

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 5101 PCB PKA 21-01 Education Funding

**SPONSOR(S):** PreK-12 Appropriations Subcommittee, Fine

**TIED BILLS:** **IDEN./SIM. BILLS:**

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**FINAL HOUSE FLOOR ACTION:** 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 5101 passed the House on April 30, 2021, as amended by the conference committee.

The bill conforms applicable statutes to the appropriations provided in the conference report of the General Appropriations Act for prekindergarten through grade 12 education for the 2021-2022 fiscal year.

The bill:

- Modifies the calculation methodology used to determine the amount of state funds the Florida Virtual School (FLVS) receives in the Florida Education Finance Program (FEFP) to include the Mental Health Assistance Allocation.
- Modifies the virtual instruction program offered by K-12 public schools by:
  - Requiring all school districts to offer at least one option for part-time and full-time virtual instruction for students within their school district.
  - Requiring a school district to expend any difference in funds provided for a virtual full-time equivalent (FTE) student and the amount paid to either the FLVS or approved virtual instruction provider on educational technology that complies with the requirements established in s. 1001.20(4)(a)1.b., Florida Statutes.
  - Limiting the enrollment of virtual FTE students residing outside of the school district providing the virtual instruction to no more than 50 percent of the total enrolled virtual FTE students residing inside the school district providing the virtual instruction; however, a school district may not enroll more out-of-district virtual students than the total number of reported students residing inside the school district.
- Modifies the FEFP by:
  - Eliminating the requirement that the 300 lowest performing elementary schools on the state reading assessment must use their portion of the Supplemental Academic Instruction Allocation on an additional hour per day of reading instruction.
  - Repealing the Decline in Full-Time Equivalent Students Allocation and the Virtual Education Contribution.
- Specifies the annual percent increase to the minimum base salary of instructional personnel on the performance salary schedule and specifies the annual percent increase to the salary adjustment of an employee on the performance salary schedule rated as highly effective.
- Requires school districts to use a specified portion of their Elementary and Secondary School Emergency Relief Funds – Nonenrollment Assistance to locate unaccounted students within their school districts.
- Requires school districts to use a specified portion of their Elementary and Secondary School Emergency Relief Funds – Academic Acceleration to remediate the learning loss among kindergarten through grade 12 students.

The bill was approved by the Governor on June 2, 2021, ch. 2021-44, L.O.F., and will become effective on July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Florida Virtual School

##### Present Situation

The Florida Virtual School (FLVS) is a component of the delivery of public education within Florida's K-20 education system<sup>1</sup> and its purpose is to develop and deliver online distance learning education.<sup>2</sup> As an accredited, statewide public school district, the FLVS offers more than 190 online courses<sup>3</sup> to K-12 students, taught by certified teachers.

The mission of the FLVS is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed.<sup>4</sup> The FLVS serves any student in the state who meets the profile for success in this educational delivery context.

Since its establishment, FLVS' student enrollment has steadily increased with enrollment growing by almost 21,000 FTE students in the past five years.<sup>5</sup> Enrollment for Fiscal Year 2020-2021 significantly increased due to the coronavirus with many parents electing to enroll their student(s) in the FLVS.

Five-Year History of FLVS Enrollments		
Fiscal Year	Enrollment	Increase
2016-17	32,213.46	
2017-18	33,957.76	1,744.30
2018-19	36,242.83	2,285.07
2019-20	39,258.49	3,015.66
2020-21 <sup>6</sup>	52,902.60	13,644.11

The FLVS is considered a school district for purposes of receiving funds in the Florida Education Finance Program (FEFP); however, it is funded with state FEFP funds only. The calculation methodology for determining the amount of state funds the FLVS is appropriated in the FEFP is the sum of their base FEFP funding (which is based on the forecasted student enrollment), the state-funded discretionary contribution and a per FTE share of the discretionary local effort, the discretionary millage compression supplement, the research-based reading instruction allocation, the teacher salary increase allocation, the exceptional student education guaranteed allocation, if applicable, and the instructional materials allocation.<sup>7</sup>

The mental health assistance allocation is currently not a FEFP categorical included in the funding calculation for the FLVS; however, for its full-time public school students, the FLVS complies with s. 1011.62(16), Florida Statutes, that requires school districts to submit a detailed plan outlining the local program and planned expenditures that focus on a multi-tiered system of supports to deliver evidence-based mental health care assessment, treatment, and recovery services to its students.<sup>8</sup>

##### Effect of the Bill

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<sup>1</sup> Section 1000.05(4), F.S.

