

CHAPTER 2012-215

Committee Substitute for Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 1261

An act relating to state employment; amending s. 110.105, F.S.; revising the employment policy of the state system of personnel management; amending s. 110.1127, F.S.; revising provisions relating to employee background screening; amending s. 110.119, F.S.; revising provisions relating to administrative leave for a service-connected disability; amending s. 110.1225, F.S.; revising provisions relating to agency furloughs; amending s. 110.126, F.S.; revising provisions relating to the authority of the Department of Management Services to administer oaths; amending s. 110.131, F.S.; revising the duties of state agencies with respect to the employment of other-personal-services employees; providing reporting requirements; amending s. 110.1315, F.S.; requiring the Department of Financial Services to provide an alternative retirement income security program for eligible temporary and seasonal employees; authorizing the department to adopt rules; amending s. 110.171, F.S.; revising provisions relating to state employee telecommuting; providing for a telework program; providing program requirements for agencies and employees; amending s. 110.181, F.S.; revising provisions relating to the Florida State Employees' Charitable Campaign; requiring state officers and employees to designate a charitable organization to receive certain charitable contributions; revising purposes for the establishment of local steering committees; deleting provisions relating to the distribution of funds; amending s. 110.2035, F.S.; revising provisions relating to pay additives; amending s. 110.205, F.S.; deleting a provision authorizing the carrying forward of unused compensatory leave by certain employees; amending s. 110.217, F.S.; revising provisions relating to a change in an employee's position status; amending s. 110.227, F.S.; deleting requirements for an agency that removes from a promotional position a career service employee who is serving a probationary period in such position to return such employee to the employee's former position or a comparable position, if such a position is vacant; amending ss. 255.249,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 110.105, Florida Statutes, is amended to read:

110.105 Employment policy of the state.—

(1) It is the purpose of this chapter to establish a System of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary

administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.

(2) It is the policy of the state:

(a) That all appointments, terminations, assignments, and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, color, religion, national origin, political affiliation, marital status, or disability, unless handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration.

(b) To support employees in balancing their personal needs and work responsibilities. This policy is designed to enhance the employee's ability to blend the competing demands of work and personal life and produce a more skilled, accountable, and committed workforce for the system. Provisions may include, but need not be limited to, flexible work schedules, telework, part-time employment, and leaves of absence with or without pay.

(3) Except as expressly provided by law, Florida residency is not required there shall be no Florida residence requirement for any person as a condition precedent to employment by the state; however, preference in hiring may be given to state Florida residents in hiring.

(4) This chapter contains the requirements and guides for establishing and maintaining a system of personnel management administration on a merit basis. The system of personnel management administration shall be implemented so as to ensure that the permit state agencies participating in the system are to be eligible for to receive federal funds.

(5) Nothing in This chapter may not shall be construed either to infringe upon or to supersede the rights guaranteed public employees under chapter 447.

Section 2. Section 110.1127, Florida Statutes, is amended to read:

110.1127 Employee background screening and investigations security checks.—

(1) Except as provided in subsection (2), each agency shall designate those positions that, based on the position duties, require background screening. All persons and employees in such positions must undergo employment screening in accordance with chapter 435, using level 1 screening standards, as a condition of employment and continued employment.

(2)(a)(1) Each employing agency shall designate those employee positions that, because of the special trust or responsibility or sensitive location, require security background investigations. All persons and employees in such positions must undergo employment screening in accordance with

chapter 435, using level 2 screening standards of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment and continued employment.

~~(b)(2)(a)~~ All positions within the Division of Treasury of the Department of Financial Services are deemed to be positions of special trust or responsibility. Individuals seeking or holding such positions, and a person may be disqualified for employment ~~in any such position~~ by reason of:

1. The conviction or prior conviction of a crime that ~~which~~ is reasonably related to the nature of the position sought or held by the individual; or

2. The entering of a plea of nolo contendere, or, when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that ~~which~~ is reasonably related to the nature of the position sought or held by the individual.

~~(b)~~ All employees of the division shall be required to undergo security background investigations, including fingerprinting, as a condition of employment and continued employment.

