

House Bill No. 135

An act relating to charter schools; creating s. 1002.335, F.S.; providing findings and intent; establishing the Florida Schools of Excellence Commission as a charter school authorizing entity; providing for startup funds; providing for membership of the commission; providing powers and duties of the commission, including serving as a sponsor of charter schools, approving certain entities to act as cosponsors, approving or denying applications for Florida Schools of Excellence (FSE) charter schools, and developing standards for and evaluating the performance of cosponsors and charter schools; requiring collaboration with municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools; providing chartering authority; prescribing procedures under which a district school board may become the exclusive authority to authorize charter schools within a school district; providing for challenges to grants of exclusive authority; prescribing conditions to be considered by the State Board of Education in determining whether to grant exclusive authority; providing requirements for approval of cosponsors by the commission; providing components of required cosponsor agreements; providing causes for revocation of approval of a cosponsor; providing for FSE charter school application and review procedures; authorizing existing charter schools to apply as FSE charter schools; providing for application of specified provisions of law; requiring access to information by parents; requiring the commission to submit an annual report; requiring rulemaking; amending s. 1002.33, F.S.; providing that the sponsor of a charter school shall not be liable for civil damages for certain actions; providing that the duty to monitor a charter school shall not be the basis for a private cause of action; prescribing limits on immunities of a charter school sponsor; providing requirements with respect to the right to appeal the denial of a charter school application; expanding a school district's immunity from assumption of contractual debts; revising provisions relating to reporting of charter school student enrollment for purposes of funding; providing an effective date.

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

Section 1. Section 1002.335, Florida Statutes, is created to read:

1002.335 Florida Schools of Excellence Commission.—

(1) FINDINGS.—The Legislature finds that:

(a) Charter schools are a critical component in the state's efforts to provide efficient and high-quality schools within the state's uniform system of public education.

(b) Charter schools provide valuable educational options and innovative learning opportunities while expanding the capacity of the state's system of

public education and empowering parents with the ability to make choices that best fit the individual needs of their children.

(c) The growth of charter schools in the state has contributed to enhanced student performance, greater efficiency, and the improvement of all public schools.

(2) INTENT.—It is the intent of the Legislature that:

(a) There be established an independent, state-level commission whose primary focus is the development and support of charter schools in order to better meet the growing and diverse needs of some of the increasing number and array of charter schools in the state and to further ensure that charter schools of the highest academic quality are approved and supported throughout the state in an efficient manner.

(b) New sources of community support in the form of municipalities with knowledge of the unique needs of a particular community or state universities, community colleges, or regional educational consortia with special education expertise should be authorized to participate in developing and supporting charter schools that maximize access to a wide variety of high-quality educational options for all students regardless of disability, race, or socioeconomic status.

(3) FLORIDA SCHOOLS OF EXCELLENCE COMMISSION.—

(a) The Florida Schools of Excellence Commission is established as an independent, state-level charter school authorizing entity working in collaboration with the Department of Education and under the supervision of the State Board of Education. Startup funds necessary to establish and operate the commission may be received through private contributions and federal and other institutional grants through the Grants and Donations Trust Fund and the Educational Aids Trust Fund housed within the department in addition to funds provided in the General Appropriations Act. The department shall assist in securing federal and other institutional grant funds to establish the commission.

(b) The commission shall be appointed by the State Board of Education and shall be composed of three appointees recommended by the Governor, two appointees recommended by the President of the Senate, and two appointees recommended by the Speaker of the House of Representatives. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall each recommend a list of no fewer than two nominees for any appointment to the commission. The appointments shall be made as soon as feasible but no later than September 1, 2006. Each member shall serve a term of 2 years; however, for the purpose of providing staggered terms, of the initial appointments, three members shall be appointed to 1-year terms and four members shall be appointed to 2-year terms. Thereafter, each appointee shall serve a 2-year term unless the State Board of Education, after review, extends the appointment. If a vacancy occurs on the commission, it shall be filled by the State Board of Education from a recommendation by the appropriate authority according to the procedure set forth in this paragraph. The members of the commission shall annually vote to

appoint a chair and a vice chair. Each member of the commission must hold a bachelor's degree or higher, and the commission must include individuals who have experience in finance, administration, law, education, and school governance.

(c) The commission is encouraged to convene its first meeting no later than October 1, 2006, and, thereafter, shall meet each month at the call of the chair or upon the request of four members of the commission. Four members of the commission shall constitute a quorum.

(d) The commission shall appoint an executive director who shall employ such staff as is necessary to perform the administrative duties and responsibilities of the commission.

