

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1031 Charter Schools

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

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Secondary Education & Career Development Subcommittee	12 Y, 3 N	Sleap	Sanchez
2) Early Learning & Elementary Education Subcommittee	11 Y, 5 N, As CS	Sleap	Brink
3) PreK-12 Appropriations Subcommittee		Bailey	Potvin
4) Education & Employment Committee			

SUMMARY ANALYSIS

The bill revises certain provisions related to charter schools and virtual instruction providers to:

- Allow charter school applications to be reviewed and approved by a newly created Charter School Review Commission (CSRC).
- Authorize the Commissioner of Education to select the members of the CSRC.
- Require a school district to sponsor and supervise a charter school authorized by the CSRC.
- Allow charter school applications to be received and considered by a sponsor at any time during the calendar year and for a charter school to be opened at a time determined by the applicant.
- Allow a virtual charter school to offer part-time instruction and contract with any public or charter school to provide a course the school does not provide.
- Allow virtual instruction programs to meet monthly parent-teacher and student-teacher communication requirements by means other than a telephone call.
- Expand the use of unrestricted current and capital assets to other charter schools within the state which are operated by a not-for-profit or municipal entity within the state.
- Allow a high-performing charter school to submit two applications at a time instead of two per year so long as each previous charter school application is withdrawn or has commenced operation.

The bill does not appear to have a fiscal impact.

The bill takes effect on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Charter Schools

All charter schools in Florida are tuition-free public schools within the state's public education system.¹ Charter schools are created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools in return for a commitment to higher standards of accountability.² One of the guiding principles of charter schools is to "meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system."³ During the 2019-2020 school year, over 329,000 students were enrolled in 673 charter schools in Florida.⁴

Sponsors

Several types of entities may sponsor charter schools:

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

In addition, FCS institutions with a teacher preparation program may operate one charter school for students in kindergarten through grade 12, sponsored by the school district.⁸

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.⁹

Establishing a Charter School

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

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

³ Section 1002.33(2)(a)1., F.S.

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

⁵ Section 1002.33(5)(a)1., F.S.

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

⁷ Section 1002.34(3)(b), F.S.

⁸ Section 1002.33(5)(b)4., F.S.

⁹ Section 1002.33(5)(b), F.S.

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law.¹⁰ While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization.¹¹

An applicant must submit a charter school application on a standard application form developed by the Department of Education (DOE).¹² As of 2018, charter school applications must be submitted to the sponsor by February 1 for a charter school to open 18 months later or at a time determined by the applicant. A sponsor may not refuse to receive a charter school application submitted before February 1 and may receive an application submitted later than February 1 if it chooses.¹³

A sponsor must approve or deny a charter school application within 90 calendar days of receipt, unless an extension of the deadline is mutually agreed to by the sponsor and applicant.¹⁴ If an application is denied, the sponsor must within 10 calendar days provide specific written reasons, based upon good cause, for its denial to the applicant and the DOE.¹⁵ The applicant has 30 calendar days to file an appeal with the State Board of Education (SBE) after the denial of or failure to act upon an application. The state board's decision is a final action subject to judicial review in the District Court of Appeal.¹⁶

Application Reporting

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

- The number of draft applications received on or before May 1 and each applicant's contact information.
- The number of final applications received on or before August 1 and each applicant's contact information.
- The date each application was approved, denied, or withdrawn.
- The date each final contract was executed.¹⁷

The DOE must compile the reported sponsor information into an annual report, by district, and post it on its website by November 1 each year.¹⁸ The annual report must also include the results of the annual charter school survey that rates the timeliness and quality of administrative services provided by the school districts.¹⁹ In 2019-2020, 93 charter applications were submitted, a 9.4 percent increase from the number of applications districts received in 2018.²⁰ The rate at which school district authorizers approved charter applications in 2019-2020 was 53 percent statewide.²¹ The approval rate of charter school applications by school district authorizers varies among districts.²²

Funding

¹⁰ Section 1002.33(3)(a), F.S.

¹¹ Section 1002.33(12)(i), F.S.

¹² Rule 6A-6.0786, F.A.C.; *see also* Florida Department of Education, Model Florida Charter School Application, *Form IEPC-M1*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference/> (last visited March 30, 2021).

¹³ Section 1002.33(6)(b), F.S.

¹⁴ Section 1002.33(6)(b)3.a., F.S.

¹⁵ *Id.*

¹⁶ Section 1002.33(6)(c)-(d), F.S.; *see also* s. 120.68, F.S.

¹⁷ Section 1002.33(5)(b)1.k.(I)-(II), F.S.

¹⁸ Section 1002.33(5)(b)1.k.(III), F.S. *see also* Florida Department of Education, *Annual Authorizer Report 2019* (Nov. 1, 2020), available at <http://www.fldoe.org/core/fileparse.php/9905/urlt/19-AuthorizerReport.pdf>.

