

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB KINS 12-01 Digital Learning

**SPONSOR(S):** K-20 Innovation Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-20 Innovation Subcommittee	12 Y, 2 N	Fudge	Sherry

### SUMMARY ANALYSIS

The bill expands digital learning options for students in public schools, allows students eligible to enter kindergarten through grade 5 to participate in Florida Virtual School Full Time (FLVS FT), full-time district virtual instruction programs, and full-time virtual charter schools. The bill also authorizes FLVS FT students to participate in interscholastic extracurricular activities.

The bill authorizes FLVS to expand part-time instruction to kindergarten through grade 3. The bill also expands part-time offerings for grades 4 and 5 by removing the limitation which restricts students to taking grades 6 through 8 courses. The bill authorizes FLVS FT students to participate in interscholastic extracurricular activities at the public school to which the student would be assigned or could choose to attend according to district school board policies. This provision is similar to current law that authorizes eligible home school, private school, and charter school students to participate in public school interscholastic extracurricular activities who meet specified academic standards and eligibility requirements.

The bill also requires FLVS to provide exceptional student education services and the English for Speakers of other Languages program to its eligible students and authorizes FLVS to receive funding for providing such services and programs.

A school district ineligible for the sparsity supplement must provide at least three options for part-time and full-time virtual instruction. The bill clarifies that the eligibility for the sparsity supplement is prior to any wealth adjustment. This would increase the number of districts eligible for the sparsity supplement, thereby reducing the number of districts that must provide at least three options.

The bill removes the student eligibility requirement for courses delivered in the traditional school setting thereby allowing school districts to offer virtual and blended courses delivered in the traditional school setting to its students who may have been unable to take such courses due to the eligibility criteria. The bill clarifies that the funding and performance accountability requirements for blended learning courses offered by school districts are the same as those for traditional courses.

The bill clarifies the online course requirements for high school graduation.

Part-time district virtual instruction is expanded to students enrolled in kindergarten through grade 8.

See FISCAL COMMENTS.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

Virtual instruction programs, commonly described as online or digital learning instruction, provide an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.<sup>1</sup>

During the 2011 Session, the Legislature enacted CS/CS/HB 7197 creating the “Digital Learning Now Act” (“the Act”) which required high school students to take an online course, authorized blended learning courses, increased access to high quality digital providers, established metrics for evaluating the quality of content and instruction, and required administration of assessments online.

### **Florida’s Public K-12 Virtual Education Options**

#### **School District Virtual Instruction Program**

##### *Present Situation*

A school district virtual instruction program is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.<sup>2</sup> The purpose of the program is to make instruction available to students using online and distance learning technology in the nontraditional classroom.<sup>3</sup> In 2008, the Legislature required all school districts to provide a virtual instruction program beginning with the 2009-2010 academic year.<sup>4</sup> In 2011, the Legislature revised the program requirements.<sup>5</sup>

Each school district must offer:

- A full-time virtual instruction program for students in kindergarten through grade 12;<sup>6</sup>
- Part-time virtual instruction for students enrolled in grades 9 through 12 courses that are measured by an evaluation method developed by the Department of Education (DOE);<sup>7</sup> and
- A full-time or part-time virtual instruction program for students enrolled in dropout prevention and academic intervention programs, Department of Juvenile Justice programs, core-curricula courses to meet class size requirements, or Florida College System institutions offering a school district virtual instruction program.<sup>8</sup>

To provide its students with the opportunity to participate in a virtual instruction program, a school district may choose one or more of the following options:

- Contract with the Florida Virtual School (FLVS) or establish a franchise of the FLVS;<sup>9</sup>
- Contract with an approved provider;<sup>10</sup>
- Contract with a Florida College System institution;<sup>11</sup>
- Enter into an agreement with another school district to allow its students to participate in a virtual instruction program provided by the other school district;<sup>12</sup>

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<sup>1</sup> Section 1002.45(1)(a)2., F.S.

<sup>2</sup> Section 1002.45(1)(a)2., F.S.

<sup>3</sup> Section 1002.45(1)(b), F.S.

<sup>4</sup> Section 4, ch. 2008-147, L.O.F.

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

<sup>6</sup> Section 1002.45(1)(b)1., F.S.

<sup>7</sup> Section 1002.45(1)(b)2., F.S.

<sup>8</sup> Section 1002.45(1)(b)3., F.S.

<sup>9</sup> Section 1002.45(1)(c)1., F.S.

