

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 5101 PCB PKA 22-01 Education  
**SPONSOR(S):** Appropriations Committee, PreK-12 Appropriations Subcommittee, Fine  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: PreK-12 Appropriations Subcommittee	15 Y, 0 N	Bailey	Potvin
1) Appropriations Committee	18 Y, 5 N, As CS	Bailey	Pridgeon

### SUMMARY ANALYSIS

The bill conforms applicable statutes to the appropriations provided in HB 5001, the House General Appropriations Act for Fiscal Year 2022-2023. Specifically the bill:

- Requires that each virtual charter school and each school district with a contract with an approved virtual instruction program provider identified as a controlled open enrollment school, determine capacity based upon the enrollment requirements of s. 1002.45(1)(e)4, F.S.
- Modifies the requirements for establishing a virtual charter school.
- Modifies the requirements for virtual instruction programs by:
  - Requiring all programs to operate under its own Master School Identification Number.
  - Requiring the annual virtual instruction audit completed by an approved virtual instruction program provider to be performed by an independent auditor licensed under chapter 473, F.S., and to provide the audit report to the State Board of Education and Auditor General.
  - Requiring an approved virtual instruction provider contract include additional components.
  - Requiring virtual instruction program providers to be approved by the State Board of Education.
  - Requiring an approved virtual instruction program provider to receive a district grade based upon the aggregated assessment scores of all students served by the provider statewide and a separate school grade for each school district with which it contracts based on the assessment scores of all students served within the school district.
  - Specifying how the Florida Education Finance Program (FEFP) funds for a district virtual full-time equivalent (FTE) student is calculated and requiring the use of state FEFP funds only for out-of-district virtual FTE students enrolled in a district virtual instruction program.
  - Clarifying that virtual instruction provided by a school district through a contract with an approved virtual instruction program provider may enroll students in other school districts.
- Specifies that the funding for eligible students enrolled in juvenile justice education programs must be the same as traditional students funded in the FEFP.
- Modifies the type of Florida Empowerment Program scholarship students that are not included in the statutorily-established maximum number of student cap.
- Deletes the Digital Classroom Allocation in the FEFP.

The bill makes it easier for parents to access public school choice by:

- Revising controlled open enrollment to require:
  - School Districts and Charter Schools to identify and disclose the capacity for their schools, by grade level, update such data every 12 weeks, and provide information on student transportation options.
  - School districts to maintain a wait list of students who are denied access due to capacity and notify parents when space becomes available.
  - Schools to accept students throughout the school year as capacity becomes available.
- Requiring the Department of Education to establish a grant program to improve access to reliable and safe transportation for students who attend school through controlled open enrollment.
- Increasing the scholarship amount for public school transportation to the amount expended by the school district on students riding a bus.
- Providing greater flexibility to school districts to use vehicles other than school buses to transport certain students.

The bill also requires the New World program to provide teachers with professional development and resources and clarifies that students must be provided options for selecting book topics or genres upon enrollment.

The bill provides for an effective date of July 1, 2022.

### FULL ANALYSIS

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h5101b.APC

**DATE:** 2/9/2022

# I. SUBSTANTIVE ANALYSIS

## A. EFFECT OF PROPOSED CHANGES:

### Virtual Instruction

#### Present Situation

##### *Overview*

All school districts are required by law to offer at least one virtual instruction option for their students.<sup>1</sup> These options include:

- Contract with the Florida Virtual School (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 full-time or part-time K-12 virtual instruction program.
- Enter into an agreement with a virtual charter school authorized by the school district under s. 1002.33, F.S.

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 all applicable state standards.<sup>2</sup>

Each student enrolled in a virtual instruction program or virtual charter school must comply with the compulsory attendance requirements of s. 1003.21, F.S. and take the statewide assessments pursuant to s. 1008.22, F.S.<sup>3</sup>

##### *Virtual Student Enrollments*

Over the past 5 years, the number of full-time equivalent (FTE) virtual student enrollments has steadily increased with a significant increase in Fiscal Year 2020-2021 due to the impact the pandemic had on students' choice of taking virtual instruction courses instead of in-person courses.

5-Year History of District Virtual FTE Student Enrollment*		
Fiscal Year	Enrollments	Difference from Prior Year
2017-2018	15,308.41	
2018-2019	17,847.55	2,539.14
2019-2020	20,588.56	2,741.01
2020-2021	58,510.92	37,922.36
2021-2022	52,718.49	(5,792.43)

\* Data Source – Florida Department of Education

The Department of Education (DOE) has assigned specific school numbers for the virtual instruction options. School districts use these prescribed school numbers when they report their applicable virtual FTE students during the various FTE surveys conducted throughout the fiscal year. The following chart provides a 3-year comparison of virtual FTE student enrollments for the different virtual instruction options:

3-Year History of Virtual FTE Enrollments by Virtual Instruction Option*					
Option	2019-20	2020-21	Difference from Prior Year	2021-22	Difference from Prior Year

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

<sup>2</sup> Section 1002.45, F.S.

<sup>3</sup> Section 1002.45(6), F.S.

