

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1569

Education

SPONSOR(S): McKeel

TIED BILLS:

IDEN./SIM. BILLS: SB 2878

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on K-12</u>	<u>7 Y, 0 N</u>	<u>Kooi</u>	<u>Ahearn</u>
2) <u>Schools & Learning Council</u>	<u>12 Y, 0 N, As CS</u>	<u>Kooi</u>	<u>Cobb</u>
3) <u>Policy & Budget Council</u>	<u>(W/D)</u>		
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS/HB 1569 allows ESE pre-kindergarten instructional personnel to participate in the extended DROP program and clarifies that charter school teachers' participation in extended DROP is to be determined by the employing charter school's governing board.

The bill requires sponsors to provide a copy of all internal audit findings and reports to the charter school in a timely manner and gives the charter school two weeks to respond in writing before any action may be taken by the sponsor.

The bill includes numerous conforming changes to clarify that applications may be made for charter schools to the Florida Schools of Excellence Commission and its cosponsors as well as to school districts and reinserts good cause as the legal standard for district school board review of charter school applications.

The bill requires that a charter school demonstrating exemplary academic programming and fiscal management that has been in operation for three years must be offered a 15-year contract renewal by its sponsor, and requires that charter school governing boards participate in board governance training approved by the Department of Education that must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

The bill clarifies that charter school facilities are exempt from assessments for special benefits and makes such exemption retroactive to July 1, 1996, which is the date of the original enactment of the charter school statute.

The bill provides legislative findings that the expansion of the extended DROP program to include pre-kindergarten ESE teachers is a legitimate state purpose.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- The bill increases the State Board of Education's rulemaking authority. It also increases the responsibilities of the Auditor General by requiring monitoring of the compliance of district performance-based pay plans. The Department of Education is also required to assist in such monitoring.

B. EFFECT OF PROPOSED CHANGES:

Background

Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.² The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.³

The FRS offers both an investment plan and a defined benefit plan which provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.⁴ Members of the FRS belong to one of five membership classes:

Regular Class ⁵	570,888 members	88.00%
Special Risk Class ⁶	68,466 members	10.59%
Special Risk Administrative Support Class ⁷	80 members	0.01%
Senior Management Service Class ⁸	6,823 members	1.10%
Elected Officers Class ⁹	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.¹⁰

To receive benefits under the FRS, a member must reach his or her "normal retirement date."¹¹ The normal retirement date depends on the membership class of the member and is based on a minimum number of years of credible service and age (e.g., six or more years and age 62 for a Regular Class

¹ FLA. STAT. § 121.025 (2005).

² Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/>>.

³ *Id.*

⁴ *Id.*

⁵ FLA. STAT. § 121.021(12) (2005).

⁶ FLA. STAT. § 121.0515 (2005).

⁷ FLA. STAT. § 121.0515(7) (2005).

⁸ FLA. STAT. § 121.055 (2005).

⁹ FLA. STAT. § 121.052 (2005).

¹⁰ See, e.g., FLA. STAT. § 121.055(3)(a)1. (2005).

¹¹ FLA. STAT. § 121.021(29) (2005).

member) or specified amount of credible service regardless of age (e.g., 30 years for a Regular Class member).¹²

Deferred Retirement Option Program

In 1997, the Florida Legislature created another retirement option for members of the Florida Retirement System: the Deferred Retirement Option Program or “DROP.”¹³ The DROP allows a member of the Florida Retirement System, who has reached his or her normal retirement date, to defer the receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer.¹⁴ The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of the DROP participation.¹⁵ After completing the DROP period and terminating employment, the member not only receives the total of the DROP benefits, but also the previously determined normal retirement benefits.¹⁶

Changes in DROP for Educational Personnel

There have been several changes to the DROP which benefit educational personnel, particularly certain “instructional personnel.” Instructional personnel are K-12 staff members who provide direct instructional services to students or direct support in the learning process of students.¹⁷ Classroom teachers,¹⁸ student personnel services,¹⁹ librarians/media specialists,²⁰ and other instructional staff²¹ are specifically included as instructional personnel.²²