<sup>10</sup> Sections 1002.45(1)(a)1., and 1002.45(1)(c)2., F.S.

<sup>11</sup> Section 9, ch. 2010-154, L.O.F.; s. 1002.45(1)(a) and (1)(c)2., F.S.

<sup>12</sup> Section 1002.45(1)(c)3., F.S.

- Establish and operate a virtual instruction program for students enrolled in the school district;<sup>13</sup>  
or
- Enter into an agreement with a virtual charter school.<sup>14</sup>

Contracts with the FLVS or other providers may include multidistrict contractual arrangements executed by a regional consortium.<sup>15</sup>

Each contract between a school district and a provider must include the following:

- A detailed curriculum plan;
- A method for determining that a student has satisfied the requirements for graduation, if the contract is for a full-time virtual instruction program in grades 9-12;
- A method for resolving conflicts among parties;
- Authorized reasons for termination of the contract;
- A requirement that the approved provider be responsible for all debts of the program if the contract is terminated or not renewed; and
- A requirement that the approved provider comply with all statutory requirements relating to the program.<sup>16</sup>

Each provider contracted to provide a school district virtual instruction program must participate in the statewide assessment program and the state's education performance accountability system.<sup>17</sup> Each provider receives a school grade or school improvement rating, which is based upon the aggregated assessment scores of all students served by the provider statewide.<sup>18</sup> School grades or school improvement ratings are published on the Department's website.<sup>19</sup>

If a provider receives a school grade of "D" or "F" or a school improvement rating of "Declining," the provider must file with the DOE a school improvement plan for correcting low performance.<sup>20</sup> The school improvement plan must identify causes of the low performance and propose a plan for improvement. If a provider receives a school grade of "D" or "F" for any two years during a four-year period, the provider's contract must be terminated and the provider cannot be approved for at least one year.<sup>21</sup>

### Effect of Proposed Changes

The bill expands part-time virtual instruction, currently offered for grades 9 through 12, to kindergarten through grade 8 for courses that are evaluated by a method developed by DOE. The evaluations include the percentage of students making learning gains, the percentage of students successfully passing any required end-of-course assessments, the percentage of students taking AP course exams, and the percentage of students scoring a three (3) or above on the AP course exam.

In addition to preexisting requirements, the bill requires that to be approved by the DOE a provider of virtual instruction must provide documentation of an annual financial audit of its accounts and records, conducted by an independent certified public accountant and in accordance with rules adopted by the Auditor General. The audit must be conducted in compliance with generally accepted auditing

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<sup>13</sup> Section 1002.45(1)(c)4., F.S.

<sup>14</sup> Section 1002.45(1)(c)5., F.S.

<sup>15</sup> Section 1002.45(1)(c), F.S. Multidistrict consortia include Panhandle Area Educational Consortium (PAEC), Heartland Educational Consortium (HEC), and Northeast Florida Educational Consortium (NEFEC). *See s. 1001.451, F.S.*

<sup>16</sup> Section 1002.45(4), F.S.

<sup>17</sup> Section 1002.45(8)(a)1., F.S.

<sup>18</sup> The performance of part-time 9-12 students is not included in the provider's school grade or school improvement rating. Performance of such students is included in the nonvirtual school that provides the student's primary instruction. Section 1002.45(8)(b), F.S.

<sup>19</sup> Section 1002.45(8)(a)2., F.S.

<sup>20</sup> Section 10082.45(8)(c), F.S.

<sup>21</sup> Section 1002.45(8)(c) and (d), F.S.

standards and must include a report on financial statements presented in accordance with generally accepted accounting principles.

A school district must provide at least three options for part-time and full-time virtual instruction if the school district is not eligible for the sparsity supplement. The bill clarifies that for purposes of this requirement, the calculation of the sparsity supplement is prior to any wealth adjustment. The bill also clarifies that school districts must provide at least one open enrollment period for full-time students of at least 90 days which ends at least 30 days before the first day of the school year thereby allowing school districts to offer more than one enrollment period.

