

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 Fiscal Policy

BILL: CS/CS/SB 1246

INTRODUCER: Fiscal Policy (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Detert

SUBJECT: Individuals with Disabilities

DATE: March 26, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Siples	McKay	CM	Fav/CS
2. Gusky	Miller	ATD	Recommend: Fav/CS
3. Jones	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1246 creates the Florida Unique Abilities Partner program to recognize business entities that employ individuals who have a disability, contribute to organizations that support the independence of individuals who have a disability, or establish or contribute to the establishment of a program that contributes to the independence of individuals who have a disability. A business that receives the designation must annually re-certify that it continues to meet the criteria for the designation.

The bill requires the Department of Economic Opportunity (DEO) to:

- Work with state agencies and CareerSource Florida, Inc., to create the program;
- Work with disability organizations to develop a logo for the program;
- Maintain a website that provides the list of businesses that have been designated as a Florida Unique Abilities Partner;
- Identify businesses with the designation on the Employ Florida Marketplace system;
- Provide VISIT Florida the list of businesses that have been designated as a Florida Unique Abilities Partner for consideration for use in any marketing campaigns, especially those targeting individuals who have a disability or their families; and
- Report to the Legislature on its progress in implementing the program by January 1, 2016, and then annually thereafter on the program's progress.

For the 2015-2016 fiscal year, the bill appropriates \$100,000 in recurring funds and \$100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund to fund the development, implementation, and administration of the Florida Unique Abilities Partner program.

II. Present Situation:

According to the United States Census Bureau, individuals who have a disability make up approximately 13.4 percent of the population of Florida, and 10.3 percent of individuals between the ages of 18 to 64 have a disability.¹ Individuals who have a disability participate in the labor force at a lower rate than those who do not have a disability. Approximately 18.2 percent of individuals who have a disability in Florida are employed, while 60.5 percent of those in Florida who do not have a disability are engaged in employment.²

Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.³ Corporate social responsibility is defined as a company's sense of responsibility toward the community and environment,⁴ which may be expressed through support of issues, such as ethical supply sourcing or a contribution to, or support for, social issues and programs. In 2013, corporations in the United States gave approximately \$18.7 billion, consisting of both cash and non-cash donations, such as product donations and employee volunteer hours.⁵ Corporate philanthropy is considered advantageous to a business because it provides the company with a bolstered public image, improved community relations, and increased employee morale.⁶

Studies suggest that people value businesses that support causes that are important to them. A recent Nielsen survey found that 55 percent of global respondents indicated a willingness to pay extra for goods and services from businesses that are committed to making a positive social and environmental impact.⁷ Consumers are becoming "more deliberate and purposeful" in their

¹ U.S. Department of Commerce, United States Census Bureau, American Fact Finder, *Disability Characteristics, 2013 American Community Survey 1-year Estimates*, Report S1810, available at <http://factfinder.census.gov/> (last visited Mar. 24, 2015).

² U.S. Department of Commerce, United States Census Bureau, American Fact Finder, *Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2013 American Community Survey 1-year Estimates*, Report S1811, available at <http://factfinder.census.gov/> (last visited Mar. 24, 2015).

³ Illia, Laura et al., *Communicating Corporate Social Responsibility to a Cynical Public*, MIT SLOAN MANAGEMENT REVIEW, Feb. 21, 2013, available at http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use_credit=db34fbf0a135038c9c9102e028c614be (last visited Mar. 24, 2015).

⁴ BusinessDictionary.com, available at <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Mar. 24, 2015).

⁵ Adams, Susan, *America's Most Generous Companies*, FORBES, July 15, 2014, available at <http://www.forbes.com/sites/susanadams/2014/07/15/americas-most-generous-companies/> (last visited Mar. 24, 2015).

⁶ Montini, Laura, *Corporate Altruism Is on the Rise (Infographic)*, INC., Aug. 17, 2014, available at <http://www.inc.com/laura-montini/infographic/the-benefits-of-community-service.html> (last visited Mar. 24, 2015).

⁷ The Nielsen Company, *Doing Well by Doing Good* (June 2014), available at <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/global-corporate-social-responsibility-report-june-2014.pdf> (last visited Mar. 24, 2015).

shopping decisions by patronizing businesses that have similar values to their own.⁸ Consumers are also more likely to be loyal to those brands that share their values or are engaged in the support of those causes that are important to them.⁹ People may even base their employment decisions on such values.

