

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1335 Florida Virtual Education
SPONSOR(S): PreK-12 Innovation Subcommittee, LaMarca
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee	16 Y, 0 N, As CS	D'Souza	Brink
2) Education Committee	14 Y, 0 N	D'Souza	Hassell

SUMMARY ANALYSIS

The Florida Virtual School (FLVS)

The bill revises FLVS student priorities to include English language learners, students with exceptionalities who currently do not have access to higher-level courses, and students who are in an alternative setting or a Department of Juvenile Justice program.

The bill reduces the membership of the FLVS board of trustees to five, rather than seven, members and prohibits a member from serving more than two consecutive 4-year terms. The bill also revises ethics and open government requirements for FLVS, including establishing the Office of the Inspector General.

The bill prohibits a member of the governing board of a direct-support organization or a supplemental support organization from having any pecuniary interest in FLVS.

The bill subjects all FLVS personnel, not just administrative and instructional personnel, to the personnel policies of the board of trustees. The bill specifies that academic and instructional personnel employed by FLVS are entitled to an annual, written contract. The bill also specifies that employment contracts for nonacademic personnel may be determined by board of trustees policy. The bill requires the inclusion of an operational plan for FLVS in the board of trustees' annual report.

Virtual Instruction Providers

The bill reduces the requirement that each school ineligible for the sparsity supplement provide at least three options for part-time and full-time virtual instruction, to at least one option.

The bill authorizes the Department of Education to conditionally approve a virtual instruction provider for 2 school years at its discretion based on the provider's success in other states.

The bill revises the assessment and accountability provisions for virtual instruction providers to be consistent with those of charter schools.

Virtual Charter Schools

The bill authorizes virtual charter schools to provide part-time virtual instruction to K-12 students if the school has provided full-time virtual instruction for at least 1 school year.

See Fiscal Comments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's K-12 Virtual Instruction Options

All students, including home education and private school students, are eligible to participate in any of the following virtual instruction options in Florida:¹

- School district operated part-time or full-time K-12 virtual instruction programs.²
- Full-time virtual charter school instruction to students within the school district or students in other school districts throughout the state.
- Virtual courses³ offered in the course code directory⁴ to students within the school district or students in other school districts throughout the state.
- Florida Virtual School (FLVS) instructional services.

The Florida Virtual School

The purpose of FLVS is to develop and deliver online and distance learning education.⁵ As an accredited, statewide public school district, FLVS offers more than 190 online courses to K-12 students, taught by certified teachers.⁶ The FLVS may provide full-time (FLVS Full Time)⁷ and part-time (FLVS Flex)⁸ instruction for K-12 students.⁹

The mission of FLVS is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed.¹⁰ The FLVS is required to give priority to:¹¹

- students who need expanded access to courses in order to meet their educational goals (i.e. home education students and students in inner-city and rural high schools who do not have access to higher-level courses);
- students seeking accelerated access in order to obtain a high school diploma at least one semester early; and
- students who are children of an active duty member of the U.S. Armed Forces who is not stationed in Florida, but whose legal residence is in Florida.

The FLVS is governed by a board of trustees composed of seven members appointed by the Governor to 4-year staggered terms.¹² Members of the board of trustees are public officers who bear fiduciary

¹ Section 1002.455(1)-(4), F.S.

² See s. 1002.45(1)(b), F.S.

³ See s. 1003.498, F.S. School districts may deliver courses in the traditional school setting by certified personnel who provide direct instruction through virtual instruction or through blended learning courses consisting of both traditional classroom and online instructional techniques.

⁴ Florida Department of Education, *2019-2020 Course Directory*, <http://www.fldoe.org/policy/articulation/ccd/2019-2020-course-directory.stml> (last visited January 21, 2020).

⁵ Section 1002.37(1)(a), F.S. FLVS began as two independent programs in Alachua and Orange Counties. The two counties collaborated to establish the FLVS as a grant-based pilot project in the 1996-97 academic year. In 2000, the Legislature removed the program's pilot status and statutorily codified the school. Chapter 2000-224, L.O.F.

