

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 Committee

BILL: CS/SB 1402

INTRODUCER: Education Pre-K - 12 Committee and Senator Gardiner

SUBJECT: Virtual Education

DATE: February 6, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	deMarsh-Mathues	ED	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill revises provisions relating to virtual education access for all K-12 students. The bill:

- Authorizes the Florida Virtual School (FLVS) to provide full-time and part-time instruction for students in grades K-12.
- Specifies that the FLVS's full-time program shall be considered a district school board pertaining to specific statutes;
- Limits the combined total of Full Time Equivalent (FTE) reported by FLVS and the school district to 1.0 FTE for full-time students in grades K-12 and part-time students in grades K-5;
- Deletes the provision that the district of residence report the funding of students who enroll in another district's virtual instruction program;
- Phases in additional grade levels for which students are eligible to participate in virtual instruction programs without meeting the prior school-year enrollment requirements;

- Authorizes funding for exceptional student education (ESE), English for Speakers of Other Languages (ESOL), and other weighted programs for students in a full-time FLVS or district virtual program, and a virtual charter school; and
- Provides standards for participation in interscholastic and intrascholastic extracurricular activities by students in a full-time FLVS or district program, and virtual charter schools.

This bill substantially amends sections 1002.20, 1002.321, 1002.37, 1002.45, 1002.455, 1003.428, 1003.498, 1003.57, 1006.15, 1011.61, and 1011.62 of the Florida Statutes.

II. Present Situation:

Beginning with the 2009-2010 school year, each school district was required to establish its own virtual instruction program (VIP).¹ In 2011, the Legislature revised the program requirements² to establish that each school district be permitted to contract with the FLVS or one or more virtual instruction providers approved by the DOE; establish an FLVS franchise; or participate in multi-district agreements to provide virtual instruction services. In addition, districts may operate their own VIP program and may contract with the providers specified in law or other entities to provide segments of their program.³ Multidistrict agreements may be executed by regional consortiums on behalf of their member districts.⁴ Additionally, a charter school may enter into a joint agreement with the school district in which it is located to have its students participate in the VIP program. Each school district must offer:

- A full-time virtual instruction program for students in kindergarten through grade 12;
- Part-time virtual instruction for students enrolled in grade 9 through 12 courses that are measured by an evaluation method developed by the Department of Education (DOE); and
- A full-time or part-time virtual instruction program for students enrolled in dropout prevention and academic intervention programs, Department of Juvenile Justice programs, core-curricula courses to meet class size requirements, or Florida College System institutions offering a school district virtual instruction program.

Each provider under contract with a school district virtual instruction program (VIP) must participate in the statewide assessment program and the state's education performance accountability system.⁵ Each provider receives a school grade or school improvement rating, which is based upon the aggregated assessment scores of all students served by the provider statewide.⁶

Provider Qualifications

¹ch. 2008-147, L.O.F.

² ch. 2011-137, L.O.F., codified in s. 1002.45(1), F.S.

³ See DOE, *School District Virtual Instruction Program (2011-2012) Questions and Answers #9*, available at: <http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf>.

⁴ s. 1002.45(1)(c), F.S.

⁵ s. 1002.45(8), F.S.

⁶ *Id.* School grades or school improvement ratings are published on the DOE website. If a provider receives a school grade of "D" or "F" or a school improvement rating of "Declining," the provider must file with the DOE a school improvement plan for correcting low performance. The school improvement plan must identify causes of the low performance and propose a plan for improvement. If a provider receives a school grade of "D" or "F" for any two years during a four-year period, the provider's contract must be terminated and the provider cannot be approved for at least one year.

Qualifications required of providers for approval include submission of a detailed curriculum and a student performance accountability plan for each subject and grade level they intend to provide. The plan must show that courses and programs meet national standards and that instructional content and services align with and measure proficiency using state standards and mechanisms to ensure a student has satisfied requirements for promotion and graduation. In addition, the application requires documentation related to financial solvency, technology, and technical support.⁷

Enrollment Reporting

Currently, the district of residence is required to report funding for a student who enrolls in another district's VIP program and to transfer funding received to the district of instruction.