~~(c)1.(3)(a)~~ All positions in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records are deemed to be persons and positions of special trust or responsibility, and require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter.

~~2.(b)~~ The employing agency may grant exemptions from disqualification from working with children, the developmentally disabled, or vulnerable adults as provided in s. 435.07.

~~(c)~~ All persons and employees in such positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

(d) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications for a position of special trust;

2. Use ~~records~~ information contained in records for purposes other than background screening or investigation for employment, or release such

records information to other persons for purposes other than preemployment screening or investigation for employment.

(e) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use juvenile records information for any purposes other than those specified in this section or to release such information to other persons for purposes other than those specified in this section.

~~(3)~~(4) Any person who is required to undergo such a security background screening or investigation and who refuses to cooperate in such screening or investigation or refuses to submit fingerprints shall be disqualified for employment in such position or, if employed, shall be dismissed.

~~(4)~~(5) ~~Such Background screening and investigations shall be conducted at the expense of the employing agency. If When fingerprinting is required, the fingerprints of the employee or applicant for employment shall be taken by the employing agency, a law enforcement agency, or a vendor as authorized pursuant to s. 435.04, or by an authorized law enforcement officer and submitted to the Department of Law Enforcement for state processing, and forwarded by the Department of Law Enforcement forward-ing, when requested by the employing agency, to the Federal Bureau of Investigation United States Department of Justice for national processing. The employing agency or vendor shall remit the processing fees required by s. 943.053 to reimburse the Department of Law Enforcement for any costs incurred by it in the processing of the fingerprints.~~

Section 3. Subsection (1) of section 110.119, Florida Statutes, is amended to read:

110.119 Administrative leave for ~~military-service-connected~~ reexamination or treatment with respect to service-connected disability.—

(1) ~~An~~ Any employee of the state who has been rated by the United States Department of Veterans Affairs or its predecessor to have incurred a ~~military-service-connected~~ service-connected disability and has been scheduled by the United States Department of Veterans Affairs to be reexamined or treated for the disability shall be granted administrative leave for such reexamination or treatment without loss of pay or benefits. ~~However, such~~ In no event shall the paid leave may not under this section exceed 48 hours per 6 calendar days a year.

Section 4. Section 110.1225, Florida Statutes, is amended to read:

110.1225 Furloughs.—When a deficit is certified or projected by the Revenue Estimating Conference pursuant to s. 216.136(3), in any fund that supports salary and benefit appropriations, the Governor or the Chief Justice of the Supreme Court, as appropriate, Administration Commission may propose a furlough plan for consideration by the Legislative Budget Commission to the Legislature, which must approve or disapprove such

plan. The plan must identify all affected positions and ensure that all affected employees are subject to the same reduction of hours for the same number of pay periods with a commensurate reduction in pay.

Section 5. Section 110.126, Florida Statutes, is amended to read:

110.126 Oaths, testimony, records; penalties.—The department may ~~shall have power to~~ administer oaths, subpoena witnesses, and compel the production of books, and papers, or other records, in written or electronic form, relevant ~~pertinent~~ to any investigation of personnel practices or hearing authorized by this chapter. Any person who fails ~~shall fail to~~ appear in response to a subpoena or to answer any question or produce any books, or papers, or other records relevant ~~pertinent~~ to any such investigation or hearing or who shall knowingly gives ~~give~~ false testimony commits therein ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Section 110.131, Florida Statutes, is amended to read:

110.131 Other-personal-services temporary employment.—

(1) As used in this section, the term “agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government and means 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.

(2) An agency may employ any qualified individual in other-personal-services ~~temporary~~ employment for ~~1,040 hours within any 12-month period.~~ For each other-personal-services employee, the agency shall:

(a) 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.

(b) Determine the appropriate rate of pay and ensure that all payments are in compliance with the federal Fair Labor Standards Act and state law.

