

# 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/SB 1206

SPONSOR: Commerce and Economic Opportunities Committee and Senator Kirkpatrick

SUBJECT: Labor and Employment Security

DATE: April 14, 2000                      REVISED: \_\_\_\_\_

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

## I. Summary:

This committee substitute provides for the dissolution of the Florida Department of Labor and Employment Security and the assumption of comparable workforce development, labor, and employment security functions by the Department of Insurance, the Department of Management Services, the Department of Education, the Department of Agricultural and Consumer Services, the Department of Revenue, and the Department of Business and Professional Regulation. Specifically, the committee substitute:

- Repeals statutory authority for the Department of Labor and Employment Security (DLES) (s. 20.171, F.S.) effective October 1, 2000.
- Transfers the Division of Workers' Compensation to the Department of Insurance, including the Office of the Judges of Compensation Claims.
- Transfers the Division of Unemployment Compensation, except for the appeals referees, to the Department of Revenue.
- Transfers the Unemployment Appeals Commission and the appeals referees to the Department of Management Services.
- Transfers the Public Employees Relations Commission (PERC) to the Department of Management Services.
- Transfers the Division of Blind Services to the Department of Management Services. Directs the Florida Rehabilitation Council on Blind Services to provide planning and policy oversight of the division and increases the emphasis on use of community-based rehabilitation programs for the delivery of services to individuals who are blind.

- Transfers the farm-labor functions of the Division of Workforce and Employment Opportunities to the Department of Agriculture and Consumer Services.
- Transfers the labor organization registration and child labor law functions of the Division of Workforce and Employment Opportunities to the Department of Business and Professional Regulation.
- Transfers the Division of Vocational Rehabilitation to the Department of Education. Provides for the Department of Education to serve as the designated state agency for receipt of federal vocational rehabilitation funds, until October 1, 2000, at which time the Occupational Access and Opportunity Commission shall assume such responsibility.
- Transfers the Minority Business Advocacy and Assistance Office to the Department of Management Services.
- Establishes a Florida Workplace Safety Task Force charged with developing innovative methods for the state to employ state or federal resources toward reduction of workplace injuries and a reduction in workers' compensation rates.
- Establishes a transition team composed of high-level officials from the affected departments and agencies.
- Authorizes a voluntary reduction-in-force payment to employees of DLES with 27 years of creditable service in the retirement system.
- Provides for hiring preferences for DLES employees dislocated as a result of the act, and requires the department to provide re-employment assistance. Authorizes the Governor to impose a hiring freeze, under which dislocated DLES employees may move into vacant positions.

The committee substitute amends the following sections of the Florida Statutes: 20.13, 20.15, 120.80, 287.09451, 413.011, 413.014, 413.034, 413.051, 413.064, 413.066, 413.067, 413.82, 413.83, 413.84, 413.85, 413.86, 413.87, 413.88, 413.89, 413.90, 413.91, 413.92, 440.02, 440.207, 440.385, 440.44, 440.4416, 440.45, 440.49, 443.012, 443.036, 443.151, 443.171, 443.211, 447.02, 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 447.203, 447.205, 447.208, 447.305, 447.307, 447.503, 447.504, 450.012, 450.061, 450.081, 450.095, 450.121, 450.132, 450.141, 450.191, 450.28, 450.30, 450.31, 450.33, 450.35, 450.36, 450.37 and 450.38. The committee substitute also amends s. 39, ch. 99-240, L.O.F.

The committee substitute repeals the following sections of the Florida Statutes: 20.171, 413.93, and 447.609

## II. Present Situation:

### Department Organizational Structure in Florida

Section 6, Art. IV of the Florida 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 constitution. Additionally, the provision requires the administration of each department, unless otherwise provided in the 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 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., however, requires that each secretary appointed as an agency head by the Governor be confirmed by the Senate.<sup>1</sup>

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 Section 3, Art. II of the State Constitution,<sup>2</sup> 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, s. 20.02, F.S., 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 overlapping activities must be eliminated.

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<sup>1</sup>If the Governor assigns the Lt. Governor as the head of any one department, no Senate confirmation is required. (s. 20.05(3), F.S.)

<sup>2</sup>Article II, s. 3 of the Florida 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.

### **Department of Labor and Employment Security**

Section 20.171, F.S., creates the Department of Labor and Employment Security (DLES). The department's programs are authorized by various state and federal laws and rules. The department's mission is to increase the ability of Floridians to lead independent lives and secure gainful employment and provide employers with skilled workers, thereby enabling Florida to compete successfully in the global economy<sup>3</sup>.

DLES receives most of its funding through trust funds supported by federal grants. The department's latest program profile by the Office of Program Policy Analysis and Government Accountability indicates that for the 1999-2000 fiscal year, the Legislature appropriated to the department \$43,738,167 from the General Revenue Fund; and \$2,630,796,725 from state trust funds; totaling \$2,674,534,892. Approximately \$1.6 billion of the \$2.6 billion of trust fund appropriations are earmarked as a reserve for payment of unemployment benefits claims<sup>4</sup>.

