

STORAGE NAME: h2081a.hhs

DATE: April 26, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 2081

RELATING TO: Adoption/State Employees/Benefits

SPONSOR(S): Representative Littlefield and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
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I.

This bill creates s. 110.152, F.S., authorizing state employees who adopt special needs children to be eligible for a \$10,000 payment. If a state employee adopts a child other than a special needs child, they are eligible for a \$5,000 payment.

“Special needs child” is defined, for this section, as one whose permanent custody is with the Department of Children and Family Services or to a licensed child-placing agency and is not likely to be adopted because he or she is older, has a developmental disability, has a handicap, is of a minority race or mixed heritage, or is part of a sibling group that are remaining together.

The state employee must apply to his or her agency head to obtain the monetary benefit for adopting the special needs child. The state employee who adopts a special needs child and is the legal guardian as well as live-in parent of the child will be granted parental leave for not more than 6 months upon the adoption of the child.

A benefit **not** provided to natural parents is that six weeks of the adoptive parents parental leave is paid leave. Their parental leave will be unpaid for the remainder of the parental leave period. The state employee will still receive employer-paid benefits, accrue paid leave time, utilize sick leave during the unpaid period and if receiving disability benefits prior to the adoption, can continue to receive the disability benefits for the duration of the disabling condition. The accrual of paid leave time during the unpaid leave period is in conflict with s. 60L-23 of the Florida Administrative Code.

Another issue is that the language of the bill states that the “parental leave shall commence on the first day the child is taken into custody...following execution of the final order of adoption.” DMS states that adoptive children are usually placed into the adoptive parents custody before the final order of adoption, so this language would preclude DMS from granting parental leave at the time the child is placed in the custody of the adoptive parents.

This bill also amends s. 110.221, F.S., to include adoption and adoptive parents in the protections in place for parental or family medical leave.

This bill takes effect on July 1, 2000.

This bill has an indeterminable fiscal impact. This bill does not provide a source of funds for the payment of the monetary benefit or designate the agency responsible for administering the benefit, whether it is the employing agency of the adoptive parent or another agency.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Under ss. 110.1521-1523, F.S., the Family Support Personnel Policies Act, the Department of Management Services is directed to develop family supportive work programs designed to make the workplace as adaptive as possible to employees' family and parental responsibilities.

Section 60L-23, F.A.C., provides flexible work hour schedules, job sharing, parental or family medical leave, and family or administrative leave as named components of the above program. Section 60L-23, F.A.C., currently grants up to six months of parental leave with or without pay for an employee (father or mother) for the birth **or adoption of a child**. Employees can choose whether or not to use their accrued annual leave credits for this absence (using the annual leave would constitute "with pay"). Accrued sick leave may also be used due to any illness or injury of an employee's child or for checkups by a physician. These rules allow for intermittent use of accrued annual leave during the parental leave of absence, allowing the employee to maintain their group insurance and other miscellaneous deductions that they have withheld from their paycheck. During this six-month period of parental leave without pay, employees are also entitled to state matching for group health and life insurance without the use of accrued leave under s. 110.123(4)(a), F.S.

If the employee uses the annual leave ("with pay"), the employee accrues leave during the absence. If the employee does not use their leave ("without pay"), the employee does not continue to accrue leave.

Under s. 409.166, F.S., the Department of Children and Family Services is authorized to pay either or both of two adoption subsidies to parents adopting "special needs" children (children with enumerated age, illness or racial parentage). The first subsidy that can be paid to the adopting parents is a monthly payment for the support and maintenance of a special needs child until the 18th birthday of the child. The subsidy agreement shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and the amount of the subsidy may be periodically adjusted based upon changes of those circumstances. The adoption monthly subsidy can never exceed the amount of the foster care maintenance payment that would have been paid during the same period if the child had been in a foster home.

The second adoption subsidy is for the medical, surgical, hospital, and related services needed as a result of a physical or mental condition of the child that existed before the adoption, this subsidy can be initiated any time but shall terminate on or before the child's 18th birthday. As a condition for the continuation of either or both subsidies, the adoptive parents must file a sworn statement with the department at least once a year to include any social or financial conditions that may have changed.

Another benefit given under s. 409.166, F.S., is a one-time payment given to the adopting parents of special needs children that reimburses the parent for non-recurring expenses related to the adopting, including, but not limited to court costs, adoption fees, attorney fees. Most special needs children also remain eligible for Medicaid coverage after their adoption. The subsidies are funded through federal and state funds, the medical subsidy is funded through general revenue. These programs are not limited to adoptive parents who are state employees.

Title 26 of the United States Code provides a federal tax credit of \$5,000 for expenses associated with adopting a child.

There were 15,621 children with special needs receiving adoption subsidies in 1997. Slightly less than ten percent of this number were living in states other than Florida.¹

Thirty-five states increased their overall adoption rates for the three years ending in 1999. The State of Florida received almost \$1.3 million in bonus awards from the Health and Human Services Administration following its 57 percent increase in adoptions during that period.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 110.152, F.S., authorizing state employees who adopt special needs children to be eligible for a \$10,000 payment. If a state employee adopts a child other than a special needs child, they are eligible for a \$5,000 payment.

"Special needs child" is defined, for this section, as one whose permanent custody is with the Department of Children and Family Services or to a licensed child-placing agency and is not likely to be adopted because he or she is older, has a developmental disability, has a handicap, is of a minority race or mixed heritage, or is part of a sibling group that are remaining together.

The state employee must apply to his or her agency head to obtain the monetary benefit for adopting the special needs child. This section shall not interfere with any other forms of financial aid available for the adoptive parents or any other financial incentives regarding adoption.

