

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1261 State Employment

**SPONSOR(S):** Mayfield

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 1 N, As CS	Naf	Williamson
2) Rulemaking & Regulation Subcommittee	9 Y, 5 N, As CS	Miller	Rubottom
3) Appropriations Committee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

This bill makes substantive and organizational changes to the statutes governing public employees and officers.

The bill makes changes to improve efficiency and to clean up statutory language. Those changes include, but are not limited to:

- Reorganization of statutory provisions, including transferring certain sections from chapter 110 to create parts IX, X, and XI in chapter 112;
- Changes in terminology;
- Removal of obsolete provisions and references; and
- Streamlining of the rule development and modification process.

Substantive changes include, but are not limited to:

- Authorization of the Department of Management Services to charge a state governmental entity outside of the state personnel system for use of services from the People First system;
- Revision of language pertaining to state employee furloughs to allow the provision to be used;
- Creation of a monetary cap on bonus payments to an employee in a fiscal year; and
- Removal of the annual hourly cap for other-personal-services employees.

The bill requires the Department of Management Services to provide a proposal to restructure and modernize the leave benefits of state personnel by a date certain.

The bill provides an effective date of July 1, 2012.

The bill may have an indeterminate fiscal impact to state government due to the changes in bonuses, telework, and People First, and due to streamlining processes.

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **STATUTES GOVERNING PUBLIC EMPLOYEES AND OFFICERS, GENERALLY**

##### 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.

Intentional violations of any provision in chapter 110, F.S., or any administrative rule adopted under authority granted in the chapter, are punished as second degree misdemeanors.<sup>1</sup> One convicted of such a misdemeanor is ineligible for employment or appointment in the state service for 5 years; state employees so convicted forfeit their positions.<sup>2</sup> These penalties are in addition to any imposed for violating the Code of Ethics for Public Officers and Employees.<sup>3</sup> Current law also provides criminal sanctions against state employees for specified offenses, including falsifying records<sup>4</sup> or misusing confidential information.<sup>5</sup>

##### *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>6</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>7</sup> Public employees have the right to bargain collectively through a labor organization but not the right to strike.<sup>8</sup> These collective bargaining rights are implemented through part II of chapter 447, F.S., for those defined as “public employees.”<sup>9</sup> Chapter 110, F.S., may not be interpreted to infringe upon or supersede public employee rights guaranteed under chapter 447, F.S.<sup>10</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;

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<sup>1</sup> Section 110.127(1), F.S.

<sup>2</sup> Section 110.127(2), F.S.

<sup>3</sup> Section 110.127(3), F.S. The Code of Ethics is found in part III, chapter 112, F.S. The penalties that may be imposed against state employees for violating the Code of Ethics include civil penalties, dismissal or other change in employment status, and certain forfeitures. Section 112.317(1)(b), F.S.

<sup>4</sup> Section 839.13, F.S.

<sup>5</sup> Section 839.26, F.S.

<sup>6</sup> Section 14, Art. III, Fla. Const.

<sup>7</sup> Section 6, art. I, Fla. Const.

<sup>8</sup> *Id.*

<sup>9</sup> Section 447.203(3), F.S. A number of positions are excluded from this definition, i.e. managerial or confidential employees as designated by the Public Employees Relations Commission (s. 447.203(3)(d), F.S.) and employees of the Legislature (s. 447.203(3)(e), F.S.).

<sup>10</sup> Section 110.105(5), F.S.

- 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>11</sup>

The DMS, however, is prohibited from adopting layoff<sup>12</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>13</sup> The DMS must develop rules that mandate agencies to consider “comparative merit, demonstrated, skills, and the employee’s experience.”<sup>14</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>15</sup> The rules further provide that an employee who has been appointed in accordance with chapter 110, F.S., and granted probationary status attains permanent status in a class upon successful completion of the designated probationary period for the class.<sup>16</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>17</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>18</sup>

#### *Senior Management Service System*

Part III of chapter 110, F.S., establishes the Senior Management Service System (SMS), 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>19</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>20</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>21</sup> Employees in the SES

<sup>11</sup> Section 110.201, F.S.

<sup>12</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>13</sup> Section 110.227(2)(a), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Rule 50L-33.003, F.A.C.

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

<sup>17</sup> Section 110.227(1), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 110.402, F.S.

<sup>20</sup> Section 110.403, F.S.

<sup>21</sup> Section 110.602, F.S.

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>22</sup>

### Background: Chapter 112, F.S., Public Officers and Employees

#### *General Provisions*

Part I of chapter 112, F.S., consists of general provisions applying to public employment, such as those relating to:

- Discrimination;
- Retirement and pensions; and
- Insurance.

#### *Interchange of Public Employees between Governments*

Part II of chapter 112, F.S., provides authority and requirements for the temporary assignment of public employees to other governmental entities.

