

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 Committee on Judiciary

BILL: CS/SB 1746

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Florida Virtual Education

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Sikes</u>	<u>ED</u>	Favorable
2.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1746 modifies the operations and governance of Florida Virtual School (FLVS), expands access to virtual charter schools, and provides school districts flexibility in implementing Virtual Instruction Program (VIP) options for the purpose of improving virtual education for students. Specifically, the bill:

- Establishes FLVS as a state agency and modifies a number of school operation and governance provisions.
- Expands upon the populations FLVS must prioritize for enrollment.
- Authorizes virtual charter schools to provide part-time virtual instruction.
- Removes the requirement for certain school districts to provide three VIP options.
- Expands the conditional approval of a VIP provider to 2 years.
- Gives the board of trustees of the Florida Virtual School discretion to use certain revenues to support the school's marketing; previously.
- Clarifies that academic and administrative personnel employed the FLVS board of trustees are entitled to an annual written contract made pursuant to the board's rules and provides that contracts for nonacademic personnel may also be determined by a board policy.

The bill does not require the appropriation of additional state funds.

The bill takes effect on July 1, 2020.

II. Present Situation:

Virtual learning is a rapidly growing space in education policy, seeking to maximize potential for instructional innovation, prepare students for life in the digital age and meet students' unique needs.¹ Virtual learning takes a variety of forms, including full-time virtual schools, supplemental course offerings and blended learning programs. Virtual schools, including charters, single-district schools and statewide programs, have emerged as educational options for students and parents seeking flexibility and individualized learning. Full-time virtual schools enrolled nearly 300,000 students across 35 states in the 2017-2018 school year, with a majority of those students enrolled in virtual charter schools.²

During the 2016-2017 fiscal year, state virtual schools in 23 states collectively served over 420,000 students with nearly 1 million supplemental online course enrollments.³ State virtual schools are entities created by legislation or by state-level agencies. Most state virtual schools do not grant diplomas and are not responsible for many of the functions generally performed by schools (such as administration of state assessments, state and federal reporting, counseling, etc.). Instead, they supply online courses and related services to schools, and students are usually enrolled with district approval. State virtual schools may be administered by a state education agency, or may be separate nonprofit organizations, charter schools, higher education institutions, or regional service agencies contracted by the state education agency.⁴ For example:

- Georgia Virtual School, Oregon Academy of Online Learning, and Virtual Virginia, are part of their state departments of education.
- Idaho Digital Learning is a governmental entity separate from the state education agency, and was created by legislation with a Board of Directors responsible for oversight.
- Montana Digital Academy is administered by the state university system.
- Michigan Virtual receives legislative funding, but is a nonprofit organization with a Board of Directors providing oversight.
- Illinois Virtual School is administered through the Peoria County Regional Office of Education, which was awarded the Illinois State Board of Education contract to manage and operate the state virtual school.
- New Hampshire's state virtual school, Virtual Learning Academy Charter School, was created through charter school rules.

Although state virtual schools have different organizational and governance structures, most share similar characteristics.⁵ They provide teacher-led online courses, have administrative staff, enroll students, hire and train teachers, and maintain technology infrastructure to deliver and

¹ Education Commission of the States, *Virtual School Policies December 2019*, available at <https://www.ecs.org/wp-content/uploads/Virtual-School-Policies.pdf>.

² Education Commission of the States, *Virtual School Policies December 2019* (2019), available at <https://www.ecs.org/wp-content/uploads/Virtual-School-Policies.pdf>.

³ Digital Learning Collaborative, *Snapshot 2019 A review of K-12 online, blended, and digital learning April 2019* (2019), available at: <https://static1.squarespace.com/static/5a98496696d4556b01f86662/t/5df14341d5d15f7ed7bf8c93/1576092485377/DLC-KP-Snapshot2019.pdf> at 18.

⁴ *Id.*

⁵ *Id.*

support online courses. They may create their own online course content, license content from vendors, use open educational resources, or combine content from various sources.⁶

Digital Learning Now Act

In 2011, the Florida Legislature created the Digital Learning Now Act to provide all kindergarten through grade 12 students with access to multiple high quality part-time and full-time digital learning options, including:⁷

- Full-time virtual charter school instruction.
- Florida Virtual School (FLVS).
- School district operated part-time and full-time virtual instruction program (VIP) options.
- Other online and blended courses.