⁶ Florida Department of Education, *Florida Virtual School*, <http://www.fldoe.org/schools/school-choice/virtual-edu/florida-virtual-school/> (last visited January 21, 2020).

⁷ See Florida Department of Education, *Florida Virtual School (FLVS) Full Time*, <http://www.fldoe.org/schools/school-choice/virtual-edu/florida-virtual-school/fl-virtual-school-full-time.stml> (last visited January 21, 2020).

⁸ See Florida Department of Education, *Florida Virtual School (FLVS) Flex*, <http://www.fldoe.org/schools/school-choice/virtual-edu/florida-virtual-school/fl-virtual-school-flex.stml> (last visited January 21, 2020).

⁹ Section 1002.37(8)(a), F.S.

¹⁰ Section 1002.37(1)(b), F.S.

¹¹ Section 1002.37(1)(b)1.-3., F.S.

responsibility for the FLVS.¹³ The board of trustees is required to meet at least four times each year, upon the call of the chair, or at the request of a majority of the membership.¹⁴

The board of trustees is responsible for generating revenue to support FLVS operations and enter into agreements with distance learning providers. Although the ownership of patents, trademarks, and copyrights vests with the state, the board has the full right of use and to retain the revenues derived from patents, copyrights, licenses, and rights or interests to support FLVS marketing.¹⁵ The board is also responsible for:

- administering and controlling all local school funds derived from all activities or sources;¹⁶
- administering and maintaining personnel programs for all employees of the board of trustees and FLVS, and may adopt rules, policies, and procedures related to the appointment, employment, and removal of personnel;¹⁷
- establishing priorities for admission of students;¹⁸
- establishing and distributing to all school districts and high schools in the state procedures for enrolling students in FLVS courses;¹⁹
- establishing criteria defining the elements of an approved franchise;²⁰
- submitting to the State Board of Education (SBE) forecasted and actual enrollments and credit completions for FLVS;²¹
- providing for the content and custody of student and employee personnel records;²² and
- maintaining the financial records and accounts of FLVS.²³

Additionally, the board of trustees is authorized to enter into franchise agreements with Florida district school boards and establish the terms and conditions governing such agreements.²⁴

The FLVS may accrue supplemental revenue from supplemental support organizations, which include, but are not limited to, alumni associations, foundations, parent-teacher associations, and booster associations.²⁵ The governing body of each supplemental support organization must recommend the expenditure of moneys collected by the organization for the benefit of FLVS. Such expenditures are contingent upon the review of the executive director. The executive director may override any proposed expenditure of the organization that would violate Florida law or breach sound educational management.²⁶

The board of trustees must annually submit to the Governor, Legislature, Commissioner of Education, and SBE, a detailed report, including:

- the operations and accomplishments of the FLVS within the state and those outside the state as FLVS Global;
- 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;
- a copy of the annual financial audits of accounts and records for FLVS and FLVS Global;

¹² Section s. 1002.37(2), F.S. The board of trustees must serve without compensation but may be reimbursed for per diem and travel expense pursuant to s. 112.061, F.S.

¹³ Section 1002.37(2), F.S.

¹⁴ Section 1002.37(2)(a)1., F.S.

¹⁵ Section 1002.27(2)(c), F.S.

¹⁶ Section 1002.37(2)(d), F.S.

¹⁷ Section 1002.37(2)(f)1.-5., F.S.

¹⁸ Section 1002.37(2)(g), F.S.

¹⁹ Section 1002.37(2)(h), F.S.

²⁰ Section 1002.27(2)(i), F.S.

²¹ See s. 1002.37(2)(j), F.S. The FLVS board of trustees must submit enrollments and credit completions to the SBE based on procedures established in state board rule.

²² Section 1002.27(2)(k), F.S.

²³ Section 1002.37(2)(l), F.S.

²⁴ Section 1002.37(2)(i), F.S.

²⁵ Section 1002.37(2)(e), F.S.

