



# Florida School Boards Association

*The voice of education in Florida.*

## **Proposal 71 – Authority to Establish Public and Charter Schools Discussion and Key Points**

[Proposal 71](#) – Authority to Establish Public and Charter Schools by [Erika Donalds](#)

*This proposal would amend Article IX, Section 4 of the Florida Constitution. The proposal would authorize the Legislature to enact laws providing alternative processes to authorize the establishment of public schools in the state.*

### Key Points

- This proposal would permit and encourage the creation of a parallel system of free public schools by essentially creating two systems: While one system would escape the operation and control of local elected school boards, the other would remain under school board authority. This threatens the state's ability to comply with the constitutional mandates for a uniform and efficient system of free public schools.
- The proposal appears to be an effort to expand on public and private school choice options but the proposal lacks quality assurance for these options that already suffer from a lack of vetting and accountability.
- The proposal would permit and encourage a process to establish a charter school, or other types of public schools, without regard to the need for, or appropriateness of, the new school.
- The proposal creates an untenable conflict between the constitutional authority of the elected school board and the authority of the legislature. Simply adding a sentence at the end of Article IX, Section 4(b) does not reduce, overcome, or eliminate the authority specifically reserved to the school board to operate, control, and supervise free public schools that is at the beginning of Section 4(b).

### Discussion

Article IX, Section 4 currently provides, in part, that “The school board shall operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein.” This proposal would add to this Section to provide that “Nothing herein may be construed to limit the legislature from creating alternative processes to authorize the establishment of public schools within the state by general law.”

Florida law specifies that all charter schools in Florida are public schools which places them under the purview of the elected school board. As a result, the vast majority of charter schools must apply to, and be approved by, local school boards. It is evident that charter schools have thrived in Florida, rapidly increasing from 5 charter schools in 1996-1997 to 654 charter schools in 2016-17. Currently, more than 283,000 students are enrolled in charter schools in 46 Florida districts. Florida ranks third, behind California and Texas, in both the number of charter schools and in the number of students served in charter schools.

Along with the success of charter schools in Florida, there have been legal challenges. In 2006, the Florida legislature enacted legislation to establish the “Florida Schools of Excellence Commission” as an independent, state-level entity with the power to authorize charter schools throughout the State of Florida. In ensuing litigation, the First District Court of Appeal (1<sup>st</sup> DCA) found that this legislation posed a total conflict with the constitutional authority of school boards to operate, control, and supervise all free public schools within the school district and declared the legislation to be unconstitutional. In addition, recent legislation creating “schools of hope” that may be established and operated by charter schools or similar entities without the approval of the school board. This legislation is the subject of multiple legal challenges due to the same conflict with the constitutional authority of school boards. Thus, it seems evident that Proposal 71 is an effort to overcome these constitutional conflicts and circumvent the authority of school boards.