

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: PCS/SB 7010 (186950)

INTRODUCER: Fiscal Policy (Recommended by Appropriations Subcommittee on General Government) and Governmental Oversight and Accountability Committee

SUBJECT: Individuals with Disabilities

DATE: November 18, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Peacock</u>	<u>McVaney</u>		GO Submitted as Committee Bill
1.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
2.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7010 modifies the State of Florida’s employment policy to provide enhanced opportunities for persons who have a disability to be employed by executive branch agencies. Specifically, the bill requires each executive agency to:

- Establish annual goals in its affirmative action plan that ensures full utilization of underrepresented groups in agency’s workforce, including individuals who have a disability;
- Report annually its progress toward increasing employment of individuals who have a disability; and
- Develop by January 1, 2017, an agency-specific plan on promoting employment opportunities for individuals who have a disability.

Additionally, the bill directs the Department of Management Services (DMS) to:

- Develop and implement programs geared toward individuals who have a disability in consultation with Agency for Persons with Disabilities, Division of Vocational Rehabilitation and Division of Blind Services of the Department of Education, Department of Economic Opportunity, 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;
- Assist executive agencies with implementing the agency-specific plans and strategies for retaining employees who have a disability;

- Compile data on hiring practices of executive agencies regarding hiring of individuals who have a disability and post this information on the agency's website; and
- Adopt rules relating to forms providing for voluntary self-identification of individuals who have a disability who are employed by executive agency.

The bill creates the Employment First Act requiring an interagency cooperative agreement among specified state agencies and organizations to ensure a long-term commitment to improve employment for individuals who have a disability.

The bill appropriates \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to the Department of Management Services and authorizes two full time equivalent (FTE) positions for the DMS to implement this act. In addition, the recurring sums of \$74,234 from the General Revenue Fund and \$64,458 from trust funds and the nonrecurring sums of \$14,051 from the General Revenue Fund and \$12,213 from trust funds are appropriated to Administered Funds for distribution among agencies for the increase in the human resource assessment.

The bill provides an effective date of July 1, 2016.

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 10.1 percent of individuals ages 18 to 64 (working age) have a disability.¹ In 2014, over 20 percent of working aged individuals who have a disability lived below the federal poverty line in Florida, compared with 13.7 percent of individuals without a disability.²

Individuals who have a disability experience significant disparities in employment and participation in the workforce.³ For example, 17.9 percent of individuals who have a disability are employed in Florida, while over 61 percent of those who do not have a disability are employed.⁴ Nationally in December 2104, there was an 11.2 percent unemployment rate for individuals who have a disability and a 5.1 percent unemployment rate for individuals without a disability.⁵ According to the National Disability Institute (NDI), many of these individuals would

¹ U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Disability Characteristics, 2014 American Community Survey 1-year Estimates*, Report S1810, searchable database (select advanced search) available at <http://factfinder.census.gov/> (last visited Nov. 5, 2015).

² U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2014 American Community Survey 1-year Estimates*, Report S1811, searchable database available at <http://factfinder.census.gov/> (last visited Nov. 5, 2015).

³ 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%202014.pdf (last visited Nov. 5, 2015).

⁴ Supra note 2. Note, 78.5 percent of individuals who have a disability are not in the labor force.

⁵ U.S. Department of Labor, Bureau of Labor Statistics, *BLS Data Viewer: Labor Force Statistics from the Current Population Survey, Series IDs LNU04074593 and LNU04074597*, (for 2014, not seasonally adjusted), available at <http://beta.bls.gov/dataViewer/view/641a3c05bb5b4578b313b2f20ca886cc> (last visited Nov. 9, 2015).

like to find employment, but are concerned if they earn more money it will cause them to lose disability and health benefits.⁶

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;⁷ establish annual goals in its affirmative action plan for ensuring full utilization of groups underrepresented in the agency's workforce as compared to relevant labor market;⁸ and appoint an affirmative action-equal employment opportunity officer.⁹

The DMS is required to issue an annual workforce report¹⁰ and provide training to all supervisory personnel of executive agencies.¹¹ The annual workforce report must include information relating to implementation, continuance, any update, and the results of each executive agency's affirmative action plan for the previous fiscal year.¹²

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.