Contract with Approved Virtual Program Provider	2,018.01	6,987.63	4,969.62	8,275.52	1,287.89
FLVS Franchise	10,012.29	30,388.08	20,375.79	21,690.01	(8,699.07)
Contract with Approved Virtual Course Provider	2,015.74	4,432.91	2,417.17	4,184.83	(248.08)
District-developed Virtual Program	2,910.15	11,519.55	8,609.40	10,288.00	(1,231.55)
Virtual Charter School	3,632.37	5,182.75	1,550.38	8,281.13	3,098.38
Florida Virtual School	39,213.49	54,336.58	15,123.09	50,238.40	(4,098.18)
<b>TOTAL</b>	<b>59,802.05</b>	<b>112,847.50</b>	<b>53,045.45</b>	<b>102,956.89</b>	<b>(9,890.61)</b>

\* Data Source – Florida Department of Education

Current law authorizes all students, including home education and private school students, to participate in the following virtual instruction options:<sup>4</sup>

- School district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under s. 1002.45(1)(b).
- Part-time or full-time virtual charter school instruction authorized under s. 1002.33, F.S., to students within the school district or to students in order school districts throughout the state pursuant to s. 1002.31, F.S.
- Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state pursuant to s. 1003.498, F.S.
- Florida Virtual School instructional services authorized under s. 1002.37, F.S.

While the majority of students enrolling in a virtual instruction program option reside within the school district offering the program, the number of students enrolling in a virtual instruction option who reside outside of the school district offering the option is increasing.

<b>Comparison of Out-of-District Virtual FTE Students*</b>					
	<b>2019-20 Final FEFP</b>	<b>2020-21 Final FEFP</b>	<b>1-Year Increase</b>	<b>2021-20 3<sup>rd</sup> Calc FEFP</b>	<b>1-Year Increase</b>
FTE Residing In-District	17,367.46	49,219.36	31,851.89	39,318.06	(9,901.30)
FTE Residing Out-of-District	3,017.89	9,108.22	6,090.33	13,270.23	4,162.01
<b>Total FTE</b>	<b>20,385.35</b>	<b>58,327.58</b>	<b>37,942.23</b>	<b>52,588.29</b>	<b>(5,739.29)</b>
Percent Out-of-District	15 percent	16 percent		25 percent	

\* Data Source – Florida Department of Education

#### *Approved Virtual Instruction Program Providers*

Current law defines an “approved provider” to mean a provider that is approved by the DOE, the FLVS, a franchise of the FLVS, or a Florida College System institution.<sup>5</sup>

To be approved by the DOE, a virtual instruction provider must document compliance with a number of items established in statute.<sup>6</sup> The DOE must annually publish online a list of providers approved to offer virtual instruction programs.<sup>7</sup>

Each approved virtual instruction program provider contracted by a school district must comply with the assessment and accountability requirements established in statute. One of the requirements is to receive a school grade under s. 1008.34, F.S., or a school improvement rating under s. 1008.341, F.S., as applicable.<sup>8</sup> The school grade or school improvement rating received by each approved virtual

<sup>4</sup> Section 1002.455, F.S.

<sup>5</sup> Section 1002.45(1)(a), F.S.

<sup>6</sup> Section 1002.45(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 1002.45(8)(a)2., F.S.

instruction program provider is based on the aggregated assessment scores of all students served by the provider statewide.<sup>9</sup>

The DOE is required to develop an evaluation method for approved virtual instruction program providers of part-time programs which must include the percentage of students making learning gains, the percentage of students successfully passing any required end-of-course assessment, the percentage of students taking Advanced Placement examinations, and the percentage of students scoring 3 or higher on an Advanced Placement examination.<sup>10</sup>

### *Funding for Virtual Instruction*

The Florida Education Finance Program (FEFP) is the primary mechanism for funding the operating costs of Florida school districts and is the foundation for financing Florida's K-12 educational programs. The FEFP is composed of both state and local revenues and to ensure equalized funding per student, it takes into account various factors such as the individual educational needs of students, the local property tax base, the costs of educational programs, and district cost differentials.<sup>11</sup>

There are two main parts of the FEFP:

- The base FEFP which represents approximately 60 percent of the total FEFP funding and is the part of the FEFP that provides state and local revenues to school districts based on each district's total number and type of full-time equivalent (FTE) students.<sup>12</sup>
- Categoricals which are allocations funded in the FEFP to ensure either equalized access to educational services and resources by all public school students or to fund specific statutory policies.

The base FEFP plus all the categoricals represent the total amount appropriated in the FEFP.

Students enrolled in a virtual instruction program or a virtual charter school are funded in the FEFP the same as a traditional student and as provided in the General Appropriations Act.<sup>13</sup> However, a virtual FTE student may not be included in the funds provided for the purpose of fulfilling the class size requirements in ss. 1003.03 and 1011.685, F.S.<sup>14</sup> The school district providing the virtual instruction reports the FTE students for a virtual instruction program or virtual charter school to the DOE and is funded for the virtual FTE students in the FEFP.<sup>15</sup>

A virtual FTE student is funded the same as a traditional FTE student in the FEFP; the base FEFP amount<sup>16</sup> and all applicable categoricals, with the exception of the class size reduction categorical as mentioned above. The total funding amount includes both state and local FEFP funds.

Funding for a virtual FTE student reported by the FLVS is different than the funding generated by a virtual FTE student reported by a school district. The calculation methodology for funding FLVS students includes the base FEFP amount and only certain categoricals and the FLVS is funded with state FEFP funds only.<sup>17</sup>

Each school district must:<sup>18</sup>

- Provide to the DOE 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; and

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Section 1011.62, F.S.

<sup>12</sup> Section 1011.62(1)(s), F.S.

