

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1569 Charter Schools

SPONSOR(S): Stargel

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	PreK-12 Policy Committee		Beagle	Ahearn
2)	PreK-12 Appropriations Committee			
3)	Education Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 1569 revises statutory provisions governing charter schools, charter school capital outlay funding, and discretionary millage for capital improvements. The bill:

- Authorizes private universities and public entities to sponsor charter lab schools. Currently, only state universities may sponsor a charter lab school.
- Creates the designation of “high performing charter school” status for a charter school that meets specified academic and financial benchmarks for three consecutive years. Such schools are entitled to: an automatic 15-year charter renewal; an increase in enrollment beyond the maximum enrollment specified in its charter; an automatic qualification for startup grants; receipt of capital outlay funds in the first year it receives a high-performing designation; and an extension of the deadline to submit an initial application to replicate a successful charter school.
- Requires a charter school sponsor to show good cause to the Commissioner of Education before terminating or not renewing a charter school’s charter for cause.
- Requires a charter school’s governing board to submit quarterly, rather than monthly, financial statements to its sponsor.
- Authorizes a charter school-in-the-workplace to receive charter school capital outlay funding. Currently, these schools are ineligible for such funds because the business partner provides the school facility.
- Requires charter schools to comply with constitutional class size requirements and provides that compliance is to be measured at the school-level.
- Requires school districts to share discretionary millage for capital improvements with charter schools. Currently, school districts are authorized, but not required, to share such millage.
- Prohibits school districts from imposing facilities restrictions on charter schools that are more stringent than those imposed by local governments.
- Exempts charter schools from concurrency exactions imposed by local ordinance.
- Deletes provisions requiring certain charter schools to report student assessment data and relaxes restrictions on the employment of relatives by charter schools.
- Adds furniture, equipment, and computer hardware, software, and network systems as allowable expenditures of charter school fixed capital outlay funding.

The bill does not appear to have fiscal impact on state government, but the bill will reduce: (a) the amount of discretionary millage revenue available to school districts due to its requirement that these revenues be shared with charter schools; and (b) the amount of revenue local governments receive from concurrency exactions due to the bill’s exemption of charter schools from the payment of concurrency exactions imposed by local ordinance. See *infra* “Fiscal Analysis & Economic Impact Statement.”

The bill presents a number of constitutional, drafting, and other issues. See *infra* “Constitutional Issues” and “Drafting Issues & Other Comments.”

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter Schools Overview

In 1996, the Legislature enacted Florida's first charter school law.¹ Charter schools are nonsectarian, public schools that operate under a performance contract, referred to as a "charter," with its sponsor. The charter frees the school from many regulations applicable to traditional public schools in order to encourage the use of innovative learning methods, while holding the school accountable for academic and financial results.² Charter schools may be sponsored by a district school board, community college or state university, municipality or, in the case of a charter lab school, by a state university.³ Each charter school is administered by a governing board.⁴

Charter schools are subject to the same academic performance accountability requirements applicable to traditional public schools. Charter school students must take the Florida Comprehensive Assessment Test (FCAT) and the schools are graded annually.⁵

Since 1996, the number of charter schools in Florida has grown from five to 389 during the 2008-2009 school year. Charter schools served 118,169 students during the 2008-2009 school year.⁶

Charter Lab Schools

Present Situation

Florida law authorizes state universities to establish developmental research schools (lab schools). Lab schools may not serve students beyond grade 12 and must be affiliated with the college of education within the state university of closest geographic proximity to the school.⁷ Lab schools feature curricula emphasizing mathematics, science, computer science, and foreign languages. Lab schools conduct research regarding teaching, learning, and school management.⁸

¹ Chapter 96-186, L.O.F., initially codified as § 228.056, F.S., redesignated in 2002 as § 1002.33, F.S.

² Section 1002.33(1), (2), (7), (9), (16), & (17), F.S.

³ Section 1002.33(5)(a), F.S.

⁴ Section 1002.33(9)(i), F.S.

⁵ Section 1002.33(7)(a)4. & (9)(k)1., F.S.

⁶ Florida Department of Education, *Charter Schools Program*, (October 2009) available at:

http://www.floridaschoolchoice.org/information/charter_schools/files/fast_facts_charter_schools.pdf.

⁷ Section 1002.32(2) & (3), F.S.

⁸ Section 1002.32(3), F.S.

