STATE EMPLOYMENT/RETIREMENT/PENSION MANAGEMENT

HB 2393 — Retirement

by General Appropriations Committee, Rep. Pruitt and others (CS/SB 1352 by Governmental Oversight & Productivity Committee)

The bill reforms several aspects of the Florida Retirement System (FRS). It creates a defined contribution (DC) retirement program that FRS members may elect in lieu of the FRS's current defined benefit (DB) program. Under the DC option, an employee may place his or her employer's pension contribution into an array of mutual funds, annuities, and other plans. As a result, the employee's pension will consist of the market return of his or her investment, rather than the fixed benefit guaranteed under the DB plan. The employee is not required to put any of his or her own money into the DC account. If an employee wishes to make a pre-tax retirement contribution, the employee may use other plans offered by his or her employer, such as the Deferred Compensation program offered to state employees. Total tax-sheltered contributions may not exceed established federal tax code limitations.

Participation in the DC program is optional. Any employee, whether current or new, may choose either the traditional defined benefit plan or the new DC option. Vesting under the DC program requires one year of participation. A current FRS employee, who has more than one year of FRS participation at the time he or she switches to the DC program, vests immediately. The DC option may be elected during the following time periods: (a) for state employees, the option window is June through August of 2002; (b) for school district employees, the option window is September through November 2002; and (c) for local government employees, the option window is December 2002, though February 2003. If the DC option is elected, the employee may either leave his or her DB benefit in the DB program, or move its discounted present value to the DC program.

The employer's contribution rates for the DC program are as follows: (a) nine percent for Regular Class; (b) 20 percent for Special Risk; (c) 11.35 percent for Special Risk Administrative; (d) 13.4 percent for elected officers, except that the rate is 18.9 percent for judges and 16.2 percent for elected county officers; and (e) 10.95 percent for Senior Management. In addition to these contribution rates, the employer must also pay for disability coverage under the DC program. The Department of Management Services is directed to complete a study by February 1, 2001 on the effect vesting changes produce on disability and health insurance subsidy benefits.

The bill also modifies the current vesting period for the DB program. Presently, a FRS employee vests at three different intervals: seven years for senior managers; eight years for elected officers; and ten years for all other class members. Effective July 1, 2001, however, all such employees or officers will vest when they have six years of creditable service. In order for former employees with six, but less than 10 years of creditable service to vest, the employee must be reemployed after July 1, 2001, for one year.

The bill also increases the retirement benefit to be received by current Special Risk Class FRS members. Under existing law, the percentage of a Special Risk member's average final compensation which is used to calculate the member's retirement benefit varies from two percent to two and eight-tenths percent for creditable service years between October 1978, and December 1992. Under the bill, however, current members of the Special Risk Class who retire after July 1, 2000, will receive three percent for these creditable service years. The cost of this increased benefit will be funded by a portion of pension assets in excess of 8.75 percent of a stabilized reserve. This latter feature is discussed in greater detail below.

The bill also enhances the retirement class of certain employees effective January 1, 2001, in the following manner: (a) assistant state attorneys, assistant public defenders, statewide prosecutors, and capital collateral regional counsel staff are moved from the Regular Class to the Senior Management Service Class; and (b) community-based correctional officers and certain enumerated correctional medical workers are moved from the Regular Class to the Special Risk Class.

The bill also decreases employer contribution rates, i.e., the amount that employers must contribute to the FRS to keep the fund actuarially sound, by one percentage point for Fiscal Years 2000-2002. The cost for this reduction is funded by the FRS surplus.

The bill requires that actuarial study of the FRS be conducted annually, and adopts a mechanism to stabilize the FRS so that market fluctuations do not cause it to be under funded or require that employer contribution rates be substantially changed each year.

The bill provides for three different competitive procurements of technical and operational expertise prior to initiation of the DC plan. The first of these occurs with the hiring of a third party administrator to act as the administrative interface between the plan participants and their provider companies. That organization will arrange for all record-keeping and non-investment services to effect compliance with state and federal requirements. The second hiring will be that of a third-party educator to inform participants of the choices before them without establishing any preference for plan type or provider company. The last significant hiring will occur with the procurement of one or more investment company providers that will act as the personal financial intermediaries for the directed contributions of the employee-participants. The provider companies must provide institutional investor class fees, that is, the lowest fees offered to their best customers, have their contracts in plain language in compliance with state insurance laws on readability, and may not charge commissions on account balance transfers from DB plan participants. Provider companies may supplement educational materials subsequent to a participant's enrollment.

