

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB SAC 16-02 Individuals with Disabilities

**SPONSOR(S):** State Affairs Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	15 Y, 0 N	Moore	Camechis

### SUMMARY ANALYSIS

According to the United States Census Bureau, individuals who have a disability make up approximately 12.9 percent of the population of Florida, and 9.9 percent of individuals ages 18 to 64 (working age) have a disability. In 2013, over 20 percent of working aged individuals who have a disability lived below the federal poverty line in Florida, compared with 14.3 percent of individuals without a disability.

The bill addresses the employment and economic independence of individuals with disabilities. Specifically, the bill:

- Modifies the definition of “developmental disability” to include Down syndrome;
- Modifies the state’s equal employment policy to provide enhanced executive agency employment opportunities for individuals who have a disability;
- Creates the Employment First Act, which requires certain state agencies and organizations to develop an interagency cooperative agreement to ensure a long-term commitment to improving employment outcomes for individuals who have a disability;
- Creates the Financial Literacy Program for Individuals with Developmental Disabilities (Literacy Program) within the Department of Financial Services (DFS) to promote economic independence and successful employment of individuals with developmental disabilities by providing information and outreach to individuals and employers; and
- Creates the Florida Unique Abilities Partner Program (Partner Program) to recognize business entities that demonstrate commitment, through employment or support, to the independence of individuals who have a disability.

The bill makes several appropriations to implement the requirements of and the programs created by the bill. Specifically, for fiscal year 2016-2017, the bill appropriates:

- \$138,692 in recurring funds and \$26,264 in nonrecurring funds to the Department of Management Services and authorizes two full-time equivalent (FTE) positions to implement provisions relating to the state’s equal employment policy;
- \$88,285 from the General Revenue Fund and \$76,671 from trust funds to Administered Funds for distribution among agencies to implement provisions relating to the state’s equal employment policy;
- \$63,664 in recurring funds and \$73,570 in nonrecurring funds to DFS and authorizes one FTE position to implement the Literacy Program; and
- \$100,000 in recurring funds and \$100,000 in nonrecurring funds to the Department of Economic Opportunity for the purpose of funding the development, implementation, and administration of the Partner Program.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

According to the United States Census Bureau, individuals who have a disability make up approximately 12.9 percent of the population of Florida, and 9.9 percent of individuals ages 18 to 64 (working age) have a disability.<sup>1</sup> In 2013, over 20 percent of working aged individuals who have a disability lived below the federal poverty line in Florida, compared with 14.3 percent of individuals without a disability.<sup>2</sup>

Individuals who have a disability experience significant disparities in employment and participation in the workforce.<sup>3</sup> For example, 18.2 percent of individuals who have a disability are employed in Florida, while over 60.5 percent of those who do not have a disability are employed.<sup>4</sup> The trend is similar nationally with a 10.4 percent unemployment rate for individuals who have a disability, and a 4.7 percent unemployment rate for individuals without a disability.<sup>5</sup> According to the National Disability Institute (NDI), many of these individuals would like to find employment, but are concerned if they earn more money it will cause them to lose disability and health benefits.<sup>6</sup>

#### Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was passed by Congress and signed by President George H. W. Bush in 1990.<sup>7</sup> Its purpose is to provide “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”<sup>8</sup> The ADA specifically prohibits discrimination against disabled individuals with regard to employment:

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.<sup>9</sup>

#### Florida Civil Rights Act of 1992

The Legislature enacted the Florida Civil Rights Act of 1992,<sup>10</sup> which prohibits discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.<sup>11</sup> Section 760.10(1)(a), F.S., provides that it is unlawful to discharge or to fail or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms,

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<sup>1</sup> U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Selected Social Characteristics in the United States, 2013 American Community Survey 1-year Estimates*, Report DP02, searchable database available at <http://factfinder.census.gov/>.

<sup>2</sup> U.S. Department of Commerce, U.S. 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, searchable database available at <http://factfinder.census.gov/> [hereinafter *Disability Status Survey*].

<sup>3</sup> American Institutes for Research, *An Uneven Playing Field: The Lack of Equal Pay for People with Disabilities*, p. 2, December 2014, available at [http://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities\\_Dec%2014.pdf](http://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities_Dec%2014.pdf).

