

STORAGE NAME: h2357.bdt

DATE: April 13, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
ANALYSIS**

BILL #: HB 2357

RELATING TO: Occupational Access and Opportunity

SPONSOR(S): Representative Gay

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
 - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill transfers the Division of Vocational Rehabilitation of the Department of Labor and Employment Security to the Department of Education, and renames it as the Division of Occupational Access and Opportunity. It specifies that hearings concerning determinations made by the commission need not be conducted by an administrative law judge. It provides for the appointment of members of the commission without Senate confirmation. It permits the Occupational Access and Opportunity Corporation to hire, through a lease agreement program, certain individuals employed by the Division of Vocational Rehabilitation at the Department of Labor and Employment Security. Additionally, it transfers the Division of Blind Services to the Department of Management Services.

The bill provides an effective date of July 1, 2000.

Rulemaking authority is addressed in that the bill allows the commission to adopt all rules and policies necessary to implement provisions of law.

The Revenue Estimating Conference has yet to review this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Vocational Rehabilitation

The federal Rehabilitation Act of 1973, as amended, allows states to empower individuals with disabilities in order to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society. To receive federal funds to administer programs under the act, states must submit to the Rehabilitation Services Administration (RSA) of the U.S. Department of Education a state plan for vocational rehabilitation services. The state plan must designate a state agency or a state unit to administer the program.

Currently, vocational rehabilitation services are administered by the Department of Labor and Employment Security (DLES). As Florida's designated state agency, the department provides rehabilitation services to individuals with disabilities. The Florida Rehabilitation Council serves as the state's Rehabilitation Council for purposes of compliance with federal regulations. To comply with the due process requirements of title I of the Rehabilitation Act of 1973, as amended, DLES has established a formal review process, conducted by the Division of Administrative Hearings within the Department of Management Services, to review determinations or decisions made under the Act and to carry out the responsibilities of the impartial hearing officer.

Occupational Access and Opportunity Commission and Occupational Access and Opportunity Corporation

In 1999, the Legislature passed CS/CS/SB 230, 2nd eng., codified as ch. 99-240, Laws of Florida, which reorganized DLES to operate in a more decentralized fashion. The law also established the Occupational Access and Opportunity Commission (OAOC) in the Department of Education to assemble individuals with disabilities, stakeholders, and employers to develop a single self-sufficiency strategy that provides for employment and career options for Floridians with disabilities. Effective July 1, 2000, the commission is designated the state agency for purposes of compliance with the Rehabilitation Act of 1973, as amended. As required by the bill, appointments of the 16 members to the commission have been made by the Governor, the President of the Senate, and the Speaker of the House of Representatives. At least 50 percent of the members are required to be from the private sector. The Governor is required to name a chair of the commission and the commission is required to name the vice chair. Neither the chair nor the vice chair may be

a provider of client services funded through the commission. Additionally, members of the commission are entitled to be reimbursed for reasonable and necessary expenses of attending meetings and performing commission duties, including per diem and travel expenses, and for personal care attendants and interpreters needed by members during meetings. The commission may appear on its own behalf before boards, commissions, departments, or other agencies of municipal, county, state, or Federal Government.

In addition to its advisory role to the Division of Vocational Rehabilitation of DLES, the Florida Rehabilitation Council is to serve the commission and continue to perform its designated duties. The OAOC is to consider the recommendations made by the council.

The OAOC is required to develop and implement a 5-year plan to promote occupational access and opportunities for Floridians with disabilities, and to fulfill the federal plan requirements. The plan must require that the OAOC enter into cooperative agreements with community-based rehabilitation programs to be the service providers for the program. However, state career service employees must provide all services mandated by federal law. The OAOC must contract by July 1, 2000, with the administrative entity designated in the plan to execute services, functions, and programs prescribed in the plan. While the commission will serve as contract administrator, the administrative entity may be a direct-support organization, if approved by the federal Department of Education.

The Occupational Access and Opportunity Corporation, a not-for-profit entity as defined s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, is created to act as the administrative arm of the commission. The board of directors of the corporation is composed 15 members, appointed by the commission from its own membership. The vice chair of the commission serves as the chair of the corporation's board of directors. The corporation is not to be considered an agency for the purposes of administrative procedures, state planning and budgeting, and leasing of buildings.

