

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 Governmental Oversight and Accountability

BILL: SPB 7010

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Individuals with Disabilities

DATE: October 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		Pre-meeting
2.				
3.				

I. Summary:

SPB 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 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 and authorizes two full time equivalent (FTE) positions for DMS to implement this act. Also, the sum of \$88,285 from the General Revenue Fund and the sum of \$76,671 from trust funds within the Human Resource Services appropriation category are appropriated to Administered Funds.

The bill provides for 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, 20.6 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 61.3 percent of those who do not have a disability are employed.⁴ The trend is similar nationally with an 11.2 percent unemployment rate for individuals who have a disability and a 5 percent unemployment rate for individuals without a disability.⁵ 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.⁶

¹ U.S. Department of Commerce, U.S. Census Bureau, American Fact Finder, *Disability Characteristics for Civilian Noninstitutionalized Population, 2014 American Community Survey 1-year Estimates*, Report S1810, searchable database available at <http://factfinder.census.gov/> (last visited Sept. 29, 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 Sept. 29, 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%2014.pdf (last visited Sept. 29, 2015).

⁴ Supra note 2.

⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Employment Status of the Civilian Population by Sex, Age, and Disability Status, not seasonally adjusted (Aug. 2015)*, available at <http://www.bls.gov/news.release/empstat06.htm> (last visited Sept. 29, 2015).

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 Sept. 29, 2015).

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

DMS is required to issue an annual workforce report¹⁰ and provide training to all supervisory personnel of executive agencies.¹¹

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 (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.

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."

The APD currently serves approximately 55,000 clients with developmental disabilities.¹² The total population of individuals in Florida with developmental disabilities is indeterminate at this

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., provides that the DMS annual workforce report shall include information relating to implementation, continuance, and updating the results of each executive agency's affirmative action plan for the previous fiscal year.

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 E-mail from the Robert Brown, Agency for Persons with Disabilities (Sept. 30, 2015) (on file with the Senate Governmental Oversight and Accountability Committee).

time. However, the APD estimates the population of individuals with developmental disabilities in Florida could be between 300,000 to 600,000 people.¹³

Governor's Commission of 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.¹⁴ 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. 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 portal¹⁵ within the Employ Florida Marketplace¹⁶ 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.¹⁷ 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;
- Workforce Florida, Inc.;¹⁸
- Department of Children and Families, Substance Abuse and Mental Health Office;
- Florida Developmental Disabilities Council, Inc.; and

¹³ *Id.*

¹⁴ 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 Sept. 29, 2015).

¹⁵ The Abilities Work website, available at <https://abilitieswork.employflorida.com/vosnet/Default.aspx#> (last visited Sept. 29, 2014).

¹⁶ Employ Florida Marketplace (EFM) is a partnership of CareerSource Florida, Inc., (formerly Workforce Florida, Inc.) and DEO.

¹⁷ See Executive Order 13-284 available at <http://www.flgov.com/wp-content/uploads/orders/2013/13-284-disabilities.pdf> (last visited Sept. 29, 2015).

¹⁸ Workforce Florida, Inc. was renamed as CareerSource Florida, Inc. See Chapter 2015-98, Laws of Florida; see also House Bill 7019 (reg. session 2015).

- Florida Association of Rehabilitation Facilities, Inc.¹⁹

Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.²⁰ Corporate social responsibility is defined as a company's sense of responsibility toward the community and the environment,²¹ which may be expressed through support of issues, such as ethical supply sourcing or a contribution to, or support for, social issues and programs. In 2013, corporations in the United States gave approximately \$18.7 billion, consisting of both cash and non-cash donations, such as product donations and employee volunteer hours.²² 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.²³

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.²⁴ Consumers are becoming "more deliberate and purposeful" in their shopping decisions by patronizing businesses that have similar values to their own.²⁵ 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.²⁶ People may even base their employment decisions on such values.

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".