#### *Code of Ethics*

Part III of chapter 112, F.S., sets out ethics requirements for public officers and employees and creates the Commission on Ethics.

#### *Supplemental Retirement Act for Retired Members of State Retirement Systems*

Part IV of chapter 112, F.S., authorizes a supplement to the monthly retirement benefits of members retired under specified retirement systems and of specified disabled members.

#### *Suspension, Removal, or Retirement of Public Officers*

Part V of chapter 112, F.S., governs the suspension, removal, or retirement of a public officer.

#### *Law Enforcement and Correctional Officers*

Part VI of chapter 112, F.S., includes the law enforcement officers' bill of rights and requirements for the discipline of such officers.

#### *Actuarial Soundness of Retirement Systems*

Part VII of chapter 112, F.S., implements state constitutional requirements relating to the actuarial soundness of public retirement systems.

#### *Firefighters*

Part VIII of chapter 112, F.S., specifies rights of firefighters.

### Background: "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>23</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>24</sup>

#### Effect of Proposed Changes

The bill significantly reorganizes provisions relating to public employees and officers and makes conforming and drafting changes.

The bill revises terminology as follows:

- Changes the title of chapter 110, F.S., from "State Employment" to "State Personnel System."

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<sup>22</sup> Section 110.604, F.S.

<sup>23</sup> Chapter 2001-43, L.O.F.

<sup>24</sup> *Id.*

- Replaces references to “Career Service” with “Civil Service” to comport with the language in the Florida Constitution.<sup>25</sup>
- Updates definitions for “state agency or agency,” “classification plan,” “salary schedule,” “position number,” “reclassification,” “promotion,” “demotion,” and “reassignment.”
- Adds definitions for “state employee or employee,” “State Personnel System,” “position description,” “other personal services,” “telework,” “merit status,” and “lateral transfer.”
- Updates, consolidates, and clarifies descriptions of positions within the State Personnel System that are exempted from the Civil Service.
- Specifies those agencies within the State Personnel System.

The bill makes changes to clean up statutory language and to improve efficiency. Those changes include, but are not limited to:

- Removal of obsolete references.
- Clarifying the language requiring security background screenings for certain employees and conforming references to chapter 435, F.S.
- Creation of a definition for “State Personnel System.”
- Revision of provisions relating to telework to reflect current technological practices.
- Streamlining of the rule development and modification process.

### **ADMINISTRATIVE COSTS**

The state maintains a personnel information program for human resources.<sup>26</sup> Costs of operating the program are divided among specified state agencies.<sup>27</sup> The bill authorizes the DMS to charge other governmental entities that use the program services for associated costs without requiring separate agreements between DMS and the other entities.

### **EMPLOYEE COMPENSATION**

#### **Bonus Awards**

Current law allows state department heads to award bonuses to exemplary employees if specified conditions are met.<sup>28</sup> It also authorizes department heads to spend up to \$100 on tokens of recognition for certain employees.<sup>29</sup> There is no limit on the total amount one employee may receive in a year.

The bill provides that an exemplary employee may receive up to \$1,000 in a single bonus award, but limits the amount an employee may receive in total bonuses in a year to \$1,000.

#### **Pay Additives**

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>30</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>31</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>32</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>33</sup>

<sup>25</sup> Section 14, Art. III, Fla. Const.

<sup>26</sup> Section 110.125, F.S. The current personnel information program is People First.

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

<sup>28</sup> Section 110.1245, F.S.

<sup>29</sup> Section 110.1245(4), F.S.

<sup>30</sup> Section 110.2035(6)(c), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

The bill provides a process by which a necessary change to an approved plan during the fiscal year may be approved and authorizes an agency to implement salary increases and decrease corrections due to administrative errors.

## **EMPLOYEE LEAVE**

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

Current law provides that a state employee who has been determined by the U.S. 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 the reexamination or treatment without loss of pay or benefits.<sup>34</sup> Such administrative leave is limited to 6 calendar days a year.

The bill reduces such administrative leave to 48 hours a year.

### **Compensatory Leave Transfer**

Compensatory leave is earned by career service employees for time worked in excess of the standard 40-hour week.<sup>35</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>36</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 such leave with an employee who moves from a Career Service to a Selected Exempt Service position.

### **Proposal for Changes to Employee Leave**

The bill requires DMS to create a proposal to restructure and modernize the leave benefits of the State Personnel System. The proposal must consider current leave policies of the state's private-sector employers and make recommendations that will more closely align the state's leave benefits with those of the private sector, ensure better management of benefits, and leverage leave benefit expenditures to maximize the state's return on investment to competitively recruit and retain a high-performing workforce. DMS must provide the proposal to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on or before December 31, 2012.