Student Eligibility for Enrollment in K-12 Virtual Education

To be eligible for K-12 virtual instruction, students must meet one of the following criteria:

- The student spent the prior school year in attendance at a public school in the state and was enrolled and reported by the school district for funding during October and February for the purposes of the Florida Education Finance Program (FEFP);
- The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state pursuant to a permanent change of station order;
- The student was enrolled during the prior school year in a virtual instruction program, K-8 Virtual School Program, or the FLVS full-time program;
- The student has a sibling who was enrolled at the end of the prior school year and is currently enrolled in a virtual instruction program; or
- The student is eligible to enter kindergarten or first grade.

Participation in Interscholastic Activities

Current law provides standards for eligibility of home education and charter school students to participate in interscholastic and intrascholastic extracurricular activities.⁸ Although these statutes provide general authority for students participating in various school choice options to participate in extracurricular activities in their district of residence, they do not provide specific language for FLVS full-time students and virtual students.⁹ In September, 2011, the Florida High School Activities Association Board of Directors¹⁰ included provisions to facilitate FLVS full-time students' participation in extracurricular activities in their district of residence.¹¹

District VIP Programs

District-operated VIP programs are currently authorized to provide the following:

- Full-time virtual instruction for students in grades K-12;

⁷ s. 1002.45(2), F.S.

⁸ s. 1002.20(18)(a), F.S., provides that students who meet specified academic and conduct requirements are eligible to participate in extracurricular activities.

⁹ Full-time FLVS students enroll directly with the FLVS at the state level and are not enrolled in a district school.

¹⁰ The Florida High School Athletic Association is the governing body for high school athletics in Florida. See www.fhsaa.org.

¹¹ The Board of Directors adopted Policy 16.3.5 on September 26, 2011. See <http://www.fhsaa.org/news/2011/0926>.

- Part-time instruction for students in grades 9-12 courses, measured by learning gains, end-of-course assessments or Advanced Placement exams; and
- Full-time or part-time virtual instruction for students enrolled in dropout prevention, academic intervention, Department of Juvenile Justice (DJJ) programs, core courses to meet class size requirements, or in Florida College System courses.

FLVS

The FLVS is currently governed by a board of trustees appointed by the Governor. The Board is designated as a public agency.¹²

The FLVS currently offers part-time virtual education to students in grades 4-12 and full-time virtual education to students in grades K-12. Public, private, and home education students in grades 6-12 may take individual online courses from FLVS to supplement their education. Also, to encourage academic acceleration and course recovery for struggling students, current law allows for students to take online courses through the FLVS's part-time program beyond the school day and during the summer. Additionally, academically advanced fourth and fifth grade public school students may take online middle school courses from FLVS; however, these students may not earn more than 1.0 FTE for district and FLVS courses combined.¹³

District virtual programs and the FLVS currently provide the entire educational program for their full-time students. The district virtual programs and the FLVS are able to serve ESE students for whom the virtual learning environment is appropriate. At present, the FLVS receives no state or federal funding for its ESE students or the services they provide to ESE students.¹⁴

III. Effect of Proposed Changes:

The bill allows for a full-time FLVS, VIP, and virtual charter school student to participate in extracurricular activities at the district public school to which the student would be assigned or could choose to attend if he or she meets specific conduct and academic requirements.

The bill establishes that the FLVS full-time program would be considered a district school board as it pertains to the following statutes:

- Section 1001.52, F.S., relating to the reproduction and destruction of district school records;
- Section 1003.22, F.S., relating to school-entry health examinations;
- Section 1003.26, F.S., relating to the enforcement of school attendance;
- Section 1003.33, F.S., relating to report cards;
- Section 1003.4156, F.S., relating to requirements for middle grades promotion;
- Section 1003.42, relating to required instruction;
- Sections 1003.428 and 1003.43, F.S., relating to the general requirements for high school

¹² s. 1002.37, F.S.

¹³ FLVS's full-time program began operation in August 2011, and enrolled over 2,700 grades K-12 public school students in its first semester of operation. Full-time students in this school may not earn more than 1.0 FTE. DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

¹⁴The FLVS is not included in the funding model for ESE programs and is not authorized to report FTE for ESOL programs. Approximately 140 FLVS full-time public school students have individual education plans. DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

- graduation;
- Section 1003.49, F.S., relating to graduation and promotion requirements for publicly operated schools;
 - Section 1003.54, F.S., relating to teenage parent programs;
 - Section 1003.56, F.S., relating to English language instruction for limited English proficient students;
 - Section 1003.571, F.S., relating to instruction for exceptional students who have a disability;
 - Section 1006.025, F.S., relating to guidance services;
 - Section 1006.07, F.S., relating to student discipline and school safety;
 - Section 1007.271, F.S., relating to dual enrollment programs;
 - Section 1008.25, F.S., relating to student progression, remedial instruction, and reporting requirements; and
 - Section 1008.30, F.S., relating to common placement testing for public postsecondary education, except that school districts are required to administer any statewide test required, pursuant to 1008.30(9)(c), F.S.