- Instructional personnel may elect to participate in DROP at any time following the date on which the member reaches his or her normal retirement date,²³
- Instructional personnel who have received authorization by the district superintendent may participate in the DROP up to 96 months,²⁴ more than the 60 months normally allowed,²⁵
- Instructional personnel employed by a developmental research school and authorized by the school’s director or principal may participate in the DROP up to 96 months;²⁶ and
- Instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind may participate in the DROP up to 96 months.²⁷

¹² *Id.*

¹³ Ch. 97-180, Laws of Fla., § 8.

¹⁴ FLA. STAT. § 121.091(13) (2005) (For most members of the Florida Retirement System, the election to participate in DROP must be made within 12 months immediately following the date on which the member first reaches his or her normal retirement date.).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ FLA. STAT. § 1012.01(2) (2005).

¹⁸ FLA. STAT. § 1012.01(2)(a) (2005) (staff members who are assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers).

¹⁹ FLA. STAT. § 1012.01(2)(b) (2005) (staff members, including guidance counselors, social workers, career specialists, and school psychologists, who are responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions.)

²⁰ FLA. STAT. § 1012.01(2)(c) (2005) (staff members who are responsible for providing school library media services).

²¹ FLA. STAT. § 1012.01(2)(d) (2005) (other staff members including primary specialists, learning resource specialists, instructional trainers, adjunct educators, and similar positions).

²² *But see* FLA. STAT. § 1012.01(2)(e) (2005) (Education paraprofessionals are also included in the definition of instructional personnel, but educational paraprofessionals have not been provided additional participation in the DROP).

²³ Ch. 2001-47, Laws of Fla., § 2; FLA. STAT. § 121.091(13)(a)6. (2005).

²⁴ Ch. 2003-260, Laws of Fla., §2; FLA. STAT. § 121.091(13)(a)2. (2005).

²⁵ FLA. STAT. § 121.091(13)(b)1. (2005).

²⁶ Ch. 2004-355, Laws of Fla., § 3 (2005).

²⁷ *See, e.g.,* FLA. STAT. § 121.091(13)(b)1. (2005).

Under current law, charter school employees are not eligible to participate in extended DROP. This bill allows charter school employees that are in FRS to participate in the DROP beyond 60 months, up to the 96-month maximum participation period.

Charter Schools

The Florida Legislature authorized charter schools in 1996. Since their introduction in 1996, the number of charter schools operating in Florida has grown from 5 to 333.²⁸ In 1996, the 5 schools served 574 students and in 2005-06 the 333 schools currently serve approximately 92,158 students.²⁹ The legislative principles guiding Florida charter schools are to meet high standards of student achievement while increasing parental choice within the public school system, align responsibility with accountability, and provide parents with sufficient information relating to their child's reading level and learning gains.³⁰

As provided in s. 1002.33, F.S., charter schools are nonsectarian public schools of choice that operate under a performance contract (a charter) with a public sponsor. Under current law, district school boards, the Florida Schools of Excellence and its approved cosponsors can sponsor charters. Additionally, four state universities are currently authorized to grant charters and sponsor development research (laboratory) schools created under s. 1002.32, F.S.³¹ Pursuant to s. 1002.335, F.S., districts may apply to the State Board of Education to be the exclusive sponsors of charter schools within their districts.

Applications for charters are reviewed by the public sponsors referenced above. Approved applications require that the school and the sponsor enter into a charter which is an agreement signed by the governing body of the school and the sponsor that addresses all major issues involving the operation of the charter school including, but not limited to, the school's mission, students served, curriculum, methods of student academic assessment, method for conflict resolution, financial and administrative management, and the term of the charter. Charter schools are held accountable to the sponsor that grants their application and to the parents who choose them for the academic and financial performance of the school and its students.