DLES consists of six program divisions and one administrative support division:

- Division of Workforce and Employment Opportunities;
- Division of Unemployment Compensation;
- Division of Workers' Compensation;
- Division of Blind Services;
- Division of Safety; and
- Division of Vocational Rehabilitation.

(s. 20.171(5), F.S.)

The Division of Workforce and Employment Opportunities focuses on assisting workers find jobs and employers with recruitment of qualified applicants. Although its authority is found largely in chs. 446 and 450, F.S., the division administers several federal programs, including, Job Training Partnership Act (JTPA); Workforce Investment Act (WIA), which, effective July 1, 2000, repeals JTPA; apprenticeship; child labor; labor market information; and school-to-work.

The Division of Unemployment Compensation administers the federal unemployment insurance program and must comply with the requirements of the federal Social Security Act, as amended; the Wagner-Peyser Act, as amended; the Federal Unemployment Tax Act; ch. 443, F.S., the Florida Unemployment Compensation Law; and rules promulgated in 38B, F.A.C. Employees

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<sup>3</sup>(See Program Profile, *Department of Labor and Employment Security*, Florida Legislature Office of Program Policy Analysis and Government Accountability, August 27, 1999, <http://www.opaga.state.fl.us/profiles/4108/right.asp?programnum=4108>, site visited April 9, 2000.)

<sup>4</sup>(See Program Profile, *Department of Labor and Employment Security*, Florida Legislature Office of Program Policy Analysis and Government Accountability, August 27, 1999.)

and employers may appeal the award or denial of unemployment compensation claims. (s. 443.151, F.S.) Appeals referees hear appealed or disputed claims. (s. 443.151(4), F.S.) Review from the decision of an appeals referee is conducted by the Unemployment Appeals Commission.

The Division of Workers' Compensation is governed by the Workers Compensation Law in ch. 440, F.S., and rules promulgated in ch. 38F, F.A.C. The division's mission is to ensure prompt, accurate benefit payments and appropriate, timely services to workers injured on the job to facilitate their gainful re-employment at a reasonable cost to employers<sup>5</sup>. The Office of Judges of Compensation Claims resolves workers' compensation disputes by determining the obligations of employers and insurance companies to injured workers, whether it be compensation payments, medical care, rehabilitation, or other injury-related expenses<sup>6</sup>. The office is composed of 17 district offices. The office's sole duty is to resolve disputed workers' compensation claims. Once a dispute reaches the judiciary level, it is guided through mediation. When mediation does not solve the problem, a compensation judge will hear the claim.

The Division of Blind Services is authorized by the federal Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990; part I of ch. 413, F.S.; and rules promulgated under ch. 38K, F.A.C. The division provides rehabilitation, job placement, and follow-up services designed to find employment for Florida's blind residents.<sup>7</sup> While vocational rehabilitation and independent living services are also provided by the Division of Vocational Rehabilitation, the Rehabilitation Act allows the state to provide these services to individuals who are blind through a separate state agency. (29 U.S.C. s. 725(2).)

The Division of Safety is governed by ch. 442, F.S., the Florida Occupational Safety and Health Act; ch. 38I, F.A.C.; and the federal Occupational Safety and Health Act of 1970. The division's mission is to reduce the incidence of employee accidents, occupational diseases, and fatalities compensable under Florida's workers' compensation law by implementing and maintaining policies, procedures, practices, rules, and standards which work toward accomplishing this purpose<sup>8</sup>.

The Division of Vocational Rehabilitation is governed by part II of ch. 413, F.S., and ch. 38J, F.A.C., and provides vocational and rehabilitative services to individuals with mental or physical

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<sup>5</sup>(See Program Profile, *Department of Labor and Employment Security: Workers' Compensation*, Florida Legislature Office of Program Policy Analysis and Government Accountability, September 24, 1999, <http://www.oppaga.state.fl.us/profiles/4068/>, site visited April 13, 2000.)

<sup>6</sup>(See Program Profile, *Department of Labor and Employment Security: Judges of Workers' Compensation Claims*, Florida Legislature Office of Program Policy Analysis and Government Accountability, April 16, 1999, [www.oppaga.state.fl.us/profiles/4116/](http://www.oppaga.state.fl.us/profiles/4116/), site visited April 13, 2000.)

<sup>7</sup>(See Program Profile, *Department of Labor and Employment Security: Blind Services*, Florida Legislature Office of Program Policy Analysis and Government Accountability, December 9, 1999, <http://www.oppaga.state.fl.us/profiles/4067/>, site visited April 13, 2000.)

<sup>8</sup>(See Program Profile, *Department of Labor and Employment Security: Safety*, Florida Legislature Office of Program Policy Analysis and Government Accountability, December 6, 1999, <http://www.oppaga.state.fl.us/profiles/4070/>, site visited April 13, 2000.)

disabilities to enable them to live and work as independently as possible.<sup>9</sup> The division is also responsible for ensuring state compliance with the federal Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

The Public Employees Relations Commission (PERC), the Unemployment Appeals Commission, and the Minority Business Advocacy and Assistance Office (MBAAO) are also administratively housed within the department.

