

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/SB 1458

SPONSOR: Education Committee and Senator Wasserman-Schultz

SUBJECT: Florida Virtual School Franchise Agreements

DATE: April 13, 2004

REVISED: _____

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

I. Summary:

CS/SB 1458 authorizes the board of trustees of the Florida Virtual School (FVS) to enter into franchise agreements with Florida-based virtual schools that are accredited by the Southern Association of Colleges and Schools, and it requires the board of trustees to establish the terms and conditions of such agreements. The board of trustees must establish performance and accountability measures and report the performance of each such franchisee to the Commissioner of Education.

The bill also permits Florida-based virtual schools that are franchisees of the FVS to receive state funding for successfully completed credits at the school on the same basis and by the same mechanism as that provided in law for the FVS. Florida-based virtual schools approved as franchisees are prohibited under the bill from charging the parent of a student a fee for services provided by the school if the school received funding for those services from the state.

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.¹ 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.²

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.³

III. Effect of Proposed Changes:

This bill authorizes – but does not require – the board of trustees of the FVS to enter into franchise agreements with Florida-based⁴ virtual schools that are accredited by SACS. Under current law, the FVS may only enter into franchise agreements with Florida district school boards. CS/SB 1458 effectively extends that authority and permits the FVS to enter into franchise agreements with a category of private schools – Florida-based accredited virtual schools – as well. The bill also requires the FVS board of trustees to establish the terms and

¹ Half-credit completions are also permitted to be counted toward funding amounts.

² Source: Florida Virtual School personnel.

³ Source: <http://www.sacs.org/>.

⁴ The bill defines “Florida-based” schools as those that conduct operations solely or primarily in the state of Florida.

conditions of the franchise agreements.⁵ The board of trustees must establish performance and accountability measures for franchisees and must report the performance of each such franchisee to the Commissioner of Education.

The bill also permits Florida-based virtual schools that are franchisees of the FVS to count FTE students for purposes of receiving state funding on the same basis that FTE funding is provided to the FVS under current law. As noted above, under current law applicable to the FVS, each full credit completed by a student in the FVS is counted as 1/6 of an FTE credit for receiving funding under the FEFP. The FVS reports FTE student credit completions to the Florida Department of Education in a manner prescribed by the department and receives funding for the credit completions through the FEFP. This mechanism would be applicable for the virtual school franchises as well.

The bill also provides, however, that virtual schools approved as franchisees are *not* permitted to charge the parent of a student a fee for services provided by the school if the student received services and was counted as a full-time equivalent student by the franchisee virtual school. It appears that this provision is designed to prohibit double-funding for virtual-school courses taken by students (i.e., when a student's parent pays for a course and the course is also counted, and funded, by the state under the FEFP.)

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 the structure proposed by CS/SB 1458, pursuant to which state funding will flow directly to private schools.⁶

⁵ Under current law, the board of trustees is merely authorized, and not required, to establish the terms and conditions of franchise agreements.

⁶See, 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

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

None.

B. Private Sector Impact:

Data are not available to determine the private sector impact of CS/SB 1458 at this time, as the bill merely authorizes, and does not require, that new franchise agreements be entered into by the FVS. If the FVS were to enter into numerous franchise agreements with private Florida-based virtual schools, access to this course content as well as a public funding source could enhance the enrollment and profits of these schools.

C. Government Sector Impact:

Data are not available to determine whether the bill would have any fiscal impact on the government sector. In particular, it is not possible to determine whether the FVS will enter into franchise agreements with any accredited Florida-based virtual schools pursuant to the bill's provisions. If many such agreements were entered into, and numerous additional student course completion credits were funded under such arrangements, the state could experience a material fiscal impact. Any major increases in the size of the program could potentially be addressed with additional legislative action, however.

VI. Technical Deficiencies:

It may be helpful to stipulate in the bill whether “franchise agreements” with Florida-based accredited virtual schools would have to be identical in terms to the “franchise agreements” entered into with Florida district school boards. Nothing in the bill or current law provides guidance with respect to this issue. It may be natural to assume that the “franchise agreements” would be the same for all parties; however, the board of trustees of the FVS is specifically authorized under current law to establish the terms and conditions governing such agreements, and this authority could be interpreted to mean that the board of trustees may establish new and different terms and conditions for each such agreement. This possibility, in combination with the FVS's current practice of entering into for-profit licensing agreements with private schools, could contribute to confusion on this point. Accordingly, it would be helpful to clarify whether the franchise agreements contemplated for Florida-based accredited virtual schools under the bill would have to mirror those of the non-profit franchise agreements the FVS enters into with public school boards, or whether these agreements could be constructed on a for-profit basis.

VII. Related Issues:

Possible accountability issues attendant to the proposed franchise arrangement

The inclusion of private virtual schools in a state funding structure raises certain enforcement and accountability questions with respect to the participating private schools. For example, the approved franchisee schools would be prohibited from charging both the state and the parent for courses taken through the virtual school franchise arrangement. Some oversight mechanism could be necessary for enforcement of this and other statutory prohibitions.

Direct state funding for private schools

The bill's provisions read in conjunction with current law suggest that private school franchisees will be reporting FTE to the state and receiving funding from the state directly through the FEFP. This direct reporting/funding framework is in use by the five current FVS franchisees. While private schools have previously received public funds through state scholarship programs, direct FEFP funding of private schools has no precedent in Florida. The franchisee private schools that will result from CS/SB 1458 will be delivering state-developed course content to students, reporting course completions to the state as FTE students, and receiving state education funding through the FEFP.

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.⁷

It appears that very few schools would qualify to enter into franchise agreements with the FVS under the bill's provisions at this time. In the event, however, that the availability of course content through the FVS, together with a new state funding source, were to attract additional virtual schools to Florida or were to encourage existing accredited Florida schools to add a virtual school component, additional unforeseen FTE could be incurred relative to these new schools, without the capacity limitations that operate currently to minimize this problem for the state. Aside from the fact that the addition of a number of new FVS franchisees could add a significant amount of FTE that is not currently funded, it would also be difficult for the state to forecast this FTE, as it would be generated primarily by students that are not otherwise enrolled in public schools.

⁷ 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.

VIII. Amendments:

None.

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