

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 901 Vocational Rehabilitation Services

**SPONSOR(S):** Higher Education & Career Readiness Subcommittee, Ponder and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1784

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**FINAL HOUSE FLOOR ACTION:** 114 Y's 0 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 901 passed the House on February 26, 2020, and subsequently passed the Senate on March 11, 2020.

To provide job exploration and workplace readiness training opportunities to disabled youth in Florida, the bill:

- requires the Division of Vocational Rehabilitation (division) within the Department of Education (DOE) to provide pre-employment transition services (Pre-ETS) as required by federal law, and to cooperate with other departments, agencies, public and private institutions, and providers to provide vocational rehabilitation (VR) and Pre-ETS to persons with disabilities;
- defines who may be provided Pre-ETS, requiring the division to provide Pre-ETS within a timeframe not to exceed 90 days or the division must work with other qualified providers to provide services;
- requires the division to enter into a formal interagency agreement with the DOE that provides for the transition of students with disabilities, including Pre-ETS and other VR services as required by federal regulation;
- requires the division to work with all local education agencies to provide VR and Pre-ETS services and to arrange for the timely referral of students; and
- amends the required individual education plan (IEP) for transitioning a student with a disability to postsecondary education and career opportunities, by adding Pre-ETS to the list of services that may be utilized.

For VR services, the bill removes extended evaluations as amended by the Workforce Innovation and Opportunity Act of 2014 (WIOA) and requires the division to prepare an individualized plan for employment within a reasonable time, not to exceed 90 days after the date of eligibility determination, unless certain circumstances are met.

The bill amends the membership of the Florida Rehabilitation Council to include applicants or recipients of Pre-ETS. The bill expands the council's review to include Pre-ETS and employment outcomes achieved for VR, including alignment with labor market demands in the state; and for youth, the availability of career pathways.

To address federal monitoring findings and observations, the bill amends the division's annual performance report to include case load data and timeframes in which eligibility is determined, plans are developed, and services are provided, in addition to matching fund data and transition services outcomes data.

To respond to audit findings of The Able Trust, the bill clarifies that administrative costs are based on actual expenditures in any fiscal year and the components included in administrative costs. The bill also adds the DOE's Director of VR, or his or her designee, as an ex officio member of the board and revises board member terms.

The bill has no fiscal impact.

The bill was approved by the Governor on June 23, 2020, ch. 2020-85, L.O.F. and will become effective on July 1, 2020.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Present Situation

According to the 2018 U.S. Census Bureau American Community Survey, approximately 2.7 million individuals with a disability live in Florida, representing over 13 percent of the state's population.<sup>1</sup> Ten percent of the state's working age (i.e. ages 18-64) population is composed of individuals with a disability.<sup>2</sup> This population has an unemployment rate twice that of persons without disabilities and such individuals may qualify for vocational rehabilitation (VR) services.<sup>3</sup>

### **Federal Law**

#### *Rehabilitation Act of 1973*

The Rehabilitation Act of 1973, as amended, provides that the purpose of VR services is to:

- Empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society; and
- Ensure that the federal government plays a leadership role in promoting the employment of individuals with disabilities and in assisting states and providers of services fulfill gainful employment and independent living aspirations of individuals with disabilities.<sup>4</sup>

VR is a federal-state program that assists individuals with disabilities prepare for, gain, or retain employment in meaningful careers.<sup>5</sup> The United States Department of Education's Rehabilitation Services Administration (RSA) oversees and administers the program and provides funds to state agencies for these services.<sup>6</sup>

#### *Workforce Innovation and Opportunity Act*

The Workforce Innovation and Opportunity Act of 2014 (WIOA), enacted on July 22, 2014,<sup>7</sup> aims to increase opportunities for individuals facing barriers to employment and increases the focus on the connection between education and career preparation.<sup>8</sup> In 2016, WIOA required states to submit a unified plan to the U.S. Departments of Education and Labor outlining a four-year workforce development strategy for the state's workforce development system, with a subsequent two-year modification to the submitted plan in 2018.<sup>9</sup> Florida's unified plan includes the Department of Education's Divisions of Career and Adult Education, Vocational Rehabilitation and Blind Services, the

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<sup>1</sup> U.S. Census Bureau, *Florida 2018: ACS 5-Year Estimates Data*, available at <https://data.census.gov/cedsci/table?q=&d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=0400000US12&lastDisplayedRow=104> (last visited Jan. 9, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> Florida Department of Education, Division of Vocational Rehabilitation, *2018-2019 Annual Report* (2019), at 6, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf?id=1>.

