effect of Proposed Changes

The bill establishes the Florida Institute for Charter School Innovation at Florida State University in order to:

- Advance charter school accountability, quality, and innovation;
- Provide support and technical assistance to charter school applicants and sponsors;
- Connect aspiring teachers to opportunities to experience teaching in schools of choice; and
- Conduct research and develop and promote best practices for charter school accountability, authorizing, financing, management and operations, and instructional practices.

The primary mission of the institute is to provide technical assistance and support to charter school applicants in developing innovative charter school proposals. An applicant would be able to engage the institute for assistance not only in developing its written application, but also in acquiring the financial and operational knowledge and skills necessary to operate a charter school. In this regard, the institute could benefit both applicants and sponsors by increasing the quality of charter school proposals, while also helping to discourage applicants with poorly developed proposals or qualifications from submitting applications for sponsor review.

The bill requires the President of the Florida State University to appoint a director of the institute to oversee implementation of the institute’s mission. The institute must annually submit a report on its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Among other things, the report must provide specific recommendations for improving the institute’s ability to fulfil its mission and changes to statewide charter school policy. The bill also requires the institute to provide for an annual financial audit by a certified public account and submit the audit to the Auditor General, the Board of Governors of the State University System, and the State Board of Education.

The bill also requires each charter school applicant to disclose in the application the name of each applicant, governing board member, and proposed management company, if any; the name and sponsor of any charter school currently or previously operated by such parties; and the academic and financial history of such charter schools. The sponsor must consider the past history of these entities in deciding to approve or deny the application. This change makes clear that sponsors have authority to evaluate the applicant’s history operating charter schools and aligns the law with the standard application currently in use and guidelines provided by the “*Principles and Standards*.”

²⁵ Rule 6A-1.0081, F.A.C. The sponsor and charter school governing board must mutually agree to the date by which the financial statements are to be submitted. *Id.*

²⁶ Presentations on charter schools and authorizers, *Hearing before the House Choice & Innovation Subcommittee* (Jan. 21, 2015); Discussion on charter school institute, *Hearing before the House Choice & Innovation Subcommittee* (Feb. 3, 2015).

Additionally, the bill requires a charter school's governing board to begin submitting financial statements to the sponsor upon approval of the charter contract. This change will enable the sponsor to monitor a newly created charter school's finances earlier, thereby strengthening the sponsor's ability to assess the school's financial readiness to begin serving students. Accordingly, the sponsor would have greater ability to identify deteriorating financial conditions and take corrective action to remedy financial deficiencies.

Currently, after approval of the charter by the sponsor, the charter school must begin operation at the beginning of the upcoming school year. The sponsor may waive this requirement for good cause.²⁷ The bill removes authority for a sponsor to grant a good cause waiver and authorizes a charter school that has been granted a charter to defer opening for up to two years to conduct facilities planning. A sponsor may not require a charter school's governing board to provide written notice of such deferral earlier than 15 days before the first day of school. Among other things, this change will enable a charter school more time to acquire adequate facilities if difficulties securing facilities arise.

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.²⁸ A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of "A" and no school grade below "B;"
- Has received an unqualified opinion²⁹ on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.³⁰

A high-performing charter school system (system) may be operated by a municipality or other public entity that is authorized by Florida law to operate a charter school; a private, not-for-profit, s. 501(c)(3) status corporation; or a private for-profit corporation.³¹ In order to earn "high-performing" status, a system must, in the previous three-year period:

- Operate at least three high-performing charter schools in Florida;
- Have at least 50 percent of its charter schools designated as "high-performing" and no charter school receiving a school grade of "D" or "F;" and
- Not receive an annual financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida.³²

Initial eligibility for "high-performing" status is verified by the Commissioner of Education, upon request by a charter school or system. Thereafter, the commissioner must annually verify continued eligibility.³³

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. The application process for such applications is streamlined to expedite approval.³⁴ A high-performing charter school may not be replicated more than once in any given year and may not

²⁷ Section 1002.33(6)(b)5., F.S.

²⁸ Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

²⁹ An unqualified audit opinion means that the charter school's financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

³⁰ Section 1002.331(1), F.S.; see s. 218.503(1), F.S. (financial emergency conditions).

³¹ Section 1002.332(1), F.S.

³² Section 1002.332(1), F.S. Exceptions to the eligibility criteria apply if the system operates a charter school established to turn around a chronically low-performing traditional public school and for charter schools opened to serve areas served by a low-performing traditional public school. Section 1002.33(1)(b)2., F.S.

