

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: SB 482
 INTRODUCER: Senator Dean
 SUBJECT: Other-Personal-Services Employment
 DATE: April 1, 2013 REVISED: _____

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

I. Summary:

SB 482 explicitly states that the governing body of a county may employ a qualified individual in other-personal-services employment. The bill creates a definition for “other-personal-services employee” and specifies conditions with which the governing board of a county must comply for each other-personal-services employee.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Other-Personal-Services Employment

State

Current law authorizes state agencies¹ to employ other-personal-services (OPS) employees.² Such OPS employees do not fill established positions and may not be assigned the duties of any vacant authorized position; rather, state OPS employment is intended to be a temporary employer/employee relationship used solely for accomplishing short term or intermittent tasks.³

¹ Section 110.131, F.S., applies to any “agency,” which the section defines to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, or any officer, court, commission, or other unit of the judicial branch of state government supported in whole or in part by appropriations made by the Legislature (s. 110.131(1), F.S.).

² Section 110.131, F.S.

³ 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)

For each OPS employee, an agency must:

- Maintain employee records identifying, at a minimum, the person employed, the hire date, the type of OPS employment, and the number of hours worked.
- Determine the appropriate rate of pay and ensure that all payments are in compliance with the federal Fair Labor Standards Act and state law.
- Annually review, determine, and document whether the continuation of the OPS position is necessary to the mission of the agency.⁴

Unless specifically provided by law, OPS employees are not eligible for any state employee benefit, including, but not limited to:

- Paid leave;
- Paid holidays;
- A paid personal day; or
- Participation in state group insurance or retirement benefits.⁵

Each agency employing OPS employees must annually submit a report to the Executive Office of the Governor and to the chairs of the legislative appropriations committees that contains the following information for the previous fiscal year:

- The total number of individuals serving in OPS employment.
- The type of employment, average pay, and total number of hours worked for each individual serving in OPS employment.⁶

County

The Florida Statutes do not specifically address OPS employment at the county level.

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.⁷

Staff is not aware of a general or special law that preempts a charter county's authority to hire OPS employees.

Non-Charter Counties

⁴ Section 110.131(2), F.S. The review process does not apply to board members; consultants; seasonal employees; institutional clients employed as part of their rehabilitation; bona fide, degree-seeking students in accredited secondary or postsecondary educational programs; employees hired to deal with an emergency situation that affects the public health, safety, or welfare; or employees hired for a project that is identified by a specific appropriation or time-limited grant (s. 110.131(2)(c), F.S.).

⁵ Section 110.131(3), F.S.

⁶ Section 110.131(3), F.S.

⁷ FLA. CONST. art. VIII, s. 1(g).

Non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁸

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.⁹ Such powers include, but are not limited to, the authority to:

- Employ personnel;¹⁰
- Perform any act not specifically enumerated that is not inconsistent with law and is in the common interest of the people of the county;¹¹ and
- Exercise all powers and privileges not specifically prohibited by law.¹²

Staff is not aware of a law that prohibits a non-charter county from hiring OPS employees.

Florida Retirement System Eligibility

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits.¹³ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities.¹⁴

Participation in the FRS is compulsory for all officers and employees of those employers.¹⁵

“Officer or employee” means any person receiving salary payments for work performed in a regularly established position.¹⁶ “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,¹⁷ or an authorized¹⁸ established position that is compensated from a salaries account.¹⁹
- With respect to a local agency employer (district school board, county agency, Florida College System institution, municipality, metropolitan planning organization, charter school,

⁸ FLA. CONST. art. VIII, s. 1(f).

⁹ See s. 125.01, F.S.

¹⁰ Section 125.01(3)(a), F.S.

¹¹ Section 125.01(1)(w), F.S.

¹² *Id.*

¹³ See ch. 121, F.S.

¹⁴ 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. 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.*).

¹⁵ Section 121.051(1), F.S.

¹⁶ Section 121.021(11), F.S.

¹⁷ 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.

¹⁸ As provided by s. 216.262(1)(a), F.S.

¹⁹ 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.

charter technical career center, or special district),²⁰ a regularly established position that will be in existence for a period beyond 6 consecutive months, except as provided by rule.²¹

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.²²
- 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.²³ 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.²⁴

Fair Labor Standards Act

The federal Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting certain full-time and part-time workers in the private sector and in the federal, state, and local governments.²⁵

III. Effect of Proposed Changes:

The bill explicitly states that governing bodies of counties have the authority to employ OPS employees. It defines “OPS employee” to mean a temporary employee of the governing body of the county.

The bill requires the governing body of a county to do the following for each OPS employee:

- Maintain employee records identifying, at a minimum, the person employed, the hire date, the type of OPS employment, and the number of hours worked per week.
- Determine the appropriate rate of pay and ensure that all payments are in compliance with the federal Fair Labor Standards Act.

²⁰ 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.

²¹ Section 121.021(52)(b), F.S.

²² 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.

²³ Section 121.021(53)(b), F.S.

²⁴ Rule 60S-1.004(5)(b), F.A.C.

²⁵ 29 U.S.C., ch. 8.

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, as the effect of the bill is unclear.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines "OPS employee" to mean a temporary employee of the governing body of the county. Counties may already employ persons in temporary positions, as indicated by Florida Retirement System provisions. In addition, any county employer or employee subject to the federal Fair Labor Standards Act is subject regardless of whether the Florida Statutes require compliance. Therefore, it appears that the primary effect of this bill would be to require maintenance of records relating to county employees labeled "OPS." Such requirements mirror those for state OPS employers; however, state OPS employers use such records in the course of compliance with other review requirements. Neither the bill nor current law appears to impose such other review requirements on county OPS employers.

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.

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