The state employee who adopts a special needs child and is the legal guardian as well as live-in parent of the child will be granted parental leave for not more than 6 months upon the adoption of the child. However, the language of the bill states that the "parental leave shall commence on the first day the child is taken into custody...following execution of the final order of adoption." DMS states that adoptive children are usually placed into the adoptive parents custody before the final order of adoption, so this language would

¹Senate Staff Analysis and Economic Impact Statement on Committee Substitute for Senate Bill 1362, 2000 Regular Session of the Florida Legislature, Page 3.

preclude DMS from granting parental leave when the child is placed in the custody of the adoptive parents.

The parental leave will be paid leave for the first six weeks and unpaid leave for the remainder of the parental leave period. The employee can still receive employer-paid benefits, accrue paid leave time, utilize sick leave during the unpaid period and if receiving disability benefits prior to the adoption, can continue to receive the disability benefits for the duration of the disabling condition.

This bill also amends s. 110.221, F.S., to include adoption and adoptive parents in the protections in place for parental or family medical leave.

This bill takes effect on July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to a February 16, 2000 Interoffice Memorandum from the Department of Children and Families to the Office of the Attorney General, the annual incidence of employer-sponsored adoptions is estimated for 1998 to be 14 special needs adoptions and 71 regular adoptions. Using the specific monetary payments in this bill, the paid benefits from the state would be \$140,000 for the special needs adoptions and \$355,000 regular adoptions. The memorandum discounts reaching even one-half of one percent during the first year.

There would be savings for the state by removing children from the state child care system, however, these savings are indeterminable due to lack of information.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not provide a source of funds for the payment of the monetary benefit or the agency responsible for administering the benefit, whether it is the employing agency of the adoptive parent or another agency.

If the monetary benefit is determined to be a bonus pursuant to s. 110.1246, F.S., it must be approved by the agency head and may not be paid more than once during a 12-month period. The current rule, s. 60L-18.0031, F.A.C., recognizes only career commitment, education and training, and special project categories as eligible for bonus payments.

The United States Internal Revenue Code provides up to a \$5,000 tax credit, \$6,000 for special needs children, for adoption related expenses.

Amount of Fiscal Impact - It is estimated that one half of one percent of the 110,485 state employees (Dec. 1998) would take advantage of this adoption incentive. The estimated number of adoptive parents receiving an incentive would be 552.

If all of the 552 employees adopted a special needs child, the cost at \$10,000 per adoption would be \$5,520,000.

If half of the 552 employees adopted special needs children and the other half adopted non-special needs children, the incentive cost would be \$4,140,000.

The incentive payments would be taxable according to the IRS.

Since the application for incentive payments would be to the individual agency head, the burden of cost would be on the department or agency where the employee worked, unless otherwise specified in rule or law.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department of Management Services Human Resource Management will have to promulgate a rule to administer the six-week paid leave provision in this bill.

C. OTHER COMMENTS:

The monetary benefit is provided to the adoptive parents regardless of whether the adoption is subsequently disrupted and the child is returned to the child-placing agency. A disruption rate of about 10 percent is reported in the literature on the subject.² Rates are reported to be the highest among older children and those not adopted by the foster parents. There is also no structure provided in this bill that guarantees that the money is used for the child.

It is unclear also whether employees paid from Other Personal Services appropriations categories would be eligible for the monetary benefit. Such employees participate in Social Security Act coverage and may enroll in the Deferred Compensation Program but are otherwise statutorily excluded from employer-sponsored retirement coverage, health insurance, civil service, and collective bargaining provisions. Such employees also do not accrue leave or receive holiday pay. Non-Career Service Employees, however, may receive bonus payments pursuant to Rule 60L-18.004, F.A.C.

This bill provides for six months leave of absence, the first six weeks of which are in full pay status. Under current law, all employees are eligible for maternity or paternity leave and they must use any combination of their accrued leave credits for salary continuation while on leave status. Employees without leave may use their agency's sick leave pool, if they are members and otherwise meet the eligibility requirements contained in s. 110.121, F.S. The paid leave provided in this bill would create an additional class of paid leave.

This bill provides salary continuation for state employee adoptive parents, without regard to their length of service or leave status, but does not provide the same benefits for similarly situated state employee childbirth parents. This bill also provides the continuation of leave accrual during the leave of absence. When, if an employee takes parental leave because of natural childbirth, they can accrue leave **only** if they have leave credits available. If the childbirth parents do not have leave available, they will not accrue leave during their absence.

²Senate Staff Analysis and Economic Impact Statement on Committee Substitute for Senate Bill 2208, 2000 Regular Session.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17, 2000, the Committee on Governmental Operations heard this bill and adopted a strike-all amendment. The strike-all does the following:

- Makes the \$10,000 payable, to adoptive parents of special needs children, in structured payments-\$5,000 up front and the remaining \$5,000 payable in equal monthly payments over a two-year period;
- Removes language requiring the first six weeks of parental leave, granted to adoptive parents, be paid leave;
- Provides DMS should develop rule pursuant to ss. 110.1522 and 110.1523, F.S.;
- Removes language regarding the accrual of paid leave during the use of unpaid leave as it conflicted with DMS policies regarding leave and would have created a new class of paid leave unavailable to natural parents;
- Removes the phrase "upon final order of adoption" due to the conflict with DMS policy of granting parental leave upon the placement of the child, which is generally prior to the final order of adoption; and
- Clarifies statutory references.

The committee reported the bill favorably as amended.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

Russell J. Cyphers, Jr.

**AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES
APPROPRIATIONS:**

Prepared by:

Staff Director:

Robert Wagner

Lynn Dixon