- PERC, governed by s. 447.205, F.S., is responsible for enforcement of constitutional and statutory provisions giving public employees rights in bargaining with their employer. The commission is composed of a chair and two full-time members appointed by the Governor, subject to Senate confirmation. (s. 447.205, F.S.)
- The Unemployment Appeals Commission, authorized in s. 443.171, F.S., decides contested unemployment compensation claims. The commission consists of a chair and two other members, appointed by the Governor and subject to Senate confirmation. Decisions of the commission are appealable to the appropriate Florida District Court of Appeal.
- The MBAAO, established in s. 287.09451, F.S., is charged with recording the utilization of Certified Minority Business Enterprises; maintaining statistics on contract participation, agency goals and subcontract activity; and identifying the participation of Minority Business Enterprise (MBEs) by industry and minority status.

### **Reorganization of the Department of Labor and Employment Security**

In 1999, the Legislature passed CS/CS/SB 230, 2nd eng. (ch. 99-240, L.O.F.), which reorganized the Department of Labor and Employment Security to operate in a more decentralized fashion. The law required that two assistant secretaries be appointed by the secretary: (1) Assistant Secretary for Finance and Administration; and (2) Assistant Secretary for Programs and Operations. The Office of General Counsel and the Office of Inspector General were established as special offices and headed by managers. The law provided for six divisions, headed by division directors, which are under the Assistant Secretary for Programs and Operations: (1) Division of Workforce and Employment Opportunities; (2) Division of Unemployment Compensation; (3) Division of Workers' Compensation; (4) Division of Blind Services; (5) Division of Safety, which is repealed July 1, 2000; and (6) the Division of Vocational Rehabilitation.

Five field offices administer and manage DLES's programs. The field offices are located in: (1) Panama City; (2) Lake City; (3) Orlando; (4) Tampa; and (5) Miami. These field offices are responsible for the administration and management of any local offices within their jurisdiction. The law required that the functions and programs of these divisions were to be coordinated and integrated to the maximum extent feasible.

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<sup>9</sup>(See Program Profile, *Department of Labor and Employment Security: Vocational Rehabilitation*, Florida Legislature Office of Program Policy Analysis and Government Accountability, December 9, 1999, <http://www.oppaga.state.fl.us/profiles/4065/>, site visited April 13, 2000.)

CS/CS/SB 230 also limited the authority of the Division of Safety to public-sector places of employment and required DLES to report on a proposed re-authorization of the division based upon specific criteria.

The law required the Division of Vocational Rehabilitation to enter into local public-private partnerships to the extent that it is beneficial to increasing employment outcomes for persons with disabilities and to ensuring their full involvement in the comprehensive workforce investment system. The law also established the Occupational Access and Opportunity Commission within the Department of Education, which is responsible for developing and implementing a 5-year plan to promote occupational access and opportunities for Floridians with disabilities, and fulfilling the federal plan requirements. Effective July 1, 2000, the commission will be the designated state agency for purposes of compliance with the Rehabilitation Act.

Effective January 1, 2000, the brain and spinal cord injury program and the Office of Disability Determinations, administered by DLES, were transferred to the Department of Health. Additionally, the Division of Blind Services is to be transferred from the department to the Department of Education (DOE), effective January 1, 2001.

### **Other Agencies of State Government**

The Department of Insurance seeks to promote an insurance marketplace where consumers have access to a variety of insurance products with fair provisions at reasonable prices offered by insurance companies in sound financial condition, and where consumers receive prompt and equitable service; serve as the statewide entity to promote fire safety, assure that Florida citizens are protected by fire safety standards, and to investigate and facilitate the prosecution of the crime of arson; and maximize return on funds invested while balancing fiduciary responsibilities with appropriate liquidity requirements. The Florida Department of Insurance is headed by the state treasurer. The Treasurer is a constitutional officer of Florida, elected to a four-year term that runs concurrently with the Governor and other cabinet members. The Treasurer is also the state's Insurance Commissioner and Fire Marshal.

The mission of the Department of Revenue is to increase voluntary payment of taxes and child support; reduce the burden on those it serves; and to continually improve the way it does business. To accomplish its mission, the department has established three programs:

- the General Tax Administration Program, which involves the collection of 36 taxes, including sales tax, corporate income tax, intangible property tax, and fuel tax;
- the Property Tax Administration Program, which ensures that taxpayers are treated equitably by county property appraisers, tax collectors, and taxing authorities across the state and to ensure that state funds are distributed equitably among school districts; and
- the Child Support Enforcement Program, which assures custodians of the stable income necessary to raise children.

The Department of Management Services mission is to deliver best value quality services to state and local governments; to help these governmental entities deliver front line services to citizens;

and to provide essential tools for managers to manage effectively and employees to work efficiently. As a support agency that provides services to other state agencies, the department develops and supervises the procedures under which agencies purchase commodities; designs, constructs, operates and maintains state facilities; provides security services for state-owned property; operates motor vehicle and aircraft pools; acquires and disposes of surplus federal property; and directs planning, develops policies, and regulates acquisition of information technology resources. The department is also responsible for the design and implementation of the state's personnel management and retirement systems and the administration of employees benefit programs. The department represents the Governor as public employer in collective bargaining activities and provides administrative support, but does not set policy for the Division of Administrative Hearings, Correctional Privatization Commission, Smart Schools Clearinghouse, State Employee Leasing Program, and Florida Commission on Human Relations.