³³ Sections 1002.331(5) and 1002.332(2)(a), F.S.

³⁴ Section 1002.331(2), F.S.

replicate again until the new charter school achieves “high-performing” status.³⁵ Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.³⁶ Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.³⁷

As of September 2014, 148 charter schools in 34 school districts and 1 state university were designated as “high-performing” and two systems were designated as high-performing systems – Doral, Inc. and McKeel Academy. Doral, Inc. is comprised of five charter schools, four of which are high-performing charter schools. McKeel Academy is comprised of three charter schools, each of which is a high-performing charter school.³⁸

Effect of Proposed Changes

Currently, a high-performing charter school may only replicate once in a given year, and may not replicate again until the newly created charter school achieves “high-performing” status, which takes at least three years. The bill provides that this limit does not apply to high-performing charter schools replicated to serve the attendance area of a traditional public school identified as in need of intervention and support under Florida’s system of school improvement and accountability or to meet needs identified by school districts. In all other cases, existing limits apply. This change expands the ability of high-performing charter schools to provide parental school choice in underserved areas or partner with school districts to meet specific district needs.

Legislation enacted in 2013 required the commissioner to annually determine a charter school’s or charter school system’s continued eligibility for “high-performing” status. A high-performing charter school or charter school system may maintain its “high-performing” status, unless the commissioner determines that the charter school or system no longer meets the eligibility criteria enumerated in law, one of which requires that the school not receive a grade below a “B”. Current language also provides for removal of a charter school’s “high-performing” status if it receives a school grade of “C” in any two years during the term of the 15-year charter. Because a high-performing school loses its status once its grade falls below a “B,” the provisions regarding consequences for receiving a “C” are obsolete. Accordingly, the bill repeals provisions regarding consequences for “C” grades.

Charter Termination or Nonrenewal

Present Situation

A sponsor may choose to terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state’s education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of financial management;
- A violation of law; or
- Other good cause shown.³⁹

The sponsor may immediately terminate a charter school’s charter if conditions at the school threaten the health, safety, or welfare of students.⁴⁰ Due process in the form of notice and, if requested, a formal hearing and opportunity to appeal must be provided to the charter school prior to a charter termination or nonrenewal. For immediate termination of a charter school, a hearing, if requested, may occur after termination.⁴¹

³⁵ Section 1002.331(3)(b), F.S.

³⁶ Section 1002.332(2), F.S.

³⁷ Section 1002.331(4), F.S.

³⁸ Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

³⁹ Section 1002.33(8)(a), F.S.

⁴⁰ Section 1002.33(8)(d), F.S.

⁴¹ Sections 1002.33(6)(c) and (8)(b)-(d), F.S.

In addition, the law requires a sponsor to terminate the charter of a charter school that earns two consecutive school grades of “F,” unless the charter school qualifies for one of three exceptions. In general, the exceptions apply to charter schools that specifically target hard-to-serve students and to traditional public schools that are reconstituted as charter schools pursuant to Florida’s system of school improvement and education accountability. The law is unclear whether the same due process procedures afforded to charter schools for discretionary or immediate terminations apply to “double “F”” terminations.⁴²

When a charter is not renewed or is terminated, unencumbered public funds from the charter school revert to the district school board, except that capital outlay and federal charter school grant funds revert to DOE for redistribution among eligible charter schools. Additionally, all district school board property and improvements, furnishings, and equipment purchased with public funds automatically revert to the district school board subject to satisfaction of any liens or encumbrances. The charter school’s governing board is responsible for all debts incurred by the charter school. Students enrolled in the charter school may apply to, and must be enrolled in, another public school in the school district. The law does not specifically apply these provisions to charter schools that close voluntarily.⁴³

Effect of Proposed Changes

The bill clarifies that “double “F”” termination occurs automatically when a charter school earns a second consecutive grade of “F,” after school grade appeals are final, unless an exception applies. The sponsor must notify, in writing, the charter school’s governing board, the charter school principal, and DOE. Hearings and appeals applicable to discretionary and immediate charter terminations are not applicable to “double “F”” terminations. The bill specifies that procedures regarding reversion of public funds and property purchased with public funds apply to “double “F”” terminations, as well as, voluntary closures.

