

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1437 Employment Services for Persons with Disabilities

**SPONSOR(S):** Abruzzo

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N	Toliver	Harrington
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Government Accountability Committee			

### SUMMARY ANALYSIS

The Division of Blind Services (DBS), and the Division of Vocational Rehabilitation (DVR), are subdivisions of the Department of Education (DOE). Both DBS and DVR, pursuant to statute, have established statewide vocational rehabilitation programs for blind and disabled persons, respectively, for the purpose of maximizing employment opportunities for these individuals and to increase their independence and self-sufficiency. Participants in DOE's vocational rehabilitation programs are not currently considered employees of the state for the purpose of workers' compensation coverage. Workers' compensation coverage requires an employer to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.

The bill requires participants in an adult or youth work experience activity under either the DBS or the DVR be deemed an employee of the state for the purposes of workers' compensation coverage

The bill has a significant fiscal impact on state government expenditures from the State Risk Management Trust Fund. According to the Department of Financial Services (DFS), the Division of Risk Management will incur additional expenditures associated with an annual increase of medical and indemnity workers' compensation claims costs. The DFS estimates that claims costs will increase by approximately \$166,000.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Division of Blind Services

The Division of Blind Services (DBS) is housed within the Department of Education (DOE).<sup>1</sup> It is the intent of the Legislature to establish a coordinated program of services which are available throughout Florida to individuals who are blind.<sup>2</sup> The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.<sup>3</sup> DBS's program of services include the blind babies program, children's program, transition services, independent living program, vocational rehabilitative program, employer services, business enterprises program, rehabilitation center for the blind and visually impaired, and the braille and talking books library.<sup>4</sup>

The Rehabilitative Council for the Blind<sup>5</sup> (RCB) is an advisory council responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitation Act of 1973,<sup>6</sup> as amended, to recommend improvements to such programs and services, and to perform specified functions.

###### Vocational Rehabilitation

The Division of Vocational Rehabilitation (DVR), located within the DOE,<sup>7</sup> is designated as the administrative unit<sup>8</sup> for the purposes of complying with the Rehabilitation Act of 1973, as amended. Under Florida law, an individual with a disability<sup>9</sup> is eligible for vocational rehabilitative (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.<sup>10</sup> The DVR is responsible for determining eligibility of an individual for VR services.<sup>11</sup> The DVR is also responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.<sup>12</sup>

The Florida Rehabilitation Council (council) is responsible for assisting the division in the planning and development of statewide rehabilitation programs and services, recommending improvements to such programs and services, and performing specified functions.<sup>13</sup> The council is responsible for performing functions such as developing and reviewing state goals and priorities in accordance with federal law and evaluating VR program effectiveness.<sup>14</sup>

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<sup>1</sup> Section 20.15(3)(e), F.S.

<sup>2</sup> Section 413.011(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *See About Blind Services*, FLORIDA DIVISION OF BLIND SERVICES, <http://dbs.myflorida.com/Information/index.html> (last visited Jan. 25, 2018).

<sup>5</sup> Section 413.011(8), F.S. Members of the council are appointed by the Governor with the majority being blind or visually impaired. The council membership must include at least 13 members. Also, *see Florida Division of Blind Services, Rehabilitation Council*, <http://dbs.myflorida.com/Rehab-Council/index.html> (last visited Jan. 25, 2018).

<sup>6</sup> 29 U.S.C. s. 701(b).

<sup>7</sup> Section 20.15(3)(d), F.S.

<sup>8</sup> Section 413.202, F.S.

<sup>9</sup> Section 413.20(7), F.S. defines "disability" to mean a physical or mental impairment that constitutes or results in a substantial impediment to employment.

<sup>10</sup> Section 413.30(1), F.S.

<sup>11</sup> Section 413.30(4), F.S.

<sup>12</sup> Section 413.207(1), F.S.

<sup>13</sup> Section 413.405, F.S. Members of the council are appointed by the Governor. The council membership must include at least 15 members but no more than 25 at a time.

<sup>14</sup> Section 413.405(9)(b), F.S.

### Workers' Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment in exchange for giving up the right to sue the employer for negligence. In Florida, workers' compensation is governed by ch. 440, F.S., the "Workers' Compensation Law." The law prescribes coverage requirements, medical and indemnity benefits, the rights and responsibilities of employers, injured employees, medical providers, and carriers, as well as procedures for dispute resolution.