These provisions do not limit or eliminate any other obligation imposed upon the FLVS by law.

Under the bill, the FLVS would be able to provide part-time instruction for students in grades K-3, in addition to the current provisions for providing instruction for students in grades 4-5. Additionally, students in grades 4-5 would no longer be restricted to taking only middle school courses.

The funding for students in grades K-12 receiving full-time instruction or students receiving part-time instruction in grades K-5 from FLVS would be limited to no more than 1.0 FTE. This provision will not prohibit public school students in grades 6-12 from enrolling in individual online courses from the FLVS supplemental program in order to accelerate academically or to recover coursework required for promotion.

The bill expands the district VIP program to include part-time instruction in grades K-12. In addition, the bill deletes the provision that the district of residence report students who enroll in another district's virtual instruction program for funding. According to the DOE, this would allow the department to prescribe that the district of instruction report these students, thus eliminating the student confidentiality and other database reporting issues encountered if the district of residence does the reporting.¹⁵ The funding would remain the same for the student.¹⁶

According to the following schedule, the bill phases-in access to virtual instruction for additional grade levels for students who would no longer have to meet other eligibility criteria:¹⁷

- In 2012-13, expanding from kindergarten through grade 1 to include students in grades 2-5;
- In 2013-14, adding students in grades 6-8; and
- In 2014-15, adding students in grades 9-12.

¹⁵ DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

¹⁶ *Id.*

¹⁷ s. 1002.455, F.S. establishes student eligibility requirements based upon prior school year enrollment status.

Under these provisions, students taking individual online courses offered by the district would no longer be required to meet the prior school year eligibility requirements.¹⁸

The expansion of eligibility for students in grades 2-5 would provide access to FLVS and FLVS district franchises by all students at all grade levels. According to the DOE, other virtual options would remain accessible for students in grades K-5, but would mainly be limited to public school students in grades 6-12.¹⁹

Additional provisions included in the bill would:

- Specify that the online course currently required for purposes of high school graduation would not apply to a student whose individual education plan indicates that an online course is not appropriate or for a student enrolled in a Florida high school for one academic year or less.
- Specify that a student whose individual education plan indicates that a full-time virtual education program is inappropriate may not be enrolled in Florida Virtual School's full-time program.
- Revise provider qualifications for approval to include an annual audit conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General.

Additionally, the bill would prohibit a school district from requiring a student to take the online course outside of the school day. This provision may eliminate opportunities for advanced students to accelerate academically and for struggling students to recover coursework needed for promotion.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁸ s. 1003.498(2), F.S. establishes that school districts may offer virtual courses for students enrolled in the school district.

¹⁹ *Id.*

B. Private Sector Impact:

According to the DOE, the bill would limit funding for full-time FLVS students and those enrolled in the new part-time elementary program. It is not known how many students reported as 1.0 FTE at the district level are also being reported by the FLVS for additional FTE.

C. Government Sector Impact:

According to the DOE, expanding student eligibility to participate in virtual instruction programs would have a fiscal impact, due to the increased number of eligible home-education students, private school students, and out-of-state students. The bill provides for the phasing-in of students by grade levels over the next three years.

Provisions for removing student eligibility requirements for individual online courses offered by the district may also have a fiscal impact. In addition, students from other districts may take these courses if not offered by their own school districts. According to the DOE, over 700 students enrolled in these individual online courses offered by school districts for fiscal year 2011-12.²⁰ The fiscal impact is indeterminate at this time.

The bill allows for funding of all FEFP programs (Basic, ESE, Career Education, and ESOL) for students in grades K-12 enrolled full-time in the FLVS.²¹ Additionally, K-12 students enrolled full-time in district VIP programs and virtual charter schools would be eligible for more heavily weighted funding.

