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DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WORKFORCE AND TECHNICAL SKILLS
ANALYSIS**

BILL #: HB 1825

RELATING TO: Vocational Rehabilitation

SPONSOR(S): Representative McGriff & Others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) WORKFORCE AND TECHNICAL SKILLS
 - (2) COUNCIL FOR LIFELONG LEARNING
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 1825:

- Defines terms relating to vocational rehabilitation.
- Requires the Division of Vocational Rehabilitation to develop a 5-year plan that prioritizes any additional initiatives and provides requirements for the plan.
- Requires the Division of Vocational Rehabilitation to assure that providers of direct services maintain quality-assurance and due-diligence regarding services.
- Renames the Rehabilitation Advisory Council the Rehabilitation Council and revises council membership and duties.
- Revises a cross-reference to conform the division's transfer to the Department of Education.
- Requires the Office of Program Policy Analysis and Government Accountability to conduct a review.

The bill has an effective date of July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Division of Vocational Rehabilitation

The 1999 Legislature transferred the Division of Vocational Rehabilitation Services (VR) from the Florida Department of Labor and Employment Security to the Department of Education (Ch. 99-240, L.O.F.). The Division of Vocational Rehabilitation Services provides services for eligible persons with physical or mental impairments to enable them to prepare for, acquire, maintain, or regain employment. Funding for vocational rehabilitation is through a state and federal matching agreement. The state contributes 21.3% of the grant award, and the federal government provides 78.7%, returning \$3.69 for each state dollar expended. In 2000-01, the state appropriated \$25.9 million in general revenue and received \$92.8 million in federal funds.

The division's primary programs include:

- The VR program: An employment program assisting individuals with disabilities, including Floridians with the most severe disabilities, to pursue meaningful careers commensurate with their abilities and capabilities.
- The Independent Living Program: A program that provides services through a statewide network of private non-profit, non-residential, locally based and consumer controlled Centers for Independent Living. The thirteen Centers for Independent Living (CILs) provide the four core services of independent living: skills training, peer counseling, advocacy and information and referral. Some CILs also provide interpreter services for the deaf, attendant care training, and Americans with Disabilities Act (ADA) architectural surveys.
- Supported Employment Program: This program services people with the most severe disabilities who traditionally would have been placed in sheltered workshop. The program assists these individuals to be included in their community by using job coaching and continuing follow up to assure that the ongoing support needs of the individual are being met.
- Rehabilitation Services Transition from School to Work Programs: This program focuses on students in secondary schools preparing for and making the transition from school to the adult community.

Occupational Access and Opportunity Commission

The Occupational Access and Opportunity Commission (OAOC) was created within the Department of Education's Division Of Vocational Rehabilitation Services by the Legislature in 1999 (Ch. 99-240, L.O.F.) to gather individuals with disabilities, stakeholders, and employers to develop a single self-sufficiency strategy that provides for employment and career options for Floridians with disabilities (s. 413.83, F.S). The OAOC is the designated State agency for purposes of receiving Title I Vocational Rehabilitation Service funds and is responsible for planning, policy, and program administration and oversight of VR services. The administrative entity is the Florida Department of Education and is responsible for program personnel, budgetary matters, the implementation of OAOC policies, and other functions of VR.

The OAOC consists of 16 members with the Commissioner of Education or designee as chair. Other members include the Chair of the Florida Rehabilitation Council; Chair of the Independent Living Council; Chair of the Commission for Purchase for Blind and other Severely Handicapped; a community rehabilitation provider who contracts to provide vocational rehabilitation services; a representative of the Advocacy Center for Persons with Disabilities; a consumer of vocational rehabilitation services; and other persons with disabilities and representatives of business, workforce development, education, consumer advocacy groups, employers of individuals with disabilities, and local government.

Functions of the OAOC include:

- Preparing and submitting the state vocational rehabilitation plan.
- Serving as the state governing authority of programs administered by the OAOC.
- Developing and implementing a five-year plan to promote occupational access and opportunities for Floridians with disabilities through a process of consulting with stakeholders and holding public hearings. The five-year plan includes:
 - Designating an administrative entity that will support the OAOC's work.
 - Exploring the use of Individual Training Accounts (ITA's).
 - Including an emergency response component for times of economic downturn.
 - Requiring that the Commission enter into cooperative agreements with community-based rehabilitation programs to be service providers of the program.
 - Increasing the amount of services provided by community rehabilitation providers.
 - Ensuring that state career service employees provide all services mandated by federal law.
- Contracting, no later than July 1, 2000, with the administrative entity designated in the plan to execute the services, functions, and programs prescribed in the plan.

