

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 865 Charter Schools

SPONSOR(S): Secondary Education & Career Development Subcommittee, Rizo

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Secondary Education & Career Development Subcommittee	13 Y, 2 N, As CS	Sleap	Sanchez
2) PreK-12 Appropriations Subcommittee	10 Y, 2 N	Bailey	Potvin
3) Education & Employment Committee		Sleap	Hassell

SUMMARY ANALYSIS

The bill establishes the Charter School Review Commission (CSRC) within Florida's Department of Education to assist in the review and approval of charter school applications. The bill:

- establishes the membership of the CSRC and 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 school applications; and
- requires a district school board which oversees the school district where a proposed charter school will be located to sponsor and supervise the charter school approved by the CSRC.

In addition, the bill makes the following changes:

- prohibits a sponsor from imposing any additional reporting requirements unless the charter school is under a deteriorating financial condition or financial emergency;
- authorizes a charter school which meets specified criteria and receives a school grade lower than a "B," to be granted a 5-year charter renewal and requires a 15-year charter renewal be granted to a charter school that receives a school grade of "A" or "B";
- makes exempt from ad valorem taxes any property utilized by a charter school and authorizes any facility or land owned by a Florida College System institution or university, any similar public institutional facilities, and any facility recently used to house a school or child care facility to provide space to charter schools under the facility's existing zoning and land use designations;
- prohibits a charter school from being subject to land use regulations which would not be required of a public school and authorizes a charter school to use a school district's interlocal agreement;
- provides that an interlocal agreement or ordinance which imposes a greater regulatory burden on a charter school is void and unenforceable;
- provides for the right to bring expedited action in circuit court to enforce specified rights, to include the award of attorney fees and court costs;
- requires a proportionate share of the educational impact fees to be designated for the construction of charter school facilities created for a specified purpose;
- revises the criteria for nonrenewal or termination of a charter by repealing "other good cause shown" as grounds and requires a charter school to be under a deteriorating financial condition or financial emergency to not renew or terminate a charter for fiscal management; and
- requires the Office of Program Policy Analysis and Government Accountability to conduct an analysis of charter school capital outlay and submit a report to the Governor and Legislature.

The bill has an indeterminate fiscal impact. See Fiscal Comments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter School Authorization in Florida

Present Situation

All charter schools in Florida are tuition-free public schools within the state's public education system.¹ One of the guiding principles of charter schools is to "meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system."² During the 2020-2021 school year, 341,926 students were enrolled in 687 charter schools in Florida.³

In Florida, several types of entities may authorize or "sponsor" charter schools:

- School districts, Florida College System (FCS) institutions, and state universities may sponsor charter schools.⁴
- State universities may sponsor charter lab schools.⁵
- School districts, FCS institutions, or a consortium of school districts or FCS institutions may sponsor a charter technical career center.⁶

To address the needs of educational capacity, workforce qualifications, and career education opportunities that may extend beyond a school district's boundaries, in 2021, the Legislature authorized Florida's state universities and FCS institutions to solicit applications and sponsor charter schools upon approval by the Department of Education (DOE).⁷ A state university sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands.⁸ A FCS institution sponsored charter school may exist in any county within its service area⁹ to meet workforce demands and the school may offer postsecondary programs leading to industry certifications for the school's students.¹⁰

Currently, almost all of Florida's charter schools are sponsored by school districts.¹¹

Charter School Sponsor Duties

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

² Section 1002.33(2)(a)1., F.S.

³ Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (Sept. 2021), available at <https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2021.pdf>.

⁴ Section 1002.33(5)(a)1.-3., F.S.; In 2021, the Legislature authorized Florida's state universities and FCS institutions to solicit applications and sponsor charter schools upon approval by the DOE. A state university or FCS institution may, at its discretion, deny an application for a charter school. S. 1002.33(5)(a)3.c., F.S.

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

⁶ Section 1002.34(3)(a)-(b), F.S.

⁷ Section 4, ch. 2021-35, L.O.F. (2021). A state university or FCS institution may, at its discretion, deny an application for a charter school. S. 1002.33(5)(a)3.c., F.S. The Board of Trustees of a sponsoring state university or FCS institution is the local educational agency for all charter schools it sponsors for purposes of receiving federal funds and accepting full responsibility for all local educational agency requirements and responsibilities. S. 1002.33(5)(b)6. F.S.

⁸ Section 1002.33(5)(a)3.a., F.S.

