

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 230

SPONSOR: Commerce and Economic Opportunities Committee, Governmental Oversight and Productivity Committee, and Senator Webster

SUBJECT: Department of Labor and Employment Security

DATE: April 14, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 230 (committee substitute) reorganizes the Department of Labor and Employment Security and requires it to operate in a decentralized fashion. The committee substitute requires the secretary to appoint three assistant secretaries with specified jurisdictional areas. Additionally, three special offices are created within the department to house the General Counsel, Inspector General, and the Executive Staff Director. The department is decentralized by the creation of five field offices. The jurisdiction of the Division of Safety is limited to public sector employers. Further, statutory authority for the Division of Safety is repealed July 1, 2000. The department is required to conduct a study related to the Division of Safety. The brain and spinal cord injury program and Office of Disability Determinations are transferred to the Department of Health by a type two transfer. The committee substitute provides that all actions required by the reorganization are to be accomplished within available appropriations and existing resources of the department. Finally, the committee substitute creates the Occupational Access and Opportunity Commission to develop the federally required vocational rehabilitation plan, contract with an administrative entity that will support the commission's work, and receive federal funds as the state's vocational rehabilitation agency.

The committee substitute amends sections 20.171, 110.205, 393.11, 400.805, 410.0245, 413.465, 413.48, 413.49, 413.507, 413.604, 413.605, 413.613, 442.006, 442.008, 442.013, 442.019, 627.212, and 627.311; creates section 443.012; and provides for the future repeal of chapter 442, Florida Statutes. The committee substitute also creates yet numbered sections of the Florida Statutes.

II. Present Situation:

Department Organizational Structure in Florida

Article IV, s. 6 of the State Constitution, outlines requirements for state agencies. First, it limits all functions of the executive branch of state government to not more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. Additionally, the provision requires the administration of each department, unless otherwise provided in the State Constitution, to be placed by law under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor. The State Constitution authorizes, but does not require, either confirmation by the Senate or approval of three cabinet members for the appointment or removal of an appointee to a designated statutory office. Section 20.05(2), F.S. (1998 Supp.), however, requires that each secretary appointed as an agency head by the Governor must be confirmed by the Senate.¹

In addition to the constitutional requirement for agency heads, ch. 20, F.S., outlines requirements for the organizational structure of departments. Section 20.02(1), F.S., reiterating Article II, s. 3 of the State Constitution,² notes the division of governmental powers among the three branches of state government and states:

The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

Section 20.02(3), F.S., provides that structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs. Additionally, this section requires that:

- ▶ The responsibility of implementing programs within the executive branch must be clearly fixed and ascertainable.
- ▶ Departments must be organized along functional or program lines.
- ▶ Management and coordination of state services must be improved and that overlapping activities must be eliminated.

¹If the Governor assigns the Lt. Governor as the head of any one department, no Senate confirmation is required.

²Article II, s. 3 of the State Constitution states: The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

- ▶ When a reorganization abolishes positions, the individuals affected, when otherwise qualified, must be given priority consideration for any new positions created by reorganization or other vacant positions in state government.

Section 20.04, F.S., contains an outline of the structure of the executive branch of state government. Under the requirements of this section, the department is the principal administrative unit of the executive branch. Except for five specifically-named departments,³ all departments are required to adhere to the following standard terms:

1. The principal unit of the department is the “division.” Each division is headed by a “director.”
2. The principal unit of the division is the “bureau.” Each bureau is headed by a “chief.”
3. The principal unit of the bureau is the “section.” Each section is headed by an administrator.

If further subdivision is necessary, sections may be divided into “subsections,” which are headed by “supervisors.”

Unless specifically authorized by law, the head of a department may not reallocate duties and functions specifically assigned by law to a specific unit of a department.⁴ Those functions or agencies assigned generally to the department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the head of the department. Additionally, s. 20.04(2), F.S., permits departments to establish field offices that combine division, bureau, section, and subsection functions.

Section 20.05, F.S. (1998 Supp.), establishes duties of an agency head. Except as otherwise provided by law, each agency head must:

- ▶ Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department;
- ▶ Have authority to delegate the execution of his or her powers;
- ▶ Compile annually a comprehensive program budget that reports all program and fiscal matters related to the operation of his or her department;
- ▶ Reimburse the members of advisory bodies, commissions, and boards of trustees for their actual and necessary expenses incurred in the performance of their duties;
- ▶ Exercise existing authority to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department, pursuant to the Administrative Procedure Act;

³The exempt departments are: Children and Family Services, Corrections, Management Services, Revenue, and Transportation.