(e) The members of the commission shall not be compensated for their services on the commission but may be reimbursed for per diem and travel expenses pursuant to s. 112.061.

(4) POWERS AND DUTIES.—

(a) The commission shall have the power to:

1. Authorize and act as a sponsor of charter schools, including the approval or denial of charter school applications pursuant to subsection (9) and the nonrenewal or termination of charter schools pursuant to s. 1002.33(8).

2. Authorize municipalities, state universities, community colleges, and regional educational consortia to act as cosponsors of charter schools, including the approval or denial of cosponsor applications pursuant to State Board of Education rule and subsection (6) and the revocation of approval of cosponsors pursuant to State Board of Education rule and subsection (8).

3. Approve or deny Florida Schools of Excellence (FSE) charter school applications and renew or terminate charters of FSE charter schools.

4. Conduct facility and curriculum reviews of charter schools approved by the commission or one of its cosponsors.

(b) The commission shall have the following duties:

1. Review charter school applications and assist in the establishment of Florida Schools of Excellence (FSE) charter schools throughout the state. An FSE charter school shall exist as a public school within the state as a component of the delivery of public education within Florida's K-20 education system.

2. Develop, promote, and disseminate best practices for charter schools and charter school sponsors in order to ensure that high-quality charter schools are developed and incentivized. At a minimum, the best practices shall encourage the development and replication of academically and financially proven charter school programs.

3. Develop, promote, and require high standards of accountability for any school that applies for and is granted a charter under this section.

4. Monitor and annually review the performance of cosponsors approved pursuant to this section and hold the cosponsors accountable for their performance pursuant to the provisions of paragraph (6)(c). The commission shall annually review and evaluate the performance of each cosponsor based upon the financial and administrative support provided to the cosponsor's charter schools and the quality of charter schools approved by the cosponsor, including the academic performance of the students that attend those schools.

5. Monitor and annually review and evaluate the academic and financial performance of the charter schools it sponsors and hold the schools accountable for their performance pursuant to the provisions of chapter 1008.

6. Report the student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.

7. Work with its cosponsors to monitor the financial management of each FSE charter school.

8. Direct charter schools and persons seeking to establish charter schools to sources of private funding and support.

9. Actively seek, with the assistance of the department, supplemental revenue from federal grant funds, institutional grant funds, and philanthropic organizations. The commission may, through the department's Grants and Donations Trust Fund, receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this section.

10. Review and recommend to the Legislature any necessary revisions to statutory requirements regarding the qualification and approval of municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools.

11. Review and recommend to the Legislature any necessary revisions to statutory requirements regarding the standards for accountability and criteria for revocation of approval of cosponsors of FSE charter schools.

12. Act as liaison for cosponsors and FSE charter schools in cooperating with district school boards that may choose to allow charter schools to utilize excess space within district public school facilities.

13. Collaborate with municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools for the purpose of providing the highest level of public education to low-income, low-performing, gifted, or underserved student populations. Such collaborations shall:

a. Allow state universities and community colleges that cosponsor FSE charter schools to enable students attending a charter school to take college courses and receive high school and college credit for such courses.

b. Be used to determine the feasibility of opening charter schools for students with disabilities, including, but not limited to, charter schools for

children with autism that work with and utilize the specialized expertise of the Centers for Autism and Related Disabilities established and operated pursuant to s. 1004.55.

14. Support municipalities when the mayor or chief executive, through resolution passed by the governing body of the municipality, expresses an intent to cosponsor and establish charter schools within the municipal boundaries.

15. Meet the needs of charter schools and school districts by uniformly administering high-quality charter schools, thereby removing administrative burdens from the school districts.

16. Assist FSE charter schools in negotiating and contracting with district school boards that choose to provide certain administrative or transportation services to the charter schools on a contractual basis.

17. Provide training for members of FSE charter school governing bodies within 90 days after approval of the charter school. The training shall include, but not be limited to, best practices on charter school governance, the constitutional and statutory requirements relating to public records and meetings, and the requirements of applicable statutes and State Board of Education rules.

18. Perform all of the duties of sponsors set forth in s. 1002.33(5)(b) and (20).

(5) CHARTERING AUTHORITY.—

(a) A charter school applicant may submit an application to the commission only if the school district in which the FSE charter school is to be located has not retained exclusive authority to authorize charter schools as provided in paragraph (e). If a district school board has not retained exclusive authority to authorize charter schools as provided in paragraph (e), the district school board and the commission shall have concurrent authority to authorize charter schools and FSE charter schools, respectively, to be located within the geographic boundaries of the school district. The district school board shall monitor and oversee all charter schools authorized by the district school board pursuant to s. 1002.33. The commission shall monitor and oversee all FSE charter schools sponsored by the commission pursuant to subsection (4).