⁹ Section 1000.21(3)(a)-(bb), F.S.

¹⁰ Section 1002.33(5)(a)3.b., F.S.

¹¹ See, e.g., Florida Department of Education, *Directory of Charter Schools*, <https://www.fldoe.org/schools/school-choice/charter-schools/charter-school-directories/> (last visited Feb. 16, 2022).

A sponsor's responsibilities include:

- approving or denying charter school applications;
- overseeing each sponsored charter school's progress toward the goals established in the charter;
- monitoring the revenues and expenditures of the charter school;
- ensuring that the charter school participates in the state's education accountability system; and
- intervening when a sponsored charter school demonstrates deficient student performance or financial instability.¹²

A sponsor must provide various administrative services to sponsored charter schools, such as contract management, student enrollment and achievement data reporting, exceptional student education program administration, eligibility determination and reporting for National School Lunch Program, assessment test administration, processing of teacher certification data and student information services.¹³

Interlocal Agreements

A school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities in the inspection, issuance, and other necessary activities for permits, licenses, and permissions a charter school needs for development, construction, or operation.¹⁴ The interlocal agreements must include the fees a charter school will be charged for such services. A charter school may use, but is not required to use, a school district for these services.¹⁵ Any interlocal agreement between a school district and a federal or state agency, county, municipality, or other governmental entity which prohibits or limits the creation of a charter school within the geographic borders of the school district is void and unenforceable.¹⁶

Effect of Proposed Changes

The bill creates the Charter School Review Commission (CSRC) within Florida's DOE to review and approve applications for charter schools overseen by district school boards.

The bill establishes the membership of the CSRC as seven members who have charter school experience, are selected by the Commissioner of Education with one member designated as chair, and are subject to confirmation by the Florida Senate. Each member of the CSRC must be appointed to a 4-year term, however for the purpose of achieving staggered terms, the bill requires three members to have an initial appointment to 2-year terms and four members to 4-year terms. A majority of the members present constitutes a quorum for the CSRC.

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 school applications. The bill requires a district school board which oversees the school district where a proposed charter school will be located to sponsor and supervise the charter school approved by the CSRC.

Upon the CSRC's decision to grant an application for a charter school, the bill requires a district school board to provide within 30 calendar days an initial proposed charter contract to the charter school.

The bill specifies that the decisions of the CRSC are subject to the same appeals process currently provided in law and makes conforming changes to reflect the authorization of the CRSC to solicit and review applications for charter schools.

¹² Section 1002.33(5)(b), F.S.

¹³ Section 1002.33(20)(a)1., F.S.

¹⁴ Section 1002.33(5)(b)5., F.S.

¹⁵ *Id.*

¹⁶ *Id.*

The bill provides legislative intent for charter school students in Florida to be considered as important as all other students in the state, and to that end, comparable funding levels from existing and future sources should be maintained for charter school students.

The bill prohibits a sponsor from imposing any additional reporting requirements on a charter school unless the school is under a deteriorating financial condition¹⁷ or financial emergency.¹⁸

The bill provides that any interlocal agreement or ordinance which imposes a greater regulatory burden on charter schools than school districts or which limits the creation of a charter school is void and unenforceable. The bill authorizes an aggrieved school or entity, or a charter school membership association or charter management organization, to bring an expedited action in circuit court to enforce its rights by a declaratory action, including injunctive relief, if any public official or employee, or the local governing authority does not comply with the law. The bill provides that a party which receives declaratory relief, may be awarded reasonable attorney fees and court costs.

The bill authorizes a charter school to use an interlocal agreement entered into by a school district for the development of district schools.

Establishing a Charter School

Present Situation

Charter schools are created through an agreement, or "charter," between a charter governing board and a sponsor. The charter provides the school flexibility relative to regulations created for traditional public schools in return for a commitment to higher standards of accountability.¹⁹ The sponsor and the governing board of the charter must use the standard charter contract developed by the DOE,²⁰ and the sponsor may not impose unreasonable rules or regulations which violate the intent of greater flexibility to meet educational goals.²¹

The initial term of a charter is five years, excluding two planning years.²² The charter must include:²³

- the students to be served, including ages and grade levels;
- the curriculum focus and instructional methods to be used;²⁴
- baseline standards of student academic achievement, outcomes to be achieved and methods of measurement to be used;²⁵

¹⁷ Section 1002.345(1)(a)3., F.S. A deteriorating financial condition means a circumstance that significantly impairs the ability of a charter school or a charter technical career center to generate enough revenues to meet its expenditures without causing the determination of a financial emergency.

