



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Empower families*—This bill provides certain state employees and their families with additional compensation to be saved for retirement.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Section 110.219, F.S., provides that permanent career service employees may receive a payout of up to 24 hours of unused annual leave, provided that the remaining leave balance totals at least 24 hours. The law limits the total payments that permanent career service employees may receive over their career with the state, including such annual payouts or a payout at time of separation from employment, to a total of 240 hours.

Section 110.2037, F.S., authorizes the Department of Management Services to adopt tax-sheltered plans under s. 401(a) of the Internal Revenue Code. The law limits participation in such plans to state employees over age 55 who are eligible for accumulated leave and special compensation payments and:

- separating from employment with 10 years of service in accordance with the Internal Revenue Code, or
- who are participating in the Deferred Retirement Option Program (DROP) on or after July 1, 2001. The Legislature created this section of law as part of the “Service First” civil service program in 2001. However, the Internal Revenue Service has not yet approved the state’s plan, and thus the state is not currently administering such a plan. Changes to the statute governing the state’s administration of the plan would require further IRS review.

##### Proposed changes

The bill authorizes law enforcement officers, correctional officers, and correctional probation officers with at least 20 years of full-time service with the state to be paid for up to 48 hours of annual leave each December. Such individuals may only receive payouts if their remaining annual leave balance totals at least 240 hours after the payout, and they must deposit the funds in a tax-sheltered plan offered by the state. The bill appears to provide that such payout is not subject to the 240 hour lifetime maximum and is to be in addition to the 24 hour payout that permanent career service employees may receive (see “Drafting Issues or Other Comments”, below).

The eligibility for participating in the tax-sheltered plan referenced in the bill is limited to individuals who are separating from the state under certain conditions or are in the DROP. Since the first criteria would not apply to state employees who are in ongoing employment, the second criteria could in effect allow as participants only individuals who are law enforcement officers, correctional officers, and correctional probation officers with at least 20 years of full-time service with the state, who are in DROP, and who would have at least 240 hours remaining after a payout. However, while providing for the deposit of payouts in this plan, the bill also provides that this happens “notwithstanding” the section of law governing the plan. This may be intended to allow these individuals to participate in the plan; however, this may be problematic for the plan (see “Drafting Issues or Other Comments” below).

If the state’s plan is approved by the IRS and these individuals are able to participate in it, the bill would result in individuals who meet all applicable criteria accumulating funds in investment accounts. This would also result in the individuals’ compensation being increased for retirement calculation purposes for the year in which a payout is received, since the payout counts as compensation in that year.

C. SECTION DIRECTORY:

Section 1 amends s. 110.219, F.S., to permit payouts of up to 48 hours of annual leave to certain law enforcement officers, correctional officers, or correctional probation officers under certain conditions.

Section 2 provides that the act takes effect on July 1, 2005.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, or eliminate a state revenue source.

2. Expenditures:

Currently, there are 2,663 law enforcement officers, correctional officers, and correctional probation officers with 20 or more years of service. The average annual salary for these individuals is \$42,222; a 48 hour payout would average \$974. If all eligible individuals were to request payout of 48 hours and be able to deposit these funds into a 401(a) plan, the fiscal impact on the state for the leave payouts in FY 2005-06 would be \$2,594,707. However, since these amounts would be considered compensation, the individuals' employers' contributions to the Florida Retirement System on the individuals' behalf would need to reflect this compensation. This would entail additional contributions to the FRS of \$574,987 based on the projected Special Risk Class contribution rate for FY 2005-06 of 22.16%. Thus the total fiscal impact of the bill in FY 2005-06 would be \$3,169,694. Additionally, the resulting increase in retirement benefits to be paid may require a future increase in the Special Risk Class employer contribution rates to keep the plan actuarially sound. This amount would need to be determined by an actuarial study and is thus indeterminate. However, the state is not currently administering such a plan, and if no plan is operating by December, no leave payouts could be made. In that case, the bill would have no fiscal impact in FY 2005-06.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, or eliminate a local revenue source.

2. Expenditures:

None. Since the bill only applies to state employees, this bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals receiving payouts would experience higher compensation which would be directed toward retirement savings.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill both “notwithstands” and requires the operation of two provisions of law, s. 110.219(7) and s. 110.2037, F.S. This is contradictory and could lead to confusion; revisions could improve the bill’s clarity.

Additionally, the “notwithstanding” of s. 110.2037 may be because of the restrictive eligibility requirements contained in that section for a s. 401(a) tax-sheltered plan. However, such plans and their eligibility criteria must be approved by the IRS. It would be more appropriate for the eligibility criteria in s. 110.2037, F.S., for the s. 401(a) tax-sheltered plan to be revised to accommodate these participants.

If the s. 401(a) tax-sheltered plan does not exist, it appears that individuals who would otherwise be able to receive this payout would not be able to do so, since deposit in such a plan is a requirement of the bill. The state does not currently have such a plan.

Finally, the insertion of the word “unused” before the words “annual leave” in line 17 would clarify the bill’s provisions.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.