

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 Governmental Oversight and Accountability

BILL: SB 648

INTRODUCER: Senator Baxley

SUBJECT: Employment Services for Persons with Disabilities

DATE: December 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Pre-meeting
2.			AGG	
3.			AP	

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 are considered employees of the state for purposes of workers' compensation coverage.

The bill takes effect on July 1, 2018.

II. Present Situation:

Division of Blind Services

The Division of Blind Services (DBS) is housed within the Department of Education (DOE).¹ The purpose of the DBS is to ensure the greatest possible efficiency and effectiveness of services to individuals who are blind.² It is the intent of the Legislature to establish a coordinated program of services which are available throughout Florida to such individuals.³ The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.⁴ 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.⁵

¹ Section 20.15(3)(e), F.S.

² Section 413.011(3), F.S.

³ Section 413.011(2), F.S.

⁴ *Id.*

⁵ See Florida Division of Blind Services, *About Blind Services*, <http://dbs.myflorida.com/Information/index.html> (last visited Nov. 27, 2017).

The Rehabilitative Council for the Blind⁶ (RCB) is an advisory council⁷ responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitative Act of 1973,⁸ 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 DOE⁹ is designated as the administrative unit¹⁰ for the purposes of complying with the Rehabilitation Act of 1973,¹¹ as amended. Under Florida law, an individual with a disability¹² is eligible for vocational rehabilitative (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.¹³ The division is responsible for determining eligibility of an individual for VR services.¹⁴ The division is also responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.¹⁵

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.¹⁶ 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.¹⁷

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.

⁶ 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 Nov. 27, 2017).

⁷ 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.

⁸ 29 U.S.C. s. 701(b).

⁹ Section 20.15(3)(d), F.S.

¹⁰ Section 413.202, F.S.

¹¹ *See supra* note 8.

¹² Section 413.20(7), F.S., defines "disability" as a physical or mental impairment that constitutes or results in a substantial impediment to employment.

¹³ Section 413.30(1), F.S.

¹⁴ Section 413.30(4), F.S.

¹⁵ Section 413.207(1), F.S.

¹⁶ 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.

¹⁷ Section 413.405(9)(b), F.S.

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.¹⁸ For such injuries, an employer is responsible for providing medical treatment,¹⁹ and compensation in the event of employee disability²⁰ or death.²¹ Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.²²

State Risk Management Program

The Division of Risk Management (DRM)²³ 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 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.²⁴

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.²⁵

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 413.015, F.S., to require that 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 of the bill creates s. 413.209, F.S., to require that 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.

¹⁸ Section 440.09(1), F.S.

¹⁹ Section 440.13, F.S.

²⁰ Section 440.15, F.S.

²¹ Section 440.16, F.S.

²² Division of Workers' Compensation, *Coverage Requirements*, <https://www.myfloridacfo.com/division/wc/Employer/coverage.htm> (last visited on Nov. 28, 2017).

²³ Section 20.121(2)(h), F.S.

²⁴ 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 Nov. 28, 2017).

²⁵ *Id.*

Section 3 of the bill provides an effective date of 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 employees training participants may experience cost savings as a result of not having to provide workers' compensation coverage for those participants.

C. Government Sector Impact:

According to DFS, the Division of Risk Management expects to incur additional claim costs for covering blind and vocational training participants.²⁶ The Division of Risk Management currently covers participants for medical benefits only who are in the Department of Economic Opportunity (DEO) training programs. Based on claim costs for that program, 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 Division of Risk Management's aggregate claim data, approximately 8 percent of claims could result in indemnity payments.

²⁶ 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.

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 Division of Risk Management aggregate claim data, they anticipate that 8 percent of the anticipated claims (2) could result in indemnity payments. The National Council on Compensation Insurance estimates that the average Florida indemnity cost per indemnity claim is \$19,000. Division of Risk Management estimates \$38,000 (\$19,000 x 2) in indemnity payments will arise yearly for the life of claims. However, a training participant that is injured severely and results in the receipt of permanent total benefits could greatly exceed \$19,000 for the life of the claim.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.