<sup>4</sup> 29 U.S.C. s. 701(b); *see also* Pub. L. No. 93-112, 87 Stat. 355 (Sep. 26, 1973).

<sup>5</sup> Division of Vocational Rehabilitation, Florida Department of Education, <http://www.rehabworks.org/index.shtml> (last visited January 9, 2020).

<sup>6</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, *RSA's mission*, <https://rsa.ed.gov/> (last visited Jan. 9, 2020).

<sup>7</sup> Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

<sup>8</sup> *See* U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, <https://www.doleta.gov/wioa/about/overview/> (last visited Jan. 9, 2020).

<sup>9</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Workforce Innovation and Opportunity Act State Plans for 2016-2020*, <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/state-plans/2016/index.html> (last visited Jan. 9, 2020).

Florida Department of Economic Opportunity, as well as CareerSource Florida.<sup>10</sup> Among other changes, WIOA now requires that state VR agencies set aside at least 15% of their federal funds to provide new pre-employment transition services (Pre-ETS) to students with disabilities who are eligible or potentially eligible for VR services.<sup>11</sup>

## State Law

### *The Florida Department of Education's Division of Vocational Rehabilitation*

In Florida, the Division of Vocational Rehabilitation (division) within the Department of Education (DOE) serves as Florida's employment program for individuals with disabilities.<sup>12</sup> The division provides services to help individuals with disabilities find, advance in, or retain employment, as well as services to youth and students with disabilities to aid in the transition from high school to a meaningful career path.<sup>13</sup> In 2018-2019, the division served 48,439 individuals, including more than 22,866 transition age youth, and assisted 5,924 individuals with disabilities to obtain or maintain a job.<sup>14</sup>

The division is designated as the administrative unit responsible for ensuring compliance with federal and state laws<sup>15</sup> and is responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.<sup>16</sup> The VR program is funded as a federal-state partnership, in which 21.3% of state general revenue matches 78.7% federal grant.<sup>17</sup> To administer VR services, the division must make eligibility determinations for VR services, provide VR services in collaboration with state and local entities, conduct research, and perform VR needs assessments.<sup>18</sup> In addition, VR is responsible for providing updates and performance and financial reports to the federal RSA who conducts regulatory and programmatic monitoring and oversight of activities in VR agencies.<sup>19</sup>

### *The Florida Rehabilitation Council*

The Florida Rehabilitation Council (council) is responsible for assisting the division in the planning and development of statewide rehabilitation programs and services, recommends improvements to such programs and services, and performs specified functions. 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.

### *The Able Trust*

In 1990, the Legislature recognized the need to encourage public and private support to enhance vocational rehabilitation and employment of Florida's citizens who are disabled by establishing the Florida Endowment Foundation for Vocational Rehabilitation, also known as The Able Trust, as a direct support organization for the division.<sup>20</sup> The Able Trust is approved by the division to be operating for the

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<sup>10</sup> CareerSource Florida, *Florida's 2018-2020 WIOA Unified State Plan Two-Year Modification Summary* (2018), available at <https://careersourceflorida.com/wp-content/uploads/2018/04/WIOA-Executive-Summary.pdf>.

<sup>11</sup> Workforce Innovation Technical Assistance Center, *Pre-Employment Transition Services*, <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited Jan. 9, 2020).

<sup>12</sup> Florida Department of Education, Division of Vocational Rehabilitation, *2018-2019 Annual Report* (2019), at 6, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf?id=1>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 6 and 10.

<sup>15</sup> Section 413.202, F.S.

<sup>16</sup> Section 413.207(1), F.S.

<sup>17</sup> State of Florida, *July 1, 2016-June 30, 2020 Workforce Innovation and Opportunity Act Unified Plan* (2016), at 75, available at <https://careersourceflorida.com/docking/WIOAUnifiedPlan.pdf>.

<sup>18</sup> Section 413.23, F.S.

<sup>19</sup> State of Florida, *supra* note 17, at 75.

