

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 21 County Employees

**SPONSOR(S):** Porter and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Stramski	Williamson
2) Local & Federal Affairs Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Florida counties have broad home rule authority under the State Constitution. The Florida Statutes further outline the powers and duties of counties, including the power to employ personnel.

This bill clarifies that the existing authority of counties to employ personnel includes the ability to determine available benefits for different types of positions, including, but not limited to, insurance coverage and leave policies. The bill also provides that the provisions of the Florida Retirement System Act apply only to the retirement benefits of county employees who are enrolled in the Florida Retirement System.

The bill may have a fiscal impact on state and local governments. See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### County Government

The State Constitution contains provisions specifically related to the county form of government in Florida, and requires the state to be divided by law into political subdivisions called “counties.”<sup>1</sup> It provides that counties may be created, abolished, or changed by law, with provision for payment or apportionment of the public debt.<sup>2</sup> Pursuant to general or special law, a county government may be established by charter, which must be adopted, amended, or repealed only upon a vote of the electors of the county in a special election called for that purpose.<sup>3</sup>

The State Constitution recognizes two types of county government in Florida: charter and non-charter. Subsections 1(f) and (g), Art. VIII of the State Constitution, respectively, provide as follows:

**NON-CHARTER GOVERNMENT.** Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

**CHARTER GOVERNMENT.** Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

The most significant distinction between charter and non-charter county power is that the State Constitution provides a direct constitutional grant of the power of self-government to a county upon charter approval, whereas a non-charter county has “such power of self-government as is provided by general or special law.”<sup>4</sup> While all counties have broad home rule authority, charter counties possess greater home rule authority than non-charter counties.

The Florida Statutes outline the powers and duties of charter and non-charter counties. The enumeration of powers is not deemed exclusive or restrictive, but is deemed to incorporate the implied powers necessary to carry out the enumerated powers.<sup>5</sup> The powers include, but are not limited to, the powers to:

- Establish civil service systems and boards;<sup>6</sup>
- Employ personnel;<sup>7</sup>
- Expend funds;<sup>8</sup>
- Enter into contractual obligations;<sup>9</sup>

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<sup>1</sup> See Art. VIII, s. 1 of the State Constitution.

<sup>2</sup> Art. VIII, s. 1(a) of the State Constitution.

<sup>3</sup> Art. VIII, s. 1(c) of the State Constitution.

<sup>4</sup> Art. VIII, s. 1(f) of the State Constitution.

<sup>5</sup> See ss. 125.01(1) and (3), F.S.

<sup>6</sup> Section 125.01(1)(u), F.S.

<sup>7</sup> Section 125.01(3)(a), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

- Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county;<sup>10</sup> and
- Exercise all powers and privileges not specifically prohibited by law.<sup>11</sup>

## Employment Benefits

### *Federal Law*

Federal law provides certain requirements regarding employee benefits that may be applicable to counties, including requirements relating to insurance and leave. For example, the Patient Protection and Affordable Care Act requires employers with more than 50 employees to provide health insurance to their full-time employees or pay a penalty.<sup>12,13</sup> Federal law also sets forth certain minimum requirements with respect to family and medical leave under the Family Medical Leave Act, and overtime under the Fair Labor Standards Act.<sup>14</sup>

### *Florida Law*

Florida law provides various benefits to certain county employees.

Specific to county law enforcement officers and firefighters, Florida law provides that:

- A county law enforcement officer is entitled to travel expenses if he or she appears as a witness at any legal proceeding resulting from that employment.<sup>15</sup>
- A county firefighter or law enforcement officer is entitled to certain presumptions in disability proceedings if the firefighter or officer suffers death or disability due to certain causes<sup>16</sup> and, under certain circumstances, is entitled to death benefits if killed while performing his or her duties.<sup>17</sup>

Current law also provides that:

- Travel expenses of county employees are subject to minimum requirements set by statute.<sup>18</sup>
- The establishment of county deferred compensation programs is governed by statute.<sup>19</sup>
- Those county employees who are called to active military service receive certain leave of absence protections.<sup>20</sup>
- Florida's established state minimum wage is applicable to all employers, including counties.<sup>21</sup>

Current law also authorizes counties to provide health and other insurance benefits to employees.<sup>22</sup>

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<sup>10</sup> Section 125.01(1)(w), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> 26 U.S.C. s. 4980H.

