

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1458

SPONSOR: Appropriations Committee, Education Committee and Senator Wasserman-Schultz

SUBJECT: Florida Virtual School Franchise Agreements

DATE: April 20, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dormady	O'Farrell	ED	Fav/CS
2.			AED	Withdrawn
3.	Armstrong	Coburn	AP	Fav/CS
4.				
5.				
6.				

## I. Summary:

CS/CS/SB 1458 authorizes the Florida Virtual School (FVS), on a pilot basis, to contract with a private Florida-based virtual school that is accredited by the Southern Association of Colleges and Schools and is an approved franchise of the FVS. Any private school party to such a contract would be permitted to provide instruction for up to 60 high school course credits in any fiscal year. The contract would be limited to courses for students who need to enroll in a virtual course for high school credit that cannot be provided in a timely manner by the FVS or by the public school district in which the student lives. Other contractual provisions are also stipulated in the bill.

Each course provided under the contract would be eligible for funding to the FVS in the same manner as for courses provided by the FVS. Payment would in turn be made to a private school provider based on course completions, pursuant to the terms of the contract with the provider. The private school could not charge a fee for the courses provided under the contract with the FVS.

This bill amends section 1002.37 of the Florida Statutes.

The bill will take effect upon becoming law.

## II. Present Situation:

### *Current statutory framework*

Section 1002.37(2)(i), F.S., provides that the board of trustees of the FVS must establish criteria defining the elements of an approved franchise. The board of trustees is permitted under current

law to enter into franchise agreements with Florida district school boards and to establish the terms and conditions of such agreements. The section also provides that the board of trustees must establish performance and accountability measures for franchisees and that they must report the performance of each school district franchise to the Commissioner of Education.

Generally, students who take classes through the FVS take only a few of their required classes through the virtual curriculum; most of their required classes are taken at their brick-and-mortar school. Funding provided to the FVS for serving these students accommodates this part-time enrollment concept. Under s. 1002.37(3)(a), F.S., a “full-time equivalent student” for the FVS is defined as one student who has successfully completed six credits that count toward the student’s credits required for high school graduation. A student who completes less than six credits is counted as a fraction of a full-time equivalent (FTE) student.<sup>1</sup> Credit completed by a student in excess of the minimum required for high school graduation is not, however, eligible for state funding. FTE student credits completed through the FVS are reported by the FVS to the Department of Education and are funded through the Florida Education Finance Program (FEFP).

#### *FVS use of franchise agreements and license agreements*

Currently, the FVS has “franchise agreements” in place with five Florida school districts, pursuant to which course content and some services are licensed to the school districts. The FVS also enters into “license agreements” with non-public schools, most of which are located outside of Florida, pursuant to which it licenses content and some services to these schools. While the franchise agreements entered into with Florida school districts are priced on a cost-recovery basis only, the licensing agreements in place with private schools are a for-profit aspect of the FVS’s business, and are priced accordingly.<sup>2</sup>

#### *Southern Association of Colleges and Schools*

The Southern Association of Colleges and Schools (SACS) is one of six regional accreditation organizations in the country; it accredits both public and private elementary and secondary schools, as well as public and private colleges, universities and graduate schools. SACS accredits more than 12,000 public and private educational institutions in 11 states in the Southeastern United States and Latin America. It conducts site visits of schools and applies a consistent set of accrediting standards to the schools it accredits.<sup>3</sup>

### **III. Effect of Proposed Changes:**

This bill authorizes – but does not require – the FVS to contract with a private Florida-based virtual school that is accredited by SACS and that is an approved franchise of the FVS. Pursuant to the contract, the private school could provide instruction for up to 60 high school course credits in any fiscal year. The contract would be limited to courses for students who need to

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<sup>1</sup> Half-credit completions are also permitted to be counted toward funding amounts.

<sup>2</sup> Source: Florida Virtual School personnel.

<sup>3</sup> Source: <http://www.sacs.org/>.

enroll in a virtual course for high school credit that cannot be provided in a timely manner by the FVS or by the public school district in which the student lives.

Any contract entered into under the bill would be required to include provisions as follows:

- The FVS would be responsible for assuring that each course meets the same educational program requirements, including curriculum, instructional materials, and instructor qualifications, as if the course were provided by the FVS.
- Each course provided under the contract would be reported to the Department of Education (DOE) in the same manner and with the same information as required for each course provided by the FVS.
- State funding for the courses provided under the contracts would be provided to the FVS, which in turn would pay the private school for each course pursuant to its contractual arrangement.
  - Payment to the private school for each course will be based on successful course completions in the same manner as courses provided by the FVS.
  - The amount paid under the contract to the private school for each course would not exceed the amount the FVS received for the same course.
- The private school would not be permitted to charge a fee of any kind for a course provided under contract with the FVS.
- The FVS is required to:
  - determine other requirements that are necessary to support student outcomes;
  - expand services not otherwise available; and
  - adequately document the contract and the pilot.