Virtual Charter Schools

Virtual charter schools are charter schools that are full-time public virtual schools. Students access the curriculum and instruction, and interact with teachers, outside of a traditional school setting, usually from home.⁸ An existing charter school that is seeking to become a virtual charter school must amend its charter or submit a new application to become a virtual charter school.⁹ An approved virtual charter school may provide full-time virtual instruction for students in kindergarten through grade 12 by:¹⁰

- Contracting with FLVS.
- Contracting with an approved provider.
- Entering into a VIP agreement with a school district.

Virtual charter schools enrolled 3,456 students in the 2018-2019 school year,¹¹ and currently 4,374 students are enrolled in seven virtual charter schools for the 2019-2020 school year.¹²

Florida Virtual School (FLVS)

FLVS was established to develop and deliver online and distance learning education,¹³ and is part of the Florida public school system.¹⁴ The Commissioner of Education (commissioner) is charged with monitoring FLVS.¹⁵ Current law requires FLVS to serve any student in the state who meets the profile for success, giving priority to:¹⁶

- Students who need expanded access to courses in order to meet their educational goals, such as home education students and students in inner-city and rural high schools.

⁶ *Id.*

⁷ Section 1002.321(4) and Section 1002.455, F.S.

⁸ Florida Department of Education, *General Information on Virtual Charter Schools*, <http://www.fldoe.org/schools/school-choice/virtual-edu/virtual-charter-school/vcs-info.stml> (last visited Jan. 22, 2020).

⁹ Section 1002.33(1), F.S.

¹⁰ Section 1002.45(1), F.S.

¹¹ Florida Department of Education, *Fact Sheet, Office of Independent Education and Parental Choice* (2019), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/Virtual-Sept.pdf>.

¹² Email, Florida Department of Education (Jan. 22, 2020).

¹³ Section 1002.37(1), F.S.

¹⁴ Section 1000.04(4), F.S.

¹⁵ Section 1002.37(1)(a), F.S.

¹⁶ *Id.*

- Students seeking accelerated access in order to obtain a high school diploma at least one semester early.
- Students who are children of an active duty member of the United States Armed Forces whose home of record or state of legal residence is Florida.

During the 2018-2019 school year, FLVS served more than 215,000 students in Florida through full- and part-time instruction, including 5,540 full-time students and 209,965 part-time students, who completed a total of 518,045 semester courses.¹⁷

FLVS Global

FLVS Global provides instruction courseware, training, and expertise to online and blended programs for schools, districts, states, and international agencies.¹⁸ FLVS Global School serves middle and high school students around the nation and world through tuition-based instruction. During the 2018-2019 school year, FLVS Global School served 3,316 students in 50 states and over 100 countries and territories, who completed 6,832 semester courses.¹⁹

FLVS Governance

FLVS is governed by a Board of Trustees (BOT), comprised of seven members appointed by the Governor to 4-year staggered terms that must:

- Meet at least four times each year.
- Be responsible for the development of a state-of-the-art technology-based education delivery system that is cost-effective, educationally sound, marketable, and self-sufficient.
- Aggressively seek avenues to generate revenue to support future endeavors. Any funds realized must be used to support the school's marketing and research and development activities in order to improve courseware and services to students.
- Be responsible for the administration and control of all local school funds.
- Administer and maintain personnel programs for all employees.
- Establish priorities for student enrollment.
- Establish and distribute to school districts and high schools procedures for enrollment.
- Establish criteria defining the elements of an approved franchise.
- Submit to the State Board of Education (SBE) enrollment and course completion data.
- Provide for the content and custody of student and employee personnel records.
- Maintain financial records and accounts.

The BOT must submit an annual report to the Governor, the Legislature, the commissioner, and the SBE that addresses:

- The operations and accomplishments of FLVS and FLVS Global;

¹⁷ FLVS Global served 3,316 students in 50 states and over 100 countries and territories in 2018-2019. Florida Department of Education, *Recommendations Regarding the Governance, Operation and Organization of the Florida Virtual School* (2019), available at <http://www.fldoe.org/core/fileparse.php/18826/urlt/FLVSReport.pdf>.

¹⁸ FLVS Global, *About us*, <https://www.flvsglobal.net/about-us/> (last visited Jan. 22, 2020).

¹⁹ Florida Department of Education, *Recommendations Regarding the Governance, Operation and Organization of the Florida Virtual School* (2019), available at <http://www.fldoe.org/core/fileparse.php/18826/urlt/FLVSReport.pdf>.

