

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 2084

INTRODUCER: Budget Committee, Governmental Oversight and Accountability Committee, and Governmental Oversight and Accountability Committee

SUBJECT: State Employment

DATE: February 28, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Fav/CS
2.		Rhodes	BC	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is comprised of the Department of Management Services' legislative package for the Department's Division of Human Resource Management. The bill makes numerous changes to the state employment statutes contained in Chapters 110 of the Florida Statutes.

The bill specifically:

- Revises requirements for fingerprinting conducted as part of a background screening.
- Removes the 1,040 annual hourly cap for other-personal-services employees and revises related agency reporting requirements.
- Restructures the administrative annual leave cap for certain disabled veterans from six days to 48 hours.
- Revises the process for the implementation of furloughs.
- Revises provisions related to telework.
- Requires employees to designate a charity when donating to the Florida State Employees' Charitable Campaign.
- Limits a career service employee's probationary period to no more than 18 months.

- Clarifies provisions relating to employees who have been promoted and are in probationary status.
- Transfers the administration of the alternative retirement benefit program for OPS employees from the Department of Management Services to the Department of Financial Services.
- Clarifies the pay additive implementation process.
- Removes a statutory provision allowing Career Service employees to retain regular or special compensatory leave credits upon appointment to a Selected Exempt Service position.

This bill substantially amends sections 110.105, 110.1127, 110.119, 110.1225, 110.126, 110.131, 110.1315, 110.171, 110.181, 110.2035, 110.205, 110.217, 110.227, 255.249, 402.3057, 409.1757, 413.20, 943.0585 and 943.059 of the Florida Statutes.

II. Present Situation:

Department of Management Services

The Department of Management Services (DMS) is the state's chief agency responsible for the administration of the state employment system. The 1992 Legislature created DMS by consolidating the Department of Administration and the Department of General Services.¹ The Department's Division of Human Resource Management provides human resource policies, practices and strategies to State Personnel System agencies.² Individual agencies retain authority to customize the guidance to suit their department's needs.

"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 through the *Service First* initiative.³ 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 longevity of prior employment. In the years following enactment of the *Service First* legislation, several inefficient practices and procedures have developed that require revisions to the current statutory authority.

Background Screening

Current law specifies requirements for background screening for certain positions of employment. Such requirements may include, but are not limited to, employment history checks and statewide criminal correspondence checks, local criminal records checks, and fingerprinting

¹ Chapter 92-279, Laws of Florida.

² Division of Human Resource Management, Department of Management Services, http://www.dms.myflorida.com/human_resource_support/human_resource_management (last visited Jan. 17, 2012).

³ Chapter 2001-43, Laws of Florida.

for state and national criminal history records checks.⁴ If fingerprinting is required, the fingerprints of the employee or applicant must be taken by the employing agency or by an authorized law enforcement officer.⁵ The fingerprints must be submitted to the Florida Department of Law Enforcement (FDLE) for processing. If so requested by the employing agency, FDLE must forward the fingerprints to the United States Department of Justice for processing. Costs of background screenings and fingerprint processing must be paid by the employing agency.⁶

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.⁷ State agencies are permitted to impose furloughs on employees in response to a projected deficit in funds that support salary and benefit costs.⁸ Agencies may only furlough employees when the Revenue Estimating Conference projects a deficit.⁹ As the Florida Constitution requires the State to have a balanced budget each fiscal year, a formal deficit never exists. Despite budget shortfalls in recent fiscal years, agencies have not been able to implement furloughs due to the current statutory language.

Transfer of Accumulated Compensatory Leave

Compensatory leave is earned for time worked in excess of the standard 40 hour week. The compensatory leave earned may be transferred across state agencies as employees change locations and employers. 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. As employees were moved into different personnel systems, the value of their previously accumulated leave was also moved. This statutory provision was intended to be a temporary measure during the *Service First* implementation to prevent loss of compensatory leave credits for the large number of Career Service employees whose positions were involuntarily transferred to the Selected Exempt Service. As a result, the special compensatory leave could be paid at the later, potentially higher rate rather than based on the employee's rate of pay when the compensatory leave was actually earned.