⁴Section 20.04(7)(a), F.S.

- ▶ Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department;
- ▶ Employ an executive director to serve at its pleasure, if the agency is under the direct supervision of a board; and
- ▶ Make recommendations concerning more effective internal structuring of the department to the Legislature. Unless otherwise provided by law, these recommendations must be provided to the Legislature at least 30 days before the first day of the regular session at which they are to be considered, when practicable.

Section 20.05(4), F.S. (1998 Supp.), also permits an agency head to require any officer or employee of the department to give a bond for the faithful performance of his or her duties. The head of a department may determine the amount of the bond and must approve the bond. In determining the amount of the bond, the agency head may consider the amount of money or property likely to be in custody of the officer or employee at any one time. The premiums for the bonds must be paid out of the funds of the department.

Organizational Structure of the Department of Labor and Employment Security

Chapter 78-201, L.O.F., removed the Divisions of Labor and Employment Security from the Department of Commerce and created a new department. The Department⁵ of Labor and Employment Security (the “department”) is created in s. 20.171, F.S. (1998 Supp.).

The head of the department is a secretary appointed by the Governor, subject to confirmation by the Senate. The Office of the Secretary houses and oversees the following offices: (a) Budget & Finance; (b) Information Management Center; (c) Governmental Affairs; (d) Civil Rights; (e) Inspector General; (f) Minority Business Advocacy and Assistance Office; (g) Communications; and (h) General Counsel.

The department consists of six programmatic divisions that address employment-related issues and one administrative support division:

⁵Section 20.03(2), F.S., defines the term “department” to mean “. . . the principal administrative unit within the executive branch of state government.”

DIVISION	DUTIES
<p>Division of Administrative Services</p>	<p>The Division of Administrative Services provides support services through four functional units: (a) Human Resource Management; (b) Administrative Support; (c) Management Information Systems; and (d) the Office of Training and Development. Support services include purchasing, leasing, facilities, storage and distribution of property, printing, mail processing and delivery, training and professional development, and personnel activities.</p>
<p>Division of Blind Services</p>	<p>The Division of Blind Services provides rehabilitation, job placement, and follow-up services designed to find employment for Florida’s blind residents. <i>Authority: Part I of ch. 413, F.S., and ch. 38K, F.A.C.</i></p>
<p>Division of Jobs and Benefits</p>	<p>The Division of Jobs and Benefits focuses on helping workers find jobs and assisting employers with recruitment of qualified applicants. The division administers a number of programs, including the following: Job Training Partnership Act; Apprenticeship; Child Labor; Labor Market Information; Professional Placement Network; WAGES/WORKPay\$; and School-to-Work. <i>Authority: Sections 446.0011-446.092, 446.20-446.27, 446.40-446.44, 406.603, and ch. 450, F.S., and ch. 38H, F.A.C.</i></p>
<p>Division of Safety</p>	<p>The Division of Safety performs worksite inspections, and educates employers, employees, and the public about workplace safety issues. <i>Authority: Section 20.171, and chs. 440 and 442, F.S., and ch. 381, F.A.C.</i></p>
<p>Division of Unemployment Compensation</p>	<p>The Division of Unemployment Compensation administers the federally-mandated insurance program that pays wage-replacement benefits to unemployed workers. <i>Authority: Ch. 443, F.S., and ch. 38B, F.A.C.</i></p>

DIVISION	DUTIES
<p>Division of Vocational Rehabilitation</p>	<p>The Division of Vocational Rehabilitation assists persons with physical or mental impairment gain employment. <i>Authority: Part II of ch. 413, F.S., and ch. 38J, F.A.C.</i></p> <p>The Office of Disability Determinations is also housed in the division. This is a federally funded program which is responsible for determining medical eligibility for Social Service Disability Insurance and Supplemental Security Income Benefits. The office also makes appropriate referrals to the Division of Vocational Rehabilitation and programs within the Department of Health to assist the claimant in obtaining the necessary health care and to regain economic employment security.</p>
<p>Division of Workers' Compensation</p>	<p>The Division of Workers' Compensation assists in the delivery of benefit payments and provides rehabilitative and support services to injured workers to facilitate their reemployment. <i>Authority: Ch. 440, F.S., and ch. 38F, F.A.C.</i></p>

