

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Appropriations Committee

BILL: CS/SB 1752

INTRODUCER: Education Pre-K-12 Appropriations Committee and Senator Wise

SUBJECT: Virtual Instruction Programs

DATE: April 2, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hamon	Hamon	EA	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill authorizes School District Virtual Instruction Programs. Beginning with the 2009-2010 school year, each school district in the state may offer courses by virtual instruction. An eligible student must be a full-time student in the school district based on the student's enrollment in virtual courses or a combination of virtual courses and standard district courses. The purpose of the program is to make academic instruction available to full-time school district students who use online and distance learning technology. Each school district may implement its program through approved district-operated programs or programs by contracted providers approved by the Department of Education. School districts may participate in multi-district contractual arrangements to provide such programs.

The bill establishes district and provider qualifications, instruction requirements, enrollment capacities, student eligibility and participation requirements, and assessment and accountability standards. The bill also authorizes districts to receive funding under the Florida Education Finance Program (FEFP) for eligible School District Virtual Instruction Programs.

This bill substantially amends section 1011.61 and creates section 1002.45 of the Florida Statutes.

II. Present Situation:

School District Virtual Instruction

Currently, school districts offer virtual instruction at school sites and through supplemental programs off-site. Districts utilize a number of curriculum models using their own instructors, including using the Florida Virtual School franchise system. However, to be eligible for full-

time equivalent (FTE) funding through the FEFP, school district instruction must meet the direct instruction requirements of the FEFP.

The FEFP statute defines, in s. 1011.61, F.S., a "full-time equivalent student" as a student who receives instruction in a standard school, comprising not less than 900 net hours for a student in or at the grade level of 4 through 12, or not less than 720 net hours for a student in or at the grade level of kindergarten through grade 3 or in an authorized prekindergarten exceptional program. It also includes students who receive instruction in a double-session school or a school utilizing an experimental school calendar approved by the Department of Education, comprising not less than the equivalent of 810 net hours in grades 4 through 12 or not less than 630 net hours in kindergarten through grade 3. Therefore, school districts are currently prohibited from receiving FTE funding for virtual instruction programs conducted off-site.

Florida Virtual School (FLVS)

The current state-sponsored virtual school was initially funded in proviso in the General Appropriations Act (GAA).¹ The Legislature subsequently codified provisions for the school in 2000.² The FLVS serves students in grades 6 through 12 who are enrolled in public schools, including charter schools, private schools registered with the Department of Education (DOE), and home school students. School districts must provide students with access to enroll in FLVS courses during or after the normal school day and during summer school and must award credit for the successful completion of courses. The FLVS does not award high school diplomas.

When a student enrolls in a FLVS course, school districts and the FLVS have specific responsibilities. District responsibilities include: verifying that the selected courses are appropriate, based on the student's academic history, age, and grade level; accepting FLVS final course grades; entering credit for successful completion of FLVS courses; and creating and maintaining FLVS online accounts. Districts also continue to be responsible for exceptional student and ESOL services. The FLVS responsibilities include the following: providing teachers and access to the curriculum and instruction of students; and awarding a final course grade for successful completion of each half credit by the student. The FLVS currently has an agreement with all school districts that incorporates these responsibilities.³

The FLVS receives a state funding allocation from the FEFP, the state funding formula for public schools. Funds are provided for students who complete virtual courses based on half-credits, which is typically one semester. Each half-credit earned is equal to .083 full-time-equivalents (FTE) or \$345 for 2007-2008. Six full-year courses successfully completed are equal to six credits and one FTE for purposes of funding. Time-based funding requirements are not applicable.

¹ Ch. 97-152, L.O.F., ch. 98-422, L.O.F., ch. 99-226, L.O.F., and ch. 2000-166, L.O.F. The FLVS was previously known as Project Orange and the Florida On-Line High School.