Services for students who require a low to moderate level of special education services are funded through the ESE Student Guaranteed Allocation. The 2011-12 ESE Student Guaranteed Allocation state average per student funding is \$2,084. This is in addition to the \$4,829 average funding per student the FLVS receives for providing services for a basic student in 2011-12. The number of students with disabilities that would be served by the FLVS and funded through the ESE Student Guaranteed Allocation is not known and therefore the fiscal impact is indeterminate.

Students with disabilities who require a significant level of services receive a higher student allocation. Based on 2011-12 funding levels, funding for these programs offered by the FLVS is estimated at between \$13,600 and \$18,700 (including basic allocation), depending upon the level of services needed.²² According to the DOE, it is unlikely that the services required by these students could be provided through a virtual delivery system.²³

²⁰ DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

²¹ In 2011-12, a student enrolled in an ESOL program earns approximately \$265 in additional FEFP funds. DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

²² DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

²³ *Id.*

VI. Technical Deficiencies:

Current law requires the DOE to develop an evaluation methodology for part-time virtual instruction providers based on the FCAT learning gains, end-of-course (EOC) results, and Advanced Placement (AP) exam performance results.²⁴ The bill expands the current part-time VIP program for students in grades 9-12 to include students in kindergarten through grade eight. The language in the bill specifies that courses for kindergarten through grade 2 are required to have the same outcome measures as the courses for students in grades 9-12. The FCAT and end-of-course assessments are not administered to students in kindergarten through grade 2. Additionally, many courses in the other grades are not measured by the FCAT, EOCs, or AP exams. According to the DOE, the intent of the bill may need to be clarified to specify which outcome measures will apply to part-time providers of virtual instruction for students in kindergarten through grade 2 and for courses that are not measured by the FCAT, EOCs, or AP exams.²⁵

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 Committee on Education Pre-K – 12 on February 6, 2012:

The committee substitute:

- Removes language that would have required the SBE to enforce compliance with laws and rules by FLVS;
- Adds language to establish that the FLVS full-time program shall be considered a district school board as it pertains to specific statutes,²⁶ such as:
 - Section 1003.26, F.S., relating to the enforcement of school attendance;
 - Section 1003.4156, F.S., relating to requirements for middle grades promotion;
 - Sections 1003.428 and 1003.43, F.S., relating to the general requirements for high school graduation;
 - Section 1003.56, F.S., relating to English language instruction for limited English proficient students;
 - Section 1003.571, F.S., relating to instruction for exceptional students who have a disability;
 - Section 1008.25, F.S., relating to student progression, remedial instruction, and reporting requirements; and
 - Section 1008.30, F.S., relating to common placement testing for public postsecondary education.

²⁴ s. 1002.45(8), F.S.

²⁵ Because the bill still includes reference to these outcome measures, the DOE notes that it is unclear as to whether these other courses are to be included in the evaluation methodology and, if so, how. DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

²⁶ These provisions do not limit or eliminate any other obligation imposed upon the Florida Virtual School by law.

- Establishes integrity of online courses, prohibiting anyone from taking an online course or examination on behalf of another individual and provides that such conduct constitutes a first degree misdemeanor;
- Requires part-time K-5 FLVS students to meet one of the currently prescribed eligibility requirements;
- Allows for part-time 6-12 FLVS students to earn above the 1.0 FTE;
- Allows for weighted funding (including ESE, ESOL, and Career-Technical) for all full-time virtual students;
- Requires that FLVS students take any required EOC assessments at the school site where they would normally be enrolled;
- Restores current law pertaining to the sparsity supplement for smaller districts that are only held to providing one virtual option for their students;
- Deletes the requirement for a virtual provider to have an independent review of its curriculum;
- Requires providers to have a financial audit conducted in accordance with rules adopted by the Auditor General;
- Establishes parity with respect to eligibility for participation in extracurricular activities for:
 - Students who transfer from the FLVS and enroll in a public school; and
 - Students who are ineligible to participate due to grades or conduct and who transfer from a public or private school to the FLVS;
- Provides for adjustment of FTE, beginning in 2014-15, for students who do not pass required EOC assessments;
- Specifies that the funding, performance, and accountability requirements for blended learning courses are the same as traditional courses; and
- Phases out the eligibility requirements for virtual instruction programs, making virtual options available to all students by the 2014-2015 school year.

B. Amendments:

None.