

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

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

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

BILL: CS/CS/SB 278

INTRODUCER: Education Pre-K-12 Appropriations Committee, Education Pre-K-12 and Senator Gaetz

SUBJECT: Charter Schools

DATE: April 15, 2009 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	<b>Fav/CS</b>
2.	<u>Armstrong</u>	<u>Hamon</u>	<u>EA</u>	<b>Fav/CS</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill:

- Establishes indicators of risk for financial difficulty for charter schools and provides a corrective action plan to assist these schools;
- Allows a sponsor to terminate a charter when a charter school exhibits one or more financial emergency conditions for two consecutive years;
- Makes the Commissioner of Education responsible for determining a state of financial emergency in a charter school;
- Requires a charter school to provide the sponsor with monthly financial statements to help the sponsor identify charter schools in financial difficulty;
- Prohibits nepotism in charter schools for employment and promotion policies;
- Establishes standards of conduct for charter school governing board members, including requirements related to the solicitation and acceptance of gifts, business transactions, and conflicting employment or contractual relationships; and
- Provides parents and the public with student performance information when a school does not receive a school grade or a school improvement rating.

This bill substantially amends sections 11.45, 218.39, 218.50, 218.501, 218.503, 218.504, 1002.33, and 1002.34, and creates section 1002.345 of the Florida Statutes.

## II. Present Situation:

### Charter Schools in Florida

Florida law specifies that all charter schools are considered public schools.<sup>1</sup> Charter schools are formed through the creation of a new school or the conversion of an existing public school.<sup>2</sup> A charter, or the written contractual agreement between the sponsor and applicant, establishes the terms and conditions of operation.<sup>3</sup> According to the Department of Education (DOE), there are 385 charter schools operating in the state for the 2008-2009 school year.

Existing charter schools are sponsored by a district school board or a state university, in which case the charter school was converted from a lab school to a charter lab school. Sponsors are responsible for monitoring the charter school, reviewing revenues and expenditures, and ensuring innovation and consistency with state education goals, including the state accountability system.<sup>4</sup> Charter lab school applications are subject to review by the state university in consultation with the district school board in that jurisdiction.<sup>5</sup> With the exception of the charter lab schools, district school boards review and approve charter school applications.<sup>6</sup>

In 2006, the Legislature created the Florida Schools of Excellence Commission (FSEC) to authorize charter schools in school districts where a district did not retain the exclusive right to establish charter schools in the district. The FSEC is an independent state-level authorizer of charter schools, appointed by the Governor, Senate President, and House Speaker.<sup>7</sup> The FSEC is permitted to enter into co-sponsorships with municipalities, state universities, community colleges, and regional educational consortia.<sup>8</sup> The Duval County School Board along with other districts challenged the constitutionality of s. 1002.335, F.S.<sup>9</sup> On December 2, 2008, the First District Court of Appeal held that the statute establishing the FSEC with the authority to authorize charter schools was facially unconstitutional, noting that the statute posed “a total and fatal conflict with article IX, section 4 of the Florida Constitution.”<sup>10</sup> This provision empowers local school boards to “operate, control and supervise all free public schools within the school district.”<sup>11</sup>

### Financial Emergencies Act

The Financial Emergencies Act is designed to promote financial responsibility, provide assistance for meeting essential services without interruption, and to improve local financial

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

<sup>2</sup> *Id.*

<sup>3</sup> s. 1002.33(6)(i), F.S.

<sup>4</sup> s. 1002.33(5)(b), F.S.

<sup>5</sup> s. 1002.33(6)(h), F.S.

<sup>6</sup> s. 1002.33(6)(b), F.S.

<sup>7</sup> s. 1002.335(3)(a), F.S.

<sup>8</sup> s. 1002.335(4)(a)1. and 2., F.S.

