

2009 Legislative Changes Impacting Charter Schools **Question & Answer Document**



There were several bills passed during the 2009 Legislative Session that impact charter schools. Those bills are Senate Bills (SB) 278, 1248, and 1676 (conforming bill).

1. What statutes did SB 278 amend or create?

SB 278 amended ss. 11.45, 218.39, 218.50, 218.501, 218.503, 218.504, 1002.33, 1002.34, F.S., and created s. 1002.345, F.S.

2. When do the provisions of SB 278 go into effect?

The provisions will go into effect on July 1, 2009.

3. What changes were made to the process of applying to a school district (sponsor) to open and operate a charter school and to the contract and renewal formats?

SB 278 made several changes to the application process. First, a charter school applicant is required to participate in training prior to submitting a charter school application to the sponsor. The Florida Department of Education (FDOE) shall provide the training; however, districts may require the applicant to participate in district provided training in lieu of the Department's training if the District's training meets or exceeds the standards of the Department's training.

Applicants will also be required to submit an application on a [model application form](#) that is prepared by the FDOE, and the District must evaluate the application using an evaluation instrument developed by the FDOE. Sponsors are permitted to require applicants to submit additional information that is not requested on the model application form.

The new and current requirements for charter school applicants will be discussed in detail at the Department's new applicant trainings. FDOE has scheduled trainings for the 2009 application cycle on July 8, 21, and 23. For more information on these trainings please visit http://www.floridaschoolchoice.org/Information/Charter_Schools/.

SB 278 also requires school district sponsors to use the charter contract and charter renewal format developed by the Department. These formats will be developed in rule with input from charter schools and school district sponsors.

4. Are there any new financial reporting requirements for charter schools?

Yes. SB 278 requires charter schools to provide a monthly financial statement to the sponsor in a form prescribed by the Department of Education. The Department will develop the monthly financial statement format in consultation with charter schools and sponsors and distribute the form as soon as it is available.

5. What are the new requirements relating to the employment of relatives?

SB 278 requires full disclosure in the charter agreement of all employees who are relatives of the school owner, president, any governing board member, principal, assistant principal or any other person with similar decision-making authority.

The new provisions prohibit the relatives of a school owner, president, governing board member, principal or assistant principal with hiring or promotion authority from being appointed, employed, promoted, or advanced. Recusal of oneself from the hiring or promotion decision or the delegation of hiring or promotion authority to another individual would not be sufficient to avoid a violation of this new provision.

While this prohibition would not preclude the continued employment of relatives whose contract or employment relationship predated July 1, 2009, any new employment, appointment or promotion would violate the statute.

Any charter schools with questions about how these provisions might apply to a situation at their charter school are strongly encouraged to consult with an attorney and/or their sponsoring district to review the language of SB 278 as well as the identical language in s. 112.3135, F.S. and the case law interpreting that provision.

6. Are there other restrictions on governing board members?

Yes. SB 278 incorporates the provisions of several public official ethics laws. It now prohibits governing board members from accepting anything of value based upon any understanding that any vote or official board action would be influenced.

More importantly, governing board members and any business entity in which they or their immediate family have a material interest, are now prohibited from contracting with the charter school they govern for the purchase, rent or leasing of any realty, goods or services. This prohibition is subject to several exceptions set forth in s. 112.313(12), F.S., including if the contract was subject to competitive bidding.

Finally, governing board members are prohibited from voting on any matter that would benefit any relative, business associate, or entity for whom that individual has been retained. In addition to recusing him/herself from any such vote, the board member must publicly disclose the interest prior to the vote being taken and must provide a written memorandum within 15 days after the vote explaining the nature of the interest which must be included in the minutes of the governing board meeting. (Section 112.3143(3), F.S.)

7. Are there any changes to how student assessment data is reported?

Yes. The Department of Education is required to report student assessment data to each charter school that does not receive a school grade or school improvement rating and serves at least 10 students who are tested on the statewide assessment test. The charter school is then required to report this information to each parent of a student at the school, the parents of students on a waiting list for the school, the sponsor, and the governing board of the charter.