<sup>2</sup> Section 1002.37(1)(a), F.S.

<sup>3</sup> <https://www.flvs.net/about-flvs>

<sup>4</sup> Section 1002.37(1)(b), F.S.

<sup>5</sup> Florida Education Finance Program (FEFP) final calculations for Fiscal Years 2016-17 through 2019-20.

<sup>6</sup> Based on the October 2020 FTE Survey.

<sup>7</sup> Section 1011.62(11), F.S.

<sup>8</sup> Email from Teresa Umstead, Florida Virtual School, March 22, 2021.

The bill amends the calculation methodology for the FLVS funding in the FEFP by adding to the calculation the mental health assistance allocation established in s. 1011.62(16), Florida Statutes.

**Virtual Instruction**

Present Situation

Each school district that is eligible for the sparsity supplement in the FEFP must provide all enrolled public school students within its district the option of participating in part-time or full-time virtual instruction programs.<sup>9</sup> 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.<sup>10</sup> To provide students with the option of participating in virtual instruction programs, a school district can:

- Contract with the FLVS or establish a franchise of the FLVS.
- Contract with an approved virtual instruction provider.
- Enter into an agreement with other school districts to allow the participation of its students in an approved virtual instruction program provided by the other school district.
- Establish a school district operated virtual instruction program.
- Enter into an agreement with a virtual charter school.<sup>11</sup>

School districts may implement more than one option and may implement a different option for each grade grouping. For all virtual instruction options, classroom teachers must hold a Florida teaching certificate and the curriculum must align with state standards.<sup>12</sup>

Student enrollment options:

<b>Student Enrollment Options for Virtual Instruction</b>		
<b>School District-Offered Virtual Instruction Option</b>	<b>In-District Student</b>	<b>Out-of-District Students</b>
FLVS Contract or Franchise Agreement	Yes	Yes
Contract with Approved Virtual Instruction Provider	Yes	Yes
Agreement with Another School District	Yes	N/A
District-Developed Virtual Instruction Program	Yes	Yes
Agreement with Virtual Charter School	Yes	Yes

The school district providing the virtual instruction reports the FTE student enrollments and is funded for these students in the FEFP.<sup>13</sup>

Each school district must:

- Provide to the Department of Education by October 1<sup>st</sup> of each year, a copy of each contract with either the FLVS or an approved virtual instruction provider and the amounts paid per unweighted FTE student for services procured.
- Expend the difference in any funds funded in the FEFP for the virtual FTE students and the amount the school district paid to either the FLVS or the approved virtual instruction provider on implementation of the school district’s digital classroom plan.
- Report no later than September 1<sup>st</sup> an itemized list of the technological tools purchased with these funds in the prior fiscal year.<sup>14</sup>

<sup>9</sup> Section 1002.45(1)(b), F.S.  
<sup>10</sup> *Id.*  
<sup>11</sup> Section 1002.45(1)(c), F.S.  
<sup>12</sup> Section 1002.45, F.S.  
<sup>13</sup> Section 1002.45(7)(e), F.S.  
<sup>14</sup> Section 1002.45(1)(e), F.S.

It appears that as a result of the coronavirus, FTE student enrollment in virtual instruction has increased significantly. Total virtual FTE enrollment went from 59,802 students in Fiscal Year 2019-2020 to 131,128 student in Fiscal Year 2020-2021; an increase of 119 percent.<sup>15</sup> Additionally, students enrolling in virtual instruction programs outside of their district of residence is beginning to increase<sup>16</sup>.