¹⁹ Section 1002.33(20)(d), F.S.

²⁰ Florida Department of Education, *Annual Authorizer Report 2019* (Nov. 1, 2020), at 3, available at <http://www.fldoe.org/core/fileparse.php/9905/urlt/19-AuthorizerReport.pdf>.

²¹ *Id.*

²² *Id.* at 7.

As with traditional public schools, charter school operations are funded through the Florida Education Finance Program (FEFP) based on student enrollment.²³ Each charter school reports student enrollment to its sponsor²⁴ for inclusion in the district's report of student enrollment.²⁵ A charter school is also entitled to receive its proportionate share of categorical funds included in the FEFP, for eligible students and programs.²⁶ For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit²⁷ may be used for other charter schools operated by the not-for-profit or municipal entity within the school district.²⁸

Operating funds from the FEFP are distributed by the sponsor to the charter school. Payments must be made monthly or bi-monthly, beginning with the start of a school board's fiscal year.²⁹ A sponsor is prohibited from delaying payment of any portion of a charter school's funding based upon the timing of receipt of local funds by the school board.³⁰

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),³¹ Title I programs for disadvantaged students,³² and Title II programs for improving teacher quality based on student eligibility.³³

Effect of Proposed Changes

The bill creates the Charter School Review Commission (CSRC) as an additional authorizer of charter schools in Florida. The bill requires the CSRC to be composed of seven members with experience or expertise, and authorizes the Commissioner of Education to select the members of the CSRC and to identify the CSRC chair.

The bill requires the CSRC to review and approve a charter school application in the same manner as a school district authorizer. Additionally, the bill authorizes a decision of the CSRC to be appealed to the SBE and requires the school district to act upon the decision of the SBE within 30 calendar days after the decision is received. The bill specifies that the school district is the charter school's sponsor with the same supervisory responsibilities it would have for a charter school it approves directly. The bill provides that the state board's decision on appeals of CSRC matters are final action subject to judicial review in the District Court of Appeal.

The bill repeals the dates by which charter school draft applications and final applications must be received by the sponsor to be included in the sponsor's annual report to the DOE.

The bill repeals the date by which charter school applications must be submitted and received each calendar year and prohibits a sponsor from refusing to receive a charter school application submitted any time during the calendar year. The bill also allows a charter school to be opened at a time determined by the applicant.

The bill expands the use of unrestricted current and capital assets to other charter schools within the state which are operated by a not-for-profit or municipal entity within the state.

²³ See Florida Department of Education, Charter Schools, *Frequently Asked Questions*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.shtml> (last visited March 30, 2021).

²⁴ A sponsor can be a district school board that approves the charter and holds the contract. Section 1002.33(5)(a)1., F.S.

²⁵ Section 1002.33(17)(a) and (b), F.S. To reflect any changes in enrollment, the charter school's funding is recalculated during the school year based upon the October and February FTE enrollment surveys. See s. 1002.33(17)(b), F.S.

²⁶ Section 1002.33(17)(b), F.S.; see also Florida Department of Education, Office of Funding and Financial Reporting, *Florida Education Finance Program 2020-21 Second Calculation* (July 17, 2020), at 3, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/2021FEFSecondCalc.pdf>.

²⁷ See ss. 11.45(3)(c) and 218.39(1)(e) & (f), F.S.

²⁸ Section 1002.33(17)(b), F.S.

²⁹ Section 1002.33(17)(e), F.S.

³⁰ *Id.*

³¹ Section 1002.33(17)(c), F.S.; 20 U.S.C. s. 1411(e).

³² 20 U.S.C. s. 6301 et. seq.

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

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.³⁴ A high-performing charter school is a charter school that during each of the 3 previous years:

- received at least two school grades of “A” and no school grade below “B;”
- has received an unqualified opinion³⁵ on each annual financial audit; and
- has not received an annual financial audit that reveals a financial emergency condition.³⁶

Initial eligibility for “high-performing” status is verified by the commissioner, upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.³⁷

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.³⁸ The application process for such applications is streamlined to expedite approval.³⁹ A high-performing charter school may not be replicated more than twice in any given year and may not replicate again until the new charter school achieves “high-performing” status.⁴⁰ Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.⁴¹ Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.⁴²

A high-performing charter school may increase the school’s enrollment once per year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect.⁴³ If the school chooses to expand the grade levels it serves, i.e., a K-5 school adding grade 6, the facility capacity must include any improvements to an existing facility or any new facility in which a majority of the high-performing charter school students will enroll.⁴⁴ A high-performing charter school may also expand grade levels within kindergarten through grade 12 to add grade levels not already served as long as the increase in enrollment in either case does not exceed the current facility capacity.⁴⁵

Effect of Proposed Changes

The bill allows a high-performing charter school to submit two applications at a time instead of two per year. Subsequent applications may be submitted so long as each previous charter school application is withdrawn or has commenced operation instead of upon each school being designated high-performing.