Other Personal Services (OPS) Employment

Agencies may hire individuals in other personal services (OPS) temporary employment when certain vacancies exist. Section 110.131(1), F.S. establishes a 1,040 hour annual cap for each OPS employee. 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.¹⁰

⁴ See ss. 110.1127, 435.03 and 435.04, F.S.

⁵ Section 110.1127(5), F.S.

⁶ *Id.*

⁷ Section 110.107(3), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 110.131(2), F.S.

The Department of Management Services is required to perform an annual review to assess agencies for the regulation of other personal services employment.¹¹

Agencies have the option of offering alternative retirement benefits to OPS employees. Individual agencies may implement an alternative retirement income security program for OPS employees upon review and recommendation of the Department of Management Services and the Governor.

Florida State Employees' Charitable Campaign

Current law requires DMS to conduct the Florida State Employees' Charitable Campaign (FSECC), an annual fundraising drive directed toward state employees.¹² Multiple charitable campaigns may participate in the campaign.¹³ 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.¹⁴

Pay Additives

State Personnel System agencies are permitted 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.¹⁵ The pay additives must be consistent with Department of Management Services' guidelines and the directions of the Legislature contained in the General Appropriations Act.¹⁶

The employing agency must notify the Department of Management Services, the Executive Office of the Governor, and the Legislature by writing of the plan to implement any pay additives before any scheduled start date.¹⁷ Agencies are restricted from implementing any pay additives unless the Legislature has specifically authorized the specific pay additives and their implementation do not conflict with any collective bargaining agreements.¹⁸

Probationary Employees

Any employee who has satisfactorily completed at least a 1-year probationary period in his or her current position may be suspended or dismissed only for cause.¹⁹ Career service employees are subject to suspension, reduction in pay, transfer, layoff, demotion, and dismissal.²⁰ Current law prescribes that cause includes, but is not limited to, poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions

¹¹ Section 110.131(7), F.S.

¹² Section 110.181(1)(a), F.S.

¹³ Section 110.181(1)(c), F.S.

¹⁴ Section 110.181, F.S.

¹⁵ Section 110.2035(6)(c), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 110.227(1), F.S.

²⁰ Section 110.227(2)(a), F.S.

of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.²¹ The Department of Management Services has established rules and procedures governing the probation of Career Service employees.²²

The 2008 Legislature passed legislation enabling career service employees serving in a probationary period in a position to which he or she has been promoted to be removed from the promotional position anytime during the probationary period but must be returned to his or her former position, or a comparable position, if such a position remains vacant.²³ An employee who is dismissed during his or her probationary period is not entitled to hearing rights before the Public Employee Relations Commission (PERC).²⁴ However, the First District Court of Appeal has ruled that the effect of the 2008 provision is that in some circumstances, an employee who is fired during the probationary period subsequent to a promotion is entitled to hearing rights before PERC.²⁵

III. Effect of Proposed Changes:

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

Section 2 amends s. 110.1127, F.S., revising the entities which may take fingerprints to authorize anyone representing a law enforcement officer to take fingerprints, instead of an authorized law enforcement officer; authorizing certain vendors to take fingerprints; specifying that the agency or vendor that takes the fingerprints must remit the processing fees to FDLE; replacing the United States Department of Justice (DOJ) with the Federal Bureau of Investigation (FBI) as the federal agency to which the fingerprints are forwarded; requiring FDLE to automatically forward fingerprints to the FBI, instead of at the request of the employing agency, and makes clear that such forwarding is for national processing.

Section 3 amends 110.119, F.S., providing that paid leave for a military-service connected disability may not exceed 48 hours per calendar year.

Section 4 amends s. 110.1225, F.S., authorizing the Governor or the Chief Justice of the Supreme Court, as appropriate, to propose a furlough plan for consideration by the Legislative Budget Commission.

Section 5 amends s. 110.126, F.S., providing that the Department of Management Services may compel records in written or electronic form relevant to any investigation of personnel practices or hearing authorized by Chapter 110, F.S.

²¹ Section 110.227(1), F.S.

²² Section 110.227(2)(a), F.S.

²³ Section 1, ch. 2008-126, L.O.F.; Section 110.227(8), F.S.

²⁴ See section 110.27(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 appeals, back pay appeals, mediations, and district court appeals. See also s. 447.207, F.S.