Type	2018-2019 FTE	2019-2020 FTE	Difference	% Difference
In-District FTE	16,323	17,367	1,045	6%
Out-of-District FTE	1,374	3,018	1,644	120%
Total FTE	17,697	20,385	2,689	15%
% of Out-of-District FTE	8%	15%	7%	

For Fiscal Year 2020-2021, three school districts have more than 20 percent of their virtual FTE residing out-of-district:<sup>17</sup>

District	In-District FTE	Out-of-District FTE	Total FTE	% Out-of-District FTE
Duval	1,492	396	1,888	21%
Hendry	63	5,684	5,747	99%
Osceola	862	849	1,711	50%

Effect of the Bill

The bill requires all school districts, regardless of whether they qualify for the sparsity supplement in the FEFP, to offer at least one option for part-time and full-time virtual instruction for students within the school district. The bill requires a school district to expend any difference between the amount funded for the applicable virtual FTE students in the FEFP and the amount paid through either a contract with the FLVS or an approved virtual instruction provider on computer and device hardware and associated operating software that complies with the requirements of s. 1001.20(4)(a)1.b., Florida Statutes. Finally the bill limits the enrollment of virtual full-time students residing outside of the school district providing the virtual instruction to no more than 50 percent of the total enrolled virtual FTE students residing inside the school district providing the virtual instruction; however a school district may not enroll more full-time out-of-district virtual students than the total number of reported students residing inside the school district.

**Florida Education Finance Program**

Present Situation

The Florida Education Finance Program (FEFP) was established in 1973 and is the state’s policy on equalized funding to guarantee to each student the availability of educational programs and services that are substantially equal regardless of geographic differences or varying local economic factors. The FEFP is used to calculate the revenue allocations for all 67 school districts, six lab schools and the Florida Virtual School.

FEFP funds are primarily generated by multiplying the number of FTE students in each of the funded education programs by cost factors to obtain weighted FTE students. Weighted FTE students are then multiplied by a base student allocation and by a district cost differential to determine the base FEFP

<sup>15</sup> Fiscal Year Final FEFP Calculation and Fiscal Year 2020-2021 FEFP based on October 2020 FTE Survey.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

funding which includes both state and local funds.<sup>18</sup> Program costs factors are determined by the Legislature and represent relative cost differences among the FEFP education programs.<sup>19</sup> In addition to the base FEFP funding, additional supplements or allocations (often times referred to as categoricals) are included in the FEFP to address specific types of student populations or needs, geographic issues, district size, or specific educational policy initiatives. Each categorical is statutorily-authorized with each law specifying its eligibility criteria and allocation methodology. The Fiscal Year 2020-2021 includes 19 funded categoricals with all but two of the categoricals funded with both state and local FEFP funds.<sup>20</sup>

Four of the categoricals funded in the FEFP for Fiscal Year 2020-2021 include:

- Virtual Education Contribution – provides funds to ensure that virtual FTE students are funded at least at the amount identified in the General Appropriations Act.<sup>21</sup>
- Decline In Full-Time Equivalent Students Allocation - provides supplemental funds to a school district with a decline between prior year and current year unweighted FTE students.<sup>22</sup>
- Supplemental Academic Instruction (SAI) – provides additional funds that support supplemental academic instruction to students in kindergarten through grade 12.<sup>23</sup> The statute identifies a number of eligible services and resources that school districts may use their SAI funds on; however, the 300 lowest performing elementary schools based on a 3-year average of the state reading assessment data must use their portion of the categorical to provide an additional hour per day of intensive reading for the students in their schools.<sup>24</sup>
- Research-based Reading Instruction Allocation – provides funds to school districts to assist in the implementation of the districts’ comprehensive kindergarten through grade 12 reading plan. Similar to the SAI categorical, the 300 lowest performing elementary schools based on a 3-year average of the state reading assessment data must also use their portion of the categorical to provide an additional hour per day of intensive reading for students in their schools.<sup>25</sup>

The Fiscal Year 2020-2021 Implementing Bill suspends the funding for the Decline in Full-Time Equivalent Students Allocation categorical for one year.