The OAOC heads the state's vocational rehabilitation program, and prior to this change, the Division of Vocational Rehabilitation in the Department of Labor and Employment Security delivered vocational rehabilitation services. The Division of Vocational Rehabilitation is now organizationally attached to the Department of Education, but reports to the OAOC. The program provides individually tailored services and job training to people with disabilities who want to work. The program's goal is to enable its customers to maintain long-term employment and become self-sufficient. To be eligible for services, a person must:

- Have a physical or mental impairment that is a substantial impediment to employment;
- Be employable after receiving vocational rehabilitation services; and
- Require vocational rehabilitation services to enter and retain employment.

Under federal regulations, vocational rehabilitation programs must give priority to serving clients with the most significant disabilities.

The provision of vocational rehabilitation services in Florida has traditionally involved both state employees and private providers. Federal law requires that only state employees may deliver certain client services; these include determining a client's eligibility for program services, approving the client's plan of services, authorizing those services, and closing the client's case. In addition, state employees have traditionally provided other basic services, including recruitment, intake, and case management. These services are provided through six area offices that supervise 24 service regions.

Private rehabilitation providers have historically offered only specialized placement services, such as job placement and supported employment. However, in October 1995, the program contracted with a private provider in the Florida Keys to deliver basic services, as the program was unable to retain sufficient state counselors to adequately deliver these services. Since then, the program has initiated three pilot projects in which private providers deliver basic services that are not federally required to be delivered by state employees.

In response to the OPPAGA report (see below), the OAOC moved to temporarily "pause from implementing new demonstration contracts until the Commission has evaluated the concerns and recommendations of various entities including the RSA (federal VR agency), OPPAGA, DOE Inspector General, and (the) MGT (report). The OAOC also moved to "establish a process to review the availability of financial and human resources, consideration of public comments, and the development of the 5-year plan."

Assisting the OAOC with the implementation of privatization efforts was MGT of America, to perform evaluations of early implementation of the demonstration projects where privatization efforts occurred. In its report dated January 11, 2002, MGT made the following findings and recommendations:

- Privatizations efforts have clearly been effective and that the "private sector providers are providing VR clients a level of service that is at least equal to the level of services being provided by public sector staff."
- Workload and caseload levels are not as great as perceived and that "due to grossly overstates and inflated caseloads, MGT questions the validity of the total number of cases and the level of effort required to manage cases."
- OAOC/VRS should be able to "up to a ramp up to a privatized service delivery system quicker and ramp down the public sector service delivery system faster and a lower cost than anticipated."
- The workload of the public sector is declining as the workload for the private sector is increasing.
- The initial transition process has had major difficulties, such as: "client choice, as it relates to an option between a specific public or private counselor has been a major hindrance to the successful implementation of the demonstration projects"; "roles and responsibilities and lines of authority for the transition from public to private has been muddled"; the "OAOC does not have direct line authority over the Director of the VRS"; and that the "allocation of start-up costs was excessive."

MGT made the following recommendations:

- The OAOC/VRS should continue with the privatization of VR services.
- The OAOC should have direct line authority over the Director of the Division of Vocational Rehabilitation Services.

- The OAOC/VRS should establish a policy regarding start-up costs and implement this policy as soon as possible.
- OAOC/VRS should establish a transition management team at VRS headquarters office to oversee the transition management implementation of future demonstration projects.
- The OAOC/VRS should change the process for initial assignment of cases to a specific counselor.
- The OAOC/VRS should transfer 100 percent of all referrals and 20 percent of the caseload per month to the private sector.
- Staffing models should be based on time standards, level of effort, and case mix.
- The OAOC/VRS should address network connectivity issues prior to rollout.
- The OAOC/VRS should train new VR counselors for private providers in RIMS (VR Information System) and case management in a timely fashion.
- The OAOC/VRS should immediately establish desk audit procedures to purge inactive cases from existing caseloads.
- Continue to evaluate the current demonstration projects in order to use the information to guide implementation of future projects.

Florida Rehabilitation Advisory Council

Section 413.405, F.S., creates the Rehabilitation Advisory Council, a federally mandated entity, for the purpose of assisting the Division of Vocational Rehabilitation in the planning and development of statewide rehabilitation programs and services and to give recommendations to the division on ways to improve the program and the delivery of services.

