

**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 Committee on Governmental Oversight and Accountability

**BILL:** CS/SB 482

**INTRODUCER:** Committee on Governmental Oversight and Accountability and Senator Dean

**SUBJECT:** Other-Personal-Services Employment

**DATE:** April 2, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<b>Favorable</b>
2.	Naf	McVaney	GO	<b>Fav/CS</b>
3.	_____	_____	AP	_____
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:**

CS/SB 482 appears to clarify authority of counties relating to employees. It specifies that the county power to employ personnel includes the authority to determine benefits, if any, for different types of employee positions. It also specifies that the Florida Retirement System Act governs the retirement benefits available to an employee under the Florida Retirement System.

This bill substantially amends section 125.01, Florida Statutes.

**II. Present Situation:**

**County Powers Relating to Employment**

The Florida Constitution grants counties broad home rule authority.

Charter Counties

Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>1</sup>

<sup>1</sup> FLA. CONST. art. VIII, s. 1(g).

Staff is not aware of a general or special law that preempts a charter county's authority to determine benefits for different types of employment positions, except that certain positions are governed by the Florida Retirement System Act as discussed below.

#### Non-Charter Counties

Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>2</sup>

The Florida Statutes specify powers of self-government for non-charter counties, unless such powers are preempted on a particular subject by general or special law.<sup>3</sup> Such powers include, but are not limited to, the authority to:

- Employ personnel;<sup>4</sup>
- Perform any act not specifically enumerated that is not inconsistent with law and is in the common interest of the people of the county;<sup>5</sup> and
- Exercise all powers and privileges not specifically prohibited by law.<sup>6</sup>

Staff is not aware of a law that prohibits a non-charter county from determining benefits for different types of employment positions, except that certain positions are governed by the Florida Retirement System Act as discussed below.

#### **Florida Retirement System Eligibility**

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits.<sup>7</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities.<sup>8</sup>

Participation in the FRS is compulsory for all officers and employees of those employers.<sup>9</sup> "Officer or employee" means any person receiving salary payments for work performed in a regularly established position.<sup>10</sup> "Regularly established position" means:

- With respect to a state employer, a position that is authorized and established pursuant to law and is compensated from a salaries and benefits appropriation,<sup>11</sup> or an authorized<sup>12</sup> established position that is compensated from a salaries account.<sup>13</sup>

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<sup>2</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>3</sup> See s. 125.01, F.S.

<sup>4</sup> Section 125.01(3)(a), F.S.

<sup>5</sup> Section 125.01(1)(w), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> See ch. 121, F.S.

<sup>8</sup> Florida Retirement System Participating Employers for Plan Year 2012-13, prepared by the Department of Management Services, Division of Retirement, Revised September 2012, at 8. A copy of the document can be found online at: [http://www.dms.myflorida.com/human\\_resource\\_support/retirement/publications/informational\\_booklets](http://www.dms.myflorida.com/human_resource_support/retirement/publications/informational_booklets). The FRS also serves as the retirement plan for participating employees of the 185 cities and 257 independent hospitals and special districts that have elected to join the system (*id.*).

<sup>9</sup> Section 121.051(1), F.S.

<sup>10</sup> Section 121.021(11), F.S.

- With respect to a local agency employer (district school board, county agency, Florida College System institution, municipality, metropolitan planning organization, charter school, charter technical career center, or special district),<sup>14</sup> a regularly established position that will be in existence for a period beyond 6 consecutive months, except as provided by rule.<sup>15</sup>

An employee in a temporary position may not be a member of the FRS. “Temporary position” means:

- With respect to a state employer, a position that is compensated from an OPS account.<sup>16</sup>
- With respect to a local agency employer, a position that will exist for less than 6 consecutive months, or other position determined by rule, regardless of whether it will exist for 6 consecutive months or longer.<sup>17</sup> The relevant rule provides that the following positions are also deemed temporary, regardless of the length of existence:
  - Certain instructional positions established with no guarantee of continuation beyond one term.
  - If acceptable agency documentation is maintained, certain student positions, work-study positions, substitute teacher positions, on-call positions, positions related to federal programs, non-salaried elected positions, OPS non-instructional community college positions, temporary emergency-related positions, and instructional positions filled by exchange teachers.<sup>18</sup>

### III. Effect of Proposed Changes:

The bill amends a current provision that specifies that counties have all implied powers necessary or incident to carrying out the powers enumerated in s. 125.01, F.S., including the authority to *employ personnel*, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property,<sup>19</sup> by:

- Specifying that the authority to employ personnel includes the authority to determine available benefits for types of positions, if any, including, but not limited to, insurance coverage and paid leave; and

<sup>11</sup> Pursuant to s. 216.011(1)(mm), F.S., which defines “salaries and benefits” to mean the appropriation category used to fund the monetary or cash-equivalent compensation for work performed by state employees for a specific period of time, and provides that benefits shall be as provided by law.

<sup>12</sup> As provided by s. 216.262(1)(a), F.S.

<sup>13</sup> Section 121.021(52)(a), F.S. A salaries account is as provided in s. 216.011(1)(nn), F.S., which defines “salary” to mean the cash compensation for services rendered for a specific period of time.

<sup>14</sup> Does not include a water management district operating pursuant to ch. 373, F.S. which has a separate definition for “regularly established position” in s. 121.021(52)(c), F.S.

<sup>15</sup> Section 121.021(52)(b), F.S.

<sup>16</sup> Section 121.021(53)(a), F.S. Section 216.011(1)(dd), F.S., defines “other-personal-services” to mean the appropriation category used to fund the compensation for services rendered by a person who is not filling an established position. The term includes, but is not limited to, services of temporary employees, student or graduate assistants, persons on fellowships, part-time academic employees, board members, and consultants and other services specifically budgeted by each agency, or by the judicial branch, in this category. A person paid from OPS appropriations is not eligible for membership in a state retirement system.

<sup>17</sup> Section 121.021(53)(b), F.S.

<sup>18</sup> Rule 60S-1.004(5)(b), F.A.C.

<sup>19</sup> The provision is s. 125.01(3)(a), F.S.

- Specifically acknowledging that the provisions of ch. 121, F.S., including compulsory membership of employees meeting certain criteria, govern the retirement benefits available to an employee under the Florida Retirement System.

The bill, therefore, appears to clarify existing authority of counties relating to employees.

The bill's effective date is July 1, 2013.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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.

##### **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. The bill's explicit specification that counties may determine benefits, if any, for different types of positions may result in benefits cost savings for any county that currently provides the same benefits for all types of positions.

#### **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 by Governmental Oversight and Accountability on April 2, 2013:**

The CS differs substantially from the original bill but is designed to accomplish the same intent. The original bill explicitly states that counties may employ other-personal-services (OPS) employees, defines “OPS employee” to mean a temporary employee, requires maintenance of records relating to OPS employees, and requires salary payments to be in compliance with the federal Fair Labor Standards Act and state law. The bill does not appear to address county employee benefits.<sup>20</sup>

The CS, alternatively, specifically states that county powers include the authority to determine available benefits, if any, for different types of employee positions, subject to Florida Retirement System Act provisions.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>20</sup> See the Senate Governmental Oversight and Accountability Committee Staff Analysis for SB 482 (dated April 1, 2013).