A newly created seven-member Public Employee Optional Retirement Program Advisory Committee will provide advice to the existing Investment Advisory Council on selection of a third-party administrator, education providers, and provider companies.

The optional choices created by this bill are in addition to those optional annuity choices now existing for state university and community college faculty and senior managers.

The bill adopts a retirement rate stabilization mechanism equivalent to 8.75 percent of actuarial liabilities, as advanced by the 1999 Legislature and further endorsed by the Trustees of the Florida Retirement System (the Governor, Comptroller, and Treasurer).

If approved by the Governor, these provisions take effect July 1, 2000, except as follows: (a) the DC program is effective for FRS employees at varying times between September and December of 2002; (b) changes to contribution rates payable by the employer are effective at varying times specified in the bill beginning July 1, 2000; (c) the six year vesting enhancement for the DB plan is effective July 1, 2001; (d) changes to the disability benefits provided under the DB plan is effective July 1, 2001; (e) changes to the health insurance subsidies provided under the DB plan is effective July 1, 2001; (f) changes to the health insurance subsidies provided under the DC plan is effective July 1, 2002; and (g) the enhancement in the retirement class for certain state criminal justice system attorneys, and certain correctional officers and medical workers is effective January 1, 2001. The DC plan option is effective in 2002 contingent upon the receipt of a favorable tax letter ruling from the Internal Revenue Service and the establishment of the other education, provider company, and third-party administrator networks.
Vote: Senate 39-0; House 119-0

CABINET REORGANIZATION

CS/SB 1194 — Secretary of State

by Governmental Oversight & Productivity Committee and Senator Brown-Waite

This bill was enacted in response to Amendment No. 8 to the State Constitution which provides for the future modification of the State Cabinet. Currently, the Cabinet consists of the Attorney General, the Commissioner of Agriculture, the Commissioner of Education, the Comptroller, the Secretary of State, and the Treasurer. On January 7, 2003, the functions of the Comptroller and Treasurer will be merged into a Chief Financial Officer, and the Commissioner of Education and the Secretary of State will no longer be members of the Cabinet.

Under the bill, much of the current structure of the Department of State is retained. While the future Secretary of State will not be elected after January 7, 2003, the future Secretary of State will continue to head the department, though the position will be appointed by the Governor and confirmed by the Senate.

The bill modifies some of the duties currently housed in the Department of State and transfers some programs out of the department. For example, financial disclosure statements will be filed directly with the Commission on Ethics, instead of being filed with the Department of State and then forwarded to the commission. Further, the regulation of game promotions is transferred to the Department of Agriculture and Consumer Services. Responsibility for the John and Mable Ringling Museum of Art is also transferred to the Florida State University.

The department will also take more responsibility under the act for Florida linkage institutes. These institutes assist in the development of stronger economic, cultural, educational, and social ties between Florida and strategic foreign companies.

If approved by the Governor, these provisions take effect July 1, 2000, except as otherwise provided.
Vote: Senate 39-0; House 114-1

HB 2263 — Educational Governance

by Governmental Operations Committee, Rep. Posey and others (CS/SB 1680 by Governmental Oversight & Productivity Committee)

This bill was enacted in response to the adoption of Amendment No. 8 to the State Constitution, which modifies the future composition of the State Cabinet. Effective January 7, 2003, the Commissioner of Education will no longer be a member of the Cabinet. Further, the State Board of Education will no longer consist of the Governor and

Cabinet, but will be composed of seven members who are appointed by the Governor and confirmed by the Senate. The State Board of Education will appoint the future Commissioner of Education.

Under the bill, the State Board of Education will be responsible for all levels of public education in Florida, from kindergarten through university. The bill abolishes the Department of Education, the Board of Regents, the State Board of Community Colleges, and a number of other boards, effective January 7, 2003.

The bill provides for a Commissioner of Education who has the ability to successfully provide education policy and planning direction, program development, performance management, and funding allocation recommendations across the spectrum of kindergarten through graduate school. Further, it provides for a Chancellor of K-12 Education, a Chancellor of State Universities, and a Chancellor of Community Colleges and Career Preparation, each of whom is appointed by the commissioner. An Executive Director of Nonpublic and Nontraditional Education is also established.

