

PUBLIC EMPLOYEE BENEFITS AND RECOGNITION

CS/CS/SB 1006 — State Employee Health Insurance

by Appropriations Committee and Governmental Oversight and Productivity Committee

During the previous two interim periods, the Committee on Governmental Oversight and Productivity examined the financial and policy difficulties affecting the financial solvency of the health and prescription drug benefits provided state employees and their dependents. This act begins a process that will change both the nature of the benefits delivered and the means through which they are funded. The act authorizes the Department of Management Services, as the workplace benefit manager for state employees, to develop more than one indemnity plan within its preferred provider organization. The revised offering, if funded by the Legislature, could involve more than the two current tiers of coverage (individual and family) and provide choices that permit employees to select different exposure levels. In keeping with an agency consultant report received prior to the start of the Session, any revised offering would include the potential for greater cost participation by employees, a setting of premiums charged based upon fixed dollar amounts rather than percentages, the incorporation of specific age- and gender-based wellness programs now unavailable, and the incorporation of peer employer and market-based levels in assigning state reimbursement levels. A major provision of the bill is its change in the medium for the setting of benefit policy from the current practice of general law in the Florida Statutes to the annual appropriations process.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 114-2

CS/CS/SB 958 — Florida Retirement System

by Appropriations Committee and Governmental Oversight and Productivity Committee

Beginning with the 2003 fiscal year, the Legislature initiated a practice of passing annual bills to implement changes to the employer-paid payroll contribution rate structure of the multi-employer Florida Retirement System (FRS). Its defined benefit component assures an annuitized monthly income to retirees of state, education, and local government employers expressed as a percentage of final pay and thus requires annual adjustments in light of the underlying value of its assets and liabilities. The act represents the revised rates necessary to fund this pension plan in line with its actuarial cost parameters.

Generally, the act continues the use of the accrued pension surplus which stood at \$12.9 billion as of June 30, 2002. While the effect of the rate adjustment is to nominally increase costs to the employers for FY 2004, when measured against the normal costs of the system the rates are

discounted more than 34 percent. The revised rates, when approved by the Governor, will be transmitted electronically to the member employers. As part of the rate adjustment, the payroll contribution rates charged to the Institute of Food and Agricultural Sciences at the University of Florida are amended to align its costs with its specific actuarial experience. Finally, the information and education expenses charged by the State Board of Administration for participants in the Public Employees' Optional Retirement Program (PEORP) are reduced by one-third following the completion of the full cycle of its initial implementation and open enrollment.

The bill contains a number of other provisions related to the use of the benefit features of the FRS. Foremost among these is the reassessment of existing retirement provisions for addressing the attrition of instructional personnel in the public school K-12 grades. The act allows instructional personnel retirees from the FRS to be reemployed without the nominal one-year suspension of benefits after the first 31 days of termination of employment. It also permits instructional personnel participating in the Deferred Retirement Option Program to enjoy participation for an additional three years, beyond the initial five years. That additional increment of participation would be voluntary on the employee's part and subject to the concurrence of the employer.

The 2002 Legislature gave university personnel participating in their own optional annuity program outside of the FRS the same distribution options as in PEORP. In addition to a monthly annuity, the revisions permitted a full or partial roll-over to a successor tax-qualified plan or a full cash distribution. These provisions are extended by the act to community college personnel who are similarly situated in their own optional plan. It also permits the employees to transfer their plan assets to PEORP in the same fashion as university personnel.

If approved by the Governor, these provisions take effect July 1, 2003, except as otherwise provided.

