

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: PCS/SB 7022 (692948)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee of General Government), Governmental Oversight and Accountability Committee, and Senator Galvano

SUBJECT: Individuals With Disabilities

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Peacock	McVaney		GO SPB 7022 as introduced
1.	Davis	DeLoach	AGG	Recommend: Fav/CS
2.	Pace	Hrdlicka	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7022 modifies the State of Florida's employment policy to provide enhanced executive branch employment opportunities for individuals with a disability. Specifically, the bill requires each executive agency to:

- Establish annual goals in its affirmative action plan that ensures full utilization of underrepresented groups in agency's workforce to include individuals who have a disability;
- Annually report its progress toward increasing employment of individuals who have a disability; and
- By January 1, 2016, develop an agency-specific plan on promoting employment opportunities for individuals who have a disability.

Additionally, the bill directs the Department of Management Services to:

- Develop and implement programs geared toward individuals who have a disability in consultation with the Agency for Persons with Disabilities, the Division of Vocational Rehabilitation within the Department of Education, the Department of Economic Opportunity, and the Executive Office of the Governor;
- Develop mandatory training programs for human resources personnel and hiring managers of executive agencies that support the employment of individuals who have a disability;
- Assist executive agencies with implementing the agency-specific plans and strategies for retaining employees who have a disability;

- Compile data on hiring practices of executive agencies regarding hiring of individuals who have a disability and post this information on the department's website; and
- Adopt rules relating to forms providing for voluntary self-identification of individuals who have a disability who are employed by an executive agency.

The bill appropriates \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel Trust Fund and authorizes two FTE for the Department of Management Services to implement this act.

II. Present Situation:

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities. Each executive agency is required to develop and implement an affirmative action plan;¹ establish annual goals in its affirmative action plan for ensuring full utilization of groups underrepresented in the agency's workforce as compared to the relevant labor market;² and appoint an affirmative action-equal employment opportunity officer.³

The Department of Management Services (DMS) is required to issue an annual workforce report⁴ and provide training to all supervisory personnel of executive agencies.⁵

Presently, s. 110.112, F.S., does not contain a definition of the term "individual who has a disability" and does not specifically address equal employment opportunity and affirmative action for this group.

Federal law prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation.⁶ Specifically, Title I of the Americans with Disabilities Act (ADA) prohibits private and public employers from discriminating against individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other privileges of employment.⁷

¹ Section 110.112(2)(a), F.S.

² Section 110.112(2)(b), F.S.

³ Section 110.112(2)(c), F.S., provides that the duties of the affirmative action-equal employment opportunity officer include "determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action."

⁴ Section 110.112(2)(d), F.S., provides that the DMS annual workforce report shall include information relating to implementation, continuance, and updating the results of each executive agency's affirmative action plan for the previous fiscal year.

⁵ Section 110.112(2)(e), F.S., provides that the training will be in "the principals of equal employment opportunity and affirmative action, the development and implementation of affirmative action plans, and establishment of annual affirmative action goals."

⁶ Americans with Disabilities Act of 1990 (Pub. L. No. 110-325).

⁷ 42 U.S.C. s. 12112.

III. Effect of Proposed Changes:

Section 1 reorders, amends, and revises definitions contained in s. 110.107, F. S., and defines the term “individual who has a disability.”

The definition of “individual who has a disability” mirrors the federal definition of “disability” contained in the ADA,⁸ with the exception of the following:

- The federal term “mental impairment” is replaced with “intellectual impairment”; and
- The federal phrase “being regarded” is replaced with “who is perceived by others.”

Section 2 amends s. 110.112, F.S., to revise and broaden the state’s equal employment opportunity policy to include individuals who have a disability.

Each executive agency is required to:

- Establish annual goals in its affirmative action plan to ensure the full utilization of underrepresented groups in the agency’s workforce, to specifically include individuals who have a disability as compared to the relevant labor market;
- Report annually to the DMS on the agency’s progress toward increasing employment of women, minorities, and individuals who have a disability; and
- Develop an agency-specific plan by January 1, 2016, addressing how to promote employment opportunities for individuals who have a disability.