The mission of the Department of Agriculture and Consumer Services (DACS) is to safeguard the public and support Florida's agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs; protecting consumers from unfair and deceptive business practices and providing consumer information; assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands. The department's responsibilities include helping ensure a safe and abundant food supply; marketing Florida's agricultural commodities to the world; helping consumers resolve problems such as auto repair fraud and telemarketing complaints; inspecting scales, gasoline pumps, and other measuring devices to help ensure that consumers get their money's worth as well as to protect the safety of the public; and managing close to a million acres of public land and protecting both rural and suburban property from the threat of wildfire.

The mission of the Department of Business and Professional Regulation is to protect the public's health, safety, and welfare through the regulation of those professions or occupational groups and businesses prescribed in the Florida Statutes. Specifically, the department regulates alcoholic beverages and tobacco; hotels and restaurants; pari-mutuel wagering; Florida land sales, condominiums and mobile homes; and professional boxing and kickboxing in Florida.

The Department of Education's mission is to ensure that Florida has a state system of schools, courses, classes, institutions, and services that can adequately meet the educational needs of Florida's citizens. The constitution requires Florida's system of public education to be a uniform system of free public schools and establishes the Governor and the Cabinet as the State Board of Education. Florida law requires that public education be a state function and responsibility. The state has the responsibility for establishing minimum standards and regulations to assure that schools and institutions are efficiently operated and provide adequate educational opportunities for all students. The Commissioner of Education is the state's chief educational officer, the secretary and executive officer of the State Board of Education, and the head of the Department of Education. The department provides leadership, technical assistance, and support to the local educational entities and institutions comprising Florida's public education system. The state education system consists of publicly supported and controlled schools, institutions of higher

education, and other educational institutions and services as may be provided or authorized by the constitution and state laws.

### **III. Effect of Proposed Changes:**

The committee substitute provides for the dissolution of the Department of Labor and Employment Security (DLES) effective October 1, 2000, and the assumption of many of the department's functions by other units of state government. Following is a section-by-section analysis of the measure.

**Section 1.** Repeals s. 20.171, F.S., relating to the authority for and organizational structure of the Department of Labor and Employment Security.

**Section 2.** Provides for the Division of Workers' Compensation to be transferred from DLES to the Department of Insurance by a type two transfer as defined in s. 20.06(2), F.S. The committee substitute requires DLES to reduce non-service-delivery positions by 25 percent prior to the transfer.

**Section 3.** Amends s. 20.13, F.S., relating to the authority for and organizational structure of the Department of Insurance, to establish a Division of Workers' Compensation within the department.

**Section 4.** Provides for the Division of Unemployment Compensation to be transferred from DLES to the Department of Revenue by a type two transfer as defined in s. 20.06(2), F.S. The committee substitute requires DLES to reduce non-service-delivery positions by 25 percent prior to the transfer. Excluded from the transfer are the Unemployment Appeals Commission and the unemployment compensation appeals referees, which are transferred to the Department of Management Services.

**Section 5.** Provides for functions of the Division of Workforce and Employment Opportunities relating to regulation of labor organizations under ch. 447, F.S., and enforcement of child labor laws under ch. 450, F.S., to be transferred from DLES to the Department of Business and Professional Regulation by a type two transfer as defined in s. 20.06(2), F.S.

**Section 6.** Provides for functions of the Division of Workforce and Employment Opportunities relating to migrant labor and farm labor registration under ch. 450, F.S., to be transferred from DLES to the Department of Agriculture and Consumer Services by a type two transfer as defined in s. 20.06(2), F.S.

**Section 7.** Establishes the Florida Task Force on Workplace Safety to develop findings and issue recommendations on innovative ways in which the state may use federal or state funds to reduce workplace injuries compensable under the workers' compensation law. The task force is to be composed of 15 members, including five appointed by the Governor, four appointed by the President of the Senate, four appointed by the Speaker of the House of Representatives, one appointed by the Insurance Commissioner, and the president of Enterprise Florida, Inc. The

membership includes representatives from businesses, business organizations, and organized labor. The task force must report to the Governor and the Legislature by February 1, 2001.

**Section 8.** Amends s. 39, ch. 99-240, L.O.F., to provide that, effective October 1, 2000, the Division of Blind Services is transferred by a type two transfer, as defined in 20.06(2), F.S., from DLES to the Department of Management Services rather than to the Department of Education. Prior to the transfer, DLES must reduce by 25 percent the number of division staff who do not directly provide services to customers or who do not supervise the direct provision of services. This section is effective upon the act becoming a law.

**Section 9.** Expresses the intent of the Legislature that the transfer of responsibilities from DLES to other agencies occur with minimal disruption in services to the public or to employees of the department. DLES and the Department of Management Services are directed to provide coordinated re-employment assistance to dislocated DLES employees. In addition, the state and its political subdivisions are to give preference in appointment to such employees. The committee substitute requires the Secretary of Labor and Employment Security to impose a hiring freeze, and authorizes the Governor to issue a hiring freeze across all state agencies and to allow DLES employees to move into vacant positions.

