

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5101 PCB PKA 22-01 Education
SPONSOR(S): 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		Bailey	Pridgeon

SUMMARY ANALYSIS

The bill conforms applicable statutes to the appropriations provided in PCB APC 22-01 the Proposed General Appropriations Act for Fiscal Year 2022-2023 for prekindergarten through grade 12 education. 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 by:
 - Requiring the use of a standard virtual charter school contract and renewal contract; and
 - Requiring virtual charter schools to comply with the applicable requirements of s. 1002.31, F.S., and the enrollment requirements of s. 1002.45(1)(e)4., F.S.
- Modifies the requirements for virtual instruction programs by:
 - Requiring all programs to operate under its own Master School Identification Number as prescribed by the Department of Education.
 - Requiring the annual audit completed by an approved virtual instruction program provider to be performed by an independent auditor licensed under chapter 473, F.S., and requiring the audit report to be provided to the State Board of Education and Auditor General.
 - Requiring a contract with an approved virtual instruction program provider to include additional components to include submitting a monthly financial statement summary sheet and providing certain student academic achievement data.
 - 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 throughout the state.
- 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 and clarifies when the scholarship payment adjustments are made to the eligible nonprofit scholarship funding organizations.
- Deletes the Digital Classroom Allocation in the FEFP.

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: h5101a.APC

DATE: 2/7/2022

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.¹ 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.²

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.³

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

¹ Section 1002.45(1)(c), F.S.

² Section 1002.45, F.S.

³ 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)
TOTAL	59,802.05	112,847.50	53,045.45	102,956.89	(9,890.61)

* 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:⁴

- 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.

Comparison of Out-of-District Virtual FTE Students*					
	2019-20 Final FEFP	2020-21 Final FEFP	1-Year Increase	2021-20 3rd Calc FEFP	1-Year Increase
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
Total FTE	20,385.35	58,327.58	37,942.23	52,588.29	(5,739.29)
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.⁵

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

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.⁸ The school grade or school improvement rating received by each approved virtual

⁴ Section 1002.455, F.S.

⁵ Section 1002.45(1)(a), F.S.

⁶ Section 1002.45(2), F.S.

⁷ *Id.*

⁸ 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.⁹

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.¹⁰

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.¹¹

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.¹²
- 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 categoricalals 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.¹³ 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.¹⁴ 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.¹⁵

A virtual FTE student is funded the same as a traditional FTE student in the FEFP; the base FEFP amount¹⁶ and all applicable categoricalals, 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 categoricalals and the FLVS is funded with state FEFP funds only.¹⁷

Each school district must:¹⁸

- Provide to the DOE by October 1st 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

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 1011.62, F.S.

¹² Section 1011.62(1)(s), F.S.

¹³ Section 1002.45(7), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 1011.62(1)(s), F.S.

¹⁷ Section 1002.37(3), F.S.

¹⁸ 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.

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 Family Empowerment Scholarship (FES) Program,¹⁹ 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 Florida Tax Credit Scholarship (FTC) Program,²⁰ a tax-credit scholarship program for families with limited financial resources; administered by an eligible nonprofit SFO; and funded with tax credit revenues.

¹⁹ Section 1002.394, F.S., and Rule 6A-6.0952, F.A.C.

²⁰ Section 1002.395, F.S., and Rule 6A-6.0960, F.A.C.

- 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.²¹
- The John M. McKay Scholarship for Students with Disabilities Program,²² 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.²³ 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.²⁴ 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
- 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.²⁵

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.²⁶ 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.²⁷

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.

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

²¹ Section 1002.40, F.S., and Rule 6A-60951, F.A.C.

²² 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.

²³ Section 1002.394(12), F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See ss. 1002.394(6), 1002.395(4), and 1002.40(4), F.S.

²⁷ Section 1002.394(11), F.S.

programs and sets standards for curriculum and other support services.²⁸ 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.²⁹ For the 2021-2022 school year, there is a total of 3,700.75 FTE students enrolled in a juvenile justice education program.³⁰

Funding for students enrolled in a juvenile justice education program is provided through the FEFP and must include, at a minimum:³¹

- Unweighted FTE x Program Cost Factor x Base Student Allocation x DCD (base FEFP funding) +
- DJJ Allocation Categorical +
- 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.³² 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.³³ Program costs factors are determined by the Legislature and represent relative cost differences among the FEFP education programs.³⁴

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.³⁵

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

²⁸ Section 1003.52(3), F.S.

²⁹ Section 1003.52(3), F.S.

³⁰ Fiscal Year 2021-2022 Florida Education Finance Program (FEFP), Third Calculation.

³¹ Section 1003.52(13)(a), F.S.

³² Section 1011.62, F.S.

³³ Section 1011.62(1)(s), F.S.

³⁴ Section 1011.62(1)(c), F.S.

³⁵ Chapter 2020-111, Laws of Florida.

- Digital Classroom Allocation – provides supplemental funds to school districts to assist with the integration of technology into classroom teaching and learning.³⁶
- 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.³⁷

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:

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.

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.

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.

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. 1002.45, 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 8. 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 9. Amends s. 1003.498, F.S., conforming provisions to changes made by the act.

³⁶ Section 1011.62(10), F.S.

³⁷ Section 1011.62(17), F.S.

Section 10. 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 11. Amends s. 1006.12, F.S., conforming provisions to changes made by the act.

Section 12. 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 13. 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 14. Amends s. 1011.71, F.S., conforming provisions to changes made by the act.

Section 15. Amends s. 1012.22, F.S., conforming provisions to changes made by the act.

Section 16. Amends s. 1012.584, F.S., conforming provisions to changes made by the act.

Section 17. 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:

D. FISCAL COMMENTS:

The bill conforms applicable statutes to the appropriations provided in PCB APC 22-01 the Proposed 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

Not applicable.