

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 5203 PCB HEAS 12-02 Reemployment Services

**SPONSOR(S):** Appropriations Committee, Higher Education Appropriations Subcommittee, O'Toole

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Higher Education Appropriations Subcommittee	13 Y, 0 N	Butler	Heflin
1) Appropriations Committee	22 Y, 0 N, As CS	Butler	Leznoff

### SUMMARY ANALYSIS

The bill provides substantive changes in law to conform to budgetary reductions in the House of Representatives proposed Fiscal Year 2012-13 General Appropriations Act (GAA).

The Division of Vocational Rehabilitation (DVR), Bureau of Rehabilitation and Reemployment Services (BRRS) in the Department of Education provides reemployment services to injured workers who are not able to return to their usual and customary occupation due to their work injury and require additional services. Services provided include vocational counseling; job-seeking training skills; transferable skills analysis; job placement; labor market information; and, if qualified, training and education, which includes payment for books, tuition, tools, uniforms, and authorized supplies.

The bill repeals s. 440.491, F.S., relating to reemployment of injured workers, effective July 1, 2012. Repealing this section of law eliminates duties of the BRRS. The House proposed GAA for Fiscal Year 2012-2013 includes a reduction of 27 full-time equivalent positions and \$2.3 million from the Workers' Compensation Administration Trust Fund (WCATF) through elimination of the BRRS Injured Worker Program. A balance of approximately \$200,000 remains in the budget to allow for the payment of anticipated program expenditures in Fiscal Year 2012-2013. DVR suggests that, of its active caseload, approximately half would qualify for general VR services. Some could be eligible for services by the Department of Economic Opportunity.

Provisions repealed in s. 440.491(6) and (7), F.S., are included in s. 440.15, F.S., to maintain two necessary provisions of law pertaining to injured workers' compensation benefits, and determination of permanent and total disability. One provision maintains current law which requires employers or carriers to pay additional training and education temporary total compensation benefits for up to 26 weeks to injured workers. The second provision maintains current law that a judge of compensation may not adjudicate an injured employee as permanently and totally disabled until or unless the carrier is given the opportunity to provide a reemployment assessment.

Effective June 30, 2013, the WCATF within the Department of Education is terminated. Provisions are made for transferring the remaining fund balance and all revenues of the trust fund to the WCATF within the Department of Financial Services.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Department of Education Division of Vocational Rehabilitation's Bureau of Rehabilitation and Reemployment Services (BRRS) provides reemployment services to injured employees in accordance with s. 440.491, Florida Statutes (Florida Workers' Compensation Law), and Rule Chapter 6A-22, Florida Administrative Code. Reemployment Services are provided to injured employees who are not able to return to their usual and customary occupation due to their work injury and require additional services to return to suitable gainful employment as defined in ss. 440.491(1)(h). Reemployment services include vocational counseling; job-seeking skills training; transferable skills analysis; job placement; labor market information; and training and education, including payment for books, tuition, tools, uniforms, and authorized supplies. Additional services may include referrals to other entities for services to assist with needs outside the scope of the Workers' Compensation System. The program organized by this section has existed since 1993.

The Workers' Compensation Administration Trust Fund (WCATF) within Department of Financial Services provides for the payment of expenses in respect to the administration of the workers' compensation program in the state.<sup>1</sup> Additionally, each fiscal year, funds are appropriated from the WCATF to be transferred to other agencies to support related programs. Besides the Department of Education's Division of Vocational Rehabilitation, funds from the WCATF are also transferred annually to other agencies which include the Agency for Health Care Administration, Department of Business and Professional Regulation, Department of Management Services/Division of Administrative Hearings, First District Court of Appeal, and Justice Administration Commission (for use by the State Attorney in the 11<sup>th</sup> Judicial Circuit for the prosecution of workers' compensation fraud).

The major revenue source (other than fines imposed by the Division of Workers' Compensation) for the WCATF comes from assessments on workers' compensation insurance premiums as provided for in s. 440.51(1), F.S. Each year, by July 1, the department is required to notify insurance carriers and self-insurers of the assessment rate necessary for the enforcement of chapter 440, F.S. The assessment rate is effective the following January 1. In an economic downturn, workers' compensation claims can exceed revenues produced, which in turn requires either expenditures to be reduced where possible, or imposition of assessment rate increases.

During the 2011 legislative session, budgetary reductions were made to the Injured Worker Program, and certain investigative, monitoring and regulatory duties of the Division of Vocational Rehabilitation related to the program were eliminated. The program was reduced by 55 full-time-equivalent (FTE) positions, and \$5.5 million in funding. These reductions were the result of declining cash balances in the WCATF.