In order to accomplish a smooth transition, the bill creates the Education Governance Reorganization Transition Task Force. The task force consists of 5 members appointed by the Governor, 3 by the Senate President and 3 by the Speaker of the House of Representatives. The task force is to make two reports to the Legislature. The reports are to include how best to achieve education system integration by combining appropriate education and functions and policies into or under the new State Board of Education and to recommend which, if any, current education staff functions and resources should be eliminated, transferred, or realigned within the new education organizational structure.

If approved by the Governor, these provisions take effect upon becoming law, except where otherwise provided.
Vote: Senate 32-7; House 86-33

TOBACCO SETTLEMENT PRESERVATION

CS/HB 1721 — Tobacco Settlement Preservation

by Financial Services Committee and Rep. Lacasa (CS/CS/SB 1998 by Fiscal Resource Committee; Governmental Oversight & Productivity Committee; and Senator Horne)

The bill (Chapter 2000-128, L.O.F.) creates the Tobacco Settlement Financing Corporation as a not-for-profit corporation. The corporation is governed by a board of directors consisting of the Governor, the Treasurer, the Comptroller, the Attorney General, two senators appointed by the Senate President, and two state representatives appointed by the Speaker of the House of Representatives. The executive director of the State Board of Administration is the chief executive officer of the corporation.

The bill authorizes the corporation to enter into one or more purchase agreements with the Department of Banking and Finance to purchase the state's interest in the tobacco settlement agreement. Sale of this interest is subject to approval by the Legislature. The corporation is authorized to issue bonds payable from and secured by amounts payable to the corporation pursuant to the tobacco settlement agreement, subject to legislative approval.

The bill also provides that in any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety, must stay the execution of any judgment, or portion thereof, entered on account of punitive damages pending completion of any appellate review of the judgment. The required bond or surety must be the lower of: (a) the amount of the punitive-damages judgment, plus twice the statutory rate of interest; or (b) ten percent of the net worth of the defendant as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment for punitive damages, though in no case is the amount of the bond or surety to exceed $100 million, regardless of the amount of punitive damages.

The bill also creates the Task Force on Tobacco-Settlement-Revenue Protection. The task force is composed of the Governor, the Comptroller, the Insurance Commissioner, three senators appointed by the Senate President, and three representatives appointed by the Speaker of the House of Representatives. The purpose of the task force is to determine the need for, and to evaluate methods for, protecting the state's tobacco settlement revenue from significant loss. Specific areas of study for the task force are assigned by the bill, including, the degree of risk posed to the amount of tobacco-settlement revenue as a consequence of a decline in domestic tobacco sales and increased sale of foreign or nonsettling manufacturers' products and the options available for protecting benefits. The initial report is due to the Senate President and the Speaker of the House of Representatives by November 1, 2000. An appropriation of $100,000 is provided to support the operation of the trust fund.

The bill also appropriates the nonrecurring sum of $2.5 million for the purchase at fair market value of equipment associated with agricultural production of tobacco from persons or entities that were using such equipment for production of tobacco between April 1 and October 1, 2000, in Florida and who sign a letter of intent to cease tobacco production upon the development and implementation of an alternative crop that would provide the same net revenue and proportional costs as tobacco.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

GOVERNMENTAL EFFICIENCY AND EFFECTIVENESS

CS/HB 301 — Florida Title Loan Act

by Business Regulations & Consumer Affairs Committee, Rep. Sublette and others (CS/SB's 1834 & 694 by Governmental Oversight & Productivity Committee and Senators Latvala, Meek, Kurth, and Saunders)

The bill creates a comprehensive regulatory act for businesses which engage in title loan transactions. The Department of Banking and Finance (the department) is responsible for enforcing the act.

Pursuant to the act, a person who wishes to engage in title loan transactions must apply to the department for a license. Fees for the initial license are $1,400, and the licensee must also post a $100,000 surety bond, letter of credit, or certificate of deposit. The department must be named as the beneficiary of the $100,000 security in order to enable the department to compensate any consumer who is injured by the lender. The title loan lender license must be renewed biennially by filing a renewal application and paying a $1200 renewal fee. Any title loan made by a person without a license is void, and the unlicensed person cannot collect any moneys from the borrower. Moreover, a person who acts as a title loan lender without a license commits a third degree felony.

