

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/CS/HB 1261 (CS/CS/SB 2084)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	State Affairs Committee; Appropriations Committee; Rulemaking & Regulation Subcommittee; Government Operations Subcommittee; Mayfield (Governmental Oversight and Accountability)	112 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 2084	<b>GOVERNOR'S ACTION:</b>	Approved

---

**SUMMARY ANALYSIS**

CS/CS/CS/CS/HB 1261 passed the House on March 5, 2012, and subsequently passed the Senate on March 9, 2012.

This bill makes the following changes to the statutes governing state employees:

- Revises requirements for fingerprinting conducted as part of a background screening.
- Restructures the administrative annual leave cap for certain disabled veterans from six days to 48 hours.
- Revises the process for the implementation of furloughs.
- Removes the annual hourly cap for other-personal-services employees and revises related agency reporting requirements.
- Transfers administration of the alternative retirement income security program for other-personal-services employees from the Department of Management Services to the Department of Financial Services.
- Revises provisions related to telework.
- Requires employees to designate a charity when donating to the Florida State Employees' Charitable Campaign.
- Revises provisions relating to pay additives.
- Removes a career service employee's ability to carry forward unused compensatory leave when he or she moves to a Selected Exempt Service position.
- Limits a career service employee's probationary period to no more than 18 months.
- Clarifies provisions relating to employees who have been promoted and are in probationary status.

The bill also makes conforming and drafting changes.

The bill has an indeterminate positive fiscal impact for the state.

The bill was approved by the Governor on May 4, 2012, ch. 2012-215, Laws of Florida. The effective date of the bill is July 1, 2012.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### **Chapter 110, F.S., State Employment**

##### General Provisions

Part I of chapter 110, F.S., consists of general provisions applying to state employment, such as those relating to:

- Education and training;
- Employee wage deductions;
- Paid holidays;
- Sick leave pool;
- Terminal pay for accumulated sick leave;
- Health insurance;
- Meritorious service awards program;
- Child care services;
- Other-personal-services temporary employment; and
- The Florida State Employees Charitable Campaign contribution program.

##### Career Service System

Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature<sup>1</sup> and authorizes a system for the collective bargaining of wages, hours, and terms of conditions of employment by public employees with their public employer.<sup>2</sup>

Part II of chapter 110, F.S., establishes the Career Service System. It requires the Department of Management Services (DMS) to:

- Develop and maintain a uniform classification and equitable pay plan applicable to all positions in the Career Service System;
- Determine guidelines for employee recruitment and selection to be used by employing agencies;
- Adopt rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees; and
- Develop uniform rules, in consultation with affected agencies and pursuant to the approval of the Administration Commission, regarding employee appointment, promotion, demotion, reassignment, separation, status, attendance, and leave.<sup>3</sup>

The DMS, however, is prohibited from adopting layoff<sup>4</sup> rules, which include a “bumping” system, except with regard to law enforcement or correctional officers, firefighters, or professional health care providers. “Bumping” is defined to mean “any system whereby a career service employee with greater seniority has the option of selecting a different position not being eliminated, but either vacant or already occupied by an employee of less seniority, and taking that position.”<sup>5</sup> The DMS must develop

---

<sup>1</sup> See art. III, s. 14 of the Fla. Const.

<sup>2</sup> See art. I, s. 6 of the Fla. Const.

<sup>3</sup> See s. 110.201, F.S.

<sup>4</sup> Section 110.107(23), F.S., defines “layoff” to mean “termination of employment due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function previously performed by career service employees.”