State Disability Resources

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

Section 393.063(9), F.S., defines developmental disability to mean "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."

⁶ 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 (last visited Nov. 5, 2015).

⁷ Section 110.112(2)(a), F.S.

⁸ Section 110.112(2)(b), F.S.

⁹ 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."

¹⁰ Section 110.112(2)(d), F.S.

¹¹ Section 110.112(2)(e), F.S., provides that the training will be in the principals of equal employment opportunity and affirmative action, the development and implementation of affirmative action plans, and establishment of annual affirmative action goals.

¹² Section 110.112(2)(d), F.S.

The APD currently serves approximately 55,000 clients with developmental disabilities.¹³ The total population of individuals in Florida with developmental disabilities is indeterminate at this time. However, the APD estimates the population of individuals with developmental disabilities in Florida could be between 300,000 to 600,000 people.¹⁴

Governor's Commission on Jobs for Floridians with Disabilities

On July 26, 2011, Governor Rick Scott created the Governor's Commission on Jobs for Floridians with Disabilities (Commission) to advance job and employment opportunities for persons with disabilities in order to help those individuals achieve greater independence.¹⁵ The Commission found that "the state's disability system does not effectively connect employers to candidates with disabilities and inform them about the resources available to support these individuals in the workplace."¹⁶ The Commission recommended that the DEO serve as a single-point of contact to assist employers in finding these resources and services in order to help employers recruit, hire, and retain individuals with disabilities. The Commission further recommended the DEO provide information on available services and support that make it possible for persons with disabilities to succeed in the workforce. The "Abilities Work" web portal¹⁷ within the Employ Florida Marketplace¹⁸ website was developed to meet the needs of Florida employers looking to hire qualified job seekers with disabilities and of individuals with disabilities who are seeking to find employment.

Employment First Initiative

On October 8, 2013, Governor Scott issued Executive Order 13-284 requiring an interagency cooperative agreement between state agencies and other disability service organizations to ensure a long-term commitment to improving employment for individuals who have a disability.¹⁹ The Executive Order directed state agencies and organizations to develop methods to increase the number and percentage of growth in competitive employment for individuals who have a disability. In 2014, a five-year interagency cooperative agreement identified as the Employment First Initiative was executed by the following agencies and organizations:

- Agency for Persons with Disabilities;
- Department of Education, Bureau of Exceptional Education and Student Services;
- Department of Education, Division of Vocational Rehabilitation;
- Department of Education, Division of Blind Services;
- Department of Economic Opportunity;

¹³ E-mail from the Agency for Persons with Disabilities, Summary of Active Clients, Jan. 28, 2015 (on file with the Senate Banking and Insurance Committee).

¹⁴ *Id.*

¹⁵ Executive Order 11-161, available at <http://www.flgov.com/wp-content/uploads/2011/07/11-161-Commission-on-Jobs-for-Floridians-with-Disabilities.pdf> (last visited Nov. 9, 2015).

¹⁶ Commission, *2013 Commission Report*, (Aug. 15, 2013), available at http://www.flgov.com/wp-content/uploads/pdfs/governors_commission_on_jobs_for_floridians_with_disabilities_2013_report.pdf (last visited Nov. 12, 2015).

¹⁷ The Abilities Work website, available at <https://abilitieswork.employflorida.com/vosnet/Default.aspx#> (last visited Nov. 9, 2014).

¹⁸ Employ Florida Marketplace is a partnership of CareerSource Florida, Inc., and the DEO.

¹⁹ See Executive Order 13-284, available at <http://www.flgov.com/wp-content/uploads/orders/2013/13-284-disabilities.pdf> (last visited Nov. 9, 2015).