### Effect of the Bill

The bill repeals the Virtual Education Contribution and the Decline in Full-Time Equivalent Students Allocation. The bill also eliminates the requirement that the 300 lowest performing elementary schools based on a 3-year average of the state reading assessment data must use their portion of the SAI allocation on providing an additional hour per day of intensive reading for their students.

## **Compensation and Salary Schedules**

### Current Situation

Section 1012.22, Florida Statutes, defines the powers and duties of the district school board pertaining to public school personnel to include compensation and establishing salary schedules. In 2011, the Legislature amended this section of law by passing legislation that reformed instructional personnel compensation and employment practices.<sup>26</sup> Among other issues, the legislation required district school boards to establish new performance salary schedules by July 1, 2014, that provide an opportunity for

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<sup>18</sup> Section 1011.62(1)(s), F.S.

<sup>19</sup> Section 1011.62(1)(c), F.S.

<sup>20</sup> Chapter 2020-111, Laws of Florida.

<sup>21</sup> Section 1011.62(11), F.S.

<sup>22</sup> Section 1011.62(8), F.S.

<sup>23</sup> Section 1011.62(1)(f), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 1011.62(9), F.S.

<sup>26</sup> Chapter 2011-1, Laws of Florida.

an annual salary adjustment based on performance.<sup>27</sup> Instructional personnel hired on or after July 1, 2014,<sup>28</sup> were placed on the new performance salary schedule. Each district school board sets the minimum base salaries on the performance salary schedules and only classroom teachers rated highly effective or effective are eligible to receive a salary adjustment to their minimum base salary. Adjustments are in addition to the base salary and become part of the permanent base salary.<sup>29</sup>

A grandfathered salary schedule is a salary schedule adopted by a district school board for paying personnel hired before July 1, 2014, in which compensation is generally based on seniority and educational level.<sup>30</sup> In determining the grandfathered salary schedule for instructional personnel, a district school board must base a portion of each employee's compensation on the performance evaluation. In addition the district school board must provide differentiated pay for instructional personnel based on district-determined factors including, but not limited to, additional responsibilities, school demographics, critical teacher shortage areas, and level of job performance difficulties.<sup>31</sup>

Section 1012.01(2), Florida Statutes, defines "instructional personnel" to include the following kindergarten through grade 12 staff members:

- Classroom teachers – provides instruction in basic education, exceptional student education, career and adult education, including substitute teachers.
- Student personnel services – includes certified school counselors, social workers, career specialists, and school psychologists.
- Librarians/media specialists – instructs students in accessing and using information resources.
- Other instructional staff – includes primary specialists, learning resource specialists, instructional trainers, and certified adjunct educators.
- Education paraprofessionals – includes classroom paraprofessionals; and exceptional education, career and adult education, library, and physical education and playground paraprofessionals.

The 2020 Legislature created the Teacher Salary Increase Allocation in the Florida Education Finance Program (FEFP) to assist school districts in their recruitment and retention of classroom teachers and other instructional personnel<sup>32</sup> and appropriated \$500 million to the allocation in the Fiscal Year 2020-2021 General Appropriations Act (GAA). Each school district and charter school was required to use a portion of its allocation to increase the minimum base salary for full-time classroom teachers, as defined in s. 1012.01(2)(a), Florida Statutes, plus certified prekindergarten teachers funded in the FEFP, to at least \$47,500,<sup>33</sup> or to the maximum amount achievable based on the allocation and as specified in the Fiscal Year 2020-2021 GAA. Additionally, each school district was required to use the portion of the allocation as specified in the Fiscal Year 2020-2021 GAA to provide salary increases to the following as determined by the school district:<sup>34</sup>

- Full-time classroom teachers as defined in s. 1012.01(2)(a), Florida Statutes, to include certified prekindergarten teachers funded in the FEFP, but not including substitute teachers, who did not receive or who received an increase of less than 2 percent from the minimum base salary portion of the allocation.
- Other full-time instructional personnel as defined in s. 1012.01(2)(b)-(d), Florida Statutes.