## **Student Eligibility**

### Present Situation

Students are eligible to participate in the virtual instruction program if the student is eligible to enter kindergarten or first grade<sup>22</sup> or if the student was:<sup>23</sup>

- Enrolled in a public school and reported for funding in the Florida Education Finance Program (FEFP) in the prior school year;
- A dependent child of a member of the armed forces whose parent was transferred in the last 12 months;
- Enrolled during the prior school year in a school district operated virtual instruction program, K-8 virtual school program, or FLVS FT;<sup>24</sup> or
- A sibling of a student currently enrolled a virtual school program.<sup>25</sup>

These student eligibility requirements apply to: school district part-time or full-time kindergarten through grade 12 Virtual Instruction Programs (VIPs); full-time virtual charter school instruction; courses delivered in the traditional school setting through a virtual environment or through blended learning; virtual courses offered in the course code directory to students within the school district or in other school districts; and full-time instruction in grades 2 through 5 provided by FLVS.

### Effect of Proposed Changes

The bill revises the eligibility criteria for the FLVS FT program, the school district operated full-time virtual instruction program, and full-time virtual charter schools to allow students eligible to enter grades 2 through 5 to participate in these full-time programs.

Applying the student eligibility requirement to courses delivered in the traditional school setting prevented school districts from offering virtual or blended courses to all of their students. Consequently, the bill removes the student eligibility requirement for courses delivered in the traditional school setting. The bill clarifies that the funding and performance accountability requirements for blended learning courses offered by school districts are the same as those for traditional courses.

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<sup>22</sup> Section 1002.455(2)(e), F.S.

<sup>23</sup> Section 1002.455, F.S.

<sup>24</sup> Section 1002.455(2)(c), F.S.

<sup>25</sup> Section 1002.455(2)(d), F.S.

## Integrity of Online Courses

### Present Situation

It is unlawful for any individual to knowingly and willfully violate test security by: giving examinees access to test questions prior to testing, copying any portion of any secure test booklet, coaching examinees during testing, making answer keys available to examinees, failing to follow test administration directions, or participating in, directing, aiding, counseling, assisting in, or encouraging any of these prohibited acts.<sup>26</sup>

While these provisions are very proscriptive, they do not prohibit an individual from taking a course or examination on behalf of another person.

### Effect of Proposed Changes

The bill prohibits any individual from knowingly and willfully taking an online course or examination on behalf of another person. Any individual that violates this provision commits a misdemeanor of the first degree.

## Online Course Requirement

### Present Situation

Students entering grade 9 in the 2011-2012 school year must complete at least one course, within the 24 credits required for high school graduation, through online learning. An online course taken during grades 6 through 8 fulfills this requirement. The online course requirement may be met through courses offered by the Florida Virtual School, an online course offered by the high school, or an online dual enrollment course. Students enrolled in a full-time or part-time virtual instruction program meet this requirement.<sup>27</sup>

### Effect of Proposed Changes

The bill clarifies that a school district may not require the student to fulfill the online course requirement outside of the school day or in addition to the student's courses for a given semester. The online course requirement would not apply to a student who has an IEP which indicates that an online course would be inappropriate or to a student who is enrolled in a Florida high school and has less than 1 academic year remaining.

## Florida Virtual School

### Present Situation

The Florida Virtual School (FLVS) is a public online school providing students with several virtual education options.<sup>28</sup> FLVS offers more than 90 courses in core subjects, world languages, electives, honors, and Advanced Placement.<sup>29</sup>

FLVS offers individual course enrollments to all Florida students in grades 6-12, including public school, private school, and home education students.<sup>30</sup> FLVS also provides part-time instruction to students in grades 4-5 taking grades 6 through 8 courses. Each elementary school principal must notify the parent

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<sup>26</sup> Section 1008.24, F.S.

<sup>27</sup> Section 1003.428(2)(c), F.S.

<sup>28</sup> See Section 1002.37(1), F.S. See also Florida Virtual School, *Grade K-12 Options* <http://www.flvs.net/AREAS/CVP/Pages/default.aspx> (last visited November 28, 2011).

<sup>29</sup> Florida Virtual School, *Quick Facts*, <http://www.flvs.net/areas/aboutus/Pages/QuickFactsaboutFLVS.aspx> (last visited November 28, 2011).