<sup>9</sup> *Duval County School Board v. State Board of Education*, 2008 WL 5055659 (Fla. 1<sup>st</sup> DCA 2008).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

management procedures for local governmental entities, school boards, and charter schools.<sup>12</sup> If one of the following specific financial conditions occur or appear likely to occur in a charter school, the charter school must notify the sponsor and the Legislative Auditing Committee:<sup>13</sup>

- Failure to timely pay short-term loans or make bond debt service or other long-term debt payments;
- Failure to timely pay uncontested claims from creditors;
- Failure to transfer withholding tax or employer and employee contributions;
- Failure to pay wages and salaries to employees or retirement benefits to former employees; and
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit for which sufficient resources are not available to cover the deficit.

The sponsor may require that a financial recovery plan be prepared by the charter school governing board to resolve the emergency.

### **Reports on Charter Schools**

*Office of Program Policy Analysis & Government Accountability (OPPAGA)*

OPPAGA conducted a study in 2005 that focused on two areas relating to charter schools:

- A comparison of Florida's process of establishing charter schools with other states; and
- The financial performance of charter schools, including improvements in financial management.<sup>14</sup>

In comparing Florida's charter school requirements to other states, researchers concluded that Florida's application requirements are extensive, but reasonable, in that they provide critical information to sponsors in determining whether a school would be academically and financially successful.<sup>15</sup>

Nonetheless, OPPAGA expressed concern over a growing number of charter schools experiencing financial difficulties. Reasons cited include:

- High facilities cost;
- Inaccurate enrollment projection;
- Inadequate expertise in financial management; and
- The small size of some charter schools.<sup>16</sup>

Schools operated by education management organizations (EMO) tended to show higher rates of financial deficits. OPPAGA noted that although federal start-up funding may be available, most states, including Florida, do not provide start-up funding for charter schools. For 2002-2003, about 50 percent of the Florida charter schools whose audits disclosed unreserved fund balance

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<sup>12</sup> ss. 218.50-218.504, F.S.

<sup>13</sup> s. 218.503(1), F.S., specifies these conditions.

<sup>14</sup> OPPAGA, *Charter School Application Requirements Are Reasonable; Financial Management Problematic*, Report No. 05-11 (2005).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

deficits were in their first two years of operation. This appears to correlate with high start-up and facilities costs in the beginning of a school's operation.<sup>17</sup>

Researchers reported little financial management experience among charter school staff, particularly in governmental accounting practice. Small charter schools begin at a disadvantage, as they operate without the benefit of economies of scale. Charter schools managed by EMOs represented almost 50 percent of charter schools with unreserved fund balance deficits in 2002-2003, although only 22 percent of Florida's 300 charter schools operating that year were managed by outside companies.<sup>18</sup>

Pursuant to OPPAGA's recommendations, the Legislature enacted additional accountability provisions:<sup>19</sup>

- The DOE is required to provide technical assistance to charter school applicants;
- The charter school governing body must review and approve the audit report, including monitoring financial recovery plans, if present;
- The DOE is required to develop a uniform, online accountability report for the charter schools to complete annually;
- Financial emergency conditions apply to charter schools; and
- The governing board is required to attend governance training approved by the DOE that includes sunshine laws, conflicts of interest, ethics, and financial responsibility.

OPPAGA recently completed an update to the 2005 report, which noted that there are additional steps that would further improve charter school financial management and performance, including:

- Strengthening reporting and technical assistance requirements for charter schools experiencing financial emergencies;
- Developing a financial monitoring system to identify and assist financially struggling charter schools earlier;
- Requiring that charter school applicants receive training and technical assistance during the application process; and
- Requiring charter schools to work with their sponsors to reconcile charter school cost information to audited figures to make the program cost information comparable to the financial information reported by other public schools.<sup>20</sup>

The report also recommended that the Legislature consider clarifying the conflict of interest prohibitions for charter schools, since the current provisions in law are not uniformly applied to charter schools.<sup>21</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> A recent Auditor General report indicates that a number of EMO's have forgiven debt, thereby contributing to a reduction of schools in financial deficit.

<sup>19</sup> ch. 2006-190, L.O.F.