C. EFFECT OF PROPOSED CHANGES:

The bill creates the Division of Occupational Access and Opportunity within the Department of Education. It assigns the OAOC the administrative responsibility of the Division of Occupational Access and Opportunity. Additionally, it assigns various powers, duties, and responsibilities to the Occupational Access and Opportunity Division. For the purposes of compliance with the federal Rehabilitation Act of 1973, as amended, it provides an effective date of January 1, 2001, for the assumption of all responsibilities by the OAOC necessary to be the designated state agency. It includes the OAOC, the Florida Rehabilitation Council, and the Florida Independent Living Council in an exemption regarding appointments by the Commissioner of Education.

It allows the Division of Occupational Access and Opportunity to contract with an appropriate resource, other than an administrative law judge, to conduct certain hearings.

The bill revises the membership of the OAOC. It exempts appointments of members of the commission from Senate confirmation. Further, it provides that a majority of the membership of the commission be individuals familiar with the process and those laws that affect vocational rehabilitation services. Commission members must be individuals with disabilities, parents of individuals with disabilities, or advocates for individuals with disabilities. The membership of the commission must include 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. It deletes a requirement that the commission contain a minimum of 50 percent representation from the

private sector. Additionally, it includes a date of September 1, 2000, for the fulfillment of membership of the commission.

The bill allows the Commissioner of Education, or his or her designee, to serve as the chair of the commission until January 1, 2001. It requires the commission to elect a chair from among its members after January 1, 2001. The commission is to include eight employers whose priority interest in serving is the employment of individuals with disabilities, three of whom are to be appointed by the Governor, three appointed by the President of the Senate, and the remaining two appointed by the Speaker of the House of Representatives. It provides that four individuals who are consumers of vocational rehabilitation services, one of whom is appointed by the Governor, one appointed by the President of the Senate, and two appointed by the Speaker of the House of Representatives be members of the commission. Additionally, it allows two representatives of business, workforce development, education, state government, local government, a consumer advocate group, or a community organization, one of whom is appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives, to serve on the commission. It deletes a requirement that a community rehabilitation provider serve on the commission for a term of four years. Further, it deletes a requirement that a representative from the Advocacy Center for Persons with Disabilities, appointed by the Senate President, serve for a term of 4 years; rather, the bill makes the individual an ex officio member. Members of the commission are to initially serve staggered terms.

It deletes a requirement allowing the governor to appoint the chair of the commission from its appointed members.

The bill designates the OAOC as the state vocational rehabilitation agency. It requires the OAOC to establish an advisory council composed of representatives from not-for-profit organizations that have submitted a resolution requesting membership and had that request approved. Further, the members of the OAOC are required to comply with the provisions of ss. 413.273(1) and 413.273(3), F.S., which entitles members to be reimbursed for per diem and travel expenses and establishes the provisions for removal from office.

The OAOC is to serve as the director of the Division of Occupational Access and Opportunity of the Department of Education. The commission is responsible for establishing policy, planning, and quality assurance for its assigned programs, including vocational rehabilitation and independent living services for individuals with disabilities funded under the Rehabilitation Act of 1973, as amended. It is required to adopt all rules and policies necessary to implement provisions of law. Such rules and policies must be submitted to the State Board of Education for approval. Effective January 1, 2001, rules adopted by the OAOC do not require approval by the state board. The commission, in consultation with the Commissioner of Education, must hire a division director to be responsible for the operation and maintenance of the programs assigned to the division.

The bill requires a 5-year plan, which is designed to promote occupational access and opportunities for Floridians with disabilities, to include a provision that state employees provide all services that are not delegated under federal law. The plan must provide for the monitoring of the operations of contracted providers of services.

It requires the commission to contract with the Occupational Access and Opportunity Corporation to execute services, functions, and programs prescribed in the plan. The commission is authorized to appear on its own behalf before the Legislature. Additionally, the commission's budget is to be included, without revision, in the budget for the Department of Education.

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It deletes the authorization for the commission to designate a direct-support organization as its administrative entity. Further, it revises the function of the corporation allowing it to carry out such activities and tasks as the commission assigns through contract. It provides for the corporation, as a corporation acting as an instrumentality of the state, to be subject to s. 768.28, F.S., relating to sovereign immunity. The composition of the board of directors is revised to include no less than 7 and no more than 15 members, appointed by the commission. A majority of the board must be appointed from the membership of the commission. It deletes a provision requiring the corporation to establish memoranda of understanding with One-Stop Career Center operators. Additionally, it authorizes the employment of certain employees from the Division of Vocational Rehabilitation.