(c) ~~Review, determine, and document by June 30 of each year whether the continuation of each other-personal-services employment position is necessary to the mission of the agency. This review process An extension beyond a total of 1,040 hours within an agency for any individual requires a recommendation by the agency head and approval by the Executive Office of the Governor. Approval of extensions shall be made in accordance with criteria established by the department. Each agency shall maintain employee information as specified by the department regarding each extension of other-personal-services temporary employment. The time limitation established by this subsection 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.

(3) Unless specifically provided by law, 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) Beginning August 15, 2012, and each August 15 thereafter, each agency employing an individual in other-personal-services employment shall submit a report to the Executive Office of the Governor and to the chairs of the legislative appropriations committees containing the following information for the previous fiscal year ending June 30, 2012, and each June 30 thereafter:

(a) The total number of individuals serving in other-personal-services employment.

(b) The type of employment, average pay, and total number of hours worked for each individual serving in other-personal-services employment.

~~(3) The department shall adopt rules providing that other-personal-services temporary employment in an employer-employee relationship shall be used for short-term tasks. Such rules shall specify the employment categories, terms, conditions, rate of pay, and frequency of other-personal-services temporary employment and the duration for which such employment may last; specify criteria for approving extensions beyond the time limitation provided in subsection (2); and prescribe recordkeeping and reporting requirements for other-personal-services employment.~~

~~(4) The department shall prepare written material explaining the terms and conditions of other-personal-services employment and shall provide master copies to each agency. Each agency shall provide each of its applicants for such employment with a copy thereof at the time of application and shall discuss the information contained thereon with each applicant at the time of interview or employment commencement, whichever occurs sooner.~~

~~(5) The department shall maintain information relating to other-personal-services employment for each agency. Such information shall include:~~

~~(a) The total amount of compensation for other-personal-services personnel, by employment category, for the preceding fiscal year.~~

~~(b) The name, social security number, employment category, employment commencement date, and number of hours worked for each individual whose initial other personal services temporary employment began before the start of the preceding fiscal year and who was still employed as an other personal services temporary employee at the end of the preceding fiscal year.~~

~~(6)(a) The provisions of subsections (2), (3), and (4) do not apply to any employee for whom the Board of Governors of the State University System, or the board's designee, or the Board of Trustees of the Florida School for the Deaf and the Blind is the employer as defined in s. 447.203(2); except that, for purposes of subsection (5), the Board of Trustees of the Florida School for the Deaf and the Blind shall comply with the recordkeeping and reporting requirements adopted by the department pursuant to subsection (3) with respect to those other personal services employees exempted by this subsection.~~

~~(b) The provisions of subsections (2), (3), and (4) do not apply to any employee of the Division of Blind Services Library for the Blind and Physically Handicapped for whom the Division of Blind Services is the employer as defined in s. 447.203(2); except that, for purposes of subsection (5), the Division of Blind Services shall comply with the recordkeeping and reporting requirements adopted by the department pursuant to subsection (3) with respect to those other personal services employees exempted by this subsection.~~

~~(c) Notwithstanding the provisions of this section, the agency head or his or her designee may extend the other personal services employment of a health care practitioner licensed pursuant to chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, part I of chapter 464, chapter 466, chapter 468, chapter 483, chapter 486, or chapter 490 beyond 2,080 hours and may employ such practitioner on an hourly or other basis.~~

~~(7) The Department of Management Services shall annually assess agencies for the regulation of other personal services on a pro rata share basis not to exceed an amount as provided in the General Appropriations Act.~~

Section 7. Section 110.1315, Florida Statutes, is amended to read:

110.1315 Alternative retirement benefits; other personal services employees.—

(1) Upon review and recommendation of the department and approval by ~~of the~~ Executive Office of the ~~the~~ Governor, the Department of Financial Services shall provide ~~may contract for the implementation of~~ an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The Department of Financial Services may contract with ~~may provide for~~ a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits

as required under s. 3121(b)(7)(F) of the Internal Revenue Code. The Department of Financial Services may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. A vendor shall be selected on the basis of the plan that best serves the interest of the participating employees and the state. The proposal must comply with all necessary federal and state laws and rules.

(2) The Department of Financial Services may adopt rules necessary to administer this section.