## **OTHER-PERSONAL-SERVICES EMPLOYEES**

### **Limitation on Hours Worked**

Current law authorizes agencies to hire individuals in other-personal-services (OPS) temporary employment when certain vacancies exist.<sup>37</sup> Each OPS employee may work no more than 1,040 hours annually. Any extension beyond the 1,040 hour limitation for each individual requires a recommendation by the agency head and approval by the Executive Office of the Governor.<sup>38</sup> The DMS must perform an annual review to assess agencies for the regulation of other personal services employment.<sup>39</sup>

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<sup>34</sup> Section 110.119(1), F.S.

<sup>35</sup> Rule 60L-34.0031, F.A.C.

<sup>36</sup> Section 110.205(7), F.S.

<sup>37</sup> Section 110.131(2), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section 110.131(7), F.S.

The bill eliminates the current 1,040 hour annual limit for OPS employees, but requires agencies to review and document the mission-critical need for any continuing OPS position by June 30 of each year.

### 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>40</sup>

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

### 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>41</sup>

Current law allows the Administration Commission<sup>42</sup> to present a state employee furlough plan to the Legislature when a deficit is projected by the Revenue Estimating Conference<sup>43</sup> in any fund that supports salary and benefit appropriations.<sup>44</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 with a commensurate reduction in pay.<sup>45</sup>

The bill defines “furlough” as a temporary reduction in the regular hours of employment, to be administered as leave without pay. Because the Florida Constitution requires the Legislature to create a balanced budget,<sup>46</sup> the bill removes the requirement that a deficit be projected by the Revenue Estimating Conference. The bill also makes additional changes to the process for and entities involved in approving a furlough plan. The bill provides that if a deficit is projected in any state agency fund that supports salary and benefits appropriations, then the agency may, upon approval by the Governor or the Chief Justice of the Supreme Court, propose a furlough plan and related budget amendments for consideration by the Legislative Budget Commission (LBC). After consulting with the Revenue Estimating Conference about the projected deficit, the LBC will approve or disapprove the plan and proposed amendments in total. The bill specifies that all affected employees *within a budget entity* are subject to the same reduction of hours for the same number of pay periods with a commensurate reduction in pay.

If authorized by the Legislature to address anticipated short-term shortfalls to funds that support salary and benefit appropriations for a specified fiscal year, an agency or the judicial branch may impose furloughs pursuant to directions in the General Appropriations Act.

### PERFORMANCE STANDARDS FOR PROBATIONARY EMPLOYEES

Current law provides procedures for the suspension, dismissal, reduction in pay, demotion, layoff, transfer, or grievance of a career service employee.<sup>47</sup> In 2008, the Legislature amended the procedures to provide that a permanent career service employee who is promoted internally is subject to the one year probationary period required for new career service employees and may not 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>48</sup>

An employee promoted internally into another position, then dismissed from the promotional position during the probationary period, is not entitled to hearing rights before the Public Employee Relations

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<sup>40</sup> Section 110.1315, F.S.

<sup>41</sup> Section 110.107(3), F.S.

<sup>42</sup> The Administration Commission is composed of the Governor and the members of the Cabinet. Section 14.202, F.S.

<sup>43</sup> The Revenue Estimating Conference develops official information relating to anticipated state and local government revenues for state planning and budgeting. Section 216.136(3), F.S.

<sup>44</sup> Section 110.1225, F.S.

<sup>45</sup> *Id.*

<sup>46</sup> Section 19(a), Art. III, and Section 1(d), Art. VII, Fla. Const.

<sup>47</sup> Section 110.227, F.S.

<sup>48</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.

Commission (PERC) for that dismissal.<sup>49</sup> The First District Court of Appeal found the 2008 provision did not eliminate all rights of the employee to appeal a dismissal. A permanent career service employee who is fired during the probationary period subsequent to a promotion, who is not returned to the former position or one that is comparable and is not retained by the agency, is entitled to hearing rights before PERC 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 the agency as to what position the employee is returned and whether such a position is available is not appealable to PERC. The bill provides that merit status attained by an employee in a prior position does not provide appeal rights for certain job actions by the agency in the current position.

#### **FLORIDA STATE EMPLOYEES' CHARITABLE CAMPAIGN**

Current law requires the DMS to conduct the Florida State Employees' Charitable Campaign, an annual fundraising drive directed toward state employees.<sup>51</sup> Multiple charitable organizations may participate in the campaign.<sup>52</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>53</sup>

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

#### **CHILD CARE**

Current law requires the DMS to approve, administer, and coordinate child care services for state employees' children or dependents.<sup>54</sup> Its duties include, but are not limited to, reviewing and approving requests from state agencies for child care services; providing technical assistance on child care program startup and operation; and assisting other agencies in conducting needs assessments, designing centers, and selecting service providers.<sup>55</sup>

The bill eliminates DMS's administrative role and instead grants authority to establish, administer, and coordinate child care services to any state agency.