The Department is also required to compare the charter school student performance data for each of these charter schools with the student performance data in traditional public schools in the district and other charter schools in the state. The Department must provide the comparative data in the following groupings: grades 3-5, grades 6-8, and grades 9-11. Each charter school is also required to provide this information on its Web site and provide notice to the public. The Department will develop rules to outline the notice requirements.

8. Are there any changes to the services provided by the school district (sponsor) to a charter school?

Yes. SB 278 amends s. 1002.33(20), F.S., related to the services a sponsor shall provide to a charter school. Specifically, the bill requires the sponsor to ensure that any funds due to the charter school under the federal school lunch program are paid to the charter school as soon as the school begins serving food under the program. In addition, the sponsor shall ensure that the charter school is paid at the same time and in the same manner as other public schools serviced by the sponsor.

9. What is a corrective action plan and when is it required?

A corrective action plan is a document developed by the governing board of a charter school and the charter school's sponsor. A charter school is subject to an expedited review by the sponsor and must develop a corrective action plan if one of the following conditions outlined in s. 1002.345(1), F.S., occurs:

- (a) The charter school fails to provide for an audit as required by s. 218.39, F.S.;
- (b) The charter school fails to comply with the reporting requirements in s. 1002.33(9), F.S.;
- (c) A deteriorating financial condition is identified through an annual audit or monthly financial statement; or
- (d) Notification that one or more the financial emergency conditions specified in s. 218.503(1), F.S., have occurred and the Commissioner of Education has determined that the condition does not necessitate a financial recovery plan. (Note: If the Commissioner determines that a financial recovery plan is needed, the school will be considered to be in a state of financial emergency and the financial recovery plan will take the place of a corrective action plan.)

The corrective action plan shall be filed with the Commissioner of Education. If the governing board and the sponsor are unable to agree on a corrective action plan, the Commissioner of Education shall determine the components of the plan. The governing board is responsible for implementing the plan, and including the plan and the status of its implementation in the annual accountability report.

Please see the [interactive worksheet](#) on corrective action/financial recovery plans for additional details.

10. What is a “deteriorating financial condition”?

SB 278 defines a deteriorating financial condition as a “circumstance that significantly impairs the ability of a charter school or a charter technical career center to generate enough revenues to meet its expenditures without causing the occurrence of a condition described in s. 218.503(1).”

11. What is a financial recovery plan and when is it required?

A financial recovery plan is a document prepared by a charter school’s governing board and filed with the Commissioner of Education for review and approval.

The Commissioner of Education has the authority to determine if a financial recovery plan is needed when one or more of the following conditions outlined in s. 218.503(1), F.S., has occurred or will occur if action is not taken to assist the charter school:

- (a) Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of a lack of funds.
- (b) Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of lack of funds.
- (c) Failure to transfer at the appropriate time, due to lack of funds:
 - a. Taxes withheld on the income of employees; or
 - b. Employer and employee contributions for:
 - i. Federal social security; or
 - ii. Any pension, retirement, or benefit plan of an employee.
- (d) Failure for one pay period to pay, due to lack of funds:
 - a. Wages and salaries owed to employees; or
 - b. Retirement benefits owed to former employees.
- (e) An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, for which sufficient resources of the charter school, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Fixed or capital assets, the disposal of which would impair the ability of the charter school to carry out its functions, are not considered resources available to cover reported deficits.

If the Commissioner of Education determines that a financial recovery plan is needed, the charter school is considered to be in a state of financial emergency.

Please see the [interactive worksheet](#) on corrective action/financial recovery plans for more information.

12. How does SB 1248 affect charter schools?

SB 1248 amends s. 1008.34(3), F.S., related to the designation of school grades. An alternative school may choose to receive either a school grade or school improvement rating. The bill authorizes the governing board of a charter school that meets the definition of an alternative school to decide whether or not the school shall receive a school grade.

13. How does SB 1676 affect charter schools?

SB 1676 amends s. 1013.62, F.S., related to capital outlay funding for charter schools. The bill expands eligibility for capital outlay funding by allowing charter schools governed by a governing board established in the state for 3 or more years which operates both charter schools and conversion charter schools within the state to be eligible.

The bill also allows a charter school's governing board to use capital outlay funds for the following purposes (in addition to those already established in section (2) of this statute):

- (f) Effective July 1, 2008, purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support school wide administration or state-mandated reporting requirements.
- (g) Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- (h) Purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.