Section 8. Section 110.171, Florida Statutes, is amended to read:

110.171 State employee telework telecommuting program.—

(1) As used in this section, the term:

(a) “Agency” means any official, officer, commission, board, authority, council, committee, or department of state government.

(b) “Department” means the Department of Management Services.

(c) “Telework” “Telecommuting” means a work arrangement that allows a whereby selected state employee employees are allowed to conduct all or some of his or her work away from the official worksite during all or a portion of the state employee’s established work hours on a regular basis. The term does not include, and a telework agreement is not required for:

1. Performance of required work duties away from the official worksite and outside of established work hours on an occasional basis and sporadically working away from the official worksite during all or some portion of the established work hours. These arrangements may be used by an agency to accommodate extenuating circumstances by allowing an employee to maintain productivity away from the official worksite.

2. Duties and responsibilities that, by their nature, are performed routinely in the field away from the official worksite perform the normal duties and responsibilities of their positions, through the use of computers or telecommunications, at home or another place apart from the employees’ usual place of work.

(2) An agency may establish telework as an integral part of the normal business operations of the agency and require that specific work be performed through telework arrangements. Telework may also be used as part of an agency’s continuity of operations plan where appropriate. An agency shall provide telework as an optional alternative work arrangement to support employee needs and implement telework arrangements where deemed appropriate.

(3) Each agency shall review all established positions and designate those positions that the agency deems appropriate for telework. The agency shall ensure that this information is current and available to its employees

and managers. In addition, each agency shall identify all currently participating employees and their respective positions in the human resource information system used by that agency.

(4) Agencies that have a telework program shall develop an agency plan that addresses the agency's telework policies and procedures. At a minimum, an agency telework plan must:

(a) Establish criteria for evaluating the ability of employees to satisfactorily perform in a telework arrangement.

(b) Establish performance standards that ensure that teleworkers maintain satisfactory performance levels.

(c) Ensure that teleworkers are subject to the same rules and disciplinary actions as other employees.

(d) Establish the reasonable conditions that the agency plans to impose in order to ensure appropriate use and maintenance of any equipment issued by the agency.

(e) Establish a system for monitoring the productivity of teleworkers that ensures that the work output remains at a satisfactory level and that the duties and responsibilities of the position remain suitable for a telework arrangement.

(f) Establish the appropriate physical and electronic information security controls to be maintained by a teleworker at the telework site.

(g) Prohibit a teleworker from conducting face-to-face state business at his or her residence.

(5) At the discretion of the agency, if an employee is approved by the agency to use telework as an optional alternative work arrangement, the agency shall require a written agreement between the teleworker and the agency that specifies the terms and conditions of the telework arrangement and provides for the termination of an employee's participation in the program if the employee's continued participation is not in the best interest of the agency.

(6) Agencies that require certain employees to telework as a part of normal business operations shall:

(a) Include the requirement to telework and the associated terms and conditions as part of the position description, specifying the minimum amount of telework required.

(b) Provide at least 30 calendar days' written notice to affected employees of intent to impose or remove a requirement to telework.

(c) Provide at least 15 calendar days' written notice to affected employees of intent to revise the terms and conditions of the current telework arrangement.

(d) Provide equipment and supplies to an employee necessary to carry out job functions from the telework site.

(e) Specify the telework requirement in any recruitment activities.

(7) Agencies that have a telework program shall establish and track performance measures that support telework program analysis and report data annually to the department in accordance with s. 255.249(3)(d). Such measures must include, but need not be limited to, those that quantify financial impacts associated with changes in office space requirements resulting from the telework program. Agencies operating in office space owned or managed by the department shall consult the department to ensure consistency with the strategic leasing plan required under s. 255.249(3)(b).