(b) Paragraph (e) may not be construed to eliminate the ability of a district school board to authorize charter schools pursuant to s. 1002.33. A district school board shall retain the authority to reauthorize and to oversee any charter school that it has authorized, except with respect to any charter school that is converted to an FSE charter school under this section.

(c) For fiscal year 2007-2008 and for each fiscal year thereafter, a district school board may seek to retain exclusive authority to authorize charter schools within the geographic boundaries of the school district by presenting to the State Board of Education, on or before March 1 of the fiscal year prior to that for which the exclusive authority is to apply, a written resolution

adopted by the district school board indicating the intent to retain exclusive authority to authorize charter schools. A district school board may seek to retain the exclusive authority to authorize charter schools by presenting to the state board the written resolution on or before a date 60 days after establishment of the commission. The written resolution shall be accompanied by a written description addressing the elements described in paragraph (e). The district school board shall provide a complete copy of the resolution, including the description, to each charter school authorized by the district school board on or before the date it submits the resolution to the state board.

(d) A party may challenge the grant of exclusive authority made by the State Board of Education pursuant to paragraph (e) by filing with the state board a notice of challenge within 30 days after the state board grants exclusive authority. The notice shall be accompanied by a specific written description of the basis for the challenge. The challenging party, at the time of filing notice with the state board, shall provide a copy of the notice of challenge to the district school board that has been granted exclusive authority. The state board shall permit the district school board the opportunity to appear and respond in writing to the challenge. The state board shall make a determination upon the challenge within 60 days after receiving the notice of challenge.

(e) The State Board of Education shall grant to a district school board exclusive authority to authorize charter schools within the geographic boundaries of the school district if the state board determines, after adequate notice, in a public hearing, and after receiving input from any charter school authorized by the district school board, that the district school board has provided fair and equitable treatment to its charter schools during the 4 years prior to the district school board's submission of the resolution described in paragraph (c). The state board's review of the resolution shall, at a minimum, include consideration of the following:

1. Compliance with the provisions of s. 1002.33.
2. Compliance with full and accurate accounting practices and charges for central administrative overhead costs.
3. Compliance with requirements allowing a charter school, at its discretion, to purchase certain services or a combination of services at actual cost to the district.
4. The absence of a district school board moratorium regarding charter schools or the absence of any districtwide charter school enrollment limits.
5. Compliance with valid orders of the state board.
6. The provision of assistance to charter schools to meet their facilities needs by including those needs in local bond issues or otherwise providing available land and facilities that are comparable to those provided to other public school students in the same grade levels within the school district.
7. The distribution to charter schools authorized by the district school board of a pro rata share of federal and state grants received by the district

school board, except for any grant received for a particular purpose which, by its express terms, is intended to benefit a student population not able to be served by, or a program not able to be offered at, a charter school that did not receive a proportionate share of such grant proceeds.

8. The provision of adequate staff and other resources to serve charter schools authorized by the district school board, which services are provided by the district school board at a cost to the charter schools that does not exceed their actual cost to the district school board.

9. The lack of a policy or practice of imposing individual charter school enrollment limits, except as otherwise provided by law.

10. The provision of an adequate number of educational choice programs to serve students exercising their rights to transfer pursuant to the “No Child Left Behind Act of 2001,” Pub. L. No. 107-110, and a history of charter school approval that encourages chartering.

(f) The decision of the State Board of Education pursuant to paragraph (e) shall not be subject to the provisions of chapter 120 and shall be a final action subject to judicial review by the district court of appeal.

(g) For district school boards that have no discernable history of authorizing charter schools, the State Board of Education may not grant exclusive authority unless the district school board demonstrates that no approvable application has come before the district school board.

(h) A grant of exclusive authority by the State Board of Education shall continue so long as a district school board continues to comply with this section and has presented a written resolution to the state board as set forth in paragraph (c).

(i) Notwithstanding any other provision of this section to the contrary, a district school board may permit the establishment of one or more FSE charter schools within the geographic boundaries of the school district by adopting a favorable resolution and submitting the resolution to the State Board of Education. The resolution shall be effective until it is rescinded by resolution of the district school board.

