

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS for SB 2206

SPONSOR: Education Committee and Senator Mitchell

SUBJECT: Vocational Rehabilitation

DATE: February 25, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	O'Farrell	ED	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	AGG	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The proposed legislation repeals the statutes that authorize the Occupational Access and Opportunity Commission and govern its administrative responsibilities. It designates the Department of Education as the agency authorized to receive and administer vocational rehabilitation funds from the Federal Government. It merges the membership of the Occupational Access and Opportunity Commission and of the Florida Rehabilitation Council and gives that council a stronger role in strategic planning and oversight of the vocational rehabilitation program.

In addition, the bill:

- Defines terms relating to vocational rehabilitation to conform with federal requirements.
- Requires the Division of Vocational Rehabilitation to develop a new 5-year plan that organizes its priorities according to identified needs, including the priority for privatization.
- 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 cross-references to conform the division's transfer to the Department of Education.
- Amends statutes to conform with the transfer to the Department of Health of the programs related to brain and spinal cord injuries and other trauma.
- Requires the Office of Program Policy Analysis and Government Accountability to conduct a review.

This bill substantially amends the following sections of the Florida Statutes: 20.15, 20.171, 229.003, 229.004, 229.0073, 413.20, 413.23, 413.395, 413.401, 413.405, 413.205, 413.445, and

413.605, 11.45, 90.6063, 215.311, 394.75, 395.404, 410.0245, 410.604, 413.034, 413.051, 413.064, 413.066, 413.067, 413.091, 413.092, 413.445, 413.615, and 944.012.

It creates the following sections of the Florida Statutes: 413.201, 413.202, 413.203, 413.206, 413.207, and 413.208.

It repeals part III of chapter 413, F.S. and subsection (8) of s. 445.024, F.S.

The bill takes effect upon becoming a law.

II. Present Situation:

Division of Vocational Rehabilitation

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 percent of the grant award, and the federal government provides 78.7 percent, 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 1999 Legislature transferred the Division of Vocational Rehabilitation Services from the Florida Department of Labor and Employment Security to the Department of Education.¹

The division implements four programs:

- **Vocational rehabilitation program:** An employment program assisting individuals with disabilities, including the most severe disabilities, to pursue meaningful careers commensurate with their abilities and capabilities.
- **Independent living program:** A program that provides services through a statewide network of Centers for Independent Living, which must be private non-profit, non-residential, locally based, and consumer controlled. The thirteen Centers for Independent Living provide the four core services of independent living: skills training, peer counseling, advocacy and information and referral. Some also provide interpreter services for the deaf, attendant care training, and Americans with Disabilities Act architectural surveys.
- **Supported employment program:** A program for people with the most severe disabilities who traditionally would have been placed in sheltered workshops. The program uses job coaching and continuous follow-up to assist these severely impaired people to be active participants in their community.
- **Rehabilitation services transition from school to work program:** A program for students in secondary schools preparing to leave that structured environment for the adult community.

¹ Ch. 99-240, L.O.F.

Occupational Access and Opportunity Commission

In the same law that transferred the Division of Vocational Rehabilitation Services to the Department of Education, the 1999 Legislature created the Occupational Access and Opportunity Commission to be the designated State agency for purposes of receiving Title I Vocational Rehabilitation Service funds.²

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.

Organization and lines of authority

The commission is responsible for planning, policy, and program administration and oversight of vocational rehabilitation services. The administrative entity, the Florida Department of Education, is responsible for program personnel, budgetary matters, the implementation of the commission's policies, and other functions of vocational rehabilitation. The Division of Vocational Rehabilitation is now organizationally attached to the Department of Education but reports to the Occupational Access and Opportunity Commission.

This organizational scheme is cumbersome and has produced some confusion about lines of responsibility.

Privatization

Florida's vocational rehabilitation services have 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 enough state counselors to deliver these services adequately. 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.

Official reviews and recommendations

² Section 413.83, F.S.

