

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: SB 648

INTRODUCER: Senator Baxley

SUBJECT: Employment Services for Persons with Disabilities

DATE: January 9, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 648 provides that participants in adult or youth work experience programs operated by the Division of Blind Services and the Division of Vocational Rehabilitation, within the Department of Education, are considered state employees for workers' compensation purposes.

The Department of Financial Services (DFS) expects to incur costs of \$166,000 annually relating to workers' compensation insurance coverage for blind and vocational training participants. In addition, the Division of Risk Management (DRM) will experience an increase in litigation, primarily involving claims for benefits.<sup>1</sup> The DFS indicates the workload and other costs associated with the increased litigation can be absorbed within existing resources.<sup>2</sup>

The bill is effective July 1, 2018.

## II. Present Situation:

### Division of Blind Services

The Division of Blind Services (DBS) is housed within the Department of Education (DOE).<sup>3</sup> The purpose of the DBS is to ensure the greatest possible efficiency and effectiveness of services to individuals who are blind.<sup>4</sup> It is the intent of the Legislature to establish a coordinated program of services which are available throughout Florida to such individuals.<sup>5</sup> The program must be

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<sup>1</sup> The Department of Financial Services, *Senate Bill 648 Fiscal Analysis* (November 7, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

<sup>2</sup> Email from BG Murphy, Legislative Affairs Director, The Department of Financial Services, to Michelle Sanders, Legislative Analyst, Florida Senate Appropriations Subcommittee on General Government (Jan. 3, 2018) (on file with the Senate Appropriations Subcommittee on General Government).

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

<sup>4</sup> Section 413.011(3), F.S.

<sup>5</sup> Section 413.011(2), F.S.

designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.<sup>6</sup> The DBS's program of services include 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 braille and talking books library.<sup>7</sup>

The Rehabilitative Council for the Blind<sup>8</sup> (RCB) is an advisory council<sup>9</sup> responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitative Act of 1973,<sup>10</sup> as amended, to recommend improvements to such programs and services, and to perform specified functions.

### **Division of Vocational Rehabilitation**

The Division of Vocational Rehabilitation (division) located within the DOE<sup>11</sup> is designated as the administrative unit<sup>12</sup> for the purposes of complying with the Rehabilitation Act of 1973,<sup>13</sup> as amended. Under Florida law, an individual with a disability<sup>14</sup> is eligible for vocational rehabilitative (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.<sup>15</sup> The division is responsible for determining eligibility of an individual for VR services.<sup>16</sup> The division is also responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.<sup>17</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>18</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>19</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> See Florida Division of Blind Services, *About Blind Services*, <http://dbs.myflorida.com/Information/index.html> (last visited Jan. 2, 2018).

<sup>8</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. 2, 2018).

<sup>9</sup> Section 20.03(7), F.S., defines the term "advisory council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional area of state government and to provide recommendations and policy alternatives.

<sup>10</sup> 29 U.S.C. s. 701(b).

<sup>11</sup> Section 20.15(3)(d), F.S.

<sup>12</sup> Section 413.202, F.S.

<sup>13</sup> See *supra* note 8.

<sup>14</sup> Section 413.20(7), F.S., defines "disability" as a physical or mental impairment that constitutes or results in a substantial impediment to employment.

<sup>15</sup> Section 413.30(1), F.S.

<sup>16</sup> Section 413.30(4), F.S.

<sup>17</sup> Section 413.207(1), F.S.

<sup>18</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>19</sup> Section 413.405(9)(b), F.S.

## **Worker's 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>20</sup> For such injuries, an employer is responsible for providing medical treatment,<sup>21</sup> and compensation in the event of employee disability<sup>22</sup> or death.<sup>23</sup> Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.<sup>24</sup>

### ***State Risk Management Program***

The Division of Risk Management (DRM)<sup>25</sup> located within the 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 DRM's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund. Agency premiums are based on loss experience, exposure, and a prorated share of the DRM's operating budget. Projected costs are derived from actuarial studies of the DRM's cash flow needs for claims and program expenses.<sup>26</sup>

The DRM is comprised of three Bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims. The Bureau of Risk Financing and Loss Prevention provides administrative support to the DRM, including the cash management for the DRM's annual budget, calculation of casualty and property premiums for the state's agencies and universities, monitoring the DRM's contracts, and providing data management and IT support. The Bureau of State Employee Workers' Compensation Claims is responsible for the administration of all workers' compensation claims filed by state and university employees and volunteers who are injured on the job. The Bureau of State Liability and Property Claims is responsible for the investigation and resolution of liability and property claims involving or against state agencies and universities.<sup>27</sup>

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<sup>20</sup> Section 440.09(1), F.S.