**Section 10.** Creates a Labor and Employment Security Transition Team composed of high-level officials from each of the agencies affected by the provisions of the committee substitute. The transition team, which expires on February 1, 2001, will be responsible for coordinating and overseeing actions necessary to implement the act. The transition team is required to report to the Legislature on progress as well as problems in implementing the legislation.

**Section 11.** Amends s. 287.09451, F.S., to reassign the Minority Business Advocacy and Assistance Office from the Department of Labor and Employment Security to the Department of Management Services.

**Section 12.** Amends s. 20.15, F.S., to create within the Department of Education the Division of Occupational Access and Opportunity and establish the Occupational Access and Opportunity Commission (commission) as the director of this division. This section further mandates that the Commissioner of Education is to assign to the division necessary powers, duties, responsibilities, and functions relating to vocational rehabilitation and independent living services funded under the federal Rehabilitation Act of 1973 (Act), as amended. Effective October 1, 2000, the commission is to assume all responsibilities necessary to be the designated state agency for purposes of compliance with the Act. This section is effective upon the act becoming a law.

**Section 13.** Amends s. 120.80, F.S., to specify that hearings concerning determinations made by the commission relating to eligibility, plans of services, or closure need not be conducted by an administrative law judge assigned by the Division of Administrative Hearings, but that the commission may choose to contract with some other appropriate resource for hearings concerning such determinations. This section is effective July 1, 2000.

**Section 14.** Amends s. 413.011, F.S., to rename the Advisory Council for the Blind the Florida Rehabilitation Council for Blind Services. The section changes the composition of the council, requiring that it include at least four representatives of private-sector businesses that are not

providers of vocational rehabilitation services. Members of the council are to serve without compensation, but may be reimbursed for per diem and travel expenses under s. 112.061, F.S. The section requires the council to develop a 5-year plan to provide services to individuals who are blind. This plan must provide for the maximum use of community-based rehabilitation programs for delivery of services and a corresponding reduction in the number of state employees in the division to the minimum number necessary to carry out the functions of the plan and its implementation. The plan must provide that 90 percent of the funds provided for services for individuals who are blind are to be used for direct customer services.

The section removes language that requires the Division of Blind Services of DLES to plan and supervise various activities and replaces it with language that specifies that the division is to carry out the various activities under planning and policy guidance from the Florida Rehabilitation Council for Blind Services. The section mandates that under the guidance of the council, the division is to implement the 5-year strategic plan prepared by the council to provide services to individuals who are blind; to contract with community-based rehabilitation programs, to assist individuals who are blind in obtaining employment; and to adopt by rule procedures necessary to comply with any plans prepared by the council and the Occupational Access and Opportunity Commission for providing vocational rehabilitation services for individuals who are blind. The section also provides definitions and changes terminology used to reference individuals who are blind.

**Section 15.** Amends s. 413.014, F.S., to specify that the 5-year plan prepared by the Florida Rehabilitation Council for Blind Services shall require the Division of Blind Services to enter into cooperative agreements with community-based rehabilitation programs to be the service providers for the blind citizens of their communities. State employees, however, are to provide all services that may not be delegated under federal law. The section also provides that by December 31 of each year, the division must submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a status report on its progress in increasing the amount of services provided by community-based rehabilitation programs. The report must include recommendations on reductions in the number of division employees based upon increased use of community-based rehabilitation programs.

**Section 16.** Amends s. 413.034(1), F.S., relating to the Commission for Purchase from the Blind or Other Severely Handicapped, to reflect changes made in other parts of the act.

**Sections 17 through 20.** Amend ss. 413.051, 413.064, 413.066, and 413.067, F.S., to conform departmental references to reflect the transfer of the Division of Blind Services to the Department of Management Services.

**Section 21.** States the intent of the Legislature that the provisions of this act relating to services for individuals who are blind not conflict with federal law governing federal grant-in-aid programs administered by the Division of Blind Services or the Florida Rehabilitation Council for Blind Services, and provides for the procedural activities of the council in the event of such a conflict.

**Section 22.** Amends s. 413.82, F.S., to provide definitions for “community rehabilitation provider,” “plan,” and “state plan” relating to the Occupational Access and Opportunity Commission. This section is effective upon the act becoming a law.

**Section 23.** Amends s. 413.83, F.S., revising the composition of the Occupational Access and Opportunity Commission. There are to be 16 voting members, including 15 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives; and four ex-officio, non-voting members. The section clarifies that appointees are not subject to confirmation by the Senate and that no more than two individuals who are, or are employed by, community rehabilitation providers who contract to provide vocational rehabilitation services to individuals who qualify for the program may be members of the commission.

The section requires that by September 1, 2000, after receiving recommendations from the commission, the Governor, the President of the Senate, and the Speaker of the House of Representatives are to consult together and take actions necessary to bring the membership of the commission into compliance with s. 413.83, F.S. Initial terms will be staggered as necessary to ensure that terms of no more than one-fourth of the commission's total appointed membership will expire in any 1-year period.

This section deletes obsolete language relating to the designation of the chair of the commission. This section also specifies that the Rehabilitation Council is to perform its designated duties with the commission; and that commission members may rely upon and are subject to statutory provisions governing reimbursement of various expenses. This section is effective upon the act becoming a law.

