

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Appropriations Committee, Rulemaking & Regulation Subcommittee, Government Operations Subcommittee, Mayfield

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	18 Y, 0 N, As CS	Delaney	Leznoff
4) State Affairs Committee			

SUMMARY ANALYSIS

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

- Removes the annual hourly cap for other-personal-services employees and streamlines related agency reporting requirements.
- Restructures the administrative annual leave cap for disabled veterans from 6 days to 48 hours.
- Revises and streamlines the process for the implementation of furloughs.
- Updates the provisions related to telework (telecommuting.)
- Requires employees to specifically designate a charity when donating to the Florida State Employees Charitable Campaign.
- Provides that a probationary period may not exceed 18 months.
- Clarifies provisions relating to employees who have been promoted and are in probationary status.

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

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

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

- 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 Legislature¹.

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.²

Effect of Proposed Changes:

The bill makes several changes relating to public employees and makes conforming and drafting changes.

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.³ Such administrative leave is limited to 6 calendar days a year.

The bill restructures such administrative leave from 6 days to 48 hours a year. This allows for greater flexibility in that full days do not need to be used in a single instance; hours in smaller increments can be used as needed.

Other Personal Services (OPS) Employees - Limitation on Hours Worked and Extension Approvals

Current law authorizes agencies to hire individuals in other-personal-services (OPS) temporary employment when certain vacancies exist.⁴ Select OPS employees 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.⁵ The process is labor intensive for both the agencies and Governor's Office.

The bill eliminates the requirement for agencies to seek approval for the extensions. In lieu, it requires agencies to review and document the mission-critical need for any continuing OPS position by June 30 of each year. In addition, agencies are required to report annually, by August 15th, to the Executive Office of the Governor and to the chairs of the legislative appropriations committees on the total number of individuals serving in OPS employment, the type of employment, average pay and hours worked for each individual.

¹ Section 14, Art. III, Fla. Const.

² Section 110.201, F.S.

³ Section 110.119(1), F.S.

⁴ Section 110.131(2), F.S.

⁵ *Id.*

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.⁶ Current law allows the Administration Commission⁷ to present a state employee furlough plan to the Legislature when a deficit is projected by the Revenue Estimating Conference⁸ in any fund that supports salary and benefit appropriations.⁹ 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.¹⁰

The bill makes changes to the process for, and entities involved in, approving a furlough plan. The bill removes the requirement that the Administration Commission submit a furlough plan to the Legislature; instead the Governor or the Chief Justice of the Supreme Court, as appropriate, are authorized to propose a furlough plan for consideration by the Legislative Budget Commission (LBC). The bill maintains the provision that all affected employees are subject to the same reduction of hours for the same number of pay periods.

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.¹¹ New career service employees must satisfactorily complete at least a one year probationary period.¹² This current language allows agencies to extend the probationary period at their discretion. Several collective bargaining units have commented on the relatively open-ended nature of this language.¹³

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 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").¹⁴

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 Public Employee Relations Commission (PERC) at least to the extent of determining if the dismissal from the agency was without cause.¹⁵

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.

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.¹⁶ Multiple charitable organizations may

⁶ Section 110.107(3), F.S.

⁷ The Administration Commission is composed of the Governor and the members of the Cabinet. Section 14.202, F.S.

⁸ 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.

⁹ Section 110.1225, F.S.

¹⁰ *Id.*

¹¹ Section 110.227, F.S.

¹² *Id.*

¹³ Information obtained during a phone conversation with Phil Spooner, Workforce Design and Compensation Manager, DMS.

¹⁴ 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.

¹⁵ *Pesta v. Department of Corrections*, Case No. 63 So.3d 788 (Fla. 1st DCA 2011).

¹⁶ Section 110.181(1)(a), F.S.

participate in the campaign.¹⁷ 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.¹⁸ This process requires staff time and litigation of allocation decisions is not uncommon.

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

Telework/Telecommuting

The state employee telecommuting program was established by ch. 90-291, Laws of Florida, 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.

The department is charged with coordinating and administering the state's telecommuting program and appointing a statewide telecommuting coordinator to provide technical assistance to agencies. Agencies are charged with determining the positions deemed appropriate and eligible for participation in the program per criteria listed in statute.¹⁹ In addition, agencies are required to specify the security controls that it deems appropriate.²⁰ A written agreement between the employer and employee is required, which specifies the terms and conditions of telecommuting²¹. Employee participation in the state's telecommuting program is voluntary and can be terminated by the employee at any time.²²

The bill changes the name of the program to the 'Telework' Program and updates the definition, removing the reference to computers and telecommunications, and clarifying that telework does not include the performance of required work duties away from the official worksite that is performed on an occasional basis or duties and responsibilities that are by their nature performed routinely in the field. The bill removes the department's responsibility for establishing and coordinating the program and eliminates the requirement to appoint a statewide telecommuting coordinator. Since the initial establishment of telecommuting in the state the department's role in the implementation and coordination has transitioned into more of a monitoring role. Correspondingly, agencies are required to report telework performance measure tracking data to the department on an annual basis. Such measures must include, but are not limited to information on the impacts on office space. The bill specifically provides for the participation of OPS employees in the Telework Program.

In addition, the bill removes the requirement that the program be voluntary; however, it does provide for agencies to allow employees to use telework as an optional alternative work arrangement with the requirement for a written agreement between the teleworker and the agency that specifies the terms and conditions of teleworking. If an agency requires certain employees to telework, they are required to: provide 30 days written notice to affected employees of intent to impose or remove a requirement to telework, include the requirement to telework and terms and conditions in the employees job description, and provide 15 days written notice of any change to the terms and conditions of the telework agreement.

B. SECTION DIRECTORY:

Section 1 amends s. 110.105, F.S., relating to the employment policy of the state.

Section 2 amends s. 110.1127, F.S., relating to employee background screening and investigations.

¹⁷ Section 110.181(1)(c), F.S.

¹⁸ Section 110.181, F.S.

¹⁹ Section 110.171, F.S.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Section 3 amends s. 110.119, F.S relating to administrative leave for military service-connected disability.

Section 4 amends s. 110.1225, F.S. relating to furloughs.

Section 5 amends s. 110.126 related to oaths, testimony, records and penalties.

Section 6 amends s. 110.131, F.S., relating to other-personal-services employees.

Section 7 amends s. 110.171, F.S. relating to telework policies.

Section 8 amends s. 110.181, F.S. relating to the Florida State Employees' Charitable Campaign.

Section 9 amends s. 110.217, F.S. relating to appointment action, promotion and status.

Section 10 repeals s. 110.227, F.S.

Section 11 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bills revised provisions pertaining to telework, the FSECC and OPS extensions will likely generate indeterminate savings for the state.

- Allowing agencies to impose a telework arrangement on employees, where an agency has determined it to be practical, may increase employee participation, potentially freeing up office space for other purposes or 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 process to track OPS hours of work will allow agencies to redirect staff time to more useful endeavors.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2012, the Appropriations Committee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment significantly alters the bill:

- Provides the Governor and Chief Justice to propose furlough plans if the Revenue Estimating Conference projects a shortfall in any fund used to pay salary and benefits.
- Eliminates the 1040 hour cap on certain OPS positions and streamlines the agency reporting process.
- Caps the length of probationary periods at 18 months.
- Clarifies that an individual who is promoted, but has received permanent status in his or her previous position, shall be placed in the same or similar job held previously, if available. Clarifies that this action is not appealable to PERC.
- Updates the provisions related to telework and requires employee participation.

This analysis is drafted to the committee substitute to the committee substitute as passed by the Appropriations Committee.