Additionally, the bill requires the governing board of a charter school that closes voluntarily to notify the sponsor and DOE in writing within 7 calendar days of its decision to cease operations. The notice must state the reasons for the closure and acknowledge that the governing board agrees to follow the procedures for dissolution and reversion of public funds specified in law. The bill also specifically applies existing law regarding dissolution of the charter school, reversion of funds, debt, and reassignment of students to voluntary closures. This change will increase the likelihood that charter schools that close voluntarily follow the law regarding reversion of public funds. It will also provide more information to sponsors and DOE regarding the reasons leading to voluntary closure.

Charter School Cooperatives

Present Situation

The law authorizes charter schools to enter into cooperative agreements with other charter schools to provide planning and development, instructional, personnel administration, payroll, human resources, and evaluation and assessment services and teacher preparation and professional development.⁴⁴

Effect of Proposed Changes

The bill deletes the list of specific services that cooperative agreements may serve and instead states that charter schools may enter into such agreements to further any educational, operational, or administrative purposes in which participating charter schools share common interests. This change expands the ability of charter schools to collaborate and pool resources for shared objectives.

Distribution of Student Funding

⁴² Section 1002.33(9)(n)4., F.S.; s. 1008.33(4)(b)3. and (e), F.S.

⁴³ Section 1002.33(8)(e), F.S.

⁴⁴ Section 1002.33(13), F.S.

Present Situation

Charter school students are funded through the Florida Education Finance Program (FEFP), including categorical funding such as the research-based reading instruction allocation (reading allocation).⁴⁵ In general, the reading allocation must be used for such purposes as providing intensive reading instruction to struggling students or to support reading teachers through professional development or utilization of reading coaches. Each school district must annually submit a plan to DOE specifying how it will use the reading allocation.⁴⁶ Each charter school applicant must include in its application a reading curriculum that provides for differentiated reading instruction for students reading at or above grade level and for those reading below grade level. The curriculum must be aligned to state reading standards and grounded in scientific research. If the application is approved, the reading curriculum is incorporated into the charter school's charter.⁴⁷ Despite the requirement that charter schools adopt a reading curriculum as a condition of approval, some sponsors have required charter schools to use the school district's reading plan as a condition to receiving the reading allocation, and that plan is often dramatically different than the reading curriculum that the sponsor has already approved in the application and charter.⁴⁸

Sponsors must distribute funds to a charter school no later than 10 working days after the district school board receives a distribution of state or federal funds. If payment is not made to the charter school within 10 working days, the sponsor must also pay interest at a rate of 1 percent per month calculated daily on the unpaid balance for each day the payment is late.⁴⁹ One sponsor has previously indicated that it would delay disbursement of locally generated funds to charter schools until the funds were received by the school district.⁵⁰

Effect of Proposed Changes

The bill prohibits sponsors from requiring charter schools to adopt the school district's reading curriculum as a condition to receiving the research-based reading allocation. Furthermore, the bill specifies that the reading curriculum adopted in a charter school's charter satisfies the research-based reading plan requirement. The bill prohibits a sponsor 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. Additionally, the bill authorizes a nonprofit organization or municipality that operates a charter school to use unrestricted surplus or unrestricted net assets of the charter school identified in an annual financial audit for educational purposes that are consistent with the applicable provisions of Chapter 617 and Title XII of the Florida Statutes.

Local Education Agencies

Present Situation

Charter schools, like traditional public schools, receive federal education funding through such programs as Title I of the Elementary and Secondary Education Act (Title I)⁵¹ and the Individuals with Disabilities Education Act (IDEA).⁵² Typically, these programs are structured so that funding flows from the federal government to a state educational agency,⁵³ which then awards subgrants to local

⁴⁵ Sections 1002.33(17)(a)-(b) and 1011.62, 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 full-time equivalent (FTE) enrollment surveys. *See* s. 1002.33(17)(b), F.S.

⁴⁶ Section 1011.62(9), F.S.

⁴⁷ Section 1002.33(6)(a)4. and (7)(a)2.a., F.S.

⁴⁸ Florida Department of Education, *Legislative Bill Analysis on School Choice Priorities*, (Nov. 6, 2014).

⁴⁹ Section 1002.33(17)(e), F.S.

⁵⁰ Florida Department of Education, *Legislative Bill Analysis on School Choice Priorities*, (Nov. 6, 2014).

⁵¹ 20 U.S.C. s. 1400 et. seq.

⁵² 20 U.S.C. s. 6301 et. seq.; s. 1002.33(17)(c)-(d), F.S.