<sup>20</sup> Section 413.615(5), F.S.; see also The Able Trust, *Our Mission*, <http://www.abletrust.org/about-us> (last visited Jan. 9, 2020).

benefits and best interest of the state through a contract.<sup>21</sup> A board of directors, appointed by the Governor, oversees the operations of The Able Trust and ensures that funds are provided for programs or initiatives which engage in the research, promotion, or aid of job training and counseling for Florida's disabled citizens, and to support the work of the division.<sup>22</sup>

## Vocational Rehabilitation

### *Vocational Rehabilitation Services*

Under Florida law, an individual with a disability<sup>23</sup> is eligible for VR services if the person requires rehabilitation services to prepare for, enter, engage in, or retain gainful employment.<sup>24</sup> The division is responsible for determining eligibility of an individual for VR services, and if an individual is determined to be eligible complete an assessment to determine rehabilitation needs and ensure that an individualized plan for employment<sup>25</sup> is prepared.<sup>26</sup> Based on an individual's VR needs, services may include services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.<sup>27</sup>

The Rehabilitation Act of 1973, as amended, requires a state's VR program to serve individuals with the most significant disabilities first when there are not enough resources to serve everyone who is eligible for VR services.<sup>28</sup> This prioritization methodology is called the Order of Selection (OSS). The OSS categories include:

- Category 1, comprised of individuals with the most significant disabilities;
- Category 2, comprised of individuals with significant disabilities; and
- Category 3, comprised of individuals with disabilities.<sup>29</sup>

Under OSS, all eligible individuals are placed on a prioritized waiting list based on the significance of their disability.<sup>30</sup> Significance is assessed by the number of barriers created in getting or keeping a job and the nature of VR services needed.<sup>31</sup>

In 2018-2019 the division served 26,744 individuals with the most-significant disabilities in category 1 and had a waiting list of 300 individuals in category 3 to receive VR services.<sup>32</sup>

### *Pre-Employment Transition Services*

WIOA requires VR state agencies to provide Pre-ETS to an individual with a disability who is between 14 and 21 years of age; who is potentially eligible for VR services in a secondary, postsecondary, or other recognized education program and has a current individual education plan (IEP) or meets the

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<sup>21</sup> Section 413.615(5)-(6), F.S.

<sup>22</sup> Section 413.615(4), (8), and (10), F.S.

<sup>23</sup> Disability means "a physical or mental impairment that constitutes or results in a substantial impediment to employment." Section 413.20(7), F.S.

<sup>24</sup> Section 413.30(1), F.S.

<sup>25</sup> An individualized plan for employment (IPE) includes a "comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services." Section 413.20(3), F.S.

<sup>26</sup> See Section 413.30(4)-(5), F.S.

<sup>27</sup> Florida Department of Education, Division of Vocational Rehabilitation, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited Jan. 9, 2020).

<sup>28</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Frequently Asked Questions About RSA*, <https://www2.ed.gov/about/offices/list/osers/rsa/faq.html> (last visited Jan. 9, 2020).

<sup>29</sup> Florida Department of Education, *supra* note 12, at 10.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

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

definition of an individual with a disability for the purposes of s. 504 of the Rehabilitation Act of 1973.<sup>33</sup> The five required Pre-ETS include:

1. Job Exploration Counseling – exploring career path options suited to a student’s skills, abilities and interests;
2. Work-Based Learning Experiences – providing hands-on training for employability skills;
3. Counseling on Post-Secondary Education – providing information about continuing education options;
4. Workplace Readiness Training – a focus on employability and related skills that prepare individuals with disabilities to work; and
5. Instruction in Self-Advocacy – instruction in effective communication of one’s own needs and planning for one’s future.<sup>34</sup>

In addition to the required five Pre-ETS, VR agencies may also use funds for coordination activities such as attending IEP meetings for students with disabilities, working with local workforce development boards and others to develop work opportunities for students with disabilities, and working with schools to coordinate and provide Pre-ETS.<sup>35</sup>

In 2018-2019, the division provided Pre-ETS to 15,402 students with disabilities.<sup>36</sup> As of June 2019, the division was providing VR services to 21,248 youth and students between the ages of 14-21 years old statewide. Of those, 11,779 were receiving Pre-ETS.<sup>37</sup>