<sup>20</sup> OPPAGA, *Steps Taken to Improve Charter School Financial Management and Performance Accountability; Additional Action Needed*, Report No. 08-04, January 2008.

<sup>21</sup> *Id.*

*Auditor General*<sup>22</sup>

The Auditor General noted the following findings in its recent report on charter schools in operation during the 2006-2007 fiscal year:

- 14 of the 358 charter schools during that year closed;
- About 16 percent, or 54 of the 341 charter schools that filed an audit reported a deficit unreserved fund balance or unrestricted net assets for the general fund or other unrestricted fund as of June 30, 2007;<sup>23</sup> however, 36 charter schools that had reported deficit balances in the previous fiscal year continued to report deficit balances, including 24 that had reported deficit balances for 3 or more consecutive fiscal years;
- 45 charter schools did not file an audit in a timely manner;
- Audit reports for 22 charter schools revealed findings of material weaknesses in internal controls;
- Audit reports for 16 charter schools included a statement by a Certified Public Accountant (CPA) questioning the schools' ability to continue operating; and
- 44 charter schools met one or more financial emergency conditions.

The Auditor General indicated that for 51 charter schools, the CPA expressed a concern that the school did not adequately separate certain duties and responsibilities. Therefore, the charter school's ability to adequately protect assets was compromised, thereby increasing the chances that errors or fraud would not be timely discovered.

*Senate Interim Project 2008-120*<sup>24</sup>

The report reviewed charter school financial management, governance, student academic performance, school grading, and class size compliance and suggested changes for consideration by the Legislature, including the following:

- Codify specific indicators that identify charter schools at risk of financial difficulty or insolvency;
- Provide an expedited review when charter schools are in financial difficulty, prior to a financial emergency determination;
- Provide specific measures to correct the problems;
- Codify existing financial planning tools in statute and require all charter school applicants and reviewing sponsors to use them;
- Limit operating appropriations for Full-Time Equivalent (FTE) for charter schools to the designated class size limits;
- Prohibit members of independent charter school boards from receiving compensation for services; and

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<sup>22</sup> Auditor General, *Report on Significant Findings and Financial Trends in Charter School and Charter Technical Career Center Audit Reports Prepared by Independent Certified Public Accountants For the Fiscal Year Ended June 30, 2007*, Report No. 2009-030 (2008). See also Report No. 2009-079 (2008) and Report No. 2008-018 (2007).

<sup>23</sup> *Id.* The Auditor General noted that the 16 percent represents a decline from the prior year (25 percent), and explained it as follows: five of the charter schools reporting deficits last year closed and financial emergency conditions provided in statute took effect. Fund balance and net assets information was not identifiable for three charter schools. During the previous audit period, some charter schools eliminated deficits through debt forgiveness or fee modification by management companies.

<sup>24</sup> *Charter School Accountability*, Interim Project, November 2007.

- Require charter schools that do not receive a school grade to disclose comparative information to parents and the public about the school's academic performance.

### III. Effect of Proposed Changes:

#### **Financial Management**

##### *Application Process and Review*

Prior to filing a charter application, applicants for charter schools and charter technical career centers, including management companies, nonprofits organizations, principals, and chief financial officers or their equivalents, must participate in the training provided by the Department of Education (DOE). Specifically, the training involves financial planning, including developing business plans, estimating costs and income, projecting enrollment, and identifying state and federal funding sources. A sponsor may require an applicant to attend a sponsor's training if it meets or exceeds the DOE's training standards. Documentation of the training must be included in the application. Sponsors must use the standard evaluation form developed by the DOE. These provisions are intended to offer a greater degree of assistance to applicants and more uniformity among sponsors during the review process.

##### *Indicators of Deteriorating Financial Conditions and Emergencies*

Currently, there is no systematic process for detecting charter schools and charter technical career centers that are experiencing financial difficulties other than an end of the year audit. The bill establishes indicators of risk for financial difficulty, such as failure to provide for an audit, failure to comply with reporting requirements, and a deteriorating financial condition. When one of these conditions occurs, a charter school and a charter technical career center are subject to an expedited review by the sponsor, which includes a corrective action plan.