Vote: Senate 38-0; House: 117-0

HB 1869 — Government Employment

by State Administration Committee and others (CS/SB 1528 by Governmental Oversight and Productivity Committee and Senator Wise)

This act places in general law provisions now contained in expiring appropriations act proviso language authorizing the development of a substantially changed state personnel infrastructure. Two acts of the legislature during the past two years significantly altered the methods and means of administrative services and personnel administration. The first of these, initially entitled *Service First*, changed the scope of civil service coverage while the second, *HR Outsourcing*, moved portions of the state agency administrative apparatus from direct to indirect administration. The effect of HB 1869 is to make the necessary nomenclature changes in the Florida Statutes to permit the changes to employee classification and pay to reflect the new

system and its revised labels as they appear throughout chapter 110 and other sections of the Florida Statutes. A central feature of the redeployed personnel infrastructure is the development of broad pay bands as the successor system to the narrow and department-specific classification actions undertaken by agencies.

The act also provides for the development of a negotiated procurement by the Department of Management Services for the examination of state agency service contracts.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 39-0; House 78-29

CS/SB 1992 — Medal of Heroism

by Governmental Oversight and Productivity Committee and Senators Argenziano, Crist, Miller, Fasano, and Atwater

This act creates an undesignated section of law that permits the Governor to award a Medal of Heroism to: (a) a law enforcement, correctional, or correctional probation officer; (b) a firefighter; (c) an emergency medical technician; or (d) a paramedic. In order to be eligible for the award, a person must have distinguished himself or herself conspicuously by gallantry and intrepidity; must have risked his or her life deliberately above and beyond the call of duty while performing duty in his or her respective position; and must have engaged in hazardous or perilous activities to preserve lives with the knowledge that such activities might result in great personal harm.

The act provides that a nomination for the medal must be made by written application to the Governor. The Governor may refer an application to any public or private entity for advice and recommendations regarding the application.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 117-0

HB 803 — Florida Jewish History Month

by Rep. Barreiro and others (SB 2412 by Senators Margolis, Klein, Geller, Wasserman Schultz, and Fasano)

This bill (Chapter 2003-7, L.O.F.) creates s. 683.195, F.S., to designate January of each year as “Florida Jewish History Month.” Further, the bill provides that the Governor may annually issue a proclamation designating the month of January as “Florida Jewish History Month,” and may call upon the citizens of the state to observe the occasion.

These provisions became law upon approval by the Governor on April 17, 2003.

Vote: Senate 39-0; House 114-0

OPEN GOVERNMENT SUNSET REVIEW

HB 1021 — Housing Assistance Program Public Records Exemption

by State Administration Committee and others (CS/SB 290 by Governmental Oversight and Productivity Committee)

This bill is the result of an Open Government Sunset Review of s. 119.07(3)(bb), F.S. That section makes medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance furnished to an agency pursuant to a federal, state, or local housing assistance program confidential and exempt. The bill continues the exemption, with amendments to clarify and narrow it, based upon a review conducted pursuant to the requirements of s. 119.15, F.S. Specifically, the bill amends the section to:

- Identify the state agencies that implement housing assistance programs.
- Remove references to bank account and credit card numbers as the general exemption in s. 119.07(3)(bb), F.S., applies and is more comprehensive.
- Eliminate telephone numbers from the exemption as they are readily available from other sources and, in the case of victims of domestic violence, other statutes provide protection for telephone numbers, as well as addresses.
- Remove language regarding the source of the information, i.e., an “individual” who furnishes information to an agency.
- Delete a provision that states that any other information that is received is subject to open government requirements because that provision reiterates the current state of the law and, as drafted, is confusing and unnecessary.

If approved by the Governor, these provisions take effect October 1, 2003.

Vote: Senate 38-0; House 114-0

HB 1591 — Employee Assistance Programs

by State Administration Committee and others (SB 288 by Governmental Oversight and Productivity Committee)

The State of Florida, like many other public and private employers, operates programs to assist employees who cope with the effects of alcohol, substance abuse, and other behavioral problems. These employee assistance programs give affected employees the professional assistance they

need and the hope of returning to the workplace, without the stigmatizing fear of producing a public record that could chill their participation and worsen their condition.

