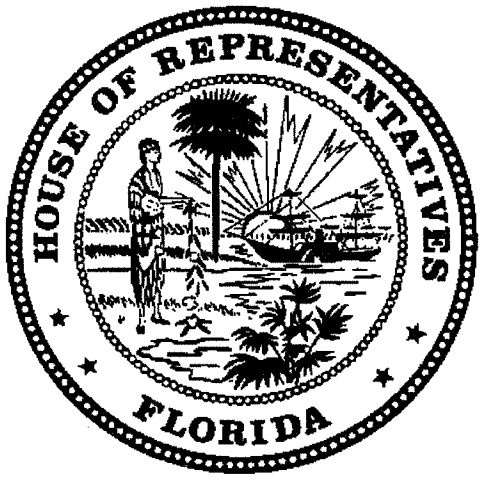

Appropriations Committee

Thursday, March 14, 2013
4:00 PM – 6:00 PM
212 Knott Building

Meeting Packet

Will Weatherford
Speaker

Seth McKeel
Chair

The Florida House of Representatives

Appropriations Committee

Will Weatherford
Speaker

Seth McKeel
Chair

AGENDA

Thursday, March 14, 2013
212 Knott Building
4:00 PM – 6:00 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair McKeel

III. Consideration of the following bills:

CS/HB 4007 Powers and Duties of Department of Environmental Protection by Agriculture & Natural Resources Subcommittee, Nelson

HB 7009 Charter Schools by Choice & Innovation Subcommittee, Moraitis

HB 7065 Everglades Improvement and Management by State Affairs Committee, Caldwell

IV. Presentation on Information Technology Governance by Committee Staff

V. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4810

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 4007 Powers and Duties of Department of Environmental Protection
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Nelson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Appropriations Committee		Helpling	Leznoff
3) State Affairs Committee			

SUMMARY ANALYSIS

The Cross Florida Barge Canal Project began in 1933. Thousands of acres of land were acquired to create a commercial shipping channel across the Florida peninsula connecting the Atlantic Ocean to the Gulf of Mexico. There were two major efforts to construct the canal, first from 1933 to 1935, and then from 1964 to 1990. The canal was never completed due to insufficient funds and concerns over potential environmental impacts. Congress officially de-authorized the project in 1990 and all federal canal lands and structures were transferred to the state to be managed as a conservation and recreation area. The canal land was officially named the Marjorie Harris Carr Cross Florida Greenway (CFG) and is now managed by the Office of Greenways and Trails. The CFG is a multi-use area and provides natural resource-based recreation, including fishing, camping, hunting, boating, bicycling, and horseback riding.

CFG lands are subject to the following specific surplus procedures that were created to generate funds needed to refund counties the ad valorem taxes that the counties paid to the Cross Florida Canal Navigation District:

- The county where the surplus land is located has the first right of refusal to acquire the land at current appraised value by buying it or subtracting the value from its reimbursement;
- The original owner of the land or the original owner's heirs have second right of refusal to acquire the land at current appraised value;
- Any person having a leasehold interest in the land has the third right of refusal to acquire the land at current appraised value;
- Surplus land that is not acquired as stated above is offered in a public sale to the highest bidder. The minimum acceptable bid is the current appraised value;
- Proceeds from the sale of CFG land are refunded to the counties for ad valorem taxes paid by the counties to the Cross Florida Canal Navigation District;
- Interest refunded to the counties is compounded annually at rates specified in s. 253.783(2)(f), F.S.; and
- Any excess funds from the sale of surplus lands *may* be used for the maintenance of the greenway corridor.

The bill repeals the specific CFG surplus and exchange procedures, which will allow the Department of Environmental Protection's (DEP) Office of Greenways and Trails to follow current DEP Division of State Lands procedures for the surplus and exchange of conservation lands.

The bill appears to have an indeterminate positive fiscal impact on DEP by not having a separate procedure for surplussing CFG lands. The bill does not have a fiscal impact on local governments or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Cross Florida Greenway

The Cross Florida Barge Canal Project began in 1933. Thousands of acres of land were acquired to create a commercial shipping channel across the Florida peninsula connecting the Atlantic Ocean to the Gulf of Mexico. There were two major efforts to construct the canal, first from 1933 to 1935, and then from 1964 to 1990. The canal was never completed due to insufficient funds and concerns over potential environmental impacts. Congress officially de-authorized the project in 1990, and all federal canal lands and structures were transferred to the state to be managed as a conservation and recreation area. The canal land was officially named the Marjorie Harris Carr Cross Florida Greenway (CFG) and is now managed by the Office of Greenways and Trails. The CFG is a multi-use area and provides natural resource-based recreation including fishing, camping, hunting, boating, bicycling, and horseback riding.[1]

The CFG extends through portions of Marion County, requiring that Marion County receive right-of-way access across portions of the CFG. Section 253.7827(3), F.S., provides that Marion County may purchase right-of-way access at fair market value, or that the value of the right-of-way be subtracted from the amount of reimbursement due to the county, pursuant to s. 253.783, F.S.

Water Resource Development Act of 1990

Section 402 of the Water Resources Development Act of 1990 (Act) amended sec. 1114(b)(5) of the Water Resources Development Act of 1986.[2] In addition to de-authorizing the project, the Act transferred all federal lands, interests, and facilities to the state without consideration, provided the state:

- Holds the federal government harmless for claims arising from operation of federal lands and facilities;
- Maintains the corridor as a public greenway for compatible recreation purposes, including specified areas;
- Agrees to preserve, enhance, interpret, and manage the natural and cultural resources contained in specified areas;
- Pays Citrus, Clay, Duval, Levy, Marion, and Putnam Counties a minimum aggregate sum of $32 million, or at the option of the counties, payment by conveyance of surplus barge canal lands selected by the state at current appraised values;
- Uses any remaining funds generated from the sale of surplus CFG lands to acquire fee title or easements to other lands along the project route. Any remaining funds generated from the sale of surplus CFG lands *must* be used for the improvement and management of the greenway corridor. It does not dictate the procedures the state must use to surplus CFG lands, only how the funds from the sale of surplus land are to be managed.

The Act provides for certain legal remedies if the state fails to comply with the above requirements.[3]

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[1] DEP, *Marjorie Harris Carr Cross Florida Greenway Management Plan*, (June 15, 2007), http://www.dep.state.fl.us/gwt/cfg/Plan_PDF/CFG_LMP_Final.pdf.

[2] U.S. Fish & Wildlife Service, *Water Resource Development Acts*, http://www.fws.gov/habitatconservation/Omnibus/WRDA1990.pdf.

[3] *See* Sec. 1114(d) of the Water Resource Development Act of 1986 as amended by Sec. 402 of the Water Resource Development Act of 1990, *available at* http://www.fws.gov/habitatconservation/Omnibus/WRDA1990.pdf.

Cross Florida Greenway Surplus Procedures

CFG lands are subject to specific surplus procedures that were created to generate funds needed to refund counties the ad valorem taxes that the counties paid to the Cross Florida Canal Navigation District. Section 253.783(2), F.S., provides the following CFG-specific surplus procedures:[4]

- The county where the surplus land is located has the first right of refusal to acquire the land at current appraised value by buying it or subtracting the value from its reimbursement;
- The original owner of the land or the original owner's heirs have second right of refusal to acquire the land at current appraised value;
- Any person having a leasehold interest in the land has the third right of refusal to acquire the land at current appraised value;
- Surplus land that is not acquired as stated above is offered in a public sale to the highest bidder. The minimum acceptable bid is the current appraised value;
- Proceeds from the sale of CFG land are refunded to the counties for ad valorem taxes paid by the counties to the Cross Florida Canal Navigation District;
- Interest refunded to the counties is compounded annually at rates specified in s. 253.783(2)(f), F.S.; and
- Any excess funds from the sale of surplus lands *may* be used for the maintenance of the greenway corridor.

The last bulleted provision is in conflict with the requirements of the Act.

Conservation Land Surplus Procedures

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) has the authority to surplus conservation land if it is determined that the land is no longer needed for conservation purposes. Section 253.034(6), F.S., outlines the surplus procedures for conservation lands as follows:[5]

- The Acquisition and Restoration Council must first confirm that the request to surplus conservation land is consistent with the resource values and management objectives of the land;
- The Board of Trustees approves the surplus by a vote of at least three members;
- State agencies, colleges, and universities are given priority to lease the surplus land;
- State, county, or local governments are offered second right of refusal to purchase the surplus land;
- If government agencies, colleges, and universities opt out of purchasing surplus land, then the land is available for sale on the private market;
- The sale price is negotiated or competitively bid (determined by market value) pursuant to s. 253.034(6)(g), F.S., and Rule 18-2.020, F.A.C.; and
- Proceeds from the sale of surplus land are deposited into the fund from which the lands were acquired. If the trust fund from which the lands were acquired no longer exists, the funds are deposited into an appropriate account to be used for land management.

Effect of Proposed Changes

The bill amends s. 253.7827, F.S., conforming cross-references.

The bill repeals s. 253.783(2), F.S., which will allow the surplussing of the CFG lands to occur under the Board of Trustees land surplus procedures described above. This provides for better management

[4] *See* s. 253.783, F.S.
[5] *See* s. 253.034, F.S.

of CFG lands and will close ownership gaps within the CFG boundary. The repeal will also provide consistency between the federal requirements for funds acquired from the surplus of CFG lands and the manner in which the state manages funds.

B. SECTION DIRECTORY:

Section 1. Amends s. 253.7827, F.S., conforming cross-references.

Section 2. Repeals s. 253.783(2), F.S., relating to the powers and duties of DEP to dispose of surplus lands acquired for the construction, operation, or promotion of a canal across the peninsula of the state and refund payments to counties.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be an indeterminate positive fiscal impact on DEP by not having a separate procedure for surplussing CFG lands.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Agriculture & Natural Resources Subcommittee amended and passed HB 4007 as a committee substitute (CS). The CS repeals subsection (2) of s. 253.783, F.S., instead of the entire section, to conform the bill to SB 326.

A bill to be entitled

An act relating to the powers and duties of the Department of Environmental Protection; amending s. 253.7827, F.S.; removing an obsolete reference for purposes of calculating the reimbursement for transportation and utility crossings of greenways lands in Marion County; repealing s. 253.783(2), F.S., relating to additional powers and duties of the department to dispose of surplus lands that were for the construction, operation, or promotion of a canal across the peninsula of the state and refund payments to counties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 253.7827, Florida Statutes, is amended to read:

253.7827 Transportation and utility crossings of greenways lands.—

(3) Furthermore, the Legislature recognizes the needs expressed by Marion County to provide for the southerly extension of Sixtieth Avenue between State Road 200 and Interstate 75 and for the extension to cross the greenways lands to allow for the orderly growth and development of Marion County. Right-of-way for this extension across greenways lands shall be designed to mitigate the impacts to the extent practical, and the value of such lands shall be paid based on fair market value ~~or, at the option of Marion County, the value~~

~~can be subtracted from the amount of reimbursement due the county pursuant to s. 253.783~~.

Section 2. Subsection (2) of section 253.783, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7009 PCB CIS 13-01 Charter Schools
SPONSOR(S): Choice & Innovation Subcommittee, Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee	8 Y, 5 N	Ammel	Fudge
1) Appropriations Committee		Heflin	Leznoff
2) Education Committee			

SUMMARY ANALYSIS

The bill includes several provisions that increase charter school accountability and transparency, including, but not limited to:

- Prohibiting a charter school, upon termination of the charter, from expending more than $10,000 without prior written permission from the sponsor, unless such expenditure was included within the annual budget submitted to the sponsor or is for reasonable attorney's fees and costs during the pendency of an appeal.
- Prohibiting employees of the charter school or the charter management organization and their spouses, from serving on the charter school governing board.
- Clarifying provisions for high-performing charter schools and systems by aligning qualifications of high-performing systems with high-performing schools, requiring the Commissioner of Education to annually review and approve such status; outlining provisions for losing that status; and providing timelines for contract modification requests.
- Prohibiting the governing board or related entity of a charter school that is subject to academic or financial corrective action, from submitting additional applications to open new charter schools until the conditions of the academic or financial corrective action are satisfactorily resolved.

The bill also includes several provisions to expand charter school growth and flexibility, such as:

- Requiring the Department of Education to adopt a standard contract and contract renewal that cannot be amended, appended or otherwise altered by the sponsor.
- Allowing charter applicants to submit a draft charter by May 1 each year and receive district feedback prior to final submission on August 1.
- Allowing all charter schools to determine their own capacity and enrollment caps and allowing them to increase those caps under certain circumstances.
- Providing statutory clarification that provisions affecting instructional personnel contracts, do not apply to charter schools under certain circumstances.
- Clarifying that district K-12 educational facilities not being used for K-12 educational purposes must be made available to charters at no cost, with certain conditions, and requiring the charter school to pay maintenance costs of the facility.
- Authorizing out-of-state operators to qualify for high-performing status to operate schools or systems in Florida under certain circumstances; requiring the State Board of Education to adopt the review and qualification process in rule.
- Enabling the Florida College System institutions that provide teacher preparation programs to operate charter schools serving PreK-12th grades under certain circumstances.

The bill has no fiscal impact on state government.

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter schools[1] are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a "charter."[2] The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.[3] One of the guiding principles of charter schools is to meet high standards of student achievement and increase parental choice and student learning opportunities.[4]

A charter school may be sponsored by a district school board or, in the case of a charter lab school, by a state university.[5] Each charter school is administered by a governing board.[6] State universities, Florida College System (FCS) institutions, municipalities, and private, nonprofit s. 501(c)(3) of the Internal Revenue Code status organizations[7] may operate a charter school.[8]

Charter School Accountability

Present Situation

Florida law establishes several requirements designed to hold charter schools accountable both financially and academically, including:[9]

- A detailed application and rigorous review and approval process.[10]
- The execution and maintenance of charter agreements between the charter school and its sponsor.[11]
- Annual reporting,[12] annual financial audits,[13] and sponsor monitoring of monthly financial statements.[14]
- Participation in statewide assessments and Florida's school grading system.[15]
- Interventions for unsatisfactory academic performance and financial instability.[16]

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[1] In the 2012-13 school year, there are currently 574 charter schools operating in 44 of Florida's 67 school districts and at two state universities. Charter schools currently serve over 200,000 students. Florida Department of Education, *Charter Schools Program Fast Facts Report* (November 2012) *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/ (last visited January 29, 2013).

[2] Section 1002.33(7), F.S.

[3] Section 1002.33(2) and (16), F.S.

[4] Section 1002.33(2), F.S.

[5] Section 1002.33(5)(a), F.S.

[6] Section 1002.33(9)(h)-(j), F.S.

[7] The internal revenue code defines a 501(c)(3) status organization as a private, nonprofit organization that is organized exclusively for religious, scientific, literary, or educational purposes or for the purpose of promoting amateur sports or for preventing cruelty to animals or children. These organizations are exempt from federal income taxes. 26 U.S.C. s. 501(c)(3).

[8] Section 1002.33(5)(b)4., (12)(i), and (15)(b)-(c), F.S.

[9] Sections 218.39, 218.503, 1002.33, and 1002.345, F.S. Charter technical career centers are subject to many of the same accountability requirements as charter schools. There are three charter technical career centers operating in Florida – the Advanced Technology College in Volusia County, the First Coast Technical College in St. Johns County, and the Lake Technical Center in Lake County. *See* 218.39, 218.503, 1002.34, and 1002.345, F.S.; Florida Department of Education, *List of Charter Technical Career Centers* (2012), *available at* http://www.fldoe.org/workforce/pdf/chartertechnicalcenterlist.pdf.

[10] Section 1002.33(6), F.S.

[11] Section 1002.33(6)(h) and (7), F.S.

[12] Section 1002.33(9)(g), F.S.

[13] Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

[14] Section 1002.33(9)(g), F.S.

[15] Section 1002.33(7)(a)4. and (16)(a)2., F.S.

[16] Sections 1002.33(9)n. and 1002.345, F.S.