State universities are also authorized to establish “charter lab schools.”⁹ Unlike lab schools, charter lab schools operate under a charter and are not required to be established by the nearest state university.¹⁰ Private universities and public entities are not currently authorized to sponsor a charter lab school.

In considering an application to establish a charter lab school, a state university must consult with the district school board of the county in which the school is located. If a state university does not act on or denies the application, the applicant may appeal such decision to the State Board of Education (SBE).¹¹

Effect of Proposed Changes

The bill authorizes a private university or public entity to sponsor a charter lab school. The bill grants private universities and public entities the same authority and responsibilities that state universities exercise with respect to a charter lab school. When considering a charter application, a private university or public entity must consult with the district school board of the county in which the lab school is located.

Current law provides that a state university’s decision on an application to establish a charter lab school may be appealed to the SBE. The bill revises these provisions to state that a state university, private university or public entity’s decision can be appealed *by the district school board* to the SBE. See *infra* “Constitutional Issues” and “Drafting Issues & Other Comments.”

High-Performing Charter Schools

Present Situation

Florida law does not currently include a program for designating charter schools as “high-performing charter schools” based on academic performance and financial stability. However, academic performance and financial stability are factors in awarding charter school capital outlay funding and 15-year charter renewal. A charter school may receive charter school capital outlay funding if, among other things, it demonstrates satisfactory student performance and financial stability.¹²

The required term of a charter is four or five years.¹³ Florida law provides opportunities for charter schools that demonstrate strong academic performance and fiscal stability to be granted a 15-year charter. In order to facilitate long-term financing for charter school construction, a sponsor:

1. May grant a 15-year charter renewal to a charter school: (a) that has operated for at least three years; (b) that demonstrates exemplary academic programming and fiscal management; and (c) for which none of the grounds for nonrenewal have been documented.¹⁴ Such a long-term charter is subject to annual review and may be terminated during its term.¹⁵
2. Must grant a 15-year charter renewal to a charter school that meets the requirements expressed in Number 1. above, receives a school grade of “A” or “B” in three out of four years, and is not in a state of financial emergency or deficit position.¹⁶ If granted, a long-term charter is subject to annual review and may only be terminated for specified reasons.¹⁷

⁹ Section 1002.33(5)(a)2., F.S.

¹⁰ Section 1002.32(2), F.S.

¹¹ Section 1002.33(6)(h), F.S.

¹² Section 1013.62(1), F.S.

¹³ Section 1002.33(7)(a)12., F.S.

¹⁴ Section 1002.33(7)(b)1., F.S.; See *supra* text accompanying note 21 for the grounds for nonrenewal of charter.

¹⁵ Section 1002.33(7)(b)1., F.S.

¹⁶ Section 1002.33(7)(b)2., F.S.; See *supra* text accompanying note 14.

¹⁷ *Id.*

Charter schools may also receive federal grant funding. Funds through the Charter School Program (CSP) Grants are offered on an as available, competitive basis to:

- Newly-approved charter schools during the first three years of operation. The funds may be used for planning, design, and initial implementation of the school.
- Charter schools that have successfully been in operation for at least three consecutive years. These funds may be used for support activities that help open new public schools or share lessons learned by charter schools with other public schools.

Charter schools may apply for these funds through the Department of Education (DOE), which acts as the state educational authority for purposes of the CSP.¹⁸

The deadline for submitting an application to establish a new charter school is August 1 of each year. Unless otherwise agreed upon by the applicant and sponsor, the opening date of the charter school is the beginning of the next full school year.¹⁹ The student capacity of a charter school is annually determined by the governing board, in conjunction with the sponsor.²⁰

Effect of Proposed Changes

The bill authorizes a charter school to be designated as a high-performing charter school if it meets the following conditions for three consecutive years:

- Receives a school grade of “A” or “B”;
- Receives unqualified opinions on its annual audited financial statements; and
- Maintains positive fund balances.

The bill provides that a high-performing charter school is entitled to the following:

- Automatic renewal of its charter for 15 years.
- Ability to increase enrollment in excess of the maximum enrollment specified in its charter.
- Automatic qualification for startup grants for new applicants.
- Receipt of capital outlay funds beginning with the first year it receives a high-performing designation.
- Extension until January 1 to submit an initial application to replicate a successful charter school.