<sup>4</sup> *Disability Status Survey*, *supra* note 2.

<sup>5</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Employment Status of the Civilian Population by Sex, Age, and Disability Status, not seasonally adjusted*, Sept. 2015, available at <http://www.bls.gov/news.release/empsit.t06.htm>.

<sup>6</sup> National Disability Institute with support from the Florida Development Disabilities Council, *The Changing Face of Benefits Knowledge for Successful Employment and Asset Development*, p. 1, March 2013, available at [http://www.realeconomicimpact.org/data/files/other%20documents/changing\\_face\\_of\\_benefits\\_2013.pdf.pdf](http://www.realeconomicimpact.org/data/files/other%20documents/changing_face_of_benefits_2013.pdf.pdf).

<sup>7</sup> Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327.

<sup>8</sup> 42 U.S.C. s. 12101(b)(1) (2015).

<sup>9</sup> 42 U.S.C. s. 12112(a) (2015).

<sup>10</sup> Sections 760.01-760.11, F.S.

<sup>11</sup> Section 760.01(2), F.S.

conditions, or privileges of employment, because of such individual's handicap. Furthermore, it is the state's policy that:

[A]n individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.<sup>12</sup>

#### State Equal Employment Policy

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities. Each executive agency is required to develop and implement an affirmative action plan;<sup>13</sup> establish annual goals in its affirmative action plan for ensuring full utilization of groups underrepresented in the agency's workforce as compared to the relevant labor market;<sup>14</sup> and appoint an affirmative action-equal employment opportunity officer.<sup>15</sup>

Presently, s. 110.112, F.S., does not contain a definition of the term "individual who has a disability" and does not specifically address equal employment opportunity and affirmative action for this group. However, s. 110.215, F.S., defines "disability" as a physical or mental impairment that substantially limits one or more of the major life activities of the individual, or a record of having such an impairment, or being regarded as having such an impairment. This section allows certain applicants for state jobs who have a disability to take employment qualification examinations that do not require use of an impaired skill.

#### State Disability Resources

Various state agencies provide services, benefits, and resources for individuals with disabilities. These agencies include the Agency for Health Care Administration (AHCA), the Agency for Persons with Disabilities (APD), the Department of Children and Families (DCF), the Department of Economic Opportunity (DEO), and the Department of Education (DOE). Many state and regional advocacy groups also provide resources and services.

APD is responsible for providing services to individuals with developmental disabilities. For purposes of ch. 393, F.S., a "developmental disability" is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>16</sup> This definition is also cross-referenced in ch. 39, F.S., relating to proceedings related to children; ch. 383, F.S., relating to maternal and infant health care; ch. 400, F.S., relating to nursing homes and related health care facilities; ch. 419, F.S., relating to community residential homes; ch. 760, F.S., relating to discrimination; and ch. 768, F.S., relating to negligence.

#### Governor's Commission on Jobs for Floridians with Disabilities

In 2011, Governor Scott created the Governor's Commission on Jobs for Floridians with Disabilities (commission).<sup>17</sup> The vision of the commission is to "advance job and employment opportunities for

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<sup>12</sup> Section 413.08(5), F.S.

<sup>13</sup> Section 110.112(2)(a), F.S.

<sup>14</sup> Section 110.112(2)(b), F.S.

<sup>15</sup> Section 110.112(2)(c), F.S., provides that the duties of the affirmative action-equal employment opportunity officer include "determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action."

<sup>16</sup> Section 393.063(9), F.S.

<sup>17</sup> Fla. Exec. Order No. 11-161 (2011); Governor's Commission on Jobs for Floridians with Disabilities,

<http://www.flgov.com/gcjfd/> (last visited Oct. 14, 2015).