¹⁸ Section 1002.345(2)(a)1., F.S. A financial emergency is when a financial audit conducted by a certified public accountant reveals that one or more of the conditions in S. 218.503(1), F.S., have occurred or will occur if action is not taken to assist the charter school or charter technical career center.

¹⁹ Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (Sept. 2021), available at <https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2021.pdf>.

²⁰ Section 1002.33(7), F.S.; see also Florida Department of Education, *Florida Standard Charter Renewal Contract-Form IEPC-SCR* (Dec. 2019), available at <https://www.fldoe.org/core/fileparse.php/7700/urlt/IEPC-SCR.PDF>.

²¹ Section 1002.33(7), F.S.

²² Section 1002.33(7)(a)12., F.S.

²³ Section 1002.33(7)(a)1.-19., F.S.

²⁴ The charter must ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction to students who are reading below grade level. Additionally, to provide students with access to diverse instructional delivery models, charter schools may implement blended learning courses. S. 1002.33(7)(a)2.a.-b., F.S.

²⁵ The district schoolboard is required to provide academic student performance data for students coming from the district school system to the charter, as well as rates of academic progress of comparable student populations in the district. S. 1002.33(7)(a)3., F.S. (flush-left provision at the end of the sub-subparagraph).

- the method for determining the strengths and needs of students and whether they are meeting educational goals²⁶ and for secondary charter schools,²⁷ the method to determine a student has satisfied the requirements for high school graduation;
- the method for resolving conflicts between the governing body and the sponsor;
- admission and dismissal procedures and the school's student conduct code;
- methods for achieving a racial/ethnic balance reflective of the community served;
- the financial and administrative management of the school, including experience required for management positions and a description of internal audit controls;
- asset and liability projections;
- a description of plans to identify various risks, reduce losses and ensure student and faculty safety;
- an agreement that the charter may be cancelled if the school has made insufficient progress with student achievement;
- the facilities to be used;
- teacher qualifications, governance structure and timetables for implementing each element of the charter;
- full disclosure of all charter school employees who are relatives of charter school officials and employees who have decision making authority over charter school operations; and
- provisions for implementing high-performing charter school benefits if the charter school is designated as "high-performing."

The charter may be renewed at the end of its term if a program review conducted by the sponsor demonstrates that the goals and criteria stated in the charter have been met and that no grounds for nonrenewal have occurred.²⁸

Charter schools operated by a municipality or other public entity and charter lab schools are eligible for a 15-year initial charter to facilitate access to long-term financial resources for charter school construction.²⁹ Charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation may receive a 15-year initial charter upon approval by the sponsor.³⁰

Additionally, Florida law provides opportunities for charter schools that demonstrate strong academic performance and fiscal stability to be granted a 15-year charter renewal. A sponsor:

- may grant a 15-year charter renewal to a charter school that has operated for at least 3 years, demonstrates exemplary academic programming and fiscal management and for which no documented grounds for nonrenewal exist;³¹ and
- must grant a 15-year charter renewal to a charter school that meets the above requirements, receives a school grade of "A" or "B" in 3 out of 4 years and is not in a state of financial emergency or deficit position.³²

A high-performing charter school may receive a modification of its charter to a term of 15 years or a 15-year charter renewal.³³ The charter may be modified or renewed for a lesser term at the option of the charter school.³⁴ Long-term charters are subject to annual review and may be terminated for reasons set forth in law.³⁵

²⁶ Students enrolled in a charter school must, at a minimum, participate in Florida's statewide assessments. S. 1002.33(7)(a)4., F.S.

²⁷ In this context, the term "secondary education" is synonymous with "middle or high school" (grades 6 through 12). Generally, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. *See* s. 1003.01(2), F.S. (definition of "school").

²⁸ Section 1002.33(7)(c)1., F.S.

²⁹ Section 1002.33(7)(a)12., F.S.

³⁰ *Id.*

³¹ Section 1002.33(7)(c)1., F.S.

³² Section 1002.33(7)(c)2., F.S.

³³ Section 1002.331(2)(e), F.S.

³⁴ *Id.*

³⁵ Sections 1002.33(7)(a)12., 1002.33(7)(c)1.-2., and 1002.331(2)(e), F.S.