The bill does not specify a procedure for reviewing a charter school’s status as “high-performing.” It is unclear whether high performing charter school status can be reviewed or terminated. See *infra* “Drafting Issues & Other Comments.”

Charter Termination or Nonrenewal

Present Situation

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

- Failure to participate in the state’s education accountability system or failure to meet the charter’s requirements for student performance;
- Failure to meet generally accepted standards of fiscal management;
- Violation of law; or
- Other good cause shown.²¹

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal,

¹⁸ U.S. Department of Education, *Charter Schools Program*, <http://www2.ed.gov/programs/charter/index.html> (last visited Mar. 14, 2010).

¹⁹ Section 1002.33(6)(b), F.S.

²⁰ Section 1002.33(10)(h), F.S.

²¹ Section 1002.33(8)(a), F.S.

except that, “a charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened.”²² Under these circumstances, the school district is to assume operation of the charter school.²³

The governing board may appeal the sponsor’s decision to terminate or not renew its charter to the SBE.²⁴ The Charter School Appeals Commission (CSAC) must consider the appeal and recommend action to the SBE. The Commissioner of Education (Commissioner) appoints the CSAC’s members. The Commissioner (or his designee) serves as the CSAC’s chair.²⁵

Effect of Proposed Changes

The bill requires a charter school sponsor to show “good cause” to the Commissioner in order to terminate or not renew a charter for cause. The Commissioner must determine if good cause exists to terminate or not renew the charter. The bill does not specify whether the Commissioner is required to decide the matter. If the Commissioner is to decide the matter, an appeal of the Commissioner’s decision would be considered by the CSAC, a body the Commissioner appoints and chairs. See *infra* “Drafting Issues & Other Comments.”

Financial Monitoring

Present Situation

Legislation enacted in 2009 requires each charter school to provide a monthly financial statement to its sponsor.²⁶ Monthly financial statements enable sponsors to closely monitor the financial health of sponsored charter schools. If a monthly financial statement indicates a deteriorating financial condition²⁷ or financial emergency condition,²⁸ the sponsor and governing board must develop a corrective action plan.²⁹

Effect of Proposed Changes

The bill requires a charter school to provide a quarterly, instead of monthly, financial statement to the sponsor, unless the charter school is determined to be in a state of financial emergency, in which case the charter school must provide a monthly financial statement.

Charter Schools-in-the-Workplace

Present Situation

Charter schools-in-the-workplace are sponsored by local school districts in partnership with a company or business. In order to establish a charter school-in-the-workplace, a business partner must, among other things, provide the school facility to be used.³⁰ Any portion of a facility used for a public charter school is exempt from ad valorem taxes as long as it is used as a public school.³¹ Charter schools in-the-workplace are not eligible for charter school capital outlay funding because they serve students in facilities that are provided by the sponsor.³²

²² Section 1002.33(8)(b) & (d), F.S.

²³ Section 1002.33(8)(d), F.S.

²⁴ Section 1002.33(6) & (8)(c)-(d), F.S.

²⁵ Section 1002.33(6)(f), F.S.

²⁶ Section 7, ch. 2009-214, L.O.F.; § 1002.33(10)(g), F.S.

²⁷ “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 occurrence of a financial emergency condition described in s. 218.503(1).” Section 1002.345(1)(a)3., F.S.

²⁸ A financial emergency condition includes: failure to pay short-term loans, make bond debt service or pay long-term debt payments due to lack of funds; failure to pay uncontested creditor claims within 90 days; failure to pay withheld employee income taxes; failure for one pay period to pay, wages, salaries, and retirement benefits owed; a fund balance or total net assets deficit. Section 218.503(1), F.S.

²⁹ Section 1002.345(1)(a) & (c), F.S.

³⁰ Section 1002.33(15)(b), F.S.

³¹ Section 1002.33(15)(b), F.S. (flush-left provisions at end of paragraph).

³² Section 1013.62(1)(a)5., F.S.

Effect of Proposed Changes

The bill relaxes the requirement that a business partner provide the school facility for a charter school-in-the-workplace by allowing the business partner to provide one of the following:

- Access to a school facility to be used;
- Resources that materially reduce the cost of constructing a school facility;
- Land for a school facility; or
- Resources to maintain a school facility.

The bill also provides that a charter school-in-the workplace is eligible for capital outlay funding. Currently, these charter schools do not receive such funding. See *infra* "Drafting Issues & Other Comments."

