

**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: SB 1402

INTRODUCER: Senator Gardiner

SUBJECT: Virtual Education

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	deMarsh-Mathues	ED	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**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 has the same authority and responsibilities as a school district related to its full-time program;
- Requires the State Board of Education (SBE) to enforce compliance with laws and State Board of Education rules by the FLVS;
- Limits the combined total of Full Time Equivalent (FTE) reported by FLVS and the school district to 1.0 FTE for full-time and part-time students in grades K-12;
- 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 other eligibility criteria;
- Provides that a district eligible for the sparsity supplement prior to the wealth adjustment is required to offer one option for a virtual instruction program to its students in grades K-12. Districts not eligible for the sparsity supplement would still be required to offer at least three options;
- Revises the virtual instruction provider qualifications to include a review of its curriculum and student performance accountability plan;

- Requires FLVS to fulfill the obligations of a school district for exceptional student education (ESE) public school students enrolled in its full-time program; and
- Provides standards for participation in interscholastic and intrascholastic extracurricular activities by full-time FLVS students.

This bill substantially amends sections 1001.03, 1002.20, 1002.321, 1002.37, 1002.45, 1002.455, 1003.428, 1003.49, 1003.57, 1006.15, 1008.22, 1008.32, 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).<sup>1</sup> In 2011, the Legislature revised the program requirements<sup>2</sup> 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.<sup>3</sup> Multidistrict agreements may be executed by regional consortiums on behalf of their member districts.<sup>4</sup> 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.

Beginning in 2011-12, school districts not eligible for the sparsity supplement in the FEFP calculation<sup>5</sup> must provide three options for their district virtual instruction programs. Districts eligible for the sparsity supplement must provide one option.<sup>6</sup> A school district may choose one or more of the following options to provide access to virtual education:

- Contract with the Florida Virtual School (FLVS)<sup>7</sup> or establish a franchise of the FLVS;
- Contract with an approved provider or a Florida College System institution;

<sup>1</sup>ch. 2008-147, L.O.F.

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

<sup>3</sup> 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>.

<sup>4</sup> s. 1002.45(1)(c), F.S.

<sup>5</sup> s. 1011.62(7), F.S.

<sup>6</sup> Thirty school districts are required to offer three options this school year. DOE Bill Analysis, January 21, 2012. On file with the Senate Education Pre-K – 12 Committee.

<sup>7</sup> Contracts with the FLVS or other providers may include multidistrict contractual arrangements executed by a regional consortium.

- Enter into an agreement with a virtual charter school or another school district to allow its students to participate in a virtual instruction program provided by the other school district; or
- Establish and operate a virtual instruction program for students enrolled in the school district.

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.<sup>8</sup> 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.<sup>9</sup>

#### *Provider Qualifications*

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.<sup>10</sup>

#### *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.

---

<sup>8</sup> s. 1002.45(8), F.S.

<sup>9</sup> *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.

<sup>10</sup> s. 1002.45(2), F.S.

*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.<sup>11</sup> 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.<sup>12</sup> In September, 2011, the Florida High School Activities Association Board of Directors<sup>13</sup> included provisions to facilitate FLVS full-time students' participation in extracurricular activities in their district of residence.<sup>14</sup>

*District VIP Programs*

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

- Full-time virtual instruction for students in grades K-12;
- 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 and is designated as a public agency.<sup>15</sup> As a Florida public school, FLVS must comply with law and SBE rules; however, the SBE's enforcement authority related to this compliance is not specifically addressed in law.<sup>16</sup>

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.<sup>17</sup>

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

<sup>11</sup> s. 1002.20(18)(a), F.S., provides that students who meet specified academic and conduct requirements are eligible to participate in extracurricular activities.

<sup>12</sup> Full-time FLVS students enroll directly with the FLVS at the state level and are not enrolled in a district school.

<sup>13</sup> The Florida High School Athletic Association is the governing body for high school athletics in Florida. See [www.fhsaa.org](http://www.fhsaa.org).

<sup>14</sup> The Board of Directors adopted Policy 16.3.5 on September 26, 2011. See <http://www.fhsaa.org/news/2011/0926>.

<sup>15</sup> s. 1002.37, F.S.

<sup>16</sup> DOE Bill Analysis, January 21, 2012. On file with the Senate Education Pre-K – 12 Committee.

<sup>17</sup> 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.

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.<sup>18</sup>

### III. Effect of Proposed Changes:

The bill specifically clarifies the SBE's oversight enforcement responsibility for the FLVS board of trustees and that FLVS is responsible for compliance with law and SBE rules. It further specifies that the SBE has the authority to request and receive information, data, and reports and that FLVS is responsible for the accuracy of the data and information provided.

The bill allows for full-time FLVS students and virtual school students to participate in extracurricular activities at the district public school to which the student would be assigned or could choose to attend if they meet specific conduct and academic requirements.