**Section 24.** Amends s. 413.84, F.S., to require that effective July 1, 2000, the Occupational Access and Opportunity Commission (commission) is to serve as the director of the Division of Occupational Access and Opportunity; that the commission is responsible for establishing policy, planning and quality assurance for programs funded to the division, including, but not limited to, vocational rehabilitation and independent living services funded under the Rehabilitation Act of 1973 (Act), as amended; and that the commission, in consultation with the Commissioner of Education, must hire a division director to be responsible to the commission for operation and maintenance of the programs assigned and funded to the division. The commission is authorized to adopt rules under ss. 120.536(1) and 120.54, F.S., of the Administrative Procedure Act to implement provisions of law conferring duties upon the commission, which must be submitted to the State Board of Education for approval. Effective October 1, 2000, rules adopted by the commission do not require approval by the State Board of Education.

The section further changes the date for development and implementation of a 5-year plan to promote occupational access and opportunities to Floridians from July 1, 2000, to January 1, 2001. This section is effective upon the act becoming a law.

**Section 25.** Amends s. 413.85, F.S., to provide that if the commission elects to contract with a corporation to provide services, the organization must be designated the Occupational Access and Opportunity Corporation (corporation). The corporation must be organized as a not-for-profit corporation under s. 501(c) rather than s. 501(c)(6) of the Internal Revenue Code of 1989, as amended. The corporation must be organized and operated exclusively to carry out such activities and tasks as the commission assigns through contract.

The section excepts the corporation from being considered an agency for the purposes of ch. 287, F.S., relating to procurement of personal property and services. This section also mandates that in

addition to being subject to statutory provisions relating to public records and public meetings, the corporation is subject to s. 768.28, F.S., relating to a limited waiver of sovereign immunity for liability for torts as a corporation primarily acting as an instrumentality of the state.

This section further changes the composition of the board of directors of the corporation from 15 members appointed by the commission, requiring instead that the board of directors for the corporation will be composed of no fewer than 7 and no more than 15 members appointed by the commission, and a majority of its members must be members of the commission. The corporation may develop a program to leverage the existing federal and state funding and provide upgraded or expanded services to Floridians with disabilities, only if directed by the commission.

The corporation may also hire any individual who is employed by the Division of Vocational Rehabilitation as of June 30, 2000. Such employment may be done through a lease agreement program with terms and conditions established by the Department of Management Services. These employees will retain their status as state employees, including the right to participate in the Florida Retirement System, but these employees will work under the direct supervision of the corporation.

This section is effective upon the act becoming a law.

**Sections 26-28.** Amend ss. 413.86, 413.87, and 413.88, F.S., to conform to changes made in other parts of the act. This section is effective upon the act becoming a law.

**Section 29.** Amends s. 413.89, F.S., to establish, effective July 1, 2000, the Department of Education (department) as the designated state agency for purposes of compliance with the federal Rehabilitation Act of 1973, as amended (Act). Effective October 1, 2000, the Occupational Access and Opportunity Commission (commission) will be the designated state agency for purposes of compliance with the Act. The section further provides that during the period between July 1, 2000, and October 1, 2000, the department and the commission may, by agreement, provide for continued administration consistent with federal and state law. This section is effective upon the act becoming a law.

**Section 30.** Amends s. 413.90, F.S., to mandate that effective July 1, 2000, the Division of Vocational Rehabilitation of the Department of Labor and Employment Security (DLES) is to be transferred to the Department of Education by a type two transfer under s. 20.06(2), F.S., and is to become the Division of Occupational Access and Opportunity (division). The Occupational Access and Opportunity Commission and the Department of Education, in establishing the division, may establish no more than 700 positions, inclusive of those positions leased by the Occupational Access and Opportunity Corporation. These positions may be filled by former employees of the Division of Vocational Rehabilitation. By October 1, 2000, the division must reduce the number to no more than 300 positions. If transition activities occur and create situations negatively effecting client services and the remedy to those temporary situations would require more than 300 positions, the division may request a budget amendment to retain positions, including the number of positions and duration of time required, not to exceed three months. This section is effective upon the act becoming a law.

**Section 31.** Amends s. 413.91, F.S., to conform to changes made in other parts of the act. This section is effective upon the act becoming a law.

**Section 32.** Amends s. 413.92, F.S., to specify the roles of the Department of Education and the Occupational Access and Opportunity Commission in the event there is a conflict between state law and federal law relating to vocational rehabilitation grant-in-aid programs. Whenever such a conflict is asserted by the applicable federal agency, until October 1, 2000, the Department of Education, and after October 1, 2000, the commission must submit to the federal Department of Education, or other applicable agency, a request for favorable interpretation of the conflicting portions. This section is effective upon the act becoming a law.

**Section 33.** Repeals s. 413.93, F.S., which designates, effective July 1, 2000, the Occupational Access and Opportunity Commission the state agency for purposes of the Rehabilitation Act of 1973, as amended. Because other provisions, which take effect upon the act becoming a law, specify that the Division of Occupational Access and Opportunity is to be the designated state agency effective July 1, 2000, this repeal should probably take effect upon the act becoming a law.