The DMS is required to:

- Include data for each executive agency related to employment levels among women, minorities, and individuals who have a disability in its annual workforce report;
- Develop and implement programs specifically geared toward individuals who have a disability in consultation with the Agency for Persons with Disabilities, the Division of Vocational Rehabilitation within the Department of Education, the Department of Economic Opportunity, and the Executive Office of the Governor;⁹
- Develop mandatory training programs by January 1, 2016, for human resources personnel and hiring managers of executive agencies that support the employment of individuals who have a disability;
- Assist executive agencies in implementing agency-specific plans, and identifying and implementing strategies for retaining employees who have a disability;¹⁰
- Biannually report on the progress of executive agencies in implementing their plans to the Governor, the President of the Senate, and the Speaker of the House of Representatives;
- Compile data regarding the hiring practices of executive agencies in regards to individuals who have a disability and make this data available on its website; and

⁸ 42 U.S.C. s. 12102, defines “disability,” with respect to an individual, as a physical or mental impairment that substantially limits one or more life activities of such individual; a record of such impairment; or being regarded as having such an impairment.

⁹ These programs may incorporate internships, mentoring, on-the-job training, unpaid work experience, situational assessments, and other innovative strategies.

¹⁰ Some of these strategies include training programs, funding reasonable accommodations, increasing access to technologies, and ensuring accessibility of physical and virtual workplaces.

- Adopt rules regarding forms that provide for voluntary self-identification of individuals who have a disability who are employed by an executive agency.

The bill specifies that no substantive or procedural right or benefit enforceable at law or in equity against the state is created by this legislation.

Section 3 appropriates \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel Trust Fund to the DMS and authorizes two FTE for the DMS to implement this act.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not contain a mandate because the bill does not affect counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill is applicable to all executive agencies.

The DMS staff estimates the implementation of the bill will require two additional full-time Human Resource Consultant positions. In addition, the People First system, the state's human resource information system, will need to be modified to add an "individual who has a disability" indicator to fully implement the reporting requirements of this bill.¹¹ The DMS estimates a cost of \$18,500 to implement these changes.

¹¹ See the DMS, *2015 Legislative Analysis on SB 7022*, (Feb. 13, 2015) (on file with the Senate Fiscal Policy Committee).

The bill provides appropriations of \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to the DMS, and authorizes two positions. The bill also appropriates \$88,285 from the General Revenue Fund and \$76,671 from trust funds to Administered Funds that provide the revenue source to support the appropriation provided to the DMS.

The fiscal impact to executive branch agencies to implement the requirements of the bill are indeterminate, but may be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DMS to adopt rules relating to forms for voluntary self-identification of individuals who have a disability who are employed by an executive agency.

Pursuant to federal law employers, including executive agencies, may not ask an individual disability-related questions. The present situation does not promote self-disclosure and individuals may self-identify as having a disability when in fact the individuals do not. The Department of Economic Opportunity notes that this could result in executive agency reports over or under-reporting hiring of individuals who have a disability.¹²

The DMS uses data from the Equal Employment Opportunity (EEO) Tabulation that is published by the U.S. Census Bureau for information on women and minorities. The EEO Tabulation provides detailed occupational statistics by race, ethnicity, and sex in the labor market by location-based geography. The Department of Economic Opportunity, the state agency responsible for maintaining employment data, has informed the DMS that data for individuals who have a disability is not available at the occupational level. Data is only available in broad categories (employed/unemployed, full-time/less than full-time). Accordingly, it might be difficult for agencies to establish numerical goals on such limited data.¹³

VIII. Statutes Affected:

This bill substantially amends sections 110.107 and 110.112 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on March 4, 2015:

The CS provides an appropriation to the DMS for Fiscal Year 2015-2016 of \$138,692 in

¹² See the DEO, *2015 Legislative Analysis on SB 7022*, (Feb. 12, 2015) (on file with the Senate Fiscal Policy Committee).

¹³ See the DMS, *2015 Legislative Analysis on SB 7022*, (Feb. 13, 2015) (on file with the Senate Fiscal Policy Committee).

recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund and authorizes two FTE to implement and manage the programs.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