Class Size Compliance

Present Situation

In 2002, voters passed an amendment to the Florida Constitution to set forth specific maximum class size limits for core curricula courses in public school classrooms. The amendment requires that, by the 2010-2011 school year, the maximum number of students that may be assigned to a teacher is: 18 students in grades PK-3; 22 students in grades 4-8; and 25 students in grades 9-12.³³

To execute the amendment, the 2003 Legislature enacted s. 1003.03, F.S., which sets forth an implementation schedule for the measurement of class size compliance in core curricula courses.³⁴ It provides that class size shall be measured at the:

- District-level for each of the three grade groupings during Fiscal Years (FYs) 2003-2006.
- School-level for each of the three grade groupings in FYs 2006-2010.
- Individual classroom-level for each of the three grade groupings in FY 2010-2011 and thereafter.³⁵

Section 1003.03, F.S., also specifies options for school compliance with class size requirements and penalties for non-compliance. Until recently, this section of law has been interpreted by the Legislature and DOE as applying to both traditional and charter schools.

On December 17, 2008, the Division of Administrative Hearings (DOAH) issued an order holding that the DOE may not require charter schools to comply with the class size implementation statute, s. 1003.03, F.S., because: (1) charter schools are exempt from that section under s. 1002.33(16)(a), F.S., which indicates that charter schools are not subject to provisions of the School Code unless specifically required by statute; and (2) the DOE violated ch. 120, F.S., by failing to adopt its regulatory policy for traditional and charter school compliance with the class size requirements as a rule.³⁶ As a result of this order, there is currently no means for enforcing charter school compliance with class size requirements although such schools appear constitutionally subject to the requirements and annually receive class size reduction operating funds.

Effect of Proposed Changes

The bill specifically requires charter schools to comply with maximum class size requirements in the Florida Constitution. However, the bill provides that charter school class size is calculated at the school-level average in the specified grade groupings. See *infra* "Constitutional Issues."

³³ Article IX, § 1, Florida Constitution.

³⁴ Chapter 2003-391, L.O.F.

³⁵ Section 1003.03, F.S.; "Core curricula courses" are mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms. Section 1003.01(14), F.S. "Extracurricular courses" are all courses that are not defined as "core-curricula courses," which may include, but are not limited to, physical education, fine arts, performing fine arts, and career education. Section 1003.01(15), F.S.,

³⁶ *Renaissance Charter School, Inc., and the Lee Charter Foundation, Inc. v. Department of Education*, DOAH Case No. 08-1309RU (Final Order dated Dec. 17, 2008).

Discretionary Millage for Capital Improvements

Each school district may levy up to 1.5 mills of discretionary millage for capital improvements,³⁷ in addition to the operating discretionary tax levies, for school purposes. Such revenues may be used for the following purposes:

- New construction and remodeling of educational facilities;
- Maintenance, renovation, and repair of school facilities to correct building code and fire safety deficiencies;
- The purchase, lease-purchase, or lease of school buses and equipment;
- Purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications;
- Payments for educational facilities and sites under a lease-purchase agreement;
- Payment of loans approved under ss. 1011.14 and 1011.15, F.S.;
- Payment of costs directly related to compliance with state and federal environmental laws;
- Lease payments for relocatable educational facilities, lease or rent payments for educational facilities, or rent or lease payments for buildings or space within existing buildings;
- Payments for school buses when the district contracts with a private entity to provide student transportation; and
- Payment of the cost of the opening day collection for the library media center of a new school.³⁸

In addition, a school district may expend up to \$100 per unweighted full-time equivalent student to fund:

- The purchase, lease-purchase, or lease of driver's education vehicles; and
- Payment of the cost of premiums for property and casualty insurance to insure school district educational and ancillary plants.³⁹

Currently, the funding agreement between a charter school and a district school board must be based on operating funds from the Florida Education Finance Program (FEFP) and General Appropriations Act, discretionary lottery funds, and funds from the school district's current operating discretionary tax levy. The agreement is not required to include discretionary millage for capital improvements.⁴⁰ In 2006, the Legislature authorized, but did not require, school districts to share discretionary millage for capital improvements with charter schools.⁴¹ Data indicating which school districts share these funds is not collected at the state-level.

Effect of Proposed Changes

The bill requires, rather than authorizes, district school boards to share discretionary millage for capital improvements with charter schools.