- Reporting of student performance information to parents and the public.[17]
- Compliance with ethical standards for employees and governing board members.[18]

Parental choice also holds charter schools accountable. Parents choose whether to enroll their children in a charter or traditional public school. Dissatisfied parents of charter school students may withdraw them from the school. This creates an incentive for the charter school to provide quality educational programs for its students. Parental choice also fosters healthy competition between charter schools and traditional public schools, improving the performance of both.[19]

Each charter school must enter into a performance contract with its sponsor, known as a charter. The charter lists specific objectives that the charter school must meet to remain in operation. A sponsor may terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of financial management;
- A violation of law; or
- Other good cause shown.[20]

When a charter school is terminated or not renewed, the law requires reversion of state and federal funds. Unencumbered public funds revert to the sponsor while unencumbered capital outlay funds and federal charter school program grant funds revert to the department to be redistributed among eligible charter schools. The charter school is responsible for all debts of the charter school, and the district may not assume the debt from any contract made between the governing body of the school and a third party, unless previously agreed upon in writing by both parties.[21]

Charter schools that qualify for a school grade are graded annually.[22] In addition, charter schools are required to submit an annual report to its sponsor. At a minimum, each charter school's annual report must include student achievement and financial data, the facilities currently used or planned for use by the school, and descriptive information about the charter school's personnel.[23]

A charter school that earns two consecutive grades of "F" may qualify for one of three exceptions to mandatory termination. The first two exceptions provide charter schools that specifically target hard-to-serve students with an additional year to raise student performance. A charter school may qualify for one of these exceptions if:

- It is in its first three years of operation and serves a student population in the same school zone as a failing public school. Such a charter school must earn at least a grade of "D" by year three. In year four and thereafter, the exception no longer applies to the charter school.
- The state board grants the charter school a waiver of termination. To obtain a waiver, the charter school must demonstrate that the learning gains of its students on statewide assessments are comparable or better than the learning gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for one year and may only be granted once. Charter schools that have been in operation for more than five years are not eligible for a waiver.[24]

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[17] Section 1002.33(21)(b) and (23), F.S.
[18] Section 1002.33(24) and (26), F.S.
[19] Florida Department of Education, Office of Independent Education and Parental Choice, *Florida's Charter Schools: A Decade of Progress* (Nov. 2006), *available at* http://www.floridaschoolchoice.org/information/charter_schools/files/Charter_10Year_Book.pdf.
[20] Section 1002.33(8)(a), F.S.
[21] Section 1002.33(8)(e) and (f), F.S.
[22] Sections 1002.33(7)(a)4. and (9)(k)1. and 1008.34(3), F.S. Charter schools that are classified as alternative schools may choose to receive a school improvement rating in lieu of a school grade. Section 1008.341, F.S.
[23] Section 1002.33(9)(k), F.S. The sponsor must submit the report to the Commissioner of Education. *Id.*
[24] Section 1002.33(9)(n)4.b.-c., F.S.

The third exception applies to traditional public schools that are reconstituted as charter schools pursuant to the differentiated accountability process. The law governing differentiated accountability controls in such cases.[25]

Members of the charter school governing board are subject to specific standards of conduct for public officers, employees of agencies, local governmental attorneys, voting conflicts and disclosure of financial interests.[26] The law requires disclosure of the identity of all relatives employed by the charter school who are related to individuals with certain decision making authority, including governing board members.[27] Governing board members are required to participate in governance training approved by the Department of Education which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.[28]

Effect of Proposed Changes

The federal government imposed additional requirements on state agencies receiving grants under the United States Department of Education's Charter Schools Program during the 2011-12 legislative session. One of the new requirements is as follows:

> 3. State law, regulations, or other policies in the State where the applicant is located require that –
>
> B) Authorized public chartering agencies use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA as the most important factor when determining to renew or revoke a school's charter.[29]

In accordance with this federal requirement, the bill requires the sponsor to make student academic achievement for all students the most important factor when determining whether or not to renew or terminate a charter. Charter schools may still be terminated or non-renewed for any of the following grounds: failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance; failure to meet generally accepted standards of fiscal management; violation of law; or other good cause shown.

The bill requires each charter school to maintain an internet website that enables the public to obtain information regarding the school, its personnel, and its programs. The website must include information or online links to information regarding any entity who owns, operates, or manages the school, including any nonprofit or for-profit entity; the names of all governing officers and administrative personnel of the entity; and any management fees the school pays to the entity. The information or online links must be prominently displayed and easily accessible to visitors of the website.

Once a charter school receives a notice of nonrenewal or termination it must obtain prior written approval from the sponsor before expending more than $10,000, unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract or such expenditure is necessary to cover expenses related to reasonable attorney fees and costs during pendency of an appeal.

Currently, charter schools earning two consecutive grades of "F" may request a waiver from the State Board of Education. The bill reduces the number of days a charter school has to file a waiver request from 30 to 15. Additionally, the bill clarifies that the waiver must be submitted within 15 days of the

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[25] Section 1002.33(9)(n)4.a., F.S.; s. 1008.33(4)(b)3. and (e), F.S.
[26] Section 1002.33(26), F.S.
[27] Section 1002.33(7)(a)18., F.S.
[28] Section 1002.33(9)(j)4., F.S.
[29] Email, Florida Department of Education, Independent Education and Parental Choice (Jan. 11, 2013). *See* The Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, Title VIII (P.L. 112-10).

Department's official release of school grades and not after school grade appeals. These measures will expedite the waiver requests and hearings.

Employees of the charter school and the charter management organization or their spouses, may not serve as members of the charter school governing board.

Charter School Application Process

Present Situation

A person or entity wanting to open a charter school must submit an application on the model application form prepared by the Department of Education.[30] Sponsors shall receive and review all applications that are received on or before August 1 of each calendar year for charter schools that will open at the beginning of the next school year or upon a date agreed to by the sponsor and the charter applicant. Before approving or denying an application, the sponsor must allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the application.[31]

Effect of Proposed Changes

The bill prohibits a sponsor from refusing to accept a charter application prior to August 1. To promote collaboration between the sponsor and the applicant, the bill allows applicants to submit a draft application on May 1 each year and requires districts to review and provide feedback to the applicant as to any potential grounds for denial within 60 days of receipt of the draft application. This allows applicants to rectify any major issues prior to final submission and affords the district more time for review of applications that are submitted early.

The bill requires the applicant to disclose whether or not they were a member of a charter school governing board or some other person with decision making authority for a charter school that was subject to a corrective action plan or financial emergency plan. The applicant must describe the circumstances surrounding that plan and the resolution of the plan. A governing board member or other related entity of a charter school under a current corrective action plan or financial recovery plan is not eligible to apply to open a new charter school.

Contractual Agreements

Present Situation

Upon approval of an application, the sponsor and the charter school must set forth the terms and conditions for the operation of the school in a written contractual agreement called a charter. The sponsor has 60 days to provide an initial contract to the charter school. The sponsor and the charter school then have 75 days to negotiate and notice the contract for final approval.[32] Several school districts have included in their charters a requirement that charter schools have a certificate of occupancy (CO) 30 days prior to the first day of school and if charter schools fail to meet that deadline, it constitutes an automatic termination of the charter. As a result, some charter applicants were required to re-submit applications and work through the approval and contract process again.[33]

[30] Section 1002.33(6)(a), F.S.
[31] Section 1002.33(6)(b), F.S.
[32] Section 1002.33(6)(h), F.S.
[33] Telephone interview with Charter Schools Director, Florida Department of Education (Jan. 24, 2013).

In the case of a contract dispute, the Department of Education must provide mediation services. If the Commissioner of Education determines that the dispute cannot be settled through mediation, it may be appealed to an administrative law judge appointed by the Division of Administrative Hearings.[34]

Currently, sponsor policies may not apply to charter schools, unless they are mutually agreed to by both the sponsor and the charter school.[35] These policies may or may not be incorporated into the contract. If not, and the sponsor subsequently revises such policies, the charter school may become subject to new provisions that were not mutually agreed to at the onset.

Current law stipulates that charter schools operated by a municipality or other public entity or a private, not-for-profit, s. 501(c)(3) status corporation are eligible for a 15-year charter upon approval of the district school board, if the purpose is to facilitate access to long-term financial resources for charter school construction.[36]

In 2009, the Legislature required the Department of Education to adopt State Board of Education rules to implement, among other documents, charter and charter renewal formats for use by all charter sponsors and charter schools.[37]

A charter may be modified, only during its initial term or any renewal term, upon the recommendation of the sponsor or the charter school's governing board and upon approval of both parties to the agreement.[38]

Effect of Proposed Changes

Currently, the charter contracts utilized by sponsors vary from district to district. This variety lengthens the contract negotiation timeline and affects a charter school's ability to open on time. The bill requires the state board to adopt in rule a standard charter contract and prohibits a sponsor from omitting, supplementing, amending or otherwise altering the standard charter contract.[39] By standardizing the charter contract, the best practices used throughout the state may be incorporated thereby streamlining the contracting process. Moreover, the amount of time necessary to produce an initial contract and negotiate the final contract will be reduced. Consequently, the bill reduces the number of days for an initial contract from 60 to 30 and the number of days for negotiations from 75 to 40.

The bill requires that any sponsor policies that the charter school and sponsor agree to be incorporated into the final charter (contract). If the sponsor subsequently amends such policies, they must be presented to the charter school and if agreed to, amended into the charter. This allows the charter school to review the new policies and determine whether or not the policies are in the best interest of the charter school.

The bill specifically prohibits a sponsor from requiring a charter school to have a CO prior to 15 days before the first day of school and clarifies that the administrative law judge does have final order authority to rule on issues outlined in Section 1002.33(6)(h), F.S.[40]

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[34] Section 1002.33(6)(h), F.S.
[35] Section 1002.33(5)(b)1.d., F.S.
[36] Section 1002.33(7)(a)12. F.S.
[37] Section 7, ch.2009-214. L.O.F.
[38] Section 1002.33(7)(c), F.S.
[39] *See* State Board of Education Rule 6A-6.0786, F.A.C. and Form Number IEPC-M3, Florida Model Charter Contract Format, *available at* https://www.flrules.org/gateway/ruleNo.asp?id=6A-6.0786 (last visited January 29, 2013).
[40] In the Division of Administrative Hearings Case No. 12-0087, Renaissance Charter School, INC:, Petitioner, vs. Leon County School Board, Respondent, it was determined that, "The statute does not specify whether the order of the administrative law judge is a final or a recommended order."

Charter schools and sponsors are provided more flexibility when negotiating long-term charters (beyond the initial 4 or 5 years), by removing the need to demonstrate that the long-term charter is necessary to facilitate access to long-term financial resources for construction.

The bill clarifies that modifications to the charter may include, but not be limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board and are physically located on the same campus. It also allows this type of modification to occur outside the normal contract renewal period.

The bill aligns timelines for sponsor review and approval of a charter modification requested by a high-performing charter school with the timelines established for a charter school. The sponsor, upon receipt of such request, has 40 days to provide an initial charter to the high-performing charter school, and then the sponsor and high-performing charter school have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

Student Eligibility, Enrollment and Capacity

Present Situation

Charter schools must enroll all eligible students who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, the school must conduct a random selection and enroll students accordingly.[41]

Currently, the capacity of a charter school is determined annually by the charter school governing board in conjunction with the sponsor, unless the charter school has obtained high-performing status pursuant to s. 1002.331, F.S. The sponsor may not require a high-performing charter school to waive its right to determine its capacity or require an enrollment cap as a condition of approval or renewal of a charter.[42] Charter schools with high-performing status are also allowed to increase their enrollment once per year by up to 15 percent more than the capacity identified in the charter.[43]

Effect of Proposed Changes

The bill requires that the lottery process be observed by the sponsor or a third party mutually agreed to by the charter school and sponsor.

The bill allows all charter schools the ability to determine capacity, without sponsor input, and to determine their own student enrollment. Moreover, the sponsor may not require any charter school to waive its rights to determine its own enrollment as a condition to approve or renew a charter. Finally, the sponsor may not require the charter school to enroll, or identify the specific students it will enroll, prior to the start of the school year as a condition of approval or renewal of a charter.

Exemption from Statutes – Teacher Compensation

Present Situation

Charter schools are generally exempt from the Florida K-20 Education Code (Chapters 1000-1013, F.S.), unless compliance with a particular statute is specifically required by law.[44] In 2011, the Legislature enacted the Student Success Act (Act), which required school districts and charter schools to implement reforms to educator compensation, performance evaluations, and contracts. These reforms were designed for implementation by traditional public schools; however, charter schools are

[41] Section 1002.33(10)(b), F.S.
[42] Section 1002.33(10)(h), F.S.
[43] Section 1002.331(2)(a), F.S.
[44] Section 1002.33(16), F.S.

required to implement them in the same manner as school districts.[45] As an unintended result, some school districts have interpreted the Act to require charter schools to implement the same employment policies as traditional public schools, even though implementation of a particular policy requires a complete structural shift from a private sector employment model to a model designed for public employers.[46]

Effect of Proposed Changes

The bill makes several changes to clarify the extent to which charter schools must comply with the Act's educator compensation, performance evaluation, and contracting requirements. The bill clarifies that provisions related to instructional personnel workforce reductions and contracts do not apply to charter schools, unless the school awards contracts and such contracts are for a term longer than one year. Charter schools must award annual salary adjustments to instructional personnel based upon annual performance evaluation results (like traditional public schools). However, flexibility is provided to determine salary supplements and other methods of compensation.[47]

The bill clarifies the meaning of "substantive requirements" by requiring that a charter school's evaluation instrument comply with subsection (2), (3), and (7) of s. 1012.34, F.S. Thus, charter schools must develop a performance evaluation that differentiates among four performance levels, supports effective instruction and student learning growth, is designed to improve instructional quality, and uses student data from multiple sources. The evaluation must be conducted at least once per year, personnel must be fully informed of the criteria and procedures prior to evaluation, the individual's supervisor must conduct the evaluation, and the evaluator may amend an evaluation based on specific assessment data. Charter schools must also comply by using the state approved student growth formula and requirements for measuring student growth in courses without statewide assessments.[48] The net effect of the bill's educator compensation, performance evaluation, and contracting provisions is to require charter schools to adopt employment policies that incorporate key concepts promoted by the Act, while providing flexibility to shape these policies in a manner that fits the charter school context.

For purposes of interpreting Education Code statutes that a charter school is required to comply with, the bill equates a charter school's principal with a district school superintendent and a governing board with a school board. Thus, for example, when a charter school must comply with a statutory provision that imposes a duty on school boards, the charter school's governing board must perform the duty.

Federal Funding Reimbursement

Present Situation

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),[49] Title I programs for disadvantaged

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[45] Chapter 2011-1, L.O.F. There are 224 charter schools participating in Florida's Race to the Top grant. These charter schools will be implementing reforms to performance evaluations and compensation systems. Florida Department of Education, *LEA Approval Status List*, http://www.fldoe.org/arra/RacetotheTop-archive.asp (last visited Feb. 27, 2012).

[46] Brief for School Board of Orange County, at 12-13, *Response to the State Board of Education in Appeal by Renaissance Charter School, Orlando* (Dec. 12, 2011)(on file with committee). For example, at least one school district has interpreted the Act's contract and workforce reduction provisions to prohibit charter schools from employing teachers on an at-will basis. *Id.*

[47] For example, the Act's salary schedule provisions provide opportunities for teachers to earn salary supplements based upon assignment to a Title I school or low-performing school. Charter school teachers are not assigned to schools in the same manner as teachers employed by a school district and many charter schools are single-school operations. Teachers in a charter school that does not meet these criteria, or that is not part of a system of charter schools that includes schools that meet these criteria, have no opportunity to earn these salary supplements. *See, e.g.*, s. 1012.27(1), F.S.

[48] Section 1012.34(2), (3), and (7), F.S.