#### **ADMINISTRATION COMMISSION'S RULE APPROVAL AUTHORITY**

The Administration Commission (commission) is composed of the Governor and members of the Cabinet.<sup>56</sup> The commission is required to adopt rules to implement provisions of law conferring duties upon it.<sup>57</sup> Current law requires a variety of personnel-related rules developed by the DMS to be approved by the commission. Such rules include, but are not limited to, those pertaining to affirmative action plans,<sup>58</sup> pretax benefits programs;<sup>59</sup> administration of the classification plan;<sup>60</sup> shared employment,<sup>61</sup> and attendance and leave.<sup>62</sup> The commission must also approve any exception to uniform personnel rules promulgated by the DMS.<sup>63</sup>

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<sup>49</sup> Section 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 appeal, back pay appeals, mediations, and district court appeals. Section 447.207, F.S.

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

<sup>51</sup> Section 110.181(1)(a), F.S.

<sup>52</sup> Section 110.181(1)(c), F.S.

<sup>53</sup> Section 110.181, F.S.

<sup>54</sup> Section 110.151, F.S.

<sup>55</sup> *Id.*

<sup>56</sup> Section 14.202, F.S.

<sup>57</sup> *Id.*

<sup>58</sup> Section 110.112(2)(a), F.S.

<sup>59</sup> Section 110.161(5), F.S.

<sup>60</sup> Section 110.2035(1)(e), F.S.

<sup>61</sup> Section 110.21(5), F.S.

<sup>62</sup> Section 110.219(5), F.S.

<sup>63</sup> Section 110.201(1)(a), F.S.

The bill preserves the authority of the commission to approve exceptions to the uniform personnel rules, but removes the authority of the commission to approve certain personnel-related rules before they become effective.

### **Rulemaking Authority for Parts IX, X, and XI of Chapter 112**

The bill restructures and renumbers numerous sections of the present statutes in chapter 110, F.S., to form new parts IX, X, and XI of chapter 112, F.S. Previously, DMS could adopt rules as necessary for these sections because of the grant to DMS of rulemaking authority for chapter 110. The restructuring of numerous sections into these new parts of chapter 112, and the resulting bifurcation of substantive authority between DMS and other agencies or governmental entities with authority over their employees, required a more precise delegation of rulemaking authority.

The sections comprising new part IX of chapter 112, F.S., are of three types: those providing duties to be implemented by all entities with authority to govern the terms and conditions of employment for their employees, those providing duties to be implemented generally only by DMS, and those sections that do not require rulemaking for their implementation. The bill creates s. 112.934, F.S., providing rulemaking authority for all employer entities for certain sections, rulemaking authority only to DMS for other sections, and expressly excluding some sections from any rulemaking unless the section itself provides otherwise.

New part X of chapter 112, F.S., is comprised of statutes primarily dealing with state employee benefits, the management for which DMS continues to be responsible. The bill creates s. 112.953, F.S., authorizing DMS to adopt rules as necessary to implement this part.

New part XI of chapter 112, F.S., pertain to the terms and conditions for governmental entities to utilize volunteers to perform duties which otherwise would be performed by state employees. The bill creates s. 112.966, F.S., to authorize rulemaking by all such governmental entities to implement this part.

### **Creation of Criminal Sanctions in Chapter 112, F.S.**

The bill creates s. 112.933, in new part IX, authorizing criminal prosecution and sanctions for violating any section of that part or the rules adopted under authority granted in that part. The language and sanctions provided are substantially similar to those in present s. 110.127, F.S. (see discussion on page 2, above) and retain the present sanctions available for violating those sections of chapter 110 moved to chapter 112 by the bill. Similar language and sanctions are provided by s. 112.952, in new part X, and s. 112.965, in new part XI. These sections in parts IX and XI of chapter 112 expand potential criminal sanctions beyond those violations of the uniform personnel rules to which s. 110.127, F.S., applies, to the additional rules certain state governmental entities are authorized to adopt under these parts.

#### **B. SECTION DIRECTORY:**

Section 1 renames ch. 110, F.S., as “State Personnel System.”

Section 2 renames part I of ch. 110, F.S., as “General Provisions.”

Section 3 amends s. 110.105, F.S., relating to the employment policy of the state and establishment and administration of the State Personnel System.

Section 4 amends, transfers, and renumbers s. 110.107, F.S., as s. 110.1054, F.S., relating to definitions for the State Personnel System.

Section 5 amends s. 110.1055, F.S., relating to the rulemaking authority of DMS for personnel rules and records. Requires adoption of uniform personnel rules applicable to all agencies within the State

Personnel System and provides for the Administration Commission to grant exceptions to the uniform rules.

Section 6 creates s. 110.1056, F.S., relating to audits of agency records.

Section 7 amends, transfers, and renumbers s. 110.405, F.S., as s. 110.106, F.S., relating to advisory committees.

Section 8 creates s. 110.1065, F.S., relating to general employment policies and requirements for the State Personnel System.

Section 9 amends, transfers, and renumbers s. 110.233, F.S., as s. 110.1075, F.S., relating to prohibited political activities and unlawful acts.