² ch. 2000-224, L.O.F. The FLVS was codified in 2001-170, L.O.F., as s. 228.082, F.S. Pursuant to ch. 2002-387, L.O.F., the FLVS is currently in s. 1002.37, F.S.

³ FLVS, E-mail, December 18, 2007. See also http://www.flvs.net/educators/affiliating_with_flvs.php The FLVS also enters into agreements with private and charter schools.

Within the 2007-2008 FEFP, the FLVS receives funds for its students who are served in basic education programs for grades 6 to 8 and grades 9 to 12.⁴ Because the school has no taxing authority, it receives a state payment in lieu of required and discretionary local millage revenue provided through the funding formula.

The school also receives an allocation for reading instruction, discretionary lottery/school recognition, instructional materials, and class size reduction. The school is eligible for the bonus of .24 FTE for each student who completes and passes the exam for Advanced Placement (AP®) courses, which, in 2006-2007, was equal to \$956 per FTE student, per exam (a total of \$457,000). The FLVS also receives a funding supplement equaling .114 FTE⁵ or \$471 per FTE student (\$4.2 million for 2007-2008). Total state funds for FLVS in 2007-2008 are almost \$59 million or \$6,551 per FTE.

A district student who takes courses at the FLVS may earn no more than one FTE or six credits for funding at the school during the regular school year. In addition, the student may earn FTE for FLVS courses during the summer school period.⁶ Credit completed by the student in excess of the minimum required for that student for high school graduation is not eligible for funding.⁷

A student who takes FLVS courses does not generate funds for his or her district of residence. Instead, he or she earns funds in the FEFP directly from the state for the Florida Virtual School.⁸

FLVS Franchise School Districts

In 2003, the Legislature authorized the FLVS board of trustees to: enter into franchise agreements with district school boards; define the elements of an approved franchise; establish the terms and conditions governing the agreements; and develop accountability performance measures for the franchises.⁹

To receive FTE funding, approved franchises must be certified by the Commissioner of Education.¹⁰ Districts that choose to franchise FLVS online courses must meet the following requirements to receive and maintain permanent certification:¹¹

- Provide a point of contact for the FLVS;
- Use the FLVS learning management system;
- Process the purchase and delivery of course materials for courses;
- Establish an approved policy for a student grace period, the removal of students from online courses, and communication for students, parents, and teachers;
- Complete the FLVS Virtual School Leadership training and participate in training for course content, the Virtual School Administrator system, and the learning management system;

⁴ ss. 1011.61(1)(c)1.(III) and 1011.62(1)(c), F.S.

⁵ s. 1011.62(1)(r), F.S.

⁶ ss. 1011.61(1)(c)2. and 1002.37(3)(b), F.S.

⁷ s. 1002.37(3)(a), F.S.

⁸ s. 1002.37(3)(d), F.S.

⁹ ch. 2003-391, L.O.F.

¹⁰ s. 1003.37(4), F.S.

¹¹ FLVS Franchise Report (2006) and FLVS Franchise Application, October 12, 2007.

- Provide certified teachers in the subject they are teaching or teachers who possess a statement of eligibility;
- Participate in evaluations; and
- Comply with the franchise agreement.

For the franchises, the FLVS provides training, mentoring for franchise teachers, online course content with updates, course materials to students, a student management information system, and technical support.¹² The FLVS board is tasked with providing an annual franchise accountability report to the Commissioner of Education.¹³

Districts that operate a franchise must pay fees to the FLVS. District franchise costs may include management, support, instructional personnel, hardware, and Internet access.¹⁴

The franchises are funded similarly to the FLVS in that students are funded based on course/credit completions. The franchise schools may not earn more than one FTE per student during the regular school year; however, like other district schools, the franchise schools may not report FTE for the summer school period.¹⁵ State funds are paid directly to the school district for franchise operations, as they are for other FEFP-funded programs.

FLVS performance measures for franchises include the following:¹⁶

- At least 80 percent of all students successfully complete an online course and have a “C” or better;
- AP scores meet or exceed the state's average; and
- All instructors are certified in the subject that they teach, communicate effectively with students and parents, respond to 90 percent of the students within 24 hours, and provide them with a monthly progress report.