[49] 20 U.S.C. s. 1411(e).

students,[50] and Title II programs for improving teacher quality.[51] Typically, federal education programs are structured so that funding flows from the federal government to a state educational agency,[52] which then awards subgrants to local education agencies (LEA) within the state.[53] School districts are the LEA for district public schools, including charter schools. Federal education funds are received by the school district, which then distributes to the charter school its proportionate share of funding.[54]

Each federal education program has unique policy goals and expenditure, record keeping, and annual financial and performance accountability reporting requirements.[55] Federal regulations provide penalties for grantees and subgrantees[56] that fail to comply with grant requirements. These penalties include withholding, suspension, or termination of grant funds or designation as a "high risk" grantee.[57]

Federal law requires school districts to ensure that charter schools receiving federal funds comply with federal grant requirements.[58] School districts typically address issues related to a charter school's compliance with federal grant requirements in the charter.[59] In addition, Florida law provides several mechanisms which enable school districts to provide financial oversight of charter schools. Charter schools must submit annual financial reports,[60] provide for an annual financial audit,[61] and submit to the district monthly financial statements.[62] Among other things, a charter school's annual financial audit must include violations of law, contract provisions, or grant agreements.[63]

According to the DOE, school districts distribute federal funds directly to charter schools, provide in-kind services in lieu of funds, or use a combination of both methods. School districts use a variety of methods to distribute federal funds directly to charter schools, including directly advancing funds, reimbursing expenditures, or making purchases on behalf of charter schools.[64]

Effect of Proposes Changes

The bill requires a sponsor to monthly reimburse a charter school for expenditures of federal funds, unless another method of disbursing federal funds is mutually agreed to by the charter school and sponsor. The charter school must provide invoices evidencing expenditures to the sponsor at least 30 days before the monthly reimbursement date set by the sponsor. Charter schools that choose to receive federal funds on a reimbursement basis must comply with applicable state and federal requirements governing use of federal funds. In order to receive federal funds on a reimbursement

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[50] 20 U.S.C. s. 6301 et. seq.
[51] 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c)-(d), F.S
[52] The Florida Department of Education is Florida's state educational agency for federal funding purposes. *See* 20 U.S.C. s. 1412(a).
[53] *See* 20 U.S.C. ss. 1412(a) and 1413(a).
[54] Section 1002.33(17)(c), F.S.
[55] 34 C.F.R. ss. 76.702, 80.36, 80.32, 80.33, and 80.42 (fiscal, procurement, and inventory management records); 34 C.F.R. s. 80.41 (financial reports include status, cash transaction, and capital outlay reports).
[56] 34 C.F.R. s. 80.3. Federal regulations governing administration of federal education grant programs define "grantee" to mean the government to which a grant is awarded and which is accountable for the use of the funds provided, i.e. DOE. Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided, i.e., school districts. *Id.*
[57] 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees). Special conditions are placed upon "high risk" grantees, including payment of grant funds on a reimbursement basis; withholding of authority to proceed to subsequent grant phases until performance expectations are met; or requiring additional financial reports, project monitoring, and technical or management assistance. 34 C.F.R. s. 80.12. Grant recipients who commit fraud may be debarred or suspended from participation in all federally funded programs. 34 C.F.R. s. 80.43(d); Exec. Order No. 12549, 34 C.F.R. s. 80.35.
[58] 34 C.F.R. s. 80.3; 34 C.F.R. s. 300.209(b).
[59] Telephone interview with Florida Department of Education, Charter Schools Director (Feb. 1, 2012).
[60] Section 1002.33(9)(g), F.S.
[61] Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.
[62] Section 1002.33(9)(g), F.S. High-performing charter schools may submit quarterly, rather than monthly, financial statements. Section 1002.331(2)(c), F.S.
[63] Section 10.856(2)(b)2.c., Rules of the Auditor General.
[64] *Funding Report, supra* note 1, at 21-22.

basis, a charter school must submit to the sponsor for approval a plan outlining the charter school's use of federal funds. Allowing charter schools to receive federal funds on a reimbursement basis provides charter schools with greater autonomy regarding purchases made with federal funds, while enabling the sponsor to oversee the charter school's compliance with state and federal requirements governing use of such funds.

Facilities for Charter Schools

Present Situation

Currently, if a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis it is made available to other public schools in the district.[65] However, there have been instances in which facilities are used for storage (some partially) or some other purpose, or not marked for disposal and such facilities still remain unavailable to charter schools. Other districts have provided buildings, at cost, to charter schools.

Effect of Proposed Changes

The bill clarifies that if a district school board facility or property that has previously been used for K-12 educational purposes is unused, or is being utilized at less than 50 percent of its Florida Inventory of School Houses (FISH) student capacity, it shall be made available at no cost to the charter school. It allows districts to give priority to charter school operators with a proven track record of academic success. In turn, the charter school must agree to target students who had previously been assigned to that school and must enroll enough students to ensure a greater capacity than the previous school year's enrollment. The charter school shall not earn capital outlay funds. The charter school is responsible for maintenance fees for the facility and may choose to do this themselves or pay the school district the actual cost to maintain the facility to the same standard it would any other district operated school in similar age and condition.

Florida College System Institution Charter Schools

Present Situation

Florida College System (FCS) institutions are statutorily authorized to, in cooperation with the school board or boards within the institution's service area, develop charter schools that offer secondary education[66] and allow students to obtain an associate degree[67] upon graduation from high school. Students have full access to all college facilities, activities, and services.[68] According to an October 2012 survey, 3 colleges reported having charter and collegiate high schools. An additional four

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[65] Section 1002.33(18)(e), F.S.

[66] Under Florida law, the term "secondary school" is synonymous with "high school" (grades 9 through 12). Section 1003.01(2), F.S. (definition of "school"). Generally speaking, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. Section 1003.01(2), F.S. High school grade levels served by FCS institution charter schools vary. For example, St. Petersburg Collegiate High School serves students in grades 10 through 12. St. Petersburg Collegiate High School, *Admissions*, http://www.spcollege.edu/spchs/Admission.html (last visited Feb. 2, 2012). In contrast, Edison State College's two collegiate high schools serve students in grades 9 through 12. *See, e.g.*, Edison Collegiate High School, *Admissions*, http://echs.edison.edu/about/admission-process/ (last visited Feb. 2, 2012).

[67] Associate degrees include the associate in arts, associate in science, and associate in applied science degrees. *See* rule 6A-14.030(1)-(3), F.A.C.

[68] Section 1002.33(5)(b)4., F.S.

indicated they had a charter school.[69] FCS institution charter schools may not serve students in the elementary or middle grades.[70]

Effect of Proposed Changes

The bill authorizes FCS institutions with approved teacher preparation programs to establish one charter school which serves students in kindergarten through grade 12. The bill further requires that charter schools offering kindergarten through grade eight under the FCS utilize a formal education program in which the student learns at least in part through online delivery of content and instruction and at least part at a supervised brick-and-mortar location away from home. This will enable FCS institutions to use these charter schools as teaching labs for prospective teachers enrolled in their teacher preparation programs.

High-Performing Charter Schools and Charter School Systems

Present Situation

Legislation enacted in 2011 established criteria for identifying charter schools and charter school systems with a track record of exemplary academic performance and financial stability.[71] A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of "A" and no grade below "B;"
- Received an unqualified opinion[72] on each annual financial audit; and
- Had not received an annual financial audit that reveals a financial emergency condition.[73]

A high-performing charter school system is a system of charter schools operated by a municipality or other public entity that is authorized by law to operate a charter school; a private, nonprofit, s. 501(c)(3) of the Internal Revenue Code status corporation; or a private for-profit education management corporation that:

- Includes at least three high-performing charter schools in Florida;
- Has at least 50 percent of its charter schools designated as "high-performing" with no charter school receiving a school grade of "D" or "F;" and
- Has not received an annual financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida.[74]

High-performing charter schools receive various advantages. A high-performing charter school may:

- Increase the school's enrollment once per year;

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[69] See *Charter and Collegiate High Schools in the Florida College System*, Division of Florida Colleges, Florida Department of Education *available at* http://www.fldoe.org/cc/OSAS/Evaluations/pdf/FYI2011-01.pdf

[70] Section 1002.33(5)(b)4., F.S

[71] Sections 1 and 2, ch. 2011-232, L.O.F.

[72] An unqualified audit opinion means that the charter school's financial statements are materially correct. Telephone interview with Florida Auditor General staff (March 24, 2011).

[73] Section 1002.331(1), F.S. 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; or a fund balance or total net assets deficit. Section 218.503(1), F.S. A charter school in the workplace satisfies audit requirements for "high-performing" status if the auditor finds that sufficient monetary resources are available to cover any reported deficiency or if the deficiency does not result in a deteriorating financial condition. Section 1002.331(1)(c), F.S. A "deteriorating financial condition" is a circumstance that significantly impairs the ability of a charter school to generate enough revenues to meet its expenditures without causing the occurrence of a financial emergency condition. Section 1002.345(1)(a)3., F.S.

[74] Section 1002.332(1), F.S.

- Expand grade levels within kindergarten through grade 12 to add grade levels not already served;[75]
- Submit quarterly, rather than monthly, financial statements to its sponsor;
- Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the school's governing board, regardless of the charter renewal cycle; and
- Receive a modification of its charter to a term of 15 years or a 15-year charter renewal.[76]

In addition to these advantages, a high-performing charter school may submit a charter school application to replicate its educational program in any school district in the state.[77] Such applications may only be denied based upon limited criteria.[78] If an application submitted by a high-performing charter school is denied, the sponsor must provide the applicant and the Department of Education (DOE) with a letter of denial stating its reasoning with supporting documentation. Like other application denials, a high-performing charter school may appeal the sponsor's denial to the State Board of Education and the sponsor may submit a response to the appeal. The appeals process for high-performing charter school applications differs from other appeals in that the state board conducts the appeal without convening the Charter School Appeal Commission[79] and independently reviews whether the sponsor based its decision upon the statutory denial criteria.[80]

In order to receive "high-performing" status, a charter school or charter school system must request verification by the Commissioner of Education that the school meets the eligibility requirements.[81] The law provides for removal of a charter school's "high-performing" status if it receives a school grade of "C" in any two years during the term of the 15-year charter.[82] The law does not provide a process for annually reviewing a charter school's, or charter school system's, continued eligibility for "high-performing" status. Nor does it specify a process for removing the status if a school or system is no longer eligible.[83]

Effect of Proposed Changes

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[75] Enrollment increases and grade level expansion may not exceed 15 percent of the student capacity authorized by the charter. Section 1002.331(2)(a) and (b), F.S.

[76] Section 1002.331(2), F.S. The charter may be modified or renewed for a lesser term at the option of the charter school, is subject to annual review by the sponsor, and may be terminated for grounds currently specified in statute. *Id.* A sponsor may terminate or not renew a charter school's charter if the school fails to participate in Florida's accountability system; fails to meet the student performance outcomes agreed upon in the charter; fails to meet generally accepted standards of fiscal management; or violates the law. Section 1002.33(8)(a), F.S.

[77] Section 1002.331(3)(a), F.S.

[78] Section 1002.33(6)(b)3.b., F.S. An application to replicate a high-performing charter school may only be denied if clear and convincing evidence demonstrates material noncompliance with application requirements related to curricula, student learning goals, reading instruction, and financial management; material noncompliance with law requiring charter schools to be nonsectarian; comply with student enrollment requirements; be accountable to the sponsor; be tuition free; and meet state and local health, safety, and civil rights requirements; that the proposed charter school does not substantially replicate one of the applicant's high-performing charter schools; that the applicant misrepresented important facts or concealed information during the application process; or the proposed charter school's educational program and financial management practices do not materially comply with the charter school statute. *Id.* "Material noncompliance" is a failure to follow requirements or a violation of prohibitions applicable to charter school applications which is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. Section 1002.33(6)(b), F.S. (flush-left provisions at end of paragraph).

[79] The Charter School Appeal Commission (CSAC) is a body comprised of school district and charter school representatives that reviews charter school application appeals filed with the state board. CSAC must review the appeal and make a written recommendation to the state board as to whether it should be upheld or denied. The state board must consider the CSAC's recommendation, but is not bound by it when making its final decision. Section 1002.33(6)(e)1. and 2., F.S.

[80] Section 1002.33(6)(c)3.b., F.S.

[81] Sections 1002.331(5) and 1002.332(2), F.S.

[82] Section 1002.331(4), F.S.

[83] *See* ss. 1002.331 and 1002.332, F.S.

The bill requires the commissioner to annually determine a charter school's, or charter school system's, continued eligibility for "high-performing" status. A high-performing charter school or charter school system may maintain its "high-performing" status, unless the commissioner determines that the charter school or system no longer meets the eligibility criteria. If a high-performing charter school or system fails to meet the eligibility criteria, the commissioner must notify the school or system of its declassification as "high-performing." These changes establish explicit standards for reviewing continued eligibility for "high-performing" status and for declassifying high-performing charter schools and systems that fail to meet eligibility criteria.

The bill clarifies that the high-performing charter school application appeals process is conducted in the same manner as other application appeals, except that the state board conducts the appeal without convening the Charter School Appeal Commission.[84] It does require the Commissioner of Education to review the appeal and make a recommendation to the State Board of Education.

The bill includes provisions by which an out-of-state entity that successfully operates a system of charter schools may qualify for high-performing status as a charter school system. The operators must apply to the State Board of Education for such status, solely for the purpose of establishing charter schools that primarily serve students in the attendance zone of a school identified as in need of intervention and support services pursuant to s. 1008.33(3)(b), F.S. The State Board of Education must adopt, by rule, a process for determining whether an entity meets the requirements by reviewing student demographic and performance data from all schools operated by the entity.

The bill also expands the definition of a high-performing charter school to include schools established by operators who have obtained high performing status through the process outlined above.

SECTION DIRECTORY:

Section 1: Amending s. 1002.33, F.S.; requiring policies agreed to by the sponsor and charter school to be incorporated into the charter contract; authorizing a charter school operated by a Florida College System institution to serve students in kindergarten through grade 12 if certain criteria are met; prohibiting the governing board or other related entity of a charter school subject to a corrective action plan or financial recovery plan from applying to open an additional charter school; providing disclosure requirements; revising provisions relating to the timely submission of charter school applications; providing requirements relating to the appeal of a denied application submitted by a high-performing charter school; requiring the use of a standard charter contract; reducing the amount of time for negotiation of a charter; revising provisions relating to the issuance of a final order in contract dispute cases; providing a restriction relating to a required certificate of occupancy; authorizing the consolidation of multiple charters into a single charter in certain circumstances; establishing student academic achievement as a priority in determining charter renewals and terminations; revising the timeline for charter schools to submit waiver of termination requests to the Department of Education; restricting expenditures upon nonrenewal or termination of a charter school; requiring a charter school to maintain specified information on a website; revising provisions relating to determination of a charter school's student enrollment; revising provisions requiring charter school compliance with statutes relating to education personnel compensation, contracts, and performance evaluations and workforce reductions; providing requirements for the reimbursement of federal funds to charter schools; requiring that certain unused or under-used school district facilities be made available to, or shared with, charter schools at no cost; requiring charter schools to cover maintenance costs for such facilities; restricting capital outlay funding; requiring the use of standard charter and charter renewal contracts and a standard evaluation instrument; providing restrictions on the employment of governing board members.

[84] Telephone interview with Charter Schools Director, Florida Department of Education (Jan. 7, 2013). In August of 2011, 44 applications were submitted by high-performing charter schools, 4 were denied and 3 appealed directly to the State Board of Education.

Section 2: Amending s. 1002.331, F.S.; providing requirements for modification of a charter; requiring the Commissioner of Education to annually review a high-performing charter school's eligibility for high-performing status; authorizing declassification as a high-performing charter school.

Section 3: Amending s. 1002.332, F.S.; revising requirements for classification as a high-performing charter school system; requiring the commissioner to annually review a high-performing charter school system's eligibility for high-performing status; authorizing declassification as a high-performing charter school system; allowing out-of-state operators to apply and qualify for high-performing status as a charter school system if they meet certain requirements; requiring the State Board of Education to adopt, by rule, the process for reviewing and approving such applications; expanding the definition of high-performing charter school to include schools opened by such operators.

Section 4: Providing an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill clarifies that if a district school board facility or property that has previously been used for K-12 educational purposes is unused, or is being utilized at less than 50 percent of its Florida Inventory of School Houses (FISH) student capacity, it shall be made available at no cost to the charter school. School districts would incur costs related to the maintenance and operations of the unused or shared facilities. These costs are indeterminate, but may be significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2013, the Choice and Innovation Subcommittee reported the proposed committee bill (PCB) favorably. The PCB added provisions that:

- Allowed charter schools, upon termination or non-renewal of its charter, to also cover expenses related to reasonable attorney fees and costs during the pendency of an appeal.
- Required a charter school utilizing a district-owned facility to incur the maintenance costs. The charter school may choose to handle their own maintenance or pay the school district for actual cost to maintain the facility at a level commensurate with other similar district-owned facilities.
- Prohibited spouses of employees of the charter school and the charter school management company from being a member of the charter governing board.
- Allowed an out-of-state entity that successfully operates a system of charter schools to apply for and qualify for high-performing status as a charter school system under specific conditions. It requires the State Board of Education to adopt, in rule, a process to determine whether or not an entity meets specified requirements by reviewing student demographic and performance data from all the schools it operates.
- Expanded the definition of a high-performing charter school to include charter schools operated by qualified out-of-state entities as determined above.

The PCB removed provisions that:

- Required districts to cover maintenance costs for district-owned facilities utilized by charter schools.
- Prohibited employees of the district school board from being a member of the charter school governing board.