⁵³ The Florida Department of Education is Florida's state educational agency for federal funding purposes. *See* 20 U.S.C. s. 1412(a).

education agencies (LEA) within the state.⁵⁴ Each state determines which entities may serve as LEAs.⁵⁵ In most cases, Florida's school districts are the LEA for district public schools, including charter schools.⁵⁶

Each federal education funding program has unique policy goals and program requirements. A LEA must submit a separate application and implementation plan for each federal program.⁵⁷ LEAs must have the personnel and infrastructure necessary to maintain financial, procurement, and inventory management systems that meet federal requirements.⁵⁸ LEAs must also comply with record keeping and annual financial and performance accountability reporting requirements.⁵⁹ A LEA that fails to comply with the terms of a federal grant may be subject to withholding, suspension, or termination of grant funds or designated as a "high risk" grantee.⁶⁰ Grant recipients who commit fraud may be debarred or suspended from participation in all federally funded programs.⁶¹

Florida law authorizes a governing board that operates a system of charter schools to serve as its own LEA for federal funding purposes if it files a resolution with its sponsor and DOE, accepts full responsibility for all LEA requirements, and:

- Has all schools located in the same county;
- Has a total enrollment exceeding that of at least one Florida school district;
- Operates both conversion and nonconversion charter schools; and
- Does not contract with a for-profit management company to operate schools.⁶²

Although both are referred to as a "charter school system," provisions defining when a system may serve as a LEA and those defining a system for purposes of the high-performing charter school system designation are not synonymous.⁶³

Of the two charter school systems that meet the LEA criteria, only Lake Wales Charter Schools in Polk County has chosen to be a LEA.

Effect of Proposed Changes

The bill revises the criteria a charter school system must meet to qualify as a LEA. Under the bill, such a system may be designated as a LEA if the charter school for which it will be performing LEA duties are located in the same county, have a total student population exceeding at least one school district, and are governed by the same governing board. Criteria requiring the system to consist of both conversion and nonconversion charter schools and prohibiting the system from contracting with a management company are eliminated. The bill does not change the requirement that the governing board file a resolution with its sponsor and DOE.

This change may allow more charter school systems to directly administer federal funds generated by charter schools within the system. However, a system that chooses to serve as a LEA must acquire the infrastructure and expertise necessary to comply with federal requirements for LEAs.

⁵⁴ See 20 U.S.C. ss. 1412(a) and 1413(a).

⁵⁵ Federal law broadly defines the term LEA to include state boards of education, state departments of education, local school boards, cities, counties, political subdivisions, public postsecondary institutions, or any other public entities that a state's law authorizes to administer public elementary and secondary schools. See, e.g., 34 C.F.R. s. 77.1.

⁵⁶ Section 1002.33(17)(c), F.S.

⁵⁷ See, e.g., 20 U.S.C. s. 6312 (local education agency Title I plans).

⁵⁸ 34 C.F.R. ss. 76.702 and 80.20-80.26 (financial management); 34 C.F.R. s. 80.36 (procurement management); 34 C.F.R. ss. 80.32 and 80.33 (inventory management).

⁵⁹ 34 C.F.R. ss. 76.702, 80.36, 80.32, 80.33, and 80.42 (fiscal, procurement, and inventory management records); 34 C.F.R. s. 80.41 (financial reports include status, cash transaction, and capital outlay reports).

⁶⁰ 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees).

⁶¹ 34 C.F.R. s. 80.43(d); Exec. Order No. 12549, 34 C.F.R. s. 80.35.

⁶² Section 1002.33(25), F.S.

⁶³ Compare s. 1002.33(25), F.S., with s. 1002.332, F.S.

Other Charter School Changes

Charter School Capital Outlay

Among other things, a charter school must demonstrate that it is financially stable in order to be eligible for charter school capital outlay funding.⁶⁴ However, the law does not specify how financial stability is to be determined.⁶⁵ The bill requires, for purposes of determining eligibility for capital outlay funding, that a charter school have no financial emergency conditions on its annual financial audit for the most recent fiscal year for which an audit is available.

Governing Board Meetings

Florida law requires each charter school's governing board to hold at least two open public meetings per school year in the school district where the charter school is located. The charter school principal and a parent liaison appointed by the board must be physically present at these meetings. Governing board members are not required to attend these meetings in person.⁶⁶ The bill relocates the aforementioned governing board meeting provisions to a more appropriate subdivision of the charter school statute. Additionally, the bill specifically authorizes a governing board member to attend biannual public meetings by communications media technology used in compliance with Administration Commission rules.⁶⁷

Alternative Teacher Certification

A professional education competence demonstration program (PEC Program) is an alternative teacher certification pathway that enables a classroom teacher who holds a temporary certificate to obtain full professional certification. The law requires each school district to establish a PEC Program. Establishing a PEC Program is optional for other "state-supported public schools" and private schools. PEC Programs must be approved by DOE prior to implementation and approval is reevaluated annually.⁶⁸ The bill clarifies that a charter school, as a "supported public school," may offer a PEC Program to enable its teachers on temporary certificates to obtain a professional teaching certificate.