Currently seven districts operate FLVS franchises: Broward, Hillsborough, Marion, Miami-Dade, Okaloosa, Palm Beach, and Polk.¹⁷

K-8 Virtual Schools

Through proviso in the GAA, the Legislature provided for the creation of at least two pilot K-8 virtual schools, subject to specific criteria for student and school eligibility and funding.¹⁸ In Fiscal Year 2003-2004, the program was made available to 1,000 students who were enrolled and in attendance at a Florida public school in the October and February full-time equivalent (FTE) enrollment surveys during the prior school year. Funds were provided for grants of up to \$4,800 per student with a total program amount for the following years: \$4,800,000 in Fiscal Year 2003-2004, \$3,840,000 in Fiscal Year 2004-2005, and \$4,800,000 in Fiscal Year 2005-2006.

¹² FLVS Franchise Report, Appendix B (excerpts from the franchise contract) (2006).

¹³ s. 1002.37(2)(i), F.S.

¹⁴ FLVS In-State Franchising, July 17, 2007.

¹⁵ s. 1011.62(1)(c)2., F.S.

¹⁶ FLVS Accountability Metrics, Received October 12, 2007.

¹⁷ See http://www.floridaschoolchoice.org/Information/Virtual_Schools/District_Franchises.asp

¹⁸ See ch. 2003-397, L.O.F., ch. 2004-268, L.O.F., and ch. 2005-70, L.O.F. The funding for Fiscal Year 2004-2005 was capped at \$3,840,000 and \$800,000 was provided to the FLVS to develop and implement a grade 6 through 8 curriculum.

In 2006, the Legislature codified the program.¹⁹ Funds are based on a total program enrollment and amount per FTE that is annually established in the GAA. The funds must be disbursed according to the schedule specified in law. Payment is contingent upon verification of student enrollment and attendance.²⁰

Funds were provided for grants of up to \$5,200 per student with a total program amount of \$7,200,000 in Fiscal Year 2006-2007, and for grants of up to \$4,848 per student with a total program amount of \$9,120,000 in Fiscal Year 2007-2008.²¹

School Eligibility

The K-8 virtual schools are independent schools that provide instruction on behalf of the state for 180 days of full-time instruction. All participating schools must provide each student with all necessary instructional materials and equipment, including a computer, monitor, and printer, and access to or reimbursement for all Internet services needed for on-line instruction.

To participate in the K-8 Virtual School program, a school may be a for-profit or nonprofit entity and must meet all of the following conditions:

- Be nonsectarian in its programs, admission policies, employment practices, and operations;
- Comply with the antidiscrimination provisions of s. 1000.05, F.S.;
- Participate in the state's performance accountability system pursuant to s. 1008.31, F.S.;
- Locate its administrative office in the state;
- Require all administrative and instructional personnel to be Florida residents; and
- Require no tuition or student registration fee.²²

An applicant must verify that the school meets all eligibility criteria, including certification of all instructional staff pursuant to chapter 1012, F.S., and compliance by all school employees with the criminal background screening requirements in s. 1012.32, F.S. An applicant must also provide the DOE with an education plan detailing how the curriculum and course content conform to the Sunshine State Standards and a detailed annual financial plan for each year of operation for a minimum of three years.²³

Contracts

The law requires an initial 3-year contract between an approved K-8 virtual school and the DOE, subject to annual review by the DOE and legislative appropriation, and provides for contract renewals for up to 5 years, contingent upon an annual appropriation. The DOE is authorized to not renew and to terminate a current contract with a school if funds are not provided by the Legislature or based on the following grounds:

- Failure to participate in the state's performance accountability system;
- Failure to earn the required school performance grade;

¹⁹ ch. 2006-48, L.O.F.

²⁰ s. 1002.415(6), F.S.