In Florida, the division collaborates with programs and providers to assist in providing Pre-ETS. One such program is Project Search, a national model for a business-led, one-year employment preparation program where high school students with a disability are provided hands-on training in the workplace.<sup>38</sup> Florida has 41 Project Search sites, the most in the nation, working with industry partners in various fields such as medical, hospitality and education.<sup>39</sup> Other programs providing Pre-ETS include job fairs, career camps, and work-based learning.<sup>40</sup>

### **Monitoring and Compliance**

#### *The Florida Department of Education’s Division of Vocational Rehabilitation*

The RSA which oversees and administers the division program conducted a fiscal year 2017 monitoring report. The report identified findings and observations related to: non-compliance with eligibility and employment plan development within the required Federal time frames; match requirements; a lower percentage of youth with disabilities exiting with employment compared to similar agencies; and the lack of a state educational agreement that meets the requirements prescribed in law

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<sup>33</sup> Workforce Innovation Technical Assistance Center, *Pre-Employment Transition Services*, <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited Jan. 9, 2020).; “To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.” U.S. Department of Education, Office of Civil Rights, *Protecting Students with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html> (last visited Jan. 9, 2020).

<sup>34</sup> Florida Department of Education, Division of Vocational Rehabilitation, Presentation to the House Higher Education & Career Readiness Subcommittee (Oct. 24, 2019), at 20, *available at* <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3016&Session=2020&DocumentType=Meeting%20Packets&FileName=hec%2010-24-19.pdf>.

<sup>35</sup> *Id.* at 21.

<sup>36</sup> Email from Liz Moya, Director of Legislative Affairs, Florida Department of Education, RE: VR Meeting Follow-up (Oct. 15, 2019).

<sup>37</sup> Florida Department of Education, *supra* note 34, at 25.

<sup>38</sup> Email from Liz Moya, *supra* note 36.

<sup>39</sup> *Id.*

<sup>40</sup> Florida Department of Education, *supra* note 34, at 23.

among other findings.<sup>41</sup> As a follow-up to the report, the division has worked with the RSA to address some findings.<sup>42</sup>

Additionally, since the passage of WIOA, statutes have not been updated to reflect the changes required by WIOA for the division to provide pre-employment transition services (Pre-ETS); however, the State Board of Education has promulgated rules to assist the division with the provision of such services.

### *The Able Trust*

In June 2019, the Florida DOE's Office of Inspector General conducted an audit of the administrative costs of the Florida Endowment for Vocational Rehabilitation, also known as The Able Trust.<sup>43</sup> The audit was conducted to ensure The Able Trust's administrative costs were kept to the minimum amount necessary for the efficient and effective administration of the foundation and were limited to 15 percent of total estimated expenditures in accordance with s. 413.615(9)(j), F.S.<sup>44</sup>

The audit found misinterpretation with the administrative costs statute by The Able Trust which could lead to inaccurate reporting of costs and noncompliance.<sup>45</sup> The audit recommended The Able Trust enhance its procedures to ensure accurate calculation, pursuant to s. 413.615(9)(j), ensure administrative costs are only paid from private resources and up to the prescribed percentage of the interest and earning on the endowment principal pursuant to s.413.615(9)(j), F.S.<sup>46</sup> The audit also recommended that to more accurately align the language in the statute with The Able Trust's operations, statutory language should be changed from calendar year to fiscal year and from estimated expenditures to actual expenditures.<sup>47</sup>

## **Effect of Proposed Changes**

### **The Florida Department of Education's Division of Vocational Rehabilitation**

To provide for the delivery of Pre-ETS to students with disabilities across Florida, as required by WIOA, the bill defines Pre-ETS as the service of job exploration counseling, work-based learning experiences, counseling on comprehensive transition or postsecondary education programs, workplace readiness training, and instruction in self-advocacy, which may be provided to students with disabilities who are eligible or potentially eligible for vocational rehabilitation (VR) services.

The bill requires the Division of Vocational Rehabilitation (division) within DOE to provide Pre-ETS and to cooperate with other departments, agencies, public and private institutions, and providers, to provide VR and Pre-ETS to persons with disabilities.