<sup>13</sup> Section 1002.45(7), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 1011.62(1)(s), F.S.

<sup>17</sup> Section 1002.37(3), F.S.

<sup>18</sup> Section 1002.45(1)(e), F.S.

- 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.

### Effect of the Bill

The bill authorizes an approved virtual instruction program provider to enroll students residing in the school district executing the contract with the provider as well as students in other school districts throughout the state pursuant to the controlled open enrollment statute, s. 1002.31, F.S. The bill amends the controlled open enrollment statute to require each virtual charter school and each school district with a contract with an approved virtual instruction program provider to determine capacity based on the enrollment requirements of s. 1002.45(1)(e)4., F.S.

The bill requires the DOE to develop a standard virtual charter school contract and renewal contract for use by the school district and the virtual charter school.

The bill removes the FLVS franchise as one of the virtual instruction options that school districts may implement. The bill requires all virtual instruction programs to operate under its own Master School Identification Number as prescribed by the DOE.

For approved virtual instruction program providers, the bill:

- Requires approval of a virtual instruction program provider be provided by the State Board of Education;
- Requires the annual financial audit report to be completed by an independent auditor who is licensed under chapter 473, F.S.;
- Includes additional requirements in a contract executed with the school district to include submitting a monthly financial statement summary sheet and providing certain student academic achievement data; and
- Requires a district grade based upon the aggregated assessment scores of all students served by the provider statewide and a separate school grade for each school district with which the provider contracts based on the assessment scores of all students served within the school district.

The bill aligns the calculation methodology for determining the amount of funds that district virtual FTE students receive in the FEFP with the FEFP calculation methodology for students enrolled and reported by the FLVS. The bill also specifies that only state FEFP funds can be used for out-of-district virtual FTE students enrolled in a school district virtual instruction program.

## **Controlled Open Enrollment**

### Present Situation

Parents of public school students may seek school choice options such as controlled open enrollment, single-gender programs, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), CAPE digital tools, CAPE industry certifications, early college programs, Advanced International Certificate of Education (AICE), early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public educational choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.<sup>19</sup>

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using a parents' indicated preferential public school choice as a

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<sup>19</sup> Section 1002.20(6), F.S.  
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significant factor.<sup>20</sup>

Controlled open enrollment allows a parent from any school district in the state whose child is not subject to a current expulsion or suspension order to seek enrollment and transport his or her child to any public school in the state of Florida, including a charter school, which has not reached capacity.<sup>21</sup> The school district or charter school shall accept the student, pursuant to that school district's or charter school's controlled open enrollment process, and report the student for purposes of the school district's or charter school's funding pursuant to the FEFP.<sup>22</sup> A school district or charter school may provide student transportation, at their discretion, to students who choose to enroll in a school as part of the controlled open enrollment process.<sup>23</sup>

Each school district and charter school capacity determinations for its schools must be current and must be identified on their respective websites.<sup>24</sup> In determining the capacity of each district school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35 F.S.<sup>25</sup> Each charter school governing board shall determine capacity based upon its charter school contract.<sup>26</sup>

Each district school board must adopt a controlled open enrollment process and post the process on its website.<sup>27</sup> The process must:<sup>28</sup>

- Adhere to federal desegregation requirements;
- Allow parents to declare school preferences, including placement of siblings within the same school;
- Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases;
- Afford parents of students in multiple session schools preferred access to controlled open enrollment;
- Maintain socioeconomic, demographic, and racial balance;
- Address the availability of transportation;
- Maintain existing academic eligibility criteria for public school choice programs; and
- Identify schools that have not reached capacity, as determined by the school district.

Districts must provide preferential treatment in their controlled open enrollment processes to:<sup>29</sup>

- Dependent children of active duty military personnel whose move resulted from military orders;
- Children who have been relocated due to a foster care placement in a different school zone;
- Children who move due to a court-ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent; and
- Students residing in the district.

Charter schools are required to annually post on their website the application process to participate in their controlled open enrollment plan.<sup>30</sup>

### Effect of the Bill

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<sup>20</sup> Section 1002.31(1), F.S.

<sup>21</sup> Section 1002.31(2)(a), F.S. Capacity is subject to the maximum class size pursuant to s. 1003.03 F.S. and s. 1, Art. IX of the State Constitution.

<sup>22</sup> Section 1002.31(2)(a), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 1002.31(2)(b), F.S.

<sup>25</sup> *Id.*

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

<sup>27</sup> Section 1002.31(3), F.S.

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

<sup>29</sup> Section 1002.31(2)(c), F.S.

<sup>30</sup> Section 1002.31(2)(d), F.S. A charter school may provide preferential treatment in its controlled open enrollment participation process to the enrollment limitations pursuant to s. 1002.33(10), F.S., if such special purposes are identified in the charter agreement.

The bill requires school districts and charter schools to identify and disclose on their websites the capacity for its schools, by grade level, and to update such data every 12 weeks.

The bill requires each district school board to adopt by rule and post on its website the process required to participate in controlled open enrollment. The process must require:

- School districts to provide information on transportation options, such as:
  - The responsibility of school districts to provide transportation to another public school pursuant to the Opportunity Scholarship Program, John M. McKay Scholarships for Students with Disabilities Program, and Family Empowerment Scholarship (FES) Program.
  - The availability of funds for transportation under the FES Program, Florida Tax Credit Scholarship (FTC) Program, and the funds for student transportation pursuant to s. 1011.68, F.S.
  - Any other transportation the school district may provide.
  - Any transportation options available in the community.
- School districts to maintain a wait list of students who are denied access due to capacity and notify parents when space becomes available.
- Schools to accept students throughout the school year as capacity becomes available.