²¹ ch. 2006-25, L.O.F., and ch. 2008-1, L.O.F.

²² s.1002.415(1), F.S.

²³ *Id.*

- Failure to meet generally acceptable standards of financial management;
- Violation of law; or
- Other good cause shown.

The DOE is under contract with two schools: the Florida Connections Academy Virtual School, Inc. (FCA); and the K12 Florida, L.L.C. (FVA).

Assessment and Accountability

Schools must participate in the statewide assessments and are subject to the school grading system provisions in s. 1008.34, F.S. A participating school that is designated with a performance grade of “D” or “F” must develop and file a school improvement plan with the DOE. If a school is designated with a performance grade of “D” or “F” for 2 school years in a consecutive 4-year period, the DOE must terminate the contract with the school.

Schools are also subject to federal testing requirements for public school students that are used to measure whether states and schools are making “adequate yearly progress” (AYP) toward state student proficiency goals.²⁴ The determination of AYP is based on academic assessments.²⁵ For 2007, the Florida Connections Academy and the Florida Virtual Academy received a school performance grade of “A,” but did not meet the AYP requirements.²⁶

Student Eligibility

Any K-8 student in Florida is eligible to enroll in a participating K-8 Virtual School, if the student meets one of the following conditions:²⁷

- Spent the prior school year in attendance at a Florida public school and was enrolled and reported by a school district for funding during the preceding October and February FEFP surveys;
- Was enrolled during the prior school year in a K-8 virtual school funded pursuant to s. 1002.415, F.S., or the 2005 GAA;
- Is eligible to enroll in kindergarten or the first grade; or
- Has a sibling who is currently enrolled in a K-8 virtual school and was enrolled at the end of the prior school year.

III. Effect of Proposed Changes:

The bill authorizes School District Virtual Instruction Programs. Beginning with the 2009-2010 school year, each school district in the state may offer courses by virtual instruction. An eligible student must be a full-time student in the school district based on the student's enrollment in virtual courses or a combination of virtual courses and standard district courses. The purpose of the program is to make academic instruction available to full-time school district students who use online and distance learning technology. Each school district may implement its program

²⁴ Part A of Title I of the Elementary and Secondary Education Act (Title I), as reauthorized by the No Child Left Behind Act of 2001.

²⁵ 20 U.S.C. s. 6311(b)(2)

²⁶ See <http://schoolgrades.fl DOE.org/default.asp>

²⁷ s. 1002.415, F.S.

through approved district-operated programs or programs by contracted providers approved by the Department of Education. School districts may participate in multi-district contractual arrangements to provide such programs.

On or before March 1, 2009, and annually thereafter, the department shall review and approve district-operated virtual programs. Approved contract providers include schools approved to provide virtual instruction under the K-8 Virtual School and Florida Virtual School programs, and other providers approved by the department. To be approved by the department, a contract provider must annually document that it:

- Is nonsectarian in its programs, admission policies, employment practices, and operations;
- Complies with the antidiscrimination provisions of s. 1000.05;
- Locates an administrative office in this state, requires its administrative staff to be state residents and instructional staff members to be Florida-certified teachers;
- Possesses prior, successful experience offering online courses to elementary, middle, or high school students;
- Is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the North Central Association of Colleges and Schools, or the New England Association of Colleges and Schools; and
- Complies with all requirements under this section.

Each virtual instruction program operated or contracted by a school district must:

- Require all instructional staff to be certified professional educators under chapter 1012.
- Conduct a background screening of all employees or contracted personnel, as required by s. 1012.32, using state and national criminal history records.
- Align virtual course curriculum and course content to the Sunshine State Standards under s. 1003.41.
- Offer instruction that is designed to enable a student to gain proficiency in each virtually delivered course of study.
- Provide each student enrolled in the program with all the necessary instructional materials.
- Provide, when appropriate, each household having a full-time student enrolled in the program with all the necessary equipment necessary for participants in the school district virtual instruction program, including, but not limited to, a computer, computer monitor, and printer; and access to or reimbursement for all Internet services necessary for online delivery of instruction.
- Not require tuition or student registration fees.