²⁶ *Id.*

- 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.²⁷

The commissioner is required to monitor the performance of FLVS and report the performance findings to the SBE and the Legislature.²⁸

Virtual Instruction Providers

Each school district that is eligible for the sparsity supplement²⁹ must provide all enrolled public school students within its district the option of participating in part-time and full-time virtual instruction programs.³⁰ Each school district that is not eligible for the sparsity supplement must provide at least three options for part-time and full-time virtual instruction. The purpose of the program is to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. A school district virtual instruction program must include the following:³¹

- Full-time and part-time virtual instruction for K-12 students.
- Full-time or part-time virtual instruction for students enrolled in dropout prevention and academic intervention programs,³² Department of Juvenile Justice (DJJ) education programs,³³ core-curricula courses to meet class size requirements,³⁴ or Florida College System (FCS) institutions.

The Department of Education (DOE) annually publishes online a list of providers approved to offer virtual instruction programs.³⁵ To be approved by DOE, a provider must document that it:³⁶

- is nonsectarian in its programs, admission policies, employment practices, and operations;
- complies with antidiscrimination laws;³⁷
- locates an administrative office or offices in Florida, requires its administrative staff to be state residents, requires all instructional staff to be Florida-certified teachers³⁸ and conducts background screenings for all employees or contracted personnel³⁹ using state and national criminal history records;
- provides to parents and students specific information about each course that is posted and accessible online;
- possesses prior, successful experience offering online courses to elementary, middle, or high school students as demonstrated by quantified student learning gains in each subject area and grade level provided for consideration as an instructional program option;

²⁷ Section 1002.37(6), F.S.

²⁸ Section 1002.37(1)(a), F.S.

²⁹ See s. 1011.62(7), F.S. Smaller districts are eligible to receive a sparsity supplement to offset the impact off a lower student population on their operating budget as compared to larger districts, which benefit from greater economies of scale.

³⁰ Section 1002.45(1)(b), F.S.

³¹ Section 1002.45(1)(b)1.-2., F.S.

³² See s. 1003.53, F.S. Dropout prevention and academic intervention programs may differ from traditional educational programs and schools in scheduling, administrative structure, philosophy, curriculum, or setting and shall employ alternative teaching methodologies, curricula, learning activities, and diagnostic and assessment procedures in order to meet the needs, interests, abilities, and talents of eligible students.

³³ See s. 1003.52, F.S. The DOE serves as the lead agency for juvenile justice education programs, curriculum, support services, and resources.

³⁴ See s. 1003.03, F.S. The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for prekindergarten through grade 3 may not exceed 18 students. The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 4 through 8 may not exceed 22 students. The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 9 through 12 may not exceed 25 students.

³⁵ Section 1002.45(2)(a), F.S.

³⁶ Section 1002.45(2)(a)1.-10., F.S.

³⁷ See s. 1000.05, F.S. Discrimination on the basis of race, ethnicity, national origin, gender, disability, religion, or marital status against a student or an employee in the state system of public K-20 education is prohibited.

³⁸ See s. 1012.56, F.S.

³⁹ See s. 1012.32, F.S.

- is accredited by a regional accrediting association;
- ensures instructional and curricular quality through a detailed curriculum and student performance accountability plan that addresses every single subject and grade level it intends to provide through the contract with the school district;
- publishes certain information and data for the general public;⁴⁰
- if the provider is a FCS institution, employs certified instructors; and
- performs an annual financial audit of its accounts and records conducted by an independent certified public accountant, is conducted in compliance with generally accepted auditing standards, and includes a report on financial statements presented in accordance with generally accepted accounting principles.

However, for a provider without sufficient prior, successful experience offering online courses, DOE may conditionally approve the provider to offer courses under the statewide assessment program.⁴¹ Conditional approval is valid for 1 school year only and, based on the provider's experience in offering the courses, DOE can determine whether to grant approval to offer a virtual instruction program.

