

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: SB 388

INTRODUCER: Senator Detert

SUBJECT: Individuals with Disabilities

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 388 creates the Florida Unique Abilities Partner Program to recognize business entities that employ individuals who have a disability, contribute to organizations that support the independence of individuals who have a disability, or establish or contribute to the establishment of a program that contributes to the independence of individuals who have a disability. A business that receives the designation must annually re-certify that it continues to meet the criteria for the designation.

The bill requires the Department of Economic Opportunity (DEO) to:

- Work with state agencies and CareerSource Florida, Inc., to create the program;
- Work with disability organizations to develop a logo for the program;
- Maintain a website that provides the list of businesses that have been designated as a Florida Unique Abilities Partner;
- Identify businesses with the designation on the Employ Florida Marketplace system;
- Provide VISIT Florida with the list of businesses that have been designated as a Florida Unique Abilities Partner for consideration for use in any marketing campaigns, especially those targeting individuals who have a disability or their families; and
- Report to the Legislature on its progress in implementing the program by January 1, 2017, and then annually thereafter on the program's progress.

For the 2016-2017 fiscal year, the bill appropriates \$100,000 in recurring funds and \$100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund to fund the development, implementation, and administration of the Florida Unique Abilities Partner Program.

The bill is effective July 1, 2016.

II. Present Situation:

According to the United States Census Bureau, individuals who have a disability make up approximately 13.4 percent of the population of Florida, and 10.1 percent of individuals ages 18 to 64 (working age) have a disability.¹ In 2014, over 20 percent of working aged individuals who have a disability lived below the federal poverty line in Florida, compared with 13.7 percent of individuals without a disability.²

Individuals who have a disability experience significant disparities in employment and participation in the workforce.³ For example, 17.9 percent of individuals who have a disability are employed in Florida, while over 61 percent of those who do not have a disability are employed.⁴ Nationally, in December 2014 there was an 11.2 percent unemployment rate for individuals who have a disability and a 5 percent unemployment rate for individuals without a disability.⁵ According to the National Disability Institute (NDI), many of these individuals would like to find employment, but are concerned if they earn more money it will cause them to lose disability and health benefits.⁶

Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.⁷ Corporate social responsibility is defined as a company's sense of responsibility toward the community and environment,⁸ which may be expressed through support of issues and programs like engaging in ethical supply sourcing or contributing to specific social programs. In 2013, corporations in the United States gave approximately \$18.7 billion, consisting of both cash and non-cash donations, such as product donations and employee volunteer hours.⁹ Corporate philanthropy is considered

¹ U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Disability Characteristics, 2014 American Community Survey 1-year Estimates*, Report S1810, searchable database (select "advanced search") available at <http://factfinder.census.gov/> (last visited Nov. 16, 2015).

² U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2014 American Community Survey 1-year Estimates*, Report S1811, searchable database available at <http://factfinder.census.gov/> (last visited Nov. 16, 2015).

³ American Institutes for Research, *An Uneven Playing Field: The Lack of Equal Pay for People with Disabilities*, p. 2, December 2014, available at http://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities_Dec%2014.pdf (last visited Nov. 16, 2015).

⁴ Supra note 2. Note, 78.5 percent of individuals who have a disability are not in the labor force.

⁵ U.S. Department of Labor, Bureau of Labor Statistics, *BLS Data Viewer: Labor Force Statistics from the Current Population Survey, Series IDs LNU04074593 and LNU04074597*, (for 2014, not seasonally adjusted), available at <http://beta.bls.gov/dataViewer/view/641a3c05bb5b4578b313b2f20ca886cc> (last visited Nov. 16, 2015).

⁶ National Disability Institute with support from the Florida Development Disabilities Council, *The Changing Face of Benefits Knowledge for Successful Employment and Asset Development*, p. 1, March 2013, available at http://www.realeconomicimpact.org/data/files/other%20documents/changing_face_of_benefits_2013.pdf.pdf (last visited Nov. 16, 2015).

⁷ Illia, Laura et al., *Communicating Corporate Social Responsibility to a Cynical Public*, MIT SLOAN MANAGEMENT REVIEW, Feb. 21, 2013, available at http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use_credit=db34fbf0a135038c9c9102e028c614be (last visited Nov. 16, 2015).

⁸ BusinessDictionary.com, available at <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Nov. 16, 2015).