Members of the council are appointed by the Governor and include, among others, representatives of community rehabilitation service providers, client assistance programs, business and labor, disability advocacy groups, and the director of the division. A majority of persons on the council must be persons with disabilities.

The council advises and assists the division with the creation of the state plan and assists the division with needs assessments and program evaluations. A representative of the council is also a member of the OAOC.

The Office of Program Policy Analysis and Government Accountability's Report

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was directed by the Legislature (Chapter 99-240, L.O.F.) to review the OAOC and to report on:

- Any net change in federally defined administrative costs;
- The OAOC's progress in increasing services through the use of community-based (private) rehabilitation providers;
- The OAOC's progress toward achieving specified outcomes based on established performance measures and standards; and
- Whether it is sound public policy for the OAOC to continue to exist.

The report (Report No. 02-06) entitled, "*Special Examination: Responsibilities Not Fulfilled by Occupational Access and Opportunity Commission; Program Performance Declines*", concluded that administrative costs were estimated to have increased since the OAOC was established, due to higher indirect costs assessed by the Department of Education, and that the commission had not effectively planned or implemented its efforts to privatize program services. The commission had provided large start-up grants to new providers with little documentation, and it had not developed adequate oversight mechanisms. As a result, program costs substantially increased while program outcomes declined. The federal government had expressed concerns about the commission's

privatization efforts, and it has classified the state as a high-risk grantee, for 2000-2201 and 2001-2002 that could jeopardize up to \$100 million in federal funds. The OPPAGA report stated, *“that it would not be sound public policy to continue the commission in its present form, and recommends that the commission be eliminated and the Department of Education be given primary responsibility for managing the vocational rehabilitation program” and designate the department the designated agency for federal purposes.* OPPAGA also recommended that the membership of the OAOC be merged with the Florida Rehabilitation Council which would have a stronger role in strategic planning and oversight of the vocational rehabilitation program.

Department of Education Office of Inspector General’s Reports

The Department of Education’s Office of Inspector General has recently published three reports regarding the OAOC. The following are summaries of each report.

Report #01-130, January 7, 2002, Summary of Findings:

The Office of Inspector General’s investigation and review of the award of contracts to Abilities Inc. of Florida and the Florida Institute for Workforce Innovation, Inc., identified the following issues that adversely impact the state:

- Vocational Rehabilitation Services violated federal and state regulations by not conducting an analysis to verify if an additional award of \$830,692 to the providers was reasonable or necessary or more cost effective than services provided by the state.
- The award of additional funding to the providers violated the Request for Proposal requirements and invalidated the Occupational Access and Opportunity Commission's formal bid process.
- The Florida Institute for Workforce Innovation, Inc. was paid in excess of \$140,000 for lease and facilities costs when actual expenses of approximately \$30,000 were documented. This does not comply with federal cost principles.
- Vocational Rehabilitation Services did not take effective action to cancel the lease at 825 NW 23 Ave., Gainesville, Florida and even though the lease contained provisions to release the state for the liability, Vocational Rehabilitation Services did not exercise these provisions. This resulted in a potential ongoing expenditure to the state for the term of the lease in the amount of \$343,258 for a vacant building.
- Abilities Inc. of Florida did not have a qualified counselor on staff in their Lake City office during the first five months of the six-month contract and VRS took no action to enforce this requirement.
- Vocational Rehabilitation Services improperly transferred state owned furniture, computers, and other office equipment to the providers, the value of which was awarded outside of the bid process.
- Inventories of property maintained by the Vocational Rehabilitation Services District Offices did not include property purchased by the providers with Demonstration Project contract funds.
- The inventory records for Regions 7, 9, and 20 maintained by Vocational Rehabilitation Services are incomplete and inaccurate.

- As specified by the Occupational Access and Opportunities Commission Request for Proposal, Vocational Rehabilitation Services awarded fixed rate contracts to providers for contractual services without measurable outcomes or defined results of service delivery that did not comply with the state and federal procedures.
- Vocational Rehabilitation Services had not taken corrective actions to address numerous recommendations by the Bureau of Compliance and Oversight relating to the contracts to privatize services in Regions 7, 9, and 20.