~~(2) The department shall:~~

~~(a) Establish and coordinate the state employee telecommuting program and administer this section.~~

~~(b) Appoint a statewide telecommuting coordinator to provide technical assistance to state agencies and to promote telecommuting in state government.~~

~~(c) Identify state employees who are participating in a telecommuting program and their job classifications through the state personnel payroll information subsystem created under s. 110.116.~~

~~(3) By September 30, 2009, each state agency shall identify and maintain a current listing of the job classifications and positions that the agency considers appropriate for telecommuting. Agencies that adopt a state employee telecommuting program must:~~

~~(a) Give equal consideration to career service and exempt positions in their selection of employees to participate in the telecommuting program.~~

~~(b) Provide that an employee's participation in a telecommuting program will not adversely affect eligibility for advancement or any other employment rights or benefits.~~

~~(c) Provide that participation by an employee in a telecommuting program is voluntary, and that the employee may elect to cease to participate in a telecommuting program at any time.~~

~~(d) Adopt provisions to allow for the termination of an employee's participation in the program if the employee's continued participation would not be in the best interests of the agency.~~

~~(e) Provide that an employee is not currently under a performance improvement plan in order to participate in the program.~~

~~(f) Ensure that employees participating in the program are subject to the same rules regarding attendance, leave, performance reviews, and separation action as are other employees.~~

~~(g) Establish the reasonable conditions that the agency plans to impose in order to ensure the appropriate use and maintenance of any equipment or items provided for use at a participating employee's home or other place apart from the employee's usual place of work, including the installation and maintenance of any telephone equipment and ongoing communications costs at the telecommuting site which is to be used for official use only.~~

~~(h) Prohibit state maintenance of an employee's personal equipment used in telecommuting, including any liability for personal equipment and costs for personal utility expenses associated with telecommuting.~~

~~(i) Describe the security controls that the agency considers appropriate.~~

~~(j) Provide that employees are covered by workers' compensation under chapter 440, when performing official duties at an alternate worksite, such as the home.~~

~~(k) Prohibit employees engaged in a telecommuting program from conducting face-to-face state business at the homesite.~~

~~(l) Require a written agreement that specifies the terms and conditions of telecommuting, which includes verification by the employee that the home office provides work space that is free of safety and fire hazards, together with an agreement which holds the state harmless against any and all claims, excluding workers' compensation claims, resulting from an employee working in the home office, and which must be signed and agreed to by the telecommuter and the supervisor.~~

~~(m) Provide measurable financial benefits associated with reduced office space requirements, reductions in energy consumption, and reductions in associated emissions of greenhouse gases resulting from telecommuting. State agencies operating in office space owned or managed by the department shall consult the facilities program to ensure its consistency with the strategic leasing plan required under s. 255.249(3)(b).~~

(8)(4) Agencies that have a telework ~~The telecommuting program for each state agency and pertinent supporting documents shall post the agency telework plan and any pertinent supporting documents be posted on the agency's Internet website to allow access by employees and the public.~~

(9) Agencies may approve other-personal-services employees to participate in telework programs.

Section 9. Paragraph (b) of subsection (1) and paragraphs (d) and (e) of subsection (2) of section 110.181, Florida Statutes, are amended to read:

110.181 Florida State Employees' Charitable Campaign.—

(1) CREATION AND ORGANIZATION OF CAMPAIGN.—

(b) State officers' and employees' contributions toward the Florida State Employees' Charitable Campaign must be entirely voluntary. State officers and employees must designate a charitable organization to receive such contributions.

(2) SELECTION OF FISCAL AGENTS; COST.—

(d) A local steering committee shall be established in each fiscal agent area to assist in conducting the campaign ~~and to direct the distribution of undesignated funds remaining after partial distribution pursuant to paragraph (e).~~ The committee shall be composed of state employees selected by the fiscal agent from among recommendations provided by interested participating organizations, if any, and approved by the Statewide Steering Committee.

~~(e) Participating charitable organizations that provide direct services in a local fiscal agent's area shall receive the same percentage of undesignated funds as the percentage of designated funds they receive. The undesignated funds remaining following allocation to these charitable organizations shall be distributed by the local steering committee.~~

Section 10. Subsection (6) of section 110.2035, Florida Statutes, is amended, and subsections (7) and (8) are added to that section, to read:

110.2035 Classification and compensation program.—

(6) The department shall establish and maintain an equitable pay plan applicable to all occupations and shall be responsible for the overall review, coordination, and administration of the pay plan.