<sup>30</sup> Florida Virtual School, *supra* note 19.

of each student who score at Level 4 or Level 5 on FCAT Reading or FCAT Mathematics of the option for the student to take accelerated courses through FLVS.<sup>31</sup>

FLVS has partnered with Connections Academy to provide a full-time virtual education program to students in grades K-12.<sup>32</sup> Florida Virtual School Full Time (FLVS FT) is open to any public school student in grades K-12 provided the student meets certain eligibility criteria.<sup>33</sup> Separate statutory requirements relating to student eligibility, assessment and accountability, and funding exist for each of these options.<sup>34</sup>

FLVS is governed by a board of trustees appointed by the governor,<sup>35</sup> and its performance is monitored by the Commissioner of Education and reported to the State Board of Education and Legislature.<sup>36</sup> FLVS is fully accredited by the Southern Association of Colleges and Schools and AdvanceED.<sup>37</sup>

Public school students receiving full-time and part-time instruction from the FLVS are required to take statewide assessments – including FCAT and statewide end-of-course exams. A student must take these assessments in the school district in which the student resides. A school district must provide access to the district's testing facilities.<sup>38</sup>

### Effect of Proposed Changes

The bill authorizes FLVS to offer part-time instruction to students in kindergarten through grade 3. The bill also expands part-time offerings in grades 4 and 5 by removing the limitation which restricted students to taking only grades 6 through 8 courses. The bill also repeals the requirement of each elementary school principal to notify certain students of the ability to take accelerated courses through the virtual school. Such notification would no longer be required because the previous restriction to grades 6 through 8 courses was removed thereby allowing those elementary students to take any course.

The bill requires school districts to allow FLVS students to take statewide assessments at the school to which the student would be assigned according to district school board attendance area polices, instead of any school within the district. In addition, the school district must provide the student access to the school's testing facilities. The bill may make it more convenient for FLVS students to comply with the assessment requirement.

## **Interscholastic Extracurricular Activities**

### Present Situation

In addition to students enrolled in traditional schools, eligible home school and charter school students may participate in interscholastic extracurricular activities at assigned public schools or at public schools to which the student could choose to attend, pursuant to district or interdistrict controlled open-enrollment provisions.<sup>39</sup> A student from a charter school may be eligible to participate in these activities

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<sup>31</sup> 1002.37(9), F.S.

<sup>32</sup> Florida Virtual School Full Time, *Florida Virtual School Full Time*, <http://www.flvsft.com/> (last visited May 26, 2010).

<sup>33</sup> Section 1002.37(8)(a), F.S.

<sup>34</sup> Section 1002.37, F.S.

<sup>35</sup> Section 1002.37(2), F.S.

<sup>36</sup> Section 1002.37(1)(a), F.S.

<sup>37</sup> Florida Virtual School, *Accreditation*, <http://www.flvs.net/areas/aboutus/Pages/accreditation.aspx> (last visited November 28, 2011); AdvancED, *International Registry for Accreditation*, <http://www.advanced.org/oasis2/u/par/accreditation/summary?institutionId=22450> (last visited November 28, 2011).

<sup>38</sup> Section 1002.37(10)(c), F.S.

<sup>39</sup> Sections 1002.41(4) and 1006.15(3)(c) and (d), F.S. "Interscholastic activities" are limited to high school athletic competitions. Section 1006.20(1), F.S. The Florida High School Athletic Association defines interscholastic contest as "any competition between organized teams of different schools in a sport recognized or sanctioned" by the FHSAA. Florida High School Athletic Association, *Interscholastic Contests*, available at, <http://www.fhsaa.org/about> (last visited March 17, 2011). "Extracurricular" activities include

at the selected public school, if such activity is not offered by that charter school.<sup>40</sup> Likewise, private school students may participate at select public schools if the student is enrolled in a non- Florida High School Athletic Association (FHSAA) member private school of less than 125 students and the school does not offer an interscholastic or intrascholastic athletic program.<sup>41</sup> Eligible home school, charter school, and private school students must register with the public school their intent to participate in interscholastic extracurricular activities, and are subject to the same eligibility requirements as other public school students.<sup>42</sup>

To be eligible to participate in interscholastic extracurricular activities, a student must maintain a 2.0 grade point average (GPA) in the semester prior to participation, or a 2.0 cumulative GPA in specified high school courses. If a student's cumulative GPA falls below 2.0 in the specified courses, the student must execute an academic performance contract with the district school board, the FHSAA, and the student's parents. At a minimum, the contract must require the student to attend summer school to improve his or her GPA.<sup>43</sup> A student must also maintain good conduct to remain eligible to participate in interscholastic extracurricular activities. The district school board policy governs the eligibility of a student to participate in these activities if he or she is found to be involved in a felony or delinquent act.<sup>44</sup>

### Effect of Proposed Changes

The bill authorizes eligible FLVS FT students to participate in interscholastic extracurricular activities at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend, pursuant to district or interdistrict controlled open-enrollment policies. FLVS FT students must meet the same academic standards and eligibility requirements applicable to private school, home school, and charter school students as well as any additional requirement as determined by the board of trustees of FLVS.