## Education Choice

### Present Situation

To help students take advantage of educational choice options, Florida offers multiple student scholarship programs for students who meet the eligibility requirements:

- The FES Program,<sup>31</sup> a school voucher program for students of families with limited financial means and students of military families, and an education savings account (ESA) program for students with disabilities; program is administered by an eligible nonprofit scholarship funding organization (SFO); and scholarships are funded in the FEFP.
- The FTC Program,<sup>32</sup> a tax-credit scholarship program for families with limited financial resources; administered by an eligible nonprofit SFO; and funded with tax credit revenues.
- The Hope Scholarship Program, a school voucher program serving students who have reported an incident of battery, harassment, hazing, bullying or other encounter as defined in law; administered by an eligible nonprofit SFO; and funded with tax credit revenues.<sup>33</sup>
- The John M. McKay Scholarship for Students with Disabilities Program,<sup>34</sup> a school voucher program for eligible students with disabilities; administered by the DOE; and funded in the FEFP.

For the FES program for students of families with limited financial means, the maximum number of awarded scholarships was statutorily-set for the 2019-2020 school year at 18,000 students.<sup>35</sup> Beginning in the 2020-2021 school year, the maximum number of students who can be awarded a scholarship can increase by 1 percent of the state's total public school student enrollment.<sup>36</sup> Any eligible student who meets any of the following requirements are excluded from the maximum number of students:

- Received a FTC program scholarship during the previous school year but did not receive a renewal scholarship based solely on the eligible scholarship funding organization's lack of available funds;
- Is a dependent child of a member of the United States Armed Forces, a foster child, or an adopted child; or

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<sup>31</sup> Section 1002.394, F.S., and Rule 6A-6.0952, F.A.C.

<sup>32</sup> Section 1002.395, F.S., and Rule 6A-6.0960, F.A.C.

<sup>33</sup> Section 1002.40, F.S., and Rule 6A-6.0951, F.A.C.

<sup>34</sup> Section 1002.39, F.S., and Rule 6A-0970, F.A.C. The McKay program will merge into the FES program beginning in the 2022-2023 school year. Section 1002.394(12), F.S.

<sup>35</sup> Section 1002.394(12), F.S.

<sup>36</sup> *Id.*

- Is determined eligible and either spent the prior year in attendance at a Florida public school or, beginning in the 2022-2023 school year, is eligible to enroll in kindergarten.<sup>37</sup>

Certain education choice scholarship programs include as one of their student eligibility prohibitions a student who is enrolled in a Florida public school to include a charter school and the Department of Juvenile Justice education program.<sup>38</sup> For the scholarship programs administered by an eligible nonprofit SFO, current law requires the SFO to provide student data to the DOE so the DOE can complete a cross-check to verify that a student is not currently enrolled in a Florida public school. The SFO must provide the DOE with the documentation necessary to verify the student's initial and continued participation. Upon completion of the cross check, for the FES program scholarships, the DOE must quarterly transfer, from state funds only, the scholarship amount to the SFO.<sup>39</sup>

### Effect of the Bill

For the FES program for students from families with limited financial means, the bill clarifies that a dependent child of a member of the United States Armed Forces, a foster child, or an adopted child; and a child determined eligible who either spent the prior year in attendance at a Florida public school, or is eligible to enroll in kindergarten are excluded in the maximum number of students annually allowed to participate in the FES program. The bill maintains the requirement that the DOE complete a cross check of the list of participating students to verify eligibility but removes the requirement that the cross-check be completed before to the distribution of each quarterly scholarship payment.

## **Student Transportation**

### Present Situation

All public school buses<sup>40</sup> owned, operated, rented, leased and contracted for by any public school board or charter school, used to transport children to and from school or school-related events must meet certain requirements.<sup>41</sup>

There are four vehicle categories that indicate the type of vehicle used to transport a student. These include:<sup>42</sup>

- School buses meeting Florida School Bus Specifications.<sup>43</sup>
- Passenger car or allowable multipurpose passenger vehicle owned, operated, or contracted by the school board or charter school, transporting fewer than 10 students.
- Privately owned motor vehicle or boat (for certain students with disabilities or isolated students).
- General-purpose transportation (city buses, trains, etc.).

Federal regulations do not prohibit the use of vans by schools, but require any van (with a capacity of more than 10) sold or leased for use as a school bus to meet the safety standards applicable to school buses. Federal regulations apply only to the manufacture and sale/lease of new vehicles. Each state prescribes its own regulations that apply to the use of any vehicle that is used to transport students.<sup>44</sup>

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

<sup>38</sup> See ss. 1002.394(6), 1002.395(4), and 1002.40(4), F.S.

<sup>39</sup> Section 1002.394(11), F.S.

<sup>40</sup> A "schoolbus" is defined as a motor vehicle regularly used for the transportation of prekindergarten disability program and kindergarten through grade 12 students of the public schools to and from school or to and from school activities, and is owned, operated, rented, contracted or leased by any district schoolboard. Section 1006.25, F.S. The federal government defines "schoolbus" as a bus that is sold or introduced in interstate commerce for purposes that include carrying students to and from school or related events." Title 49 CFR Part 571.3

<sup>41</sup> Florida Department of Education, *Florida School Bus Specifications* (January 2020), available at, <https://www.fldoe.org/core/fileparse.php/7585/urlt/2020FLSchoolBusSpec.pdf>.