(a) The department shall provide for broad, market-based pay bands for occupations and shall establish guidelines for the employing agencies to move employees through these pay bands. The employing agencies may determine the appropriate salary within the pay bands and guidelines adopted by the department. Such pay bands, and the assignment of broadband levels to positions, are ~~shall not constitute~~ rules within the meaning of s. 120.52.

(b) The department, in consultation with the Executive Office of the Governor and the legislative appropriations committees, shall conduct wage and salary surveys as necessary for the purpose of achieving the goal of an equitable, competitive, market-based pay policy.

(7)(e) The department shall establish rules for the administration of pay additives, by rule, guidelines with respect to, and shall delegate to the employing agencies, if where appropriate, the authority to implement pay additives. The agency shall use pay additives, as appropriate, within the guidelines established by the department and consistent with directions contained in the General Appropriations Act. administer

(a) The following pay additives are authorized:

1. Shift differentials.
2. On call ~~On-call fees.~~
3. Hazardous duties ~~Hazardous-duty pay.~~
- ~~4. Salary increase and decrease corrections.~~
- ~~4.5. Lead-worker duties~~ Lead-worker pay.
- ~~5.6. Temporary special duties – general pay.~~
6. Temporary special duties – absent coworker.
7. Trainer duties ~~Trainer-additive pay.~~
8. Competitive area differentials.
9. Critical market pay.

(b) Each state agency shall include in its annual legislative budget request a proposed written plan for implementing temporary special duties – general pay additives during the next fiscal year. Proposed revisions to an approved plan which become necessary during the fiscal year must be submitted by the agency to the department for review and recommendation to the Executive Office of the Governor. Such revisions may be implemented only after approval by the Executive Office of the Governor. A proposed revision is an action that is subject to s. 216.177.

(c) A new competitive area differential or a new critical market pay additive may not be implemented unless the department has reviewed and recommended such action and the Legislature has provided express authority to implement such action. This applies to an increase in the level of competitive area differentials or critical market pay additives, and to the initial establishment and implementation of a competitive area differential or critical market pay additive not in effect as of January 1, 2012.

(d) An agency may implement shift differential additives, on-call additives, hazardous duty additives, lead-worker additives, temporary special duty – absent coworker additives, and trainer duty additives as necessary to accomplish the agency's mission and in accordance with department rules, instructions contained in the General Appropriations Act, and applicable collective bargaining agreements.

(e) The department shall annually provide to the Executive Office of the Governor and the Legislature a summary report of the pay additives implemented pursuant to this section.

(8) An agency may implement salary increase and decrease corrections due to administrative errors.

~~The employing agency must use such pay additives as are appropriate within the guidelines established by the department and consistent with the directions of the Legislature contained in the General Appropriations Act. The employing agency shall advise the department, the Executive Office of the Governor, and the Legislature in writing of the plan for implementing such pay additives prior to the implementation date. An agency may not implement any pay additive to a cohort of positions sharing job classifications or job occupations unless the Legislature has specifically authorized such pay additives and such pay additives do not conflict with any collective bargaining agreement for that specific cohort of positions. Any action by an employing agency to implement temporary special duties pay, competitive area differentials, or critical market pay may be implemented only after the department has reviewed and recommended such action; however, an employing agency may use temporary special duties pay for up to 3 months without prior review by the department. The department shall annually provide to the Executive Office of the Governor and the Legislature a summary report of the pay additives implemented pursuant to this section.~~

Section 11. Subsection (7) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

~~(7) CARRYING LEAVE FORWARD.—If an employee is transferred or otherwise moves from the Career Service System into the Selected Exempt Service, all of the employee's unused annual leave and, unused sick leave, and unused compensatory leave shall carry forward with the employee.~~

Section 12. Section 110.217, Florida Statutes, is amended to read:

110.217 Appointment actions and status ~~Appointments and promotion.~~

~~(1)(a) The department, in consultation with agencies that must comply with these rules, shall develop uniform rules regarding original appointment, promotion, demotion, reassignment, lateral action, separation, and status that which must be used by state employing agencies. Such rules must be approved by the Administration Commission before their adoption by the department.~~

(2) An employee appointed on probationary status shall attain permanent status in his or her current position upon successful completion of at least a 1-year probationary period. The length of the probationary period may not exceed 18 months. An employee who has not attained permanent

status in his or her current position serves at the pleasure of the agency head and may be dismissed at the discretion of the agency head.