The bill requires that a student register his or her intent to participate in extracurricular activities with the school before the beginning date of the season for the activity in which he or she wishes to participate. A FLVS student must be allowed to participate in curricular activities if that is a requirement for an extracurricular activity.

## **Exceptional Student Education**

### Present Situation

Exceptional Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.<sup>45</sup> Student enrollment in ESE programs is one factor considered in determining the funding a school district receives.<sup>46</sup>

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any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

<sup>40</sup> Section 1006.15(3)(d), F.S.

<sup>41</sup> Section 1006.15(8), F.S.

<sup>42</sup> Section 1006.15(3), F.S.

<sup>43</sup> Sections 1006.15(3)(a)(1) and (2) and 1003.43(1), F.S.

<sup>44</sup> Section 1006.15(3)(a)4., F.S.

<sup>45</sup> Section 1003.57(1), F.S.; rule 6A-6.03411(1)(m) and (n), F.A.C. Whether the gifted program should continue to be part of the exceptional student education (ESE) program or whether it should be a separate stand-alone program has been a topic of recent discussion. The Office of Program Policy Analysis and Government Accountability (OPPAGA) identified the advantages and disadvantages of classifying gifted students as exceptional students by reviewing available research and holding focus group discussions with parents, gifted students, teachers, and district administrators. See Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, at 11 (Jan. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0801rpt.pdf> [hereinafter *OPPAGA Report No. 08-01*].

<sup>46</sup> See s. 1011.62(1)(c), F.S.

The federal Individuals with Disabilities Education Act (IDEA) requires school districts to make a free appropriate public education (FAPE) available to students with disabilities ages 3 through 21.<sup>47</sup> A school district, at its discretion, may provide services to eligible infants and toddlers with disabilities below three years of age.<sup>48</sup> A FAPE must include special education and related services<sup>49</sup> that are provided by the public school system at no cost to the parent, which meet the standards of the state and which conform with the student's individual educational plan (IEP).<sup>50</sup>

The IDEA does not address gifted students; however, state law and State Board of Education rule require school districts to provide a FAPE to gifted students as well.<sup>51</sup> State law specifies that districts must provide special instruction and services to gifted students, but does not mandate or describe the specific types of instruction and services required.<sup>52</sup>

Services for exceptional education students are funded primarily via the Florida Education Finance Program (FEFP) through the use of basic funding, an ESE Guaranteed Allocation, and two weighted cost factors. FEFP funding reflects approximately 91 percent of the total funding for Florida's public school students. FEFP funds are calculated by multiplying the number of full-time equivalent (FTE) students in each of the funded education programs by cost factors to obtain weighted FTE students.<sup>53</sup> Weighted FTE students are then multiplied by a base student allocation and by a district cost differential. In FY 2010-11, \$980.5 million was appropriated to school districts through the ESE Guaranteed Allocation.<sup>54</sup>

Since July 1, 2000, approximately 95 percent of ESE students have generated funds at the same level as nondisabled students. These students are reported under basic programs 111 (grades PK-3 basic, with ESE services), 112 (grades 4-8 basic with ESE services) or 113 (grades 9-12 basic with ESE services). In order to fund exceptional education and related services (including therapies) for these students, an ESE Guaranteed Allocation was established by the Legislature in addition to the basic funding. The guaranteed allocation is a fixed amount provided to each district.<sup>55</sup>

For the remaining five percent of students with disabilities (those with the most intense needs), funding is determined using a matrix of services. Consistent with the services identified in the IEP, each matrix is completed by checking all the services that will be provided to the student. Students with the two highest matrix ratings (254 and 255) generate funding at a significantly higher weight than basic funding.<sup>56</sup>

Each year the IDEA awards (IDEA, Part B and IDEA, Part B Preschool) are made to states from the United States Department of Education. A major portion of these funds are distributed to school districts/agencies as entitlement grants. Allocations to districts/agencies are calculated using a federally-mandated formula. Funds must be used to supplement the excess costs of providing special

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<sup>47</sup> 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.; *see also* Individuals with Disabilities Education Act (IDEA) Fact Sheet.

<sup>48</sup> Rules 6A-6.0331 and 6A-6.03026, F.A.C.

