

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 21	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Porter and others	116 Y's	0 N's
COMPANION BILLS:	CS/SB 106	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 21 passed the House on April 11, 2014, as CS/SB 106. The bill clarifies the existing authority of counties to employ personnel.

Florida counties have broad home rule authority under the State Constitution. The Florida Statutes further outline the powers and duties of counties, including the power to employ personnel.

The bill clarifies that the existing authority of counties to employ personnel includes the ability to determine available benefits for different types of positions, including, but not limited to, insurance coverage and paid leave. It also clarifies that chapter 121, F.S., governs the participation of county employees in the Florida Retirement System.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 12, 2014, ch. 2014-7, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

County Government

The State Constitution contains provisions specifically related to the county form of government in Florida, and requires the state to be divided by law into political subdivisions called “counties.”¹ It provides that counties may be created, abolished, or changed by law, with provision for payment or apportionment of the public debt.² Pursuant to general or special law, a county government may be established by charter, which must be adopted, amended, or repealed only upon a vote of the electors of the county in a special election called for that purpose.³

The State Constitution recognizes two types of county government in Florida: charter and non-charter. Subsections 1(f) and (g), Art. VIII of the State Constitution, respectively, provide as follows:

NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

The most significant distinction between charter and non-charter county power is that the State Constitution provides a direct constitutional grant of the power of self-government to a county upon charter approval, whereas a non-charter county has “such power of self-government as is provided by general or special law.”⁴ While all counties have broad home rule authority, charter counties possess greater home rule authority than non-charter counties.

The Florida Statutes outline the powers and duties of charter and non-charter counties. The enumeration of powers is not deemed exclusive or restrictive, but is deemed to incorporate the implied powers necessary to carry out the enumerated powers.⁵ The powers include, but are not limited to, the powers to:

- Establish civil service systems and boards;⁶
- Employ personnel;⁷

¹ See Art. VIII, s. 1 of the State Constitution.

² Art. VIII, s. 1(a) of the State Constitution.

³ Art. VIII, s. 1(c) of the State Constitution.

⁴ Art. VIII, s. 1(f) of the State Constitution.

⁵ See ss. 125.01(1) and (3), F.S.

⁶ Section 125.01(1)(u), F.S.

⁷ Section 125.01(3)(a), F.S.

- Expend funds;⁸
- Enter into contractual obligations;⁹
- Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county;¹⁰ and
- Exercise all powers and privileges not specifically prohibited by law.¹¹

Employment Benefits

Federal Law

Federal law provides certain requirements regarding employee benefits that may be applicable to counties, including requirements relating to insurance and leave. For example, the “Patient Protection and Affordable Care Act” requires employers with more than 50 employees to provide health insurance to their full-time employees or pay a penalty.^{12,13} Federal law also sets forth certain minimum requirements with respect to family and medical leave under the “Family Medical Leave Act,” and overtime under the “Fair Labor Standards Act.”¹⁴

Florida Law

Florida law provides various benefits to certain county employees.

Specific to county law enforcement officers and firefighters, Florida law provides that:

- A county law enforcement officer is entitled to travel expenses if he or she appears as a witness at any legal proceeding resulting from that employment.¹⁵
- A county firefighter or law enforcement officer is entitled to certain presumptions in disability proceedings if the firefighter or officer suffers death or disability due to certain causes¹⁶ and, under certain circumstances, is entitled to death benefits if killed while performing his or her duties.¹⁷

Current law also provides that:

- Travel expenses of county employees are subject to minimum requirements set by statute.¹⁸
- The establishment of county deferred compensation programs is governed by statute.¹⁹
- Those county employees who are called to active military service receive certain leave of absence protections.²⁰
- Florida’s established state minimum wage is applicable to all employers, including counties.²¹

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 125.01(1)(w), F.S.

¹¹ *Id.*

¹² 26 U.S.C. s. 4980H.

¹³ The implementation and enforcement of the employer mandate has been postponed until 2015. Statement by Mark Mazur, Assistant Secretary for Tax Policy at the U.S. Department of Treasury, available at <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx> (last visited January 8, 2014).

¹⁴ Family and Medical Leave Act, 29 U.S.C. s. 2601, *et seq.*, and the Fair Labor Standards Act, 29 U.S.C. s. 201, *et seq.*

¹⁵ Section 92.141, F.S.

¹⁶ Section 112.18, F.S.

¹⁷ Sections 112.19 and 112.191, F.S.

¹⁸ Section 112.061, F.S.

¹⁹ Section 112.215, F.S.

²⁰ Sections 115.14 and 250.48, F.S.

²¹ Section 448.110, F.S.

Additionally, current law authorizes counties to provide health and other insurance benefits to employees.²²

Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits.²³ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities.

Membership in the FRS is compulsory for all county officers and employees, except for certain elected officials, who are employed in a regularly established position.²⁴ With respect to a county employer, a regularly established position is one that will be in existence for a period beyond six consecutive months, except as provided by rule.²⁵ A temporary position is a position that will exist for less than six consecutive months, or other positions as determined by rule, regardless of whether the position will exist for six consecutive months or longer.²⁶ An employee in a temporary position may not be a member of the FRS.

Effect of the Bill

The bill clarifies that the existing authority of counties to employ personnel includes the ability to determine available benefits for different types of positions, including, but not limited to, insurance coverage and paid leave. As this appears to be a clarification of current law, the bill would not affect any county employee benefits required by state or federal law.

The bill also clarifies that the provisions of ch. 121, F.S., govern the participation of county employees in the FRS.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

²² See s. 112.08, F.S.

²³ See ch. 121, F.S.

²⁴ Section 121.051(1), F.S.

²⁵ Section 121.021(52)(b), F.S.

²⁶ Section 121.021(53)(b), F.S.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.