

FSBA Issue Brief: Capital Outlay for Charter Schools

Background

Florida's first charter school law was enacted in 1996, but it has undergone substantial revision over the past 16 years. For the 2012-2013 school year, there are 574 charter schools operating in 44 Florida school districts and serving more than 200,000 students, or about 7.4% of all of Florida's public school students. Charter schools are public schools that operate under a performance contract (charter) with a sponsor (typically, a school district). The charter contract must address several key components including, but not limited to, the charter school's mission and purpose, student population, curriculum, budget, and facilities.

While a charter school is exempt from – or is granted flexibility in complying with – many regulations applicable to traditional public schools, it must comply with those statutes specifically relating to charter schools and, generally, with those statutes relating to student assessment, civil rights, public records, and student health, safety, and welfare. With respect to facilities, charter schools are exempt from compliance with the State Requirements for Educational Facilities (SREF), but must comply with the Florida Building Code and the Florida Fire Prevention Code.

Current Capital Outlay Funding for Charter Schools

In order to be eligible for **state** capital outlay funding, a charter school must:

- (a) Have been in operation for at least three years; (b) have a governing board that has been established in Florida for three or more years which operates both charter schools and conversion charter schools; (c) be part of an expanded feeder chain that includes a charter school that is receiving capital outlay funds, (d) be accredited by the Southern Association of Colleges and Schools, **or** (e) serve students in facilities provided by a business partner for a charter school-in-the-workplace;
- Demonstrate financial stability for future operation as a charter school;
- Have satisfactory student achievement based on the state accountability standards;
- Have received the sponsor's final approval for operation during that fiscal year; and
- Serve students in facilities that are not provided by the charter school sponsor.

In the allocation of state capital outlay funds to charter schools, first priority is given to charter schools that received capital outlay funding in FY 2005-06. The second priority is to allocate state funds to those schools not included in the first priority allocation and to those schools in the first priority allocation with growth in excess of FY 2005-06 student enrollments. After meeting these priorities, any remaining funds are allocated among all eligible charter schools. In fiscal years 2011-12 and 2012-13, the state allocated \$55.2 million in state capital outlay funding each year to charter schools. It is important to note that, during the same time period, **no** state capital outlay funding was allocated to traditional public schools.

In addition to state charter school capital outlay funding discussed above, current law authorizes, but does not require, school boards to allocate local discretionary capital outlay funds to charter schools. In addition, for purposes of school concurrency, accepted local policies authorize, but do not require, that school boards accept the construction of a charter school as mitigation to offset the impact of new residential development.

K-12 Public School Facility Funding Task Force

In recent years, there have been efforts by both the state legislature and by charter school advocates to require, rather than authorize, revenues garnered from the local discretionary capital outlay millage to be directed to charter school capital outlay projects. During the 2012 Legislative Session, these efforts culminated in the establishment of the K-12 Public School Facility Funding Task Force (Task Force). The Task Force was directed to make recommendations to the Legislature for more equitable facility funding for charter schools and traditional public schools.

The Task Force developed a Report, with accompanying proposed legislation, that included the following key provisions:

- Authorize all school districts to increase their discretionary capital outlay millage from 1.5 mills to 1.75 mills;
- In addition to the 1.75 mills, provide those districts that had charter schools the authority to levy additional millage at whatever level necessary, but not more than .25 mills, to address the capital outlay needs of the charter schools in the district;
- Make it compulsory for districts to provide charter school capital outlay funding from either the additional millage or from other district funds in a per student amount that was the lesser of 1/30 of the statutory student station cost or the value of 1.75 mills divided by the district's prior year Capital Outlay FTE; and
- Revise the standards and requirements for charter schools to be eligible for capital outlay funding.

The Task Force Report did not receive final approval by the Task Force members during their final meeting in November 2012, so these recommendations have been rendered moot for the time being. However, the Task Force Report does serve to highlight many of the central issues and controversies relating to capital outlay funding for charter schools.

Discussion of Key Issues Raised by the Task Force Report

State vs. Local Funding: The Florida Constitution provides that it is a "paramount duty of the state to make adequate provision for the education of all children residing within its borders." "Adequate provision" clearly includes the provision of funding for educational facilities. In recent years, state funding for all educational capital outlay has dwindled, yet the state has made no effort to expand existing, or create new, revenue streams for this purpose. Further, the state has allocated what little state funding that is available to charter schools and has ignored the capital needs of traditional public schools. The Task Force made little effort to encourage the state to fulfill its responsibility to adequately fund capital outlay needs and, instead, recommended shifting the responsibility from the state to local school boards.