These changes have attracted scrutiny from a consulting firm employed to assist the privatization efforts,³ the agency that evaluates governmental programs,⁴ and the Department of Education's Office of Inspector General. The reviews focused on privatization, administration, and structure. The findings about privatization are inconclusive, although all the reviewers discovered problems with the way some contracts were managed. All concluded, however, that the commission's structure and administration are cumbersome. The report by the Office of Program Policy and Government Accountability recommended merging the Occupational Access and Opportunity Commission with the Florida Rehabilitation Council and designating the Department of Education for receipt of federal funds. These reports are summarized as "Related Issues" below.

III. Effect of Proposed Changes:

The Committee Substitute repeals the statutes that authorize the Occupational Access and Opportunity Commission and govern its administrative responsibilities. It designates the Department of Education as the official state agency and the Division of Vocational Rehabilitation as the unit authorized to receive and administer vocational rehabilitation funds from the Federal Government. It merges the membership of the Occupational Access and Opportunity Commission with that of the Florida Rehabilitation Council and gives that council a stronger role in strategic planning and oversight of the vocational rehabilitation program.

Amendments to s. 20.15, F.S., s. 20.71, F.S., and chapter 229, F.S., establish the proper authorities for the transfer of the Division of Vocational Rehabilitation and Blind Services to the Department of Education.

The bill creates s. 413.206, F.S., to require 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.

The bill amends s. 413.405, F.S., to redesignate 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

³ MGT of America

⁴ The Office of Program Policy and Government Accountability or OPPAGA

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 be no fewer than 15 or more than 25 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.

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.

The bill requires the Division of Vocational Rehabilitation to maintain an internal system of quality assurance, have proven functional systems, review provider systems of quality assurance, and be monitored for compliance with state and federal laws, rules, and regulation.

In addition, the bill:

- Defines terms relating to vocational rehabilitation to conform with federal requirements.
- Requires the Division of Vocational Rehabilitation to develop a new 5-year plan that organizes its priorities according to identified needs, including the priority for privatization.
- Revises a number of cross-references to conform the division's transfer to the Department of Education and the elimination of the Department of Labor and Employment Security.
- Amends statutes to conform with the transfer to the Department of Health of the programs related to brain and spinal cord injuries and other trauma.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Division of Vocational Rehabilitation, on July 1, 2001, the Occupational Access and Opportunity Commission was given an annual budget allocation for FY 2001-2002 fiscal year of \$610,149. Eliminating the OAOC would redirect the \$610,149 to provide direct client services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Following is a summary of the major findings and recommendations of three recent reviews of vocational rehabilitation and the Occupational Access and Opportunity Commission.

MGT of America

Among MGT's recommendations are:

- The privatization effort should continue.
- The commission should have direct line authority over the Director of the Division of Vocational Rehabilitation Services.
- A policy regarding start-up costs should be developed and implemented as soon as possible.
- A transition management team should oversee the implementation of future demonstration projects.

A number of technical or administrative recommendations respond to difficulties encountered in the transition process, the need of private counselors for training to use the information system and to reflect caseloads accurately, and of evaluation and guidance during future projects.

Report by Office of Program Policy and Government Accountability

In January 2002, OPPAGA⁵ concluded:

- Administrative costs increased since the commission was established, due to higher indirect costs assessed by the Department of Education.
- 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 classified the state as a high-risk grantee.

The OPPAGA report recommended against continuing the commission in its present form:

⁵ Report No. 02-06, "Special Examination: Responsibilities Not Fulfilled by Occupational Access and Opportunity Commission; Program Performance Declines"

- The Department of Education should be the designated agency for federal purposes.
- The membership of the commission and of the Florida Rehabilitation Council could be merged, and the council could have a stronger role in strategic planning and oversight of the vocational rehabilitation program.