Student Eligibility for Virtual Instruction

Present Situation

Florida law establishes a variety of options to make virtual instruction accessible to students in kindergarten through grade 12. These options include:

- Full-time or part-time enrollment in a school district virtual instruction program (VIP).⁶⁹
- Full-time enrollment in a virtual charter school.⁷⁰
- Enrollment in individual virtual courses offered by school districts and approved by DOE.⁷¹
- Full-time or part-time enrollment in the Florida Virtual School (FLVS) or school district FLVS franchises.⁷²

⁶⁴ Section 1013.62(1)(a), F.S.

⁶⁵ See, e.g., ss. 1002.331 and 1002.345, F.S.

⁶⁶ Section 1002.33(7)(d), F.S. The parent liaison must reside in the school district where the charter school is located and may be a governing board member, charter school employee, or contracted individual. The governing board must appoint a separate liaison for each charter school it operates in the district. The law prohibits a sponsor from requiring governing board members to reside in the school district if the governing board complies with these requirements. *Id.*

⁶⁷ Florida law requires the Administration Commission to adopt uniform rules for conducting public meetings by means of communications media technology. Sections 120.54(5)(b)2. and 1002.33(7)(d), F.S.; ch. 28-109, F.A.C.

⁶⁸ Section 1012.56(8)(b), F.S.; rule 6A-5.066(1)(d) and (2), F.A.C.

⁶⁹ Section 1002.45, F.S.

⁷⁰ Sections 1002.33(1) and 1002.45(1)(d), F.S.

⁷¹ Section 1003.498, F.S.

⁷² Sections 1002.37 and 1002.45(1)(a)1. and (c)1., F.S.

Student enrollment in a full-time or part-time school district virtual instruction program (VIP), a full-time virtual charter school, or a school district virtual course offering is open to any student residing in the district who.⁷³

- Attended a Florida public school during the prior year and was enrolled and reported for funding during the October and February Florida Education Finance Program (FEFP) surveys;
- Is the dependent child of a member of the United States military who, within 12 months of the parent's permanent change of station order, transferred to Florida from another state or from a foreign country;
- Was enrolled in a school district virtual instruction program or a full-time FLVS program during the prior school year;
- Has a sibling who is currently enrolled in a school district virtual instruction program and the sibling was enrolled in such program at the end of the prior school year.
- Is eligible to enter kindergarten or first grade; or
- Is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school, or FLVS.⁷⁴

FLVS or a district FLVS franchise may provide full-time and part-time instruction for students in kindergarten through grade 12. However, students in kindergarten through grade 5 must meet at least one of the eligibility criteria listed above to access part-time instruction in such programs.⁷⁵

Eligibility for Virtual Instruction							
Students Not Enrolled in Public School During the Previous School Year							
Grade Level	Full-Time			Part-Time			
	FLVS	District VIP	District FLVS Franchise	FLVS	District VIP	District FLVS Franchise	District Virtual Course
K							
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
KEY							
	Student is Eligible						
	Student must meet prior public school requirement						
	No part-time virtual options for students who were not enrolled in public school during the prior year						

Consequently, students in 2nd through 5th grades are not eligible for enrollment in part-time virtual instruction unless they meet eligibility criteria pertaining to prior public school attendance, dependent children of military personnel, or siblings.⁷⁶

⁷³ Sections 1002.45(5) and 1002.455(2), F.S.

⁷⁴ Section 1002.455(2), F.S.

⁷⁵ Section 1002.37(8)(a), F.S.

Effect of Proposed Changes

The bill repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction. This change will open various virtual education options that are not currently available to students who did not attend public school in the prior year, as follows:

- Students in 6th through 12th grades may enroll in full-time school district VIP programs.
- Students in 2nd through 5th grades may enroll in part-time FLVS or district FLVS franchises.
- Students in 2nd through 12th grades may enroll in part-time school district VIP.
- Students in 2nd through 12th grades may enroll in school district virtual course offerings.

