

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 427 Independent Living Services

**SPONSOR(S):** Post-Secondary Education & Lifelong Learning Subcommittee, Persons-Mulicka, Tant and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 794

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	17 Y, 0 N, As CS	Wolff	Kiner
2) Ways & Means Committee	14 Y, 0 N	Curry	Aldridge
3) Education & Employment Committee	19 Y, 0 N	Wolff	Hassell

### SUMMARY ANALYSIS

The bill aligns the requirements for the Florida Independent Living Council (FILC) to the federal requirements amended by the Workforce Innovation and Opportunity Act (WIOA). The changes ensure that FILC membership meets federal requirements and provide FILC with more responsibility regarding the development of the State Plan for Independent Living (SPIL).

The bill also increases funding for the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program (JP-PAS Program) by increasing the percentage of revenue from the tax collection enforcement diversion program provided to the Florida Association of Centers for Independent Living (FACIL) for the administration of the JP-PAS Program.

The Revenue Estimating Conference estimated that the bill will have a negative recurring impact on General Revenue of \$0.7 million, an insignificant negative recurring impact on state trust fund revenue and a negative recurring impact of \$0.1 million on local government revenues.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Federal Independent Living Program Requirements

In 2014, the WIOA<sup>1</sup> transferred the Independent Living (IL) programs to the newly created Independent Living Administration within the Administration for Community Living (ACL) of the Federal Department of Health and Human Services.<sup>2</sup> The purpose of the IL program is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities and support their integration and full inclusion into mainstream society.<sup>3</sup> Centers for Independent Living (CILs) are consumer controlled, community-based, cross-disability, nonresidential private nonprofit agencies incorporated to provide individuals with significant disabilities (regardless of age or income) IL services.<sup>4</sup> The IL program, through the CILs, must provide at least the five core services established by WIOA to eligible individuals in the state.<sup>5</sup>

Federal law provides the framework for the IL programs established by the states, including the requirements for Designated State Entities (DSE),<sup>6</sup> the State Independent Living Councils (SILCs),<sup>7</sup> and the SPIL.<sup>8</sup>

##### *Designated State Entities*

A state operating an IL program must have a DSE, identified in the SPIL, to perform the following functions:

- Receive, account for, and disburse funds received by the state for the IL program.
- Provide administrative support services.
- Maintain records with respect to the IL programs as required by the ACL.
- Submit information and provide assurances as may be required by the ACL.
- Retain, not more than 5 percent, of federal funds received for the states IL program.<sup>9</sup>

##### *State Independent Living Council*

Federal law requires that the SPIL provide for the establishment of a SILC.<sup>10</sup> The SILC membership must be appointed by the Governor, or the chief officer of an entity specified in state law, and must include:

- at least one director of a CIL, chosen by the CIL directors of the state, that is a voting member;
- at least one director of a CIL operated by the governing bodies of American Indian Tribes located on Federal or State reservation, if at least one such CIL is operated in the state, as a voting member; and

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<sup>1</sup> Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014). Prior to WIOA, the IL program under the Rehabilitation Act of 1973, 29 U.S.C. s. 701, *et seq.*, as amended, was administered by the Rehabilitation Services Administration within the Federal Department of Education.

<sup>2</sup> Pub. L. No. 113-128, s. 472, 128 Stat. 1425, 1685 (July 22, 2014).

<sup>3</sup> 29 U.S.C. s. 796.

<sup>4</sup> 29 U.S.C. s. 796a(2).

<sup>5</sup> See 29 U.S.C. s. 796a(2) and 29 U.S.C. s. 705(17). IL Core Services are defined as: information and referral services; independent living skills training; peer counseling (including cross-disability peer counseling); individual and systems advocacy; and services that assist individual transition out of nursing homes and other institutions, assist individuals at risk of entering institutions, and facilitate the transition of eligible youth to postsecondary life.

<sup>6</sup> 29 U.S.C. s. 796c(c).

<sup>7</sup> 29 U.S.C. s. 796d.

<sup>8</sup> 29 U.S.C. s. 796c.

<sup>9</sup> 29 U.S.C. s. 796c(c).

<sup>10</sup> 29 U.S.C. s. 796c(b).