<sup>13</sup> The implementation and enforcement of the employer mandate has been postponed until 2015. Statement by Mark Mazur, Assistant Secretary for Tax Policy at the U.S. Department of Treasury, available at <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx> (last visited January 8, 2014).

<sup>14</sup> Family and Medical Leave Act, 29 U.S.C. s. 2601, *et seq.*, and the Fair Labor Standards Act, 29 U.S.C. s. 201, *et seq.*

<sup>15</sup> Section 92.141, F.S.

<sup>16</sup> Section 112.18, F.S.

<sup>17</sup> Sections 112.19 and 112.191, F.S.

<sup>18</sup> Section 112.061, F.S.

<sup>19</sup> Section 112.215, F.S.

<sup>20</sup> Sections 115.14, F.S. and 250.48, F.S.

<sup>21</sup> Section 448.110, F.S.

<sup>22</sup> *See* s. 112.08, F.S.

### Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits.<sup>23</sup> It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities.

Membership in the FRS is compulsory for all county officers and employees, except for certain elected officials, who are employed in a regularly established position.<sup>24</sup> With respect to a county employer, a regularly established position is one that will be in existence for a period beyond six consecutive months, except as provided by rule.<sup>25</sup> A temporary position is a position that will exist for less than six consecutive months, or other positions as determined by rule, regardless of whether they will exist for six consecutive months or longer.<sup>26</sup> An employee in a temporary position may not be a member of the FRS.

In addition, after July 1, 1972, a special act or general law of local application may not be enacted if it proposes to amend, alter, or contravene the provisions of any state-administered retirement system or any state-supported retirement system established by general law.<sup>27</sup>

### **Effect of the Bill**

The bill clarifies that the existing authority of counties to employ personnel includes, but is not limited to, the provision of insurance coverage and paid leave. As this appears to be a clarification of current law, the bill would not impact any county employee benefits required by state or federal law.

The bill also provides that the provisions of chapter 121, F.S., which include compulsory membership in the FRS for certain county employees in regularly established positions, apply only to the retirement benefits of county employees who are enrolled in the FRS. The intent of the language is unclear and could be interpreted to:

- Limit the applicability of chapter 121, F.S., to county employees who are enrolled in the FRS as of the effective date of the bill; or
- Clarify that the provisions of chapter 121, F.S., apply to county employees who are required to be enrolled in the FRS, regardless of when that enrollment takes place.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 125.01, F.S., authorizing the governing body of a county to determine available benefits of county employees and providing for applicability of certain provisions relating to the FRS.

Section 2 provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>23</sup> See chapter 121, F.S.

<sup>24</sup> Section 121.051(1), F.S.

<sup>25</sup> Section 121.021(52)(b), F.S.

<sup>26</sup> Section 121.021(53)(b), F.S.

<sup>27</sup> Section 121.191, F.S.

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is unclear whether the bill provides county governments with more flexibility in determining which employees will be designated to participate in the FRS or if it is simply clarifying current law.

If the bill is interpreted to provide a county with more flexibility, the bill may have an indeterminate, positive fiscal impact if a county government elects to use such flexibility in a manner which reduces the number of employees who are eligible to participate in the FRS. Such an interpretation also could have an indeterminate, negative fiscal impact on the state due to a potential increase in workload for the Division of Retirement associated with monitoring and auditing the accuracy of data reported by the county government.

If the bill is interpreted as clarifying current law, then there would be no fiscal impact to county governments or the state.

### 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:

This bill does not appear to create a need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Clarification regarding FRS Provision

The bill provides that the provisions of chapter 121, F.S., which include compulsory membership in the FRS for certain county employees, apply only to the retirement benefits of county employees who are enrolled in the FRS. This provision could be interpreted to limit the applicability of chapter 121, F.S., to only those county employees who are enrolled in the FRS as of the effective date of the bill. Conversely, it could be interpreted as a clarification that the provisions of chapter 121, F.S., apply to county employees regardless of when enrollment takes place. The bill sponsor may wish to consider an amendment clarifying the effect of the bill.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.