

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 1620

INTRODUCER: Senator Flores

SUBJECT: Educational Instruction

DATE: April 4, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Favorable
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the current framework and funding for virtual instruction in Florida. The bill:

- Provides for the participation of statewide virtual providers, virtual charter schools, and blended-learning charter schools;
- Revises the role of school district virtual instruction programs;
- Requires the online administration of all statewide assessments;
- Requires the Department of Education to develop an evaluation process for part-time virtual instruction providers;
- Revises the qualifications of instructional personnel; and
- Requires students entering the ninth grade in 2011-2012 and thereafter to take at least one online course in order to meet high school graduation requirements.

This bill substantially amends sections 163.3180, 1002.20, 1002.33, 1002.34, 1002.37, 1002.41, 1002.45, 1003.02, 1003.03, 1003.428, 1008.22, 1011.61, 1011.68, 1012.57, and 1013.62 and creates section 1003.07 of the Florida Statutes.

II. Present Situation:

Virtual Instruction

The Florida Virtual School (FLVS) offers individual course enrollments to all Florida students in grades 6 through 12, including public school, private school, and home education students.¹ School districts are required to provide students with access to enroll in courses available through the FLVS during or after the normal school day and through summer school enrollment.

¹ s. 1002.37, F.S.

Virtual education is also provided through school district virtual instruction programs (VIP).² Each school district is required to provide a full-time VIP program for students in kindergarten through grade 12 and a full-time or part-time virtual instruction program for students in grades 9 through 12 enrolled in dropout prevention and academic intervention programs, Department of Juvenile Justice programs, core-curricula courses to meet class size requirements, or community colleges.³

For the 2009-2010 school year, less than one percent (21,176 full-time equivalent or FTE) of the total final FTE (2,629,327 FTE) were in virtual education. Of the 21,176 FTE in virtual education, 2,575 FTE were in the virtual instruction (VIP) program and 18,601 FTE were in the Florida Virtual School's traditional program and a safety net program (18,451 FTE and 150 FTE, respectively).⁴

Charter Schools

Charter schools are public schools formed through the creation of a new school or the conversion of an existing public school.⁵ A charter, or the written contractual agreement between the sponsor and applicant, establishes the terms and conditions of operation.⁶ Florida ranked third in the nation both in the number of charter schools and in charter school enrollment in 2009-2010, with more than 137,000 students enrolled in 410 charter schools in 43 districts.⁷

III. Effect of Proposed Changes:

Virtual Education Framework

Beginning with the 2009-2010 school year, each school district was required to establish its own virtual instruction program (VIP).⁸ Each school district is now 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.⁹ Multidistrict agreements may be executed by regional consortiums on behalf of their member districts.¹⁰ Finally, 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.

Under the bill, a district would be permitted rather than required to offer a virtual instruction program. Districts would still be able to operate their own programs, enter into agreements with

² s. 1002.45(1)(a), F.S.

³ s. 1002.45(1)(b)2., F.S.

⁴ E-mail, DOE, January 12, 2011, on file with the committee.

⁵ s. 1002.33(1), F.S.

⁶ s. 1002.33(6)(h), F.S.

⁷ DOE, August 2010. *See*

https://www.floridaschoolchoice.org/information/charter_schools/files/fast_facts_charter_schools.pdf.

⁸ ch. 2008-147, L.O.F.

⁹ *See* DOE, *School District Virtual Instruction Program (2010-2011) Questions and Answers #9*, available at:

<http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf>.

¹⁰ s. 1002.45(1)(c), F.S.

other districts, and contract with approved providers. Charter schools would be permitted to enter into a joint agreement with the school district for the charter school to be an approved provider.

Statewide providers approved by the DOE would offer full-time virtual education¹¹ to students in kindergarten through grade 12 and part-time virtual education to students in grades 6-12.¹² Currently, approved providers may offer virtual instruction under contracts with districts. With the exception of the traditional FLVS program, current law does not permit an approved provider participating in the VIP program to independently provide virtual instruction.