<sup>5</sup> Section 110.227(2)(a), F.S.

rules that mandate agencies to consider “comparative merit, demonstrated, skills, and the employee’s experience.”<sup>6</sup>

Current law does not define the terms “career service” and “career service employee.” A “career service employee” may be a short-term or long-term employee. The rules distinguish among probationary, overlap, temporary, trainee, and permanent status.<sup>7</sup> An employee who has been appointed in accordance with chapter 110, F.S., and granted probationary status attains permanent status in his or her position upon successful completion of the designated probationary period.<sup>8</sup>

Current law provides that an employee who has satisfactorily completed *at least* a 1-year probationary period may only be suspended or dismissed for cause.<sup>9</sup> Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.<sup>10</sup>

#### Senior Management Service System

Part III of chapter 110, F.S., establishes the Senior Management Service System, which is a separate system of personnel administration for positions in the executive branch. The duties and responsibilities are primarily and essentially policymaking or managerial in nature.<sup>11</sup> The DMS is charged with adopting rules that provide for a system for employing, promoting, or reassigning managers that is responsive to organizational or program needs.<sup>12</sup>

#### Volunteers

Part IV of chapter 110, F.S., provides requirements for departments and agencies that use volunteers.

#### Selected Exempt Service System

Part V of chapter 110, F.S., creates the Selected Exempt Service System (SES). The SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. The DMS is required to designate all positions included in the SES as managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.<sup>13</sup> Employees in the SES serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.<sup>14</sup>

#### **“Service First” Legislation**

The most recent set of significant changes to the statutes governing the state employment system occurred during the 2001 legislative session. That year, the Legislature enacted numerous changes to chapters 110 and 112, F.S., through the *Service First* initiative.<sup>15</sup> Those changes removed designated positions from the civil service; increased benefit compensation for named, exempt positions; banned political considerations in civil service actions; altered appellate rights in personnel disciplinary cases; and made retention decisions during reduction in force actions a function of overall fitness considerations rather than of longevity of prior employment.<sup>16</sup>

---

<sup>6</sup> *Id.*

<sup>7</sup> *See* rule 60L-33.003, F.A.C.

<sup>8</sup> *See* ss. 110.227(1) and (5), F.S.

<sup>9</sup> Section 110.227(1), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *See* s. 110.402, F.S.

<sup>12</sup> *See* s. 110.403, F.S.

<sup>13</sup> *See* s. 110.602, F.S.

<sup>14</sup> *See* s. 110.604, F.S.

<sup>15</sup> *See* ch. 2001-43, L.O.F.

<sup>16</sup> *Id.*

## **Effect of the Bill**

The bill makes the following substantive changes relating to public employees, as well as conforming and drafting changes.

## **Background Screening**

Current law specifies requirements for background screening for certain positions of employment. Such requirements may include, but are not limited to, employment history checks and statewide criminal correspondence checks, local criminal records checks, and fingerprinting for state and national criminal history records checks.<sup>17</sup> If fingerprinting is required, the fingerprints of the employee or applicant must be taken by the employing agency or by an authorized law enforcement officer.<sup>18</sup> The fingerprints must be submitted to the Florida Department of Law Enforcement (FDLE) for processing. If so requested by the employing agency, the FDLE must forward the fingerprints to the United States Department of Justice for processing. Costs of background screenings and fingerprint processing must be paid by the employing agency.<sup>19</sup>

The bill revises requirements for fingerprinting conducted as part of a background screening as follows:

- Revises the entities which may take fingerprints to authorize anyone representing a law enforcement agency to take fingerprints, instead of an authorized law enforcement officer. It also authorizes certain vendors to take fingerprints.<sup>20</sup>
- Specifies that the agency or vendor that takes the fingerprints must remit the processing fees to the FDLE.
- Replaces the United States Department of Justice (DOJ) with the Federal Bureau of Investigation (FBI) as the federal agency to which fingerprints are forwarded.
- Requires the FDLE to automatically forward fingerprints to the FBI, instead of at the request of the employing agency, and makes clear that such forwarding is for national processing.<sup>21</sup>

## **Administrative Leave for Military Service-Connected Disability**

Current law provides that a state employee who has been determined by the United States Department of Veterans Affairs (DVA) or its predecessor to have incurred a service-connected disability and has been scheduled by the DVA to be reexamined or treated for the disability is entitled to administrative leave for reexamination or treatment without loss of pay or benefits.<sup>22</sup> Such administrative leave is limited to six calendar days a year.

