

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 794

INTRODUCER: Senator Bean

SUBJECT: Independent Living Services

DATE: April 14, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Jahnke</u>	<u>Bouck</u>	<u>ED</u>	<b>Favorable</b>
3.	<u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<b>Pre-meeting</b>

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## I. Summary:

SB 794 modifies the membership and responsibilities of the Florida Independent Living Council (FILC). Specifically, the bill removes the Division of Blind Services (DBS) from the membership of the FILC, and revises the total number of members from 14 to 11. The bill also permits the FILC to choose representative members from a wide range of persons with developmental disabilities from diverse backgrounds.

The bill revises certain required and discretionary tasks of the FILC and prohibits the FILC from engaging in certain prohibited activities related to lobbying.

The bill increases the percentage of total revenues collected from the Tax Collection Enforcement Diversion Program (Diversion Program) used to administer the James Patrick Memorial Work Incentive Personal Attendant Services Program (JPPAS Program) from 50 percent to 75 percent.

The bill will have a positive fiscal impact on the JPPAS program by increasing the proportion of funds from the Diversion Program to the JPPAS Program, and a negative fiscal impact on other segments of state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Independent Living

The term “independent living” is not defined in Florida Statutes. “Independent living” may refer to an elderly person with the physical and mental capacity to live independently but who wants

companionship or otherwise needs supportive services. It may also encompass a living arrangement for people with disabilities who need supportive services.<sup>1</sup>

The Federal Rehabilitation Act of 1973, as amended, created a framework for states to obtain funding for independent living programs, known as Centers for Independent Living, which work to support community living and independence for people with disabilities.<sup>2</sup> There are 16 Centers for Independent Living in Florida which together serve all 67 counties.<sup>3</sup> To receive funding, states must develop a State Plan for Independent Living (SPIL), which is a three year plan for providing independent living services in the state, through a designated Statewide Independent Living Council (SILC).

Independent living communities are communities in which healthy individuals may live on their own but that do not offer assisted living or nursing services. Independent living communities may offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.<sup>4</sup>

### ***Florida Independent Living Council***

In 1988, the Legislature created the FILC which serves as Florida's SILC.<sup>5</sup> The FILC's responsibilities include jointly developing and submitting the SPIL.<sup>6</sup> The FILC works to ensure that persons with disabilities have an opportunity for input into the development of the SPIL and works for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities. The FILC describes the independent living philosophy as "promot[ing] consumer control of services, self-determination and equal access and participation in every aspect of community life, to the level that individual wishes."<sup>7</sup> The 2017-2019 SPIL, in part, identified the need for safe, affordable, accessible housing as being critical for Florida's Centers for Independent Living and noted a lack of housing is commonly identified as the main barrier to independent living.<sup>8</sup>

Currently, the FILC is comprised of 14 members, including, among other members, directors of independent living centers, a representative from the Division of Vocational Rehabilitation (VR), a representative from the Division of Blind Services (DBS), and various individuals with developmental disabilities.<sup>9</sup> The FILC must coordinate activities with the Florida Rehabilitation Council and other councils that address the needs of specific disability populations under federal

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<sup>1</sup> aPlaceforMom, *Independent Living in Florida*, available at <https://www.aplaceformom.com/independent-living/florida> (last visited March 13, 2021).

<sup>2</sup> Administration for Community Living, *Centers for Independent Living*, available at <https://acl.gov/programs/aging-and-disability-networks/centers-independent-living> (last visited March 13, 2021).

<sup>3</sup> The Department of Education, Division of Vocational Rehabilitation, *Independent Living Program*, available at [http://www.rehabworks.org/indep\\_living.shtml](http://www.rehabworks.org/indep_living.shtml) (last visited March 13, 2021).

<sup>4</sup> Senior Living.org, *Selecting an Independent Living Community*, available at <https://www.seniorliving.org/independent-living/> (last visited March 13, 2021).

<sup>5</sup> Ch. 88-214, L.O.F.

<sup>6</sup> Section 413.395(1), F.S.

<sup>7</sup> The Florida Independent Living Council (FILC), *About Independent Living*, available at <https://www.floridasilc.org/independent-living/> (last visited March 13, 2021).