Additionally, each approved provider participates in the statewide assessment program and the state's education performance accountability system by receiving a school grade or school improvement rating based upon the aggregated assessment scores of all students served by the provider statewide.⁴² An approved provider that receives a school grade of "D" or "F" or a school improvement rating of "Unsatisfactory" must file a school improvement plan with DOE for consultation to determine the causes for low performance and to develop a plan for correction and improvement.⁴³

An approved provider's contract is terminated if the provider receives a school grade of "D" or "F" or a school improvement rating of "Unsatisfactory" for 2 years during any consecutive 4-year period or has violated any qualification requirement.⁴⁴ A provider that has a contract terminated may not be an approved provider for a period of at least 1 year after the contract was terminated and until the DOE determines that the provider is in compliance with the qualification requirements and has corrected each cause of the provider's low performance.⁴⁵ By contrast, a charter school sponsor must automatically terminate the charter's contract if the school earns two consecutive grades of "F," unless the charter school qualifies for an exception.⁴⁶

Virtual Charter Schools

A charter school may operate a virtual charter school to provide online instruction to K-12 students on a full-time basis only.⁴⁷ 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. A virtual charter school is subject to the requirements of charter schools;⁴⁸ however, a virtual charter school is exempt from class size maximums.⁴⁹

⁴⁰ See s. 1002.45(2)(a)8.a.-g., F.S. Includes information and data about the curriculum of each full-time and part-time program; school policies and procedures; certification status and physical location of all administrative and instructional personnel; hours and time of instructional personnel availability; student-teacher ratios; student completion and promotion rates; and student, educator, and school performance accountability outcomes.

⁴¹ See s. 1008.22, F.S.

⁴² Section 1002.45(8)(a)-(b), F.S.

⁴³ Section 1002.45(8)(c), F.S.

⁴⁴ Section 1002.45(8)(d), F.S.; see s. 1002.45(2), F.S.

⁴⁵ *Id.*

⁴⁶ Section 1002.33(9)(n)3., F.S.; see s. 1002.33(9)(n)3.a.-c., F.S.

⁴⁷ Section 1002.33(1), F.S.

⁴⁸ See s. 1002.33, F.S.

⁴⁹ See s. 1003.03, F.S.

To provide virtual instruction, a virtual charter may:⁵⁰

- contract with FLVS;
- contract with an approved provider;⁵¹ or
- enter into an agreement with a school district to allow the virtual charter school's students to participate in the school district's virtual instruction program.

Effect of Proposed Changes

Florida's K-12 Virtual Education Options

The Florida Virtual School

The bill decreases the FLVS's board membership from seven to five and prohibits a member from serving more than two consecutive 4-year terms. The bill requires the board of trustees to appoint an executive director who is responsible for executing FLVS's mission, vision, and goals; proposing policies and policy revisions to the board of trustees; and the day-to-day operations of FLVS. The bill requires the board of trustees to meet upon the call of the executive director. The meetings of the board of trustees are required to be conducted and noticed in kind to those of district school boards.⁵²

Additionally, the bill requires the board of trustees to be governed by the code of ethics for public officers and employees.⁵³ The bill prohibits a member of the board of trustees from having any business relationship with or pecuniary interest in FLVS while serving on the board or for 6 years after serving on the board. In addition to local school funds, the bill requires the board of trustees to be responsible for the administration and control of all internal school funds derived from all activities or sources and prescribe the principles and procedures in administering these funds.

Within FLVS, using existing resources and funds, the bill requires the board of trustees to establish an Office of the Inspector General (OIG) responsible for promoting accountability, efficiency, effectiveness, and detecting fraud and abuse within FLVS. If there are substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within FLVS, the OIG will conduct, coordinate, or request investigations into such allegations. Additionally, the OIG will investigate allegations or reports of possible fraud or abuse against FLVS or its students. The bill requires the OIG to have access to all information and personnel necessary to perform its duties.

The bill authorizes FLVS to accrue supplemental revenue from a direct-support organization.⁵⁴ The bill prohibits a member of the governing board of a direct-support organization or a supplemental support organization from having any business relationship with or pecuniary interest in FLVS. The FLVS executive director must approve the expenditure of moneys collected or generated by these organizations for the benefit of FLVS.

The bill revises the students given priority by FLVS to include:

- English language learners;
- students with exceptionalities who currently do not have access to higher-level courses, including gifted students; and
- students who are in an alternative setting or a DJJ program.

The bill expands board of trustees personnel policies on certification, leaves of absence, sabbaticals, and remuneration to all personnel rather than only academic administrators and instructional personnel.

⁵⁰ Section 1002.45(1)(d)1.-3., F.S.

⁵¹ See s. 1002.45(2)(a)1.-10., F.S.