A bill to be entitled

An act relating to charter schools; amending s. 1002.33, F.S.; requiring policies agreed to by the sponsor and charter school to be incorporated into the charter contract; authorizing a charter school operated by a Florida College System institution to serve students in kindergarten through grade 12 if certain criteria are met; prohibiting the governing board or other related entity of a charter school subject to a corrective action plan or financial recovery plan from applying to open an additional charter school; providing disclosure requirements; revising provisions relating to the timely submission of charter school applications; providing requirements relating to the appeal of a denied application submitted by a high-performing charter school; requiring the use of a standard charter contract; reducing the amount of time for negotiation of a charter; revising provisions relating to the issuance of a final order in contract dispute cases; providing a restriction relating to a required certificate of occupancy; authorizing the consolidation of multiple charters into a single charter in certain circumstances; establishing student academic achievement as a priority in determining charter renewals and terminations; revising the timeline for charter schools to submit waiver of termination requests to the Department of Education; restricting

expenditures upon nonrenewal or termination of a charter school; requiring a charter school to maintain specified information on a website; revising provisions relating to determination of a charter school's student enrollment; revising provisions requiring charter school compliance with statutes relating to education personnel compensation, contracts, and performance evaluations and workforce reductions; providing requirements for the reimbursement of federal funds to charter schools; requiring that certain unused or under-used school district facilities be made available to, or shared with, charter schools at no cost; restricting capital outlay funding; requiring the use of standard charter and charter renewal contracts and a standard evaluation instrument; providing restrictions on the membership of a governing board; amending s. 1002.331, F.S.; revising criteria for classification as a high-performing charter school; providing requirements for modification of the charter of a high-performing charter school; requiring the Commissioner of Education to annually review a high-performing charter school's eligibility for high-performing status; authorizing declassification as a high-performing charter school; amending s. 1002.332, F.S.; revising requirements for classification as a high-performing charter school system; authorizing an entity operating outside the state to obtain high-performing charter

school system status under certain circumstances; requiring the commissioner to annually review a high-performing charter school system's eligibility for high-performing status; authorizing declassification as a high-performing charter school system; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (5), paragraphs (a), (b), (c), (d), and (h) of subsection (6), paragraphs (a) and (c) of subsection (7), paragraph (a) of subsection (8), paragraph (n) of subsection (9), paragraphs (b), (h), and (i) of subsection (10), paragraph (b) of subsection (16), paragraph (c) of subsection (17), paragraph (e) of subsection (18), paragraph (a) of subsection (21), and subsection (27) of section 1002.33, Florida Statutes, are amended, and paragraphs (o) and (p) are added to subsection (9) and paragraph (c) is added to subsection (26) of that section, to read:

1002.33 Charter schools.—

(5) SPONSOR; DUTIES.—

(b) Sponsor duties.—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor ~~sponsor's policies~~ shall not apply policies to a charter school unless mutually agreed to by both the sponsor and the charter school. Each policy agreed to by the sponsor and the charter school must be incorporated into the final charter contract. If the sponsor subsequently amends any policy that affects charter schools, the sponsor and the charter school must mutually agree to the newly revised policy and incorporate the agreed-to terms into the contract through the contract amendment process. The sponsor may not hold the charter school responsible for any provision of a newly revised policy until the policy is mutually agreed to and adopted through the amendment process.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing board ~~body~~ of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing board ~~body~~ of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a district school board's sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. If a Florida College System institution operates an approved teacher preparation program under s. 1004.04 or s. 1004.85, the institution may operate no more than one charter school that serves students in kindergarten through grade 12. In kindergarten through grade 8, the charter school shall implement innovative blended learning instructional models in which, for a given course, a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised

brick-and-mortar location away from home. A student in a blended learning course must be a full-time student of the charter school and receive the online instruction in a classroom setting at the charter school. District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity that wants ~~wishing~~ to open a charter school shall prepare and submit an application on the ~~a~~ model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided instruction on ~~services to attain~~ the Next Generation Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated,

and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.

5. Contains an annual financial plan for each year that the applicant intends to operate ~~requested by the charter for operation of~~ the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Discloses whether the applicant was a member of a charter school governing board or was a person with decisionmaking authority for a charter school that was subject to corrective action pursuant to subparagraph (9)(n)2., a corrective action plan pursuant to s. 1002.345(1)(c), or a financial recovery plan pursuant to s. 1002.345(2)(a). The applicant must include a detailed explanation of the circumstances requiring a corrective action plan or financial recovery plan and the resolution of the plan. However, a governing board member or other related entity of a charter school under a current corrective action plan or financial recovery plan is not eligible to apply to open an additional charter school. ~~Documents that the applicant has participated in~~

~~the training required in subparagraph (f)2. A sponsor may require an applicant to provide additional information as an addendum to the charter school application described in this paragraph.~~

7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

A sponsor may require an applicant to provide additional information as an addendum to the charter school application described in this paragraph.

(b) A sponsor shall receive and review all applications for a charter school using the ~~an~~ evaluation instrument developed by the Department of Education. A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted ~~applications~~ later than August 1 ~~this date~~ if it chooses. In order to facilitate greater collaboration in the application process, an applicant may submit a draft charter school application on or before May 1. If a draft application is timely submitted, the sponsor shall review and provide feedback as to any potential grounds for denial within 60 days after receipt of the draft application. The applicant shall then have until August 1 to resubmit a revised and final application. A

sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of an application upon the promise of future payment of any kind. Before approving or denying any final application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an

application within ~~no later than~~ 60 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the charter application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application does not materially comply with the requirements in paragraph (a);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a high-performing charter school, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting ~~its~~ denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the sponsor's denial of the application ~~directly~~ to the State Board of Education pursuant to paragraph (c) and must provide the sponsor with a copy of the appeal ~~sub-subparagraph (c)3.b~~.

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of a charter application within 10 calendar days after such

approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. Upon approval of a charter application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted unless the sponsor allows a waiver of this subparagraph for good cause.

(c)1. An applicant may appeal any denial of that applicant's application or failure to act on an application to the State Board of Education within ~~no later than~~ 30 calendar days after receipt of the sponsor's decision or failure to act and shall notify the sponsor of its appeal. Any response of the sponsor shall be submitted to the State Board of Education within 30 calendar days after notification of the appeal. Upon receipt of notification from the State Board of Education that a charter school applicant is filing an appeal, the Commissioner of Education shall convene a meeting of the Charter School Appeal Commission to study and make recommendations to the State Board of Education regarding its pending decision about the appeal. The commission shall forward its recommendation to the state board within ~~no later than~~ 7 calendar days before ~~prior to~~ the date on which the appeal is to be heard. An appeal regarding the denial of an application submitted by a high-performing charter school pursuant to s. 1002.331 shall be conducted by the State Board of Education in accordance with this paragraph, except that the commission shall not convene to make recommendations regarding the appeal. However, the Commissioner of Education shall review the appeal and make a recommendation

to the state board.

2. The Charter School Appeal Commission or, in the case of an appeal regarding an application submitted by a high-performing charter school, the State Board of Education may reject an appeal submission for failure to comply with procedural rules governing the appeals process. The rejection shall describe the submission errors. The appellant shall have 15 calendar days after notice of rejection in which to resubmit an appeal that meets the requirements set forth in State Board of Education rule. An appeal submitted subsequent to such rejection is considered timely if the original appeal was filed within 30 calendar days after receipt of notice of the specific reasons for the sponsor's denial of the charter application.

3.a. The State Board of Education shall by majority vote accept or reject the decision of the sponsor within ~~no later than~~ 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The State Board of Education shall remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The sponsor shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to ~~the provisions of~~ the Administrative Procedure Act, chapter 120.

b. If an appeal concerns an application submitted by a high-performing charter school identified pursuant to s. 1002.331, the State Board of Education shall determine whether the sponsor's denial of the application complies with the requirements in sub-subparagraph (b)3.b. ~~sponsor has shown, by~~

~~clear and convincing evidence, that:~~

~~(I) The application does not materially comply with the requirements in paragraph (a);~~

~~(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);~~

~~(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;~~

~~(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or~~

~~(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.~~

The State Board of Education shall approve or reject the sponsor's denial of an application no later than 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The State Board of Education shall remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The sponsor shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to the Administrative Procedure Act, chapter 120.

(d) The sponsor shall act upon the decision of the State Board of Education within 30 calendar days after it is received. The State Board of Education's decision is a final action

subject to judicial review in the district court of appeal.

(h) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The applicant and sponsor shall use the standard charter adopted in state board rule pursuant to subsection (27) and the application submitted by the applicant. The sponsor may not omit, supplement, or amend any provision of the standard charter agreement. In addition, the sponsor may not insert or append attachments, addenda, or exhibits to the standard charter contract. The sponsor shall not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The sponsor shall have 30 ~~60~~ days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and the sponsor shall have 40 ~~75~~ days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days before ~~prior to~~ the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law

judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to ~~may~~ rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal and shall award the prevailing party reasonable attorney ~~attorney's~~ fees and costs incurred to be paid by the losing party. The costs of the administrative hearing shall be paid by the party whom the administrative law judge rules against.

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance, which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses in which a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home ~~consisting of both traditional classroom and online instructional techniques~~. Charter schools may implement blended learning courses that ~~which~~ combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under

s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and

efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.428, s. 1003.429, or s. 1003.43.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be

compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter, which shall provide for termination ~~cancellation~~ of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. ~~In order to facilitate access to long-term financial resources for charter school construction,~~ Charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, ~~to facilitate access to long-term financial resources for charter school construction,~~ charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual

review and may be terminated during the term of the charter, but only according to ~~the provisions set forth in~~ subsection (8).

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives

employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(c) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement. Modification may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board and physically located on the same campus, regardless of the renewal cycle.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(a) The sponsor shall make student academic achievement for all students the most important factor when determining whether to renew or terminate the charter. The sponsor may also choose not to renew or may terminate the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.

2. Failure to meet generally accepted standards of fiscal management.

3. Violation of law.

4. Other good cause shown.

(9) CHARTER SCHOOL REQUIREMENTS.—

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34(2) shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student achievement. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F,"

or two nonconsecutive grades of "F" within a 3-year period, the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 4.

d. A charter school is no longer required to implement a corrective action if it improves by at least one letter grade. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school

improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

e. A charter school implementing a corrective action that does not improve by at least one letter grade after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve a letter grade if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 4.

3. A charter school with a grade of "D" or "F" that improves by at least one letter grade must continue to implement the strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

4. The sponsor shall terminate a charter if the charter school earns two consecutive grades of "F" unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)3. Such charter schools shall be governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district

public school that earned a grade of "F" in the year before the charter school opened and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 ~~30~~ days after the department's official release ~~completion~~ of school grades ~~grade appeals~~. The state board may waive termination if the charter school demonstrates that the learning gains of its students on statewide assessments are comparable to or better than the learning gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

5. The director and a representative of the governing board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

6. Notwithstanding any provision of this paragraph except sub-subparagraphs 4.a.-c., the sponsor may terminate the charter

at any time pursuant to subsection (8).

(o) Upon notification of nonrenewal or termination of its charter, a charter school may not expend more than $10,000 without prior written approval from the sponsor, unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract or such expenditure is for reasonable attorney fees and costs during the pendency of any appeal.

(p) Each charter school shall maintain a website that enables the public to obtain information regarding the school, its personnel, and its programs. The website shall include information or online links to information regarding any entity that owns, operates, or manages the school, including any nonprofit or for-profit entity; the names of all governing officers and administrative personnel of the entity; and any fees the school pays to the entity. The information or online links must be prominently displayed and easily accessible to visitors of the website.

(10) ELIGIBLE STUDENTS.—

(b) The charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, all applicants shall have an equal chance of being admitted through a random selection process observed by the sponsor or a third party mutually agreed to by the charter school and sponsor.

(h) The capacity of the charter school shall be determined annually by the governing board~~, in conjunction with the~~

~~sponsor,~~ of the charter school in consideration of the factors identified in this subsection ~~unless the charter school is designated as a high-performing charter school pursuant to s. 1002.331~~. A sponsor may not require a charter school to waive its rights to determine its own ~~the provisions of s. 1002.331 or require a~~ student enrollment ~~cap that prohibits a high-performing charter school from increasing enrollment in accordance with s. 1002.331(2)~~ as a condition of approval or renewal of a charter.

~~(i) The capacity of a high-performing charter school identified pursuant to s. 1002.331 shall be determined annually by the governing board of the charter school.~~ The governing board shall notify the sponsor of any increase in enrollment by March 1 of the school year preceding the increase. A sponsor may not require a charter school to identify the names of students to be enrolled or to enroll those students before the start of the school year as a condition of approval or renewal of a charter.

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

4. Section 1012.22(1)(c)5.b. ~~1012.22(1)(c)~~, relating to

the implementation of a compensation system that requires annual salary adjustments for instructional personnel to be based upon performance ~~and salary schedules~~.

5. Section 1012.33(5), relating to workforce reductions, if the charter school awards contracts to instructional personnel and the term of a contract exceeds 1 year.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011, if the charter school awards contracts to instructional personnel and the term of a contract exceeds 1 year.

7. Section 1012.34(2), (3), and (7) ~~1012.34~~, relating to ~~the substantive requirements for~~ performance evaluations for instructional personnel and school administrators. For purposes of compliance with this subparagraph, the duties assigned to a district school superintendent apply to a charter school principal or his or her equivalent, and the duties assigned to a district school board apply to a charter school's governing board.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(c) If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in charter schools in the school district shall be provided federal funds for the same level of service provided students in the schools operated by the district school

board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of reimbursement set by the sponsor. In order to be reimbursed, any expenditure made by the charter school must comply with all applicable state and federal rules and regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars, the federal Education Department General Administrative Regulations, and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the funds in accordance with applicable federal requirements. The sponsor has 30 days to review and

approve any plan submitted pursuant to this paragraph.

(18) FACILITIES.—

(e) If a district school board-owned ~~board~~ facility that has previously been used for K-12 educational purposes ~~or property~~ is ~~available because it is surplus, marked for disposal, or otherwise~~ unused, it shall be made available ~~provided~~ for a charter school's use at no cost ~~on the same basis as it is made available to other public schools in the district~~. If the facility was used as a K-12 public school in the previous school year, as a condition of using such a facility, the charter school shall agree to target students who had been assigned to that public school the previous school year and to enroll a sufficient number of students to ensure that the facility will be used at a greater capacity than it had been used in the previous school year. A district school board-owned facility that is being used at less than 50 percent of its Florida Inventory of School Houses (FISH) student capacity shall be shared with the charter school at no cost to the charter school, or the entire facility shall be made available to the charter school at no cost. The district school board may give priority for the use of such facility to charter schools and charter school operators with a proven record of academic success. A charter school using such a facility ~~receiving property from the school district~~ may not sell, sublease, or dispose of such facility ~~property~~ without written permission of the school district. The charter school may not earn capital outlay funds; however, the school district shall include the charter school's capital outlay full-time equivalent (COFTE)

student count in the district's capital outlay calculations. The charter school may choose to maintain the charter school facility or pay the school district the actual cost to maintain the facility at the same standard and level it would maintain any other district-operated school similar in age and condition. Maintenance does not include capital improvements. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include a model ~~standard~~ application form ~~format~~, standard charter contract ~~format~~, standard evaluation instrument, and standard charter renewal contract ~~format~~, which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with both school districts and charter schools before implementation. The charter and charter renewal contracts ~~formats~~ shall be used by charter school sponsors.

(26) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.—

(c) An employee of a charter school or his or her spouse or an employee of a charter management organization or his or her spouse may not be a member of the charter school governing board.

(27) RULEMAKING.—The Department of Education, after consultation with school districts and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts ~~formats~~ in accordance with this section.

Section 2. Paragraph (d) is added to subsection (1) of section 1002.331, Florida Statutes, and subsections (2), (4), and (5) of that section are amended, to read:

1002.331 High-performing charter schools.—

(1) A charter school is a high-performing charter school if it:

(d) Is established primarily to serve students in the attendance zone of a school identified in need of intervention and support pursuant to s. 1008.33(3)(b) and is operated by an entity classified as a high-performing charter school system by the State Board of Education pursuant to s. 1002.332(2).

A virtual charter school established under s. 1002.33 is not

eligible for designation as a high-performing charter school.

(2) A high-performing charter school is authorized to:

(a) Increase its student enrollment once per school year by up to 15 percent more than the capacity identified in the charter.

(b) Expand grade levels within kindergarten through grade 12 to add grade levels not already served if any annual enrollment increase resulting from grade level expansion is within the limit established in paragraph (a).

(c) Submit a quarterly, rather than a monthly, financial statement to the sponsor pursuant to s. 1002.33(9)(g).

(d) Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the charter schools' governing board regardless of the renewal cycle.

(e) Receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a shorter term at the option of the high-performing charter school. The charter must be consistent with s. 1002.33(7)(a)19. and (10)(h) ~~and (i)~~, is subject to annual review by the sponsor, and may be terminated during its term pursuant to s. 1002.33(8).

A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable. <u>If a high-</u>

performing charter school requests to consolidate multiple charters or to modify its charter pursuant to this subsection, the sponsor shall have 40 days after receipt of that request to provide an initial draft charter to the charter school. The sponsor and charter school shall have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

(4) A high-performing charter school may not increase enrollment or expand grade levels following any school year in which it receives a school grade of "C" or below. If the charter school receives a school grade of "C" or below in any 2 years during the term of the charter awarded under subsection (2), the term of the charter may be modified by the sponsor ~~and the charter school loses its high-performing charter school status until it regains that status under subsection (1)~~.