The bill restructures such administrative leave from six days a year to 48 hours a year. The change allows greater flexibility in that full days do not need to be used in a single instance; hours in smaller increments may be used as needed.

## **Employee Furloughs**

A furlough is a temporary reduction in the regular hours of employment in a pay period, or temporary leave without pay for one or more pay periods, with a commensurate reduction in pay.<sup>23</sup>

---

<sup>17</sup> See ss. 110.1127, 435.03, and 435.04, F.S.

<sup>18</sup> Section 110.1127(5), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> The bill requires such vendors to be authorized pursuant to s. 435.04, F.S., which requires vendors to be qualified and to ensure the integrity and security of all personal information.

<sup>21</sup> FDLE staff states the revisions to authorized fingerprinting entities, the removal of the employing agency request requirement, and the replacement of the DOJ with the FBI codify current practice (phone conversations between State Affairs Committee staff and FDLE staff on February 22 and 23, 2012).

<sup>22</sup> Section 110.119(1), F.S.

<sup>23</sup> Section 110.107(3), F.S.

Current law allows the Administration Commission<sup>24</sup> to present a state employee furlough plan to the Legislature when a deficit is projected by the Revenue Estimating Conference<sup>25</sup> in any fund that supports salary and benefit appropriations.<sup>26</sup> The Legislature must approve or disapprove such plan. The plan must identify all affected positions and ensure that all affected employees are subject to the same reduction of hours for the same number of pay periods.<sup>27</sup>

The bill revises the process for and the entities involved in approving a furlough plan. It removes the requirement that the Administration Commission submit a furlough plan to the Legislature. Instead, the bill authorizes the Governor or the Chief Justice of the Supreme Court, as appropriate, to propose a furlough plan for consideration by the Legislative Budget Commission.<sup>28</sup>

The bill maintains the current requirement that all affected employees be subject to the same reduction of hours for the same number of pay periods.

### **Requirements for the Use of Other-Personal-Services Employees**

Current law authorizes agencies to hire individuals in other-personal-services (OPS) temporary employment when certain vacancies exist.<sup>29</sup> Each OPS employee may work no more than 1,040 hours annually without a recommendation by the agency head and approval by the Executive Office of the Governor for an extension.<sup>30</sup>

The bill eliminates the annual hourly cap and the corresponding requirement that agencies seek approval for extensions. Instead, it requires agencies to review and document the mission-critical need for any continuing OPS position by June 30 of each year. The bill also requires each agency employing an OPS employee to annually report the following information to the Executive Office of the Governor and to the chairs of the legislative appropriations committees by August 15 of each year:

- The total number of individuals serving in OPS employment; and
- The type of employment, average pay, and total number of hours worked for each individual serving in other-personal-services employment.

The bill also deletes certain informational responsibilities of the DMS relating to OPS employees, and revises and transfers OPS employee recordkeeping requirements from the DMS to the agency employing the OPS employee.

### **Social Security Program Alternatives**

Current law authorizes the DMS to contract for the implementation of an alternative retirement income security program for OPS employees, upon approval of the Governor.<sup>31</sup>

The bill transfers the on-going administration of the program to the Department of Financial Services.

---

<sup>24</sup> The Administration Commission is composed of the Governor and the members of the Cabinet. Section 14.202, F.S.

<sup>25</sup> The Revenue Estimating Conference develops official information relating to anticipated state and local government revenues for state planning and budgeting. See s. 216.136(3), F.S.

<sup>26</sup> Section 110.1225, F.S.

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

<sup>28</sup> The Legislative Budget Commission is a constitutional entity composed of equal numbers of Senate members appointed by the President of the Senate and House of Representatives members appointed by the Speaker of the House of Representatives. Its duties include issuing a long-range financial outlook, reviewing certain adjustments to the state budget, and performing any other duties prescribed by general law or joint rule. See art. III., s. 19(c) and (j) of the Fla. Const.

