

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 2374

SPONSOR: Governmental Oversight and Productivity Committee and Commerce and Economic Opportunities Committee and Senator Kirkpatrick

SUBJECT: Vocational Rehabilitation

DATE: April 25, 2000 REVISED: _____

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

I. Summary:

The committee substitute changes and clarifies many provisions relating to vocational rehabilitation in that it:

- creates the Division of Occupational Access and Opportunity within the Department of Education and establishes the Occupational Access and Opportunity Commission (commission) as the director of the new division, effective July 1, 2000;
- provides that effective July 1, 2000, the Department of Education is the designated state agency for purposes of compliance with the federal Rehabilitation Act of 1973, as amended; effective October 1, 2000, the commission will become the designated state agency;
- provides that effective July 1, 2000, the Division of Occupational Access and Opportunity will be the designated state unit;
- transfers the Vocational rehabilitation program within the Department of Labor and Employment Security (DLES) to the Division of Occupational Access and Opportunity, effective July 1, 2000; and requires a reduction in positions to 700 upon transfer;
- changes the date for development and implementation of a 5-year plan from July 1, 2000, to January 1, 2001;
- permits the Occupational Access and Opportunity Corporation to hire, through a lease agreement program, certain individuals employed by the Division of Vocational Rehabilitation at DLES;

- transfers the Division of Blind Services within DLES to the Department of Management Services, effective July 1, 2000, and requires a 25 percent reduction in the number of division staff who do not provide direct services;
- removes planning and policy activities of the Division of Blind Services and requires that these activities are to be done by Florida Rehabilitation Council for Blind Services, which was formerly named the Advisory Council for the Blind;
- requires that a 5-year plan be prepared by the Florida Rehabilitation Council for Blind Services and that this plan require the Division of Blind Services to enter into cooperative agreements with community-based rehabilitation programs to be the service providers.

The committee substitute amends the following sections of the Florida Statutes: 20.13, 20.15, 120.80, 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, and 413.92. The committee substitute also amends s. 39, ch. 99-240, L.O.F., and repeals s. 413.93, F.S.

II. Present Situation:

Vocational Rehabilitation

The federal Rehabilitation Act of 1973 (the Act), 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 avail themselves of 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.¹ The state plan must designate a state agency or a state unit to administer the plan.² Where the designated state agency is not primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, the state agency must include in its state plan assurances that the state has established a state Rehabilitation Council and that the state:

- jointly with the council develops, agrees to, and reviews annually state goals and priorities, and jointly submits annual reports of progress with the council, consistent with the provisions of the Act and the state plan;
- regularly consults with the council regarding the development, implementation, and revision of state policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;
- includes in the state plan and in any revision to the state plan, a summary of input provided by the council, including recommendations from the annual report of the council, the review and analysis of consumer satisfaction, and other reports prepared by the council, and the response of the designated state unit to such input and recommendations, including explanations for rejecting any input or recommendation; and

¹29 U.S.C. ss. 701-7961 (1999), amended by Pub. L. No. 105-220 (1998), ss. 401-414.

²29 U.S.C. s. 721.

- transmits to the council all plans, reports, and other information required under title I of the Act to be submitted to the RSA; all policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel in carrying out this state plan; and copies of due process hearing decisions issued under title I of the Act, which are transmitted in such a manner as to ensure that the identity of the participants in the hearings is kept confidential³.

Currently, vocational rehabilitation services are administered by the Divisions of Vocational Rehabilitation and Blind Services within the Department of Labor and Employment Security. 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 disabilities to enable them to live and work as independently as possible.⁴ 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 Division of Blind Services is authorized under 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. to provide rehabilitation, job placement, and follow-up services designed to find employment for Florida's blind residents.⁵ While vocational rehabilitation and independent living services are provided by both the Division of Vocational Rehabilitation and the Division of Blind Services, the Rehabilitation Act allows the state to provide these services to individuals who are blind through a separate state agency.⁶

As Florida's designated state agency, the department provides rehabilitation services to persons with disabilities who are determined to be eligible for such services.⁷ The Florida Rehabilitation Council serves as the state's Rehabilitation Council for purposes of compliance with the Act.⁸ To comply with the due process requirements of title I of the Act, the Department of Labor and Employment Security has established a formal review process as conducted by the Division of Administrative Hearings within the Department of Management Services to review determinations

³29 U.S.C. ss. 721 and 725. *See also*, Florida Department of Labor and Employment Security, State Plan For the State Vocational Rehabilitation Services Program and State Plan Supplement For the State Supported Employment Services Program, (July 1, 1999), pp. 7-8.