This act reauthorizes such programs, as required by the Open Government Sunset Review Act of 1995, as operated by agencies of the State of Florida and maintains as confidential and exempt the personal identifying information of a participating employee. The exemption is also saved from further periodic review unless the records exemption is expanded.

If approved by the Governor, these provisions take effect October 1, 2003.

Vote: Senate 38-0; House 112-0

AGENCY MANAGEMENT AND ADMINISTRATIVE PRACTICES

HB 365 — Direct and Citizen Support Organizations

by Rep. Ross and others (CS/SB 1036 by Appropriations Committee and Senators Dockery, Lynn, Posey, Sebesta, Jones, Argenziano, Constantine, and Alexander)

The bill amends the audit requirements established in s. 215.981, F.S., for direct-support organizations (DSOs) and citizen support organizations (CSOs). Specifically, the bill establishes an annual expenditure threshold of more than \$100,000 for non-educational DSOs and CSOs, excluding those of the Department of Environmental Protection, prior to requiring an annual financial audit of its accounts and records by an independent certified public accountant.

For those DSOs and CSOs of the Department of Environmental Protection, this bill establishes a \$300,000 annual expenditure threshold before an independent audit is required. The department is required to establish accounting and financial management guidelines and conduct reviews of those with expenditures below the threshold.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 39-0; House 115-0

CS/SB 1374 — Administrative Procedures

by Governmental Oversight and Productivity Committee and Senator Peaden

This bill amends s. 120.551, F.S., which was enacted during the 2001 Legislative Session (Chapter 2001-278, L.O.F.) to authorize the Department of Environmental Protection (DEP) to establish a pilot project to determine the cost effectiveness of publishing administrative notices on the Internet, rather than in the Florida Administrative Weekly (FAW). This project began on December 31, 2001, and is scheduled to end under current law on July 1, 2003. A report, submitted by the DEP to the Legislature in January 2003, indicated that the project had been well

received by the public and had resulted in annually saving the DEP \$32,100 in FAW publication line charges.

This bill extends the DEP's authority to publish administrative notices on the Internet and also provides that the Board of Trustees for the Internal Improvement Trust Fund, which is staffed by the DEP, may likewise publish administrative notices on the Internet. The bill requires that the Internet website be: (a) centralized; (b) established and maintained by the DEP; and (c) provided to the public without charge. Further, the website must allow the public to: (a) search for notices by type, publication date, program area, or rule number; (b) search a permanent database that archives all notices published on the website; and (c) subscribe to an automated e-mail notification of selected notice types. Notices published on the website must clearly state the date the notice was first published and may only be published on the same days as the FAW is published.

The authority for the DEP and the board to publish on the Internet is repealed on July 1, 2004, unless the Legislature reviews and reenacts s. 120.551, F.S., before that date.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 37-0; House 106-11

CS/CS/SB 1584 — Administrative Procedures

by Judiciary Committee; Governmental Oversight and Productivity Committee; and Senators Aronberg and Bullard

This bill amends numerous provisions of ch. 120, F.S., entitled the Administrative Procedure Act, relating to definitions, procedural and evidentiary matters, administrative and appellate review, unadopted rule challenges, licensing, and attorney's fees and costs awards.

Definitions: The bill amends ss. 120.52(8)(e) and 120.57(1)(e)1.d., F.S., to provide that a rule is "arbitrary" if it is not supported by logic or the necessary facts, and that a rule is "capricious" if it is "adopted without thought or reason or is irrational." These changes define the terms in a manner consistent with case law.

Procedural matters: The bill amends s. 120.54(5)(b)4., F.S., to provide that petitions for administrative hearings must include a statement explaining how the facts of a case relate to the rules or statutes alleged in the petition to require reversal or modification of an agency's proposed action.

The bill amends s. 120.569(2), F.S., to require an administrative law judge, when requested by any party, to enter an initial scheduling order that includes discovery and joint report deadlines.