Charter School Facilities

Present Situation

Concurrency is a growth management procedure designed to accommodate the impacts of new growth on the availability of public facilities and services. Concurrency is essentially a timing mechanism. Under concurrency, public services must be available to serve new development within statutorily established time frames.⁴² District school boards and local governments achieve school concurrency

³⁷ To levy this millage, a school district must annually publish a notice of its intent, which specifies the projects such funds will be used for, and must hold a public hearing. Section 200.065(10), F.S.

³⁸ Section 1011.71(2), F.S.

³⁹ Section 1011.71 (5), F.S.

⁴⁰ Section 1002.33(17)(b), F.S.

⁴¹ See Chapter 2006-190, s. 9, L.O.F., *codified at* s. 1011.71(2), F.S.

⁴² Section 163.3180(2), F.S.

when there are adequate school facilities available to accommodate increases in student enrollment resulting from new development.⁴³

When school capacity is unavailable to support the impacts of a particular development proposal, such development is precluded from proceeding. “Proportionate-share-mitigation” enables a developer to execute a legally binding commitment to provide mitigation to offset the demand on public school facilities created by the development so that it may proceed. Options for proportionate-share mitigation are established locally in the public school facilities element and interlocal agreement.⁴⁴

Construction of a charter school that meets the statutory requirements for charter school facilities is one of four mitigation options provided in statute.⁴⁵ If the educational facilities plan⁴⁶ and the public school facilities element authorize the construction of a charter school as proportionate share mitigation, the local government must credit the developer towards any impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.⁴⁷

Charter schools are exempt from compliance with the State Requirements for Educational Facilities, but are required to comply with the Florida Building Code and the Florida Fire Prevention Code. A local governing authority may not impose local building requirements more stringent than those in the Florida Building Code.⁴⁸ For purposes of inspection of a facility and issuance of a certificate of occupancy, the agency with jurisdiction is the local municipality or, if in an unincorporated area, the county governing authority.⁴⁹

Florida law provides several fee exemptions that financially benefit charter schools. Charter schools are exempt from assessments of fees for building permits, building and occupational licenses, impact fees, service availability fees, and assessments for special benefits.⁵⁰ Charter schools are not currently exempt from exactions imposed by local ordinance related to school concurrency.

Effect of Proposed Changes

The bill prohibits a school district from imposing more stringent facilities restrictions on charter schools than those imposed by the local municipality or county governing authority. The bill also provides that charter school facilities are exempt from exactions imposed by local ordinance related to school concurrency.

Public Information on Charter Schools

Present Situation

Legislation enacted in 2009 requires DOE to report student assessment data to charter schools that do not receive a school grade or a school improvement rating, but which serve at least 10 students who

⁴³Florida Department of Community Affairs, *Best Practices for School Concurrency*, p. 8 (April 2007) available at <http://www.dca.state.fl.us/fdcp/DCP/SchoolPlanning/Files/schoolsbp.pdf>.

⁴⁴ Section 163.3180(13)(e), F.S. Local government entities, i.e., counties and municipalities, must adopt comprehensive plans that guide future growth and development. Section 163.3177, F.S. Each local government comprehensive plan must contain chapters or “elements” that address various development issues, including public schools. Section 163.3177(12), F.S. The county and each municipality within a school district must enter into an agreement with the school board which jointly establishes a process for coordinating school board educational facilities plans and the local government comprehensive plans. Section 163.3177(1)(a), F.S.

⁴⁵ Section 163.3180(13)(e), F.S.; *See* Section 1002.33(18), F.S. (charter school facilities requirements). The other three mitigation options are the contribution of land or payment for land acquisition; mitigation banking, which allows the developer to contribute mitigation that exceeds the actual impact of its development in exchange for proportionate share credits toward impact fees or future development; and construction or payment for construction of a public school facility. *See also* Florida Department of Community Affairs, *Proportionate Share Mitigation for School Concurrency* (May 2006) available at <http://www.dca.state.fl.us/fdcp/DCP/SchoolPlanning/Files/ProportionateShareMitigation.pdf>.

⁴⁶ An educational facilities plan is a comprehensive planning document that is adopted annually by the district school board. The plan includes long-range planning for facilities needs over 5-year, 10-year, and 20-year periods. The plan must be developed in coordination with local governments and be consistent with the local government comprehensive plans. Section 1013.35(1)-(2), F.S.