Local Discretionary Capital Millage: Over the past 5 years, the Legislature has reduced – from 2.0 mills to 1.5 mills – the discretionary authority for school boards to levy capital outlay millage. This has caused hardship in many districts struggling to meet their new and existing capital outlay needs and commitments, particularly given the concurrent loss of state capital outlay funding. In addition, this reduction in millage authority has had a negative effect on bond ratings in some districts. For this reason, the Task Force's recommendation to partially restore the discretionary capital outlay millage authority to 1.75 mills for all school boards is welcome. However, the recommendation granting additional

taxing authority up to 2.0 mills for only those districts that have charter schools is problematic. It would create a disparity in the taxing authority of school districts that have charter schools and those that do not. It would also create confusion and uncertainty in planning and budgeting because, under current law, school boards cannot always anticipate when and where a charter school will be added to, or be allowed to remain open in, the school district. As a possible result, school boards may be called upon to provide local capital outlay revenue for projects that had not been anticipated or budgeted. Further, tying charter school capital outlay to local property tax revenue may discourage charter schools from applying to open charter schools in districts that have low property values.

Compulsory vs. Need Based Funding: Under current law, the capital outlay needs within the school district must be included, in priority order, in the district's state approved 5-year Capital Outlay Plan. As state and/or local funding becomes available, the projects listed in the district 5-Year Plan are addressed and funded in order of need. Thus, under current law, while the district earns state capital outlay funding on a per-student basis, the funds are expended only on the basis of need as identified in the 5-Year Plan. In stark contrast, the Task Force Report recommended that funding for charter school capital projects be earned and expended on a per-student basis, regardless of need for the charter school facility, and regardless of any other pressing capital outlay needs in the school district contained in the district's 5-Year Plan. This is certainly inconsistent with long established policies for funding public school facilities and could result in wasteful and unaccountable spending of scarce capital outlay funding.

New or Expanded Charter School Capacity: One of the most basic characteristics of a charter school is often overlooked in the discussion of capacity needs: Charter schools are a school choice option – the school board cannot assign any student to attend a charter school. Further, even those students who initially choose to attend a charter school are free to change their minds and return to their traditional public school. Thus, charter schools are not necessarily a reliable way to address district capacity deficits. Despite this fact, the Task Force recommended that a charter school wishing to open or expand its enrollment to address district capacity needs should be eligible for capital outlay funding to accomplish this.

Further, the Task Force recommended that charter schools would be eligible for capital outlay funding if the charter school wished to expand in order to reduce the charter school's waiting list. This presents an untenable double standard because, under current law, a traditional public school cannot draw down capital outlay funding in a similar manner in order to reduce the waiting list for a popular and successful magnet program, theme school, or similar program.

In addition, the Task Force recommended that a charter schools would be eligible for local capital outlay funding if at least 50% of the parents within a geographic region of the school voted to support the funding. Such a mechanism not only bypasses the role and authority of the school advisory council, but it also would create capacity where none may be needed or used. More important, such a mechanism would assign authority to a relatively small group of parents to over-ride or dictate a decision normally reserved to the school board – the body that has been elected by voters to represent and consider the needs and desires of students and parents throughout the entire district.

Facility Standards: Since 1996, a total of 216 charter schools – more than 27% of all charter schools – have closed, either voluntarily or by the sponsor. Under current law, when a charter school closes, unencumbered capital outlay funds revert to the state for redistribution to other charter schools. Meanwhile, any district school board property and improvements, furnishings, and equipment purchased with public funds revert to the district school board subject to satisfaction of any liens or encumbrances. This creates problems in some school districts because charter school facilities that revert to the school district are often unusable unless and until they are brought up to SREF standards. Due to the absence of state capital outlay funding allocated to the school district, the school district lacks the funding to upgrade these facilities. The Task Force recommendation that would mandate local capital outlay funding for charter schools that need not meet SREF standards compounds this problem because, in addition to the state funding already invested, it forces the investment of local funding into facilities that the district cannot use if the charter school closes. At the same time, it depletes the availability of both state and local funding to upgrade the facilities and reduces the inventory of needed emergency shelter spaces.

FSBA Recommendations

FSBA commends the Task Force for its work to bring equity to capital outlay funding for both charter and traditional public schools. To address the concerns expressed in this Issue Brief, FSBA makes the following recommendations to improve on the work done by the Task Force:

- Expand the base and increase the rate of the Gross Receipts Utilities Tax and/or identify new revenue streams to support increased and ongoing state funding for both charter and traditional public school capital outlay projects;
- Ensure that districts earn state capital outlay funding on the same per student basis for all students, regardless of whether they are enrolled in charter schools or traditional public schools;
- Restore the local discretionary capital outlay millage authority to 2 mills for all districts;
- Establish criteria by which all charter school capital outlay projects may be included in the district state approved 5-Year Capital Outlay Plan;
- Require that both state and local capital outlay funding may only be expended in accordance with the priority order of the state approved 5-year Capital Outlay Plan;
- Require that any charter school facilities that seek to address district capacity needs are built to SREF standards.