Inspector General's Reports

In January of 2002, the Office of Inspector General investigated two of the commission's contracts -- to Abilities Inc. of Florida and the Florida Institute for Workforce Innovation, Inc.⁶ The following issues were characterized as having an adverse effect:

- Vocational Rehabilitation Services awarded an additional \$830,692 to the providers without verifying that the award assured services that were reasonable or necessary or more cost effective than services provided by the state. This award invalidated the formal bid process and the RFP requirements.
- Various problems with facilities and equipment were identified, including:
 - An excess payment of \$140,000 for lease and facilities costs when actual expenses of approximately \$30,000 were documented.
 - A Gainesville lease not cancelled as authorized, resulting in a potential expenditure to the state for the term of the lease in the amount of \$343,258 for a vacant building.
 - The improper transfer of state owned furniture, computers, and other office equipment to the providers.
- Contract problems included:
 - Vocational Rehabilitation Services did not address recommendations by the Bureau of Compliance and Oversight relating to the contracts to privatize services in Regions 7, 9, and 20.
 - Fixed rate contracts awarded without measurable outcomes or defined results of service delivery did not comply with state and federal procedures.
- Oversight problems included:
 - One provider did not have a qualified counselor on staff in the Lake City office during the first five months of the six-month contract.
 - The inventory records for Regions 7, 9, and 20 maintained by Vocational Rehabilitation Services are incomplete and inaccurate.

In December 2001,⁷ the Office of Inspector General found that a contract with the Able Trust for a High School/High Tech program did not comply with federal and state laws for the following reasons:

- The level of delegation of day-to-day services was not consistent with federal law.
- The Able Trust contract documentation did not contain a cost or needs analysis or a sufficiently detailed budget.
 - The budget did not specify how to disburse \$387,000 for 10 start-up grants to establish the High School/High Tech centers.
 - Oversight was inadequate to ensure reasonable costs or that funds were expended for contract purposes.
- The contract termination clause was poorly drafted.

⁶ Report #01-130, January 7, 2002

⁷ Report # 01-083, December 21, 2001

- Under the contract terms, the provider could obligate the full amount of the funds without authorizing the division to withhold funding.
 - These terms placed the Department at risk of possible litigation.
- These and other administrative irregularities required contract amendments.

In October, the inspector general reviewed Contract #VD 032,⁸ the Able Trust and the Department of Education, and identified the following issues:

- The contract prescribed the use of Social Security Reimbursement Funds in a discretionary manner that did not comply with federal vocational rehabilitation program requirements.
- The contract conflicted with a requirement of the code of federal regulations (CFR) for maximum effort to secure funding through other sources before using vocational rehabilitation funds for training or training services:
 - This contract provided 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 did not contain the standard contract monitoring requirements as authorized by the federal Rehabilitation Services Administration (RSA).
- The contract language was not specific enough to ensure compliance with 34 CFR 361.25, which 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 proposed expenditure of funds by the Florida Independent College Fund was not sufficiently documented.
- The contract provisions contained contradictory statements regarding responsibilities under the Statement and Scope Of Work and did not provide adequate performance measures.
- The Contract/Grant Review Form documents that contract expenditures will be processed manually.
 - Under manual processing, individual services to clients would not be entered into the Rehabilitation Information and Management System (RIMS), causing duplication of client services and circumventing authorized federal reporting requirements.
- Through an administrative error, the entity named in the minutes was different from the actual entity under contract – the contract was with Florida Independent College Fund, Inc., not Independent Colleges and Universities of Florida, which was the entity named in the minutes of the Executive Committee.
- Compliance with the open meetings laws is ambiguous. All parties signed the contract on or before August 14, 2001, but the Executive Committee did not vote its approval until August 27, 2001. The approval was by facsimile, a “meeting” that may not comply with the open meetings requirements of Florida law.

⁸ Report # 01-129, October 16, 2001

- Certain conflict of interest issues include:
 - An OAOC Commissioner represented the Florida Independent College Fund, but the commission did not approve the contract by two-thirds vote.
 - The commissioner had not signed a Conflict of Interest Statement to officially disclose his direct relationship with ICUF and FICF, even though that relationship was common knowledge. This procedure was required by the OAOC Policies and Procedures Manual.

The Inspector General commended new and innovative approaches to assist individuals with disabilities achieve higher education but asserted that these alternatives must meet state and federal requirements.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