Enrollment in a school district virtual instruction program is open to any student residing within the district's attendance area if the student meets at least one of the following conditions:

- The student has spent the prior school year in attendance at a public school in this state and was enrolled and reported by a public school district for funding during the preceding October and February for purposes of the Florida Education Finance Program surveys; or

- The student was enrolled during the prior school year in a school district virtual instruction program under this section or a K-8 Virtual School Program under s. 1002.415.

Each student enrolled in a school district virtual instruction program must comply with the compulsory attendance requirements of s. 1003.21 and student attendance must be verified by the school district. Students must take state assessment tests within the school district where such student resides, which must provide the student with access to the district's testing facilities.

Each school district virtual instruction program provider must participate in the statewide assessment program under s. 1008.22 and in the state's education performance accountability system under s. 1008.31 and receive a school grade as provided in s. 1008.34. A program that is designated with a grade of "D," making less than satisfactory progress, or "F," failing to make adequate progress, must file a school improvement plan with the department for consultation to determine the causes for low performance and to develop a plan for correction and improvement. The school district shall terminate its program or its provider's contract for any program that is designated with the grade of "D," making less than satisfactory progress, or "F," failing to make adequate progress, for 2 years during any consecutive 4-year period. Also, beginning with the 2010-2011 school year, a school district may not increase the enrollment for a virtual education program in excess of its prior school year enrollment unless the program is designated with a grade of "C," making satisfactory progress, or better under the school grading system.

The State Board of Education is required to adopt rules under ss. 120.536(1) and 120.54 to administer the School District Virtual Instruction Program.

The bill modifies definitions in s. 1011.61, F.S., to authorize reporting of students in School District Virtual Instruction Programs for FTE funding under the FEFP. A full-time equivalent student for students in grades K-8 in a school district virtual instruction program as provided in s. 1002.45 shall consist of a student who has successfully completed a basic program listed in s. 1011.62(1)(c)1.a. or b., and who is promoted to a higher grade level. A full-time equivalent student for students in grades 9-12 in a school district virtual instruction program as provided in s. 1002.45 shall consist of six full credit completions in programs listed in s. 1011.62(1)(c)1. and 4. Credit completions can be a combination of either full credits or half credits.

The bill takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes school districts to contract with providers of virtual education instruction.

C. Government Sector Impact:

The bill provides additional opportunities for the use of virtual instruction in school districts. Currently, statute authorizes only the Florida Virtual School, school district franchises of the Florida Virtual School, and the K to 8 Virtual schools as virtual instruction providers in the Florida public school system. The bill provides additional fiscal options for districts by authorizing school districts to offer their own virtual programs or to contract with other providers for a program. The bill also allows school districts to deviate from “seat time” or hours of instruction funding by authorizing the FTE for these virtual instruction programs to be earned on a performance basis either by grade progression for grades K to 8 or credit completion for high school students.

The bill’s performance funding standards, rather than “seat time” standards, means that districts will only be paid for student completers rather than for all student participants. In 2006-2007, the statewide average promotion rate for K to 8 students in public schools was 95.7%. Also, in the same year, the statewide average credit completion rate for high school students was 90.4%. However, completion rates may improve if virtual instruction is targeted towards students who would find this instructional approach more relevant, and the efficiency of virtual instruction may provide savings to districts when program expenses are less than the revenue generated by the funding formula.

This bill removes fiscal barriers by allowing districts to report FTE for programs that they contract for or provide themselves. Also, multi-district contractual arrangements may provide greater access for small districts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Education Pre-K-12 Appropriations Committee, April 2, 2008:

Senate Bill 1752 was originally filed as a shell bill expressing legislative intent to revise laws relating to education innovation. The committee adopted the committee substitute as described in this bill analysis.

- B. **Amendments:**

None.