Causes for Nonrenewal or Termination of a Charter

A charter school sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter. However, a sponsor also has the discretion to terminate or not renew a charter for any of the following reasons:³⁶

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

A sponsor must provide at least 90 days written notice to the charter school prior to termination or nonrenewal.³⁷ The notice must state, in reasonable detail, the grounds for the termination or nonrenewal, and must specify that the charter school's governing board has 14 days after receiving such a notice to request a hearing.³⁸ A charter school's governing board which is notified of termination or nonrenewal is entitled to a formal hearing with an administrative law judge within 90 days after receipt of the request for a hearing.³⁹ The administrative law judge must issue a final order to the sponsor. The charter school's governing board may appeal the final order to the district court of appeal.⁴⁰

A charter may be terminated immediately if the sponsor sets forth particular facts and circumstances demonstrating that an immediate and serious danger to the health, safety or welfare of the students exists and is likely to continue.⁴¹ A charter may also be terminated by a charter school's governing board through a voluntary closure.⁴²

In the 2020-2021 school year, nine charter schools closed, three of which were voluntarily closed by the sponsor.⁴³

Effect of Proposed Changes

The bill provides that a charter school which receives a school grade lower than a "B" in the most recent graded school year, and has met the terms of its program review with no grounds for nonrenewal being expressly found, must be granted no less than a 5-year charter renewal, notwithstanding the provisions of law which govern the actions of an academically struggling charter school.⁴⁴

The bill requires a 15-year charter renewal be granted to a charter school which 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, provided the school is not in a state of financial emergency.

The bill revises the criteria for nonrenewal or termination of a charter to:

³⁶ Section 1002.33(8)(a)1.-4., F.S.

³⁷ Section 1002.33(8)(b), F.S.

³⁸ *Id.*

³⁹ Section 1002.33(8)(b), F.S.

⁴⁰ Section 1002.33(8)(b), F.S. The administrative law judge must award reasonable attorney fees and costs to the prevailing party of any injunction, administrative proceeding, or appeal. S. 1002.33(8)(b) and (c), F.S.

⁴¹ Section 1002.33(8)(c), F.S. The sponsor must notify, in writing, the charter school's governing board, the charter school principal, and the DOE of the facts and circumstances supporting the immediate termination.

⁴² Section 1002.33(7)(e), F.S.

⁴³ Email from Jessica Fowler, Deputy Director of Legislative Affairs, Florida Department of Education, RE: Request for School Choice Information (Aug. 23, 2021).

⁴⁴ Section 1002.33(9)(n)1.-3., F.S. Charter schools that earn a school grade of "D" or "F" must develop a school improvement plan, which must be approved by the sponsor. Corrective actions are required for charter schools earning three consecutive grades below a "C". The sponsor of a charter school that earns two consecutive grades of "F," must terminate a charter school unless the charter school qualifies for an exception.

- 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 mismanagement.
- Remove “other good cause shown” as a grounds for the termination or nonrenewal of a charter school.

Charter School Governing Board

Present Situation

Each charter school must have a governing board. The board is responsible for:

- negotiating the school’s charter agreement with its sponsor;
- exercising continuing oversight over the school’s operations;
- adopting and maintaining an annual operating budget;
- ensuring that annual audits are conducted;
- submitting monthly financial statements to the sponsor and implementing corrective actions to remedy financial instability;
- submitting the school’s annual progress report to the sponsor; and
- adopting policies which establish standards of ethical conduct for educational support employees, instructional personnel, and school administrators.⁴⁵

Each board member must participate in governance training, approved by the DOE, which must include such topics as government in the sunshine, conflicts of interest, ethics and financial responsibility.⁴⁶ Members must complete a minimum of 4-hours of initial training and a 2-hour refresher course at least once every three years thereafter.⁴⁷

Each charter school’s governing board must hold at least two public meetings per school year.⁴⁸ The meetings must be noticed, open and accessible to the public. The appointed representative and charter school principal or director or their designee, must be physically present at each meeting. A governing board member may attend the meetings by communications media technology used in compliance with Administration Commission rules.⁴⁹

Effect of Proposed Changes

The bill authorizes a member of a committee formed or designated by a charter school governing board to attend meetings by communications media technology⁵⁰ authorized under the Administration Commission’s rules.