<sup>49</sup> "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

<sup>50</sup> 34 C.F.R. s. 300.17; rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>51</sup> *See* ss. 1003.01(3)(a) and 1011.62(1)(e)c.2., F.S.; rules 6A-6.0331(1) and 6A-6.03411(1)(m), F.A.C.

<sup>52</sup> Section 1003.57(1), F.S.

<sup>53</sup> Email, Florida Department of Education (Aug. 20, 2010).

<sup>54</sup> Specific Appropriation 78, s. 2, ch. 2010-152, L.O.F.

<sup>55</sup> Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2009-2010 Statistical Report*, available at <http://www.fldoe.org/fefp/pdf/fefpdist.pdf>.

<sup>56</sup> *Id.*

education and related services for students with disabilities. Remaining award funds are used by DOE to support capacity building and other state-level activities as required by the IDEA.<sup>57</sup>

### Effect of Proposed Changes

The bill requires full-time virtual instruction programs operated by FLVS<sup>58</sup> and school districts<sup>59</sup> to fulfill the obligations of a school district for exceptional students who are enrolled in such programs. The bill also authorizes a student whose individual educational plan indicates that full-time virtual instruction is appropriate to enroll in a full-time virtual instruction program.

Under the bill, funds for students identified as exceptional are allocated annually to the Florida Virtual School in the same manner such funds are allocated to school districts through the FEFP.

## **English for Speakers of Other Languages**

### Present Situation

English for Speakers of Other Languages (ESOL) is an educational approach in which English language learners (ELLs)<sup>60</sup> are instructed in the use of the English language. Their instruction is based upon a special curriculum that typically involves little or no use of the native language and focuses on language (as opposed to content). ESOL instructional strategies are also used to teach any subject in English to ELLs who have limited English proficiency in speaking, reading, writing or listening in English.<sup>61</sup>

A student is classified as an ELL if the student has been assessed for English language proficiency and qualifies as a non English speaker or limited English speaker on a Florida Department of Education (DOE) approved ESOL placement test.<sup>62</sup> During the 2009-10 academic year, there were 2,634,382 Prekindergarten through grade 12 students enrolled in Florida's public schools.<sup>63</sup> Of that number, 228,749 or 8.7 percent of the students were ELLs and 75.6 percent of the ELL students were Hispanic children.<sup>64</sup>

A district school board must:

- Develop and submit a district plan for providing English language instruction to DOE for review and approval;
- Identify ELLs through assessment;
- Provide for student exit from and reclassification into the English instruction program;
- Provide ELLs with ESOL instruction in English (to develop sufficient skills in listening, speaking, reading, and writing which enable the student to become proficient in English);
- Provide ELLs with ESOL instruction or home language instruction in reading, mathematics, science, social studies, and computer literacy;
- Maintain a student plan for each ELL;
- Provide qualified teachers;

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<sup>57</sup> *Id.*

<sup>58</sup> Section 1002.37, F.S.

<sup>59</sup> Section 1002.45, F.S.

<sup>60</sup> "English language learner" (ELL) means "Limited English proficient" (LEP) student. Rule 6A-6.0901(1), F.A.C. "Limited English Proficiency" is used by the U.S. Department of Education to refer to ELLs who lack sufficient mastery of English to meet standards and excel in an English-language classroom. Increasingly, ELL is used to describe this population because it highlights learning, rather than suggesting that non-native-English-speaking students are deficient." National Council of Teachers of English, *English Language Learners: A Policy Research Brief*, at 2 (2008), available at <http://www.ncte.org/library/NCTEFiles/Resources/PolicyResearch/ELLResearchBrief.pdf>.

<sup>61</sup> See rule 6A-6.0904, F.A.C. and s. 1003.56, F.S.

<sup>62</sup> Section 1003.56(2)(a), F.S.

<sup>63</sup> Florida Department of Education, Education Information and Accountability Services Data Report, *English Language Learners*, at 4 (July 2010), available at <http://www.fldoe.org/eias/eiaspubs/pdf/ell0910.pdf>.

<sup>64</sup> *Id.* at 3 and 4.

- Provide equal access to other programs for eligible ELLs based on need; and
- Provide for parental involvement in ESOL programs.<sup>65</sup>

A school district is eligible to report full-time equivalent student membership in the ESOL program in the FEFP if the school district has a plan approved by DOE and the eligible student is identified as limited English proficient.<sup>66</sup>

*Effect of Proposed Changes*

The bill makes full-time virtual instruction programs subject to the same requirements applicable to school districts regarding ELL students. In doing so, full-time virtual instruction programs are eligible to report full-time equivalent student membership in the ESOL program in the FEFP, if the full-time virtual instruction program meets the same conditions applicable to school districts.