<sup>42</sup> Florida Department of Education Bureau of PK-20 Education Data Warehouse and Office of Funding and Financial Reporting, *Full-time Equivalent (FTE) General Instructions 2020-21*, at 72, available at, <https://www.fldoe.org/core/fileparse.php/7507/urlt/2021FTEGeneralInstruct.pdf>.

<sup>43</sup> Rule 6A-3.003, F.A.C.

<sup>44</sup> 49 U.S.C. s. 30101. This statute applies to school buses sold to public and parochial schools.



School districts are also responsible for transportation costs for students participating in:

- The Opportunity Scholarship Program<sup>45</sup> whose parent chooses to request that the student be enrolled in a higher-performing public school in the school district.<sup>46</sup>
- The John M. McKay Scholarships for Students with Disabilities Program<sup>47</sup> whose parent chooses a public school consistent with the district school board's choice plan under controlled open enrollment.<sup>48</sup>
- The FES program<sup>49</sup> whose parent chooses another public school in the school district.<sup>50</sup>

A scholarship of \$750 may be awarded to eligible students<sup>51</sup> under the FTC scholarship program<sup>52</sup> and the FES program<sup>53</sup> to cover the cost of transportation to a public school in which a student is enrolled that is different from the school the student was assigned or a lab school.<sup>54</sup>

Many states have policies to provide families with schooling options beyond their residentially assigned school, such as open enrollment or public charter schools. But administrative hurdles and transportation challenges can limit access to those options.<sup>55</sup> Policymakers are working to make it easier for families to access more schooling options by decreasing administrative barriers in open enrollment programs and creating more flexible transportation policies to help families access the best schooling opportunities for their children.<sup>56</sup>

In 2020 and 2021, Congress passed three stimulus bills that provided nearly \$193 billion as relief aid for K-12 education.<sup>57</sup> Most recently, the United States Department of Education invited states to complete the application for their share of the second disbursement of \$600 million American Rescue Plan Act of 2021's Homeless Children and Youth Fund (ARP-HCY) funds to states. ARP Homeless I and II funds are supplemental to the supports and services provided with ESSER funds.<sup>58</sup>

### Effect of the Bill

The bill revises the amount of the transportation scholarship available to students in the FES program, John M. McKay Scholarships for Students with Disabilities Program, and the FTC scholarship program from \$750 to the per student amount expended by the school district on students riding a bus, whichever is greater.

The bill allows an eligible nonprofit scholarship-funding organization to use administrative funds to develop or contract with rideshare programs or to facilitate carpool strategies for recipients of a transportation scholarship.

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<sup>45</sup> Section 1002.38, F.S.

<sup>46</sup> Section 1002.38(3)(e), F.S.

<sup>47</sup> Section 1002.39, F.S.

<sup>48</sup> Section 1002.39(5)(a)3., F.S.

<sup>49</sup> Section 1002.394, F.S.

<sup>50</sup> Section 1002.394(7)(c)3., F.S.

<sup>51</sup> A scholarship for transportation under the Family Empowerment Scholarship Program may only be awarded to a student if the student is on the direct certification list, the student's household income level does not exceed 185 percent of the federal poverty index, or the student is placed in foster care or in out-of-home care and the school district does not provide the student with transportation to the school. Section 1002.394(12)(a)4., F.S.

<sup>52</sup> Section 1002.395, F.S.

<sup>53</sup> Section 1002.394, F.S.

<sup>54</sup> Sections 1002.395(6)(d)2.; 1002.395(11)(a)3.; 1002.394(4)(a)2.; and 1002.394(12)(a)4., F.S.

<sup>55</sup> Bellwether Educational Partners, *Expanding Educational Options: Emergent Policy Trends* (Jan. 2022), available at, [https://bellwethereducation.org/sites/default/files/Bellwether\\_ExpandingEducationalOptions\\_FINAL\\_1.25.22.pdf](https://bellwethereducation.org/sites/default/files/Bellwether_ExpandingEducationalOptions_FINAL_1.25.22.pdf).

<sup>56</sup> Bellwether Education Partners, *The Challenges and Opportunities in School Transportation Today* (July 2019), available at, <https://bellwethereducation.org/publication/challenges-and-opportunities-school-transportation-today>.

<sup>57</sup> U.S. Department of Education, Office of Elementary & Secondary Education, *Elementary and Secondary School Emergency Relief Fund*, available at, <https://oese.ed.gov/offices/education-stabilization-fund/>.

<sup>58</sup> U.S. Department of Education, Office of Elementary & Secondary Education, *American Rescue Plan Elementary and Secondary School Emergency Relief—Homeless Children and Youth (ARP-HCY)*, available at, <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-secondary-school-emergency-relief-homeless-children-youth-arp-hcy/>.

The bill expands the use of motor vehicles other than school buses by school districts when used to transport students participating in controlled open enrollment. Currently, it is limited to transporting a student to a career education program that is not offered at the high school in which the student is enrolled.

The bill clarifies that when the transportation of students is provided in a vehicle other than a school bus that is owned, operated, rented, contracted, or leased by a school district or charter school, the vehicle must be designed to transport no more than 10 students, rather than less than 10 students.