- a representative of the DSE and representatives of state agencies that provide services to individuals with disabilities, as ex officio members.<sup>11</sup>

The SILC membership must meet the following requirements:

- Members are representative of the state population.
- Members represent a broad range of individuals with disabilities from diverse backgrounds.
- Members are knowledgeable about CILs and IL services.
- A majority of the total membership, and a majority of the voting members, are individuals with disabilities and not employed by any state agency or a CIL.<sup>12</sup>

A chairperson must be selected from amongst the voting membership by the SILC.<sup>13</sup> Federal law also provides the requirements for the length of member terms and term limits.<sup>14</sup>

The SILC is charged with fulfilling the following duties:

- Develop the SPIL.
- Monitor, review, and evaluate implementation of the SPIL.
- Meet regularly, providing public notice and permitting public participation.
- Submit reports and maintain records as required by the ACL.
- Coordinate activities with other entities in the state that provide similar services, as appropriate.<sup>15</sup>

The SILC may also be granted the following authority by state law:

- Work with CILs to coordinate services with public and private entities.
- Develop resources to assist with the implementation of SILC duties or to assist CILs in the provision of IL services.
- Perform other functions, consistent with its duties and authorities, that the SILC determines appropriate.<sup>16</sup>

### *State Plan for Independent Living*

In order to be eligible to receive federal IL program funding, a state must have a SPIL that is jointly developed by the SILC and the state's CILs with public input from throughout the state.<sup>17</sup> The SPIL must be executed by the chairperson of the SILC, the director, or their designee, of the DSE, and not less than 51 percent of the CIL directors in the state.<sup>18</sup>

The SPIL must provide for the following:

- Designation of the DSE.
- Objectives of the state IL program with proposed timeframes for their completion.
- Description of how IL services will be provided throughout the state.
- Design for the state network of CILs.
- Cooperation, coordination and working relationship among both entities providing IL services and other entities providing services to individuals with disabilities.
- Coordination of services with other entities to avoid duplication of effort.
- Coordination between state and federal sources of funding.
- Steps taken regarding outreach to populations that are unserved or underserved by the IL program.<sup>19</sup>

<sup>11</sup> 29 U.S.C. s. 796d(b)(2).

<sup>12</sup> 29 U.S.C. s. 796d(b)(4)(A) and (B).

<sup>13</sup> 29 U.S.C. s. 796d(b)(5).

<sup>14</sup> 29 U.S.C. s. 796d(b)(6) and (7). The law provides for 3 years terms and prohibits a member from serving more than two consecutive full terms.

<sup>15</sup> 29 U.S.C. s. 796d(c)(1).

<sup>16</sup> 29 U.S.C. s. 796d(c)(2).

<sup>17</sup> 29 U.S.C. s. 796c(a)(1) and (2).

<sup>18</sup> 29 U.S.C. s. 796c(a)(2)(B).

<sup>19</sup> 29 U.S.C. s. 796c(d)-(1).

Finally, the SPIL must provide for the assurances mandated by ACL and provide for periodic IL program evaluation.<sup>20</sup>

### State Level Independent Living Program

Florida operates an IL program with the Division of Vocational Rehabilitation (DVR) within the Florida Department of Education (DOE) as the DSE and the FILC is the SILC for Florida's IL program.<sup>21</sup> There are currently 16 CILs throughout Florida.<sup>22</sup> The FACIL serves as a capacity building advocacy organization supporting all of Florida's CILs and provides a forum for the cooperation of Florida's CILs.<sup>23</sup>

While the statutes that provide for Florida's IL program generally align with federal requirements, the current law regarding the composition and duties of FILC was aligned with the federal requirements prior to passage of WIOA and has not been updated to address the current requirements described above.<sup>24</sup>

### **Effect of Proposed Changes**

The bill aligns the requirements for the FILC in state law with the updated SILC requirements from WIOA. The bill provides that the FILC will be comprised of 11 members, 3 of which are employees of a CIL and at least 6 of which are voting members that are individuals with significant disabilities and are not employed by the state or a CIL. The bill permits that one or more members may be representatives of state agencies serving individuals with disabilities. As required by WIOA, FILC membership must be from diverse backgrounds.

As the DVR is the DSE for Florida, the bill removes several references and requirements related to the Division of Blind Services (DBS) within the DOE. The FILC is no longer required to assist the DBS with the implementation of the state's IL program as this relationship lies between the FILC and the DVR. Similarly, the bill removes the requirement that DBS make FILC reports available to the public, as the DVR already fulfills this requirement. Finally, the DBS will no longer have a mandatory representative on the FILC, but it is not barred from having a representative if one is appointed by the governor.

The bill revises the FILC's duties to mirror federal law, namely, the development of the SPIL and the coordination of activities with other entities. The FILC will now designate a member to serve on the Florida Rehabilitation Council. Additionally, the bill provides the FILC with the optional authorities provided for in WIOA as described above. Consistent with WIOA, the bill requires the FILC to coordinate with the CILs to avoid duplication of services, prohibits the FILC from directly providing IL services, and mandates that the FILC comply with federal and state law relating to restrictions and prohibitions on lobbying activities.

### **Present Situation**

#### James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program

The JP-PAS Program provides assistance to individuals employed in Florida, or in counties adjacent to Florida, with Personal Care Attendant (PCA) services that assist them with activities of daily living, such

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<sup>20</sup> 29 U.S.C. s. 796c(m) and (n).

<sup>21</sup> Section 413.371 and 413.395, F.S.