Charter School Facilities

Present Situation

Current law prohibits local governing authorities from adopting or imposing any local building requirements or site-development restrictions that are addressed by and more stringent than those found in the State Requirements for Education Facilities (SREF) of the Florida Building Code.⁵¹ A local governing authority must treat charter schools equitably in comparison to similar requirements,

⁴⁵ Section 1002.33(7), (9)(h)-(k), and (12)(g)3. F.S.

⁴⁶ Section 1002.33(9)(j)5., F.S.; *see also* rule 6A-6.0784(1)(b), F.A.C.

⁴⁷ Rule 6A-6.0784(1)(b), F.A.C.

⁴⁸ Section 1002.33(9)(p)3., F.S.

⁴⁹ *Id.* *See also*, Op. Att’y Gen. Fla. 98-28 (1998) and Op. Att’y Gen. Fla. 2003-41 (2003); The School District of Palm Beach County, *School Advisory Council Training* (Spring 2014), at 35, *available at*, https://www.palmbeachschools.org/students_parents/school_advisory_council_sac/training/.

⁵⁰ Rule 28-109.002, F.A.C. defines “communications media technology” as the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.

⁵¹ Section 1002.33(18)(a), F.S.

restrictions, and site planning processes imposed upon public schools that are not charter schools.⁵² If an official or employee of the local governing authority does not comply with the law and adopts or imposes additional requirements or restrictions, the aggrieved school or entity has an immediate right to bring an action in circuit court to enforce its rights by injunction, and if injunctive relief is granted, the aggrieved party may be awarded attorney fees and court costs.⁵³

Any facility or portion of a facility, which is used to house a charter school is exempt from ad valorem taxes, and specified entities, including a library, community service, museum, performing arts, theatre, cinema, church, an FCS institution, college, and university may provide space to charter schools within their facilities under their preexisting zoning and land use designations.⁵⁴

If a charter school is housed in a facility that is not 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.

If a charter school facility is created to mitigate the educational impact created by the development of new residential units, some or all of the educational impact fees required to be paid by the developer may be designated for the construction of the charter school facilities which will mitigate the student station impact.⁵⁵ Such facilities must be built to the SREF and owned by a public or nonprofit entity.

Effect of Proposed Changes

The bill prohibits a charter school from being subject to any land use regulation which requires a change to a local government comprehensive plan⁵⁶ or requiring a development order⁵⁷ or development permit⁵⁸ that would not be otherwise required for a public school in the same location.

The bill provides that an aggrieved school or entity, or a charter school membership association or charter management organization, has standing and an immediate right to bring an expedited action in circuit court to enforce its rights by a declaratory action, including injunctive relief, if a public official, employee, or the local governing authority refuses to comply with the law. Under the bill, the aggrieved party that receives declaratory relief may be awarded attorney fees and court costs.

The bill makes exempt from ad valorem taxes, any property utilized by a charter school and provides that any facility or land owned by an FCS institution or university, similar public institutional facilities, and any facility recently used to house a school or child care center may provide space to charter schools under their preexisting zoning and land use designations.

The bill requires a proportionate share of costs per student station, rather than some or all, of educational impact fees to be designated for the construction of charter school facilities which are created to mitigate the educational impact of the development of new residential dwelling units.

District School Tax- Charter School Capital Outlay

Present Situation

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Section 1002.33(18)(c), F.S.

⁵⁵ Section 1002.33(18)(f), F.S.; Student station is used for planning purposes and is defined as the net square footage requirements per student (in full-time equivalency) based upon the instructional program to be housed and is primarily used to determine student capacity of a school. Florida Department of Education, Office of Educational Facilities, *State Requirements for Educational Facilities* (2014), at 11, available at <https://www.fldoe.org/core/fileparse.php/7738/urlt/srefrule14.pdf>.

⁵⁶ Section 163.3164(10).F.S.

⁵⁷ Section 163.3164(15), F.S. “Development order” is defined as any order granting, denying, or granting with conditions an application for a development permit.