Pursuant to s. 1002.33(16), F.S., charter schools are exempt from the requirements of the school code (Chapters 1000-1013, F.S.), with the exception of statutes:

1. specifically applicable to charter schools;
2. relating to student assessment and school grading;
3. relating to provision of services to students with disabilities;
4. relating to civil rights and discrimination; and
5. relating to student health, safety, and welfare.

Charter schools are funded through the Florida Education Finance Program (FEFP) as provided in s. 1011.62, F.S. The funds are distributed by the Department of Education to the districts who may take up to 5% in administrative costs before forwarding the funding to the charter schools. Charter schools are eligible to receive federal Title I funding and any other federal funds to which they are otherwise eligible.

Charter school facilities must comply with the Florida Building Code or may choose to comply with the State Requirements for Educational Facilities. These facilities must comply with the Florida Fire

²⁸ www.floridaschoolchoice.org

²⁹ *Id.*

³⁰ FLA. STAT. § 1002.33(2).

³¹ FLA. STAT., § 1002.32(2), provides that for the purpose of state funding, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, and the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school.

Prevention Code and are exempt from assessments of fees for building permits, building and occupational licenses, and impact fees or service availability fees. A school district is also required to make any surplus property or facility available to charter schools for use on the same basis as it is available for use by other public schools within the district.

Effects of Proposed Changes

CS/HB 1569 revises section of Ch. 121, F.S., to allow ESE pre-kindergarten instructional personnel³² to participate in the extended DROP program and clarifies that charter school teachers' participation in extended DROP is to be determined by the employing charter school's governing board.

The bill requires sponsors to provide a copy of all internal audit findings and reports to the charter school in a timely manner and gives the charter school two weeks to respond in writing before any action may be taken by the sponsor.

The bill includes numerous conforming changes to clarify that applications may be made for charter schools to the Florida Schools of Excellence Commission and its cosponsors as well as to school districts. The bill also reinserts good cause as the legal standard for district school board review of charter school applications.³³

The bill requires that a charter school demonstrating exemplary academic programming and fiscal management that has been in operation for three years must be offered a 15-year contract renewal by its sponsor. The change requiring three years of operation conforms to the subsequent requirement that charter schools must have received an A or a B for three of the past four years in order receive the 15-year renewal contract.

The bill requires that charter school governing boards participate in board governance training approved by the Department of Education that must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

The bill clarifies that charter school facilities are exempt from assessments for special benefits and makes such exemption retroactive to July 1, 1996, which is the date of the original enactment of the charter school statute. The purpose of these provisions is to clarify the intent that charter school facilities are to be treated in the same manner as other public school facilities with regard to various fees and assessments that are otherwise charged or levied on property.

The bill sets forth legislative findings that a proper and legitimate state purpose is served by including charter school employees as eligible for participation in DROP.

C. SECTION DIRECTORY:

Section 1. Revising sections of Ch. 121, F.S. to include provisions to allow ESE pre-kindergarten teachers to participate in the extended DROP program for instructional personnel and clarifying that charter school governing boards determine which charter school instructional personnel may participate in extended DROP.

³² Federal IDEA requirements provide that states must provide education for students with disabilities starting at age three. 20 U.S.C.A. § 1412(a)(1)(A). Consequently, districts are required to hire pre-kindergarten teachers to teach children with disabilities starting at age three, and such teachers are properly included with other district instructional personnel.

³³ "Good cause" is a legal term that guides the review of district application denials by the State Board of Education, and subsequently the courts. The term was removed during the 2006 legislative session for other reasons and needs to be re-inserted as it creates confusion as to the proper legal standard to be used in such denials. One court has already suggested that its removal may give districts wider discretion than they already have in reviewing and approving or denying charter applications. See *Imhotep-Nguzo Saba Charter School v. Department of Educ.*, 947 So.2d 1279, 1282 (Fla. 4th DCA 2007).