Virtual Instruction Program

Present Situation

³⁴ Section 1002.331(1), F.S.

³⁵ An unqualified audit opinion means that the charter school’s financial statements are materially correct.

³⁶ Section 1002.331(1), F.S.; *see* s. 218.503(1), F.S. (financial emergency conditions).

³⁷ Sections 1002.331(4) and 1002.332(2)(a), F.S.

³⁸ Section 1002.331(3)(a)1., F.S.

³⁹ Section 1002.331(3)(a)2., F.S.

⁴⁰ Section 1002.331(3)(b), F.S.

⁴¹ Section 1002.332(2)(b), F.S.

⁴² Section 1002.331(2)(e), F.S.

⁴³ Section 1002.331(2)(a), F.S.

⁴⁴ *Id.*

⁴⁵ Section 1002.331(2)(b), F.S.

Florida law establishes a variety of options to make virtual instruction accessible to K-12 students. These options include:

- full-time or part-time enrollment in a school district virtual instruction program;⁴⁶
- full-time enrollment in a virtual charter school;⁴⁷
- enrollment in individual virtual courses offered by school districts and approved by the DOE;⁴⁸ and
- full-time or part-time enrollment in the Florida Virtual School (FLVS) or school district FLVS franchises.⁴⁹

The DOE is required to annually publish online a list of providers approved to offer virtual instruction programs in the state.⁵⁰ To be approved by the DOE, among other requirements specified in law,⁵¹ a virtual provider must document that the provider makes available to the parents and students in their virtual program specific contact information.⁵² The contact information must be posted and accessible online and include, but is not limited to, the following teacher-parent and teacher-student contact information for each virtual course:⁵³

- How to contact the instructor via phone, e-mail, or online messaging tools.
- How to contact technical support via phone, e-mail, or online messaging tools.
- How to contact the administration office via phone, e-mail, or online messaging tools.
- Any requirement for regular contact with the instructor for the course and clear expectations for meeting the requirement.
- The requirement that the instructor in each course must, at a minimum, conduct one contact via phone with the parent and the student each month.

Effect of Proposed Changes

The bill allows a virtual charter school to offer part-time instruction and allows the virtual charter school to contract with any public or charter school to provide any course it does not provide. Additionally, the bill removes the requirement for a virtual instructor to conduct one contact specifically via phone with a parent and student each month. The requirement for contact still remains, but the modality of communication is not prescribed.

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.33, F.S.; revising requirements for the charter school application process; authorizing certain assets of specified charter schools to be used for certain other charter schools across the state; establishing the Charter School Review Commission; providing for membership of the commission; providing duties of the commission; providing for an appeal of certain decisions; requiring school districts to act upon certain State Board of Education decisions within a specified time; requiring the school district to serve as the sponsor of certain charter schools.

Section 2: Amends s. 1002.331, F.S.; revising provisions relating to the opening of additional high-performing charter schools; providing applicability.

Section 3: Amends s. 1002.45, F.S.; authorizing a virtual charter school to provide part-time virtual instruction and be an approved provider; authorizing a virtual charter school to contract,

⁴⁶ Section 1002.45, F.S.

⁴⁷ Sections 1002.33(1) and 1002.45(1)(d), F.S.

⁴⁸ Section 1003.498, F.S.

⁴⁹ Sections 1002.37 and 1002.45(1)(a)1 and (c)1., F.S.

⁵⁰ Section 1002.45(2)(a), F.S.; see also Florida Department of Education, List of Approved Program and Course Providers, <https://www.fldoe.org/schools/school-choice/virtual-edu/provider-resources/approved-providers/> (last visited March 31, 2021).

⁵¹ Section 1002.45(2)(a)1.-10., F.S.

⁵² Section 1002.45(2)(a)4., F.S.

⁵³ Section 1002.45(a)4.a.-e., F.S.

rather than enter into an agreement, with a public or charter school for specified purposes; revising teacher-parent and teacher-student contact information requirements.

Section 4: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 April 1, 2021, the Early Learning & Elementary Education Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- remove the requirement for a virtual instructor to conduct one contact specifically via phone with a parent and student each month;

- create the Charter School Review Commission (CSRC commission) composed of seven members selected by the Commissioner of Education;
- authorize the CSRC commission to review and approve charter school applications;
- authorize the decisions of the CSRC commission to be appealed to the SBE;
- require the school district to act upon the decision of the SBE within 30 calendar days after it is received and to sponsor and supervise the charter school; and
- specify that the SBE's decision is a final action subject to judicial review in the District Court of Appeal.

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