- The marketing and operational plan for FLVS and FLVS Global;
- The assets and liabilities of FLVS and FLVS Global at the end of the fiscal year;
- Recommendations regarding the unit cost of providing services to students through FLVS and FLVS Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by FLVS and FLVS Global.²⁰

Recent operational and governance related issues at FLVS prompted a temporary change in governance in ch. 2019-116, Laws of Fla., the implementing bill for the 2019 General Appropriations Act,²¹ while the condition of FLVS could be assessed. Identified issues include:²²

- A data breach in 2018;
- Leadership instability;
- Questionable hiring practices;
- Perceptions of “self-dealing” behaviors;
- Inappropriate work climate;
- Improper purchasing and contracting;
- Employees conducting work on FLVS time unrelated to FLVS; and
- Billing FLVS for travel unrelated to FLVS.

Ch. 2019-116, Laws of Fla., requires the SBE to serve as the BOT of FLVS. The SBE sitting as the BOT of FLVS must appoint an executive director, who reports directly to the commissioner. The executive director must competitively award a contract for an independent third-party consulting firm to conduct financial, operational, or performance audits, and the Office of the Inspector General of the DOE must oversee the audit. The DOE must provide recommendations regarding the governance, operation, and organization of FLVS to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2019.²³

The DOE submitted its required recommendations on November 1, 2019. These recommendations were developed around the following three goals:²⁴

- Ensuring stakeholders’ confidence – FLVS needs to operate ethically, with efficacy and transparency.
- Setting the bar for excellence – FLVS should be the model for accessible and high-quality virtual education.
- Giving students the best possible conditions for success – virtual education in Florida should be a competitive marketplace that is held accountable by ensuring that parents and students have consumable information to make great choices.

²⁰ Section 1002.37(6), F.S.

²¹ Section 12, ch. 2019-116, Law of Fla.

²² Florida Department of Education, *Recommendations Regarding the Governance, Operation and Organization of the Florida Virtual School* (2019), available at <http://www.fldoe.org/core/fileparse.php/18826/urlt/FLVSReport.pdf>.

²³ *Id.*

²⁴ *Id.*

Virtual Instruction Program (VIP)

A VIP is defined as a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.²⁵ Each VIP is required to:²⁶

- Align virtual course curriculum and course content to the state standards.
- Offer instruction designed to enable a student to gain proficiency in each course of study.
- Provide each student enrolled with all necessary instructional materials.
- Provide qualified²⁷ full-time students with equipment and Internet access.
- Not require tuition or student registration fees.

Smaller school districts receiving the sparsity supplement²⁸ are required to offer at least one full-time and part-time VIP option²⁹ and schools districts not receiving the sparsity supplement are required to offer at least three options.³⁰

In order to provide students the opportunity to participate in VIP options, a school district may:³¹

- Contract with FLVS or establish an FLVS franchise.³²
- Contract with an approved provider.³³
- Enter into an agreement with other school districts.
- Establish school district operated part-time or full-time VIP options.
- Enter into an agreement with a virtual charter school.

The DOE is tasked with annually publishing a list of providers approved to offer VIP options.³⁴ To be approved, a provider must document that the provider possesses prior, successful experience offering online courses to elementary, middle, or high school students as demonstrated by student learning gains in each grade level subject provided for consideration.³⁵

²⁵ Section 1002.45(1)(a)2., F.S.

²⁶ Section 1002.45(3), F.S.

²⁷ Any student who qualifies for free or reduced-price school lunches under the National School Lunch Act, or who is on the direct certification list, and who does not have a computer or Internet access in his or her home. Section 1002.45 (3)(d), F.S.

²⁸ School districts having a student population between 17,000 and 24,000 full-time equivalent students may receive additional funding through the sparsity supplement as determined through a statutory formula and provided in the General Appropriations Act. Florida Department of Education, *2019-20 Funding for Florida School Districts* (2019), available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf> at 18.

²⁹ Florida Department of Education, *District Virtual Options for Students*, <http://www.fldoe.org/schools/school-choice/virtual-edu/parent-resources/district-virtual-options.stml> (last visited Jan. 23, 2020).

³⁰ Section 1002.45(1)(b), F.S.

³¹ Section 1002.45(1)(c), F.S.

³² FLVS, *County Virtual Schools*, <https://www.flvs.net/florida-school-solutions/county-virtual-schools> (last visited Jan. 22, 2020).