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.<sup>15</sup> For such injuries, an employer is responsible for providing medical treatment,<sup>16</sup> and compensation in the event of employee disability<sup>17</sup> or death.<sup>18</sup> Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.<sup>19</sup>

### State Risk Management Program

The Division of Risk Management (division)<sup>20</sup> located within the Department of Financial Services (DFS) is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. The divisions operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund.<sup>21</sup> Agency premiums are based on loss experience, exposure, and a prorated share of the division's operating budget. Projected costs are derived from actuarial studies of the divisions cash flow needs for claims and program expenses.<sup>22</sup>

### **Effect of the Bill**

The bill requires participants in an adult or youth work experience activity under either the DBS or the DVR be deemed an employee of the state for the purposes of workers' compensation coverage.

#### **B. SECTION DIRECTORY:**

Section 1 creates s. 413.015, F.S., relating to workers' compensation coverage for participants in an adult or youth work experience activity for blind individuals.

Section 2 creates s. 413.209, F.S., relating to workers' compensation coverage for participants in an adult or youth work experience activity in a vocational rehabilitation program.

Section 3 provides an effective date of July 1, 2018.

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<sup>15</sup> Section 440.09(1), F.S.

<sup>16</sup> Section 440.13(2), F.S.

<sup>17</sup> Section 440.15, F.S.

<sup>18</sup> Section 440.16, F.S.

<sup>19</sup> *Coverage Requirements*, DIVISION OF WORKERS' COMPENSATION,

<https://www.myfloridacfo.com/division/wc/Employer/coverage.htm> (last visited on Jan. 25, 2018).

<sup>20</sup> Section 20.121(2)(h), F.S.

<sup>21</sup> Section 284.30, F.S.

<sup>22</sup> See Division of Risk Management, Department of Financial Services, Fiscal Year 2016 Annual Report,

<https://www.myfloridacfo.com/Division/Risk/documents/2015-2016Report.pdf> (last visited on Jan. 25, 2018).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Financial Services (DFS) Division of Risk Management (division) is expected to incur additional medical and indemnity claim costs for providing workers' compensation benefits coverage to participants of training programs offered by the Division of Blind Services (DBS) and the Division of Vocational Rehabilitation (DVR), operated within the Department of Education (DOE). Currently, in similar training programs offered by the Department of Economic Opportunity (DEO), the division only covers the medical benefits of program participants. Based on five years of claims experience in the DEO training programs, the DFS estimates that medical claim costs for the new program coverage created in the bill will increase costs approximately \$128,000 annually, which are paid from the State Risk Management Trust Fund. The DFS also indicates that this cost estimate does not include ultimate developed costs, and is based on 966 additional participants from the DOE for these programs.

Additionally, the DFS indicates that the above costs do not include indemnity payments. Unlike DEO participants, the participants in the blind and vocational rehabilitation training programs will now be eligible for indemnity payments. Based on the divisions aggregate claim data, approximately 8 percent of claims will result in indemnity payments. Although injury severity will influence the duration of indemnity payments, it is anticipated that adding 966 training participants will result in 23 additional claims per year. Based on aggregate claim data, the division indicates that 8 percent of the anticipated claims (2 claims) will result in indemnity payments. The National Council on Compensation Insurance estimates that the average Florida indemnity cost per claim is \$19,000. Utilizing the average Florida indemnity cost per claim, the DFS estimates that annual indemnity claim payments for the new program created in the bill will be approximately \$38,000.<sup>23</sup>

The DFS estimates the total annual impact of HB 1437 to be \$166,000 (\$128,000 in medical claims and \$38,000 in indemnity payments).

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>23</sup> 2018 Agency Bill Analysis for SB 648, DEPARTMENT OF FINANCIAL SERVICES, on file with the Oversight, Transparency & Administration Subcommittee. SB 648 and HB 1437 are identical.

D. FISCAL COMMENTS:

In the event that a training participant is injured severely, resulting in the receipt of permanent total benefits, the DFS suggests that that indemnity claims payments would greatly exceed the estimated average cost per claim of \$19,000 for the life of the claim.<sup>24</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>24</sup> *Id.*