⁴*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.

⁵*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.

⁶9 U.S.C. s. 725(2).

⁷Section 413.23, F.S.

⁸Section 413.405, F.S.

or decisions made under the Act and to carry out the responsibilities of the impartial hearing officer.⁹

Occupational Access and Opportunity Commission and Occupational Access and Opportunity Corporation

In 1999, the Legislature passed CS/CS/SB 230, which reorganized the Department of Labor and Employment Security to operate in a more decentralized fashion.¹⁰ The law also established the Occupational Access and Opportunity Commission (commission) 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.¹¹ Effective July 1, 2000, the commission will be the designated state agency for purposes of compliance with the Rehabilitation Act (the Act).¹² As required by CS/CS/SB 230, 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.¹³ The Governor is required to name a chair of the commission and the commission is required to name vice chair.¹⁴ Neither the chair nor the vice chair may be a provider of client services funded through the commission.¹⁵ 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.¹⁶ The commission may also appear on its own behalf before boards, commissions, departments, or other agencies of municipal, county, state, or Federal Government.¹⁷

In addition to its advisory role to the Division of Vocational Rehabilitation of the Department of Labor and Employment Security, the Florida Rehabilitation Council is to serve the commission and continue to perform is designated duties.¹⁸ The commission is to consider the recommendations made by the council.

⁹ (29 U.S.C. s. 722; and Florida Department of Labor and Employment Security State Plan For the State Vocational Rehabilitation Services Program and State Plan Supplement For the State Supported Employment Services Program, (July 1, 1999), p. 22.)

¹⁰Chapter 99-240, L.O.F.

¹¹Section 413.81, F.S.

¹²Section 413.93, F.S.

¹³Section 413.83(2), F.S.

¹⁴ Section 413.83(6), F.S.

¹⁵ Section 413.83(6), F.S.

¹⁶Section 413.83(10), F.S.

¹⁷Section 413.84(6), F.S.

¹⁸Section 413.83(7), F.S.

Also by July 1, 2000, the commission 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.¹⁹ The plan must require that the commission enter into cooperative agreements with community-based rehabilitation programs to be the service providers for the program.²⁰ However, state career service employees must provide all services mandated by federal law. Notwithstanding part I, ch. 287, F.S., the commission must contract by July 1, 2000, with the administrative entity designated in the plan to execute services, functions, and programs prescribed in the plan.²¹ 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.²²

The Occupational Access and Opportunity Corporation (corporation), a not-for-profit entity, as defined in s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, is created to act as the administrative arm of the commission.²³ The board of directors of the corporation is composed of 15 members, appointed by the commission from its own membership.²⁴ The vice chair of the commission serves as the chair of the corporation's board of directors.²⁵

The corporation is not to be considered an agency for the purposes of :

- ch. 120, F.S., relating to the administrative procedures;
- ch. 216, F.S., relating to state planning and budgeting;
- ss. 255.25, and 255.254, F.S., relating to leasing of buildings;
- ss. 283.33 and 283.35, F.S., relating to bids for printing;
- s. 215.31, F.S., relating to state funds; and
- parts IV through VIII of ch. 112, F.S., relating to public officers and employees.²⁶

However, the corporation is subject to the provision of ch. 119, F.S., relating to public records and ch. 286, relating to public meetings.²⁷

Sovereign Immunity

The doctrine of sovereign immunity, rooted in common law, maintains that no suit may be brought against the state in either its own courts or the courts of another state by its own citizens

¹⁹Section 413.84(1), F.S.

²⁰Section 413.84(1)(d), F.S.

²¹Section 413.84(2), F.S.

²²Section 413.84(2), F.S.