³³ Approved providers include a provider that is approved by the DOE, FLVS, a franchise of FLVS, or a Florida College System institution. Section 1002.45(1)(a)1., F.S., and Rule 6A-6.0981, F.A.C.

³⁴ Section 1002.45(2)(a), F.S.

³⁵ Section 1002.45(2)(a)5., F.S.

Once approved, a VIP provider retains its status for 3 years.³⁶ However, for a provider without sufficient prior, successful experience offering online courses, the DOE may conditionally approve the provider to offer courses for one school year.³⁷

More than 11,000 students participated in school district VIP options during the 2018-2019 school year.³⁸

III. Effect of Proposed Changes:

The bill modifies the operations and governance of Florida Virtual School (FLVS), expands access to virtual charter schools, and provides school districts flexibility in implementing Virtual Instruction Program (VIP) options for the purpose of improving virtual education for students. Specifically the bill:

- Establishes FLVS as a state agency and modifies a number of school operation and governance provisions such as:
 - Reducing the number of Board of Trustees (BOT) members from seven to five.
 - Requiring term limits for BOT members.
 - Requiring the BOT to establish an Office of the Inspector General (OIG).
 - Expanding upon the populations FLVS must prioritize for enrollment.
- Authorizes virtual charter schools to provide part-time virtual instruction.
- Removes the requirement for certain districts to provide three VIP options.
- Expands the conditional approval of a VIP provider to two years.

Florida Virtual School (FLVS)

The bill modifies the governance and operations of FLVS in a number of ways.

The bill adds new requirements to establish FLVS as a state agency and require the BOT to establish an OIG within the school just like other state agencies. The OIG provides a central point of coordination and is responsible for activities that promote accountability, integrity and efficiency in state government.³⁹ The OIG is required to investigate allegations or reports of possible fraud or abuse against the school, staff or students.

The bill modifies a number of requirements that may bring greater accountability and transparency to the school such as, reducing the number of BOT members to five, limiting members to two consecutive 4-year terms, and restricting a BOT member from having any business relations or pecuniary interest in FLVS while serving on the board or for 6 years after leaving the board.

The bill expands the mission of the FLVS by adding English language learners, students having exceptionalities including gifted students, and students who are in an alternative setting or a

³⁶ Section 1002.45(2)(b), F.S.

³⁷ *Id.*

³⁸ Florida Department of Education, *Fact Sheet, Office of Independent Education and Parental Choice* (2019), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/Virtual-Sept.pdf>.

³⁹ Florida Department of State, *Inspector General*, <https://dos.myflorida.com/offices/inspector-general/> (last visited Jan. 29, 2020).

Department of Juvenile Justice program as priority populations for enrollment. Expanding the mission may provide more students opportunities to enroll in FLVS courses.

The bill gives the board of trustees discretion to use revenues from patents, copyrights, trademarks, or licenses to support FLVS's marketing. Previously, such funds were required to be used for that purpose.

The bill clarifies that academic and administrative personnel employed the FLVS board of trustees are entitled to an annual written contract made pursuant to the board's rules and provides that contracts for nonacademic personnel may also be determined by a board policy.

Finally, the bill removes the requirement that FLVS market its services in Florida, removes the annual reporting requirements for marketing FLVS and FLVS Global, and removes the requirement for FLVS Global to include its operational plan in the annual report. This change may remove competitive barriers for FLVS and other approved virtual instruction providers in Florida.

Virtual Charter Schools

The bill authorizes virtual charter schools to offer part-time virtual instruction if the school has provided full-time instruction for at least 1 year. This change may provide more options to students and increase competition between virtual instruction providers.

Virtual Instruction Program (VIP)

The bill modifies s. 1002.45, F.S., to remove the requirement for school districts not eligible for the sparsity supplement to offer at least three part-time and full-time VIP options. The proposed bill requires all school districts to offer part-time and full-time VIP options without specifying a number. Removing the requirement may provide school districts flexibility to customize virtual instruction options based on student need.

The bill authorizes the DOE to conditionally approve a VIP provider for two school years based on the provider's success in other states, which may create more competition between virtual instruction providers and provide additional options for students.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.33, 1002.37, and 1002.45.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 11, 2020:

The committee substitute differs from the underlying bill by stating that funds received by the Florida Virtual School board of trustees may be used to support the school's marketing; previously, the bill required such funds be used for that purpose.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