Floridians with disabilities in order to help those Floridians achieve greater independence.”<sup>18</sup> The commission, which consists of 13 members appointed by the Governor,<sup>19</sup> has three responsibilities:

- Identify and recommend strategies to cultivate job opportunities for persons with disabilities in the state;
- Identify barriers in state and local programs that hinder individuals with disabilities from gaining employment and proposing solutions to mitigate those barriers; and
- Develop and leverage state and community resources to advance service delivery.<sup>20</sup>

Each year, on or before July 26, the commission must provide a report to the Governor outlining its accomplishments during the previous 12 months.<sup>21</sup>

### Employment First Initiative

In 2013, Governor Scott issued Executive Order Number 13-284, which ordered that an interagency cooperative agreement (agreement) be created between state agencies and other disability service organizations to ensure a long-term commitment to improving employment for individuals who have a disability.<sup>22</sup> It required certain agencies<sup>23</sup> to develop and implement the agreement with the following objectives:

- Establish a commitment among the agencies’ leadership to maximize resources and coordinate with each other to improve employment outcomes for persons with disabilities seeking publicly funded services;
- Develop strategic goals and reasonable benchmarks to assist the agencies in implementing the agreement;
- Identify financing and contracting methods that will prioritize employment among the array of services paid for or provided by agencies;
- Identify ways training opportunities can be better utilized by agency employees and contracted providers to ensure the effectiveness of employment services;
- Ensure collaboration occurs during the development of service plans, including the Individual Plan for Employment, when individuals are served by multiple agencies to achieve their employment goals;
- Promote service innovation; and
- Identify accountability measures to ensure sustainability.<sup>24</sup>

In 2014, a five-year agreement identified as the Employment First Initiative was executed by the following agencies and organizations:

- APD;
- The Bureau of Exceptional Education and Student Services of DOE;
- The Division of Vocational Rehabilitation of DOE;
- The Division of Blind Services of DOE;
- DEO;
- CareerSource Florida, Inc.;
- The Substance Abuse and Mental Health Office of DCF;

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<sup>18</sup> Fla. Exec. Order No. 11-161, s. 1 (2011).

<sup>19</sup> *Id.* at s. 4. The commission membership is as follows: two Florida citizens representing individuals with physical or developmental disabilities; four individuals representing the business community who have personal experience in creating private-sector jobs; two individuals representing the state community college system who have experience in education-to-employment transition programs; one individual who has a background in employment recruiting or experience in job training for individuals with disabilities; one representative from the Able Trust; one representative from the Division of Vocational Rehabilitation of DOE; one representative from APD; and one representative from the Agency for Workforce Development.

<sup>20</sup> *Id.* at s. 2.

<sup>21</sup> *Id.* at s. 3.

<sup>22</sup> Fla. Exec. Order No. 13-284, s. 1 (2013).

<sup>23</sup> The following agencies were tasked with developing the agreement: Division of Vocational Rehabilitation of DOE; Division of Blind Services of DOE; Bureau of Exception Education and Student Services of DOE; APD; Mental Health and Substance Abuse Program of DCF; Workforce Florida, Inc.; Florida Developmental Disabilities Council; and other state agencies and disability organizations that wish to participate. Fla. Exec. Order No. 13-284 at s. 4.

<sup>24</sup> *Id.* at s. 3.

- The Florida Developmental Disabilities Council, Inc.; and
- The Florida Association of Rehabilitation Facilitates, Inc.<sup>25</sup>

The agreement was executed and became effective on July 1, 2014.<sup>26</sup> It incorporates the objectives from the executive order and establishes an organizational structure.<sup>27</sup> The agreement establishes three entities to carry out its required responsibilities: the Employment Partnership Coalition,<sup>28</sup> the State Level Employment First Collaborative Team,<sup>29</sup> and the Grassroots Level Group.<sup>30</sup> The agreement further provides that it will automatically terminate on June 30, 2019, unless it is renewed.<sup>31</sup>

#### Department of Financial Services

The Chief Financial Officer (CFO) of the State of Florida is the head of DFS.<sup>32</sup> The CFO has established outreach and education programs to increase the financial literacy of Florida residents and to protect them from financial fraud. These initiatives include, among others, a comprehensive online financial literacy and education initiative to provide Hispanic Floridians and their families with important financial information and resources, a program to educate and protect seniors from financial scams and identity theft, and financial education for military service members.<sup>33</sup>

Presently, the CFO has not established an outreach or education program to address the financial literacy of individuals with developmental disabilities.

#### Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.<sup>34</sup> “Corporate social responsibility” is defined as a company’s sense of responsibility toward the community and environment,<sup>35</sup> 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, which included non-cash donations such as product donations and employee volunteer hours.<sup>36</sup> 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.<sup>37</sup>

<sup>25</sup> Interagency Cooperative Agreement, Employment First Initiative, FLDOE Contract No. IA-556 (2014), *available at* <http://www.fddc.org/sites/default/files/2.Employment%20First%20Interagency%20Cooperative%20Agreement.5.7.14.pdf> [hereinafter Interagency Cooperative Agreement].

<sup>26</sup> *Id.* at s. IV.

<sup>27</sup> *Id.*

<sup>28</sup> The coalition is composed of the leaders of each agency or organization that is a participant in the agreement and charged with overall coordination and implementation of activities required by the agreement, as well as to ensure continuous improvement.

<sup>29</sup> The team is composed of staff assigned by the participating entities and meets on a monthly basis. The team is responsible for identifying the barriers within extant systems and practices and creating potential solutions for those barriers. The team will present recommendations based upon their findings to the coalition.

<sup>30</sup> The group is “composed of self-advocates and local stakeholders representing a cross-section of persons with various disabilities.” The group meets quarterly to share information and “ensure the voice of the stakeholders is heard.”

<sup>31</sup> Interagency Cooperative Agreement, *supra* note 25 at s. VI.

<sup>32</sup> Section 20.121(1), F.S.

<sup>33</sup> See Your Money Matter\$, <http://www.myfloridacfo.com/ymm/> (last visited Oct. 14, 2015).

<sup>34</sup> Laura Illia 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](http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use_credit=db34fbf0a135038c9c9102e028c614be).

<sup>35</sup> BusinessDictionary.com, <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Oct. 14, 2015).

<sup>36</sup> Susan Adams, *America’s Most Generous Companies*, FORBES, July 15, 2014, *available at* <http://www.forbes.com/sites/susanadams/2014/07/15/americas-most-generous-companies/>.

<sup>37</sup> Laura Montini, *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>.

## Effect of Proposed Changes

### Definition of Developmental Disability

The bill adds Down syndrome to the list of disorders and syndromes that are included in the definition of “developmental disability.” For purposes of ch. 393, F.S., this change will have no effect. For provisions in other chapters that cross-reference this definition, the effect of the change is uncertain, but likely minimal.

### State Equal Employment Policy

The bill modifies the state’s equal employment policy to provide enhanced executive agency employment opportunities for individuals who have a disability. The bill defines the term “individual who has a disability” as a person who has a physical or intellectual impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment.

The bill specifies that each executive agency’s annual goals for ensuring full utilization of groups underrepresented in the agency’s workforce must include consideration for women, minorities, and individuals who have a disability. Each executive agency must annually report to the Department of Management Services (DMS) the agency’s progress toward increasing employment among these groups. DMS must include data for each executive agency relating to employment levels among these groups in its annual workforce report. By January 1, 2017, each executive agency must also develop an agency-specific plan that addresses how to promote employment opportunities for individuals who have a disability.

The bill requires DMS to:

- Develop and implement job-related programs specifically geared toward individuals who have a disability in consultation with APD, the Division of Vocational Rehabilitation and the Division of Blind Services of DOE, DEO, and the Executive Office of the Governor;
- Develop mandatory training programs for human resources personnel and hiring managers of executive agencies that support the employment of individuals who have a disability by January 1, 2017;
- Assist executive agencies in implementing agency-specific plans and, at least biannually, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the progress in implementing these plans;
- Compile data regarding the hiring practices of executive agencies with regard to individuals who have a disability and make such data available on its website;
- Assist executive agencies in identifying and implementing strategies for retaining employees who have a disability that include training programs, funding reasonable accommodations, increasing access to appropriate technologies, and ensuring accessibility of physical and virtual workplaces; and
- Adopt rules relating to forms that provide for the voluntary self-identification of individuals who have a disability who are employed by an executive agency.

The bill specifies that these DMS requirements do not create any substantive or procedural right or benefit enforceable at law or in equity against the state or a state agency, or an officer, employee, or agent thereof.