If the sponsor and board are unable to agree on the components or necessity of the plan, the Commissioner of Education determines the plan. The governing board must monitor corrective action plans and annually report to the sponsor the status of the corrective actions specified in the plan. The State Board of Education (SBE) must adopt rules to establish procedures for determining a deteriorating financial condition.

The SBE must prescribe the steps required for compliance when a governing board fails to implement the plan within one year. The chair of the governing board must appear before the SBE to report on the status of the plan and its effect on resolving the financial difficulties. The DOE would provide technical assistance to charter schools and centers and their governing boards and sponsors for corrective action and financial recovery plans.

The bill requires the Commissioner of Education to determine if a charter school or a charter technical career center needs a financial recovery plan to resolve a financial condition specified in s. 218.503, F.S. If the Commissioner determines that a plan is needed, the charter school or charter technical career center is considered to be in a state of financial emergency. Under current law, the charter school sponsor has the authority to require a financial recovery plan.<sup>25</sup> The law also provides that a state of financial emergency exists if a CPA or an auditor makes this

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<sup>25</sup> s. 218.503(4), F.S.

finding in a financial audit conducted in accordance with s. 218.39, F.S.<sup>26</sup> However; a state of financial emergency is not determined by a CPA or an auditor for local governments and district school boards.<sup>27</sup>

#### *Charter Technical Career Centers*

Under the bill, charter technical career centers are subject to the Financial Emergencies Act, which currently only applies to local governments, district school boards, and charter schools.

#### *Causes for Nonrenewal or Termination of Charter*

The bill provides additional grounds for not renewing or terminating a charter to include when a charter school or center fails to correct the deficiencies in a corrective action plan within one year or exhibits one or more financial emergency conditions for two consecutive years. The bill permits a charter to be immediately terminated or not renewed without a hearing under the Administrative Procedures Act<sup>28</sup> when there is good cause shown or the health, safety, and welfare of a student is threatened.

### **Standards of Conduct<sup>29</sup>**

#### *Nepotism*

As a condition of receiving a charter, applicants must disclose the names of relatives that will be employed by the charter school or center. This requirement for full disclosure is also a part of the charter.

Personnel in charter schools or charter technical career centers that are operated by a private entity may not employ or promote a relative if he or she exercises jurisdiction or control over the individual. Additionally, the prohibition applies to governing board members and their relatives. Similarly, the bill prohibits a relative from accepting employment or a promotion if the decision is made or advocated by his or her relative. These provisions do not apply when an action is limited to the approval of a budget.

The nepotism requirements in s. 112.3135, F.S., apply to charter school personnel in schools operated by municipalities or other public entities. A violation of s. 112.3135, F.S., subjects these personnel to the penalties in s. 112.317, F.S.

#### *Conflict of Interest and Governing Board Members*

Members of the governing board of a charter school or charter technical career center, including those operated by private entities, are subject to the same requirements that apply to public employees for the solicitation and acceptance of gifts, business transactions, and conflicting employment or contractual relationships.<sup>30</sup> Under certain circumstances, a board member may seek an exemption from the provisions for business transactions and conflict of interest. The bill

<sup>26</sup> s. 1002.33(9)(g), F.S.

<sup>27</sup> s. 218.503(3), F.S. For these entities, a state of financial emergency exists if the Governor or the Commissioner of Education, as appropriate, determines that state assistance is needed to resolve the financial condition.

<sup>28</sup> ch. 120, F.S.

<sup>29</sup> For the fiscal year ended June 30, 2006, the Auditor General's findings for charter schools included 21 related-party transactions.

<sup>30</sup> s. 112.313(2), (3), and (7), F.S. The business transactions in s. 112.313(3), F.S., relate to the purchase, rent, or lease of realty, goods, and services.

also subjects board members to the voting conflict requirements.<sup>31</sup> Board members of charter schools or centers operated by public entities are explicitly subject to the requirements for public disclosure of financial interests in s. 112.3144, F.S. A violation of any of these provisions subjects governing board members to the penalties in s. 112.317, F.S.