It revises the required content of a quarterly report which the corporation is to provide to the commission. Further, it revises the provisions of an annual report the commission is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill specifies a period of time between July 1, 2000, and January 1, 2001, during which the Department of Education and the OAOC may, by agreement, provide for continued administration consistent with federal and state law.

Effective July 1, 2000, it names the Department of Education the designated state agency and the Division of Occupational Access and Opportunity the designated state unit for purposes of compliance with the federal Rehabilitation Act of 1973, as amended. Additionally, it names the OAOC the designated state agency for purposes of compliance with the federal Rehabilitation Act of 1973, as amended, effective January 1, 2001.

It provides for the transfer, effective July 1, 2000, of the Division of Vocational Rehabilitation of the Department of Labor and Employment Security to the Department of Education and designates the competitive area for any necessary layoff in the division.

The bill specifies the state entity responsible for submitting a request to the appropriate federal agency upon conflict of laws.

It amends section 39 of Chapter 99-240, Laws of Florida, providing for the transfer, effective July 1, 2000, rather than January 1, 2001, of the Division of Blind Services from the Department of Labor and Employment Security to the Department of Management Services.

It repeals s. 413.93, F.S., relating to the designated state agency.

The bill provides an effective date of July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 Amends s. 20.15, F.S., creating the Division of Occupational Access and Opportunity within the Department of Education. Assigns the OAOC the administrative responsibility of the Division of Occupational Access and Opportunity. Assigns powers, duties, and responsibilities to the Occupational Access and Opportunity Division. Provides an effective date of January 1, 2001, for the assumption of all responsibilities by the OAOC necessary to be the designated state agency for the purposes of compliance with the Rehabilitation Act of 1973, as amended. Includes the OAOC, the Florida Rehabilitation

Council, and the Florida Independent Living Council in an exemption regarding appointments by the Commissioner of Education.

Section 2 Amends s.120.80, F.S., allowing the Division of Occupational Access and Opportunity to contract with an appropriate resource, other than an administrative law judge to conduct certain hearings.

Section 3 Amends s. 413.82, F.S., revising and deleting definitions used in statute.

Section 4 Amends s. 413.83, F.S., revising the membership of the OAO. Exempts appointments of members of the commission from Senate confirmation. Provides that a majority of the membership of the commission be individuals familiar with the process and laws that affect vocational rehabilitation services. Requires members to be individuals with disabilities, parents of individuals with disabilities, or advocates for individuals with disabilities. Requires the membership of the commission to include 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. Deletes requirement that commission contain a minimum of 50 percent representation from the private sector.

Includes a date of September 1, 2000, for the fulfillment of membership of the commission. Allows the Commissioner of Education, or his or her designee, to serve as the chair of the commission until January 1, 2001. Requires the commission to elect a chair from among its members after January 1, 2001. Provides that the commission is to include eight employers whose priority interest in serving is the employment of individuals with disabilities, three of whom are to be appointed by the Governor, three appointed by the President of the Senate, and the remaining two appointed by the Speaker of the House of Representatives. Provides that four individuals who are consumers of vocational rehabilitation services, one of whom is appointed by the Governor, one appointed by the President of the Senate, and two appointed by the Speaker of the House of Representatives be members of the commission. Allows two representatives of business, workforce development, education, state government, local government, a consumer advocate group, or a community organization, one of whom is appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives to serve on the commission. Deletes a requirement that a community rehabilitation provider serve on the commission for a term of four years. Deletes a requirement that a representative from the Advocacy Center for Persons with Disabilities, appointed by the Senate President, serve for a term of 4 years and makes the individual an ex officio member. Provides for members of the commission to initially serve staggered terms.

Deletes a requirement allowing the governor to appoint the chair of the commission from its appointed members.

Designates the OAO as the state vocational rehabilitation agency. Requires the OAO to establish an advisory council composed of representatives from not-for-profit organizations that have submitted a resolution requesting membership and had that request approved.

Requires the members of the OAO to comply with the provisions of ss. 413.273(1), F.S., and 413.273(3), F.S., which entitles members to reimbursement for per diem and travel expenses and establishes the provisions for removal from office.