²³Section 413.85, F.S.

²⁴Section 413.85(3), F.S.

²⁵Section 413.85(3), F.S.

²⁶Section 413.85(1)(d), F.S.

²⁷Section 413.85(1)(e), F.S.

unless the state has consented to suit or has waived the immunity.²⁸ Section 13, Article X of the Florida Constitution allows the state to make laws to bring suits against the state involving all liabilities. Section 768.28, F.S., specifically waives sovereign immunity for liabilities for torts of the state, but is subject to limitation. Specifically, suits brought against the state in tort are limited to \$100,000 for a claim or judgment by any one person.²⁹ Where there are multiple such claims or judgments against the state, its agencies, or subdivisions arising out of the same incident or occurrence, the limit is \$200,000.³⁰ Claims or judgments greater than these amounts may only be paid by a further act of the Legislature or by insurance coverage provided to the state, agency, or subdivision in settlement of the claim or judgment.³¹

Leasing of State Employees

Section 110.191, F.S., outlines the actions the Executive Office of the Governor may take related to salaries and benefits of employees in those situations in which the Legislature has expressly authorized an agency to lease employees. These actions may only be accomplished if the direct costs of the action are to be paid or reimbursed within 30 days after payment by the entity or person to whom the employees are leased. Authorized actions are to:

- create a separate budget entity from which leased employees will be paid and transfer those positions to that budget entity;
- provide increases in the operating budget entity;
- authorize lump-sum salary bonuses to leased employees; however, any lump-sum salary bonus above the automatic salary increase which may be contained in the General Appropriations Act is funded from private sources;
- approve salary rate increases for leased positions; however, any salary rate above the automatic salary increases which may be contained in the General Appropriations Act is funded from private sources; and
- waive any requirement for automatic salary increases which may be contained in the General Appropriations Act.

Section 110.191, F.S., further mandates that positions in the Senior Management Service (SMS) System or the Select Exempt Service (SES) System on the day before the state employee lease agreement takes effect remain in the respective system if the duties performed by the position during the assignment of the state employee lease agreement are comparable as determined by the Department of Management Services. Those SMS and SES system positions which are not determined comparable by the department and positions which are in other pay plans on the day before the lease agreement takes effect will have the same salaries and benefits provided to employees of the Executive Office of the Governor pursuant to s. 110.205(2)(k)2., F.S.

Section 110.205, F.S., states that the career service provisions of ch.110, F.S., apply to all positions unless specifically exempted. Section 110.205(2)(u), F.S., specifically exempts from

²⁸See 28 Fl. Jur. Government Liability, s. 1 (1998).

²⁹Section 768.28(5), F.S.

³⁰Section 768.28(5), F.S.

³¹Section 768.28(5), F.S.

career service those positions leased under a state employee lease agreement expressly authorized by the Legislature under s. 110.191, F.S.

III. Effect of Proposed Changes:

The committee substitute changes and clarifies many provisions relating to vocational rehabilitation.

Section 1. 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 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 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.

Section 2. 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.

Section 3. Amends s. 413.82, F.S., to provide definitions relating to the Occupational Access and Opportunity Commission.

Section 4. 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 appointments of commission members 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 also deletes obsolete language relating to the designation of the chair of the commission; clarifies 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.

Section 5. 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 an executive 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.

Section 6. 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 that the board of directors for the corporation will be composed of no less than 7 and no more than, and a majority of its members must be member 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 shall be done through a lease agreement program with terms and conditions established by the Department of Management Services. These employees will retain his or her status as a state employee, including the right to participate in the Florida Retirement System, but these employees will work under the direct supervision of the corporation.

Section 7. Amends s. 413.86, F.S., to conform an organizational reference relating to the Division of Occupational Access and Opportunity.

Sections 8 and 9. Amend ss. 413.87 and 413.88, F.S., to conform to changes made in other parts of the act.

Section 10. 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.

Section 11. Amends s. 413.90, F.S., to mandate that effective July 1, 2000, the Vocational rehabilitation program 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 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.

Section 12. Amends s. 413.91, F.S., to conform to changes made in other parts of the act.