### **School Grades and School Improvement Ratings**

The bill provides reporting requirements for the DOE and each charter school that does not receive a school grade or a school improvement rating,<sup>32</sup> to the extent that the information does not compromise a student's privacy.<sup>33</sup>

The DOE must provide charter schools that do not receive a school grade or a school improvement rating and serve at least 10 students who participate in the statewide assessment with student performance data, including learning gains, which is used to determine a school grade or a school improvement rating.<sup>34</sup>

Charter schools must report to the parents of a student at the charter school and others student performance comparisons by grade groupings for the following:

- Charter schools without school grades or school improvement ratings compared to traditional public schools in the district in which the charter school is located and to other charter schools in the state; and
- Charter alternative schools compared to all alternative schools in the state.

The bill requires charter schools to post this information on their website and provide for other notice to the public, as provided for in SBE rule.

### **Other Potential Implications:**

The accountability provisions of the bill may prevent the disruption of a charter school student's education by providing charter school sponsors and governing boards with a means to timely detect financial problems and intervene prior to the closure of a school.

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<sup>31</sup> s. 112.3143, F.S.

<sup>32</sup> ss. 1008.34 and 1008.341(2), F.S., as amended by ch. 2008-235, L.O.F. For 2007-2008, 33 percent of the charter schools did not receive a school grade or school improvement rating, compared to 12 percent of the other public schools. Of the ungraded charter schools in 2006-2007, 8 percent received a school improvement rating (points only) for alternative schools, compared to 12 percent of the other ungraded public schools. According to the DOE, a new school improvement rating system for alternative schools was implemented in 2007-2008. Alternative schools were permitted to receive a regular school grade or a school improvement rating. The previous "points only" option was phased out. For a school to be eligible for a school grade, it must have at least 30 eligible students with valid FCAT scores in reading and math in both current and previous years in the grade levels tested (grades 3 through 10). See Rule 6A-1.09981(4), F.A.C.

<sup>33</sup> Privacy of student records is provided for in s. 1002.22, F.S., relating to student records, and 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

<sup>34</sup> s. 1008.34(b), F.S. School performance grades are based upon a combination of student achievement scores, student learning gains as measured by annual FCAT assessments in grades 3 through 10, and improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are exhibiting satisfactory performance. Section 1008.341, F.S., specifies the student data used for determining an alternative school's school improvement rating.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill requires the DOE to perform a number of tasks to assist charter schools and charter technical career centers, including offering or arranging training and specific technical assistance for applicants, assisting with the development and monitoring of financial recovery plans, and providing and comparing student performance information. The DOE already provides these types of services to districts and other schools. Also, sponsors of charter schools and technical career centers may have some additional effort associated with this bill. However, the administrative workload associated with the bill is expected to be met within existing budgets.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education Pre-K-12 Appropriations on April 15, 2009:**

The committee substitute makes the following revisions:

- For preparing charter and charter school applications, applicants are to use DOE-developed formats rather than to use them only as guidelines.
- Removes provisions related to class size reduction compliance for charter schools.
- Removes the cap on funding for charter schools for students in classrooms up to the class size maximum prescribed in s. 1, Art. IX of the State Constitution.
- Clarifies a reference that the governing board of a charter school or charter technical career center must present the status of implementation annually to the State Board of Education of the corrective action plan prescribed by the State Board when the school is in a state of financial deterioration or emergency.
- Provides that charter school applicant training, if the applicant is a management company or other nonprofit organization, will include the chief financial officer *or the equivalent*.
- Removes the provision that the sponsor may require additional information as an addendum to the DOE evaluation instrument used to review charter school applicants.
- Allows a sponsor to approve a charter before the applicant has identified, rather than secured, space, equipment, or personnel.

**CS by Education Pre-K-12 on February 4, 2009:**

- The committee substitute removes references to the Florida Schools of Excellence Commission.

**B. Amendments:**

None.