- Workforce Florida, Inc.;²⁰
- Department of Children and Families, Substance Abuse and Mental Health Office;
- Florida Developmental Disabilities Council, Inc.; and
- Florida Association of Rehabilitation Facilities, Inc.²¹

Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.²² Corporate social responsibility is defined as a company's sense of responsibility toward the community and environment,²³ which may be expressed through support of issues and programs, like engaging in ethical supply sourcing or contributing to a specific social program. 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.²⁴ 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.²⁵

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.²⁶ Consumers are becoming "more deliberate and purposeful" in their shopping decisions by patronizing businesses that have similar values to their own.²⁷ 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.²⁸ People may even base their employment decisions on such values.²⁹

²⁰ Workforce Florida, Inc. was renamed as CareerSource Florida, Inc. See ch. 2015-98, Laws of Florida; see also HB 7019 (reg. session 2015).

²¹ Interagency Cooperative Agreement, Employment First Initiative (2014), FLDOE Contract No.: IA-556, <http://www.fddc.org/sites/default/files/2.Employment%20First%20Interagency%20Cooperative%20Agreement.5.7.14.pdf> (last visited Nov. 9, 2015).

²² 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 Nov. 5, 2015).

²³ BusinessDictionary.com, available at <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Nov. 5, 2015).

²⁴ 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 Nov. 5, 2015).

²⁵ Montini, Laura, *Corporate Altruism Is on the Rise (Infographic)*, INC., Aug. 27, 2014, available at <http://www.inc.com/laura-montini/infographic/the-benefits-of-community-service.html> (last visited Nov. 5, 2015).

²⁶ 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 Nov. 5, 2015).

²⁷ 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 Nov. 5, 2015).

²⁸ 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 Nov. 5, 2015).

²⁹ Supra note 11.

III. Effect of Proposed Changes:

Section 1 reorders, amends, and revises definitions contained in s. 110.107, F.S., and 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 definition of “individual who has a disability” mirrors the federal definition of “disability” contained in the American with Disabilities Act (ADA),³⁰ with the exceptions of the following:

- The federal term “mental impairment”³¹ is replaced with “intellectual impairment”; and
- The federal phrase “being regarded”³² is replaced with “who is perceived by others”.

Section 2 amends s. 110.112, F.S., and revises and broadens the state’s equal employment opportunity policy to include individuals who have a disability.

Each executive agency is required to:

- Set annual goals in its affirmative action plan to ensure the full utilization of underrepresented groups, specifically including individuals who have a disability as compared to the relevant labor market;
- Report annually to the DMS on the agency’s progress toward increasing employment of individuals who have a disability; and
- Develop an agency-specific plan by January 1, 2017, addressing how to promote employment opportunities for individuals who have a disability.

The DMS is required to:

- Include data for each executive agency related to employment levels among women, minorities, and individuals who have a disability in its annual workforce report;
- Develop and implement programs specifically geared toward individuals who have a disability in consultation with the Agency for Persons with Disabilities, the Division of Vocational Rehabilitation and Division of Blind Services of the Department of Education, the Department of Economic Opportunity, and the Executive Office of the Governor;³³
- Develop mandatory training programs by January 1, 2017, for human resources personnel and hiring managers of executive agencies that support the employment of individuals who have a disability;
- Assist executive agencies in implementing agency-specific plans; and identifying and implementing strategies for retaining employees who have a disability.³⁴
- Biannually report on the progress of executive agencies in implementing their plans to the Governor, the President of the Senate, and the Speaker of the House of Representatives;

³⁰ 42 U.S.C. s. 12102.

³¹ *Id.*

³² *Id.*

³³ These programs may incorporate internships, mentoring, on-the-job training, unpaid work experience, situational assessments, and other innovative strategies.

³⁴ Some of these strategies include training programs, funding reasonable accommodations, increasing access to technologies, and ensuring accessibility of physical and virtual workplaces.

- Compile data regarding the hiring practices of executive agencies in regards to individuals who have a disability and make this data available on its website; and
- Adopt rules regarding forms that provide for voluntary self-identification of individuals who have a disability who are employed by an executive agency.