Section 10 amends s. 110.1099, F.S., relating to elective education and professional development certain state employees.

Section 11 amends, transfers, and renumbers s. 110.235, F.S., as s. 110.1115, F.S., relating to training and professional development of state employees.

Section 12 amends s. 110.112, F.S., relating to equal employment opportunity.

Section 13 creates s. 110.1135, F.S., relating to attendance and leave records.

Section 14 amends s. 110.116, F.S., relating to the human resource information system and payroll procedures.

Section 15 amends s. 110.1245, F.S., relating to bonus payments and other awards.

Section 16 amends s. 110.125, F.S., relating to administrative costs.

Section 17 amends s. 110.126, F.S., relating to oaths, testimony, and records.

Section 18 amends s. 110.127, F.S., relating to penalties for violation of the chapter or associated rules.

Section 19 amends, transfers, and renumbers s. 110.2037, F.S., as s. 110.182, F.S., relating to tax-sheltered annual leave and sick leave payments and special compensation payments.

Section 20 amends, transfers, and renumbers s. 110.201, F.S., as s. 110.183, F.S., relating to collective bargaining.

Section 21 creates s. 110.184, F.S., relating to a workforce report.

Section 22 renames part II of ch. 110, F.S., as "Civil Service."

Section 23 creates s. 110.202, F.S., relating to the establishment of the Civil Service.

Section 24 amends s. 110.205, F.S., relating to Civil Service positions.

Section 25 creates s. 110.208, F.S., relating to a classification system for Civil Service positions.

Section 26 creates s. 110.2085, F.S., relating to the Civil Service pay plan.

Section 27 amends s. 110.211, F.S., relating to recruitment.

Section 28 amends s. 110.213, F.S., relating to selection of employees.

Section 29 amends s. 110.2135, F.S., relating to veterans' preference in employment.

Section 30 amends s. 110.215, F.S., relating to assessments of disabled persons.

Section 31 amends s. 110.217, F.S., relating to appointment actions and status, revising the period for employee probationary status and certain process pertaining to internal agency employee promotions.

Section 32 amends s. 110.219, F.S., relating to attendance and leave general policies.

Section 33 amends s. 110.221, F.S., relating to family medical leave.

Section 34 amends s. 110.224, F.S., relating to employee evaluations.

Section 35 amends s. 110.227, F.S., relating to suspension, dismissal, or pay reductions of Civil Service employees, and clarifies the hearing rights of employees.

Section 36 renumbers part V of ch. 110, F.S., as part III of that chapter, and renames that part as "Selected Exempt Service."

Section 37 amends, transfers, and renumbers s. 110.601, F.S., as s. 110.302, F.S., relating to the declaration of policy for Selected Exempt Service employees.

Section 38 amends, transfers, and renumbers s. 110.602, F.S., as s. 110.3021, F.S., relating to the establishment of the Selected Exempt Service.

Section 39 amends, transfers, and renumbers s. 110.605, F.S., as s. 110.3022, F.S., relating to DMS's administration of and duties for the Selected Exempt Service.

Section 40 creates s. 110.3023, F.S., relating to recruitment of Selected Exempt Service employees.

Section 41 renumbers part III of ch. 110, F.S., as part IV of that chapter, and renames that part as "Senior Management Service."

Section 42 amends s. 110.401, F.S., relating to a declaration of policy for Senior Management Service employees.

Section 43 amends s. 110.402, F.S., relating to establishment of the Senior Management Service.

Section 44 amends s. 110.403, F.S., relating to administration of the Senior Management Service.

Section 45 creates s. 110.4035, F.S., relating to recruitment of Senior Management Service employees.

Section 46 creates part IX of ch. 112, F.S., to be entitled "State Employment."

Section 47 creates s. 112.906, F.S., relating to definitions for the "State Employment" part.

Section 48 amends, transfers, and renumbers s. 110.131, F.S., as s. 112.907, F.S., relating to other-personal-services employees.

Section 49 amends, transfers, and renumbers s. 110.1315, F.S., as s. 112.908, F.S., relating to alternative benefits for other-personal-services employees.

Section 50 transfers and renumbers s. 110.1128, F.S., as s. 112.909, F.S.

Section 51 creates s. 112.910, F.S., relating to state policy for equal employment opportunity.

Section 52 creates s. 112.911, F.S., relating to nondiscrimination in state employment.

Section 53 amends, transfers, and renumbers s. 110.1221, F.S., as s. 112.912, F.S., relating to the sexual harassment policy for the state.

Section 54 amends, transfers, and renumbers s. 110.122, F.S., as s. 112.913, F.S., relating to accumulation and use of, and terminal payment of, annual and sick leave.

Section 55 amends, transfers, and renumbers s. 110.121, F.S., as s. 112.914, F.S., relating to agency sick leave pools.