Blended-learning Charter Schools

Existing charter schools are sponsored by a district school board or a state university, in which case the charter school was converted from a lab school to a charter lab school.¹³ With the exception of the charter lab schools, district school boards review and approve charter school applications.¹⁴ Sponsors are responsible for monitoring the charter school, reviewing revenues and expenditures, and ensuring innovation and consistency with state education goals, including the state accountability system.¹⁵

Under the bill, full-time virtual charter schools are subject to the same application process as are other charter schools, must contract with a statewide virtual provider, and may only serve their charter school students in the school district in which the charter is granted. They are not subject to the provisions related to facilities and transportation. However, it is unclear as to whether they are subject to other charter school provisions.

The bill also permits “blended-learning charter schools,” which combine traditional classroom instruction with online offerings, to offer online instruction; however, the schools may only offer this instruction to their students.

Providers

Current providers that wish to participate in the VIP program must be approved by the DOE. Under the bill, providers that are approved for the 2011-2012 school year would continue to provide virtual instruction under the current requirements until the 2012-2013 school year. To be approved after that date, all providers must have courses that meet the standards of the International Association for K-12 Online Learning (iNACOL) or the Southern Regional Education Board (SREB)¹⁶ and have the requisite curriculum plan and a method for determining if a student has satisfied high school graduation requirements.¹⁷ Providers are prohibited from charging tuition or student registration fees.

¹¹ The terms “virtual education” and “virtual instruction” are used interchangeably throughout the bill.

¹² Currently, part-time instruction is limited to students in grades nine through 12 in dropout prevention and academic intervention programs, core courses to meet class size requirements, or community colleges.

¹³ s. 1002.33(5)(a), F.S. A community college may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education, pursuant to s. 1002.33(5)(b) 4., F.S.

¹⁴ s. 1002.33(5)(b) and (6)(g), F.S.

¹⁵ s. 1002.33(5)(b), F.S.

¹⁶ *National Standards of Quality for Online Courses*, iNACOL, updated August 2010, and *Standards for Quality Online Courses*, SREB, November 2006. See

<http://www.inacol.org/research/nationalstandards/NACOL%20Standards%20Quality%20Online%20Courses%202007.pdf> and http://publications.sreb.org/2006/06T05_Standards_quality_online_courses.pdf.

¹⁷ Lines 546-547 require the DOE to approve providers. Lines 766-767 require the State Board of Education to do so.

Assessments

The bill requires the online administration of all statewide assessments, including end-of-course assessments, beginning in the 2014-2015 school year. According to the DOE, Florida Assessments for Instruction in Reading (FAIR) is currently in a computer-based format.¹⁸ Partnership for the Assessment of Readiness for College and Careers Consortium (PARCC) assessments will all be computer based.¹⁹ There are some grade levels of the FCAT 2.0 in reading and mathematics that will be computer based. Additionally, end-of-course assessments in Algebra I, geometry, biology I, U.S. history, and civics will be computer-based.

Current law requires students enrolled in a VIP program to take state assessments within the school district in which the student resides.²⁰ Districts must provide the student with access to the district's testing facilities. Lines 672-676 and 747-751 expand that obligation to include students in statewide virtual programs and virtual charter schools. The DOE notes that these students would not be enrolled in the district, as is the case for the vast majority of students in the current virtual programs or schools.²¹

Funding

Under current law, funding is based solely on successful completion. In the Florida Education Finance Program (FEFP), the traditional FLVS funding is currently based on credit successfully completed. Credit completed by a student in excess of the minimum required for that student for high school graduation is not eligible for funding.²² Six credits equal one full-time equivalent (FTE) student. A student who completes less than six credits is a fraction of an FTE student. Half-credit completions are included in determining an FTE student.²³

District VIP programs are funded through the FEFP.²⁴ Students in full-time kindergarten through grade five programs are funded based on program completion and promotion to the next grade-level.²⁵ Full and part-time students in grades six through 12 are funded on a credit completion basis. Funding is only received if the course is successfully completed.²⁶ Six credits equal one full-time equivalent (FTE) student. Half credit completions are included in determining an FTE

¹⁸ E-mail, DOE, April 1, 2011.

¹⁹ The U.S. Department of Education awarded Race to the Top assessment funds to PARCC for the development of a K-12 assessment system aligned to the Common Core State Standards in English/language arts and mathematics. PARCC was awarded an additional grant to support the states participating in PARCC in successfully transitioning to Common Core State Standards and next generation assessments. Florida is part of the partnership. See http://www.fldoe.org/news/2010/2010_09_29.asp.

