

Department of Planning and Budget 2015 Fiscal Impact Statement

1. Bill Number: HB324

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Bell, Richard P.

3. Committee: Passed both houses

4. Title: Virginia Virtual School established.

5. Summary: The proposed legislation would establish the Virginia Virtual School (VVS), which will be open to any school-age person in the Commonwealth and provide an educational program meeting the Standards of Quality (SOQ) for grades kindergarten through 12, beginning with the 2017-2018 school year, through contracts with multidivision online providers. The bill also creates the Board of the VVS as a policy agency in the executive branch within the Education Secretariat for the purpose of governing the online educational programs and services offered to enrolled students. VVS would receive the average state Standards of Quality per pupil funding amount for each enrolled student. The bill contains an enactment clause setting the bill's effective date at July 1, 2016, and only if the bill is reenacted by the 2016 Session of the General Assembly.

6. Budget Amendment Necessary: None.

7. Fiscal Impact Estimates: Final. See Item 8.

8. Fiscal Implications: The total potential cost implications of this legislation are uncertain as a number of specific issues would need to be addressed. Since the bill's enactment clause delays the effective date to next biennium, following additional legislative approval, the bill will not have a fiscal impact in FY2016.

The bill would fund VVS with the average state share of the SOQ per pupil funding for each enrolled student. Since the number of students who will enroll in VVS cannot be known prior to the opening of the school, it cannot be determined if the cost of the multidivision online providers and operating the VVS will exceed the state per pupil funding that VVS will receive. If costs do exceed the revenues provided in this legislation, the state would likely be responsible for funding the difference. VVS will likely need to be provided start-up funding in FY2017 prior to the receipt of per pupil SOQ funding beginning in FY2018. Any amount cannot be determined at this time and would be in excess of the transferred SOQ amount.

The cost impact for this program for students currently enrolled in the public school system will depend on the individual students' localities of residence. The state will pay the average per pupil amount to VVS, but the amount paid to each locality varies depending on the locality's wealth and its composite index of ability to pay. If the majority of enrolled

students are from localities receiving state per pupil payments that are more than the average amount, the state would save money. However, if students from wealthier counties are the majority, the state will pay more to VVS than it would have paid to the localities of residence. The fiscal impact will depend on the residences of the enrolled students and may vary each fiscal year.

The provisions of the bill would require changes to the process the Department of Education (DOE) uses to determine the state costs of public education. The amount appropriated for the SOQ is based off local school divisions' ADM. Since the bill states that the students enrolled in VVS are not to be included in school divisions' ADM counts, the budget will need to contain a separate appropriation for VVS, similar to how funding is appropriated to the Virginia School for the Deaf and Blind (VSDB). DOE will need to forecast the enrollment numbers for VVS and apply an estimated per pupil funding amount to determine the required appropriation amount. Budget amendments will need to be made if actual enrollment numbers or the per pupil amount differ from the projections and increase or lower the cost of VVS.

The bill places an enrollment cap on VVS, stating that no more than two percent of any school division's enrolled students, based on the previous year's March 31 average daily membership, shall enroll in the school. Based on the projected FY2015 average daily membership (ADM), the total enrollment in VVS could be as high as approximately 25,000 students. The estimated FY2015 SOQ per pupil amount calculated from the enrolled budget passed by the 2015 General Assembly is \$4,047. Therefore, the total cost of VVS could reach as high as \$101.2 million annually.

It is not clear if the enrollment cap also applies to students not currently attending public schools. VVS is open to all school-age persons, and students may enroll in VVS if they complete the enrollment process through an approved multidivision online provider. The bill places the two percent enrollment cap on students enrolled in local school divisions. It is not clear if the intent is to place the cap on the applicable locality and thus would also apply to non-enrolled students, or if an unlimited number of students currently attending private school or home-based instruction may enroll directly in VVS. Private and home-schooled students enrolling in VVS will create a state fiscal impact since these students are not currently included in the cost of the Standards of Quality. There are approximately 30,000 home-schooled students in Virginia as well as approximately 120,000 private school students. It cannot be determined at this time how many of these students may enroll in VVS and whether these students would be subject to the enrollment cap, and what the cost to the Commonwealth might be.

