



**Proposal 71 – Charter School Authorization
FSBA Analysis and Key Concepts**

Summary

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 charter schools in the state.

Background

Charter schools are tuition-free public schools created through an agreement or "charter" typically between the school and the local district school board. This agreement gives the charter school a measure of expanded freedom relative to traditional public schools. While the vast majority of charter schools must apply to and be approved by local school boards, recent legislation has created "schools of hope" that may be established without the approval of the school board.

Since the inception of charter schools in Florida, the number of charter schools has steadily increased from 5 charter schools in 1996-1997 to 654 charter schools in 2016-17. Currently, more than 283,000 students were enrolled in charter schools in 46 Florida districts. Nationally, in 2016-2017, there were nearly 7,000 charter schools in 43 states serving just over 3 million students. Among these states, Florida ranks third, behind California and Texas, in both the number of charter schools and in the number of students served in charter schools.

Of particular relevance to this proposal, the recent legislation enacting "schools of hope" is the subject of multiple legal challenges due to an apparent conflict with Article IX, Section 4 of the Florida Constitution. In addition, 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 found that this legislation posed a total and fatal conflict with Article IX, Section 4 and declared the legislation to be unconstitutional.

It appears that Proposal 71 may be an effort to overcome these constitutional conflicts so that the Legislature could enact through legislation an alternative authorization process and/or authorizing entities. Specifically, Proposal 71 would amend the current text of Article IX, Section 4 of the Florida Constitution by adding a sentence at the end of Section 4(b) as follows:

Article IX, Section 4 –

- (a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

- (b) 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. Two or more school districts may operate and finance joint educational programs. Nothing herein may be construed to limit the legislature from creating alternative processes to authorize the establishment of charter schools within the state by general law. (Proposed amendment language underlined)

Key Concepts and Concerns

Section 1002.33(1), F.S., specifies that “[a]ll charter schools in Florida are public schools and shall be part of the state’s program of public education.” Therefore all charter schools are free public schools that fall under the purview of the elected school board in each district.

Simply adding a sentence at the end of Article IX, Section 4(b) does not reduce, overcome, or eliminate the powers to operate, control, and supervise free public schools that are specifically reserved to locally elected school boards at the beginning of Section 4(b). Instead, as written, this proposal creates, within the same paragraph, an untenable conflict between the constitutional responsibilities of the elected school board and the authority of the legislature.

Article IX, Section 1(a) provides in part: “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.”

Establishing through legislation an alternative process and/or entity to authorize charter schools would permit and encourage the creation of a parallel system of free public education that escapes the operation and control of local elected school boards.

Establishing through legislation an alternative process and/or entity to authorize charter schools would permit and encourage the creation of a parallel system of free public education that escapes the operation and control of local elected school boards. This threatens the state’s ability to comply with the constitutional mandates for a uniform and efficient system of free public schools.

Given the success of charter school establishment and expansion in Florida, the “needs of the people” do not require the establishment of an alternative process and/or entity to authorize charter schools, nor is there any evidence that such an alternative would be necessary or desirable.

The CRC Staff Analysis of Proposal 71 stipulates that the proposal does not change the current system or statutes guiding charter schools, so it must be assumed that school districts would continue to be responsible for some level of oversight and for the provision of supporting services for these schools for which the district would have no accompanying authority to enforce compliance with statutes, particularly those relating to academic and fiscal accountability.

The CRC Staff Analysis of Proposal 71 freely states that the impact of the proposal is indeterminate. To install in the state constitution a provision for which there is no clear evidence the proposal will result in a benefit nor assurance that the proposal will not result in harm is, at best, premature.

Since the proposal stipulates no changes the current system or statutes guiding charter schools, it fails to invest any responsibility or accountability for the alternative process and/or entity that authorizes a charter school beyond the authority to approve the charter school.

Sources

[Text of Proposal 71](#)

[CRC Staff Analysis of Proposal 71](#)

[Section 1002.33, F.S.](#)

[FDOE Charter School 2017 Fact Sheet](#)

[National Alliance for Public Charter Schools Report \(2/1/17\)](#)