<sup>29</sup> Section 110.131(2), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> See s. 110.1315, F.S.

## Telework (Telecommuting)

The state employee telecommuting program was established in 1990,<sup>32</sup> with limited changes since. Current law defines “telecommuting” as a work arrangement whereby selected state employees are allowed to perform the normal duties and responsibilities of their positions, through the use of computers or telecommunications at home or another place apart from the employees’ usual place of work.<sup>33</sup> Current telecommuting provisions:

- Require the DMS to coordinate and administer the state’s telecommuting program, appoint a statewide telecommuting coordinator to provide technical assistance to agencies, and identify state employees who are participating in a telecommuting program and their job classifications.<sup>34</sup>
- Require each agency to maintain a current listing of the job classifications and positions that the agency considers appropriate for telecommuting.<sup>35</sup>
- List requirements for any agency telecommuting program, such as voluntary participation by an employee.<sup>36</sup>

The bill:

- Revises terminology from the “telecommuting” program to the “telework” program.
- Updates the definition of “telework” by removing the references to computers and telecommunications, and clarifies that telework does not include the performance of required work duties away from the official worksite on an occasional basis or duties and responsibilities that are by their nature performed routinely in the field.
- Removes the DMS’s responsibility for establishing and coordinating the telework program and for appointing a statewide telecommuting coordinator.
- Requires agencies to report telework performance measure tracking data to the DMS on an annual basis, to comport with the DMS’s transition from an implementation to a monitoring role.
- Specifies that OPS employees may participate in a telework program.
- Authorizes an agency to require an employee’s participation. If an agency requires an employee to telework, the agency must provide 30 days’ written notice to the affected employee, include the requirement to telework and the terms and conditions in the employee’s job description, and provide 15 days’ written notice of any change to such terms and conditions.

## Florida State Employees’ Charitable Campaign

Current law requires the DMS to conduct the Florida State Employees’ Charitable Campaign (FSECC), an annual fundraising drive directed toward state employees.<sup>37</sup> Multiple charitable organizations may participate in the campaign.<sup>38</sup> A contributing employee may choose to donate to the fund without specifying a recipient from among the participating charitable organizations, but such a decision requires the state to manage designation of the donation.<sup>39</sup>

The bill requires a contributing employee to designate a charitable organization.

## Pay Additives

---

<sup>32</sup> See ch. 90-291, L.O.F.

<sup>33</sup> Section 110.171(1)(c), F.S.

<sup>34</sup> Section 110.171(2), F.S.

<sup>35</sup> Section 110.171(3), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 110.181(1)(a), F.S.

<sup>38</sup> Section 110.181(1)(c), F.S.

<sup>39</sup> Section 110.181, F.S.

Current law authorizes agencies to use pay additives. Pay additives include shift differentials, on-call fees, hazardous-duty pay, salary increase and decrease corrections, lead-worker pay, temporary special duties pay, trainer-additive pay, competitive area differentials, and critical market pay.<sup>40</sup> The pay additives must be consistent with the DMS's guidelines and the directions of the Legislature contained in the General Appropriations Act.<sup>41</sup>

The employing agency must notify the DMS, the Executive Office of the Governor, and the Legislature, in writing, of the plan to implement any pay additives before any scheduled start date of such additives.<sup>42</sup> Agencies may not implement any pay additives unless the Legislature has specifically authorized them and unless implementation of the pay additives does not conflict with any collective bargaining agreements.<sup>43</sup>

The bill provides a process by which a necessary change to an approved plan during the fiscal year may be approved. Guidelines are established by the DMS and directions are provided by the Legislature through the General Appropriations Act.