(6) APPROVAL OF COSPONSORS.—

(a) The commission shall begin accepting applications by municipalities, state universities, community colleges, and regional educational consortia no later than January 31, 2007. The commission shall review and evaluate all applications for compliance with the provisions of paragraph (c) and shall have 90 days after receipt of an application to approve or deny the application unless the 90-day period is waived by the applicant.

(b) The commission shall limit the number of charter schools that a cosponsor may approve pursuant to its review of the cosponsor’s application under paragraph (c). Upon application by the cosponsor and review by the commission of the performance of a cosponsor’s current charter schools, the commission may approve a cosponsor’s application to raise the limit previously set by the commission.

(c) Any entity set forth in paragraph (a) that is interested in becoming a cosponsor pursuant to this section shall prepare and submit an application to the commission that provides evidence that the entity:

1. Has the necessary staff and infrastructure or has established the necessary contractual or interagency relationships to ensure its ability to handle all of the administrative responsibilities required of a charter school sponsor as set forth in s. 1002.33(20).

2. Has the necessary staff expertise and infrastructure or has established the necessary contractual or interagency relationships to ensure that it will approve and is able to develop and maintain charter schools of the highest academic quality.

3. Is able to provide the necessary public and private financial resources and staff to ensure that it can monitor and support charter schools that are economically efficient and fiscally sound.

4. Is committed to providing equal access to all students and to maintaining a diverse student population within its charter schools, including compliance with all applicable requirements of federal law.

5. Is committed to serving low-income, low-performing, gifted, or underserved student populations.

6. Has articulated annual academic and financial goals and expected outcomes for its charter schools as well as the methods and plans by which it will measure and achieve those goals and outcomes.

7. Has policies in place to protect its cosponsoring practices from conflicts of interest.

(d) The commission's decision to deny an application or to revoke approval of a cosponsor pursuant to subsection (8) is not subject to chapter 120 and may be appealed to the State Board of Education pursuant to s. 1002.33(6).

(7) COSPONSOR AGREEMENT.—

(a) Upon approval of a cosponsor, the commission and the cosponsor shall enter into an agreement that defines the cosponsor's rights and obligations and includes the following:

1. An explanation of the personnel, contractual and interagency relationships, and potential revenue sources referenced in the application as required in paragraph (6)(c).

2. Incorporation of the requirements of equal access for all students, including any plans to provide food service or transportation reasonably necessary to provide access to as many students as possible.

3. Incorporation of the requirement to serve low-income, low-performing, gifted, or underserved student populations.

4. An explanation of the academic and financial goals and expected outcomes for the cosponsor's charter schools and the method and plans by which they will be measured and achieved as referenced in the application.

5. The conflict-of-interest policies referenced in the application.

6. An explanation of the disposition of facilities and assets upon termination and dissolution of a charter school approved by the cosponsor.

7. A provision requiring the cosponsor to annually appear before the commission and provide a report as to the information provided pursuant to s. 1002.33(9)(l) for each of its charter schools.

8. A provision requiring that the cosponsor report the student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.

9. A provision requiring that the cosponsor work with the commission to provide the necessary reports to the State Board of Education.

10. Any other reasonable terms deemed appropriate by the commission given the unique characteristics of the cosponsor.

(b) No cosponsor may receive applications for charter schools until a cosponsor agreement with the commission has been approved and signed by the commission and the appropriate individuals or governing bodies of the cosponsor.

(c) The cosponsor agreement shall be proposed and negotiated pursuant to the timeframes set forth in s. 1002.33(6)(i).

(d) The cosponsor agreement shall be attached to and shall govern all charter school contracts entered into by the cosponsor.

(8) CAUSES FOR REVOCATION OF APPROVAL OF A COSPONSOR.—If at any time the commission finds that a cosponsor is not in compliance, or is no longer willing to comply, with its contract with a charter school or with its cosponsor agreement with the commission, the commission shall provide notice and a hearing in accordance with State Board of Education rule. If after a hearing the commission confirms its initial finding, the commission shall revoke the cosponsor's approval. The commission shall assume temporary sponsorship over any charter school sponsored by the cosponsor at the time of revocation. Thereafter, the commission may assume permanent sponsorship over such school or allow the school's governing body to apply to another sponsor or cosponsor.

(9) CHARTER SCHOOL APPLICATION AND REVIEW.—Charter school applications submitted to the commission or to a cosponsor approved by the commission pursuant to subsection (6) shall be subject to the same requirements set forth in s. 1002.33(6). The commission or cosponsor shall receive and review all applications for FSE charter schools according to the provisions for review of charter school applications under s. 1002.33(6)(b).