²⁵ *Pesta v. Dept. of Corrections*, -- So.3d --, Case No. 1D09-6489 (Fla. 1st DCA 2011).

Section 6 amends s. 110.131, F.S., eliminating the annual hourly cap and corresponding requirement that agencies seek approval for extensions for OPS employees; requiring agencies to review and document the mission-critical need for any continuing OPS position by June 30 of each year; requiring each agency employing an OPS employee to annually report the total number of individuals serving in OPS employment and the type of employment, average pay, and total number of hours worked for each individual serving in OPS employment to the Executive Office of the Governor and the chairs of the legislative appropriations committees by August 15 of each year; revising and transferring OPS employee recordkeeping requirements from DMS to the agency employing the OPS employee.

Section 7 amends s. 110.1315, F.S., transferring the administration of the alternative retirement benefit program for OPS employees from DMS to the Department of Financial Services; granting the Department of Financial Services rulemaking authority to administer this section.

Section 8 amends s. 110.171, F.S., providing a definition of “telework”, requiring agencies to designate positions that are deemed appropriate for telework; requiring agencies to develop a telework plan that includes telework policies and procedures, providing minimum requirements for an agency telework plan; granting rulemaking authority to administer this section to each agency authorized to adopt rules governing the terms and conditions of employment.

Section 9 amends s. 110.181, F.S., providing that state officers and employees must designate a charitable organization to receive contributions when donating to the Florida State Employees’ Charitable Campaign.

Section 10 amends s. 110.2035, F.S., providing that the Legislature may fund temporary special duty pay additives through the General Appropriations Act; requiring that new competitive area differentials or a new critical market pay additive may not be implemented by agencies unless express authority is granted by the Legislative and is reviewed and recommended by the Department of Management Services; requiring the Department of Management Services to provide an annual report on pay additives to the Governor and the Legislature.

Section 11 amends s. 110.205, F.S., deleting provision allowing Career Service employees to retain all unused annual, sick, and compensatory leave upon appointment to a Selected Exempt Service position.

Section 12 amends s. 110.217, F.S., removing requirement for uniform rule approval by the Administration Commission; clarifying language relating to appointments; providing that a probationary period is capped at 18 months. This section clarifies that an employee that has attained merit status in one position, is promoted to another position and does not meet performance standards of the promotional position *shall* be returned to the original position, or to a position with substantially similar duties and responsibilities, if such a position is available. This section contains language providing that a Career Service employee serving a probationary period in a promotional position must be returned to their former or comparable position if removed is transferred to this section from s. 110.227, F.S.

Section 13 amends s. 110.227, F.S., removing language providing that a Career Service employee serving a probationary period in a promotional position must be returned to their

former or comparable position if removed is transferred to s. 110.217, F.S. (section 12 of this bill).

Sections 14-19 make non-substantive editorial changes and correct cross-references.

Section 20 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Budget – February 28, 2012:**

A strike-all amendment was adopted that significantly reduces the scope of the original bill. The CS made the following changes:

- Authorizes the Governor and the Chief Justice of the Supreme Court to propose furlough plans to 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 a career service employee who is promoted and subsequently dismissed within the probationary period, but who 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, or dismissal of such employee, is not appealable to PERC.
- Updates the provisions related to telework and requires employee participation.
- Makes conforming and drafting changes.

CS by Governmental Oversight and Accountability – February 7, 2012:

The CS amended the original bill in that it:

- Provides that if a state agency certifies or projects a deficit in an agency fund that supports salary and benefit appropriations, the agency may propose a detailed plan to furlough employees. The plan must be approved by the Governor or Chief Justice of the Supreme Court, and then sent to the Legislative Budget Commission. To ensure that the agency is truly facing a deficit, the Legislative Budget Commission must consult with the Revenue Estimating Conference regarding the deficit.
- Providing an 18 month cap to probationary periods and clarifying that when an employee that has attained merit status in one position is promoted to another position and does not meet performance standards of the promotional position, they shall be returned to the original position, or to a position with substantially similar duties and responsibilities, if such a position is available.
- Restoring to current law a provision guaranteeing collective bargaining rights.

B. Amendments:

None.