### **Compensatory Leave Transfer**

Compensatory leave is earned by career service employees for time worked in excess of the standard 40-hour week.<sup>44</sup> As a result of the 2001 *Service First* legislation, several thousand Career Service employees had their positions involuntarily moved from the Career Service to the Selected Exempt Service. To prevent such employees from losing compensatory leave, the Legislature provided that if a career service employee was transferred or otherwise moved into the Selected Exempt Service, all the employee's unused annual leave, unused sick leave, and unused compensatory leave would carry forward with the employee.<sup>45</sup>

The provision was intended to be a temporary measure during the *Service First* implementation. The result, however, is that the compensatory leave could be paid at a later, potentially higher rate instead of one based on the employee's rate of pay when the compensatory leave was actually earned.

The bill repeals the provision requiring the transfer of unused compensatory leave with an employee who moves from a Career Service to a Selected Exempt Service position. It leaves in place the required transfer of unused annual leave and unused sick leave for such an employee.

### **Career Service Probationary Employees**

Current law provides procedures for the suspension, dismissal, reduction in pay, demotion, layoff, transfer, or grievance of a career service employee.<sup>46</sup> A career service employee must satisfactorily complete at least a 1-year probationary period in his or her current position.<sup>47</sup> An employee who is dismissed during his or her probationary period is not entitled to hearing rights before the Public Employee Relations Commission (PERC).<sup>48</sup>

---

<sup>40</sup> Section 110.2035(6)(c), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See rule 60L-34.0031, F.A.C.

<sup>45</sup> See s. 110.205(7), F.S.

<sup>46</sup> Section 110.227, F.S.

<sup>47</sup> *Id.* This provides agencies discretion to extend an employee's probationary period. The issue has been commented upon by several collective bargaining units (phone conversation between Appropriations Committee staff and DMS staff).

<sup>48</sup> See 110.227(1), F.S. The PERC processes charges of unfair labor practices and charges relating to a public employee or employee organization. It handles public sector cases (unfair labor practice charges, representation petitions, amendments to certification, petitions to revoke certifications, and labor organizations registration), career service appeals, Drug-Free Workplace appeals, whistleblower appeals, veterans' preference appeals, attorneys' fees appeals, back pay appeals, mediations, and district court appeals. See s. 447.207, F.S.

In 2008, the Legislature amended the statutes to provide that a permanent career service employee who is promoted internally is subject to the probationary period required for new career service employees and may be removed from the promotional position without cause, but is entitled to return to his or her former position, or the equivalent, if such position is available (hereinafter "2008 provision").<sup>49</sup>

The First District Court of Appeal ruled that the 2008 provision allows PERC hearing rights for a permanent career service employee who is fired during the probationary period subsequent to a promotion and who is not returned to the former position or one that is comparable, at least to the extent of determining if the dismissal from the agency was without cause.<sup>50</sup>

The bill clarifies that the decision of an agency as to whether the same or a similar position is available in such a situation, and accordingly, whether a promoted employee in a probationary period is dismissed, is not appealable to the PERC. It also limits a probationary period to no more than 18 months.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures:

The bill's revisions to provisions relating to telework, the FSECC, OPS employees, and compensatory leave will likely generate the following indeterminate savings for the state:

- Allowing agencies to impose a telework arrangement on employees may increase employee participation, potentially freeing up office space for other purposes or for closure.
- Requiring employees to designate a charitable organization when donating to the FSECC will reduce litigation and state staff time involved in the distribution process.
- Streamlining the OPS recordkeeping and reporting process to track OPS hours of work will allow agencies to redirect staff time to more useful endeavors.
- Eliminating a career service employee's ability to carry forward unused compensatory leave to a Selected Exempt Service position will require such unused leave to be paid at the rate at which it was earned, instead of at a later, potentially higher rate.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

### D. FISCAL COMMENTS: None.

<sup>49</sup> Chapter 2008-126, L.O.F. (CS/CS/HB 887). This provision took effect on January 1, 2009, and is codified at s. 110.227(8), F.S.

<sup>50</sup> *Pesta v. Department of Corrections*, Case No. 63 So.3d 788 (Fla. 1st DCA 2011).