**B. SECTION DIRECTORY:**

**Section 1.** Amending s. 1002.20, F.S., relating to K-12 student and parental rights, authorizing FLVS FT students to participate in interscholastic extracurricular activities.

**Section 2.** Amending s. 1002.321, F.S., relating to digital learning, revising definition of blended learning courses, and prohibiting any individual from taking an online course or examination on behalf of someone else.

**Section 3.** Amending s. 1002.37, F.S., relating to the Florida Virtual School, requiring school districts to provide access to school testing facilities for FLVS students, revising student eligibility criteria for full-time instruction in grades 2 through 5; repealing a requirement that each elementary principal to notify certain students of the ability to take accelerated courses through FLVS, and expanding part-time instruction to kindergarten through grade 5.

**Section 4.** Amending s. 1002.45, F.S., relating to virtual instruction programs, clarifying calculation of the sparsity supplement, revising open enrollment period, expanding part-time virtual instruction, and revising provider requirements.

**Section 5.** Amending s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction, revising eligibility requirements for district full-time programs and specified school district courses.

**Section 6.** Amending s. 1003.428, F.S., relating to general requirements for high school graduation, clarifying applicability of online course requirement for high school graduation.

**Section 7.** Amending s. 1003.498, F.S., relating to school district virtual course offerings, defining blended learning courses offered by school districts.

**Section 8.** Amending s. 1003.57, F.S., relating to exceptional students instruction, requiring full-time virtual instruction programs to provide exceptional education services for specified students.

**Section 9.** Amending s. 1006.15, F.S., relating to student standards for participation in interscholastic and intrascholastic extracurricular student activities, authoring FLVS FT students to participate in interscholastic extracurricular activities if certain conditions are met.

**Section 10.** Amending s. 1011.61, F.S., relating to definitions, authorizing full-time virtual instruction programs to receive funding for exceptional student education services.

**Section 11.** Amending s. 1011.62, F.S., relating to funds for operation of schools, authorizing full-time virtual instruction programs to receive funding for providing an ESOL program.

<sup>65</sup> Section 1003.56 (3)(a)-(h), F.S.

<sup>66</sup> Section 1011.62(10)(g), F.S.

**Section 12.** Provides an effective date of July 1, 2012.

## 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:

None.

### D. FISCAL COMMENTS:

The 2012-13 forecast estimates 1,266 or 67% of the 1,899 new kindergarten virtual Full Time Equivalent (FTE) will be from home or private schools. Another 5% of the students will be from other public schools and the remaining 28% will be new to the system.

The latest National Center for Education Statistics indicates 7.6% of home schooled children are in kindergarten.<sup>67</sup>

In 2010-11, there were 69,349 home schooled students in Florida. Of those students, using the national average of 7.6% of home schooled students are in kindergarten, it was estimated 5,265 Florida home schooled students were in kindergarten. The forecasted 1,266 students would be 2% of the 69,281 home schooled students expected in 2012-13.<sup>68</sup>

Based on the above estimates, a similar estimate could be expected for each additional grade level (grades 2 through 5). With current year funding of approximately \$6,200 per student, a conservative estimate of 1,300 students, in each grade group, coming into the school system estimates to be \$8m per grade.

For fiscal year 2012-13, the addition of grades 2, 3, 4, and 5 has an estimated fiscal of \$32.2m additional student funding for the Florida Education Finance Program.

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<sup>67</sup>National Center for Education Statistics, *Digest of Education Statistics*, available at [http://nces.ed.gov/programs/digest/d10/tables/dt10\\_040.asp](http://nces.ed.gov/programs/digest/d10/tables/dt10_040.asp) (last visited January 19, 2012).

<sup>68</sup> Florida Department of Education, *Home Education Fast Facts and Program Statistics*, available at [http://www.floridaschoolchoice.org/pdf/Home\\_Ed\\_Fast\\_Facts.pdf](http://www.floridaschoolchoice.org/pdf/Home_Ed_Fast_Facts.pdf).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2012, the K-20 Innovation Subcommittee adopted one amendment. The amendment revised outdated terminology by changing the term "handicapped student" to a "student with a disability."