The definition of "individual who has a disability" mirrors the federal definition of "disability" contained in the American with Disabilities Act (ADA),²⁷ with the exceptions of the following:

¹⁹ 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 Sept. 29, 2015).

²⁰ Illia, Laura et al., *Communicating Corporate Social Responsibility to a Cynical Public*, MIT SLOAN MANAGEMENT REVIEW, Feb. 21, 2013, http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use_credit=db34fbf0a135038c9c9102e028c614be (last visited Sept. 29, 2015).

²¹ BusinessDictionary.com, <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Sept. 29, 2015).

²² Adams, Susan, *America's Most Generous Companies*, FORBES, July 15, 2014, <http://www.forbes.com/sites/susanadams/2014/07/15/americas-most-generous-companies/> (last visited Sept. 29, 2015).

²³ Montini, Laura, *Corporate Altruism Is on the Rise (Infographic)*, INC., Aug. 17, 2014, <http://www.inc.com/laura-montini/infographic/the-benefits-of-community-service.html> (last visited Sept. 29, 2015).

²⁴ The Nielsen Company, *Doing Well by Doing Good* (June 2014), <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/global-corporate-social-responsibility-report-june-2014.pdf> (last visited Sept. 29, 2015).

²⁵ Solomon, Micah, *Six Customer Trends That Will Build or Break Your Business As We Enter 2015*, FORBES, Dec. 25, 2014, <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 Sept. 29, 2015).

²⁶ Irwin, Julie, *Ethical Consumerism Isn't Dead, It Just Needs Better Marketing*, HARVARD BUSINESS REVIEW, Jan. 12, 2015, <https://hbr.org/2015/01/ethical-consumerism-isnt-dead-it-just-needs-better-marketing> (last visited Sept. 29, 2015).

²⁷ 42 U.S.C. s. 12102(2).

- The federal term “mental impairment”²⁸ is replaced with “intellectual impairment”; and
- The federal phrase “being regarded”²⁹ 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.

Executive agencies are required to:

- Set annual goals in its affirmative action plan to ensure the full utilization of underrepresented groups, to specifically include individuals who have a disability as compared to the relevant labor market;
- Report annually to 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.

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 Agency for Persons with Disabilities, Division of Vocational Rehabilitation and Division of Blind Services of the Department of Education, Department of Economic Opportunity, and Executive Office of the Governor;³⁰
- 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.³¹
- 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;
- 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.

SPB 7010 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.

²⁸ *Id.*

²⁹ *Id.*

³⁰ These programs may incorporate internships, mentoring, on-the-job training, unpaid work experience, situational assessments, and other innovative strategies.

³¹ Some of these strategies include training programs, funding reasonable accommodations, increasing access to technologies, and ensuring accessibility of physical and virtual workplaces.

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 legislation to be known as 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:

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

Additionally, this interagency cooperative agreement shall outline the roles and responsibilities of the parties to the agreement.

The bill outlines the objectives of the interagency agreement that must include the following:

- Establishing commitment by state leadership to maximizing 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;
- Establish 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 FY 2016-2017, 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 FTE positions for the purpose of implementing the new responsibilities of DMS, relating to employment of individuals who have a disability.

In addition, \$88,285 from the General Revenue Fund and \$76,671 from trust funds are appropriated to Administered Funds in the “Special Categories – Transfer to DMS – Human Services Purchased per Statewide Contract” appropriations category for distribution among agencies.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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 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 \$88,285 from the General Revenue Fund and \$76,671 from trust funds to Administered Funds for distribution among the agencies.

DMS has also suggested the People First system, the state's human resource information system, may need to be enhanced to add an "individual who has a disability" indicator to fully implement the reporting requirements of this legislation.

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.³² 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.³³

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 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.

VIII. Statutes Affected:

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

This bill creates the Employment First Act.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³² See 42 U.S.C. s. 12112.

³³ 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).