⁹ Adams, Susan, *America's Most Generous Companies*, FORBES, July 15, 2014, available at <http://www.forbes.com/sites/susanadams/2014/07/15/americas-most-generous-companies/> (last visited Nov. 16, 2015).

advantageous to a business because it provides the company with a bolstered public image, improved community relations, and increased employee morale.¹⁰

Studies suggest that people value businesses that support causes that are important to them. A recent Nielsen survey found that 55 percent of global respondents indicated a willingness to pay extra for goods and services from businesses that are committed to making a positive social and environmental impact.¹¹ Consumers are becoming “more deliberate and purposeful” in their shopping decisions by patronizing businesses that have similar values to their own.¹² Consumers are also more likely to be loyal to those brands that share their values or are engaged in the support of those causes that are important to them.¹³ People may even base their employment decisions on such values.¹⁴

III. Effect of Proposed Changes:

Section 1 of the bill creates the Florida Unique Abilities Partner Program to be administered by the Department of Economic Opportunity (DEO). The purpose of the program is to recognize businesses that demonstrate a commitment to the independence of individuals who have a disability. The DEO must consult with the Agency for Persons with Disabilities, the Divisions of Vocational Rehabilitation and Blind Services of the Department of Education, and CareerSource Florida, Inc., in creating the program.

The bill defines “individuals who have a disability” as persons who have a physical or intellectual impairment that substantially limits one or more major life activities, persons who have a history or record of such an impairment, or persons who are perceived by others as having such an impairment.

In order to be designated as a Florida Unique Abilities Partner, a business must submit an application to the DEO, indicating that the business would qualify for the designation by:

- Employing individuals who have a disability;
- Contributing to local or national disability organizations; or
- Contributing to or establishing a program that contributes to the independence of individuals who have a disability.

¹⁰ Montini, Laura, *Corporate Altruism Is on the Rise (Infographic)*, INC., Aug. 27, 2014, available at <http://www.inc.com/laura-montini/infographic/the-benefits-of-community-service.html> (last visited Nov. 16, 2015).

¹¹ The Nielsen Company, *Doing Well by Doing Good* (June 2014), available at <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/global-corporate-social-responsibility-report-june-2014.pdf> (last visited Nov. 16, 2015).

¹² Solomon, Micah, *Six Customer Trends That Will Build or Break Your Business As We Enter 2015*, FORBES, Dec. 25, 2014, available at <http://www.forbes.com/sites/micahsolomon/2014/12/25/six-deep-customer-trends-that-will-build-or-break-your-business-as-we-enter-2015/> (last visited Nov. 16, 2015).

¹³ Irwin, Julie, *Ethical Consumerism Isn't Dead, It Just Needs Better Marketing*, HARVARD BUSINESS REVIEW, Jan. 12, 2015, available at <https://hbr.org/2015/01/ethical-consumerism-isnt-dead-it-just-needs-better-marketing> (last visited Nov. 16, 2015).

¹⁴ Supra note 11.

At a minimum, to qualify for the designation, a business must:

- Employ at least one Florida resident, who has a disability, for at least 9 months before applying for the designation; the DEO may not require the employer to provide any personally identifiable information about its employees;
- Make a financial or in-kind contribution, including employee volunteer hours, to a local or national disability organization or a contribution in support of individuals who have a disability;¹⁵ or
- Establish or contribute to the establishment of a program that contributes to the independence of individuals who have a disability.¹⁶

The DEO may also consider nominations from members of the community regarding a local business entity's qualification for designation as a Florida Unique Abilities Partner. The nomination must identify the business entity's achievements in one or more of the above-referenced categories. Upon receipt of a nomination, the DEO must determine whether the nominee meets the requirements of the program based on the information provided and may request additional information from the nominee if needed. If the nominee meets the requirements, the DEO must notify the nominated business and provide the business the qualifying criteria asserted in the nomination. The nominee has 30 days from the receipt of notice to certify that the information in the notice is true and correct and to either accept or decline the nomination. If a business does not accept the nomination within 30 days of receiving notice, the DEO may not award the designation.

A business must annually certify that it continues to meet the requirements to be designated a Florida Unique Abilities Partner. Failure to submit the annual certification will result in the removal of the business' designation. A business may elect to discontinue its use of the designation by notifying the DEO of such decision.

The DEO must adopt procedures for the application, nomination, and designation processes for the Florida Unique Abilities Partner Program. The bill specifies that the DEO's designation under this program does not constitute final agency action, and therefore is not subject to the Florida Administrative Procedures Act in ch. 120, F.S.

