

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 Community Affairs

BILL: SB 482

INTRODUCER: Senator Dean

SUBJECT: Other-personal-services Employment

DATE: February 21, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Pre-meeting
2.			GO	
3.			AP	
4.				
5.				
6.				

I. Summary:

This bill authorizes the governing body of a county to employ a qualified individual in other-personal-services employment. The bill provides a definition for the term “other-personal-services employee.” The bill also provides conditions that the county must follow for each other-personal-services employee.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Other Personal Services Employment (OPS)

Other Personal Services (OPS) employment is a temporary employer/employee relationship used solely for accomplishing short term or intermittent tasks. OPS employees do not fill established positions and may not be assigned the duties of any vacant authorized position. OPS employees are at-will employees and are subject to actions such as pay changes, changes to work assignment, and terminations at the pleasure of the agency head or designee.¹

Each OPS employee shall have their name, social security number, employment category, employment start date, number of hours worked, and amount of compensation maintained by the agency in the human resource information system, in accordance with s. 110.131(2) (a), F.S.²

¹ Department of Management Services, *Other Personal Services Employment*, found at http://www.dms.myflorida.com/human_resource_support/human_resource_management/other_personal_services_employment_ops (last accessed February 5, 2013)

² *Id.*

OPS employees are paid for the actual number of hours they work. All work hours over 40 within a workweek are paid at one and one-half times the employee's hourly rate of pay when the position is designated as "included" or "nonexempt" under the federal Fair Labor Standards Act (FLSA). However, even though physicians, lawyers, teachers and certain highly paid (minimum \$27.63 per hour) computer-related occupations are paid on an hourly basis, such OPS employees maintain exempt status and are not subject to the FLSA overtime provisions.³

Other-personal-services employees are not eligible for any form of paid leave, paid holidays, a paid personal day, participation in state group insurance or retirement benefits, or any other state employee benefit. Other-personal-services employees may be included in that part of an agency's recognition and reward program that recognizes and rewards employees who submit innovative ideas that increase productivity, eliminate or reduce state expenditures, improve operations, or generate additional revenue or who meet or exceed the agency's established criteria for a project or goal.⁴

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁵ 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.⁶ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁷ Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section of law. This section authorizes the governing body of a county to employ a qualified individual in other-personal-services employment. The bill provides a definition for the term "other-personal-services employee." The bill also provides conditions that the county must follow for each other-personal-services employee. The county must maintain employee records identifying, at a minimum, the person employed, the hire date, the type of other-personal services employment, and the number of hours worked per week. Also, the county must determine the appropriate rate of pay and ensure that all payments are in compliance with the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq., and applicable state law.

Section 2 provides an effective date of July 1, 2013.

³ *Id.*

⁴ Section 110.131(3), F.S.

⁵ FLA. CONST. art. VIII, s. 1(f).

⁶ FLA. CONST. art. VIII, s. 1(g).

⁷ FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

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:

The bill may provide for more employment opportunities with the governing body of a county.

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.)

None.

B. Amendments:

None.