Section 56 amends, transfers, and renumbers s. 110.119, F.S., as s. 112.915, F.S., relating to administrative leave for military service-connected disability.

Section 57 amends, transfers, and renumbers s. 110.120, F.S., as s. 112.916, F.S., relating to administrative leave for disaster service volunteers.

Section 58 amends, transfers, and renumbers s. 110.1091, F.S., as s. 112.917, F.S., relating to employee assistance programs.

Section 59 amends, transfers, and renumbers s. 110.151, F.S., as s. 112.918, F.S., relating to child care services.

Section 60 amends, transfers, and renumbers s. 110.181, F.S., as s. 112.919, F.S., relating to the Florida State Employees' Charitable Campaign.

Section 61 amends, transfers, and renumbers s. 110.1225, F.S., as s. 112.920, F.S., relating to furloughs.

Section 62 transfers and renumbers s. 110.1155, F.S., as s. 112.921, F.S.

Section 63 amends, transfers, and renumbers s. 110.191, F.S., as s. 112.922, F.S., relating to state employee leasing.

Section 64 amends, transfers, and renumbers s. 110.1082, F.S., as s. 112.923, F.S., relating to telephone voice mail and menu systems.

Section 65 amends, transfers, and renumbers s. 110.1165, F.S., as s. 112.924, F.S., relating to executive branch personnel errors.

Section 66 amends, transfers, and renumbers s. 110.113, F.S., as s. 112.925, F.S., relating to pay periods and direct deposit.

Section 67 transfers and renumbers s. 110.114, F.S., as s. 112.926, F.S.

Section 68 creates s. 112.927, F.S., relating to the human resource information system.

Section 69 amends, transfers, and renumbers s. 110.1127, F.S., as s. 112.928, F.S., relating to employee background screening and investigations, conforming references to chapter 435, F.S..

Section 70 amends, transfers, and renumbers s. 110.117, F.S., as s. 112.929, F.S., relating to paid holidays and personal days.

Section 71 creates s. 112.930, F.S., relating to telework policies.

Section 72 creates s. 112.931, F.S., relating to savings sharing programs.

Section 73 transfers and renumbers s. 110.1156, F.S., as s. 112.932, F.S.

Section 74 creates s. 112.933, F.S., relating to penalties for violation of that part.

Section 75 creates s. 112.934, F.S., relating to rulemaking authority for part IX, ch. 112, F.S.

Section 76 creates part X of ch. 112, F.S., to be entitled "State Administered Benefits."

Section 77 amends, transfers, and renumbers s. 110.1227, F.S., relating to the Florida Employee Long-Term-Care Plan Act.

Section 78 amends, transfers, and renumbers s. 110.1228, F.S., as s. 112.942, F.S., relating to participation of certain local governments in the state group health insurance program.

Section 79 amends, transfers, and renumbers s. 110.123, F.S., as s. 112.942, F.S., relating to the state group insurance program.

Section 80 amends, transfers, and renumbers s. 110.12301, F.S., as s. 112.943, F.S., relating to competitive procurement of postpayment claims review services by the Division of State Group Insurance.

Section 81 transfers and renumbers s. 110.12302, F.S., as s. 112.944, F.S.

Section 82 amends, transfers, and renumbers s. 110.12312, F.S., as s. 112.945, F.S., relating to the health insurance open enrollment period for retirees.

Section 83 transfers and renumbers s. 110.12315, F.S., as s. 112.946, F.S.

Section 84 amends, transfers, and renumbers s. 110.1232, F.S., as s. 112.947, F.S., relating to health insurance coverage for persons retired under state-administered retirement systems before a date certain.

Section 85 transfers and renumbers s. 110.1234, F.S., as s. 112.948, F.S.

Section 86 transfers and renumbers s. 110.1238, F.S., as s. 112.949, F.S.

Section 87 transfers and renumbers s. 110.1239, F.S., as s. 112.950, F.S.

Section 88 amends, transfers, and renumbers s. 110.161, F.S., as s. 112.951, F.S., relating to the pretax benefits program for state employees.

Section 89 creates s. 112.952, F.S., relating to penalties for a violation of that part.

Section 90 creates s. 112.953, F.S., relating to rulemaking authority for part X, ch. 112, F.S.

Section 91 renumbers part IV of ch. 110, F.S., as part XI of ch. 112, F.S., and renames that part as "State Volunteer Services."

Section 92 amends, transfers, and renumbers s. 110.501, F.S., as s. 112.961, F.S., relating to definitions for "State Volunteer Services."

Section 93 amends, transfers, and renumbers s. 110.502, F.S., as s. 112.962, F.S., relating to state volunteers.

Section 94 amends, transfers, and renumbers s. 110.503, F.S., as s. 112.963, F.S., relating to responsibilities of agencies using volunteers.

Section 95 amends, transfers, and renumbers s. 110.504, F.S., as s. 112.964, F.S., relating to volunteer benefits.