According to the Division of Vocational Rehabilitation, the BRRS has approximately 1,800 active open cases. Injured workers are referred to the BRRS program by insurance carriers, attorneys, health care providers, and rehabilitation providers. Per the Division of Vocational Rehabilitation, "We are not aware of other states that have a program similar to the Florida Workers' Compensation Reemployment Services Program. It is our understanding that most of the states we are familiar with refer clients to their state's General VR Program for vocational services."<sup>2</sup>

The BRRS program's current remaining budget includes \$2.5 million in WCATF to support the remaining 27 FTE who assist Florida's injured workers with reemployment services to return them to suitable gainful employment.

##### Effect of Changes

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<sup>1</sup> Section 440.50, F.S.

<sup>2</sup> Email Correspondence, Division of Vocational Rehabilitation (11/7/2011)

The bill repeals s. 440.491, Florida Statutes, relating to reemployment/rehabilitative services for injured workers. Reemployment services include vocational counseling, job seeking skills training, ergonomic job analysis, labor market surveys, and arranging other services such as education or training, vocational and on-the-job, which may be needed by the employee to secure suitable employment.

It is anticipated that approximately half of the active injured employees currently receiving BRRS services would be eligible for general services provided by the Division of Vocational Rehabilitation (DVR). DVR assists people who have a physical or mental disability with preparing for a job, finding a job, or retaining employment.

The bill repeals the WCATF within the Department of Education, effective June 30, 2013. The bill provides procedures for transferring balances remaining in, and all revenues of the trust fund to the WCATF within the Department of Financial Services; provides procedures for payment of outstanding debts and obligations of the trust fund; and requires the Chief Financial Officer to close out and remove the trust fund from the various state accounting systems upon the trust funds termination.

Two provisions repealed in s. 440.491, F.S., are included in s. 440.15, F.S., to maintain necessary provisions of law pertaining to injured workers' compensation benefits, and determination of permanent and total disability. The first provision maintains that an employer or carrier is required to pay additional training and education temporary total compensation benefits for up to 26 weeks while an employee receives training and education, when the injured worker who has attained maximum medical improvement is unable to earn at least 80 percent of the compensation rate and requires training and education to obtain suitable gainful employment. The second provision maintains that a judge of compensation may not adjudicate an injured employee as permanently and totally disabled until or unless the carrier is given the opportunity to provide a reemployment assessment.

#### B. SECTION DIRECTORY:

Section 1. Repeals s. 440.491, F.S., relating to reemployment of injured workers.

Section 2. Repeals s. 1010.87, F.S., relating to the WCATF in the Department of Education, providing an effective date.

Section 3. Terminates the WCATF in the Department of Education; provides for accounting procedures relating to the fund; and, provides an effective date.

Section 4. Amends s. 287.057, F.S., deleting a provision related to the repealed program.

Section 5. Amends s. 402.7305, F.S., conforming a cross reference as a result of changes in the bill.

Section 6. Amends s. 427.0135, F.S., conforming a cross reference as a result of changes in the bill.

Section 7. Amends s. 440.15, F.S., deleting a cross reference as a result of changes in the bill, and adding provisions relating to injured workers' compensation benefits, and determination of permanent and total disability.

Section 8. Amends s. 440.33, F.S., deleting a cross reference related to the repealed program.

Section 9. Amends s. 440.50, F.S., deleting a reference related to the WCATF in the Department of Education.

Section 10. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may result in a lesser adjustment to the assessments on workers' compensation insurance premiums by the Chief Financial Officer.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reemployment and training services, which included payment of costs for tuition, books, and supplies, will no longer be available for injured workers through the Division of Vocational Rehabilitation. These individuals may, or may not qualify for services under Division of Vocational Rehabilitation.

The bill may result in a lesser adjustment to the assessments on workers' compensation insurance premiums by the Chief Financial Officer which will likely be a savings to private businesses.

D. FISCAL COMMENTS:

A reduction of 27 full-time-equivalent positions and \$2.3 million from the WCATF is included in the House proposed Fiscal Year 2012-2013 GAA due to elimination of the Injured Worker Program in the Division of Vocational Rehabilitation. Approximately \$200,000 is left in the trust fund to allow payment of anticipated costs associated with job eliminations, such as employee leave payouts and payment of unemployment compensation in Fiscal Year 2012-2013.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The House Appropriations Committee considered the bill on February 1, 2012, and adopted an amendment. The amendment reinstates necessary provisions to maintain current law pertaining to injured

workers' compensation benefits, and determination of permanent and total disability. These provisions, which were repealed in s. 440.491, F.S., are added back in s. 440.15, F.S. Specifically, these provisions:

- Maintain that an employer or carrier is required to pay additional training and education temporary total compensation benefits for up to 26 weeks while an employee receives training and education, when the injured worker who has attained maximum medical improvement is unable to earn at least 80 percent of the compensation rate and requires training and education to obtain suitable gainful employment.
- Maintain that a judge of compensation may not adjudicate an injured employee as permanently and totally disabled until or unless the carrier is given the opportunity to provide a reemployment assessment.