The act provides that a title loan agreement must contain certain information including: (a) the make, model, year, vehicle identification number, and license plate number of the titled property; (b) the name, address, date of birth, physical description, and social security number of the borrower; (c) the date of the loan and the maturity date of the loan, which must be 30 days after the agreement is executed; and (d) the total loan interest payable on the maturity date, the total amount of all loan payments, and the interest rate.

The act also limits the charges that may be imposed for title loans to the following simple interest rates per annum: (a) 30 percent for the first $2,000; (b) 24 percent for the amount exceeding $2,000, but not exceeding $3,000; and (c) 18 percent for the amount exceeding $3,000. No other fee may be charged for a title loan, and a title loan lender is expressly prohibited by the act from advertising the loans as "interest free" or "no finance charge."

The act also sets forth the remedies available to a title loan lender in the event the borrower defaults on the loan. A title loan lender may take possession of the titled property 30 days after a payment was due from the borrower. The lender must provide the borrower with an opportunity to make the titled property available to the lender; however, if the borrower fails to provide the titled property, the property may be repossessed by a licensed repossession agent. After taking possession of the property, the lender may sell it through a licensed motor vehicle dealer. Ten days prior to the sale the lender must provide the borrower with notice of the sale, along with an accounting of all amounts owed by the borrower under the loan. The borrower may redeem the titled property at any time prior to the sale. Within 30 days after the sale, all proceeds in excess of the amount owed must be returned to the borrower.

If approved by the Governor, these provisions take effect October 1, 2000.
Vote: Senate 39-0; House 115-0

HB 2127 — State Procurement

by Business Development & International Trade Committee and Rep. Bradley (SB 2618 by Senator Diaz-Balart)

The bill revises provisions relating to the state contract procurement process and minority business enterprise (MBE) programs. Currently, the Minority Business Advocacy and Assistance Office (MBAAO), which is responsible for overseeing the state's MBE contracting programs, is housed in the Department of Labor and Employment Security. Under the bill, the MBAAO is renamed as the Office of Supplier Diversity (OSD) and transferred to the Department of Management Services where state procurement activities are centralized.

The bill increases penalties. Under the bill, the MBE certification of a contractor, firm or individual will be permanently revoked, and the entity will be barred from doing any business with the state for 36 months if: (a) the certification was obtained by false representation; or (b) the MBAAO determines that the entity has failed to act in good faith in fulfilling the terms of a contract calling for it to use the services or commodities of a certified MBE.

The bill also prohibits discrimination based on race, national origin, gender, religion, or physical disability by state agencies when contracting for commodities and services. Complaints alleging discrimination by an agency may be filed with the OSD. The OSD is required to refer the complaint to the Inspector General of the relevant agency, who must investigate the claim. If it is determined that the agency engaged in discrimination, any state employee(s) who participated shall be referred for disciplinary action.

The bill amends provisions relating to MBE certification and as a result, the current number of certified MBEs in Florida will likely increase. The bill makes the following changes:

- It expands the definition of “small business,” which a business must be in order to qualify as a certified MBE. Under the bill, a “small business” may have up to 200 employees, rather than up to 100 employees as in current law, and may have a net worth up to $5 million, rather than up to $3 million as in current law.

- It provides that a business certified as a MBE by a local government must be accepted as a state certified MBE if the local government applies the state’s MBE certification criteria in its certification process.

- It provides that a MBE owner must be licensed or have a demonstrated expertise in the trade or profession that the MBE will offer to the state, rather than requiring all MBEs to be licensed as is required by current law.

The bill also creates a discriminatory vendor list. Under the bill, an entity or an affiliate of an entity may be placed on the list after an administrative hearing process if it has been found by a state or federal court to have violated any law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion. If placed on the discriminatory vendor list, the entity or affiliate may not submit a bid, contract, or transact any business with any public entity for a period of three years.

The bill leaves existing statutory MBE spending goals and contracting advantages, such as set asides and price preferences, in place.

If approved by the Governor, these provisions take effect July 1, 2000.
Vote: Senate 24 -10; House 88-27