<sup>8</sup> The FILC, *State Plan for Independent Living for Florida for 2017-2019*, p. 22, available at [https://www.floridasilc.org/documents/State\\_Plan.pdf](https://www.floridasilc.org/documents/State_Plan.pdf) (last visited March 13, 2021).

<sup>9</sup> Section 413.395(3)-(5), F.S.

law. The FILC must also submit periodic reports to the Commissioner of the Federal Rehabilitation Administration Services, and provide access to such records at the request of the Commissioner.<sup>10</sup>

### **The Florida Division of Vocational Rehabilitation**

The VR within the Department of Education (DOE) administers the vocational rehabilitation program in Florida. The VR provides services to help individuals with a disability find, advance in, or retain employment, and provides services to youth and students with a disability to aid in the transition from high school to a meaningful career path. In FY 2018-19, the VR served 48,439 individuals, including 26,086 customers who were between the ages of 14 through 21.<sup>11</sup>

An individual with a disability<sup>12</sup> is presumed eligible for vocational rehabilitation services if the person requires rehabilitation services to prepare for, enter, engage in, or retain gainful employment.<sup>13</sup> After determining eligibility, the VR must complete an assessment to determine rehabilitation needs and ensure that an individualized plan for employment (IPE)<sup>14</sup> is prepared.<sup>15</sup> The IPE must be designed to achieve the specific employment outcome of the individual and may include services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.<sup>16</sup>

### ***Division of Blind Services***

The DBS is housed within the DOE.<sup>17</sup> The purpose of the DBS is to ensure the greatest possible efficiency and effectiveness of services to individuals who are blind.<sup>18</sup> It is the intent of the Legislature to establish a coordinated program of services that are available throughout Florida to such individuals. The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.<sup>19</sup> The DBS's program of services include a blind babies program, children's program, transition services, independent living program, vocational rehabilitative program, employer services, business enterprises program, rehabilitation center for the blind and visually impaired, and braille and talking books library.<sup>20</sup>

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<sup>10</sup> Section 413.395(11)(c), F.S.

<sup>11</sup> The Florida Department of Education, Division of Vocational Rehabilitation, *2018-2019 Annual Report* (2019), p. 6, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf> (last visited March 13, 2021).

<sup>12</sup> Section 413.20(7), F.S., defines "disability" to mean "a physical or mental impairment that constitutes or results in a substantial impediment to employment."

<sup>13</sup> Section 413.30(1), F.S.

<sup>14</sup> An individualized plan for employment includes a "comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services." Section 413.20(3), F.S.

<sup>15</sup> See s. 413.30(4) and (5), F.S.

<sup>16</sup> The Florida Department of Education, Division of Vocational Rehabilitation, *Frequently Asked Questions*, available at <http://www.rehabworks.org/faq.shtml> (last visited March 13, 2021).

<sup>17</sup> Section 20.15(3)(e), F.S.

<sup>18</sup> See s. 413.011(3), F.S.

<sup>19</sup> Section 413.011(2), F.S.

<sup>20</sup> See The Florida Division of Blind Services, *About Blind Services*, available at <http://dbs.myflorida.com/Information/index.html> (last visited March 10, 2021).

The DBS was administratively housed within the VR upon inception.<sup>21</sup> The DBS has since been established as a separate entity within the DOE and has a separate representative council, known as the Rehabilitative Council for the Blind (RCB).<sup>22</sup> The RCB is an advisory council<sup>23</sup> responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitative Act of 1973,<sup>24</sup> as amended, to recommend improvements to such programs and services, and to perform specified functions.

### **James Patrick Memorial Work Incentive Personal Attendant Services Program**

The James Patrick Memorial Work Incentive Personal Attendant Services Program (JPPAS) Program was created by the Legislature in 2002 as a pilot project. In 2008, it was established in ch. 413.402, F.S., as a statewide program. The administration and financial oversight of the JPPAS Program was originally conducted as a partnership between the Florida Endowment Foundation for Vocational Rehabilitation and FACIL. In 2017, ch. 413.402, F.S. was amended, transferring administration and financial oversight to FACIL.<sup>25</sup>

The JPPAS Program provides a monthly stipend to participants in an effort to offset the cost of the personal care assistance used to help with daily activities such as bathing, dressing, toileting, and eating. As of December 31, 2020, 79 individuals were enrolled in the JPPAS Program.<sup>26</sup>