Most notably, this change gives students in 2nd through 5th grades who did not attend public school in the prior year the ability to enroll in part-time virtual instruction, whereas under current law, these students have no such options.

Virtual Instruction Providers

Present Situation

The law designates the FLVS, school district FLVS franchises, and Florida College System institutions as “approved providers.” The law also prescribes a process in which other virtual instruction providers may obtain DOE-approval to offer services to public school districts. DOE must annually publish a list of approved providers.⁷⁷ Currently, a DOE-approved virtual instruction provider’s contract must be terminated if the provider earns a school grade of “D” or “F” or a school improvement rating of “Unsatisfactory” in any two years of a consecutive four year period. In such cases, the provider must be removed from the DOE-approved provider list for a period of at least one year. Among other things, the provider may not regain “approved provider” status until it demonstrates to DOE that academic performance deficiencies have been remedied.⁷⁸

Effect of Proposed Changes

The bill provides that a virtual instruction provider’s contract must be terminated, and the provider loses “approved provider” status, if the provider earns two consecutive school grades of “F” or school improvement ratings of “Unsatisfactory.”

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.33, F.S., relating to charter schools.

Section 2. Amends s. 1002.331, F.S., relating to high-performing charter schools.

Section 3. Amends s. 1002.37, F.S., relating to the Florida Virtual School.

Section 4. Amends s. 1002.45, F.S., relating to virtual instruction programs.

Section 5. Repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction.

Section 6. Amends s. 1003.498, F.S., relating to school district virtual course offerings.

Section 7. Creates s. 1004.650, F.S., relating to the Florida Institute for Charter School Innovation.

Section 8. Amends s. 1011.62, F.S., relating to funds for operation of schools.

Section 9. Amends s. 1012.56, F.S., relating to educator certification.

⁷⁶ Section 1002.455(2), F.S.

⁷⁷ Section 1002.45(2)(a), F.S.

⁷⁸ Section 1002.45(8)(d), F.S.

Section 10. Amends s. 1013.62, F.S., relating to charter schools capital outlay funding.

Section 11. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction. This change will open various virtual education options that are not currently available to students who did not attend public school in the prior year. The bill provides an appropriation of \$4,184,000 to the Florida Education Finance Program for FY 2015-16 to fund the expansion of student eligibility for public virtual education.

The bill establishes the Florida Institute for Charter School Innovation within the Florida State University. Among other things, the institute will assist applicants in developing charter school application proposals. Performance of these activities will require the institute to hire or subcontract with individuals with expertise in such areas as school finance, governance, operations, academics and curriculum, and exceptional student education services. It is estimated that approximately 5-6 full-time staff are needed to operate the institute. Funds will also be required to hire subcontractors to review applications. The bill provides an appropriation of \$1,000,000 to Florida State University to establish the Florida Institute for Charter School Innovation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Provisions expanding the purposes of cooperative agreements may provide charter schools with new opportunities to pool resources and achieve cost savings.

D. FISCAL COMMENTS:

The bill revises the criteria enabling a charter school system to serve as a LEA for purposes of administering federal education funds. This may allow more charter school systems to directly administer federal funds generated by charter schools within the system. However, a system that chooses to serve as a LEA would have to acquire the infrastructure and expertise necessary to comply with federal requirements for LEAs.

The bill clarifies that a sponsor may not require a charter school to adopt the school district's reading curriculum as a condition to receiving a share of the research-based reading allocation. This may increase the number of charter schools that receive a share of the allocation.

The bill authorizes a nonprofit organization or municipality that operates a charter school to use unrestricted surplus or unrestricted net assets of the charter school identified in an annual financial

audit for educational purposes that are consistent with the applicable provisions of Chapter 617 and Title XII of the Florida Statutes.

The bill provides clearer guidance to DOE in determining whether a charter school is financially stable enough to merit an award of capital outlay funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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 12, 2015, the Education Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments added provisions:

- Authorizing a charter school that has been granted a charter to defer opening for up to two years to conduct facilities planning.
- Authorizing a nonprofit organization or municipality that operates a charter school to use unrestricted surplus or unrestricted net assets of the charter school identified in an annual financial audit for other educational purposes.
- Providing an appropriation of \$4,184,000 to the Florida Education Finance Program for FY 2015-16 to fund the bill's expansion of student eligibility for public virtual education.
- Providing an appropriation of \$1,000,000 to Florida State University to establish the Florida Institute for Charter School Innovation.

This bill analysis is drafted to the committee substitute.