III. Effect of Proposed Changes:

Section 1 of the bill creates the Florida Unique Abilities Partner program to be administered by the Department of Economic Opportunity (DEO). The purpose of the program is to recognize businesses that demonstrate a commitment to the independence of individuals who have a disability. The DEO must consult with the Agency for Persons with Disabilities, the Division of Vocational Rehabilitation and Division of Blind Services of the Department of Education, and CareerSource Florida, Inc., in creating the program.

The bill defines “individuals who have a disability” as persons who have a physical or intellectual impairment that substantially limits one or more major life activities; persons who have a history or record of such an impairment; or persons who are perceived by others as having such an impairment.

In order to be designated as a Florida Unique Abilities Partner, a business must submit an application to the DEO, indicating that the business would qualify for the designation due to the:

- Employment of individuals who have a disability;
- Contributions to local or national disability organizations; or
- Contributions to or the establishment of a program that contributes to the independence of individuals who have a disability.

At a minimum, to qualify for the designation, a business must:

- Employ at least one Florida resident who has a disability for at least 9 months before applying for the designation; the employer may not be required to provide personally identifiable information about its employees;
- Make a financial or in-kind contribution, including employee volunteer hours, to a local or national disability organization or a contribution in support of individuals who have a disability; or
- Establish or contribute to the establishment of a program that contributes to the independence of individuals who have a disability.

Contributions must be documented by providing copies of written receipts, program materials or letters of acknowledgment from recipients, volunteers, or donees. A business entity with 100 or fewer employees must make a financial or in-kind contribution of at least \$1,000, and a business entity with more than 100 employees must make a financial or in-kind contribution of at least \$5,000.

⁸ Solomon, Micah, *Six Customer Trends That Will Build or Break Your Business As We Enter 2015*, FORBES, Dec. 25, 2014, available at <http://www.forbes.com/sites/micahsolomon/2014/12/25/six-deep-customer-trends-that-will-build-or-break-your-business-as-we-enter-2015/> (last visited Mar. 24, 2015).

⁹ Irwin, Julie, *Ethical Consumerism Isn't Dead, It Just Needs Better Marketing*, HARVARD BUSINESS REVIEW, Jan. 12, 2015, available at <https://hbr.org/2015/01/ethical-consumerism-isnt-dead-it-just-needs-better-marketing> (last visited Mar. 24, 2015).

A business entity that applies to be designated as a Florida Unique Abilities Partner must be awarded the designation if it meets the above listed requirements.

In lieu of the application process, the DEO must also consider nominations from members of the community regarding a local business entity's qualification for designation as a Florida Unique Abilities Partner. The nomination must identify the business entity's achievements in one or more of the above-referenced categories. Upon receipt of a nomination, the DEO must determine whether the nominee meets the requirements of the program based on the information provided and may request additional information from the nominee if needed. If the nominee meets the requirements, the DEO must notify the nominated business and provide the business the qualifying criteria asserted in the nomination.

The nominee has 30 days from the receipt of notice to certify that the information in the notice is true and correct and to accept or decline the nomination. If the nominee accepts the nomination, the DEO must award the designation. If a business does not accept the nomination within 30 days, the DEO may not award the designation. If the nominee declines the nomination, the DEO may not award the designation.

A business must annually certify that it continues to meet the requirements to be designated a Florida Unique Abilities Partner. Failure to submit the annual certification will result in the removal of the business' designation. A business may elect to discontinue its use of the designation by notifying the DEO of such decision.

The DEO must adopt procedures for the application, nomination and designation processes for the Florida Unique Abilities Partner program. The business's name, location and contact information must also be included in business entity's application or nomination. The bill specifies that the DEO's designation under this program does not constitute final agency action, and therefore is not subject to the Florida Administrative Procedures Act in ch. 120, F.S. The bill directs the DEO, in partnership with the disability community, to develop a logo that may be used to identify a business that has been designated as a Florida Unique Abilities Partner. The DEO is responsible for developing guidelines and requirements for the use and display of the Florida Unique Abilities Partner program logo. A business that has not received the designation or has elected to discontinue its designation may not display the logo.