The JPPAS Program is funded with delinquent sales taxes collected by state attorney's offices in the following eight Florida circuits:

- The Fourth Judicial Circuit (Clay, Duval, Nassau);
- The Sixth Judicial Circuit (Pasco, Pinellas);
- The Ninth Judicial Circuit (Orange, Osceola);
- The Eleventh Judicial Circuit (Miami-Dade);
- The Thirteenth Judicial Circuit (Hillsborough);
- The Fifteenth Judicial Circuit (Palm Beach); and
- The Seventh Judicial Circuit (Broward).<sup>27</sup>

Persons eligible to participate in the program must:

- Be at least 18 years of age, a legal resident of this state, and be significantly and chronically disabled;
- Require a personal care attendant for assistance with or support for at least two activities of daily living such as bathing and dressing and as defined in s. 429.02, F.S.;

<sup>21</sup> Ch. 88-214, L.O.F.

<sup>22</sup> Section 413.011(8), F.S. Members of the council are appointed by the Governor with the majority being blind or visually impaired. The council membership must include at least 13 members. *See also* The Florida Division of Blind Services, *Rehabilitation Council*, available at <http://dbs.myflorida.com/Rehab-Council/index.html> (last visited March 1, 2021).

<sup>23</sup> Section 20.03(7), F.S., defines "advisory council" to mean "an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional area of state government and to provide recommendations and policy alternatives."

<sup>24</sup> 29 U.S.C. § 701(b).

<sup>25</sup> The Florida Association of Centers for Independent Living, *James Patrick Memorial Work Incentive Personal Attendant Services Program Summary July 1, 2019 - June 30, 2020*, p. 1 (On file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The JPPAS Program Summary").

<sup>26</sup> *Id.*

<sup>27</sup> The JPPAS Program Summary at p. 1-2.

- Require a personal care attendant in order to maintain substantial gainful employment; and
- Be able to acquire and direct a personal care attendant.<sup>28</sup>

### **Tax Collection Enforcement Diversion Program**

The primary source of funding for the JPPAS Program is the Diversion Program.<sup>29</sup> In conjunction with the establishment of the JPPAS program, the DOR was directed, in cooperation with FACIL and state attorneys, to select judicial circuits in which to operate the Diversion Program to collect unpaid sales taxes from delinquent business owners.<sup>30</sup> Fifty percent of the collections from the Diversion Program are deposited into the operating account of the Florida Achieving a Better Life Experience (ABLE) Trust<sup>31</sup> to be used to operate the JPPAS program and to contract with the state attorneys participating in the tax diversion program, and the remaining 50 percent is deposited into General Revenue.<sup>32</sup>

The annual budget for the JPPAS Program is determined by the State Revenue Estimating Conference's estimates of delinquent tax collections and revenue from the Bikers Care special motorcycle license tag.<sup>33</sup> The estimate adopted for the Diversion Program for the 2020-2021 fiscal year is \$3,247,129 in total tax collections.<sup>34</sup> FACIL expects to receive approximately \$70,000 in additional revenue from Florida Bikers Tag license plate sales.<sup>35</sup> This means the estimated budget for the JPPAS Program for Fiscal Year 2020-2021 is approximately \$1,693,565, (50 percent of the total estimated collections (\$1,623,565) plus the additional \$70,000 from Florida Bikers Tag license plate sales).

### **III. Effect of Proposed Changes:**

The bill amends s. 413.395, F.S., removing a representative of the DBS from the membership of the FILC. The bill also reduces the total number of members on the FILC from 14 members to 11 members, at least three of whom must be employees of a center for independent living. The bill requires that at least six of the members must be persons with significant disabilities who are not employed by any state agency or any center for independent living.

The bill also requires the membership of the FILC to include a broad range of persons with disabilities from diverse backgrounds. Under the bill, the FILC must select a chairperson from among the FILC's voting membership. The bill provides that the FILC must meet at the request of the VR alone, and removes the requirement for a joint request of the VR and the DBS. The

<sup>28</sup> Section 413.402(1)(a)-(d), F.S.

<sup>29</sup> The JPPAS Program Summary at p. 1.

<sup>30</sup> Section 413.4021, F.S.