The bill establishes a grant program to improve access to reliable and safe transportation for students who attend school through controlled open enrollment and to support innovative solutions that increase the efficiency of public school transportation. Grant proposals may include:

- Transportation resource planning and sharing among school districts and local governments.
- Developing or contracting with rideshare programs or developing carpool strategies.
- Developing options to reduce costs and increase efficiencies while improving access to transportation options for families.
- Developing options to address personnel challenges.
- Expanding the use of transportation funds under ss. 1002.394, 1002.395, and 1011.68, F.S., to help cover the cost of transporting students to and from school.

The bill requires the DOE to publish on its website, by December 31, 2023, an interim report and by December 31, 2024, a final report that includes:

- The best practices used by grant recipients to increase transportation options for students, including any transportation barriers addressed by grant recipients.
- The number of students served by grant recipients including the number of students transported to a school that is different from the school to which the student is assigned.

The bill revises the requirements for use of student transportation funds to include transportation of students to and from school in private passenger cars and boats when transportation on a school bus is impractical or to support parents or carpools, as defined by rule.

## **Reading Scholarship Accounts**

Reading Scholarship Accounts are available for students in grades 3 through 5 who are enrolled in a Florida public school and scored below a Level 3 on the grade 3 or grade 4 statewide, standardized English Language Arts assessment in the prior school year.<sup>59</sup>

For the 2021-2022 school year, the amount of the scholarship is \$500 per eligible student, for a total appropriation of \$7.6 million.<sup>60</sup>

The eligible expenditures for reimbursement include:<sup>61</sup>

- Instructional materials.
- Curriculum.
- Tuition and fees for part-time tutoring services. The services shall be provided by a person who holds a valid Florida educator's teaching certificate;<sup>62</sup> a person who holds a baccalaureate or graduate degree in the subject area; a person who holds an adjunct teaching certificate;<sup>63</sup> or a person who has demonstrated a mastery of subject area knowledge.<sup>64</sup>
- Fees for specialized summer education programs designed to improve reading or literacy skills.
- Fees for after-school education programs designed to improve reading or literacy skills.

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<sup>59</sup> Section 1002.411, F.S.

<sup>60</sup> Specific Appropriation 108, Fiscal Year 2021-2022 General Appropriations Act, ch. 2021-36, L.O.F.

<sup>61</sup> Section 1002.411(3), F.S.

<sup>62</sup> Section 1012.56, F.S.

<sup>63</sup> Section 1012.57, F.S.

<sup>64</sup> Section 1012.56(5), F.S.

## Effect of the Bill

The bill aligns the eligibility for the Reading Scholarship Accounts to that of the New Worlds Reading Initiative to now apply to students enrolled in a public school in kindergarten through grade 5, rather than students in grades 3 through 5, who have a substantial reading deficiency identified under s. 1008.25(5)(a), F.S., or who scored below a level 3 on the statewide, standardized English Language Arts assessment in the prior school year.

The bill allows instructional personnel to provide services to students receiving a Reading Scholarship Account on the school campus outside of regular work hours.

## **New Worlds Reading Initiative**

In 2021, the Legislature established the New Worlds Reading Initiative under the DOE to improve literacy skills and instill a love of reading by providing high-quality, free books to students in kindergarten through grade 5 who are reading below grade level.<sup>65</sup> For Fiscal Year 2021-2022, the program was appropriated \$200 million<sup>66</sup> and will:<sup>67</sup>

- Mail a new book, in English, Spanish, or Kreole, to each eligible, enrolled K-5 grade public school student in Florida each month for free.
- Provide families with reading resources, in English, Spanish, or Kreole, that build reading confidence and conversation skills.
- Help students build a personalized library based on their interests.
- Reinforce the science of reading strategies.
- Support parents and caregivers as they continue to build their child's love of reading.

The DOE selected the Lastinger Center for Learning at the University of Florida (UF) to administer, organize, and launch the New Worlds Reading Initiative. The UF Lastinger Center for Learning, in partnership with Scholastic,<sup>68</sup> began delivering books to children in December 2021.<sup>69</sup>

The UF Lastinger Center for Learning is responsible for:<sup>70</sup>

- Developing, in consultation with the Just Read, Florida! Office,<sup>71</sup> a selection of high-quality books encompassing diverse subjects and genres for each grade level to be mailed to students in the initiative.
- Distributing books at no cost to students either directly or through an agreement with a book distribution company.
- Assisting local implementation of the initiative by providing marketing materials to school districts and any partnering nonprofit organizations to assist with public awareness campaigns and other activities designed to increase family engagement and instill a love of reading in students.
- Maintaining a clearinghouse for information on national, state, and local nonprofit organizations that support efforts to improve literacy and provide books to children.
- Developing training materials for parents of students in the initiative, including brief video training modules, which engage families in reading and assist with improving student literacy skills.
- Annually submitting to the department an annual financial report that includes, at a minimum, the amount of eligible contributions received by the administrator; the amount spent on each activity, including administrative expenses; and the number of students and households served under the initiative.

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<sup>65</sup> Section 1003.485(2), F.S.

<sup>66</sup> Specific Appropriation 145 and Section 152, Fiscal Year 2021-2022 General Appropriations Act, ch. 2021-36, L.O.F.

<sup>67</sup> Florida Department of Education, New Worlds Reading, available at, <https://www.newworldsreading.com/fl/en/home.html> (last visited Feb. 9, 2022).

