

CHAPTER 2011-143

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 88

An act relating to public employee compensation; amending s. 215.425, F.S.; revising provisions relating to the prohibition against the payment of extra compensation; authorizing the payment of bonuses and severance pay to officers, agents, employees, and contractors of a public hospital under certain circumstances; providing for bonuses; specifying the conditions for paying bonuses; requiring that contracts providing for severance pay under certain circumstances include specified provisions; providing an exception; defining the term “severance pay”; prohibiting certain contract provisions that provide for extra compensation to limit the ability to discuss the contract; amending s. 125.01, F.S.; deleting provisions relating to the power of a county to pay extra compensation; amending s. 166.021, F.S.; deleting a provision that allows a municipality to pay extra compensation; amending s. 112.061, F.S.; conforming cross-references; repealing s. 373.0795, F.S., relating to a prohibition against severance pay for officers or employees of water management districts; providing an effective date.

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

Section 1. Section 215.425, Florida Statutes, is amended to read:

215.425 Extra compensation claims prohibited; bonuses; severance pay.

(1) No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year.

(2) ~~The provisions of This section does~~ do not apply to:

(a) A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or a special district; or Extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services; to extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing

~~boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or to~~

(b) ~~A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49.~~

(3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

(a) Base the award of a bonus on work performance;

(b) Describe the performance standards and evaluation process by which a bonus will be awarded;

(c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and

(d) Consider all employees for the bonus.

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.

2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29), by the unit of government.

(b) On or after July 1, 2011, an officer, agent, employee, or contractor may receive severance pay that is not provided for in a contract or employment agreement if the severance pay represents the settlement of an employment dispute. Such severance pay may not exceed an amount greater than 6 weeks of compensation. The settlement may not include provisions that limit the ability of any party to the settlement to discuss the dispute or settlement.

(c) This subsection does not create an entitlement to severance pay in the absence of its authorization.

(d) As used in this subsection, the term “severance pay” means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

1. Earned and accrued annual, sick, compensatory, or administrative leave;

2. Early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112; or

3. Any subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is by policy available to all employees of the unit of government pursuant to the unit's health insurance plan. This subparagraph may not be construed to limit the ability of a unit of government to reduce or eliminate such subsidies.

(5) Any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.

Section 2. Paragraphs (cc) and (dd) of subsection (1) of section 125.01, Florida Statutes, are redesignated as paragraphs (bb) and (cc), respectively, and paragraph (bb) of that subsection is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

~~(bb) Notwithstanding the prohibition against extra compensation set forth in s. 215.425, provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.~~

Section 3. Present subsections (8) through (10) of section 166.021, Florida Statutes, are redesignated as subsections (7) through (9) respectively, and present subsection (7) of that section is amended, to read:

166.021 Powers.—

~~(7) Notwithstanding the prohibition against extra compensation set forth in s. 215.425, the governing body of a municipality may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.~~

Section 4. Paragraphs (a) and (c) of subsection (14) of section 112.061, Florida Statutes, are amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, SPECIAL DISTRICTS, AND METROPOLITAN PLANNING ORGANIZATIONS.—

(a) The following entities may establish rates that vary from the per diem rate provided in paragraph (6)(a), the subsistence rates provided in paragraph (6)(b), or the mileage rate provided in paragraph (7)(d) if those rates are not less than the statutorily established rates that are in effect for the 2005-2006 fiscal year:

1. The governing body of a county by the enactment of an ordinance or resolution;

2. A county constitutional officer, pursuant to s. 1(d), Art. VIII of the State Constitution, by the establishment of written policy;

3. The governing body of a district school board by the adoption of rules;

4. The governing body of a special district, as defined in s. 189.403(1), except those special districts that are subject to s. 166.021(9) ~~166.021(10)~~, by the enactment of a resolution; or

5. Any metropolitan planning organization created pursuant to s. 339.175 or any other separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, by the enactment of a resolution.

(c) Except as otherwise provided in this subsection, counties, county constitutional officers and entities governed by those officers, district school boards, special districts, and metropolitan planning organizations, other than those subject to s. 166.021(9) ~~166.021(10)~~, remain subject to the requirements of this section.

Section 5. Section 373.0795, Florida Statutes, is repealed.

Section 6. This act shall take effect July 1, 2011.

Approved by the Governor June 17, 2011.

Filed in Office Secretary of State June 17, 2011.