(5) The Commissioner of Education, upon request by a charter school, shall verify that the charter school meets the criteria in subsection (1) and provide a letter to the charter school and the sponsor stating that the charter school is a high-performing charter school pursuant to this section. The commissioner shall annually determine whether a high-performing charter school continues to meet the criteria in subsection (1). A high-performing charter school shall maintain its high-performing status unless the commissioner determines that the charter school no longer meets the criteria in subsection (1), at which time the commissioner shall send a letter providing notification of its declassification as a high-performing charter school.

Section 3. Section 1002.332, Florida Statutes, is amended to read:

1002.332 High-performing charter school system.—

(1) For purposes of this section, the term:

(a) "Entity" means a municipality or other public entity that is authorized by law to operate a charter school; a private, nonprofit corporation with tax-exempt status under s. 501(c)(3) of the Internal Revenue Code; or a private, for-profit education management corporation.

(b) "High-performing charter school system" means an entity that:

1. Operated ~~Operates~~ at least three high-performing charter schools in the state during each of the previous 3 school years;

2. Operated ~~Operates~~ a system of charter schools in which at least 50 percent of the charter schools were ~~are~~ high-performing charter schools pursuant to s. 1002.331 and no charter school earned a school grade of "D" or "F" pursuant to s. 1008.34 in any of the previous 3 school years, except that:

a. If the entity ~~has~~ assumed operation of a public school pursuant to s. 1008.33(4)(b)3. with a school grade of "F," that school's grade may not be considered in determining high-performing charter school system status for a period of 3 years.

b. If the entity established ~~establishes~~ a new charter school that served ~~serves~~ a student population the majority of which resided ~~resides~~ in a school zone served by a public school that earned a grade of "F" or three consecutive grades of "D" pursuant to s. 1008.34, that charter school's grade may not be

considered in determining high-performing charter school system status if it attained ~~attains~~ and maintained ~~maintains~~ a school grade that was ~~is~~ higher than that of the public school serving that school zone within 3 years after establishment; and

3. Did ~~Has~~ not receive ~~received~~ a financial audit that revealed one or more of the financial emergency conditions set forth in s. 218.503(1) for any charter school assumed or established by the entity in the most recent 3 fiscal years for which such audits are available.

(2) An entity that successfully operates a system of charter schools outside the state may apply to the State Board of Education for status as a high-performing charter school system solely for the purpose of establishing a charter school that primarily serves students in the attendance zone of a school identified in need of intervention and support pursuant to s. 1008.33(3)(b). The State Board of Education shall adopt rules prescribing a process for determining whether the entity meets the requirements of this subsection by reviewing student demographic and performance data from all schools operated by the entity.

(3)~~(2)~~(a) The Commissioner of Education~~, upon request by an entity,~~ shall verify all charter schools served by an entity and verify that the entity meets the criteria in this section ~~subsection (1)~~ for the previous ~~prior~~ school year and provide a letter to the entity stating that it is a high-performing charter school system. The commissioner shall annually determine whether a high-performing charter school system continues to meet the criteria in this section. A high-performing charter

school system shall maintain its high-performing status unless the commissioner determines that the charter school system no longer meets the criteria in this section, at which time the commissioner shall send a letter providing notification of its declassification as a high-performing charter school system.

(b) A high-performing charter school system may replicate its high-performing charter schools pursuant to s. 1002.331(3).

Section 4. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Moraitis offered the following:

Amendment (with title amendment)

Remove lines 842-865 and insert:

(18) FACILITIES.—

(e) If a district school board-owned ~~board~~ facility that has previously been used for K-12 educational purposes ~~or property~~ is ~~available because it is surplus, marked for disposal, or otherwise unused~~ no longer used as a school as defined by s. 1003.01(2), it shall be made available ~~provided~~ for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school using such a facility ~~receiving property from the school district~~ may not sell, sublease, or dispose of such facility ~~property~~ without written permission of

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Amendment No. 1

T I T L E A M E N D M E N T

Remove lines 39-42 and insert:

requiring that certain unused school district facilities be made available to charter schools in a manner similar to other public schools in the district; restricting capital outlay funding; requiring the use of standard charter

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 PCB SAC 13-01 Everglades Improvement and Management
SPONSOR(S): State Affairs Committee, Caldwell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	17 Y, 0 N	Blalock	Camechis
1) Appropriations Committee		Helpling	Leznoff

SUMMARY ANALYSIS

The Everglades Forever Act (EFA) is the primary Florida law pertaining to the management, protection, and restoration of the Everglades.

The bill amends the Everglades Forever Act to:

1. Provide a legislative finding that implementation of best management practices (BMPs) funded by the owners and users of land in the Everglades Agricultural Area (EAA) effectively reduces nutrients in waters flowing into the Everglades Protection Area.

2. Update the definition of the "Long Term Plan" to include the South Florida Water Management District's (SFWMD's) "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, in addition to the SFWMD's "Everglades Protection Area Tributary Basin Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003.

3. Authorize the continued use of up to 0.1 mill of the SFWMD's ad valorem revenues within the Okeechobee Basin to implement the Long-Term Plan and delete obsolete references to the "interim phase" of the Long Term Plan.

4. Prohibit a permittee's discharge from being deemed to cause or contribute to any violation of water quality standards in the Everglades Protection Area if the discharge is in compliance with applicable permits and any associated orders.

5. Require the SFWMD, prior to the completion of all projects and improvements in the Long Term Plan, to complete a use attainability analysis to determine if those projects and improvements will achieve the water quality based effluent limits established in permits and orders authorizing the operation of those facilities.

6. Require payment of a $25 per acre agricultural privilege tax on property classified as agricultural within the Everglades Agricultural Area between November 2014 and November 2024. Thus, the tax rate will fall to $10 per acre beginning in 2025 rather than in 2017 as required by current law.

7. Provide that the Legislature intends that payment of the agricultural privilege tax, in addition to payment of the cost of continuing implementation of best management practices, fulfills the obligations of owners and users of land under Article II, Section 7(b) of the Florida Constitution.

The bill appears to have a positive fiscal impact on SFWMD of $6.6 million per year from 2017 through 2024 due to retention of the $25 per acre agricultural privilege tax. Conversely, landowners who pay the tax must pay the increased tax from 2017 through 2024. The SFWMD has also stated that it will expend a total of $520 million to implement the $880 million Everglades restoration plan referenced in the bill, and intends to seek $32 million from the Legislature each year throughout the plan's 12-year implementation period. If the Legislature approves this annual appropriation, it would result in a negative fiscal impact to state government expenditures.

The act takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

The bill amends s. 373.4592(1)(g), F.S., to incorporate the finding that the implementation of best management practices (BMPs) funded by the owners and users of land in the Everglades Agricultural Area (EAA) effectively reduces nutrients in waters flowing into the Everglades Protection Area.

The bill also updates the definition of "Long-Term Plan" in s. 373.4592(2)(j), F.S., to include the "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, as may be subsequently modified in accordance with the Act, as well as the SFWMD's "Everglades Protection Area Tributary Basin Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003. The "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, being referenced in the definition of Long-Term Plan, is the new $880 million Everglades restoration plan described in more detail below.

In addition, the bill amends ss. 373.4592(3)(d) and 373.4592(3)(e), F.S., to remove outdated references to an initial phase and 10 year second phase of the previous Long-Term Plan.

The bill also amends s. 373.4592(4)(a), F.S., to authorize the continued use of up to 0.1 mill of the SFWMD's ad valorem revenues within the Okeechobee Basin for the purpose of implementing the Long-Term Plan.

The bill amends s. 373.4592(4)(f)4., F.S., to prohibit a permittee's discharge from being deemed to cause or contribute to any violation of water quality standards in the Everglades Protection Area if the discharge is in compliance with applicable permits and any associated orders.

The bill creates s. 373.4592(4)(h), F.S., which directs the SFWMD, prior to the completion of all projects and improvements in the Long Term Plan, to complete a use attainability analysis to determine if those projects and improvements will achieve the water quality based effluent limits established in permits and orders authorizing the operation of those facilities.

The bill amends s. 373.4592(6)(c)6., F.S., to require payment of a $25 per acre agricultural privilege tax on property classified as agricultural within the Everglades Agricultural Area between November 2014 and November 2024. Thus, the tax rate will fall to $10 per acre beginning in 2025 rather than in 2017 as required by current law.

Lastly, the bill amends s. 373.4592(6)(h), F.S., to provide that the Legislature intends that payment of the agricultural privilege tax, in addition to payment of the cost of continuing implementation of BMPs, fulfills the obligations of owners and users of land under Article II, Section 7(b) of the Florida Constitution.

Present Situation

2012 Restoration Strategies Regional Water Quality Plan

The SFWMD, Florida Department of Environmental Protection (FDEP), and United States Environmental Protection Agency (USEPA) engaged in technical discussions starting in 2010 and reached a consensus on new strategies for further improvement of water quality in America's Everglades in 2012. These agreed upon strategies will expand water quality improvement projects to

achieve the low phosphorus water quality standard established for the Everglades. The primary objectives were to establish a Water Quality Based Effluent Limit (WQBEL) that would achieve compliance with Florida's numeric phosphorus criterion in the Everglades Protection Area and to identify a suite of additional water quality projects to work in conjunction with the existing Everglades Stormwater Treatment Areas (STAs) to meet the WQBEL.

The SFWMD is implementing this technical plan to complete six projects that will create more than 6,500 acres of new STAs and 110,000 acre-feet of additional water storage through construction of flow equalization basins (FEBs) (Figure 1). The primary purpose of FEBs is to attenuate peak stormwater flows prior to delivery to STAs and provide dry season benefits, while the primary purpose of STAs is to utilize biological processes to reduce phosphorus concentrations in order to achieve the WQBEL. A FEB is a constructed storage feature used to capture and store peak stormwater flows. Water managers can move water from FEBs into STAs at a steady rate to optimize STA performance and achieve water quality improvement targets.

The projects have been divided into three flow paths (Eastern, Central and Western), which are delineated by the source basins that are tributary to the existing Everglades STAs. The identified projects primarily consist of Flow Equalization Basins (FEBs), STA expansions, and associated infrastructure and conveyance improvements.

The Eastern Flow Path contains STA-1E and STA-1W. The additional water quality projects for this flow path include an FEB in the S-5A Basin with approximately 45,000 acre-feet (ac-ft) of storage and an STA expansion of approximately 6,500 acres (5,900 acres of effective treatment area) that will operate in conjunction with STA-1W. The Central Flow Path contains STA-2, Compartment B and STA-3/4. The additional project is an FEB with approximately 54,000 ac-ft of storage that will attenuate peak flows to STA-3/4, and STA-2 and Compartment B. The Western Flow Path contains STA-5, Compartment C and STA-6. An FEB with approximately 11,000 ac-ft of storage and approximately 800 acres of effective treatment area (via internal earthwork) within STA-5 are being added to the Western Flow Path.

Design and construction of new projects will be achieved in the following phases to allow for stormwater treatment areas and flow equalization basins to mature and begin treating water as soon as possible:

Phase One (2012-2016)

- 45,000 acre-foot FEB in the eastern Everglades, close to the Loxahatchee National Wildlife Refuge, to work in conjunction with 11,500 acres of existing STAs (STA-1 East and STA-1-West).
- 54,000 acre-foot FEB in the central Everglades, adjacent to 31,800 acres of existing and newly completed STAs (STA-3/4, STA-2 and Compartment B) and utilizing construction already completed for the Everglades Agricultural Area-A1 Reservoir.

Phase Two (2013-2018)

- 4,700 acres of new STA in the eastern Everglades, adjacent to the Loxahatchee National Wildlife Refuge and adding to the treatment capacity of 11,500 acres of existing STAs (STA-1 East and STA-1-West).

Phase Three (2018-2024)

- 2018-2022: 1,800 acres of new STA in the eastern Everglades, adjacent to the Loxahatchee National Wildlife Refuge and adding to the treatment capacity of 11,500 acres of existing STAs (STA-1 East and STA-1-West) and 4,700 acres of STA added in Phase Two.
- 2018-2023: 11,000 acre-foot FEB in the western Everglades, adjacent to 13,700 acres of existing and newly completed STAs (STA-5, STA-6 and Compartment C).

- 2019-2024: 800 acres of earthwork in the existing STA-5 to maximize treatment in the western Everglades.

The strategies also include additional source controls – where pollution is reduced at the source – in areas of the eastern Everglades where phosphorus levels in stormwater runoff have been historically higher. In addition, a science plan will ensure continued research and monitoring to improve and optimize the performance of water quality treatment technologies.

Implementation of the technical plan is estimated to cost $880 million. The SFWMD is proposing to fund the plan through a three-part strategy that includes a combination of state and SFWMD revenues consisting of cash reserves from the SFWMD, ad valorem revenues collected by the SFWMD, and state appropriations. The SFWMD has proposed using $220 million in cash reserves, $300 million in anticipated ad valorem tax revenues from increased property values resulting from new construction estimated to increase by 1-1.5 percent, and a state appropriation of $32 million each year throughout the 12-year implementation period of the plan (Table 1).

The project construction schedule is intentionally planned over a 12-year period to balance timely and reasonable progress in improving Everglades water quality with the implementation of the SFWMD's ongoing core mission responsibilities for flood control, water supply and natural systems restoration. It also recognizes the economic and engineering realities associated with planning, permitting, designing, constructing and operating massive, biologically-based public works projects that rely on cutting-edge engineering, science and technology.

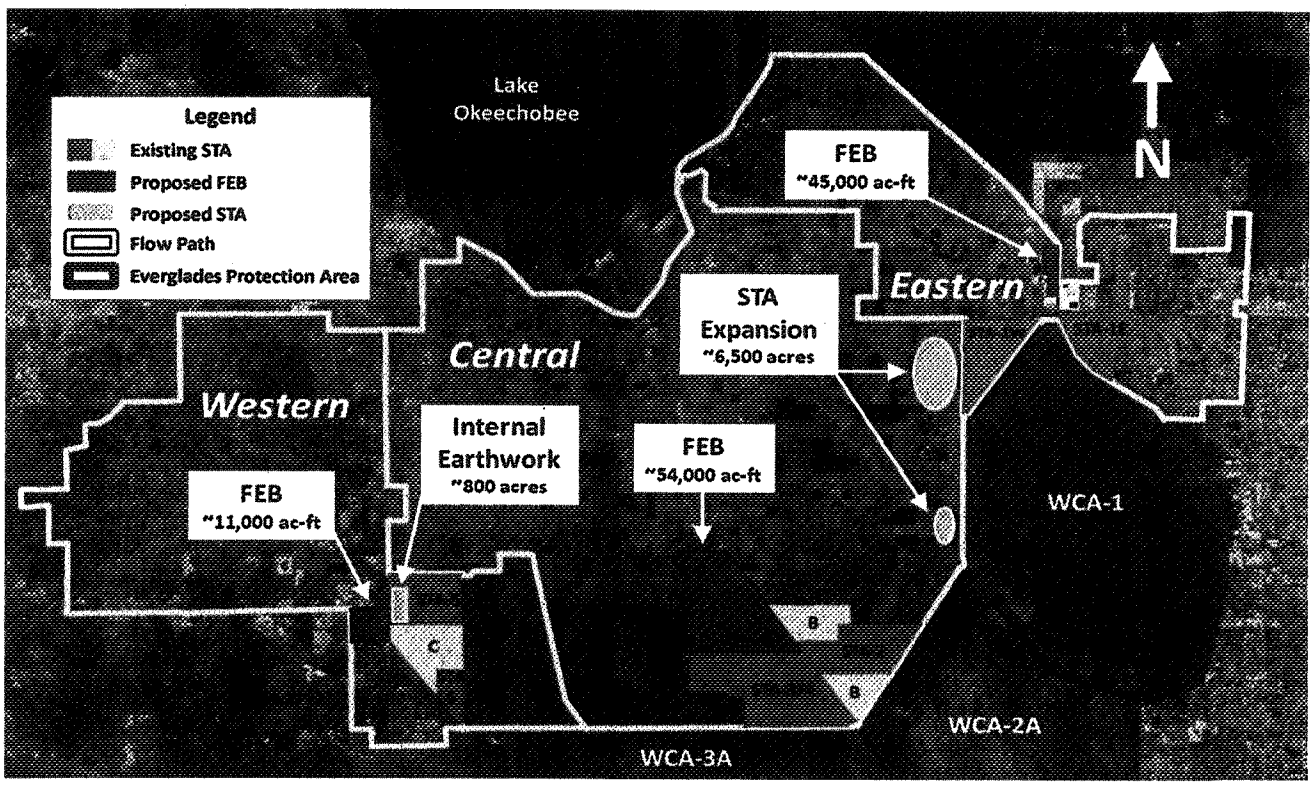

Figure 1. Restoration Strategies Flow Paths and Projects

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Everglades Restoration Strategies Funding
Estimated Project Costs

Flow Path	Projects	Cost
Eastern Flow Path	FEB & STAs	$365M
Central Flow Path	FEB	$120M
Western Flow Path	FEB & Earthwork	$130M
	Replacement Features	$180M
	Science Plan	$ 55M
	Source Controls	$ 30M
	Total	$880M

Table 1. Restoration Strategies Project Costs

Section 373.4592, F.S., "Everglades Forever Act:" Goals and Findings

The Everglades Forever Act (EFA)[1] is the primary Florida law pertaining to the management, protection, and restoration of the Everglades. Originally enacted in 1994, the statute outlines the state's commitment to preserve and restore an ecosystem that is "unique in the world and one of Florida's great treasures."[2] The statue is also designed to function in concert with the Comprehensive Everglades Restoration Plan (CERP), a multi-billion, multi-decade plan jointly implemented and funded by the state and federal government. The foremost goals of the EFA include improving both the quantity and quality of waters discharged into the Everglades Protection Area, and protecting native plants and animals of the Everglades by stemming the proliferation of invasive, non-native species within the ecosystem.[3]

As indicated in the legislative findings made at the outset of the EFA, the legislature was particularly concerned with excessive phosphorous levels in the Everglades. The EFA states that, "the Legislature finds that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. A reduction in levels of phosphorus will benefit the ecology of the Everglades Protection Area."[4] This goes hand in hand with the other goals set forth in the EFA.