<sup>68</sup> Scholastic is one of the largest publishers and distributors of children's books.

<sup>69</sup> *Id.*

<sup>70</sup> Section 1003.485(2)(b), F.S.

<sup>71</sup> Section 1002.215, F.S.

- Maintaining separate accounts for operating funds and funds for the purchase and delivery of books.
- Expending eligible contributions received only for the purchase and delivery of books and to implement the requirements of this section, as well as for administrative expenses not to exceed 2 percent of total eligible contributions.<sup>72</sup>
- Providing the taxpayer that made the contribution with a certificate of contribution upon receipt of a contribution.

Each school district must notify the parent of a student who meets the eligibility criteria and provide the parent with the application form developed by the administrator, which must allow for the selection of specific book topics or genres for the student.<sup>73</sup> Once an eligible student is identified, the school district must coordinate with the administrator to initiate book delivery on a monthly basis during the school year.<sup>74</sup>

At the beginning of each school year, students must be provided options for specific book topics or genres in order to maximize student interest in reading.<sup>75</sup> A student's eligibility for the initiative continues until promotion to grade 6 or until the student's parent opts out of the initiative.<sup>76</sup>

### Effect of the Bill

The bill requires the program administrator to provide teachers with professional development and resources that correlate with the books provided through the initiative.

The bill clarifies that students must be provided options for selecting book topics or genres upon enrollment when enrollment does not occur at the beginning of the school year.

## **Department of Juvenile Justice Education Programs**

### Present Situation

Florida law authorizes education programs for the four types of juvenile justice services provided by the Department of Juvenile Justice (DJJ) to ensure that all eligible students receive a high-quality education designed to meet their unique needs. The DOE is the lead agency for the education programs and sets standards for curriculum and other support services.<sup>77</sup> The school district of the county in which the juvenile justice service is located must provide or contract for appropriate educational assessments and programs of instruction and special education services.<sup>78</sup> For the 2021-2022 school year, there is a total of 3,700.75 FTE students enrolled in a juvenile justice education program.<sup>79</sup>

Funding for students enrolled in a juvenile justice education program is provided through the FEFP and must include, at a minimum:<sup>80</sup>

- Unweighted FTE x Program Cost Factor x Base Student Allocation x DCD (base FEFP funding)
- +
- DJJ Allocation Categorical +

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<sup>72</sup> Section 1003.485(2)(b), F.S. Notwithstanding s.1002.395(6)(j)2., F.S., the administrator may carry forward up to 25 percent of eligible contributions to the following state fiscal year for purposes authorized by this subsection. Any eligible contributions in excess of the 25 percent carry forward not used to provide additional books throughout the year to eligible students shall revert to the state treasury.

<sup>73</sup> Section 1003.485(4)(b), F.S.

<sup>74</sup> Section 1003.485(4)(c), F.S.

<sup>75</sup> Section 1003.485(4)(d), F.S.

<sup>76</sup> Section 1003.485(4)(e), F.S.

<sup>77</sup> Section 1003.52(3), F.S.

<sup>78</sup> Section 1003.52(3), F.S.

<sup>79</sup> Fiscal Year 2021-2022 Florida Education Finance Program (FEFP), Third Calculation.

<sup>80</sup> Section 1003.52(13)(a), F.S.

- Proportionate share of the ESE Guaranteed Allocation (if applicable), Supplemental Academic Instruction Allocation, and Instructional Materials Allocation +
- Proportionate share of the state average of the discretionary local effort as calculated in s. 1003.52(13)(a), F.S.

### Effect of the Bill

The bill modifies the funding for eligible students enrolled in a juvenile justice education program to be the same as a traditional FTE student funded in the FEFP and as specified in the General Appropriations Act.

## **Florida Education Finance Program**

### Present Situation

The FEFP was established in 1973 and is the primary mechanism for funding the operating costs of Florida school districts and is the foundation for financing Florida's K-12 educational programs. The FEFP is composed of both state and local revenues and to ensure equalized funding per student, it takes into account various factors such as the individual educational needs of students, the local property tax base, the costs of educational programs, district cost differentials, and the sparsity of the population.<sup>81</sup> The FEFP is used to calculate the revenue allocations for all 67 school districts, six lab schools and the Florida Virtual School.

The 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 funding which includes both state and local funds.<sup>82</sup> Program costs factors are determined by the Legislature and represent relative cost differences among the FEFP education programs.<sup>83</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 2021-2022 includes 18 funded categoricals with all but two of the categoricals funded with both state and local FEFP funds.<sup>84</sup>

Two of the categoricals funded in the FEFP for Fiscal Year 2021-2022 include:

- Digital Classroom Allocation – provides supplemental funds to school districts to assist with the integration of technology into classroom teaching and learning.<sup>85</sup>
- Funding Compression and Hold Harmless Allocation – provides additional funds to school districts if the district's prior year total funds per FTE student were less than the statewide average or if the school district's district cost differential (DCD) in the current year is less than the prior year.<sup>86</sup>

### Effect of the Bill

The bill repeals the Digital Classroom Allocation and does not re-enact the Funding Compression and Hold Harmless Allocation.

## **B. SECTION DIRECTORY:**

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<sup>81</sup> Section 1011.62, F.S.

<sup>82</sup> Section 1011.62(1)(s), F.S.

<sup>83</sup> Section 1011.62(1)(c), F.S.

<sup>84</sup> Chapter 2021-36, Laws of Florida.