<sup>22</sup> Florida Department of Education, Division of Vocational Rehabilitation, *Centers for Independent Living Map with Contact Information Below*, [http://rehabworks.org/cil\\_map.shtml](http://rehabworks.org/cil_map.shtml) (last visited April 15, 2021).

<sup>23</sup> Florida Association of Centers for Independent Living, *About Us*, <https://www.floridacils.org/AboutUs.html> (last visited April 15, 2021).

<sup>24</sup> Section 413.395, F.S.

as dressing, grooming, or eating.<sup>25</sup> The costs associated with PCA services, depending on the scope of the individual's needs, can range from \$500 to \$2000 a month.<sup>26</sup> To be eligible for the JP-PAS Program, an individual must require PCA services for at least two activities of daily living, be employed and earning at least 100% of the federal poverty level but not more than \$150,000 a year, not be receiving Social Security Disability Insurance or Supplemental Security Income, and not be receiving Medicaid Home and Community Based services.<sup>27</sup> The JP-PAS Program is administered by FACIL and provides participants with reimbursement for expenses for PCA services, up to \$1,600.00 a month.<sup>28</sup> As of December 31, 2020, there were 79 participants in the JP-PAS Program.<sup>29</sup>

Current law provides that 50 percent of the revenue from the tax collection enforcement diversion program is provided to FACIL for the administration of the JP-PAS Program.<sup>30</sup> The tax collection enforcement diversion program is operated in state attorney's offices in the following eight Florida circuits:<sup>31</sup>

- The Fourth Judicial Circuit (Clay, Duval, Nassau).
- The Sixth Judicial Circuit (Pasco, Pinellas).
- The Ninth Judicial Circuit (Orange, Osceola).
- The Eleventh Judicial Circuit (Miami-Dade).
- The Thirteenth Judicial Circuit (Hillsborough).
- The Fifteenth Judicial Circuit (Palm Beach).
- The Seventeenth Judicial Circuit (Broward).
- The Twentieth Judicial Circuit (Charlotte, Collier, Glades, Hendry, Lee).

In Fiscal Year 2019-2020, the revenues of the tax collection enforcement diversion program decreased by 4 percent.<sup>32</sup> The Revenue Estimating Conference projects that the revenue from the tax collection enforcement diversion program will remain stagnant for the next 5 years.<sup>33</sup>

### Effect of Proposed Changes

The bill increases the percentage of revenue from the tax collection enforcement diversion program that is provided to FACIL for the administration of the program from 50 percent to 75 percent.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 413.395, F.S., removing a provision requiring the Florida Independent Living Council to assist the Division of Blind Services of the Department of Education; revising the membership of the council; revising the council's duties and responsibilities; authorizing the council to conduct certain activities as described in the state plan for independent living; requiring the council to coordinate with centers for independent living; prohibiting the council from engaging in certain activities; requiring the council to comply with state and federal laws and regulations relating to lobbying.

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<sup>25</sup> Sections 413.02(1) and 413.402, F.S.

<sup>26</sup> Florida Association of Centers for Independent Living, *Jimmy Patrick Memorial Work Incentive PAS Program Overview*, <https://www.floridacils.org/JPPASOverview.html> (last visited April 15, 2021).

<sup>27</sup> Florida Association of Centers for Independent Living, *The James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program Policies and Procedures for Program Participants*, Sept. 25, 2020, on file with the Post-Secondary Education & Lifelong Learning Subcommittee.

<sup>28</sup> *Id.*

<sup>29</sup> Florida Association of Centers for Independent Living, *James Patrick Memorial Work Incentive Personal Attendant Services Program Summary July 1, 2019 – June 30, 2020*, Jan. 15, 2021, on file with the Post-Secondary Education & Lifelong Learning Subcommittee.

<sup>30</sup> Section 413.4021, F.S. The remaining 50 percent of the revenue from the tax collection enforcement diversion program is placed into General Revenue for the state.

<sup>31</sup> Florida Revenue Estimating Conference, *Tax Collection Enforcement Diversion Program*, Jan 5, 2021, available at <http://edr.state.fl.us/content/conferences/generalrevenue/taxcollectiondivprog.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

**Section 2.** Amends s. 413.4021, F.S., increasing the percentage of certain revenues used to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program.

**Section 3.** Provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill increases the percentage of revenue collected from tax collection enforcement diversion program deposited into the special reserve account of FACIL from 50 percent to 75 percent. See Fiscal Comments.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

None.

### **D. FISCAL COMMENTS:**

The Revenue Estimating Conference estimated that the bill will have a negative recurring impact on General Revenue of \$0.7 million, an insignificant negative recurring impact on state trust fund revenue and a negative recurring impact of \$0.1 million on local government revenues.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

None.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2021, the Post-Secondary Education & Lifelong Learning Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires that at least 6 voting members of the Florida Independent Living Council be individuals with significant disabilities and not employed by the state or a CIL.

The bill analysis is drafted to the committee substitute adopted by the Post-Secondary Education & Lifelong Learning Subcommittee.