⁵⁸ Section 163.3164(16), F.S. “Development permit” is defined as any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

In order to receive funds under the Florida Education Finance Program for the operation of schools, a district school board must levy the millage⁵⁹ set for its required local effort from property taxes.⁶⁰ A school district's millage rate may not exceed the amount certified by the Commissioner of Education as the minimum millage rate necessary to provide the district required local effort for the current year.⁶¹

In addition to the required local effort, each school district may levy a discretionary nonvoted current operating millage.⁶² The Legislature prescribes annually in the General Appropriations Act (GAA) the maximum amount of millage a district may levy. For the 2021-2022 Fiscal Year (FY), the Legislature set a maximum levy of 0.748 mills.⁶³

In addition to the maximum discretionary levy of nonvoted current operating millage, a school board may also levy no more than 1.5 mills for charter schools and for district schools to fund:⁶⁴

- New construction, remodeling projects, sites and site improvement or expansion to new sites, existing sites, auxiliary facilities, athletic facilities, or ancillary facilities.
- Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies.
- The purchase, lease-purchase, or lease of school buses.
- The purchase, lease-purchase, or lease of new and replacement equipment, including computer and device hardware and enterprise resource software.
- Lease and lease-purchase agreements for educational facilities.
- Costs related to compliance with state and federal environmental requirements.
- Costs of opening day collection for the library media center of a new school.
- Costs of school buses when a school district contracts with a private entity to provide transportation services.
- Specified loans.

Charter School Capital Outlay

For FY 2021-2022, charter school capital outlay funding consists of state funds appropriated in the FY 2021-2022 GAA in the amount of \$182,864,353 and not revenue from the 1.5 discretionary mileage a school district may levy.⁶⁵ While current law does not prohibit school districts from sharing any of the 1.5 discretionary millage revenue with charter schools, the amount appropriated by the Legislature in the GAA does not require a school district to do so.⁶⁶

Beginning in FY 2022-2023, charter school capital outlay funding will consist of state funds when funds are appropriated in the GAA and revenue resulting from the 1.5 discretionary millage a school district levies if the amount of state funds appropriated for charter school capital outlay is less than the average charter school capital outlay funds per unweighted full-time equivalent student for FY 2018-2019, 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.⁶⁷

To be eligible for charter school capital outlay funding, a charter school must:

⁵⁹ Section 200.001(3)(a)-(e), F.S. School millage is composed of 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.

⁶⁰ Section 1011.71(1), F.S.

⁶¹ *Id.* The state average millage was set at 3.606; for the 67 school districts, the certified required millage varied from 3.734 mills (Suwannee County) to 1.486 mills (Monroe County). *see* Florida Department of Education, *2021-22 Funding for Florida School Districts*, at 4, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>.

⁶² Section 1011.71(1), F.S.

⁶³ Specific Appropriation 90, s. 2, ch. 2021-36, L.O.F.

⁶⁴ Section 1011.71(2)(a)-(i), F.S.

⁶⁵ Section 1013.62(1), F.S. and Specific Appropriation 19, s. 2, ch. 2021-36, L.O.F.

⁶⁶ Section 1013.62(1), F.S.; *see also* Florida Department of Education, *2021-22 Funding for Florida School Districts*, at 4, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>.

⁶⁷ Section 1013.62(1), F.S.

- be in operation for at least two years;
- 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 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 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.⁶⁸

In addition, a charter school must:

- have an annual audit that does not reveal a financial emergency for the most recent fiscal year for which such audit results are available;
- have satisfactory student achievement based upon the state accountability standards applicable to charter schools;
- have received final approval from its sponsor for operation during that fiscal year; and
- serve students in facilities that are not provided by the charter school sponsor.⁶⁹

Capital outlay funds may be used by a charter school's governing board for the following:⁷⁰

- Purchase of real property.
- Construction of school facilities.
- Purchase, lease-purchase or lease of permanent or relocatable school facilities.
- Purchase of vehicles to transport students to and from the charter school.
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- Purchase, lease-purchase or lease of driver's education vehicles, motor vehicles used for the maintenance or operation of plants and equipment, security vehicles, or vehicles used in storing or distributing materials and equipment.
- Purchase, lease-purchase, or lease of computer and device hardware and operating system software necessary for gaining access to or enhancing the use of electronic and digital instructional content and resources.
- Payment of the cost of the opening day collection for the library media center of a new school.

Effect of Proposed Changes

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an analysis of the current methodologies for the distribution of capital outlay funds to charter schools and make recommendations that provide for a more equitable allocation of capital outlay funds for all public schools. The OPPAGA analysis must include, at a minimum, the following:

- An analysis of the calculation methodology the DOE must use to allocate state funds appropriated in the GAA for charter school capital outlay funding to eligible charter schools.
- An analysis of the calculation methodology used by the DOE to determine the amount of revenue a school district must distribute to each eligible charter school if the school board levies the discretionary millage up to 1.5 mills and state funds appropriated for charter school capital outlay funding is less.
- For the most recent three years, a comparison of the charter school capital outlay amounts between the allocation of state funds and revenue that would result from the discretionary millage of up to 1.5 mills a school board may levy.