The bill directs the DEO, in partnership with the disability community, to develop a logo that may be used to identify a business that has been designated as a Florida Unique Abilities Partner. The DEO is responsible for developing guidelines and requirements for the use and display of the Florida Unique Abilities Partner Program logo. A business that has not received the designation or has elected to discontinue its designation may not display the logo.

The DEO must maintain a website that, at a minimum, provides:

- The list of businesses, by county, that currently have the Florida Unique Abilities Partners designation, updated quarterly;

¹⁵ Contributions must be documented by providing copies of written receipts, program materials, or letters of acknowledgment from recipients, volunteers, or donees. A business entity with 100 or fewer employees must make a financial or in-kind contribution of at least \$1,000, and a business entity with more than 100 employees must make a financial or in-kind contribution of at least \$5,000.

¹⁶ *Id.*

- Information on the eligibility requirements for the designation and the methods of application and nomination; and
- The best practices for businesses to facilitate the inclusion of individuals who have a disability, updated annually.

The website may provide links to the websites of organizations or other resources that will aid business entities in the employment or support individuals who have a disability. The Agency for Persons with Disabilities must provide a link to the DEO website for the Florida Unique Abilities Partner Program on its website. On the Employ Florida Marketplace website or successor system, the DEO and CareerSource Florida, Inc., must identify the employers that currently have a designation as a Florida Unique Abilities Partner.

The DEO is required to provide a list of businesses that have a designation as a Florida Unique Abilities Partner to VISIT Florida¹⁷ on a quarterly basis. VISIT Florida must consider using the program and the designees in marketing campaigns, including campaigns that target individuals who have a disability or their families.

The DEO must report its progress in implementing the Florida Unique Abilities Partner Program to the Legislature by January 1, 2017. Beginning in 2017, the DEO must describe the progress and use of the program in its annual report required under s. 20.60, F.S.¹⁸

Section 2 amends s. 20.60, F.S., to add the Florida Unique Abilities Partner Program to the list of programs the DEO must include in its annual report.

Section 3 provides an appropriation to the DEO to develop, implement, and administer the Florida Unique Abilities Partner Program in Fiscal Year 2016-2017 (*See* Section V).

Section 4 provides an effective date of July 1, 2016, unless the bill expressly provides otherwise. The requirement that the DEO include information regarding the Florida Unique Abilities Partner Program in the department's annual report has an effective date of January 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ VISIT Florida is statutorily referred to as the Florida Tourism Industry Marketing Corporation. *See* s. 288.1226, F.S.

¹⁸ The DEO's annual report is due to the Legislature on November 1 of each year.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under the Florida Unique Abilities Partner Program a business that receives a designation may experience greater patronage due to the designation. Local or national disability organizations may receive additional donations from businesses seeking a designation under the program.

C. Government Sector Impact:

For the 2016-2017 fiscal year, the bill appropriates \$100,000 in recurring funds and \$100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund for the development, implementation, and administration of the Florida Unique Abilities Partner Program. Sufficient revenue is available in that fund to support the recurring and nonrecurring appropriations.

According to the DEO, there will be costs associated with staff time to develop the program, process applications, determine compliance, and designate businesses, and also staff time for IT personnel to create, maintain, and update the website that is required by the bill.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill directs the DEO to adopt rules to administer the program.

Under the Americans with Disabilities Act (ADA), employers are prohibited from inquiring about whether a person has a disability or the nature of a disability prior to employment.²⁰ However, an employer may inquire about the applicant's ability to perform job-related functions. Upon employment, an employer may require a medical examination it is required of all employees, is job-related, and consistent with business necessity. Any medical information obtained from the medical examination must be maintained in a separate file. If an employee requests a reasonable accommodation, an employer is permitted to request documentation sufficient to substantiate the need for the reasonable accommodation.²¹

¹⁹ The Department of Economic Opportunity, *2015 Senate Bill Analysis for Senate Bill 1246* (Mar. 5, 2015), which included substantively similar provisions (on file with the Senate Commerce and Tourism Committee).

²⁰ See 42 U.S.C. s. 12112.

²¹ EEOC, No. 915.002, *EEOC Enforcement Guidance of Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, July 27, 2000, available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (last visited Nov. 16, 2015).

VIII. Statutes Affected:

This bill substantially amends section 20.60 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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