²⁰ s. 1002.45(6)(b), F.S.

²¹ DOE draft analysis of SB 1620, April 1, 2011, on file with the committee.

²² s. 1002.37(3)(a), F.S.

²³ ss. 1002.37(3)(a) and 1011.61(1)(c)1.b.(V), F.S.

²⁴ s. 1002.45(7), F.S.

²⁵ s. 1011.61(1)(c)1.b.(III), F.S.

²⁶ A "successful completion" for students in grades K-5 is completion of a basic education program and promotion to a higher grade level. "Successful completion" for students in grades 6-12 is based on course credits earned for high school students or course completions with a passing grade for middle school students. See DOE, *School District Virtual Instruction Program (2010-2011) Questions and Answers #37 and #38*, available at: <http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf>.

student.²⁷ For the VIP program, districts may only earn one FTE per student, per regular school year and they are not eligible for summer school FTE funding.²⁸

If a district contracts with a provider, FEFP funding flows to the district and the provider is paid by the district pursuant to the terms of the contract.²⁹ The district retains FEFP funds in excess of the negotiated contract price. Districts may use FEFP funds to provide equipment or Internet access to students under appropriate circumstances.³⁰

The bill revises the manner in which virtual instruction is funded:

- All full-time virtual programs would be funded based on “seat time” (80 percent) and successful completions (10 percent per semester);
- All part-time virtual options (individual online courses) would be funded solely on performance (successful completions); and
- The FLVS would serve and receive funding for students in grade K-5.

If a student is required to earn a credit to generate funding, the virtual provider would presumably not receive funding for that student, unless he or she passes the required state assessment.

Additionally, students in full-time programs could not be reported for more than 1.0 FTE. Each successfully completed credit earned through an online course from a district other than the district in which the student resides would be calculated as 1/6 FTE.

Accountability

Current full-time private providers that participate in the VIP program receive a school grade or school improvement rating based upon the aggregated assessment scores of all students served by the provider statewide.³¹ The performance of part-time students in grades 9 through 12 are not included for purposes of school grades or school improvement ratings. Instead, their performance is included for school grading or school improvement rating purposes by the nonvirtual school providing the student’s primary instruction.³²

The bill requires the DOE to develop an evaluation process for part-time providers of virtual instruction, which must include the percentage of students making learning gains, successfully passing end-of-course assessments, and taking and scoring a three or higher on Advanced

²⁷ s. 1011.61(1)(c)1.b.(IV), F.S.

²⁸ DOE, Office of Funding and Financial Reporting, *FTE General Instructions* (2010-2011), available at: <http://www.fldoe.org/fefp/pdf/1011FTEInstructions.pdf>.

²⁹ DOE, *School District Virtual Instruction Program (2010-2011) Questions and Answers #51 and 52*, available at: <http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf>. Pursuant to s. 1002.45(7)(c), F.S., community colleges may not count the student enrollment for Community College Program Funding.

³⁰ s. 1002.45(3)(d), F.S.

³¹ s. 1002.45(8), F.S. This is the first year for school grades under the VIP program and not all of the FLVS franchises and approved providers received a school grade. Ten districts identified themselves as franchises that had full-time VIP students. For 2009-2010, only one franchise (Broward Virtual Education) received a school grade. According to the DOE, the other districts did not report enough full-year-enrolled eligible students with FCAT scores to meet the sample size criteria for a school grade. Four of the eight private providers received a school grade. See *Virtual Instruction Programs*, Senate Interim Report 2011-215, October 2010.

³² *Id.*

Placement course exams. It is unclear as to the reason for not including other exams, such as industry certification exams. The bill also permits the DOE to develop a standard of success for part-time providers and use school grades as a benchmark. There is no comparable provision in the bill for full-time providers to be assessed on the same criteria as part-time providers.

The DOE would disclose on its website information related to virtual schools, programs, and providers. Although the bill requires part-time providers to be evaluated on specific criteria, it does not require this information to be disclosed.