For fiscal year (FY) 2016-2017, the bill appropriates the sums of \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to DMS, and authorizes two full-time equivalent (FTE) positions with an associated salary rate of 92,762. In addition, the bill appropriates the sum of \$88,285 from the General Revenue Fund and the sum of \$76,671 from trust funds to Administered Funds for distribution among agencies.

### Employment First Act

The bill creates the Employment First Act (act) and provides legislative findings regarding employment opportunities for individuals with disabilities. The purpose of the act is to prioritize

the employment of individuals with disabilities and to change the employment system to better integrate individuals with disabilities into the workforce.

To achieve the act's purpose, the bill requires the following agencies and organizations to develop and implement an interagency cooperative agreement (agreement) to provide the framework for a long-term commitment to improving employment outcomes for individuals with disabilities:

- The Division of Vocational Rehabilitation of DOE;
- The Division of Blind Services of DOE;
- The Bureau of Exceptional Education and Student Services of DOE;
- APD;
- The Substance Abuse and Mental Health Program of DCF;
- DEO;
- CareerSource Florida, Inc.;
- The Florida Developmental Disabilities Council;
- The Florida Association of Rehabilitation Facilities, Inc.; and
- Other appropriate organizations.

The agreement must identify the roles and responsibilities of these agencies and organizations and the objectives of the agreement, which must include:

- Establishing a commitment by the leadership of the agencies and organizations to maximize resources and coordination to improve employment outcomes for individuals with disabilities who seek publicly funded services;
- Developing strategic goals and benchmarks to assist the agencies and organizations in implementing the agreement;
- Identifying financing and contracting methods that will help to prioritize employment for individuals with disabilities;
- Establishing training methods to better integrate individuals with disabilities into the workforce;
- Ensuring collaborative efforts between multiple agencies to achieve the purposes of the act;
- Promoting service innovations to better assist individuals with disabilities in the workplace; and
- Identifying accountability measures to ensure the sustainability of the agreement.

#### Financial Literacy Program

The bill creates the Financial Literacy Program for Individuals with Developmental Disabilities (Literacy Program) within DFS. The goal of the Literacy Program is to promote economic independence and successful employment of individuals with developmental disabilities by providing resources, outreach, and education in specific areas. For individuals with developmental disabilities, these areas include financial education, identification of available financial and health benefit programs and services, job training programs and employment opportunities, and the impact of earnings and assets on eligibility for federal and state financial and health benefit programs. For employers of the state, the areas include strategies to make program information and educational materials available to their employees with developmental disabilities.

DFS, in consultation with public and private stakeholders, must develop and implement the Literacy Program. By October 1, 2016, DFS must:

- Establish on its website a clearinghouse for information regarding the Literacy Program and other resources available for individuals with developmental disabilities and their employers; and
- Publish a brochure describing the Literacy Program that is accessible on its website.

The bill specifies that banks, credit unions, savings associations, and savings banks will be key participants in the development and promotion of the Literacy Program. Such entities that are qualified public depositories as defined in s. 280.02, F.S.,<sup>38</sup> are required to:

- Make copies of the DFS brochures available at their principal place of business and each branch office that has in-person teller services; and
- Provide a hyperlink on their website to the DFS's Literacy Program website.

The bill specifies that a participating qualified public depository is not subject to civil liability arising from the distribution or nondistribution of the brochure or Literacy Program website information. In addition, the contents of the brochure or the Literacy Program website information may not be attributed to a participating qualified public depository by virtue of its distribution, and do not constitute financial or investment advice by, nor create a fiduciary duty on, the participating qualified public depository to the recipient.

For FY 2016-2017, the bill appropriates the sums of \$63,664 in recurring funds and \$73,570 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Consumer Assistance Program within DFS, and authorizes one FTE position with a salary rate of 41,114.

#### Florida Unique Abilities Partner Program

The bill creates the Florida Unique Abilities Partner Program (Partner Program) to recognize business entities that demonstrate commitment, through employment or support, to the independence of individuals who have a disability. For purposes of the Partner 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.