⁴⁷ Section 163.3180(13)(e)2., F.S.

⁴⁸ Section 1002.33(18)(a) & (b), F.S.

⁴⁹ Section 1002.33(18)(a), F.S.

⁵⁰ Section 1002.33(18)(d), F.S.

are tested on the FCAT. A charter school is then required to report such information to the parent of a student attending the charter school, the parent of a child on the charter school's waiting list, the district in which the charter school is located, and the governing board of the charter school.⁵¹ Each charter school is required to provide such information on its internet website and also provide notice to the public at large.⁵² Reporting of data must comply with federal law governing education records privacy.⁵³

Effect of Proposed Changes

The bill removes the requirement that charter schools, which serve at least 10 students who are tested on the FCAT but which do not receive a school grade or school improvement rating, report student assessment data to specified parents, the district in which the charter school is located, and the governing board of the charter school. A charter school is still required to provide this information on its internet website.

Restriction of Employment of Relatives

Present Situation

Legislation enacted in 2009 prohibits personnel in a charter school operated by a private entity from appointing, employing, promoting, or advancing, or advocating for the appointment, employment, promotion, or advancement of a relative in the school in which the personnel works or exercises jurisdiction or control. Furthermore, the law prohibits an individual from being appointed, employed, promoted, or advanced in or to a position in the charter school if such action has been advocated by the individual's relative who serves in or exercises jurisdiction or control over the charter school, or if such appointment, employment, promotion, or advancement is made by the governing board of which a relative of the individual is a member.⁵⁴

Effect of Proposed Changes

The bill relaxes the restrictions on employment of relatives by prohibiting charter school personnel from *knowingly* recommending or engaging in the employment, promotion, or assignment of an individual or employee to a work location if that action will create a situation in which one employee will be responsible for the direct supervision of, or exercise jurisdiction or control over, a relative. The bill provides that the Commissioner or the sponsor may make exceptions to this provision if it would cause undue hardship on students or seriously disrupt a charter school's operations. The bill also provides that this provision does not prohibit the employment of relatives in the same work location as long as neither person is directly supervised by the other.

Charter School Capital Outlay Funding

Present Situation

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

- Have been in operation for at least 3 years; be governed by a governing board established in the state for three or more years which operates both charter schools and conversion charter schools; be part of an expanded feeder chain with an existing charter school in the district; or be accredited by the Southern Association of Colleges and Schools;
- Demonstrate financial stability;
- Have satisfactory student performance;
- Have received final approval from its sponsor; and
- Serve students in facilities not provided by the charter school sponsor.⁵⁵

⁵¹ Section 7, ch. 2009-214, L.O.F.; § 1002.33(21)(b)1. & 2., F.S.

⁵² Section 1002.33(21)(b)3.b., F.S.

⁵³ Section 1002.33(21)(b)2., F.S.; *See* 20 U.S.C. § 1232g.

⁵⁴ Section 7, ch. 2009-214, L.O.F.; § 1002.33(24), F.S.

⁵⁵ Section 1013.62(1), F.S.

Capital outlay funds may be used by a charter school for the:

- 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.
- Purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications.
- 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.⁵⁶

Enterprise resource software applications must be "classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support schoolwide administration or state-mandated reporting requirements."⁵⁷

Effect of Proposed Changes

The bill adds the purchase of equipment, furniture, and computer software, hardware, and network systems to the list of allowable uses of charter school capital outlay funding. Equipment is already an allowable use of these funds. The terms "furniture" and "computer software, hardware, and network systems" are not defined. (See Drafting Comments & Other Issues).

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.32, F.S., authorizes a private university or a public entity to sponsor a charter lab school.

Section 2: Amends s. 1002.33, F.S., authorizes a private university or public entity to sponsor a charter to a lab school and provides for appeals; establishes a high-performing charter school designation; requires good cause for nonrenewal or termination of a charter to be shown to the Commissioner; revises financial reporting requirements; revises the requirements for establishment of a charter school-in-the-workplace; requires a charter school compliance with constitutional class size requirements; requires compliance to be calculated at the school-level average; requires school districts to share discretionary millage for capital improvements with charter schools; prohibits school districts imposing more stringent requirements on charter school facilities than local governments; provides for an exemption from certain exactions; removes a reporting requirement; revises restrictions on the employment of relatives.