Section 96 creates s. 112.965, F.S., relating to penalties for a violation of that part.

Section 97 creates s. 112.966, F.S., relating to rulemaking authority for part XI, ch. 112, F.S.

Section 98 repeals the following sections of the Florida Statutes: 110.115, 110.118, 110.124, 110.129, 110.1521, 110.1522, 110.1523, 110.171, 110.2035, 110.21, 110.406, 110.603, 110.604, and 110.606.

Section 99 amends s. 11.13, F.S., to make conforming and drafting changes.

Section 100 amends s. 20.055, F.S., to make conforming and drafting changes.

Section 101 amends s. 20.21, F.S., to make conforming and drafting changes.

Section 102 amends s. 20.23, F.S., to make conforming and drafting changes.

Section 103 amends s. 20.255, F.S., to make a conforming change.

Section 104 amends s. 24.105, F.S., to make conforming and drafting changes.

Section 105 amends s. 24.122, F.S., to make a conforming change.

Section 106 amends s. 30.071, F.S., to make conforming and drafting changes.

Section 107 amends s. 43.16, F.S., to make conforming and drafting changes.

Section 108 amends s. 104.31, F.S., to make conforming and drafting changes.

Section 109 amends s. 106.24, F.S., to make conforming and drafting changes.

Section 110 amends s. 112.044, F.S., to make conforming and drafting changes.

Section 111 amends s. 112.0805, F.S., to make conforming and drafting changes.

Section 112 amends s. 112.313, F.S., to make conforming and drafting changes.

Section 113 amends s. 112.3145, F.S., to make conforming and drafting changes.

Section 114 amends s. 112.363, F.S., to make conforming and drafting changes.

Section 115 amends s. 121.021, F.S., to make conforming and drafting changes.

Section 116 amends s. 121.051, F.S., to make conforming and drafting changes.

Section 117 amends s. 121.055, F.S., to make conforming and drafting changes.

Section 118 amends s. 121.35, F.S., to make conforming and drafting changes.

Section 119 amends s. 145.19, F.S., to make conforming and drafting changes.

Section 120 amends s. 216.011, F.S., to make conforming and drafting changes.

Section 121 amends s. 216.181, F.S., to make a conforming change.

Section 122 amends s. 260.0125, F.S., to make a conforming change.

Section 123 amends s. 287.175, F.S., to make conforming and drafting changes.

Section 124 amends s. 295.07, F.S., to make conforming changes.

Section 125 amends s. 295.09, F.S., to make conforming and drafting changes.

Section 126 amends s. 296.04, F.S., to make conforming and drafting changes.

Section 127 amends s. 296.34, F.S., to make conforming and drafting changes.

Section 128 amends s. 381.00315, F.S., to make a conforming change.

Section 129 amends s. 381.85, F.S., to make conforming and drafting changes.

Section 130 amends s. 394.47865, F.S., to make a conforming change.

Section 131 amends s. 402.3057, F.S., to make conforming and drafting changes.

Section 132 amends s. 402.55, F.S., to make conforming and drafting changes.

Section 133 amends s. 402.7305, F.S., to make a conforming change.

Section 134 amends s. 402.731, F.S., to make conforming and drafting changes.

Section 135 amends s. 409.1757, F.S., to make conforming and drafting changes.

Section 136 amends s. 409.9205, F.S., to make conforming and drafting changes.

Section 137 amends s. 414.37, F.S., to make conforming and drafting changes.

Section 138 amends s. 427.012, F.S., to make conforming and drafting changes.

Section 139 amends s. 440.102, F.S., to make a conforming change.

Section 140 amends s. 447.203, F.S., to make conforming and drafting changes.

Section 141 amends s. 447.207, F.S., to make conforming changes.

Section 142 amends s. 447.209, F.S., to make conforming and drafting changes.

Section 143 amends s. 447.401, F.S., to make conforming and drafting changes.

Section 144 amends s. 456.048, F.S., to make conforming and drafting changes.

Section 145 amends s. 551.116, F.S., to make a conforming change.

Section 146 amends s. 570.07, F.S., to make conforming and drafting changes.

Section 147 amends s. 601.10, F.S., to make drafting and conforming changes.

Section 148 amends s. 624.307, F.S., to make conforming and drafting changes.

Section 149 amends s. 624.437, F.S., to make conforming and drafting changes.

Section 150 amends s. 627.6488, F.S., to make conforming and drafting changes.

Section 151 amends s. 627.649, F.S., to make conforming and drafting changes.

Section 152 amends s. 627.6498, F.S., to make conforming and drafting changes.

Section 153 amends s. 627.6617, F.S., to make conforming and drafting changes.

Section 154 amends s. 627.6686, F.S., to make conforming and drafting changes.

Section 155 amends s. 849.086, F.S., to make a conforming change.

Section 156 amends s. 943.0585, F.S., to make conforming and drafting changes.