The Partner Program is established within DEO. The bill requires DEO to consult with APD, the Division of Vocational Rehabilitation of DOE, the Division of Blind Services of DOE, and CareerSource Florida, Inc., in creating the Partner Program.

Business entities may apply to DEO to be designated as a Florida Unique Abilities Partner, or they may be nominated by a member of the community where the business is located. In order to receive the designation, a business entity must:

- For at least nine months before applying for the designation, employ at least one individual who has a disability and is a Florida resident;
- Make financial or in-kind contributions to local and national disability organizations of at least \$1,000 if the entity has 100 or fewer employees, or at least \$5,000 if the entity has more than 100 employees; or
- Make financial or in-kind contributions for the establishment of a program that contributes to the independence of individuals who have a disability of at least \$1,000 if the entity has 100 or fewer employees, or at least \$5,000 if the entity has more than 100 employees.

A business entity that applies to be a Florida Unique Abilities Partner and meets one of these requirements must be awarded the designation. A business entity that is nominated for the designation and meets one of the requirements must be notified of its eligibility to receive the designation and provided 30 days to accept or decline the nomination.

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<sup>38</sup> A "qualified public depository" is a bank, savings bank, or savings association that:

- (a) Is organized and exists under the laws of the U.S. or the laws of any state or territory of the U.S.
- (b) Has its principal place of business in Florida or has a branch office in the state that is authorized by law to receive deposits.
- (c) Has deposit insurance pursuant to the Federal Deposit Insurance Act.
- (d) Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.
- (e) Meets all the requirements of ch. 280, F.S.
- (f) Has been designated by the CFO as a qualified public depository.



A business entity that has been designated as a Florida Unique Abilities Partner must annually certify that it continues to meet the requirements to maintain its designation. DEO must remove the designation for a business entity that does not submit the annual certification. A business entity may elect to discontinue its use of the designation by notifying DEO of such decision.

DEO must adopt procedures for the application, nomination, and designation processes for the Partner Program.

The bill directs DEO, in consultation with the disability community, to develop a logo that may be used to identify a business entity that has been designated as a Florida Unique Abilities Partner. DEO must develop guidelines and requirements for the use and display of the logo.

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

- A list of businesses, by county, that currently have the Florida Unique Abilities Partner designation, updated quarterly;
- Information on the eligibility requirements for the designation and the method of application or nomination; and
- The best practices for business entities 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 APD must provide on its website a link to the DEO website for the Partner Program. On the Employ Florida Marketplace website, DEO and CareerSource Florida, Inc., must identify employment opportunities posted by business entities that are designated as a Florida Unique Abilities Partner.

On a quarterly basis, DEO must provide VISIT Florida with a current list of all business entities that are designated as Florida Unique Abilities Partners. VISIT Florida must consider the Partner Program in the development of marketing campaigns, including campaigns that target individuals who have a disability or their families.

DEO must report its progress in implementing the Partner Program to the Legislature by January 1, 2017. Also, beginning in 2017, DEO must describe the progress and use of the Partner Program in its annual report on the condition of the business climate and economic development in the state, which is required under s. 20.60, F.S., and due by November 1 each year.

For FY 2016-2017, the bill appropriates the sums of \$100,000 in recurring funds and \$100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund to DEO for the purpose of funding the development, implementation, and administration of the Partner Program.

#### B. SECTION DIRECTORY:

Section 1 creates s. 17.68, F.S., to establish the Financial Literacy Program for Individuals with Developmental Disabilities within the Department of Financial Services.

Section 2 amends s. 20.60, F.S., to revise requirements for the Department of Economic Opportunity's annual report effective January 1, 2017.

Section 3 reorders and amends s. 110.107, F.S., to revise definitions and to define the term "individual who has a disability."

Section 4 amends s. 110.112, F.S., relating to the state's equal employment opportunity policy.

Section 5 amends s. 280.16, F.S., to require a qualified public depository to participate in the Financial Literacy Program for Individuals with Developmental Disabilities.

Section 6 amends s. 393.063, F.S., to revise the definition of "developmental disability" to include Down syndrome.

Section 7 creates an unnumbered section of law to create the Employment First Act.

Section 8 creates an unnumbered section of law to create the Florida Unique Abilities Partner Program within the Department of Economic Opportunity.