Section 3: Amends s. 1011.71, F.S., relating to district school tax; provides that district school boards levy the capital improvement millage for charter schools.

Section 4: Amends s. 1013.62, F.S., authorizes additional uses for charter school capital outlay funds.

Section 5: Amends s. 163.3180, F.S., conforms cross references.

Section 6: Amends s. 1002.34, F.S., conforms cross-references.

Section 7: Amends s. 1002.345, F.S., conforms cross-references.

Section 8: Amends s. 1011.68, F.S., conforms cross-references.

Section 9: Amends s. 1012.32, F.S., conforms cross-references.

Section 10: Provides an effective date of July 1, 2010.

⁵⁶ Section 1013.62(2), F.S.

⁵⁷ Section 1013.62(2)(f), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments may experience a reduction in revenue resulting from the exemption of charter schools from concurrency exactions imposed by local ordinance.

2. Expenditures:

The bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes a private university to sponsor a charter lab school. These schools will be eligible for state education funding. The bill allows charter schools established by businesses to receive revenue from discretionary millage for capital improvements levied by a school district and charter school capital outlay funding.

D. FISCAL COMMENTS:

The bill requires school districts to share discretionary millage for capital improvements with charter schools. This provision will reduce the total amount of discretionary millage for capital improvements available to traditional public schools within the district, while increasing the amount of this revenue that is received by charter schools.

The bill authorizes a charter school-in-the-workplace to receive charter school capital outlay funding. The bill also provides that a charter school may receive such funding in the first year it is designated as "high performing." These charter schools will receive increased funding. Because these provisions could increase the number of charter schools that are eligible for capital outlay funding, the amount that is disbursed to each eligible school may be reduced.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Constitutional District School Board Authority: In 2006, the Florida Schools of Excellence Commission (FSE) was statutorily empowered to: authorize and sponsor charter schools; authorize municipalities, state universities, community colleges, and regional educational consortia to cosponsor charter schools; approve or deny charter school applications; and renew or terminate charters. In 2008, the FSE was held facially unconstitutional by the First District Court of Appeals.⁵⁸ The court ruled that the law was in direct conflict with Article IX, s. 4 of the Florida Constitution, which empowers local school boards to “operate, control and supervise all free public schools within the school district.”⁵⁹

Similar to the FSE, the bill authorizes private universities and public entities to sponsor charter lab schools. Florida courts have held that these powers are reserved to district school boards and, as a result, the bill’s expanded sponsorship for charter lab schools may subject it to constitutional challenge.

Public Aid to Sectarian Entities: Article I, s. 3 of the Florida Constitution, the “No Aid” clause, broadly prohibits both “direct” and “indirect” payment of state funds to sectarian entities. Florida courts have held that the direct payment of state funds to sectarian entities is unconstitutional.⁶⁰

Charter lab schools receive state funding via the FEFP based on the county in which the school is located and the General Appropriations Act. The required local effort funds and nonvoted ad valorem millage that would otherwise be required for charter lab schools are allocated from state funds. Charter lab schools also receive state categorical funding.⁶¹ Operating funds are deposited in a Lab School Trust Fund and the state university assigned a charter lab school is the fiscal agent for these funds. All rules of the state university governing the budgeting and expenditure of state funds apply to these funds unless otherwise provided by law or SBE rule.⁶²

Florida law requires a charter school to be nonsectarian in its programs, admission policies, employment practices, and operations.⁶³ The entities that are currently authorized to sponsor charter schools are all nonsectarian and public in nature. Because allowing private entities to sponsor charter schools is not contemplated in statute, there is no express language requiring a *sponsor* to be nonsectarian.⁶⁴

Under the bill, a private university sponsoring a charter lab school would receive state funding for the operation of the school. The bill does not preclude a private sectarian university from sponsoring a charter lab school. This creates the possibility that a private sectarian university could receive state funds, which would violate the Florida Constitution.

Class Size Compliance: Charter schools are considered public schools.⁶⁵ As such, charter schools appear subject to the Florida Constitution’s maximum class size limits for core curricula courses.⁶⁶ The bill specifies that charter schools are subject to the Florida Constitution’s class size requirements, but provides that class size for charter schools must be measured at the school-level. The Florida Constitution provides that class size must be measured at the classroom-level beginning with FY 2010-2011.⁶⁷ These provisions of the bill conflict with the Florida Constitution.

⁵⁸ Section 1002.335, F.S.