Section 13. Amends s. 413.92, F.S., to mandate that in the event there is a conflict between state law and federal law relating to federal grant-in-aid programs administered by the Division of Occupational Access and Opportunity or the Occupational Access and Opportunity Commission. 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.

Section 14. 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.

Section 15. 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 that the 5-year plan provide for the maximum use of community-based rehabilitation programs for deliver 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 other 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 by January 1, 2001; to contract with community-based rehabilitation programs, to assist individuals who are blind in obtaining employment, and to teach them trades and occupations within their capacities; 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 language relating to individuals who are blind.

Section 16. Amends s. 413.014, F.S., to require the 5-year plan prepared by the Florida Rehabilitation Council for Blind Services that the Division of Blind Services enter into cooperative agreements with community-based rehabilitation programs to be the service providers for the blind citizens of their communities. State employees 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 17. Amends s. 413.034(1), F.S., to conform to changes made in other parts of the act as it relates to the membership of the Commission for Purchase from the Blind or Other Severely Handicapped within the Department of Management Services.

Sections 18 through 21. 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 22. 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 23. 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.

Section 24. Provides that the act will take effect upon becoming a law, except that portions of the act amending ss. 413.011, 413.014, 413.034, 413.051, 413.064, 413.066, and 413.067, relating to the Division of Blind Services, shall take effect October 1, 2000.

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:

The committee substitute allows the Occupational Access and Opportunity Corporation (corporation) to hire individuals employed by the Division of Vocational Rehabilitation (division) as of June 30, 2000. To the extent that these individuals are no longer needed to render services delivered by the division, these individuals may experience less disruption regarding their employment situation if employed by the corporation.

C. Government Sector Impact:

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. 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 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 Vocational rehabilitation program, 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 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:

None.

VII. Related Issues:

Section 20.03(10), F.S., defines *commission*, unless otherwise required by the State Constitution, to mean

a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited *quasi-legislative* or *quasi-judicial* powers, or both, independently of the head of the department or the Governor.

The Commission on Occupational Access and Opportunity is currently housed within the Department of Education. By designating the commission as the head of a division in an executive branch department, the commission is acting in an executive capacity, not a quasi-legislative or quasi-judicial fashion.

The committee substitute designates the Occupational Access and Opportunity Commission to be the head of the Division of Occupational Access and Opportunity. Currently, there are two divisions in the Department of Education that are headed by collegial bodies: (1) the Board of Regents is designated the head of the Division of Universities; and (2) the Board of Community Colleges is designated the head of the Division of Community Colleges. In both instances, board members other than the Commissioner of Education, are appointed by the Governor and confirmed by the Senate. The committee substitute divides the appointment of commission members among the Governor, the President of the Senate and the Speaker of the House of Representatives and specifically states that members are not subject to confirmation by the Senate.

The committee substitute authorizes the commission to define the terms of its contract with the Occupational Access and Opportunity Corporation. Typically, more specificity is required in statute regarding contractual terms to ensure uniformity where appropriate, to ensure that public funds can be accounted for, and to ensure that any funds or property held in trust by the corporation are returned to the state if the corporation ceases to exist or if it is no longer approved to operate on behalf of the state. The committee substitute does not specify that such requirements be contained in the contract.

The committee substitute requires that prior to the transfer of the Vocational rehabilitation program, 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 for Senate Bill 1680 reorganizes the structure of the Department of Education as of January 7, 2003. In that reorganization, the State Board of Education is designated as the head of the department and only four divisions are created in the department. In each case, the divisions are headed by individuals appointed by the State Board of Education and not by collegial bodies. Further, the members of the State Board of Education are appointed by the Governor. The bill would be inconsistent with the departmental structure proposed in CS/SB 1680 because it would provide for an additional division; the division would be headed by a collegial body, instead of an individual; and the members of the collegial body would not be appointed solely by the Governor, but also by members of the Legislature, and would include other private persons such as the executive director of the Advocacy Center for Persons with Disabilities; the chair of the Florida Rehabilitation Council, the chair of the Council for Independent Living, and the chair of the Commission for the Purchase from the Blind or Other Severely Handicapped.

VIII. Amendments:

None.