⁶⁸ Section 1013.62(1)(a)1.a.-f., F.S.

⁶⁹ Section 1013.62(1)(a)2.-5., 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. S. 1013.62(1)(b), F.S.

⁷⁰ Section 1013.62(4)(a)-(i), F.S.

- Other state policies and methodologies for the distribution of charter school capital outlay funds.

The bill requires OPPAGA to 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. SECTION DIRECTORY:

Section 1. Creates s. 1002.3301, F.S.; creating the Charter School Review Commission within the Department of Education; providing the purpose of the commission; specifying membership of the commission and the duration of members' terms; requiring the Commissioner of Education to appoint members, subject to confirmation by the Senate; providing that a majority of the commission members constitutes a quorum; providing that the commission has the same powers and duties relating to reviewing and approving charter schools as a sponsor; designating the district school board where a proposed charter school will be located as the new charter school's sponsor and supervisor; requiring a district school board to take specified actions within a certain timeframe after the commission grants a charter school application; authorizing the appeal of commission decisions.

Section 2. Amends s. 1002.33, F.S.; providing legislative intent; authorizing the commission to solicit and review certain charter school applications; requiring the district school board that oversees the school district where a charter school approved by the commission will be located to serve as the charter school's sponsor; prohibiting sponsors from imposing additional reporting requirements unless a charter school meets specified criteria; providing that certain interlocal agreements and ordinances are void and unenforceable; authorizing charter schools to use school district interlocal agreements; providing that specified schools and entities may bring actions against select officials, employees, or authorities in violation of specified provisions; providing for the award of reasonable attorney fees and court costs; revising the terms and conditions for charter renewal; revising the procedure and causes for nonrenewal or termination of a charter; authorizing members of certain committees of a charter school governing board to attend specified meetings in person or through the use of communications media technology; prohibiting a charter school from being subject to certain land use regulations if such regulations would not be required for certain public schools; exempting specified property from certain ad valorem taxes; providing that any facility may provide space to charter schools under its existing zoning and land use designations without obtaining a special exception, rezoning, or a land use change; requiring a specified proportionate share of certain educational impact fees to be designated for the construction of certain charter school facilities.

Section 3. Requiring the Office of Program Policy Analysis and Government Accountability to conduct an analysis of charter school capital outlay and submit a report to the Governor and Legislature by a specified date.

Section 4. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The cost to the Department of Education to staff and support the Charter School Review Commission is indeterminate; however, such costs may be supported within existing resources of the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 27, the Secondary Education & Career Development Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- provide that any interlocal agreement or ordinance which imposes a greater regulatory burden on charter schools than school districts or which limits the creation of a charter school is void and unenforceable;
- authorize a charter school to use a school district's interlocal agreement which was entered into for the development of district schools;
- provide the right to bring an expedited action, including injunctive relief if a public official or employee, or the local governing body violates the law in regards to interlocal agreements, ordinances, or existing zoning and land use designations, and provides for the award of attorney fees and court costs for a party that receives declaratory relief;
- authorize members of a committee formed or designated by a charter school's governing board to attend meetings through the use of communications media technology;
- exempt from ad valorem taxes any property utilized by a charter school;
- authorize any facility or land owned by a Florida College System institution or university, similar public institutional facilities, and any facility recently used to house a school or a child care center to provide space to charter schools under their preexisting zoning and land use designations;

- provide that a charter school shall not be subject to any land use regulation requiring a change to a local government comprehensive plan or requiring a development order or development permit that would not be required for a public school in the same location;
- require a proportionate share of costs per student station, rather than some or all, of educational impact fees to be designated for the construction of charter school facilities which are created to mitigate the educational impact of the development of new residential dwelling units;
- remove from the bill the provision which required the additional discretionary 1.5 mileage to be part of a school district's operating discretionary millage levy; and
- require the Office Program Policy Analysis and Government Accountability to conduct an analysis of the current methodologies for the distribution of the capital outlay funds and report to the Governor and Legislature any recommend changes to provide more equitable funding allocations of capital outlay funds for traditional and charter public schools.

The analysis is drafted to the committee substitute passed by the Secondary Education & Career Development Subcommittee.