Sections 9 – 11 provide appropriations.

Section 12 provides an effective date of July 1, 2016, except as otherwise expressly provided in the act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill makes several appropriations to implement the programs and activities created in the bill:

State Equal Employment Policy

The bill appropriates \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to DMS and authorizes two FTE positions. The bill also appropriates \$88,285 from the General Revenue Fund and \$76,671 from trust funds to Administered Funds that provide the revenue source to support the appropriation provided to DMS.

Financial Literacy Program for Individuals with Developmental Disabilities

The bill authorizes one FTE position and appropriates \$137,234 from the Insurance Regulatory Trust Fund to the Consumer Assistance Program within DFS to implement this program (\$63,664 recurring and \$73,570 nonrecurring). This includes expense costs relating to the printing and mailing of brochures to all bank branches within the state.<sup>39</sup>

Florida Unique Abilities Partner Program

The bill appropriates \$100,000 in recurring funds and \$100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund. These costs are associated with staff time to develop the program, process applications, determine compliance, and designate businesses. Information technology staff time is also required to create, maintain, and update the website that is required by the bill.<sup>40</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

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<sup>39</sup> Department of Financial Services, Agency Analysis of 2015 Senate Bill 206, p. 2 (Feb. 12, 2015) (on file with the State Affairs Committee). Senate Bill 206 (2015) contained similar provisions creating the Financial Literacy Program for Individuals with Developmental Disabilities and appropriated the same funds as this bill.

<sup>40</sup> Department of Economic Opportunity, Agency Analysis of 2015 Senate Bill 1246 (Mar. 5, 2015) (on file with the State Affairs Committee). Senate Bill 1246 (2015) contained similar provisions creating the Florida Unique Abilities Partner Program and appropriated the same funds as this bill.

The Literacy Program will facilitate greater financial literacy and economic independence among individuals with developmental disabilities by providing information and resources on financial products and services, financial management, employment options, and federal and state benefits. Employers will also benefit from resources that will facilitate employment of individuals with developmental disabilities.

Financial institutions may incur indeterminate costs associated with providing brochures about the Literacy Program at their places of business and revising their websites to provide a link to access the Literacy Program's website.

Under the Partner Program, 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.

#### D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on VISIT Florida as the number of businesses certified and transmitted by DEO, which must be considered by VISIT Florida in the development and implementation of marketing campaigns, cannot be estimated.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires DMS to adopt rules relating to forms that provide for the voluntary self-identification of individuals who have a disability. The bill also requires DEO to adopt rules to administer the Florida Unique Abilities Partner Program.

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

##### Other Comments: Americans with Disabilities Act

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.<sup>41</sup> However, an employer may inquire about the applicant's ability to perform job-related functions. Upon employment, an employer may require a medical examination if it is required of all employees, is job-related, and is 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.<sup>42</sup>

##### Other Comments: Data for Individuals Who Have a Disability

DMS uses data from the Equal Employment Opportunity (EEO) Tabulation that is published by the U.S. Census Bureau for information on women and minorities. The EEO Tabulation provides detailed occupational statistics by race, ethnicity, and sex in the labor market by location-based geography.

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<sup>41</sup> See 42 U.S.C. s. 12112.

<sup>42</sup> 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>.

DEO, which is the state agency responsible for maintaining employment data, has informed DMS that data for individuals who have a disability is not available at the occupational level. Data is only available in broad categories (employed/unemployed, full-time/less than full-time). Accordingly, it might be difficult for agencies to establish numerical goals on such limited data.<sup>43</sup>

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

On October 22, 2015, the State Affairs Committee adopted an amendment and reported the bill favorably. The amendment set a deadline of October 1, 2016, for the Department of Financial Services to establish a clearinghouse on its website and publish a brochure regarding the Financial Literacy Program.

This analysis is drafted to the bill as amended and passed by the State Affairs Committee.

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<sup>43</sup> Department of Management Services, Agency Analysis for 2015 Senate Bill 7022, p. 3 (Feb. 13, 2015) (on file with the State Affairs Committee). Senate Bill 7022 (2015) provided the same requirements.