(10) APPLICATIONS OF EXISTING CHARTER SCHOOLS.—

(a) An application may be submitted pursuant to this section by an existing charter school approved by a district school board provided that the obligations of its charter contract with the district school board will expire prior to entering into a new charter contract with the commission or one of its cosponsors. A district school board may agree to rescind or waive the obligations of a current charter contract to allow an application to be submitted by an existing charter school pursuant to this section. A charter school that changes sponsors pursuant to this subsection shall be allowed to continue the use of all facilities, equipment, and other assets it owned or leased prior to the expiration or rescission of its contract with a district school board sponsor.

(b) An application to the commission or one of its cosponsors by a conversion charter school may only be submitted upon consent of the district school board. In such instance, the district school board may retain the facilities, equipment, and other assets of the conversion charter school for its own use or agree to reasonable terms for their continued use by the conversion charter school.

(11) APPLICATION OF CHARTER SCHOOL STATUTE.—

(a) The provisions of s. 1002.33(7)-(12), (14), and (16)-(19) shall apply to the commission and the cosponsors and charter schools approved pursuant to this section.

(b) The provisions of s. 1002.33(20) shall apply to the commission and the cosponsors and charter schools approved pursuant to this section with the exception that the commission or a cosponsor of a charter school approved pursuant to this section may retain no more than the actual cost of its administrative overhead costs expended to sponsor the charter school not to exceed 5 percent of the funding provided to the charter school.

(12) ACCESS TO INFORMATION.—The commission shall provide maximum access to information to all parents in the state. It shall maintain information systems, including, but not limited to, a user-friendly Internet website, that will provide information and data necessary for parents to make informed decisions. At a minimum, the commission must provide parents with information on its accountability standards, links to schools of excellence throughout the state, and public education programs available in the state.

(13) ANNUAL REPORT.—Each year, the chair of the commission shall appear before the State Board of Education and submit a report regarding the academic performance and fiscal responsibility of all charter schools and cosponsors approved under this section.

(14) IMPLEMENTATION.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to facilitate the implementation of this section.

Section 2. Paragraphs (d) through (h) of subsection (6) of section 1002.33, Florida Statutes, are redesignated as paragraphs (e) through (i), respec-

tively, a new paragraph (d) is added to that subsection, and paragraph (b) of subsection (5), paragraph (f) of subsection (8), and paragraph (a) of subsection (17) of that section are amended, 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.2. The sponsor shall monitor the revenues and expenditures of the charter school.

c.3. The sponsor may approve a charter for a charter school before the applicant has secured space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working capital.

d.4. The sponsor's policies shall not apply to a charter school.

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

f.6. 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 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 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.

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. Nothing contained in this paragraph shall be considered a waiver of sovereign immunity by a district school board.

4. A community college 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. District school boards shall cooperate with and assist the community college on the charter application. Community college 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. Community colleges shall not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

(6) APPLICATION PROCESS AND REVIEW.—Beginning September 1, 2003, applications are subject to the following requirements:

(d) For charter school applications in school districts that have not been granted exclusive authority to sponsor charter schools pursuant to s. 1002.335(5), the right to appeal an application denial under paragraph (c) shall be contingent on the applicant having submitted the same or a substantially similar application to the Florida Schools of Excellence Commission or one of its cosponsors. Any such applicant whose application is denied by the commission or one of its cosponsors subsequent to its denial by the district school board may exercise its right to appeal the district school board's denial under paragraph (c) within 30 days after receipt of the commission's or cosponsor's denial or failure to act on the application. However, the applicant forfeits its right to appeal under paragraph (c) if it fails to submit its application to the commission or one of its cosponsors by August 1 of the school year immediately following the district school board's denial of the application.

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

(f) If a charter is not renewed or is terminated, the charter school is responsible for all debts of the charter school. The district may not assume the debt from any contract ~~for services~~ made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the district and the governing body of the school and that may not reasonably be assumed to have been satisfied by the district.

(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.

(a) Each charter school shall report its student enrollment to the sponsor ~~district school board~~ as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The sponsor ~~district school board~~ shall include each charter school's enrollment in the district's report of student enrollment. All charter schools submitting student record information required by the Department of Education shall comply with the Department of Education's guidelines for electronic data formats for such data, and all districts shall accept electronic data that complies with the Department of Education's electronic format.

Section 3. This act shall take effect July 1, 2006.

Approved by the Governor June 26, 2006.

Filed in Office Secretary of State June 26, 2006.