The grounds for terminating a full-time provider's contract are revised. Under current law, a provider's contract is terminated if the provider receives a school grade of "D" or "F" or a school improvement rating of "Declining" for two years in a four-year period. The bill provides that the contract is terminated if the provider receives a "D" or an "F," with an exception. The State Board of Education may extend the eligibility of a provider that receives a "D" for one year if a school improvement plan is submitted to the DOE. Presumably, the provider would be able to continue to operate under the current contract for an additional year. Otherwise, the period of disqualification would be two years rather than one year.

Instructional Personnel

School districts may currently issue adjunct certificates for part-time teaching positions, pursuant to district school board rules, to an applicant who meets specific requirements for state-certified instructional personnel and who has expertise in the subject area to be taught.³³ Adjunct certificates are valid for five years and are renewable.³⁴

Under the bill, adjunct certificates would be used to enhance the diversity of course offerings rather than to reduce teacher shortages. The bill provides for legislative intent to issue certificates to individuals in other states, but does not explicitly require districts to do so. The validity period for the adjunct certificate would be the term of the contract between the district and the educator rather than five years.

Statewide virtual providers would be able to employ or contract with not only Florida-certified teachers, but also with those who hold a certificate in another state or who hold National Board Certification or American Board Certification. If the term "National Board Certification" means National Board for Professional Teaching Standards (NBPTS), it should be changed to reflect this reference. This provision does not contemplate allowing providers to employ or contract with an individual who demonstrates subject area expertise.

The DOE notes that if other than a Florida-certified teacher is assigned as the teacher of record for a core academic subject, he or she will not meet federal Highly-Qualified Teacher requirements, which mandate that the teacher hold a Florida state-issued certificate.³⁵

High School Graduation

³³ s. 1012.57(1), F.S. Applicants must meet the requirements in s. 1012.56(2)(a)-(f) and (10), F.S., and demonstrate sufficient subject area mastery through passage of a subject area test.

³⁴ *Id.*

³⁵ DOE draft analysis of SB 1620, April 1, 2011, on file with the committee. *See* 20 U.S.C. § 7801(23)(A).

Students entering the ninth grade in 2011-2012 and thereafter would be required to take at least one online course in order to meet high school graduation requirements. The requirement could be met if the student has taken an online course in grades six through eight or participates as a dually enrolled student in an online course offered by a postsecondary institution.³⁶

Student Eligibility and Access

The FLVS currently offers virtual education for students in grades six through 12.³⁷ The law requires that enrollment priority be given to students who need expanded access to courses in order to meet their educational goals, such as home education students, students in inner-city and rural high schools that do not have access to advanced courses, and students seeking accelerated access to a high school diploma.³⁸

Currently, enrollment in a school district VIP program is open to any student residing in the district who meets at least one of the following criteria: attendance at a Florida public school during the prior year and was reported for funding during the October and February Florida Education Finance Program (FEFP) surveys; is the dependent child of a member of the military who transfers into Florida with his or her parent from another state or country within 12 months of seeking enrollment in a district virtual instruction program; was enrolled in a district VIP program during the prior school year; or has a sibling who is currently enrolled in the VIP program and that sibling was enrolled in the VIP program at the end of the prior school year.³⁹

Under the bill, public, private and home school students would be eligible to participate in a part-time or full-time statewide virtual program. The bill permits students to enroll part-time in all virtual programs throughout the school year. Additionally, a uniform enrollment period is required.

Other

The bill codifies the elements of high quality digital learning (e.g., student access, customized learning, and high quality instruction), which were recommended by the Digital Learning Council.⁴⁰

The bill directs the Office of Program Policy Analysis and Government Accountability or an independent research organization to evaluate the best methods of implementing part-time virtual education to students in kindergarten through grade 5.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁶ The bill limits the dual enrollment option to state colleges, as opposed to community colleges.

³⁷ ss. 1002.37 and 1011.61(1)(c)1.b.(V), F.S. FLVS refers to the grades 6–12 traditional supplemental model as its “classic” offering. See <http://www.flvs.net/areas/aboutus/Documents/16%20page%20Legislative.pdf>.

³⁸ s. 1002.37(1)(b), F.S.

³⁹ s. 1002.45(5), F.S.

⁴⁰ *Digital Learning Now!*, Foundation for Excellence in Education, December 1, 2010.

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:

A provider would no longer be required to have an administrative office and staff in Florida. The bill allows the DOE to charge each provider fees to cover the costs associated with the review of statewide providers and the content of courses offered by part-time providers.