Additionally, four independent entities have been created within the department:

Independent Entities	Duties
<p>Office of the Judges of Compensation Claims</p>	<p>This office consists of 31 judges appointed by the Governor to adjudicate disputed facts and resolve disputed issues regarding workers' compensation claims. Specific functions include scheduling and conducting of pre-trial, motion and final hearings, maintaining records of court proceeding, reviewing and recommending rules procedures, reviewing all evidence presented regarding disputed workers compensation cases, determining the facts, and rendering decisions issuing orders.</p>
<p>Public Employees Relations Commission</p>	<p>PERC is responsible for enforcement of constitutional and statutory provisions giving public employees rights in bargaining with their employer. <i>Authority: Section 447.205, F.S., and ch. 38D, F.A.C.</i></p>

Unemployment Appeals Commission	The UAC is responsible for deciding contested appeals for Unemployment Compensation. <i>Authority: Section 443.171, F.S., and ch. 38E, F.A.C.</i>
Workers' Compensation Oversight Board	The board formulates proposed workers' compensation and holds hearings. <i>Authority: Section 440.4416, F.S.</i>

The department has approximately 7,000 employees:

UNIT	FTEs
Office of the Secretary	7.00
Office of Governmental Affairs & Communications	13.00
Office of Inspector General	23.00
Office of Legal Affairs	27.00
Office of Civil Rights	12.50
Office of Budget & Financial Services	66.00
Minority Business Advocacy & Assistance Office	21.00
Administrative Services	166.50
Information Management Center	135.00
Division of Blind Services	310.00
Office of Disability Determinations	907.00
Division of Jobs & Benefits	2,768.00
Division of Safety	144.00
Division of Unemployment Compensation	768.00
Division of Vocational Rehabilitation	1,143.00
Division of Workers' Compensation	642.00
Workers' Compensation Oversight Board	2.50
Office of Judges of Compensation Claims	179.00
Public Employees Relations Commission	40.00
Unemployment Appeals Commission	37.00
TOTAL	7,412.00
Minus (WAGES FTE Reductions 10/1/98)	- 756.00
TOTAL Department FTEs	6,656.00

The department’s FY 1998-99 budget is as follows:

FY 98-99 DLES BUDGET

	Amount	Percent
GENERAL REVENUE	\$ 41,735,765	1.59%
TRUST FUNDS: State	\$ 271,590,251	10.34%
Federal	\$2,312,523,192	88.07%
TOTAL BUDGET	\$2,625,849,208	100.00%

Reorganization of the Division of Safety

In 1998, the Governor vetoed CS/SB 1626 relating to Occupational Safety and Health. This legislation eliminated various duties and powers prescribed to the Department of Labor and Employment Security’s Division of Safety, including: mandated employee health and safety programs for employers with a high frequency or severity of work related injuries and penalties for failure to implement such programs; division authority to enter and inspect private employers; and private sector employer penalties for refusal to admit for inspection.

The 1998 legislation additionally authorized the division to provide safety consultations to employers who are insured pursuant to the joint underwriting plan approved by the Department of Insurance.

III. Effect of Proposed Changes:

The committee substitute decentralizes the operations of the Department of Labor and Employment Security.

The committee substitute requires the secretary of the department to appoint three assistant secretaries. The three assistant secretaries required to be appointed by the committee substitute are the: (a) Assistant Secretary for Finance and Administration; (b) Assistant Secretary for Programs; and (c) Assistant Secretary for Field Operations. The committee substitute assigns each assistant secretary a particular jurisdictional area, but also provides that the secretary may assign any assistant secretary the responsibility to supervise, coordinate, or formulate policy for any division, office, or field office.

Additionally, the committee substitute requires the establishment of three special offices within the department which will be headed by “managers” appointed by the secretary. These offices are the: (a) Office of the General Counsel; (b) Office of the Inspector General; and (c) Office of the Executive Staff Director.

Five field offices are created to effectuate the decentralization of departmental operations. The field offices are located in: (a) Pensacola; (b) Jacksonville; (c) Orlando; (d) Ft. Lauderdale; and (e) Miami. These field offices, headed by “managers” under an Assistant Secretary for Field

Operations, will administer and manage workers' compensation, jobs and benefits, and unemployment compensation.