Non-point sources of pollution, such as from agricultural areas and suburban storm water runoff, are a contributor of phosphorous contamination in the Everglades.[5] The EFA addresses non-point nutrient pollution primarily via two methods: (1) requiring the implementation of best management practices

[1] Section 373.4592, F.S.
[2] Section 373.4592(1)(a), F.S.
[3] Section 373.4592(1)(e), F.S. *See also* Michael T. Olexa & Zachary Broome, Handbook of Florida Water Regulation: Florida Everglades Forever Act, University of Florida Institute of Food and Agricultural Services.
[4] Section 373.4592(1)(d), F.S.
[5] Michael T. Olexa & Zachary Broome, Handbook of Florida Water Regulation: Florida Everglades Forever Act, University of Florida Institute of Food and Agricultural Services.

(BMPs) in the Everglades Agricultural Area (EAA); and (2) mandating the construction of storm water treatment areas (STAs).[6]

Everglades Forever Act: Everglades Long-Term Plan

In 2003, the legislature substantially amended the EFA, creating the Everglades Long-Term Plan.[7] The statute establishes that a long-term planning process is the optimal means by which to reduce the flow of excess levels of phosphorous into the Everglades.[8] At the heart of this process is the utilization of STAs and BMPs.[9]

The 2003 amendments also provide that the Long-Term Plan be implemented over the course of an initial 13-year phase (2003-2016) "and shall, to the maximum extent practicable, achieve water quality standards relating to the phosphorous criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose."[10] For every five years thereafter, the Florida Department of Environmental Protection (FDEP) must "review and approve incremental phosphorous reduction measures to be implemented at the earliest practicable date."[11]

Everglades Forever Act: Everglades Program

Section 373.4592(4), F.S., establishes the core substantive programs of the EFA, which are to be implemented by the SFWMD. These include:

- The construction of a number of STAs currently in operation, as directed under the Everglades Construction Project set out in Section (4)(a).
- The implementation of a water supply management program designed to improve the quantity of water reaching the Everglades and improve hydroperiod deficiencies,[12] in part via a reduction in wasteful discharges of fresh water to tide and water conservation practices and reuse measures.
- Providing additional inflows to the Everglades Protection Area so as to realize an average annual increase of 28 percent compared to the baseline years of 1979 to 1988 without reducing water quality benefits.
- SFWMD is directed to develop a model to be used for quantifying the amount, timing, and distribution of water needed to account for all reductions in flow to the Everglades Protection Area from BMPs.
- The development, through cooperation with federal and state agencies, of other programs and methods designed to increase the water flow and improve the hydroperiod of the Everglades Protection Area.[13]

Everglades Forever Act: Funding

To fund the various projects called for as part of the Everglades Program, SFWMD is empowered to levy an ad valorem tax on property owners within the Okeechobee Basin not exceeding 0.1 mill.[14] The 0.1 mill ad valorem tax must be used for design, construction, and implementation of the initial phase of the long term plan, including operation, maintenance, and enhancements of the Everglades

[6] Section 373.4592(4), F.S.
[7] Section 373.4592(3), F.S.
[8] Section 373.4592(3)(a), F.S.
[9] Section 373.4592(3)(b), F.S.
[10] Section 373.4592(3)(d), F.S.
[11] Section 373.4592(3)(e), F.S.
[12] A hydroperiod is defined as "the number of days per year that an area of land is dry or the length of time there is standing water at a location."
[13] Section 373.4592(4)(b)5., F.S.
[14] Section 373.4592(4)(a) F.S.

Construction Project.[15] Moreover, the 0.1 mill ad valorem tax must be the sole direct SFWMD contribution from SFWMD ad valorem taxes "appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project, unless the Legislature by specific amendment to this section increases the 0.1 mill ad valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project."[16]

Everglades Forever Act: Research and Monitoring Program

Section 373.4592(4)(d), F.S., establishes an Everglades research and monitoring program requiring FDEP and SFWMD to review and evaluate water quality data for the Everglades Protection Area and tributary waters and to identify additional information necessary to adequately describe water quality.[17] The statute also requires FDEP and SFWMD to similarly monitor and gauge the effectiveness of STAs and BMPs.[18] The department must continue research intended to optimize the design and operation of STAs and to identify other treatment and management methods that may potentially provide superior water quality and quantity benefits to the Everglades.[19]

Furthermore, the statute requires that SFWMD "shall monitor all discharges into the Everglades Protection Area for purposes of determining compliance with state water quality standards."[20] The SFWMD and FDEP is required to annually issue a peer-reviewed report regarding the research and monitoring program that summarizes all of its data and findings.[21]

Everglades Forever Act: Evaluation of Water Quality Standards

With regard to phosphorous, the EFA states that "[i]n no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna."[22] In the event that FDEP did not adopt a phosphorous criterion before December 31, 2003, the statute sets the phosphorous criterion at 10 parts per billion (ppb) in the Everglades Protection Area.[23] The statute also establishes the method of evaluating compliance with the phosphorous criterion, which is based upon a long term mean of concentration levels measured at a number of sampling stations recognized as reasonably representative of receiving waters in the Everglades Protection Area.[24]

Everglades Forever Act: Florida's Phosphorous Rule

In 2005, FDEP utilized the rulemaking authority granted to it under the EFA to promulgate rule 62-302.540, F.A.C. (Rule). The Rule "implemented the requirements of the Everglades Forever Act by utilizing the powers and duties granted the FDEP under the EFA and other applicable provisions of Chapters 373 and 403, F.S., to establish water quality standards for phosphorus, including a numeric phosphorus criterion, within the Everglades Agricultural Area (EAA)."[25]

The Rule also sets a numeric phosphorous criterion for Class III waters (waters used for recreation and aquatic life support) at a "long-term geometric mean of 10 ppb, but shall not be lower than the natural

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[15] *Id.*
[16] *Id.*
[17] Section 373.4592(4)(d), F.S.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Section 373.4592(4)(e), F.S.
[23] *Id.*
[24] *Id.*
[25] Rule 62-302.540, F.A.C.

conditions of the Everglades Protection Area, and shall take into account spatial and temporal variability."[26] Achievement of the phosphorus criterion within the Everglades Protection Area is gauged based on monthly data collected from monitoring stations in both impacted and unimpacted areas of four separate water bodies: Water Conservation Areas 1, 2 and 3, and the Everglades National Park.[27]

In both impacted and unimpacted areas, each water body "will have achieved the criterion if the five year geometric mean averaged across all stations is less than or equal to 10 ppb."[28] The following conditions must be met as well:

- The annual geometric mean averaged across all stations is less than or equal to 10 ppb for three of five years.
- The annual geometric mean averaged across all stations is less than or equal to 11 ppb.
- The annual geometric mean at all individual stations is less than or equal to 15 ppb. Individual station analyses are representative of only that station.

Everglades Forever Act: Best Management Practices (BMPs)

Section 373.4592(4)(f), F.S., outlines the BMP program to be applied to agricultural activities in the EAA. The statute requires SFWMD to enforce the BMP program and other requirements of chapter 40E-61 and 40E-63 (the administrative rules pertaining to BMPs) during the terms of the existing permits issued pursuant to those rules.[29] Those rules are to thereafter be amended to implement a comprehensive program consisting of testing, research, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area.[30] A five-year permitting system is established as well. In accordance with this program:

- EAA landowners must sponsor a program of BMP research with experts to identify appropriate BMPs.
- BMPs must be field tested in the EAA to reflect soil and crop types.
- BMPs as required for varying crop and soil types must be included in permit conditions in the five year permits issued pursuant to the EFA.
- SFWMD must conduct research along with the cooperation of EAA landowners to identify water quality parameters not being significantly improved via STAs and BMPs, and to identify further BMP strategies to assist in meeting those parameters.
- As of December 31, 2006, all permits, including those issued prior to that date, must include additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, "no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area."[31]
- Landowners in the C-139 Basin (an area within the EAA described in detail in Section (16) of the statute) must not exceed an annual loading of phosphorus based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows must not increase the annual average loading of phosphorus stated above.[32]

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[26] Rule 62-302.540(4)(a), F.A.C.
[27] Rule 62-302.540(4)(b), F.A.C
[28] Rule 62-302.540(d)(1), F.A.C
[29] Section 373.4592(4)(f), F.S.
[30] *Id.*
[31] Section 373.4592(4)(f)4., F.S.
[32] Section 373.4592(4)(f), F.S.

The Everglades Forever Act: Agricultural Privilege Tax

Section 373.4592(6), F.S., of the EFA, establishes an annual agricultural privilege tax on those entities conducting an agricultural trade or business on real property located within the EAA.[33] The tax is collected "in the manner applied for ad valorem taxes."[34] For tax notices mailed between November 2006 and November 2013, the annual agricultural privilege tax is set at $35 per acre.[35] For November 2014 through November 2016, the annual tax rate is $25 per acre.[36] For November 2017 and beyond, the tax rate drops to $10 per acre.[37]

The statute also creates an incentive credit to be applied against the agricultural privilege tax based on a reduction of phosphorous loads via the utilization of BMPs at points of discharge within the EAA.[38] The total phosphorous load attributable to the EAA as a whole is to be measured for each annual period against the total phosphorous load that would have occurred during the 1979-1988 base period using a model described chapter 40E-63 of the Florida Administrative Code.[39] This method is intended to assist SFWMD in making an annual ministerial determination of whether any incentive credit will be available.[40] Incentive credits, if any, will reduce the tax only to the extent that the phosphorous load reduction exceeds 25 percent.[41] The reduction of phosphorous loads by each percentage point in excess of 25 percent creates a credit in the amount of $0.65 per acre from November 2006 through November 2013.[42] The statute does not provide an incentive credit rate beyond 2013.

In addition, incentive credits may not reduce the agricultural privilege tax to less than $24.89 per acre, which is defined by the statute as the "minimum tax."[43] To the extent that the application of credits would reduce the amount of the tax below the minimum tax level, any unused credits may be carried forward, on a phosphorous load percentage basis, for use in subsequent years.[44] Moreover, any property that achieves an annual flow weighted mean concentration of 50 ppb of phosphorous at each discharge structure serving the property is entitled to have the minimum tax "included on the annual tax notice mailed in November of the next ensuing calendar year."[45] Phosphorous reductions in excess of 50 ppb are carried forward to the subsequent year in determining whether the minimum tax is to be applied.[46] All unused or excess incentive credits will expire after tax notices are mailed in November 2013.[47]

Agricultural entities in the EAA are also entitled to have the agricultural privilege tax on their properties reduced to the minimum tax by participating in the baseline plan defined in chapter 40E-63, F.A.C, which consists of the implementation of BMPs and the monitoring of phosphorous levels at discharge points on the property.[48] To qualify for the minimum tax, participants must achieve phosphorous load reductions of 45 percent or greater for the period of November 2006 through November 2013.[49] A phosphorous load reduction schedule is not provided for beyond 2013.

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[33] Section 373.4592(6), F.S.
[34] Section 373.4592(6)(b), F.S.
[35] Section 373.4592(6)(c)1., F.S.
[36] Section 373.4592(6)(c)6., F.S.
[37] *Id.*
[38] Section 373.4592(6)(c)2., F.S.
[39] *Id.*
[40] *Id.*
[41] Section 373.4592(6)(c)3., F.S.
[42] *Id.*
[43] Section 373.4592(6)(c)4., F.S.
[44] *Id.*
[45] *Id.*
[46] Section 373.4592(6)(c)5., F.S.
[47] Section 373.4592(6)(c)4., F.S.
[48] Section 373.4592(6)(c)5., F.S.
[49] *Id.*

If for any given year, the number of total acres subject to the agricultural privilege tax is less than the number of acres listed on the agricultural privilege tax roll certified in November 1994, the minimum tax is subject to increase.[50] For each tax year, SFWMD must determine the amount, if any, by which the sum of the following figures exceeds $12,367,000:

(1) The product of the minimum tax multiplied by the number of acres subject to the agricultural privilege tax.
(2) The "ad valorem tax increment," defined as "50 percent of the difference between the amount of ad valorem taxes actually imposed by the SFWMD for the immediate prior tax year against property included on the Everglades agricultural privilege tax roll certified for the tax notices mailed in November 1994 that was not subject to the Everglades agricultural privilege tax during the immediate prior tax year and the amount of ad valorem taxes that would have been imposed against such property for the immediate prior tax year if the taxable value of each acre had been equal to the average taxable value of all other land classified as agricultural within the EAA for such year; however, the ad valorem tax increment for any year shall not exceed the amount that would have been derived from such property from imposition of the minimum tax during the immediate prior tax year."[51]

The aggregate of these figures is referred to by the statute as the "excess tax amount."[52] If for any tax year, the amount computed in figure (1) above is less than $12,367,000, the excess tax amount is applied as follows: "If the excess tax amount exceeds such difference [the difference between $12,367,000 and the amount computed in Figure 1 above], an amount equal to the difference must be deducted from the excess tax amount and applied to eliminate any increase in the minimum tax. If such difference exceeds the excess tax amount, the excess tax amount must be applied to reduce any increase in the minimum tax. In such event, a new minimum tax shall be computed by subtracting the remaining excess tax amount from $12,367,000 and dividing the result by the number of acres subject to the Everglades agricultural privilege tax for such tax year."[53]

The statute also provides for a hardship exception, whereby if either the Governor, the President, or the U.S. Department of Agriculture declares a state of emergency or disaster "resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops," payment of the privilege taxes are to be deferred for a period of one year, with subsequent annual payments deferred as well depending on the time of year in which the declaration is made.[54]

Florida's "Polluter Pays Amendment" and the Meaning of "Primarily Responsible"

In 1996, Florida's voters approved a constitutional amendment, what is now Article II, Section 7(b), Florida Constitution ("Polluter Pays Amendment"), providing that "those in the EAA who cause water pollution within the Everglades Protection Area or the EAA shall be primarily responsible for paying the costs of the abatement of that pollution."[55] Prior to its passage, the initiative was deemed constitutional by the Supreme Court of Florida, which held that the initiative was "sufficiently clear and embraced but a single subject."[56]

Following its passage, the Governor sought guidance from the Florida Supreme Court on two questions pertaining the amendment's proper function and application:[57]

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[50] Section 373.4592(6)(e), F.S.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Section 373.4592(6)(d), F.S.
[55] Article II, Section 7(b), Fl. Const.
[56] Advisory Opinion to Governor – 1996 Amendment 5 (Everglades), 706 So.2d 278, 279-80 (1997).
[57] *Id.*

(1) Is the amendment self-executing, or does it require the legislature to enact implementing legislation to determine how to carry out its intended purposes?
(2) What does the term "primarily responsible" mean? For instance, does it mean responsible for more than half the costs of abatement, a substantial part of the costs of abatement, the entire cost, or something different?

In an advisory opinion, the Court answered the first question in the negative, stating that the amendment cannot be implemented without the aid of the legislation as it does not provide enough guidance for accomplishing its purpose.[58]

As to the meaning of "primarily responsible," the Court found that the words should be applied "in accordance with their ordinary meaning to require that individual polluters, while not bearing the total burden, would bear their share of the costs of abating the pollution found to be attributable to them."[59] The Court declined to specify an exact percentage of the costs polluters would be responsible for.