C. Government Sector Impact:

Currently, full-time and part-time virtual instruction program FTE, including the FLVS, is based on promotion to a higher grade or successful course completion. Students who are not promoted or who do not complete a virtual education course do not earn FTE or funding. Under the bill, full-time VIP students would earn FTE based on seat-time and a percentage of promotions or successful completions. The number of students who would earn FTE and funding through full-time enrollment is unknown.

Under the bill, virtual education programs will receive funding similar to the FLVS. According to the DOE, the impact on funding is indeterminate.⁴¹

Beginning with students entering grade 9 in the 2011-2012 school year, the bill requires at least one course be taken online. Under the bill, part-time enrollment in VIP programs would continue to be funded based on course completions. The DOE notes the impact on funding is not known.⁴²

School districts report FTE for funding once per semester (October and February surveys). According to the DOE, the accommodation of quarterly funding would involve additional reporting or revised criteria to earn the seat-time funding for the virtual programs.⁴³ Additional reporting requirements would place an additional burden on traditional public schools and charter schools.⁴⁴

⁴¹ DOE draft analysis of SB 1620, on file with the committee.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

The performance funding for the first semester is based on successful completion of the semester, while the performance funding for the second semester is based on successful completion of the full year. The DOE notes that this would preclude performance funding for a student who was enrolled the second semester only and successfully completes the second semester or is promoted.

The bill allows home education and private school students to participate in all virtual education options, increasing the number of public school students. In 2009-2010 there were 62,567 home school students and 313,291 private school students in Florida.⁴⁵ The number of home school and private school students who would enroll in virtual programs is not known.

Removing the cap on the number of FLVS credits that may be taken for high school graduation may have a fiscal impact.

The bill removes the current student eligibility requirements, including the prior public school attendance provision, which mitigates state costs by limiting the participation of those students who would not ordinarily go to public schools. Removing this requirement may have a fiscal impact.

The bill authorizes FLVS to serve and receive funding for students in grades K-5. The number of students who would enroll in grades K-5 through the FLVS is not known.

The bill requires the State Board of Education to establish a process to review and approve the content of each part-time course in grade levels six through 12 that is offered by a statewide provider of virtual education. According to the DOE, approving individual online courses is labor-intensive. The bill permits the DOE to charge fees to cover the cost of the review of content and the qualifications of statewide providers; however, it does not specify a range of fees that may be charged.

According to the DOE, the additional responsibilities for the DOE and the State Board and duties relating to the approval for individual online courses, an annual evaluation of all part-time options, and accountability for more online programs and providers will require additional resources.⁴⁶

The bill prohibits school district virtual programs from continuing to receive class size funding. According to the DOE, this would make funding more consistent across virtual programs, but would decrease the funding substantially for the district virtual programs.

Charter school sponsors could withhold an administrative fee of up to two percent for virtual charter schools. Based on the FLVS 2010-2011 per student funding amount of \$5,186, sponsors would be allowed to withhold \$104 in administrative fees per student.⁴⁷

⁴⁵ DOE draft analysis, April 1, 2011, on file with the committee.

⁴⁶ *Id.*

⁴⁷ *Id.*

VI. Technical Deficiencies:

School districts are currently required to provide computers, related equipment, and Internet access when appropriate; however, providers are not required to do so.⁴⁸ If the intent of the bill is to subject both districts and providers to this requirement, the stricken words “when appropriate” on line 661 should be restored to current law to be consistent with lines 603. The word “participants” on line 607 should be changed to “students.” There are several references in the bill to “core curricular standards” (see for example lines 650-652). It is unclear as to whether or not this refers to the common core standards for English/language arts and mathematics adopted by the State Board of Education on July 27, 2010. If so, the term “common core state standards” should be used. On lines 605 and 663, the bill refers to eligibility for free and reduced price lunch. For clarity, it should reference free or reduced-price school lunches under the National School Lunch Act. On lines 672-676, the requirements for districts to provide access to district testing facilities is redundant (see lines 747-751). Lines 839-854 repeat lines 816-831. On line 1404, the amended cross reference is incorrect.

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.

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

⁴⁸ s. 1002.45(3)(d), F.S.