<sup>21</sup> Section 440.13, F.S.

<sup>22</sup> Section 440.15, F.S.

<sup>23</sup> Section 440.16, F.S.

<sup>24</sup> Division of Workers' Compensation, *Coverage Requirements*, <https://www.myfloridacfo.com/division/wc/Employer/coverage.htm> (last visited on Jan. 2, 2018).

<sup>25</sup> Section 20.121(2)(h), F.S.

<sup>26</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. 2, 2018).

<sup>27</sup> *Id.*

The State Risk Management Trust Fund has a projected deficit of \$18.8 million based upon the December 21, 2017 Self-Insurance Estimating Conference.<sup>28</sup> For estimating conference purposes, deficits are assumed to be dealt with during session to begin the following year with a zero balance.

### III. Effect of Proposed Changes:

**Section 1** creates s. 413.015, F.S., to require participants in an adult or youth work experience activity administered under the Division of Blind Services be deemed an employee of the state for purposes of workers' compensation coverage.

**Section 2** creates s. 413.209, F.S., to require participants in an adult or youth work experience activity administered under the Division of Vocational Rehabilitation be deemed an employee of the state for purposes of workers' compensation coverage.

**Section 3** provides the bill is effective July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and 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:

A private sector entity who employs training participants may experience cost savings as a result of not having to provide workers' compensation coverage for those participants.

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<sup>28</sup> See December 21, 2017, Self-Insurance Estimating Conference.  
<http://edr.state.fl.us/Content/conferences/riskmanagement/riskmanagementresults.pdf>

**C. Government Sector Impact:**

According to the DFS, the DRM expects to incur additional claim costs for covering blind and vocational training participants.<sup>29</sup> The DRM currently covers participants for medical benefits only who are in the Department of Economic Opportunity (DEO) training programs. Based on claim costs for DEO training programs, DFS expects that annual medical claim costs of approximately \$128,000 would be incurred for covering blind and vocational training participants. This dollar amount is based on five years of claim experience in the DEO program, does not include ultimate developed costs, and is based on DOE's estimate of 966 additional participants for these programs.

DFS states that such costs do not include indemnity payments. Unlike DEO participants, the participants in the blind and vocational programs are eligible for indemnity payments. Based on the DRM's aggregate claim data, approximately eight percent of claims could result in indemnity payments.

Although injury severity will influence the duration of indemnity payments, DFS anticipates that adding 966 training participants will result in 23 additional claims per year. Based on the DRM's aggregate claim data, eight percent (two) of the anticipated claims could result in indemnity payments. The National Council on Compensation Insurance estimates the average Florida indemnity cost per indemnity claim is \$19,000. The DRM estimates \$38,000 (\$19,000 x 2) in indemnity payments will arise yearly for the life of claims. However, indemnity payments could greatly exceed \$19,000 for the life of the claim if a training participant is severely injured and the injury results in the receipt of permanent total benefits.<sup>30</sup>

The DFS anticipates the DRM will experience an increase in litigation, primarily involving claims for benefits.<sup>31</sup> The DFS indicates this increase can be absorbed within existing resources<sup>32</sup> appropriated by the Legislature. The projected deficit is not affected since the anticipated cost can be absorbed within existing appropriations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>29</sup> 2018 Agency Legislative Bill Analysis from the Department of Financial Services, November 7, 2017, on file in the office of the Senate Committee on Governmental Oversight and Accountability.

<sup>30</sup> The Department of Financial Services, *Senate Bill 648 Fiscal Analysis* (November 7, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

<sup>31</sup> *Id* at p. 2.

<sup>32</sup> Email from BG Murphy, Legislative Affairs Director, The Department of Financial Services, to Michelle Sanders, Legislative Analyst, Florida Senate Appropriations Subcommittee on General Government (Jan. 3, 2018) (on file with the Senate Appropriations Subcommittee on General Government).

**VIII. Statutes Affected:**

This bill creates sections 413.015 and 413.209 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.

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

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