The issue was revisited by the Florida Supreme Court in the 2002 case *Barley v. South Florida Water Management Dist.*[60] The petitioners owned property within the Okeechobee Basin, wherein the SFWMD authorized by various statutory authority, including the EFA, to levy ad valorem taxes on property within the SFWMD.[61] The petitioners argued that because they were non-polluters, SFWMD's authority to levy taxes on them and similarly situated property owners was inconsistent with Article II, Section 7(b), Florida Constitution, which in their view, required polluters within the EAA to pay for 100 percent of the pollution they caused.[62] In finding against the petitioners, the Court echoed its own advisory opinion in stating that the words "primarily responsible" would be applied within their "ordinary meaning."[63] According to the Court, this "includes a recognition that individual polluters would not bear the 'total burden.'" The Court held that SFWMD's levy of an ad valorem tax on all property, including that of non-polluters, within Okeechobee Basin was thus constitutionally valid.[64] Lastly, the Court noted that the "polluter pays" provision does not expressly prohibit the state from taxing other persons or entities for the purpose of paying for pollution abatement in the EPA or EAA.

During the next regular session in 2003, the Legislature amended the law imposing the Everglades Agricultural Privilege Tax as follows:

> (6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—
>
> (c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades agricultural privilege taxes for each year shall be computed in the following manner:
>
> 6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 <u>through November 2016 shall be $25 per acre and for tax notices mailed in November 2017</u> and thereafter shall be $10 per acre.
>
> (h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this act to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution <u>and that payment of the tax complies with the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.</u>

[58] *Id.*
[59] *Id.* at 81.
[60] 823 So.2d 73 (2002).
[61] *Id.* at 74.
[62] *Id.*
[63] *Id.*
[64] *Id.*

The 2002 Barley opinion and the 1997 advisory opinion discussed above are the only opinions in which the Florida Supreme Court has interpreted the "polluter pays" provision, and there are no additional lower appellate court decisions that address the issue. There are also no appellate court decisions directly interpreting the agricultural privilege tax provision in s. 373.4592(6), F.S., including language added during the 2003 session.

Recent Everglades Litigation

The current state of Everglades regulation has been heavily shaped by two separate but interrelated cases, the origins of which stretch back to 1988: *U.S. v. South Florida Water Management District* and *Miccosukee Tribe of Indians v. U.S.* In fact, an impetus behind the EFA was putting an end to such litigation.[65] Nonetheless, to quote Judge Gold from a ruling issued in 2011, "[i]t is now...eighteen years after EPA, [SFWMD], and [FDEP] recognized in 1993 that it was time to 'bring to a close 5 years of costly litigation,' which has now expanded to twenty-three years of costly litigation over many of the same issues... ."[66]

U.S. v. South Florida Water Management District (Moreno Case)

In 1988, the United States sued SFWMD and the Florida Department of Environmental Regulation (now FDEP) in federal district court alleging that waters entering the Loxahatchee National Wildlife Refuge ("Refuge") and Everglades National Park ("Park') were being polluted with phosphorus runoff from farms in the EAA.[67] After three years of costly and contentious litigation, the State Parties admitted liability and entered into settlement agreement with the federal government. That agreement was subsequently approved in a Consent Decree entered by then presiding Judge William Hoeveler.[68]

Under the Consent Decree, the State Parties agreed to implement a two part phosphorus control program. First, they agreed to build and operate by 2004 approximately 35,000 acres of constructed wetlands (known as Stormwater Treatment Areas ("STAs")) that remove phosphorus with plants (there were initially five STAs: STA-1W, STA-2, STA-3/4, STA-5 and STA-6). In addition, they would implement an agricultural best management practices regulatory program in the EAA designed to achieve a 25% reduction in phosphorus discharges from the basin. Finally, the State Parties committed to researching and adopting a numeric phosphorus water quality standard for the Everglades.

Under the Decree, the State Parties also had to meet initial interim phosphorus limits for the Refuge and Park and, by December 31, 2006, the lower of the new numeric phosphorus water quality standard or the long-term phosphorus limits described in Decree, whichever was lower. Pursuant to the Decree, a violation of an applicable phosphorus limit requires the State Parties to construct more STAs, impose more agricultural BMPs, or a combination of both.

Since the Decree was entered, it was amended to require the Army Corps of Engineers to build a 5,500 acre STA adjacent to the Refuge (known as STA-1E). In 2004, in response to a potential violation of the Refuge's interim limits, the State Parties agreed to build an additional 17,000 acres of STAs adjacent to STA-2 and STAs-5 and 6 (known as Compartment B and Compartment C STAs, respectively. The SFWMD also built pumps and canals that diverted untreated stormwater discharges from Wellington away from the Refuge. Finally, in 2005, FDEP adopted a numeric phosphorus water quality standard for the Everglades. Under the Rule, phosphorus levels in the Refuge and Water Concentration Areas 2 and 3 must be at or below a long-term geometric mean of 10 ppb, taking into account spatial and temporal variability. Phosphorus levels in the Park must meet the limits prescribed by the Consent Decree.

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[65] *Miccosukee Tribe of Indians v. U.S.*, 2011 WL 1264977 2011, at 17.
[66] *Id.*.
[67] *See U.S. v. South Florida Water Management District,* 847 F. Supp 1567 (S.D. Fla. 1992).
[68] *Id.*

Today, after an investment of approximately $1.5 billion, the SFWMD is operating nearly 60,000 acres of STAs, which in 2011 treated 735,000 acre-feet of water and reduced total phosphorous loads to the Everglades Protection Area by 79%. In 1996, SFWMD also successfully implemented the EAA BMP program, with annual farm nutrient runoff having been reduced by approximately 55 percent over the programs 16-year history. Combined, these two control programs have reduced phosphorus levels in waters entering the Everglades from a high of 200 ppb to as low as 13 ppb, with some waters in the Everglades National Park achieving phosphorous levels below the 10 ppb goal.

Miccosukee Tribe of Indians v. U.S. (Gold Case)

In 2003, the Florida Legislature amended the EFA to allow rules creating new discharge limits for structures discharging into the Everglades, including the SFWMD's STAs. Rather than meet the phosphorus water quality standard by the EFA's 2006 deadline, the new rule would allow dischargers, including the SFWMD, to discharge at higher levels through 2016 provided they were implementing "Best Available Phosphorus Reduction Technology" (BAPRT), which the EFA amendments defined as the projects in the SFWMD's *Long-Term Plan for Achieving Water Quality Standards* (Long-Term Plan).

In 2004, the Miccosukee Tribe brought suit against the United States Environmental Protection Agency (EPA) claiming that the 2003 EFA amendments, and portions of the State's subsequently-adopted phosphorus water quality standard[69] (Phosphorus Rule) that implemented them, violated the Federal Clean Water Act (CWA). FDEP subsequently intervened as a defendant in the case. SFWMD was not a party to the lawsuit and FDEP never issued permits with moderating provisions.

In July 2008, Judge Alan Gold agreed with the Tribe and issued an order enjoining EPA and FDEP from issuing new permits containing moderating provisions.[70] In essence, the Court perceived the new variance procedure as creating a statutorily mandated "blanket variance," and not a typical variance which is generated on a case by-case analysis. The Court also directed EPA to conduct a thorough, written review of other provisions in the 2003 EFA amendments and Phosphorus Rule to determine if they complied with the CWA (what the Court refers to as a "Determination Letter"). Neither EPA nor FDEP appealed Judge Gold's ruling.

EPA never conducted the review, prompting the Tribe to file a motion for contempt against EPA. The Tribe subsequently broadened the scope of its motion to include claims against FDEP. The Tribe asserted that EPA and FDEP violated the July 2008 order by allowing the SFWMD to continue to operate under old permits *issued prior* to the Court's July 2008 order. Those permits authorized discharges above the phosphorus water quality standard; however, they did so in reliance upon existing regulations authorizing "administrative orders" and "compliance schedules" - frequently used devices that allow a discharger to bring itself into compliance with a water quality standard provided it implements new remedies within a certain timeframe.

On April 14, 2010, Judge Gold again agreed with the Tribe and ruled that EPA and FDEP violated his July 2008 order (but stopped short of holding them in contempt).[71] In so ruling, the Court clarified (and largely rewrote) the scope of his earlier injunction. In summary, the Court ordered:

- EPA "shall direct the State of Florida" to delete the 2003 EFA amendments and those portions of the Phosphorus Rule that implemented them. Attached to his order are underlined/strike through versions of the EFA and Phosphorus Rule reflecting the text the Court wants the Legislature and FDEP to remove from the EFA and Rule 62.302.540, F.A.C.
- EPA shall determine the remedies and strategies that the SFWMD must implement, "with specific milestones . . . that provide an enforceable framework" to ensure that discharges to the

[69] Rule 62-302.540, F.A.C

[70] *Miccosukee Tribe of Indians v. U.S.*, 2008 WL 2967654.

[71] *Miccosukee Tribe of Indians v. U.S.*, 2010 WL 9034624.

Everglades are in compliance with the Phosphorus Rule. The EPA shall then direct FDEP to amend the SFWMD's existing NPDES permits to include the new remedies and strategies.
- After FDEP issues the new NPDES permits, EPA is to revoke FDEP's authority to issue NPDES permits for discharges into the Everglades.

On September 3, 2010, the EPA issued its Amended Determination as required by the Court. The Amended Determination describes a two-part Water Quality Based Effluent Limit for STA discharges. Total phosphorus concentrations in STA discharges may not exceed either 10 parts per billion (ppb) as an annual geometric mean in more than two consecutive years or 18 ppb as an annual flow weighted mean. The Amended Determination also provides direction on how the SFWMD should achieve the STA discharge limits, including expanding existing STAs to provide an additional 42,000 acres of effective treatment area.

In April of 2011, Judge Gold again revisited the case to address several issues, such as, conforming the NPDES permitting program to meet the water quality based effluent limitations for phosphorous described in the Amended Determination. Judge Gold emphasized that "it is necessary to enact and enforce the appropriate water standard and [quality based effluent limitations] *now*, and to have *immediate* conformance of the permits for the purpose of enforcing all terms therein."[72] To accomplish this, Judge Gold ordered that permitting authority be primarily transferred to the EPA: "the EPA must now take the reins of the permitting issues and take action as to what it has committed itself to doing."[73] Specifically, the EPA was ordered to issue permits without compliance schedules so that the water quality based effluent limitations are immediately enforceable.[74] In June of 2011, the EPA rejected the amended NPDES permits for the SFWMD that had been submitted by FDEP.

Clean Water Act Variances and Use Attainability Analysis

Under section 303 of the federal Clean Water Act (CWA), states are required to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that defines the amounts of pollutants in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.[75]

The CWA does provide some flexibility to permittees required to meet an established WQS by allowing the enforcing agency to revise the designated use for a specific waterbody or to grant an individual permittee a variance that temporarily modifies the water quality standards to the highest use and criteria that are currently available. A water quality variance is a temporary change in a State's water quality standards and its relevant criteria, usually regarding a specific pollutant. The underlying standards remain in place. In granting the variance, the State must follow its established variance policies and the variance is then subject to public and EPA review. Variances are based on a use attainability demonstration and target achievement of the highest attainable use and associated criteria during the variance period.

A Use Attainability Analysis (UAA) is a structured scientific assessment of the factors affecting the attainment of uses specified in Section 101(a)(2) of the CWA (the so called "fishable/swimmable" uses). The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria described in EPA's water quality standards regulation.

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[72] *Miccosukee Tribe of Indians v. U.S.*, 2011 WL 1264977 2011, at *18.
[73] *Id.* at *20.
[74] *Id.*
[75] 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. §§ 131.6, 131.10-12.1.

Under 40 CFR 131.10(g) States can issue a variance or remove a designated use that is not an "existing use," as defined in § 131.3, C.F.R., or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

1. Naturally occurring pollutant concentrations prevent the attainment of the use; or
2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
4. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
6. Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.4592, F.S., relating to the Everglades Forever Act.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill appears to have a positive fiscal impact on SFWMD revenues by extending, from 2017 to 2024, the year that the $25 per acre agricultural privilege tax is scheduled to be reduced to $10 per acre. Retaining the $25 per acre tax, rather than decreasing the tax to $10 after 2016, will result in a positive impact of $6.6 million per year from 2017 through 2024 when the tax rate will drop to $10 per acre.

2. Expenditures:

   The SFWMD has proposed using $220 million in cash reserves and $300 million in anticipated ad valorem tax revenues from increased property values resulting from new construction to fund the updated Everglades restoration plan. According to the SFWMD, completion of a use attainability analysis may be accomplished within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a negative fiscal impact on private landowners who pay the annual agricultural privilege tax, by extending the current tax rate of $25 per acre until 2024. Under current law, the tax rate is scheduled to fall to $10 per acre in 2017.

D. FISCAL COMMENTS:

To fund the $880 million updated Everglades restoration plan referenced in the bill, the SFWMD has stated that it will seek $32 million from the Legislature each year throughout the plan's 12-year implementation period. If the Legislature approves this annual appropriation, it would result in a negative fiscal impact to state government expenditures.

The current agriculture privilege tax assessment, as outlined in statute, was used in determining the funding of the Everglades restoration plan. The extension of the $25 per acre tax will provide funds used to ensure timely completion of projects and to provide available funding to meet unexpected project expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to Everglades improvement and management; amending s. 373.4592, F.S.; revising legislative findings for achieving water quality goals; revising the definition of the term "Long-Term Plan"; revising provisions for use of certain ad valorem tax proceeds; providing that certain discharges do not constitute violations of water quality standards; directing the South Florida Water Management District to complete a specified analysis; extending the period time for collection of the agricultural privilege tax; providing that payment of the tax and certain costs fulfills certain constitutional obligations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) of subsection (1), paragraph (j) of subsection (2), paragraphs (d) and (e) of subsection (3), paragraphs (a) and (f) of subsection (4), and paragraphs (c) and (h) of subsection (6) of section 373.4592, Florida Statutes, are amended, and paragraph (h) is added to subsection (4) of that section, to read:

373.4592 Everglades improvement and management.—

(1) FINDINGS AND INTENT.—

(g) The Legislature finds that the Long-Term Plan ~~Statement of Principles of July 1993, the Everglades~~

~~Construction Project,~~ and the regulatory requirements of this section provide a sound basis for the state's long-term cleanup and restoration objectives for the Everglades. It is the intent of the Legislature to provide a sufficient period of time for construction, testing, and research, so that the benefits of the Long-Term Plan ~~Everglades Construction Project~~ will be determined and maximized prior to requiring additional measures. The Legislature finds that STAs and BMPs are currently the best available technology for achieving the ~~interim~~ water quality goals of the Everglades Program and that implementation of BMPs, funded by the owners and users of land in the EAA, effectively reduces nutrients in waters flowing into the Everglades Protection Area. A combined program of agricultural BMPs, STAs, and requirements of this section is a reasonable method of achieving ~~interim~~ total phosphorus discharge reductions. The Everglades Program is an appropriate foundation on which to build a long-term program to ultimately achieve restoration and protection of the Everglades Protection Area.

(2) DEFINITIONS.—As used in this section:

(j) "Long-Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as subsequently modified in accordance with paragraph (3)(b), and the district's "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, as may be subsequently modified pursuant to paragraph (3)(b) ~~modified herein~~.

(3) EVERGLADES LONG-TERM PLAN.—

(d) ~~The Legislature recognizes that the Long-Term Plan contains an initial phase and a 10-year second phase.~~ The Legislature intends that a review of this act at least 10 years after implementation of the Long-Term Plan ~~initial phase~~ is appropriate and necessary to the public interest. The review is the best way to ensure that the Everglades Protection Area is achieving state water quality standards, including phosphorus reduction, and the Long-Term Plan is using the best technology available. ~~A 10-year second phase of the Long-Term Plan must be approved by the Legislature and codified in this act prior to implementation of projects, but not prior to development, review, and approval of projects by the department.~~

(e) The Long-Term Plan shall be implemented ~~for an initial 13-year phase (2003-2016)~~ and shall achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures.