The managers of all divisions and offices created by the committee substitute, as well as the heads of the five field offices, are exempt from the career service system⁶ and are included in the Senior Management Service.⁷ Additionally, the committee substitute specifically prohibits the creation of any other assistant secretaries or senior management positions at or above the division level, except those established in ch. 110, F.S., without specific legislative authority.

Assistant Secretary for Finance and Administration - The committee substitute makes the Assistant Secretary for Finance and Administration responsible for two broad areas. First, the Assistant Secretary for Finance and Administration is responsible for developing, monitoring, and enforcing policy. Second, the Assistant Secretary for Finance and Administration is responsible for managing major technical programs. The assigned duties of the Assistant Secretary for Finance and Administration include: (a) financial planning and management; (b) information systems; (c) accounting systems; and (d) administrative functions.

Prior to December 1, 1999, the Assistant Secretary for Finance and Administration must:

- a. Document the internal controls the department relies on for accurate and complete financial information.
- b. Reconcile the department's accounting, planning and budgeting, cash forecasting, and grants-in-aid program on a monthly basis.
- c. Develop a long-range information system plan which addresses the computing and informational requirements of the five field and special offices. The plan must identify and quantify financial, personnel, and technical resources, as appropriate.

The skills required of the Assistant Secretary of Finance and Administration are delineated in statute. Specifically, he or she is required to possess a broad knowledge of the administrative, financial, and technical aspects of a complete cost-accounting system, budget preparation and management, and management information systems. Additionally, the Assistant Secretary for Finance and Administration must be a “. . . proven, effective manager with specialized skills in financial planning and management.”

The committee substitute creates five offices that must be headed by managers. These offices are the: (a) Office of Administration; (b) Office of Comptroller; (c) Office of Management and Budget; (d) Office of Civil Rights; and (e) Office of Information Systems.

The secretary is required to appoint a Certified Public Accountant as comptroller and chief financial officer reporting to the Assistant Secretary of Finance and Administration. The committee substitute specifies the requirements the comptroller must meet in order to be appointed by the secretary. The comptroller must be a proven, effective administrator who by combination of education and experience clearly possesses a broad knowledge of the

⁶Part II of ch. 110, F.S.

⁷Section 110.205(2)(I), F.S.

administrative, financial, and technical aspects of a complex cost-accounting system. The comptroller also must have a working knowledge of generally accepted accounting principles. At a minimum, he or she must hold an active license to practice public accounting in Florida pursuant to ch. 473, F.S., or an active license to practice accounting in another state. A bond is authorized, but not required.

The comptroller is required to supervise and direct the preparation of a detailed 36-month forecast of cash and expenditures and will be responsible for managing and determining cash requirements. The comptroller is also required to review all comparative cost studies which examine the cost-effectiveness and feasibility of contracting for services and operations performed by the department.

The Assistant Secretary for Programs

Like the Assistant Secretary of Finance and Administration, the Assistant Secretary for Programs is responsible for developing, monitoring, and enforcing policy, as well as responsible for managing major technical programs. The Assistant Secretary for Programs is required by the committee substitute to possess a broad knowledge of the administrative, financial, and technical aspects of the divisions within the department.

The responsibilities and duties of this office include, but are not limited to: (a) workers' compensation management and policy; (b) jobs and benefits management and policy; (c) unemployment compensation management and policy; and (d) blind services management and policy. The committee substitute establishes each of these areas as divisions of the department and provides that each of these divisions will be headed by "division directors."

The Assistant Secretary for Field Operations

Like the other two assistant secretaries of the department, the Assistant Secretary for Field Operations is responsible for developing, monitoring, and enforcing policy and managing major technical programs. The Assistant Secretary for Field Operations is also required to possess a broad knowledge of the administrative, financial, and technical aspects of the divisions within the department.

The Assistant Secretary for Field Operations' responsibilities include, but are not limited to: (a) oversight of the five field offices; (b) workers' compensation policy implementation; (c) jobs and benefits policy implementation; and (d) unemployment compensation policy implementation.