The bill also contains a provision that specifically states that no substantive or procedural right or benefit enforceable at law or in equity against the state, state agency, officer, employee, or agent thereof is created by this legislation.

The bill applies to the State Personnel System comprised of positions in the Career Service, Selected Exempt Service, or Senior Management Service within all executive branch agencies. This bill is not applicable to the personnel systems of the State University System, the Florida Lottery, the Legislature, the Justice Administration System, or the State Courts System.

Section 3 creates the “Employment First Act.” This section provides a short title, legislative intent, and purpose, which is to improve the employment outcomes for individuals with disabilities, to prioritize employment of individuals with disabilities, and to change the employment system to integrate individuals with disabilities into the workforce.

This section also requires an interagency cooperative agreement be developed among the following:

- Agency for Person with Disabilities;
- Department of Education, Bureau of Exceptional Education and Student Services;
- Department of Education, Division of Vocational Rehabilitation;
- Department of Education, Division of Blind Services;
- Department of Economic Opportunity;
- CareerSource Florida, Inc.;
- Department of Children and Families, Substance Abuse and Mental Health Office;
- Florida Developmental Disabilities Council;
- Florida Association of Rehabilitation Facilities; and
- Other appropriate organizations.

The interagency cooperative agreement must outline the roles and responsibilities of the parties to the agreement.

The bill requires the objectives of the interagency agreement to include the following:

- Establishing a commitment by state leadership to maximize resources and coordination to improve employment outcomes for individuals with disabilities;
- Developing strategic goals and benchmarks to assist state agencies and organizations in the implementation of agreement;
- Identifying financing and contracting methods to help prioritize employment for individuals with disabilities by state agencies and organizations;
- Establishing training methods to better integrate persons with disabilities into the workforce;
- Ensuring collaborative efforts between agencies;
- Promoting service innovations to better assist individuals with disabilities in the workplace; and

- Identifying accountability measures to ensure sustainability of agreement.

Section 4 appropriates for Fiscal Year 2016-2017, the sums of \$138,692 in recurring funds and \$26,264 in nonrecurring funds from the State Personnel System Trust Fund to the DMS, and authorizes two FTE positions for the purpose of implementing the new responsibilities of the DMS, relating to employment of individuals who have a disability.

In addition, the recurring sums of \$74,234 from the General Revenue Fund and \$64,458 from trust funds and the nonrecurring sums of \$14,051 from the General Revenue Fund and \$12,213 from trust funds are appropriated to Administered Funds for distribution among agencies for the increase in the human resource assessment.

Section 5 provides an effective date of July 1, 2016.

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:

Indeterminate.

C. Government Sector Impact:

The DMS staff estimates the implementation of the bill will require two additional full-time positions. The total cost for two Human Resource Consultant positions with the standard expense package is \$146,456.³⁵

In addition, the People First system, the state's human resource information system, will need to be enhanced to add an "individual who has a disability" indicator to fully

³⁵ Department of Management Services, *SB 7010 Analysis*, October 9, 2105 (on file with the Senate Fiscal Policy Committee).

implement the reporting requirements of this bill. The DMS estimates a cost of \$18,500 to implement these changes.³⁶

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 positions. The bill also appropriates the recurring sums of \$74,234 from the General Revenue Fund and \$64,458 from trust funds and the nonrecurring sums of \$14,051 from the General Revenue Fund and \$12,213 from trust funds to Administered Funds, which provide the revenue source to support the appropriation provided to the DMS, for distribution among the agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill directs the DMS to adopt rules relating to forms that provide for the voluntary self-identification of individuals who have a disability.

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.³⁷ 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 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.³⁸

The 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. The state's data center, DEO, has informed the 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.³⁹

VIII. Statutes Affected:

This bill substantially amends the sections 110.107 and 110.112 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

³⁶ Id.

³⁷ See 42 U.S.C. s. 12112.

³⁸ 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, <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (last visited Sept. 29, 2015).

³⁹ Supra note 35.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on November 3, 2015:

The committee substitute specifies the recurring and nonrecurring amounts appropriated to Administered Funds.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