The FVS must report the results of the pilot project to the President of the Senate and the Speaker of the House of Representatives no later than March 1 of each year in which the pilot is conducted. The length of the pilot project is not specified by the bill.

The bill will take effect upon becoming law.

#### **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:**

The First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion.” This section of the First Amendment, known as the Establishment Clause, is applicable to state action by incorporation through the Fourteenth Amendment to the U.S. Constitution. As a result, state programs must not violate Establishment Clause principles. Certain Establishment Clause issues under the federal Constitution may be raised by both the oversight provisions of the bill (pursuant to which the FVS, itself a state actor, must ensure that each course at the private schools meets curricular, instructional material and instructor qualification requirements) and the funding structure proposed by the bill (pursuant to which state funding will flow directly to private schools.<sup>4</sup>)

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The private school party to the pilot project will receive payment from the FVS for each virtual school course completion documented to the Department of Education.

**C. Government Sector Impact:**

Data are not available to determine whether the bill would have any fiscal impact on the government sector. This pilot project would result in state funds being paid to a private school for offering virtual school content; however, it is not known how many private schools in the state of Florida would currently qualify for participation in the program under the bill’s requirements. Additionally, the FVS is not required to enter into contracts with any such schools. It could elect not to enter into any such contracts at all.

It appears that the fiscal impact to the state from this bill would be small, at least initially, since systems for supporting virtual school enrollment at participating schools would take time to implement. Additionally, contracts entered into under the bill’s provisions would only authorize enrollment for students who need to enroll in courses that cannot be provided in a timely manner by the FVS or by the school district in which the student lives. This provision should limit the fiscal impact of the bill as well. The fact that no

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<sup>4</sup>See, e.g., *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993), and *Zelman v. Simmons-Harris et al.*, 536 U.S. 639 (2002), drawing a distinction between funding provided directly to private schools and state funding that is provided to a private individual who, in turn, makes the decision to direct that money to a religious institution. Florida’s current state scholarship programs, such as the McKay Scholarship Program, would be examples of funding that is provided by the latter method described above. Any Establishment Clause issues that may exist with respect to the direct flow of state funding to private schools under this bill will not be obviated by the fact that the FVS, which is itself a public school and a state entity, would perform the function of paying the private school for course completions.

private school could be paid for more than 60 high school course credits in a fiscal year would limit the bill's impact as well.

The FVS is assigned certain responsibilities under the bill, including certain oversight responsibilities, the cost of which are not currently determinable.

## **VI. Technical Deficiencies:**

Subparagraph (a)2. of the subsection created by the bill provides that each course provided under the contracts authorized by the bill must be reported to the DOE in the same manner and with the same information as required for each course provided by the FVS. It is not clear from this language whether the FVS itself would report the courses to the DOE – upon receipt of information from the private schools – or if the private schools would report this course information. It may be helpful to designate what party must report this information to the DOE.

The bill provides that the FVS may contract with a Florida-based private virtual school that is accredited by SACS and is an approved franchise of the FVS. Section 1002.37, F.S., however, which governs the FVS, does not provide authority for the FVS to approve private schools as franchises at this time. Accordingly, it may be helpful to add such authority to the bill, or to remove the requirement that private schools party to these contracts be franchisees.

As noted above, the bill provides that the FVS may contract with “a Florida-based private virtual school” under the terms and conditions set forth in the bill. While this language could seem to suggest that the pilot program is limited to just one school, s. 1.01(1), F.S., provides that, in construing the Florida Statutes, the singular includes the plural, and vice versa. If it is desired that the pilot program be limited to one school, it would be necessary to revise the language of the bill to provide that the FVS may contract with “one” private virtual school.

## **VII. Related Issues:**

### *Logistical difficulties in the proposed funding structure*

Under current law, all Florida students – including public, private, and home education students – are permitted to take courses through the FVS. The FVS in turn receives FTE funding for course completions for all of these students through the FEFP without regard to whether the students are enrolled in public schools or not. Effectively, course completions by these students who are not otherwise enrolled in public schools adds unforeseen FTE to the FEFP, but because the FVS has a limited capacity, the impact of this additional FTE funding is minimal for the state.<sup>5</sup>

It appears that very few schools would qualify to enter into contracts with the FVS under the bill's provisions at this time. Additionally, as noted above, several provisions of the bill operate to limit its fiscal impact on the state. As is the case with the FVS currently, the bill would add

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<sup>5</sup> FTE funding for course completions by public school students reported by the FVS is subtracted from the FTE received from the school district where that public school student is enrolled, so FTE funding of public school student course completions through the FVS does not impact FTE amounts overall.

unforeseen funding requirements for the state, but, also like the FVS, capacity limitations set forth in the bill should limit this problem.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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