⁵⁹ *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008); *See* § 1002.335, F.S.

⁶⁰ *Bush v. Holmes*, 886 So.2d 340, 351, 366-367 (1st Fla. D.C.A. 2004)(Opportunity Scholarship Program violates “no aid” provisions of Article I, § 3 of the Florida Constitution).

⁶¹ Section 1002.32(9)(a), F.S.

⁶² Section 1002.32(9)(c), F.S.

⁶³ Section 1002.33(9)(a), F.S.

⁶⁴ Section 1002.33(5)(a), F.S.

⁶⁵ Section 1002.33(1), F.S. (“all charter schools in Florida are public schools”).

⁶⁶ Article IX, § 1, Florida Constitution.

⁶⁷ Article IX, § 1(a) of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Charter Lab Schools (lines 67-75): The bill authorizes a “private university” or “public entity” to sponsor a charter lab school. The terms “private university” and “public entity” are not defined. The bill also does not specify whether these entities must be located within the state of Florida. Regarding a private university, the bill does not specify whether the university must maintain a physical campus or may primarily offer online instruction.

The bill provides that a district school board of the county where a charter school is located may appeal the decision of a private university or public entity to deny a charter application. It is unclear why a district school board, rather than the applicant, would be provided this right to appeal.

High Performing Charter Schools (lines 709-729): The bill’s creation of “high performing charter school” status presents the following issues:

- The bill specifies that such high performing charter schools are entitled to an “automatic” 15-year charter renewal. Usually, charter renewal occurs at the expiration of the term of the charter. It is unclear whether 15-year charter renewal is to occur immediately upon being designated as “high performing” or if this means that the charter school will be presumed eligible for such renewal at the expiration of the current charter term.
- The bill authorizes a high performing charter school to increase its enrollment beyond the maximum enrollment specified in its charter. Currently, a charter school’s enrollment is jointly determined by the governing board and the sponsor. School districts perform various services for charter schools and serve as the local education agency for the purposes of receipt and distribution of federal funds. Such a unilateral increase in enrollment may impose logistical difficulties on school districts related to providing services and federal funding to charter school students.
- The bill entitles a high performing charter school to automatically qualify for charter school start-up grants. In awarding federal charter school grants, the DOE is required to follow federal regulations and employ a competitive process to determining grantee eligibility. The bill does not address this issue.⁶⁸
- The bill does not specify a procedure for reviewing a charter school’s status as “high-performing.” It is unclear whether high performing charter school status can be terminated if: student performance declines; the school encounters deficit fund balances; or the school receives audit criticism.

Good Cause (lines 740-741): The bill requires a charter school sponsor to show “good cause” to the Commissioner in order to terminate or not renew a charter for cause. The bill does not specify what the Commissioner should do with this information. Further, the bill would conflict with current law if it did specify that the Commissioner must determine whether good cause exists to terminate or not renew the charter. Under current law, a charter school may file an appeal of a charter termination or nonrenewal with the CSAC, which considers the appeal and recommends action to the SBE. The Commissioner appoints the CSAC’s members and serves as its chair. If the bill requires the Commissioner to be responsible for deciding whether good cause exists to terminate or not renew a charter school’s charter, it will result in the Commissioner serving as the chair of the entity that will consider an appeal of the decision made by the Commissioner.

Charter Schools-in-the-Workplace (lines 1208-1209): Currently, charter schools in-the-workplace are not eligible for charter school capital outlay funding because they serve students in facilities that are

⁶⁸ U.S. Department of Education, Charter Schools Program: Non-Regulatory Guidances (July 2004), available at <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc>. See 34 C.F.R. Pts. 74-75 (regulations governing U.S. Department of Education grant programs).

provided by the sponsor.⁶⁹ The bill provides eligibility for charter school capital outlay funding to these charter schools, but does not amend provisions in the charter school capital outlay statute which deny eligibility to charter schools that serve students in facilities provided by the sponsor.

Fixed Capital Outlay (lines 1759-1761): The bill authorizes charter schools to use capital outlay funding to purchase furniture, equipment, and computer software, hardware and network systems. Expenditure of capital outlay funds on equipment is already authorized under current law. Current law specifies limited and defined purposes for use of capital outlay funds. The terms “furniture,” and “computer software, hardware and network systems” are not defined or limited by the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A

⁶⁹.Section 1013.62(1)(a)5., F.S.