**Section 34.** Amends s. 440.02, F.S., relating to definitions under the workers' compensation law, to reflect the transfer of the Division of Workers' Compensation from DLES to the Department of Insurance.

**Section 35.** Amends s. 440.207, F.S., relating to the workers' compensation system guide, to conform to the transfer of the of the Division of Workers' Compensation from DLES to the Department of Insurance.

**Section 36.** Amends s. 440.385, F.S., deleting obsolete provisions and making conforming departmental references relating to initial appointments to the Florida Self-Insurance Guaranty Association.

**Section 37.** Amends s. 440.44, F.S., to conform to changes made in other parts of the act relating to the workers' compensation law.

**Section 38.** Amends s. 440.4416, F.S., to reassign the Workers' Compensation Oversight Board to the Department of Insurance. Section 440.4416(1)(f), F.S., specifies that each member of the board is accountable to the Governor for proper performance of his or her duties as a member of the board and that the Governor may remove from office any member for any of the specified acts. However, the Department of Insurance is not an agency subject to the control of the Governor, but is under the direction of the Insurance Commissioner, a constitutional officer. This section of the committee substitute would appear to create a conflict relating to control of the board.

**Section 39.** Amends s. 440.45, F.S., to reassign the Office of the Judges of Compensation Claims to the Department of Insurance.

**Section 40.** Amends s. 440.49, F.S., to reassign responsibility for a report on the Special Disability Trust Fund to the Department of Insurance. The report is to be submitted to the

Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year.

**Section 41.** Amends s. 443.012, F.S., to provide that the Unemployment Appeals Commission is to be created within the Department of Management Services rather than the Department of Labor and Employment Security and that the chair of the commission has authority to appoint a chief appeals referee.

**Section 42.** Provides for the transfer of the Unemployment Appeals Commission to the Department of Management Services by a type two transfer as defined in s. 20.06(2), F.S.

**Section 43.** Amends s. 443.036, F.S., to conform the definition of “commission” to the transfer of the Unemployment Appeals Commission to the Department of Management Services. This section also conforms the definition of “division” to the transfer of the Division of Unemployment Compensation to the Department of Revenue.

**Section 44.** Amends s. 443.151, F.S., to provide that the unemployment compensation appeals referees are to be appointed by the Unemployment Appeals Commission. This section also requires the Department of Management Services to provide facilities to the appeals referees and the commission. The Division of Unemployment Compensation is also required to post notices in one-stop career centers relating to the availability of bilingual translators in those offices and bureaus.

**Section 45.** Amends s. 443.171, F.S., to conform duties of the Division of Unemployment Compensation and appointment of the Unemployment Compensation Advisory Council to reflect program transfer to the Department of Revenue. This section also corrects or conforms other cross-references.

**Section 46.** Amends s. 443.211, F.S., to authorize the Unemployment Appeals Commission to approve payments from the Employment Security Administration Trust Fund. This section further provides for use of funds in the Special Employment Security Trust Fund by the Unemployment Appeals Commission and the Agency for Workforce Innovation.

**Sections 47 through 53.** Amend ss. 447.02, 447.04, 447.041, 447.045, 447.06, 447.12, and 447.16, to provide that part I of ch. 447, F.S., relating to the regulation of labor organizations, is to be administered by the Department of Business and Professional Regulation. This section also deletes references to the Division of Jobs and Benefits and the Department of Labor and Employment Security.

**Section 54.** Amends s. 447.203, F.S., to revise the definition of the term “professional employee” as it relates to public employee labor organizations. The revision specifies that at a minimum such an employee is engaged in work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of high learning or a hospital.

**Section 55.** Amends s. 447.205, F.S., to conform to other parts of the act to reflect the transfer of the Public Employees Relations Commission to the Department of Management Services.

**Section 56.** Amends s. 447.208, F.S., to clarify the procedure for appeals, charges, and petitions relating to the Public Employees Relations Commission. The revisions specify that the procedures outlined in this section of the statutes apply to a person filing a charge or petition as well as an appeal.

**Section 57.** Amends s. 447.305, F.S., relating to the registration of employee organizations to provide that the Public Employees Relations Commission within the Department of Management must share registration information with the Department of Management Services (DMS). Because the act transfers responsibility for labor organization registration from the Department of Labor and Employment Security to the Department of Business and Professional Regulation (DBPR), it appears that this reference to DMS may need to be a reference to DBPR.

**Section 58.** Amends s. 447.307, F.S., to authorize the Public Employees Relations Commission to modify existing bargaining units under certain circumstances, including changed circumstances, an inadvertent mistake by the commission in the original bargaining unit description, or newly created or deleted jobs, or to reorganize a name change of the employee organization.

**Section 59.** Amends s. 447.503, F.S., to clarify procedures of the Public Employees Relations Commission relating to proceedings involving disputed issues of material fact and when an evidentiary hearing is to be conducted. The amendment specifies that if a party fails to appear for the hearing, the hearing officer shall open the record, note the nonappearance, and close the hearing. Such hearing may be subsequently reconvened only if the party establishes that the failure to appear is attributable to circumstances beyond the party's control.

**Section 60.** Amends s. 447.504, F.S., to authorize the Public Employees Relations Commission to stay determinations of the amount of back pay, benefits, or attorney's fees until a court decides the case on appeal.