Section 5 Amends s. 413.84, F.S., requiring the OAO to serve as the director of the Division of Occupational Access and Opportunity of the Department of Education. Provides

the commission is responsible for establishing policy, planning, and quality assurance for its assigned programs, including vocational rehabilitation and independent living services for individuals with disabilities funded under the Rehabilitation Act of 1973, as amended. Allows the commission to adopt all rules and policies necessary to implement provisions of law. Such rules and policies must be submitted to the State Board of Education for approval. The section provides that effective January 1, 2001, rules adopted by the OAOC do not require approval by the state board. Requires the commission, in consultation with the Commissioner of Education, to hire a division director to be responsible for the operation and maintenance of the programs assigned to the division.

Requires a 5-year plan, which is designed to promote occupational access and opportunities for Floridians with disabilities, to include a provision that state employees provide all services that are not delegated under federal law. The section requires the plan to provide for the monitoring of the operations of contracted providers of services.

Section 5 requires the commission to contract with the Occupational Access and Opportunity Corporation to execute services, functions, and programs prescribed in the plan. It authorizes the commission to appear on its own behalf before the legislature. Deletes references to the designated administrative entity. Requires the commission's budget to be included, without revision, in the budget for the Department of Education.

Section 6 Amends s. 413.85, F.S., deleting the authorization for the commission to designate a direct-support organization as its administrative entity. Revises the function of the corporation allowing it to carry out such activities and tasks as the commission assigns through contract. Provides for the corporation, as a corporation acting as an instrumentality of the state, to be subject to s. 768.28, F.S., relating to sovereign immunity. Revises the composition of the board of directors to include no less than 7 and no more than 15 members, appointed by the commission. Requires a majority of the board to be appointed from the membership of the commission. Revises the powers and duties of the corporation to conform to its new function. Deletes a requirement that the corporation establish memoranda of understanding with One-Stop Career Center operators. Authorizes the employment of certain employees from the Division of Vocational Rehabilitation.

Section 7 Amends s. 413.86, F.S., revising a reference to the Division of Vocational Rehabilitation.

Section 8 Amends s. 413.87, F.S., revising the required content of a quarterly report which the corporation is to provide to the commission.

Section 9 Amends s. 413.88, F.S., revising the provisions of an annual report the commission is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Deletes references to the designated administrative entity.

Section 10 Amends s. 413.89, F.S., specifying a period of time between July 1, 2000, and January 1, 2001, during which the Department of Education and the OAOC may, by agreement, provide for continued administration consistent with federal and state law.

Section 11 Amends s. 413.90, F.S., designating the Department of Education the designated state agency and the Division of Occupational Access and Opportunity the designated state unit for purposes of compliance with the federal Rehabilitation Act of 1973, as amended, effective July 1, 2000. Designates the OAOC the designated state

agency for purposes of compliance with the federal Rehabilitation Act of 1973, as amended, effective January 1, 2001. Provides for the transfer, effective July 1, 2000, of the Division of Vocational Rehabilitation of the Department of Labor and Employment Security to the Department of Education. Designates the competitive area for any necessary layoff in the division.

Section 12 Amends s. 413.91, F.S., revising a reference to “the designated administrative entity” to “all contractors.”

Section 13 Amends s. 413.92, F.S., specifying the state entity responsible for submitting a request to the appropriate federal agency upon conflict of laws.

Section 14 Amends s. 410.0245, F.S., providing conforming language.

Section 15 Amends s. 410.604, F.S., providing conforming language.

Section 16 Amends s. 413.034, F.S., providing conforming language.

Section 17 Amends s. 413.20, F.S., providing conforming language.

Section 18 Amends s. 413.445, F.S., providing conforming language.

Section 19 Amends s. 413.615, F.S., providing conforming language.

Section 20 Amends s. 414.065, F.S., providing conforming language.

Section 21 Amends section 39 of Chapter 99-240, Laws of Florida, providing for the transfer, effective July 1, 2000, rather than January 1, 2001, of the Division of Blind Services from the Department of Labor and Employment Security to the Department of Management Services.

Section 22 Repeals s. 413.93, F.S., relating to the designated state agency.

Section 23 Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Revenue Estimating Conference has yet to review this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

James Marshall Cox

J. Paul Whitfield, Jr.