The bill creates s. 413.301, F.S., requiring Pre-ETS be provided to an individual with disabilities who is between 14 and 21 years of age; who is potentially eligible for VR services in a secondary, postsecondary, or other recognized education program; and who has a current individual education plan (IEP) developed by a local district school board in accordance with rules of the State Board of Education or meets the definition of an individual with a disability, for the purposes of s. 504 of the

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<sup>41</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services Rehabilitation Services Administration, *Fiscal Year 2017 Monitoring Report on the Florida Division of Vocational Rehabilitation-Vocational Rehabilitation and Support Employment Programs* (April 12, 2018), available at <https://www2.ed.gov/rschstat/eval/rehab/107-reports/fy2017-fl-g.pdf>.

<sup>42</sup> Email from Liz Moya, *supra* note 36.

<sup>43</sup> Florida Department of Education, Office of Inspector General, *The Florida Endowment for Vocational Rehabilitation, Inc., dba The Able Trust- Administrative Costs, Report # A-1819DOE-021* (June 2019), available at <http://www.fldoe.org/core/fileparse.php/7514/urlt/FEVR-ABLETRUST.PDF>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 3

<sup>47</sup> *Id.*

Rehabilitation Act of 1973. The bill requires the division to provide Pre-ETS within a reasonable period of time, not to exceed 90 days after the date of consent to receive services, unless unforeseen circumstances beyond the control of the division prevent the division from providing services and the division and the individual agree that an extension of time is warranted. The bill requires the division to work with other qualified providers to provide Pre-ETS if it cannot provide services within the specified 90 day timeframe.

The bill requires the division to enter into a formal interagency agreement with the DOE that provides for the transition of students with disabilities, including Pre-ETS and other VR services as required by s. 101(a)(11)(D) of the Rehabilitation Act of 1973, as amended. The agreement must comply with the requirements of 34 C.F.R. s. 361.22(b). The division must also work with all local educational agencies to provide Pre-ETS and other VR services. The services provided by the division to local education agencies may also include coordination activities such as attending IEP meetings. The bill provides that the division and local education agencies must arrange for the timely referral of students for services, including electronic referral.

The bill amends the required IEP to assist a student with a disability with transition to postsecondary education and career opportunities, by adding Pre-ETS to the list of services that may be needed to assist the student's transition.

The bill amends the membership of the Florida Rehabilitation Council to include applicants or recipients of Pre-ETS and adds to the council's review, the effectiveness of, and consumer satisfaction with Pre-ETS provided or paid for by a variety of sources and delivered by state agencies and other public and private entities. In addition, the council should review the employment outcomes achieved, including alignment with labor market demands in the state; and for youth with disabilities, the availability of career pathways, including work-based learning experiences and customized employment.

To address RSA monitoring findings and observations, the bill amends the required components of the division's annual performance report to include case load data, by service type and service area, including the timeframes in which eligibility is determined, plans are developed, and services are provided. The annual performance report must also include matching fund data and the extent to which the state is meeting its cost-sharing requirements, as well as transition services data, to include Pre-ETS, for students and youth with disabilities, along with employment outcomes achieved and postsecondary enrollment rates.

The bill removes extended evaluations for trial work experiences as amended by WIOA and requires the division to prepare an individualized plan for employment within a reasonable time, not to exceed 90 days after the date of eligibility determination as required by federal regulation, unless unforeseen circumstances beyond the control of the division occur, or the division and the individual agree that an extension is warranted.

### **The Able Trust**

To respond to the DOE's Office of Inspector General audit's findings on The Able Trust and compliance with administrative costs, the bill clarifies that the administrative costs are based on actual expenditures in any fiscal year and includes audits, salaries or other costs for non-officers and contractors providing services that are not directly related to the mission of the foundation, costs of promoting the purposes of the foundation, and other allowable costs, and all travel and per diem expenses of board members, officer salaries, and chief executive officer program management.

The bill repeals limitations on administrative costs that have already occurred.

The bill adds the DOE's Director of VR, or his or her designee, as an ex officio member of The Able Trust board and revises board member terms to two 3-year terms or until resignation or removal for cause. The bill provides that a board member may continue to serve until a successor is appointed.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

In Fiscal Year 2019-2020, the Division of Vocational Rehabilitation requested and received an increase of \$12.3 million in recurring federal budget authority to meet the federal requirements for Pre-ETS. The bill makes necessary codifications to current practice. No additional funding is required for implementation.