(3) If an employee who has received an internal agency promotion from a position in which the employee held permanent status is to be dismissed from the promotional position for failure to meet the established performance standards of the promotional position while in probationary status, the agency, before dismissal, shall return the employee to his or her former position, or to a position with substantially similar duties and responsibilities as the former position, if such a position is vacant. Such determinations by an agency are not appealable, and this subsection does not apply to dismissals for any other reason.

~~(b) Employing agencies may seek exceptions to these uniform rules by filing a petition with the Administration Commission. The Administration Commission shall approve an exception when the exception is necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exception must be published in the Florida Administrative Weekly.~~

~~(c) Agency rules that provide exceptions to the uniform rules may not be filed with the Department of State unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules or that must comply with statutory requirements that conflict with the uniform rules must have a separate chapter published in the Florida Administrative Code that delineates clearly the provisions of the agency's rules which provide exceptions or are based upon a conflicting statutory requirement. Each alternative chosen from those authorized by the uniform rules must be specified. Each chapter must be organized in the same manner as the uniform rules.~~

~~(2) Each employing agency shall have the responsibility for the establishment and maintenance of rules and guidelines for determining eligibility of applicants for appointment to positions in the career service.~~

~~(3) Eligibility shall be based on possession of required minimum qualifications for the job class and any required entry-level knowledge, skills, and abilities, and any certification and licensure required for a particular position.~~

~~(4) The employing agency shall be responsible for developing an employee career advancement program which shall assure consideration of qualified permanent employees in the agency or career service who apply. However, such program shall also include provisions to bring persons into the career service through open competition. Promotion appointments shall be subject to postaudit by the department.~~

~~(5) The department shall adopt any rules necessary to implement the provisions of this section. The rules must be approved by a majority vote of the Administration Commission prior to their adoption by the department.~~

Section 13. Subsection (8) of section 110.227, Florida Statutes, is amended to read:

110.227 Suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances.—

~~(8) A career service employee who is serving a probationary period in a position to which he or she has been promoted may be removed from that promotional position at any time during the probationary period but must be returned to his or her former position, or a comparable position, if such a position is vacant. If such a position is not available, before dismissal, the agency shall make a reasonable effort to retain the employee in another vacant position. This subsection does not apply to terminations for cause as described in subsection (1), nor does it create a right to “bump” an employee from an occupied position as described in paragraph (2)(a).~~

Section 14. Paragraph (d) of subsection (3) of section 255.249, Florida Statutes, is amended to read:

255.249 Department of Management Services; responsibility; department rules.—

(3)

(d) By June 30 of each year, each state agency shall annually provide to the department all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, business case analyses related to consolidation plans by an agency, a telework telecommuting program, and current occupancy and relocation costs, inclusive of furnishings, fixtures and equipment, data, and communications.

Section 15. Section 402.3057, Florida Statutes, is amended to read:

402.3057 Persons not required to be reprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c) ~~110.1127(3)~~, 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), shall not be required to be reprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Section 16. Section 409.1757, Florida Statutes, is amended to read:

409.1757 Persons not required to be refingerprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, and teachers who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c) ~~110.1127(3)~~, 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Section 17. Subsection (9) of section 413.20, Florida Statutes, is amended to read:

413.20 Definitions.—As used in this part, the term:

(9) “Employment outcome” means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable, supported employment, or any other type of employment, including self-employment, telework ~~telecommuting~~, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Section 18. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the

defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. ~~110.1127(2)(c)~~ 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 19. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified

in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(2)(c) ~~110.1127(3)~~, s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 20. This act shall take effect July 1, 2012.

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.