The DEO must maintain a website that, at a minimum, provides:

- The list of businesses, by county, that currently have the Florida Unique Abilities Partners designation, updated quarterly;
- Information on the eligibility requirements for the designation and the methods to apply or nominate; and
- The best practices for businesses to facilitate the inclusion of individuals who have a disability, updated annually.

The website may provide links to the websites of organizations or other resources that will aid business entities to employ or support individuals who have a disability. The Agency for Persons with Disabilities must provide on its website a link to the DEO website for the Florida Unique Abilities Partner program. On the Employ Florida Marketplace, the DEO and CareerSource,

Florida, Inc., must identify the employers that currently have a designation as a Florida Unique Abilities Partner designation.

The DEO is required to provide a list of businesses that have a designation as a Florida Unique Abilities Partner to VISIT Florida¹⁰ on a quarterly basis. VISIT Florida must consider using the program and the designees in marketing campaigns, including campaigns that target individuals who have a disability or their families.

The DEO must report its progress in implementing the Florida Unique Abilities Partner program to the Legislature by January 1, 2016. Also, beginning in 2016, the DEO must describe the progress and use of the program in its annual report required under s. 20.60, F.S.¹¹

Section 2 provides an appropriation to the DEO to develop, implement, and administer the Florida Unique Abilities Partner program in Fiscal Year 2015-2016 (*See* Section V).

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Under the bill, a business that receives a designation may experience greater patronage due to the designation.

Local or national disability organizations may receive additional donations from businesses seeking a designation under the program.

¹⁰ VISIT Florida is statutorily referred to as the Florida Tourism Industry Marketing Corporation. s. 288.1226, F.S.

¹¹ This report is due to the Legislature on November 1 annually.

C. Government Sector Impact:

For the 2015-2016 fiscal year, the bill appropriates \$100,000 in recurring funds and \$100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund to the DEO to cover costs associated with developing, implementing, and administering the Florida Unique Abilities Partner program. Costs include staff time to develop the program, process applications, determine compliance, and designate businesses. Staff time is also required to create, maintain, and update the website that is required by the bill.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill directs the DEO to adopt rules to administer the program.

Under the Americans with Disabilities Act (ADA), employers are prohibited from inquiring about whether a person has a disability or the nature of a disability prior to employment.¹³ However, an employer may inquire about the applicant's ability to perform job-related functions. Upon employment, an employer may require a medical examination it is required of all employees, is job-related, and consistent with business necessity. Any medical information obtained from the medical examination must be maintained in a separate file. If an employee requests a reasonable accommodation, an employer is permitted to request documentation sufficient to substantiate the need for the reasonable accommodation.¹⁴

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on March 26, 2015:

As recommended by the Appropriation Subcommittee on Transportation, Tourism, and Economic Development, the CS does the following:

- Makes clarifying changes to the structure of the program.
- Requires the DEO to include the progress and use of the Florida Unique Abilities program in its annual report to the Governor and Legislature.

¹² The Department of Economic Opportunity, *Senate Bill 1246 Analysis* (March 5, 2015) (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

¹³ See 42 U.S.C. s. 12112.

¹⁴ EEOC, No. 915.002, *EEOC Enforcement Guidance of Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, July 27, 2000, available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (last visited Mar. 24, 2015).

- Appropriates \$200,000 from the Special Employment Security Administration Trust Fund to the DEO to implement the program in Fiscal Year 2015-2016.

CS by Commerce on March 10, 2015:

- Directs the DEO to accept nominations for the Florida Unique Abilities Partner designation from members of the community in which the business is located, in lieu of submission of an application by the business.
- Requires the DEO review nominations for the Florida Unique Abilities Partner program to determine if the nominations meet the requirements of the program.
- Requires the DEO to notify a nominated business of its nomination and the qualifying criteria asserted in the nomination, and give a nominated business the opportunity to decline a nomination.
- Prohibits the DEO from requiring a business to provide personally identifiable information about its employees.
- Deletes the requirement that the DEO must partner with the Florida Tourism Industry Marketing Corporation (VISIT Florida) to create a marketing campaign and requirement that VISIT Florida has a link from its website to the DEO's website.
- Requires the DEO to provide VISIT Florida a list of Florida Unique Abilities Partners for consideration for use in any marketing campaigns.

B. Amendments:

None.