Local school divisions will need to create processes to track previously enrolled students who move to VVS. Local school divisions may experience difficulties in identifying private or home-schooled students who are not currently in the division's enrollment records. In addition, since students enroll directly with one of the multidivision online providers, it is not clear how localities will interact with the enrollment process to determine if the cap has been met. The bill does not specify how students are to be selected to attend VVS if enrollments within a local school division exceed the division's two percent limit.

The Board of VVS is established as a policy board and given the authority to establish rules, policies and regulations for the governance of the school and for the multidivision online providers that will offer services to students enrolled in VVS. The Board is not specifically given the authority to hire staff or contract for services; but, given the workload involved in operating a virtual school, the Board may experience difficulties without support staff. For instance, VVS will process semi-monthly payments from the state. Without personnel, it is not clear how funding is to pass to VVS and then on to the contracted content providers. In addition, staff support would be needed to prepare, implement, and manage any contracts with private providers, as well as overseeing curriculum development, evaluating vendor performance or handling student and parent feedback. The bill directs that any costs or fees associated with the administration of VVS are to be borne proportionally by each of the schools online providers.

The Board of VVS does not possess the authority to evaluate the performance of multidivision online providers and prevent students from enrolling with failing providers. The bill allows students to enroll directly with any provider who meets the Board of Education's existing criteria. The Board's criteria focus on the providers' compatibility with the state's Standards of Learning and Standards of Accreditation and do not focus on student performance and achievement. The list of approved providers is presently used by local school divisions to contract for virtual programs; it is the responsibility of the divisions to monitor student achievement and cancel contracts if performance is not acceptable. The bill does not grant this authority to the Board of VVS and specifically requires the Board of Education and DOE to promote all providers equally.

Although it possessed a different mission than VVS, the Opportunity Educational Institution (OEI) was also envisioned as a standalone state school division that would receive state per pupil SOQ funding. The 2013 budget included substantial language specifying the flow of state and federal funding to OEI in order to ensure that the full funding amounts were available to the institution. Similar budget language may be needed to implement the VVS.

VVS is to provide appropriate special education for students with disabilities participating in the school. The student's local school division of residence is released from its obligations to the student. Since VVS will not have staff, it is not clear how VVS will ensure the provisions of the student's Individualized Education Program (IEP) are met or cover the administrative costs in ensuring the successful implementation of the IEP. DOE is to transfer to VVS all federal funds directly associated with any pupil served by the school. The bill does not specify how the per pupil funding amount is to be calculated. Any transferred funds would need to be spent on uses permitted under the federal grant and would require the US Department of Education to first classify VVS as a local education agency (LEA).

The bill is unclear where students enrolled in VVS will take the Standards of Learning (SOL) assessments. Since the students will not be enrolled in the school district of residence, there may be complications in determining suitable testing locations. Addressing this issue may result in additional costs. In addition, as VVS must be eligible for state accreditation under the bill, failure to achieve full accreditation could trigger state costs related to assisting VVS

to achieve accreditation. It is also not clear what type of diploma will be awarded through VVS.

The bill requires a member of the staff of DOE to serve as a consultant to the VVS Board pertaining to instruction, federal and state special education requirements, and school accreditation and to provide technical assistance to the Board in meeting specific instructional and school accreditation needs. Depending on the actual workload, it could require the need for additional positions at DOE. DOE would also have to administer the state per pupil payments to the VVS. The bill does not include provisions allowing DOE to be reimbursed for expenses related to VVS. The provisions regarding the consultant mirror the requirement for DOE to provide a consultant to the Board of Visitors of VSDB. It is assumed that the services provided by the DOE consultant will be similar to those that DOE currently provides to the VSDB Board. The provisions in the bill do not direct DOE to provide any staff work related to vendor contracts review and evaluations, special education instruction services or support for board meetings and reports. In addition, the bill does not authorize the Auditor of Public Accounts to audit the financial records of VVS.

The bill directs that members of the VVS Board shall receive compensation for their service and expenses as set out in the Code of Virginia. The costs of this would be dependent on the number and location of meetings. Any amounts that are paid to board members would need to be appropriated to VVS in the Appropriation Act and cannot be determined at this time.

9. Specific Agency or Political Subdivisions Affected: Department of Education, local school divisions, Board of Education, Virginia Virtual School

10. Technical Amendment Necessary: None.

11. Other Comments: The VVS is exempt from the Public Procurement Act under this legislation, and exemption which is not typically provided to executive branch agencies.

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