**Section 61.** Provides that the Public Employees Relations Commission is to be transferred by a type two transfer authorized under s. 20.06(2), F.S. to the Department of Management Services.

**Section 62.** Repeals s. 447.609, F.S., relating to representation before the Public Employees Relations Commission of persons not licensed as attorneys. The repealed section authorizes any full-time employee or officer of any public employer or employee organization to represent his or her employer or any member of the bargaining unit in a proceeding.

**Sections 63-69.** Amend ss. 450.012, 450.061, 450.081, 450.095, 450.121, 450.132, and 450.141, F.S., to provide that part I of ch. 450, F.S., relating to child labor, is to be administered by the Department of Business and Professional Regulation. This section also deletes references to the Division of Jobs and Benefits and the Department of Labor and Employment Security.

**Section 70.** Amends s. 450.191, F.S., authorizing and directing the Executive Office of the Governor to cooperate with the regional workforce boards and one-stop career centers in the recruitment and referral of migrant laborers and other persons for the planting, cultivation, and harvesting of agricultural crops in Florida.

**Sections 71-78.** Amend ss. 450.28, 450.30, 450.31, 450.33, 450.35, 450.36, 450.37, and 450.38, F.S., to provide that part III of ch. 450, F.S., relating to farm labor registration, is to be administered by the Department of Agriculture and Consumer Services. This section also deletes references to the Division of Jobs and Benefits and the Department of Labor and Employment Security.

**Section 79.** Authorizes the Department of Labor and Employment Security to offer a voluntary reduction-in-force payment to active employees of the department with 27 or more years of creditable service in a state-administered retirement system. This section also provides that the Department of Management Services must prepare a plan to implement the reduction-in-force payment authority for approval by the Office of Planning and Budgeting of the Executive Office of the Governor. The plan must meet all applicable federal and state laws regarding special compensation to employees. All persons retiring under this provision must do so by September 30, 2000.

**Section 80.** Provides that contracts between the Department of Labor and Employment Security and other entities or persons existing on October 1, 2000, will continue to be binding for the remainder of the term of the contract with the successor department, agency, or entity responsible for the program, activity, or functions relative to the contract or agreement.

**Section 81.** Specifies that this act does not affect pending judicial or administrative proceedings involving DLES, and provides for the successor department, agency, or entity responsible for the program, activity, or function that is the subject of the proceeding to be substituted as a party in interest effective October 1, 2000.

**Section 82.** Provides a standard severability clause.

**Section 83.** Provides that, except as otherwise provided, the act shall take effect October 1, 2000. The act is made contingent, however, upon passage of Senate Bill 2050 or similar legislation transferring workforce development responsibilities from the Division of Workforce and Employment Opportunities at DLES to another unit of state government.

#### **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:**

None.

**C. Government Sector Impact:**

The committee substitute provides for the dissolution of the Department of Labor and Employment Security (DLES) and the transfer of functions to other agencies of state government. The committee substitute provides that prior to the transfer of the Divisions of Workers' Compensation, Unemployment Compensation, and Blind Services to other agencies, DLES is to reduce by 25 percent the number of non-service-delivery staff in each division who are to be transferred. The committee substitute also requires that prior to the transfer of the Division of Vocational Rehabilitation, the division is to reduce the number of positions, inclusive of those positions leased to the Occupational Access and Opportunity Corporation, to 700. DLES indicates that a significant percentage of the reductions can be absorbed by positions currently vacant within the department.

The committee substitute provides that the Department of Management Services is to establish a lease agreement program and the terms and conditions of lease agreements made under the program in the event the corporation hires individuals employed by the division and uses lease agreements in hiring these individuals. While the department may experience an increase in administrative costs associated with implementing and administering the program, the precise fiscal impact is unknown at this time.

The committee substitute provides that sovereign immunity is waived as to the corporation. This provision will subject the corporation to possible tort claims. However, such claims will be limited to a maximum of \$200,000 in the absence of a further act by the Legislature or insurance coverage by the corporation exceeding these amounts.

**VI. Technical Deficiencies:**

The committee substitute does not revise a number of existing references to the Department of Labor and Employment Security contained in provisions throughout the Florida Statutes.

**VII. Related Issues:**

The committee substitute requires that prior to the transfer of the Division of Vocational Rehabilitation, the division is to reduce the number of positions, inclusive of those positions leased to the Occupational Access and Opportunity Corporation, to 700. The department indicates that, after reducing the number of vacant positions in the division, approximately 69 percent of those positions in the division are direct-service positions with administrative positions

accounting for 13 percent and “quasi-administrative” positions accounting for 17 percent. The manner in which the Division of Vocational Rehabilitation chooses to make reductions of its positions and the extent to which the successor entity, the Division of Occupational Access and Opportunity at the Department of Education, enters into contracts with community-based rehabilitation providers before further reducing the number of employees to 300 could affect the potential for disruption of vocational rehabilitation service delivery.

The committee substitute provides that it shall not take effect unless CS/SB 2050 or similar legislation becomes a law that transfers workforce responsibilities of the Department of Labor and Employment Security to another unit of state government.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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