Section 2. Amends s. 1002.33, F.S., relating to charter schools; providing duties of a sponsor relating to charter school applications; providing legal standard for charter application review; revising provisions relating to charter school renewal terms; requiring charter school board governance training; clarifying charter school facility fee exemptions.

Section 3. Providing a declaration of important state interest.

Section 4. Providing that the act shall take effect upon becoming law with the exception that the charter school facility fee exemption from special assessments is to be applied retroactively to July 1, 1996.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive longer, and likely increased, DROP contributions for ESE prekindergarten teachers.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures if this bill adversely affects future valuations of the Florida Retirement System.³⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill clarifies that charter schools are not required to pay assessments for special benefits to local government entities with the authority to levy such assessments.

2. Expenditures:

This bill will require the K-12 district school boards to fund the DROP contribution rate for any extended period for pre-k ESE instructional personnel.³⁵ This bill also may have two additional fiscal impacts: differentials between the DROP contribution rates and the Florida Retirement System contribution rates and salary differentials between the DROP employees and the employees who could replace the DROP employee.³⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

Expansion of the members eligible for extended DROP participation would have a nominal fiscal impact and depend upon how liberally the district school boards permit this to happen. This impact would be determined in future valuations and incorporated into the rates recommended at that time.³⁷

³⁴ Fla. Dep't of Mgmt. Serv., HB 659 (2006) Substantive Bill Analysis (Feb. 3, 2006) (on file with dep't) at pg. 5.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at pg. 6.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.³⁸ According to the Department of Management Services, the actuarial impact of extending the DROP is properly funded as long as employers pay the required contribution rate.³⁹ As such, this bill appears to satisfy this constitutional requirement.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 27, 2007, the Committee on K-12 adopted a strike-all amendment. The Committee reported the bill favorably as amended. The strike-all amendment amended the bill as follows:

The strike-all revised the DROP extension eligibility language to clarify the conflict with the definition in s. 1012.01, and like the bill, adds pre-K ESE teachers to those employees eligible to participate in DROP and clarifies that the appropriate charter school governing board will determine what charter school teachers may participate. The strike-all also revised charter school provisions to provide clarification that charter school facilities shall not be charged for special assessments.

The strike-all also removed the following provisions:

- Language revising charter school purposes;
- Unnecessary language specifying an exemption for charter schools on the school start date;
- Unnecessary language regarding the duration of a charter contract terms;
- Language allowing charter schools to apply to transfer sponsors after two years;
- Language including procedures and relief for "unlawful reprisal" by a district against a charter school;
- Language allowing charter schools to review and revise data in the online accountability report sent to DOE;

³⁸ Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

³⁹ Fla. Dep't of Mgmt. Serv., HB 659 (2006) Substantive Bill Analysis (Feb. 3, 2006) (on file with dep't) at pg. 5.

- Unnecessary language requiring monthly payment of funds to charter schools and payment within 10 days of receipt by district; and
- Language stating that facilities and property from closed schools must be first made available to charter schools for initial 60 days after closure.

The strike-all also revises the effective date to make the provision clarifying charter school facilities exemption from special assessments fees retroactive to January 7, 2003.

On April 4, 2007, the Schools and Learning Council favorably reported House Bill 1569 as a committee substitute. The Council amended the strike-all as follows:

- Insertion of good cause as the legal standard for district school board review of charter school applications.
- Clarification of conflicting language in the statute and providing that charter schools demonstrating exemplary academic programming and fiscal management must have been in operation for three years rather than two in order to get the 15-year contract renewal required by the strike-all.
- Clarification that the new board governance training required by the bill must be reviewed and approved by the Department of Education.
- Provides that the provision clarifying that charter school facilities are exempt from assessments for special benefits is retroactive to July 1, 1996, which is the original enactment date of the charter school statute.