(4) EVERGLADES PROGRAM.—

(a) Everglades Construction Project.—The district shall implement the Everglades Construction Project. By the time of completion of the project, the state, district, or other governmental authority shall purchase the inholdings in the Rotenberger and such other lands necessary to achieve a 2:1 mitigation ratio for the use of Brown's Farm and other similar lands, including those needed for the STA 1 Inflow and Distribution Works. The inclusion of public lands as part of the

project is for the purpose of treating waters not coming from the EAA for hydroperiod restoration. It is the intent of the Legislature that the district aggressively pursue the implementation of the Everglades Construction Project in accordance with the schedule in this subsection. The Legislature recognizes that adherence to the schedule is dependent upon factors beyond the control of the district, including the timely receipt of funds from all contributors. The district shall take all reasonable measures to complete timely performance of the schedule in this section in order to finish the Everglades Construction Project. The district shall not delay implementation of the project beyond the time delay caused by those circumstances and conditions that prevent timely performance. The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purposes of the design, construction, and acquisition of the Everglades Construction Project. The ad valorem tax proceeds not exceeding 0.1 mill levied within the Okeechobee Basin for such purposes shall also be used for design, construction, and implementation ~~of the initial phase~~ of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in ~~the initial phase of~~ the Long-Term Plan, and including the enhancements and operation and maintenance of the Everglades Construction Project and shall be the sole direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project unless the Legislature by specific amendment to this section increases the 0.1 mill ad

valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project. Notwithstanding the provisions of s. 200.069 to the contrary, any millage levied under the 0.1 mill limitation in this paragraph shall be included as a separate entry on the Notice of Proposed Property Taxes pursuant to s. 200.069. Once the STAs are completed, the district shall allow these areas to be used by the public for recreational purposes in the manner set forth in s. 373.1391(1), considering the suitability of these lands for such uses. These lands shall be made available for recreational use unless the district governing board can demonstrate that such uses are incompatible with the restoration goals of the Everglades Construction Project or the water quality and hydrological purposes of the STAs or would otherwise adversely impact the implementation of the project. The district shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Everglades Construction Project, consistent with their qualifications and abilities, for the construction and operation of these STAs. The following milestones apply to the completion of the Everglades Construction Project as depicted in the February 15, 1994, conceptual design document:

1. The district must complete the final design of the STA 1 East and West and pursue STA 1 East project components as part of a cost-shared program with the Federal Government. The

district must be the local sponsor of the federal project that will include STA 1 East, and STA 1 West if so authorized by federal law;

2. Construction of STA 1 East is to be completed under the direction of the United States Army Corps of Engineers in conjunction with the currently authorized C-51 flood control project;

3. The district must complete construction of STA 1 West and STA 1 Inflow and Distribution Works under the direction of the United States Army Corps of Engineers, if the direction is authorized under federal law, in conjunction with the currently authorized C-51 flood control project;

4. The district must complete construction of STA 3/4 by October 1, 2003; however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;

5. The district must complete construction of STA 6;

6. The district must, by December 31, 2006, complete construction of enhancements to the Everglades Construction Project recommended in the Long-Term Plan and initiate other pre-2006 strategies in the plan; and

7. East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agricultural lease number 3420 shall complete any system modifications described in the Everglades Construction Project to the extent that funds are available from the Everglades Fund. These entities shall divert the discharges described within the Everglades Construction

Project within 60 days of completion of construction of the appropriate STA. Such required modifications shall be deemed to be a part of each district's plan of reclamation pursuant to chapter 298.

(f) EAA best management practices.—

1. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs in achieving and maintaining compliance with state water quality standards and restoring and maintaining designated and existing beneficial uses. The program shall include an analysis of the effectiveness of the BMPs in treating constituents that are not being significantly improved by the STAs. The monitoring program shall include monitoring of appropriate parameters at representative locations.

2. The district shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code, during the terms of the existing permits issued pursuant to those rules. Chapter 40E-61, Florida Administrative Code, may be amended to include the BMPs required by chapter 40E-63, Florida Administrative Code. Prior to the expiration of existing permits, and during each 5-year term of subsequent permits as provided for in this section, those rules shall be amended to implement a comprehensive program of research, testing, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area. Under this program:

a. EAA landowners, through the EAA Environmental

Protection District or otherwise, shall sponsor a program of BMP research with qualified experts to identify appropriate BMPs.

b. Consistent with the water quality monitoring program, BMPs will be field-tested in a sufficient number of representative sites in the EAA to reflect soil and crop types and other factors that influence BMP design and effectiveness.

c. BMPs as required for varying crops and soil types shall be included in permit conditions in the 5-year permits issued pursuant to this section.

d. The district shall conduct research in cooperation with EAA landowners to identify water quality parameters that are not being significantly improved either by the STAs or the BMPs, and to identify further BMP strategies needed to address these parameters.

3. The Legislature finds that through the implementation of the Everglades BMPs Program and the implementation of the Everglades Construction Project, reasonable further progress will be made towards addressing water quality requirements of the EAA canals and the Everglades Protection Area. Permittees within the EAA and the C-139 Basin who are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida Administrative Code, have made all payments required under the Everglades Program, and are in compliance with subparagraph (a)7., if applicable, shall not be required to implement additional water quality improvement measures, prior to December 31, 2006, other than those required by subparagraph 2., with the following exceptions:

a. Nothing in this subparagraph shall limit the existing

authority of the department or the district to limit or regulate discharges that pose a significant danger to the public health and safety; and

b. New land uses and new stormwater management facilities other than alterations to existing agricultural stormwater management systems for water quality improvements shall not be accorded the compliance established by this section. Permits may be required to implement improvements or alterations to existing agricultural water management systems.

4. As of December 31, 2006, all permits, including those issued prior to that date, shall require implementation of additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, no permittee's discharge shall be deemed to cause or contribute to any violation of water quality standards in the Everglades Protection Area if the discharge is in compliance with applicable permits and any associated orders.

5. Effective immediately, landowners within the C-139 Basin shall not collectively exceed an annual average loading of phosphorus based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows shall not increase the annual average loading of phosphorus stated above. Provided that the C-139 Basin does not exceed this annual average loading, all landowners within the Basin shall be in compliance for that year. Compliance determinations for individual landowners within the C-139 Basin for remedial action, if the Basin is determined

by the district to be out of compliance for that year, shall be based on the landowners' proportional share of the total phosphorus loading. The total phosphorus discharge load shall be determined as set forth in Appendix B2 of Rule 40E-63, Everglades Program, Florida Administrative Code.

6. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the quality of the discharge from the C-139 Basin. Upon determination by the department or the district that the C-139 Basin is exceeding any presently existing water quality standards, the district shall require landowners within the C-139 Basin to implement BMPs appropriate to the land uses within the C-139 Basin consistent with subparagraph 2. Thereafter, the provisions of subparagraphs 2.-4. shall apply to the landowners within the C-139 Basin.

(h) Before the completion of all projects and improvements in the Long-Term Plan, the district shall complete a use attainability analysis to determine if those projects and improvements will achieve the water quality based effluent limits established in permits and orders authorizing the operation of those facilities.

(6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—

(c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades

agricultural privilege taxes for each year shall be computed in the following manner:

1. Annual Everglades agricultural privilege taxes shall be charged for the privilege of conducting an agricultural trade or business on each acre of real property or portion thereof. The annual Everglades agricultural privilege tax shall be $24.89 per acre for the tax notices mailed in November 1994 through November 1997; $27 per acre for the tax notices mailed in November 1998 through November 2001; $31 per acre for the tax notices mailed in November 2002 through November 2005; and $35 per acre for the tax notices mailed in November 2006 through November 2013.

2. It is the intent of the Legislature to encourage the performance of best management practices to maximize the reduction of phosphorus loads at points of discharge from the EAA by providing an incentive credit against the Everglades agricultural privilege taxes set forth in subparagraph 1. The total phosphorus load reduction shall be measured for the entire EAA by comparing the actual measured total phosphorus load attributable to the EAA for each annual period ending on April 30 to the total estimated phosphorus load that would have occurred during the 1979-1988 base period using the model for total phosphorus load determinations provided in chapter 40E-63, Florida Administrative Code, utilizing the technical information and procedures contained in Section IV-EAA Period of Record Flow and Phosphorus Load Calculations; Section V-Monitoring Requirements; and Section VI-Phosphorus Load Allocations and Compliance Calculations of the Draft Technical Document in

Support of chapter 40E-63, Florida Administrative Code - Works of the District within the Everglades, March 3, 1992, and the Standard Operating Procedures for Water Quality Collection in Support of the Everglades Water Condition Report, dated February 18, 1994. The model estimates the total phosphorus load that would have occurred during the 1979-1988 base period by substituting the rainfall conditions for such annual period ending April 30 for the conditions that were used to calibrate the model for the 1979-1988 base period. The data utilized to calculate the actual loads attributable to the EAA shall be adjusted to eliminate the effect of any load and flow that were not included in the 1979-1988 base period as defined in chapter 40E-63, Florida Administrative Code. The incorporation of the method of measuring the total phosphorus load reduction provided in this subparagraph is intended to provide a legislatively approved aid to the governing board of the district in making an annual ministerial determination of any incentive credit.

3. Phosphorus load reductions calculated in the manner described in subparagraph 2. and rounded to the nearest whole percentage point for each annual period beginning on May 1 and ending on April 30 shall be used to compute incentive credits to the Everglades agricultural privilege taxes to be included on the annual tax notices mailed in November of the next ensuing calendar year. Incentive credits, if any, will reduce the Everglades agricultural privilege taxes set forth in subparagraph 1. only to the extent that the phosphorus load reduction exceeds 25 percent. Subject to subparagraph 4., the reduction of phosphorus load by each percentage point in excess

of 25 percent, computed for the 12-month period ended on April 30 of the calendar year immediately preceding certification of the Everglades agricultural privilege tax, shall result in the following incentive credits: $0.33 per acre for the tax notices mailed in November 1994 through November 1997; $0.54 per acre for the tax notices mailed in November 1998 through November 2001; $0.61 per acre for the tax notices mailed in November 2002 through November 2005, and $0.65 per acre for the tax notices mailed in November 2006 through November 2013. The determination of incentive credits, if any, shall be documented by resolution of the governing board of the district adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

4. Notwithstanding subparagraph 3., incentive credits for the performance of best management practices shall not reduce the minimum annual Everglades agricultural privilege tax to less than $24.89 per acre, which annual Everglades agricultural privilege tax as adjusted in the manner required by paragraph (e) shall be known as the "minimum tax." To the extent that the application of incentive credits for the performance of best management practices would reduce the annual Everglades agricultural privilege tax to an amount less than the minimum tax, then the unused or excess incentive credits for the performance of best management practices shall be carried forward, on a phosphorus load percentage basis, to be applied as incentive credits in subsequent years. Any unused or excess incentive credits remaining after certification of the

Everglades agricultural privilege tax roll for the tax notices mailed in November 2013 shall be canceled.

5. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph 1., the owner, lessee, or other appropriate interestholder of any property shall be entitled to have the Everglades agricultural privilege tax for any parcel of property reduced to the minimum tax, commencing with the tax notices mailed in November 1996 for parcels of property participating in the early baseline option as defined in chapter 40E-63, Florida Administrative Code, and with the tax notices mailed in November 1997 for parcels of property not participating in the early baseline option, upon compliance with the requirements set forth in this subparagraph. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for consideration of reduction to the minimum tax on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the reduction in phosphorus load attributable to such parcel of property. The phosphorus load reduction for each discharge structure serving the parcel shall be measured as provided in chapter 40E-63, Florida Administrative Code, and the permit issued for such property pursuant to chapter 40E-63, Florida Administrative Code. A parcel of property which has achieved the following annual phosphorus load reduction standards shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year: 30 percent or more for the tax notices

mailed in November 1994 through November 1997; 35 percent or more for the tax notices mailed in November 1998 through November 2001; 40 percent or more for the tax notices mailed in November 2002 through November 2005; and 45 percent or more for the tax notices mailed in November 2006 through November 2013. In addition, any parcel of property that achieves an annual flow weighted mean concentration of 50 parts per billion (ppb) of phosphorus at each discharge structure serving the property for any year ending April 30 shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year. Any annual phosphorus reductions that exceed the amount necessary to have the minimum tax included on the annual tax notice for any parcel of property shall be carried forward to the subsequent years' phosphorus load reduction to determine if the minimum tax shall be included on the annual tax notice. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 through November 2024 ~~2016~~ shall be $25 per acre and for tax notices mailed in November 2025 ~~2017~~ and thereafter shall be $10 per acre.

(h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida. ~~and~~ The Legislature intends this act to be

a general law authorization of the Everglades agricultural privilege tax within the meaning of s. 9, Art. VII of the State Constitution and further intends that payment of the tax, in addition to payment of the cost of continuing implementation of BMPs, fulfills ~~complies with~~ the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.

Section 2. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Hudson offered the following:

Amendment (with title amendment)

Between lines 426 and 427, insert:

Section 2. Beginning Fiscal Year 2013-2014 through Fiscal Year 2023-2024, the sum of $12 million in recurring general revenue funds and $20 million recurring funds from the Water Management Lands Trust Fund is appropriated to the Department of Environmental Protection for the Restoration Strategies Regional Water Quality Plan. This section is effective July 1, 2013.

T I T L E A M E N D M E N T

Remove line 14 and insert:

constitutional obligations; providing an appropriation; providing an effective

Information Technology Governance

Information Technology Governance

House Appropriations Committee

March 14, 2013

Impact on Government

- State governments must meet the expectations of connected citizens.
  - Citizens and businesses expect government services to be accessible and convenient.
  - Operate at the speed of "**now**".
- Florida is tasked with using technology to more efficiently & effectively operate government & provide services & information to its citizens.
  - Center for Digital Government completes biennial survey that evaluates the digital government practices of all 50 states.
  - 2012 survey results show Florida slipped in its ranking compared to the 2010 survey results.

Technology Funding in State Government

- Technology is funded in all sections of Florida's $59.7 billion budget for FY 2012-13
  - **$847.9 million – $112.1 million is General Revenue**
- Major IT projects funded:

Agency	IT Project	FY12-13	Total Cost
DOE-OEL	Early Learning Information System (ELIS)	$5,882,783	$33M
DEO	Reemployment Assistance System Modernization (Project Connect)	$20,233,838	$57M
DCF	FLORIDA Eligibility System Remediation	$32,525,565	$41.4M
DCF	Florida Safe Families Network (FSFN) Enhancements	$12,450,000	$12.5M

Data Center Consolidation Legislation

- 2008 study documented that Florida could realize sufficient cost savings/cost avoidance to warrant consolidating all agency data centers into 3 primary data centers (PDC).
- Legislature enacted law which established state data center system & required all agency data centers to be consolidated into a PDC by **2019**.
- Since FY 2010-11, 16 agency data centers have consolidated into a PDC.
  - **($13 million)** in total cost savings resulting from consolidations.

IT Issues Requiring Resolution

- Identification of opportunities & strategies for consolidating the purchase of commodity IT services to achieve cost savings for the state.
- Recommendations for standardizing & consolidating the IT services that support business functions & operations that are common across state agencies.
- Development of a strategic business plan for implementing a successor financial and cash management system that enables state agencies to de-commission the hundreds of agency financial management systems.

IT Issues Requiring Resolution

- Development & implementation of a plan and process for detecting, reporting, and responding to suspected or confirmed IT security threats or incidents.
- Establishment of appropriate operating policies and standards for the primary data centers to ensure that all cost savings can be fully realized.
- Development & implementation of IT project management standards to ensure that all IT projects, especially large-scale IT projects, complete "on-time and within budget and scope."

Florida's Biggest Challenge in Addressing IT Issues

- No sustainable IT governance structure
  - Past 16 years, Florida has had **5** different IT governance structures

Time Period	Structure	Overall Responsibility
1997–2000	State Technology Council (Governor, Cabinet, agency heads, & private sector representatives)	Develop statewide vision & policies for IT and resource management
1997–2000	State Technology Office *(original version)*	Provide support to State Technology Council
2000–2005	State Technology Office *(expanded scope version)*	Manage consolidation of IT resources for executive branch agencies
2005–2006	State Technology Office *(reduced scope version)*	Provide strategic planning & policy recommendations
2005–2006	Department of Management Services (DMS)	Transferred certain IT operational responsibilities to DMS
2007–current	Agency for Enterprise Information Technology (AEIT)	Oversee policies for the design, planning, project management, & implementation of enterprise IT services

2012 Legislature

- To address outstanding operational issues with AEIT & governance issues of the primary data centers:
  - HB 5011 passed both chambers on 3/9/12.
  - Bill established successor agency, *Agency for State Technology*, and assigned it duties that were not as broad as AEIT's duties but more focused on those necessary to:
    - Identify other opportunities for improving the delivery of IT in the state.
    - Ensure the state realized the **full** cost savings & efficiencies associated with data center consolidation

2012 Legislature

- HB 5011 also:
  - Amended governance structure of the primary data centers by transferring their oversight to new agency.
  - Appropriated $1.8 million in recurring GR & 16 FTE for new agency.
- Governor vetoed bill on 4/20/12.
  - Veto message stated overly prescriptive language regarding management of IT resources & creates inflexible and ineffective landscape discouraging innovative business change.
- AEIT exists in statute but is not funded and has no FTE.

Questions?