The bill amends s. 120.57(1)(i), F.S., to require, rather than permit as is provided in current law, an administrative law judge to relinquish jurisdiction to an agency when it is determined by the administrative law judge that no genuine issue as to any material fact exists.

Finally, the bill amends s. 120.57(1)(k), F.S., to provide that an agency need not rule on exceptions to a recommended order if the exception does not: (1) clearly identify the disputed portion of the recommended order by page number or paragraph; (2) identify the legal basis for the exception; or (3) include appropriate and specific citations to the record.

Burdens of proof: The bill amends s. 120.56(1)(e), F.S., to specify that the standard of proof to be used in a rule challenge hearing is a preponderance of the evidence. Further, the bill provides in s. 120.56(3), F.S., that a petitioner, who challenges the validity of an existing rule, has the burden to prove by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority.

Administrative and appellate review: The bill amends ss. 120.52(8)(f), 120.56(1)(e), and 120.57(1)(e)1., F.S., to provide that an administrative law judge's review of a petition challenging a proposed or existing rule is de novo, rather than "competent and substantial evidence," as is currently provided by case law. "Competent and substantial evidence" remains the appellate court's standard of review, under the bill, for appeals of administrative final orders in rule challenges. Further, the bill clarifies in s. 120.68, F.S., that an agency's findings of immediate danger, necessity, and procedural fairness in justification of an emergency rule are subject to appellate review. This clarification is repetitive of existing s. 120.54(4)(a)3., F.S.

Unadopted rule challenges: The bill amends s. 120.56(4)(e), F.S., to create new time frames and legal impacts for agency responses in challenges alleging that an agency statement is an unadopted rule. Under the bill, if an agency, prior to the final hearing on the unadopted rule challenge, publishes: (1) a notice of rule development, then a stay of the proceedings may be granted for 30 days during which time the agency may publish proposed rules; or (2) a proposed rule addressing the statement, then a presumption is created that the agency is acting expeditiously and in good faith to adopt rules and the agency may rely on the statement as a basis for agency action. Further, the bill clarifies in s. 120.56(4)(e)5., F.S., that an agency may not continue to rely on a statement underlying an unadopted rule challenge when the statement has been found to be an invalid exercise of delegated legislative authority pursuant to s. 120.52(8), F.S.

Licensing: The bill amends s. 120.60, F.S., to provide that if an agency fails to approve or deny a license within the time frame specified in the section that the application is "considered approved" and the license must be issued, unless a recommended order recommends denial of the license. Further, if an examination is a prerequisite to licensure, the bill provides that issuance of the license is subject to satisfactory completion of that examination.

Attorney's fee awards: The bill amends s. 120.595(1), F.S., which requires an award of costs and attorney's fees where a non-prevailing party has participated in a s. 120.57(1), F.S., proceeding for an "improper purpose." The definition of this term is expanded by the bill to include needlessly increasing the cost of litigation. The bill also eliminates the subsection's reference to s. 120.569(2)(e), F.S., in defining "improper purpose," so that filing pleadings for an improper purpose is not a condition precedent to an award of attorney's fees under the section.

Further, the bill amends ss. 120.595(6) and 57.105(5), F.S., to provide that attorney's fee awards available pursuant to s. 57.105, F.S., for frivolous actions apply in administrative proceedings. Case law currently holds that such attorney's fee awards are only applicable to judicial proceedings.

Finally, the bill amends s. 57.111, F.S., to increase the attorney's fee awards available under the section in judicial and administrative proceedings to prevailing small business parties in state initiated actions from a maximum of \$15,000 to a maximum of \$50,000.

If approved by the Governor, these provisions take effect upon becoming a law.