<sup>85</sup> Section 1011.62(10), F.S.

<sup>86</sup> Section 1011.62(17), F.S.

**Section 1.** Amends s. 1002.31, F.S., providing for a capacity determination for virtual charter schools and school districts with a contract with an approved virtual instruction program provider; providing for school districts and schools to identify and communicate capacity for controlled open enrollment by grade level and providing information on student transportation options.

**Section 2.** Amends s. 1002.33, F.S., requiring a standard virtual charter school contract and a renewal contract and requiring a virtual charter school to comply with applicable statutes when enrolling students.

**Section 3.** Amends s. 1002.37, F.S., repealing the Florida Virtual School franchise with school districts.

**Section 4.** Amends s. 1002.394, F.S., specifying the types of eligible students excluded from the maximum number of students participating in the scholarship program; specifying that adjustments to payments to eligible nonprofit scholarship funding organizations and to the Florida Education Finance Program are based upon the results of the Department of Education's cross-check; increasing the scholarship amount for public school transportation to an amount equal to the school district expenditure per student riding a school bus or \$750 whichever is greater.

**Section 5.** Amends s. 1002.395, F.S., specifying that adjustments to payments to eligible nonprofit scholarship funding organizations and to the Florida Education Finance Program are based upon results of the Department of Education's cross-check; allowing eligible nonprofit scholarship funding organizations to include costs associated with developing or contracting with rideshare programs or facilitating carpool as eligible administrative expenses.

**Section 6.** Amends s. 1002.40, F.S., specifying that adjustments to payments to eligible nonprofit scholarship funding organizations and to the Florida Education Finance Program are based upon results of the Department of Education's cross-check.

**Section 7.** Amends s. 1002.411, F.S., expanding the eligibility requirements for the Reading Scholarship Accounts program.

**Section 8.** Amends s. 1002.45, F.S., requiring each virtual instruction program to operate under its own Master School Identification Number prescribed by the Department of Education; requiring an approved virtual instruction program provider to perform an annual audit conducted by a certified public accountant licensed under chapter 473 and specifying submission of the report to the State Board of Education and the Auditor General; specifying additional components that are required in a contract with an approved virtual instruction program provider; specifying the calculation methodology for funding virtual full-time equivalent student in the Florida Education Finance Program; and requiring an approved virtual instruction program provider to receive a district grade based upon the aggregated assessment scores of all students served by the provider statewide and a separate school grade for each school district with which it contracts based on the assessment scores of all students served within the school district.

**Section 9.** Amends s. 1002.455, F.S., authorizing an approved virtual instruction program provider to enroll students within the school district contracting with the provider and to students in other school districts throughout the state.

**Section 10.** Amends s. 1003.485, F.S., requiring the administrator of the New Worlds Reading Initiative to provide teachers with professional development and other resources.

**Section 11.** Amends s. 1003.498, F.S., conforming provisions to changes made by the act.

**Section 12.** Amends s. 1003.52, F.S., specifying that the funding of students enrolled in a juvenile justice education program offered by a school district is the same as traditional students funded in the Florida Education Finance Program.

**Section 13.** Amends s. 1006.12, F.S., conforming provisions to changes made by the act.

**Section 14.** Amends s. 1006.22, F.S., conforming provisions to changes made by the act.

**Section 15.** Amends s. 1006.27, F.S., requiring the Department of Education to develop a grant program to improve access to reliable and safe transportation for students who attend school through controlled open enrollment and to support innovative solutions that increase the efficiency of public school transportation.

**Section 16.** Amends s. 1010.20, F.S., specifying the percentage amount that must be expended on the juvenile justice programs funded in the Florida Education Finance Program.

**Section 17.** Amends s. 1011.62, F.S., repealing the Digital Classroom Allocation and no re-enacting the Funding Compression and Hold Harmless in the Florida Education Finance Program.

**Section 18.** Amends s. 1011.68, F.S., conforming provisions to changes made by the act.

**Section 19.** Amends s. 1011.71, F.S., conforming provisions to changes made by the act.

**Section 20.** Amends s. 1012.22, F.S., conforming provisions to changes made by the act.

**Section 21.** Amends s. 1012.584, F.S., conforming provisions to changes made by the act.

**Section 22.** Provides an effective date of July 1, 2022.

## 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 HB 5001 the House General Appropriations Act for Fiscal Year 2022-2023 for prekindergarten through grade 12 education.

## 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 9, 2022, the Appropriations Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Revise controlled open enrollment to require:
  - School districts and charter schools to identify and disclose on their websites the capacity for its schools, by grade level, and to update such data every 12 weeks.
  - School districts to provide information on student transportation options.
  - School districts to maintain a wait list of students who are denied access due to capacity and notify parents when space becomes available.
  - Schools to accept students throughout the school year as capacity becomes available.
- Require the Department of Education to establish a grant program to improve access to reliable and safe transportation for students who attend school through controlled open enrollment and to support innovative solutions that increase the efficiency of public school transportation.
- Increase the scholarship amount for public school transportation to the amount expended by the school district on students riding a bus or \$750 whichever is greater.
- Provide greater flexibility to school districts to use vehicles other than school buses to transport certain students.
- Requires the New World program administrator to provide teachers with professional development and resources and clarifies that students must be provided options for selecting book topics or genres upon enrollment.

The bill analysis is drafted to the committee substitute adopted by the Appropriations Committee.