Section 157 amends s. 943.059, F.S., to make a conforming change.

Section 158 amends s. 945.043, F.S., to make conforming and drafting changes.

Section 159 amends s. 946.525, F.S., to make conforming and drafting changes.

Section 160 amends s. 985.045, F.S., to make a conforming change.

Section 161 amends s. 1001.705, F.S., to make conforming changes.

Section 162 amends s. 1001.706, F.S., to make conforming changes.

Section 163 amends s. 1002.36, F.S., to make conforming and drafting changes.

Section 164 amends s. 1012.62, F.S., to make conforming and drafting changes.

Section 165 amends s. 1012.79, F.S., to make a conforming change.

Section 166 amends s. 1012.88, F.S., to make conforming and drafting changes.

Section 167 amends s. 1012.96, F.S., to make a conforming change.

Section 168 requires the DMS to create a proposal to restructure and modernize state employee leave.

Section 169 provides an effective date of July 1, 2012.

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

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill authorizes no new revenue sources and existing revenues would not be increased.

#### **2. Expenditures:**

There is likely to be an indeterminate reduction in state expenditures due to procedural efficiencies in the bill and due to changes to employee leave carry-over.

The changes to bonus authorizations, telework, provisions involving People First, and the streamlining of other processes may have an indeterminate fiscal impact.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill authorizes no new revenue sources and existing revenues would not be increased.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The cost of the research and study necessary to prepare the report required by s. 165 of the bill is indeterminate. A somewhat similar study in Florida during 1999-2000 cost approximately \$90,000 and a similar study recently completed in Utah is believed to have cost approximately \$300,000.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>64</sup> Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create” a rule. Because legislative power involves the exercise of policy-related discretion over the content of law,<sup>65</sup> any discretion given an agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>66</sup>

The bill transfers, consolidates, and modifies grants of rulemaking authority relating to implementation of the statutes governing public employees. In part, the bill:

- Transfers some rulemaking authority from the DMS to the agency implementing the provision;
- Removes the Administration Commission’s approval authority for certain DMS rules; and
- Changes some rulemaking authority for the DMS from mandatory to permissive.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An amendment adopted on February 3, 2012 (see discussion below) created s. 112.934, F.S., providing rulemaking authority for new part IX proposed for chapter 112, F.S., and deleted redundant rulemaking authority within numerous sections. The amendment did not delete the rulemaking provision proposed as s. 112.907(3), in section 48, lines 2770-2772 of CS/HB 1261, now found in CS/CS/HB 1261, section 48, lines 2709-2711. With the creation of s. 112.934, this additional rulemaking provision in s. 112.907(3) is redundant and unnecessary.

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<sup>64</sup> Section 120.52(16), F.S.; *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696 (Fla. 1st DCA 2001).

<sup>65</sup> *State ex rel. Taylor v. City of Tallahassee*, 177 So.2d 719 (Fla. 1937).

<sup>66</sup> *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Government Operations Subcommittee adopted a strike-all amendment and passed HB 1261 as a committee substitute. The amendment made technical and organizational changes, as well as the following substantive changes to the originally-filed bill:

- Removes the requirement that a governmental entity outside the State Personnel System must enter into a mutual agreement with the DMS in order to be charged for the People First services it receives, but allows the DMS to charge the governmental entity for such services;
- Removes the elimination of lump sum sick leave and annual leave payouts for leave earned after a date certain;
- Removes the elimination of authorization for agency child care programs;
- Removes the elimination of Florida personal and family medical leave provisions;
- Removes the requirement that the DMS conduct a pay cycle study; and
- Adds a requirement that the DMS provide a proposal to restructure and modernize leave benefits for state employees by a date certain.

On February 3, 2012, the Rulemaking & Regulation Subcommittee adopted four amendments and passed CS/HB 1261 as a second committee substitute. The amendments made the following changes:

- Restored in section 3 of the bill that language in current law expressly preventing chapter 110, F.S., from being construed as infringing upon or superseding rights guaranteed to public employees under chapter 447, F.S., and deleting identical language that was added in another section of chapter 110.
- Provides for civil service employees to be on probationary status for up to 18 months, during which they serve at the pleasure of the agency head.
- For employees promoted internally who fail to meet the performance requirements of the new position, the agency employer is required to return that employee to the former position or one substantially similar to it before dismissal, but the agency decision is not appealable.
- Clarifies the process for a state agency to seek approval from the Legislative Budget Commission for a plan to furlough employees, together with necessary budget amendments, in the event of a projected deficit in an agency fund.
- Corrects rulemaking provisions and removes unnecessary rulemaking language (see above note in Drafting Issues).
- Creates new sections in parts IX, X, XI, ch. 112, clarifying the division of rulemaking authority between DMS and agency employers.
- Clarifies directory language for renumbering parts and sections of chapters 110 and 112, F.S.

This analysis is drawn to the second committee substitute.