<sup>31</sup> The Florida ABLE Program was created in 2015 to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities. *See* s. 2, ch. 2015-56, L.O.F.

<sup>32</sup> Section 413.4021(1), F.S. The contract amount for each state attorney cannot exceed \$50,000.

<sup>33</sup> The JPPAS Program Summary at p. 2.

<sup>34</sup> The Office of Economic and Demographic Research (EDR), *Tax Collection Enforcement Diversion Program January 5, 2021 Executive Summary* (2021), available at <http://edr.state.fl.us/Content/conferences/generalrevenue/taxcollectiondivprog.pdf> (last visited March 10, 2021) (hereinafter cited as "The EDR Summary").

<sup>35</sup> The JPPAS Program Summary at p. 2.

bill also removes requirement that both the VR and the DBS make the FILC meeting reports available to the public, and requires only the VR to make such reports available.

The bill revises the duties of the FILC by requiring the FILC to develop and submit a state plan for independent living in conjunction with the directors of independent living centers, rather than with the VR, and by requiring the state plan to be in accordance with federal guidelines following the receipt of public input from individuals with developmental disabilities and other relevant stakeholders throughout the state. The FILC must coordinate activities with state entities which provide services similar to or complementary of independent living services, including entities which offer or facilitate the provision of long-term community-based services and supports. The bill eliminates the current requirement that the FILC coordinate activities with the Florida Rehabilitation Council.

Under the bill the FILC must conduct regular meetings and submit periodic reports to the Administration for Community Living within the United States Department of Health and Human Services, as well as keep access to and provide such reports to the administrator as frequently as is necessary to verify the reports. The bill changes the recipient of the reports from the Commissioner of the Federal Rehabilitation Administration Services to the head of the Administration for Community Living within the United States Department of Health and Human Services.

The bill authorizes the FILC to conduct the following activities described in the state plan for independent living:

- Working with independent living centers to coordinate services with public and private entities in an effort to improve independent living services for developmentally disabled persons;
- Developing resources to augment activities provided in the SPIL and the provision of relevant services by independent living centers; and
- Other activities consistent with and comparable to other enumerated activities as the FILC deems appropriate and as authorized in the SPIL.

The bill also requires the FILC to:

- Coordinate with independent living centers to avoid conflicting or overlapping activities within established service areas;
- Refrain from engaging in the direct provision of independent living services to developmentally disabled individuals, including the independent living core services.
- Comply with state and federal laws and regulations which restrict and prohibit lobbying activities.

The bill amends s. 413.4021, F.S., to direct 75 percent of the delinquent tax collection revenues to the JPPAS program (instead of 50 percent).

The bill is effective July 1, 2021.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant fiscal impact<sup>36, 37</sup> which for Fiscal Year 2021-2022, is forecast at approximately \$2.2 million or less.<sup>38</sup>

While the bill diverts funding away from General Revenue, the bill does not appear to affect the authority of local governments to raise revenues. Therefore, the local governments mandate provision does not apply.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, Art. VII, s. 19 of the Florida Constitution does not apply.

##### E. Other Constitutional Issues:

None identified.

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<sup>36</sup> Fla. Const. art. VII, s. 18(d).

<sup>37</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact at p. 1, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021).

<sup>38</sup> Based on the EDR's Estimating Conference's April 1, 2021, estimated population adopted on Nov. 13, 2020. The EDR, *Demographic Estimating Conference* at p. T-1, available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 10, 2021).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The January 5, 2021, Revenue Estimating Conference reported that collections for the Diversion Program declined by 3.8 percent in the 2019-20 fiscal year and are projected to remain flat, at approximately \$3.25 million per year, for the next five years. The bill would create a positive, significant fiscal impact on the JPPAS program by increasing funding levels from 50 percent of the Diversion Program proceeds to 75 percent. Increasing funding from 50 percent of Diversion Program revenues (\$1.62 million) to 75 percent (\$2.44 million) would result in approximately \$690,000 more annually in each of the next five years for the JPPAS program, and a proportionate increase in years thereafter. The bill would divert an additional 25 percent of Diversion Program funds away from General Revenue to the JPPAS program, resulting in a negative fiscal impact on other segments of state government.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 413.395 and 413.4021.

**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.

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<sup>39</sup> The EDR Summary.



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

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