The committee substitute establishes five field offices:

FIELD OFFICE AND LOCATION	COUNTIES SERVED
Field Office I - Pensacola	Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Liberty, Franklin, Wakulla, Leon, Gadsden, Jefferson, Madison, Lafayette, Suwannee, Hamilton, Dixie, Gilchrist, Columbia, and Union.
Field Office II - Jacksonville	Baker, Bradford, Clay, St. Johns, Duval, Nassau, Alachua, Putnam, Marion, Citrus, Levy, Flagler, Volusia, and Brevard.
Field Office III - Orlando	Lake, Seminole, Orange, Sumter, Sarasota, Hardee, DeSoto, Highlands, Osceola, Polk, Hernando, Pasco, Pinellas, Manatee, and Hillsborough.
Field Office IV - Ft. Lauderdale	Broward, Palm Beach, Martin, St. Lucie, Indian River, Glades, Hendry, Collier, Okeechobee, Charlotte, and Lee.
Field Office V - Miami	Dade and Monroe.

Additionally, the committee substitute provides for the following divisions:

- The Division of Workforce and Employment Opportunities;
- The Division of Unemployment Compensation;
- The Division of Workers' Compensation;
- The Division of Blind Services;
- The Division of Safety (which is repealed on July 1, 2000); and
- The Division of Vocational Rehabilitation.

The committee substitute also restricts the jurisdiction of the Division of Safety to public sector employees. Chapter 442, F.S., which provides regulatory authority for the Division of Safety is repealed July 1, 2000. The department is required to conduct a study with specified areas of study and to report to the Governor and Legislature.

The Division of Vocational Rehabilitation is required to enter into local public/private partnerships to the extent that it is beneficial to increasing employment outcomes for persons with disabilities and ensuring their full involvement in the comprehensive workforce investment system.

The statutory provision creating the Unemployment Appeals Commission in ch. 20, F.S., is repealed in that chapter and recreated in s. 443.012, F.S.

The committee substitute provides a type two transfer of the brain and spinal cord injury program and the Office of Disability Determinations to the Department of Health.

The committee substitute creates a 15-member Occupational Access and Opportunity Commission. The commission is authorized to develop the federally required vocational rehabilitation plan, contract with an administrative entity that will support the commission's work, and receive federal funds as the state's vocational rehabilitation agency. The commission must develop the required vocational rehabilitation plan and contract with an administrative entity, which may be a direct-support organization, by July 1, 2000. If the commission does not contract for administrative services with the Division of Vocational Rehabilitation, the committee substitute provides for the transfer of division duties, functions, equipment, property, and funds to the commission. Before the 2002 Regular Session of the Legislature, the Office of Program Policy Analysis and Government Accountability must conduct a review of the commission and its designated administrative entity.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increased local public/private partnerships may increase employment outcomes for persons with disabilities, as well as increase the level of privatization of services to the disabled.

C. Government Sector Impact:

This committee substitute requires that all actions required by this act must be accomplished within available appropriations of the Department of Labor and Employment Security.

This committee substitute provides for a number of changes to the organizational structure of the department, including elimination of department functions, and the transfer of department

divisions and programs to other entities. The department would incur a fiscal impact relating to these changes, but the specific impact of these changes is indeterminate at this time.

VI. Technical Deficiencies:

Page 6, lines 9-11 of the committee substitute creates the Office of Management and Budget within the “central office,” yet does not provide for the creation of such central office.

Instead of authorizing the secretary to designate duties, page 8, lines 19-20 of the committee substitute provides that the department may designate duties to the comptroller.

VII. Related Issues:

The committee substitute creates another exception to the organizational structure of state agencies that is provided for in s. 20.04, F.S. Under that section, each state department is organized so that the principal unit is a “division” headed by a “division director.” The principal unit of each division is a “bureau” which is headed by a “bureau chief.” The principal unit of each bureau is a “section” which is headed by an “administrator.” If further divisions are necessary, sections may be divided into “subsections” which are headed by “supervisors.” Exceptions to this organizational structure and terminology, however, exist. Under s. 20.04, F.S., the Department of Children and Family Services is created with organizational units called “offices” which are headed by assistant secretaries. Additionally, the principal policy and program development units of the Department of Corrections are called “offices” and each office is headed by a director. Within the Department of Transportation, the principal unit of the department is the “office.” Each office is headed by a “director.”

According to the department, the assignment of policy-making to one assistant secretary and of policy-implementation to another assistant secretary may result in some accountability problems. In addition to this separation of policy-making and policy-implementation in the committee substitute, however, are provisions that assign *each* assistant secretary the responsibility for developing, monitoring, and implementing policy, as well as another provision that permits the secretary to assign any assistant secretary duties that would fall under these categories. Nevertheless, provisions which ensure coordination of policy-making and policy-implementation may be helpful to ensure uniformity and accountability.

VIII. Amendments:

None.