Vote: Senate 40-0; House 115-0

HB 1609 — State Planning and Budgeting

by Rep. Quinones and others (SB 1808 by Senator Posey)

This act requires each agency of the executive branch and the judicial branch to provide an annual one-page summary of its preceding budget year's financial data. Among the additional data reporting elements are total funds appropriated from all sources, performance incentives and disincentives, and expenditures and costs aggregated by unit cost as well as activity level. The submission date is changed to be identical with that established in the annual budget instructions.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 39-0; House 116-0

HB 315 — Florida Institute of Human and Machine Cognition

by Rep. Benson and others (CS/CS/CS/SB 2328 by Finance and Taxation Committee; Comprehensive Planning Committee; Commerce, Economic Opportunities, and Consumer Services Committee; and Senators Saunders, Miller, and Siplin)

The Institute of Human and Machine Cognition (Institute) is currently an interdisciplinary research unit of the University of West Florida (UWF). The Institute investigates a broad range of topics related to understanding cognition in both humans and machines, with an emphasis on building computational tools to leverage and amplify human cognitive and perceptual capacities. The Institute, which currently has a staff of over 100 people, was established in 1990 as an interdisciplinary research unit of the UWF. While it was originally housed on the campus of

UWF, it is now located primarily in downtown Pensacola, Florida in two leased buildings (one of which is owned by UWF, and one of which is owned by a private party). It also has a small office at NASA ARC in Mountain View, California, which is operated on leased property. Furnishings, equipment, and other personal property used in the operation of the Institute are generally owned by UWF. The Institute currently receives annual funding from the state.

The bill establishes the Florida Institute of Human and Machine Cognition in law as a not-for-profit corporation. The Institute is designated as an instrumentality of the state for purposes of sovereign immunity, but it is not an agency as that term is defined in s. 20.03(11), F.S. The Institute is subject to open meetings and records requirements.

The affairs of the Institute are managed by a board of directors who serve without compensation. The board consists of the chair of the Board of Governors, the chair of the Board of Trustees of the UWF, the President of the UWF, three state university representatives, and nine public representatives. The board is required to employ a chief executive officer to administer the affairs of the Institute.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 114-0

PUBLIC RECORDS/CONFIDENTIALITY

CS/SB 192 — Public Library Records

by Governmental Oversight and Productivity Committee and Senator Lynn

Section 257.261, F.S., makes library registration records and circulation records confidential and exempt from the requirements of s. 24, Art. I, State Constitution, except in accordance with a proper judicial order. That section defines “library registration records” to mean “...any information that a library requires a patron to provide in order to become eligible to borrow books and other materials...” Section 257.261, F.S., defines “circulation records” to include “...all information that identifies the patrons who borrow particular books and other materials.”

Statistical reports of registration and circulation are expressly excluded from the exemption.

Under the exemption, library registration records and circulation records may be made available to any business, municipal or county law enforcement officials, or to judicial officials for the purpose of “...recovering overdue books, documents, films, or other items or materials owned or otherwise belonging to the library.” Further, those officials are permitted access to the records for the purpose of “...collecting fines or overdue books, documents, films, or other items of materials.” If a patron is under the age of 16, confidential information can be released “...relating to the minor’s parent or guardian.” According to the Department of State (DOS),

s. 257.261, F.S., is interpreted differently among local communities. The DOS states that currently some libraries allow parental access to their children's records and some prohibit this access.

The committee substitute maintains exceptions to the exemption, but revises the statutory language in order to clarify the exceptions. Further, subsections and paragraphs are added to the section, like-concepts are grouped together, redundant provisions are removed, and extraneous words are eliminated.

The committee substitute clarifies that a parent or guardian of a child under the age of 16 can be granted access to that child's registration or circulation records for the purpose of recovering overdue books or collecting fines. The committee substitute does not, however, grant a parent or guardian access to his or her child's library records for the purpose of monitoring or discovering what books that child checks out at the library. The committee substitute also clarifies that a patron may have access to his or her exempt information.

The committee substitute does not expand the exemption to public records requirements and, therefore, does not create a new exemption.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 38-0; House 115-1