If a school district had any remaining funds after complying with the requirements of the minimum base salary portion of the allocation, the school district could use such funds for the abovementioned salary increase portion of the allocation.

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<sup>27</sup> Section 1012.22(1)(c)5., F. S. Requirements for the performance evaluation are contained in s. 1012.34, F. S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 1012.22(1)(c)1.a., F.S.

<sup>30</sup> Section 1012.22(1)(c)1.b., F.S.

<sup>31</sup> Section 1012.22(1)(c)4., F.S.

<sup>32</sup> Chapter 2020-94, Laws of Florida.

<sup>33</sup> Section 1011.62(18), F.S.

<sup>34</sup> *Id.*

## Effect of the Bill

The bill requires that beginning July 1, 2021, and until such a time as the minimum base salary as defined in s. 1011.62(18), Florida Statutes, equals or exceeds \$47,500, the annual increase to the minimum base salary cannot be less than 150 percent of the largest adjustment made to the salary of an employee on the grandfathered schedule. Thereafter, the annual increase to the minimum base salary cannot be less than 75 percent of the largest adjustment for an employee on the grandfathered salary schedule. Finally, the bill requires that the annual salary adjustment under the performance schedule for an employee rated as highly effective must be at least 25 percent greater than the highest annual salary adjustment available to be employee of the same classification.

## **Federal Elementary and Secondary School Emergency Relief Funds**

### Current Situation

Section 311(b) of the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) of 2021 requires the U.S. Department of Education (USDOE) to reserve 67 percent of the Education Stabilization Fund for the Elementary and Secondary School Emergency Relief (ESSER) Fund authorized under section 313 of the CRRSA Act; this total \$54.3 billion.<sup>35</sup>

Section 313(b) of the CRRSA Act requires the USDOE to allocate the ESSER funds based on the proportion that each state received under Title I, Part A of the Elementary and Secondary Education Act (ESEA) of 1965 in the most recent fiscal year. To determine the ESSER fund allocations to each state, the USDOE used the fiscal year 2020 state shares of Title I, Part A allocation and based on this calculation, Florida received \$3.1 billion.<sup>36</sup> States must distribute at least 90 percent of the ESSER funds to local educational agencies (LEA) based on their proportional share of the state's Title I, Part A allocation. States have the option to reserve 10 percent of the allocation for emergency needs as determined by the state to address issues responding to the coronavirus and for administration.<sup>37</sup>

The CCRSA Act enumerates the eligible uses of each LEA's ESSER funds to include, but not limited to:

- Any activity authorized by the ESEA of 1965;
- Coordinating the preparedness and response efforts to prevent, prepare for, and respond to coronavirus;
- Providing principals and others school leaders with the resources necessary to address the needs of their individual schools;
- Addressing the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth;
- Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases;
- Purchasing supplies to sanitize and clean the facilities of a LEA, including buildings operated by such LEA;
- Providing mental health services and supports;
- Planning and implementing activities related to summer learning and supplemental afterschool programs;
- Addressing learning loss among students;
- Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between

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<sup>35</sup> Consolidated Appropriations Act, 2021, dated December 21, 2020.

<sup>36</sup> USDOE Grant Award Notification, PR/Award Number S425D210052.

<sup>37</sup> *Id.*

students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment.

- Addressing facility repairs and improvements to enable operation of schools to reduce risk of virus transmission;
- Completing maintenance, repair, replacement and upgrade projects to improve the indoor air quality in school facilities; and
- Other activities that are necessary to maintain the operation and continuity of services.

### Effect of Bill

The bill requires school districts to use a specified portion of their ESSER funds: (1) to locate unaccounted students within their school districts and (2) to remediate the learning loss among kindergarten to grade 12 students.

## **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:

See Fiscal Comments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill conforms applicable statutes to the appropriations provided in the conference report of the General Appropriations Act for prekindergarten through grade 12 education for the 2021-2022 fiscal year.