Report # 01-083, December 21, 2001, Summary of Findings:

Based on the review conducted by the Office of Inspector General, OAOC/VRS contract with the Able Trust does not comply with federal and state laws for the following reasons:

- The OAOC/VRS delegates the day-to-day management and oversight of the High School/High Tech Program that cannot be delegated according to federal law.
- The Able Trust contract documentation did not contain a cost or needs analysis of the Able Trust proposal or a budget of how the \$387,000 for ten (10) "Start Up Grants" to establish the High School/High Tech centers would be disbursed. Furthermore, the OAOC/VRS did not take steps necessary to ensure that costs were reasonable or necessary, or to ensure that funds were expended for contract purposes.
- The contract termination clause does not adequately protect the interests of the State of Florida. The contract terms were written such that the provider can obligate the full amount of the funds without a provision to withhold funding of this contract for any reason without placing the Department at risk of possible litigation.
- The contract contains numerous other administrative irregularities (See report for details).
- Based on these issues, numerous contract amendments are required to ensure services for the disabled are clearly defined and are in compliance with law, and that the State's interests are adequately protected.

Report # 01-129, October 16, 2001, Summary of Findings:

The Office of Inspector General's investigation and review of Contract #VD 032, The Able Trust and the Department of Education, OAOC/VRS identified the following issues:

- The IG found that the contract prescribed the use of Social Security Reimbursement Funds in a discretionary manner. Subsequent to an opinion given to the VRS Division Director by Manasevit & Brustein on July 27, 2001, the Offices of General Counsel and Inspector General (OIG) obtained legal clarification from the same firm regarding the use of Social Security Reimbursement Funds. The legal opinion indicated that the OAOC/VRS must comply with federal vocational rehabilitation program requirements and cannot be used as described in this contract.
- The IG found that the contract conflicts with the code of federal regulations (CFR) which requires that the VRS make maximum effort to secure funding through other sources before utilizing vocational rehabilitation funds for training or training services. Federal regulations require that funds for training or training services in an institution of higher education be sought from alternative sources before using Social Security Reimbursement Funds.

- Based on the review of the contract and 34 CFR 361.13(c), the IG found that the OAOC/VRS cannot delegate responsibility for administration of the vocational rehabilitation program. This contract provides that Florida Independent College Fund, Inc. (FICF) administer this program with a cost to the state of \$80,000. The transfer of administration of a program to a provider conflicts with 34 CFR 361.13(c).
- This contract does not contain the standard contract monitoring requirements as authorized by the Rehabilitation Services Administration (RSA).
- The contract language is not specific enough to ensure compliance with 34 CFR 361.25 that requires that services will be available "...in all political subdivisions of the State..." with the intention that services be available statewide. The contract refers to "participating public/private colleges or universities", but does not identify the performance requirement that statewide accessibility be accomplished.
- The IG found no documentation to support the proposed expenditure of funds by FICF, particularly the \$80,000 administrative fee. OAOC/VRS contract procedures require that management maintain documentation of a cost analysis to determine how the contract might be best performed and what the cost of such a contract might be on the vocational rehabilitation program.
- The IG found that the contract language contains contradictory statements regarding responsibilities under the Statement and Scope Of Work.
- The Contract/Grant Review Form documents that contract expenditures will be processed manually. By using manual processing, individual services to clients would not be entered into the Rehabilitation Information and Management System (RIMS). This is problematic because it could result in duplication of client services and circumvents authorized federal reporting requirements.
- The IG found that the contract language does not provide for adequate performance measures or measurable outcomes.
- The contract, as written, does not adequately address how OAOC/VRS and FICF will handle the confidentiality requirements of state and federal law. OAOC/VRS is required by law to respect the privacy and rights of individuals. By identifying individuals eligible for receipt of funds available by this contract, FICF and VRS may be required to exchange certain information that is prohibited in terms of the Vocational Rehabilitation Act of 1973, as amended.
- The contract we reviewed was between the Department and the Florida Independent College Fund, Inc. (FICF), but OAOC Executive Committee records indicated they voted on a contract with Independent Colleges and Universities of Florida (ICUF). The Division Director categorized this inaccuracy as an administrative error.
- Based on the review, the IG found that all parties signed on or before August 14, 2001, the contract with FICF on or before August 14, 2001, which is prior to OAOC Executive Committee approval. The OAOC Executive Committee passed a motion approving a contract with ICUF on August 27, 2001, via facsimile. This also brings into question whether the facsimile vote complies with Government in the Sunshine Law.
- The IG found that the OAOC had not ratified the actions of the OAOC Executive Committee meeting of August 9, 2001, or the vote taken on August, 27, 2001, as required by the OAOC Policies and Procedures Manual.