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 part-time or full-time instruction from FLVS would be limited to no more than 1.0 FTE. This provision may preclude 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 clarifies that a district eligible for the sparsity supplement prior to the wealth adjustment will be required to offer at least one virtual instruction program option. Districts that do not fall within this category must still provide the three options currently required.

The bill would revise provider qualifications for approval to include an independent review of its curriculum and student performance accountability plan. The reviewer must hold a current Florida educator certificate, have experience teaching K-12 education in a Florida public school, have knowledge of the standards of the International Association for K-12 Online Learning,<sup>19</sup> and experience in teaching in or administering an online education program.

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 DOE 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

---

<sup>18</sup>The FLVS is not included in the funding model for ESE programs and is not authorized to report FTE for ESOL programs. Approximately 140 students of FLVS's 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.

<sup>19</sup> Providers are currently required to provide an externally validated summary of financial information to document financial stability, sound business practices, and demonstration of sufficient technology resources and technical support. This supports the new requirement established in 2011 for provider programs to meet national standards, which include financial and technology standards.

residence does the reporting.<sup>20</sup> The bill eliminates the requirement that students taking virtual courses offered in a district in which the student is not a resident be reported by the district of residency. Each district will report the FTE separately instead of the resident district reimbursing the non-resident district for the virtual course. The funding will remain the same for the student.

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:

- In 2012-13, expanding from K-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.

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

The expansion of eligibility for students in grades 2-5 would essentially 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.<sup>21</sup>

Additional provisions included in the bill would:

- Require the school district to provide information routinely to an approved provider verifying the accuracy of reported enrollment data for students served in the provider's program.
- Beginning in 2014-15, require all statewide end-of-course assessments to be administered electronically, instead of online.<sup>22</sup>
- 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 and must be enrolled in the school district in which he or she resides. Each district will report the FTE separately instead of the resident district reimbursing the non-resident district for the virtual course.

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.

---

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

<sup>21</sup> *Id.*

<sup>22</sup> According to the DOE Office of Accountability, Research, and Measurement (ARM), assessments offered electronically generally refer to computer-based assessments, whereas "online" infers "via the web." Email correspondence with ARM staff, January 31, 2012. On file with the Senate Committee on Education Pre-K – 12.

**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.

**B. Private Sector Impact:**

According to the DOE, the bill would not only limit funding for full-time FLVS students and those enrolled in the new part-time elementary program, it would also limit funding for part-time students in grades 6-12 who have always been able to take courses beyond the school day or year to accelerate or catch up. 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. The DOE further notes that districts will need to take great care that part-time students in the FLVS equally distribute their course load so as to not exceed 1.0 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 students (e.g., from home or private education or new to Florida). The bill provides for the phasing-in by grade levels to lessen the fiscal impact 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.<sup>23</sup> The fiscal impact is indeterminate at this time.

---

<sup>23</sup> DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

The bill revises provisions to allow for funding of all FEFP programs (Basic, ESE, Career Education, and ESOL) for students in grades K-12 enrolled in the FLVS.<sup>24</sup> However, as the bill is currently written, only students in grades 6-12 district VIP programs and virtual charter schools would be eligible for more heavily weighted funding. The funding for grades K-5 for district virtual instruction programs remains limited to basic education programs and is based on successful completion of a basic education program and promotion to a higher grade level.

Services for students who require a low to moderate level of special 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.<sup>25</sup> According to the DOE, it is unlikely that the services required by these students could be provided through a virtual delivery system.

The bill authorizes the FLVS to report full-time equivalent student membership in the ESOL program. In 2011-12, a student in this program would earn approximately \$265 in additional FEFP funds.<sup>26</sup> The number of students that the FLVS would serve in the ESOL program is not known. The fiscal impact is indeterminate.

## VI. Technical Deficiencies:

Current law requires the DOE to develop evaluation methodology for part-time virtual instruction providers based on learning gains, end-of-course (EOC) results, and Advanced Placement (AP) exam performance results. The current part-time program includes grades 9-12 courses that are measured by learning gains FCAT, EOC assessments, and AP exams. According to the DOE agency bill analysis, the bill expands the part-time program to include courses in grades K-12 and is not limited to courses that have these specific outcome measures. However, the amended language regarding the evaluation methodology in s. 1002.45(8), F.S. still includes reference to these outcome measures. Additional guidance is needed regarding whether these other courses are to be included in the evaluation methodology and, if so, how.<sup>27</sup>

---

<sup>24</sup> The 2011-12 Exceptional Student Guaranteed Allocation state average per student funding is \$2,084. 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.

<sup>25</sup> DOE Bill Analysis, January 21, 2012. On file with the Senate Committee on Education Pre-K – 12.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



The bill states 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 and must be enrolled in the school district in which he or she resides. According to the DOE agency bill analysis, a parent may have other options for their child other than enrolling him or her in the district and should be able to exercise those options.

**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.)

None.

B. **Amendments:**

None.