⁵² See s. 1001.372(1), (3), and (4), F.S.

⁵³ See Part III, ch. 112, F.S.

⁵⁴ See s. 1001.453, F.S. For the purposes of this section, the term "direct-support organization" means an organization that is approved by the district school board; is a Florida corporation not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State; and is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public K-12 education and adult career and community education programs in this state.

The FLVS personnel will also be subject to the personnel, ethics, and disqualification requirements that apply to school district personnel.⁵⁵ The bill specifies that academic and instructional personnel employed by FLVS are entitled to an annual, written contract. Employment contracts for nonacademic personnel may be determined by board of trustees policy.

The bill replaces the marketing and operational plan for FLVS and FLVS Global in the annual report with an operational plan for FLVS, including recommendations regarding methods for improving the delivery of digital education.

Virtual Instruction Providers

The bill reduces the requirement that each school district ineligible for the sparsity supplement provide three options for part-time or full-time virtual instruction program participation to at least one option.

Additionally, the bill authorizes DOE to conditionally approve a virtual instruction provider for 2 school years at its discretion based on the provider's success in other states.

The bill revises the assessment and accountability provisions for providers to be consistent with those of charter schools by requiring an approved provider's contract to be automatically terminated if the provider earns two consecutive school grades of "F" after all school grade appeals are final or earns two consecutive improvement ratings of "Unsatisfactory." The bill deletes the automatic termination requirement for earning disqualifying grades or improvement ratings twice over the course of 4 years.

Virtual Charter Schools

The bill authorizes virtual charter schools to provide part-time virtual instruction to K-12 students if the school has provided full-time virtual instruction for at least 1 school year.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.33, F.S.; conforming provisions to changes made by the act.

Section 2. Amends s. 1003.37, F.S.; providing that certain employees of FLVS are entitled to sovereign immunity; revising the students given priority by FLVS; revising the number of members appointed to the board of trustees of FLVS; providing term limits for such board; providing that the board are governed by a specific code of ethics; prohibiting members of the board and member of a governing body for a direct-support organization or supplemental organization associated with FLVS from holding specific business relationships or interest in FLVS; requiring the board to appoint an executive director; authorizing, rather than requiring the board of trustees to participate in specified marketing activities; authorizing FLVS to accrue supplemental revenue from a specified organization; requiring the board of trustees to be responsible for all internal funds of the school; requiring the executive director of FLVS to review and approve specified expenditures; deleting a provision authorizing such executive director to override such expenditures under certain circumstances; deleting provisions authorizing the board of trustees to adopt rules and procedures; providing that all FLVS employees are subject to specified policies; revising requirements for the use of certain employment contracts; deleting a requirement that the board of trustees distribute certain procedures to high schools in the state; requiring student records held by the school to meet specified provisions; providing requirements for meetings of the board of trustees; revising the requirements for a specified plan; deleting a requirement that the FLVS board of trustees submit specified information to certain entities for FLVS Global; and requiring the board of trustees to establish an OIG within the school; providing duties and responsibilities of such office.

Section 3. Amends s. 1002.45, F.S.; deleting a requirement that certain school districts provide a specified number of virtual instruction options; authorizing a virtual charter school to provide part-time instruction under certain circumstances; and authorizing the DOE to conditionally approve a virtual instruction provider for 2 years, rather than 1 year; revising requirements for the termination of a provider contract.

⁵⁵ See s. 1001.45(5), (6), and (7), F.S.

Section 4. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private virtual instruction providers may benefit from having more opportunities to contract with or become approved providers.

D. FISCAL COMMENTS:

The FLVS may experience an increase in funds through supplemental revenue from a direct-support organization.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the PreK-12 Innovation Subcommittee adopted two amendments and reported the bill favorable as a committee substitute. The amendments:

- specify that academic and instructional personnel employed by FLVS are entitled to an annual, written contract;

- specify that employment contracts for nonacademic personnel may be determined by board of trustees policy; and
- revise the assessment and accountability provisions for virtual instruction providers to be consistent with those of charter schools.

The analysis is drafted to the committee substitute adopted by the PreK-12 Innovation Subcommittee.