- The OAOC/VRS entered into a contract with an organization represented by one of the OAOC Commissioners. In such an event, the OAOC is required to approve the contract by a two-thirds vote of the Commission, or at least 8 of the 16 total votes of the Commission. The IG found that this did not occur.
- The IG found that the OAOC Commissioner that represents the contractor had not signed a Conflict of Interest Statement (CE Form 8A-rev. 1/94) as required by the OAOC Policies and Procedures Manual to officially disclose his direct relationship with ICUF and FICF.
- The IG agrees that new and innovative approaches to assist individuals with disabilities achieve higher education is commendable. While there may be a number of alternative approaches for privatization of the vocational rehabilitation program, these alternatives must meet state and federal requirements.
- Based on the contract review and interviews, The IG concludes that there are several administrative irregularities that must be addressed to determine if this contract is in the best interest of the state and individuals with disabilities.
- In its current state, the contract, if implemented, would not comply with state and federal requirements applicable to the vocational rehabilitation program. Several amendments to the contract would be required to bring it into compliance with these requirements.

C. EFFECT OF PROPOSED CHANGES:

Section 1: The bill amends s. 413.20, F.S. by defining terms.

Section 2: The bill creates s. 413.206, F.S., requiring the Division of Vocational Rehabilitation to develop a 5-year plan that prioritizes any additional initiatives and provides requirements for the plan. The plan must:

- Promote innovative contracts that upgrade or enhance direct services to Floridians who have a disability. Contracts must be evaluated on need and cost and must be performance-based.
- Include recommendations regarding specific performance standards and measurable outcomes and must outline performance standards and measurable outcomes and must outline procedures for monitoring the implementation of the plan. The division shall annually report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the progress that has been made toward achieving the objectives set forth in the plan.

Section 3: The bill creates s. 413.208, F.S., where Division of Vocational Rehabilitation will assure that providers of direct service maintain an internal system of quality-assurance, have proven functional systems, and are subject to a due-diligence inquiry as to their fitness to undertake service responsibilities, regardless of whether a contract for services is procured competitively or noncompetitive.

Section 4: The bill amends s. 413.405, F.S., by redesignating the Rehabilitation Advisory Council the Rehabilitation Council. The bill revises council membership by including at least one representative of the state educational agency responsible for the public education of students who have a disability and who are eligible to receive vocational rehabilitation services and services under the Individuals with Disabilities Education Act and at least one representative of the state

workforce investment board. Other individuals who have a disability, representatives of state government, local government, employers, community organizations, and members of the former Occupational Access and Opportunity Commission may be considered for council membership. The bill requires that the total membership for the council to have no fewer than 15 members at any one time, and that in selecting members, the extent to which minority populations are represented must be considered to the greatest extent practicable. The bill instructs the council to consult with the state workforce investment board before expediting duties.

Section 5: The bill amends 413.445, F.S., by revising a cross-reference to conform the division's transfer to the Department of Education from the Labor and Employment Security.

Section 6: The bill amends 413.615, F.S., by removing the Secretary of Labor and Employment Security and adding the Commissioner of Education to receive a report issued by the board.

Section 7: The bill requires the Office of Program Policy Analysis and Government Accountability to conduct a review and prepare a report on the progress of the Division of Vocational Rehabilitation of the Department of Education before the 2005 Regular Session.

Section 8: The bill has an effective date of July 1, 2002

D. SECTION-BY-SECTION ANALYSIS:

See Section C.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

According to the Division of Vocational Rehabilitation, on July 1, 2001, the OAOC was given an annual budget allocation for FY 2001-2002 fiscal year of \$610,149. Implementing the

recommendations of OPPAGA regarding the elimination of the OAOC would redirect the \$610,149 to provide direct client services.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action that requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties and municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not appear to violate any constitutional provisions.

B. RULE-MAKING AUTHORITY:

This bill does not grant any additional rule making authority.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill references "former members of the OAOC" in terms of redefining the membership of the Florida Rehabilitation Advisory Council. It is committee staff's understanding that a drafting error neglected to specify those sections of Florida Statute related to the OAOC which were to be repealed which is the intention of the bill's sponsor. An amendment would need to be offered to rectify this omission.

VII. SIGNATURES:

COMMITTEE ON WORKFORCE AND TECHNICAL SKILLS:

Prepared by:

Staff Director:

Alex Amengual/Ken Winker

Ken Winker