

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB KCOS 11-03 Florida College System institution

SPONSOR(S): K-20 Competitiveness Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|----------|------------|--|
| Orig. Comm.: K-20 Competitiveness Subcommittee | 8 Y, 4 N | Valenstein | Ahearn |

SUMMARY ANALYSIS

The bill discontinues the award of tenure, multi-year contracts, and continuing contracts for all personnel of Florida College System (FCS) institutions as of July 1, 2011, except for the president of the institution. The bill prohibits the renewal, extension, or re-adoption of such contracts in effect prior to July 1, 2011; however, the board of trustees of an FCS institution (FCS BOT) may award these personnel annual contracts.

As of July 1, 2011, all newly hired personnel by an FCS BOT must be classified as administrative, educational support, or instructional personnel, as these classifications are defined in the bill. Newly hired personnel must be awarded a probationary contract. During the term of a probationary contract, an FCS BOT may terminate the contract without cause or the employee may resign without breach of contract. Probationary contracts are awarded to all newly hired personnel, regardless of prior employment in another FCS institution or another state.

Upon successful completion of the one-year probationary contract, an FCS BOT may award the employee an annual contract. An annual contract may only be awarded if a president recommends and an FCS BOT approves the recommendation, in accordance with policies and procedures adopted by the institution.

An FCS BOT is also authorized to award annual contracts to personnel that have obtained permanent or classified status as of July 1, 2011, on their employment anniversary date.

Any FCS personnel may be dismissed at any time during the term of a contract based upon the recommendation of the president. The president's recommendation must be based upon just cause, the policies adopted by the FCS BOT, or both. The president must notify the employee in writing of the recommendation and the FCS BOT must provide the employee a hearing in accordance with policies and procedures established by the FCS BOT.

In addition, the bill specifies that a contract does not create an expectancy of employment beyond the term of the contract, nor does non-renewal of a contract entitle an employee to an explanation or statement of the reasons for non-renewal or a hearing.

The bill requires FCS institutions, when making workforce reductions, to retain employees based upon educational and programmatic needs and the performance of employees within the affected area. An FCS BOT is required to adopt a performance evaluation policy that sets forth the criteria and process for evaluating performance.

Additionally, the bill eliminates the specific eligibility for upper-division faculty at St. Petersburg College to receive tenure after their fifth year of teaching.

The bill repeals certain State Board of Education rules and FCS policies regarding tenure.

This bill does not have a fiscal impact.

This bill provides an effective date of July 1, 2011.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb03a.KCOS

DATE: 3/30/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Employees of Florida College System (FCS) institutions currently receive different types of employment contracts including, a probationary contract, an annual contract, a multi-year contract, or a continuing contract. In 2009-10, the FCS employed 51,662 people of which 10,925 employees were on contract. Of the contracted employees, 3,962 employees were on continuing contracts, while 5,552 employees were on annual contracts.¹ All employment contracts may be awarded by an FCS institution in accordance with the criteria established by the State Board of Education.²

Full-time FCS administrative personnel may receive a multi-year contract not to exceed three years. All other contracts provided to administrative personnel may not exceed 12 months.³ These contracts do not create an expectancy of employment beyond the term of the contract. Additionally, non-renewal of a contract does not entitle a person to the reasons for non-renewal or to a hearing.⁴

A continuing contract entitles a full-time faculty member to continue in a faculty position at the FCS institution without the necessity for annual nomination or reappointment until the employee resigns or the president recommends, and the board of trustees approves, the dismissal or the return to an annual contract for the employee. An FCS institution determines when a continuing contract is to be awarded to full-time faculty, in accordance with criteria established by the State Board of Education.⁵

In order to be eligible for a continuing contract, the faculty member must have completed three years of continuous service in the same college in a five year period and have received a recommendation for the contract by the president and approval by the board of trustees of the FCS institution (FCS BOT). The decision by the president and the FCS BOT must be based upon successful performance of duties and demonstration of professional competence.⁶ FCS institutions may also use other criteria in awarding continuing contracts, including educational qualifications, efficiency, compatibility, character and capacity to meet the educational needs of the community, and the length of time the duties and responsibilities of the position are expected to be needed. FCS institutions must provide the criteria used to award continuing contracts to faculty in writing.⁷

Additionally, upper-division faculty members at St. Petersburg College are specifically authorized to obtain "tenure" after their fifth year of teaching.⁸

"Tenure" is defined in a number of ways and is often used interchangeably with continuing contracts or other forms of long term contracts. Tenure allows employees to remain employed for life or until retirement; and, these employees may not be discharged except for cause.⁹ However, an employee with tenure may terminate employment by notifying the institution, yet the institution may not give notice to the employee that his or her services are no longer needed and expect that employee to release the institution from its employment obligations. In effect, the system of tenure is not a "two-way" street.

Florida law is silent as to requirements for workforce reductions made by FCS institutions.

¹ Email, Florida Department of Education Staff, March 28, 2011.

² Section 1012.83(1), F.S.; rules 6A-14.041 and 6A-14.0411, F.A.C.

³ Rule 6A-14.041(2), F.A.C.; *see also* s. 1012.83(1), F.S.

⁴ Rule 6A-14.041(3), F.A.C.

⁵ Rule 6A-14.0411, F.A.C.

⁶ Rule 6A-14.0411(1), F.A.C.

⁷ Rule 6A-14.0411(2), F.A.C.

⁸ Section 1007.33(4), F.S.

⁹ Black's Law Dictionary, 5th ed. (1979), at 1317.

Proposed Changes

The bill discontinues the award of tenure, multi-year contracts, and continuing contracts for all personnel of FCS institutions as of July 1, 2011, except for the president of the institution. The bill prohibits the renewal, extension, or re-adoption of such contracts in effect prior to July 1, 2011; however, an FCS BOT may award these personnel annual contracts. Typically, awards of tenure and continuing contracts do not expire, so the bill will not affect employees with these contracts because the contract does not need to be renewed, extended, or readopted.

As of July 1, 2011, all newly hired personnel by an FCS BOT must be classified as administrative, educational support, or instructional personnel and must first be awarded a probationary contract. During the term of a probationary contract, an FCS BOT may terminate the contract without cause or the employee may resign without breach of contract. An FCS BOT may not award a probationary contract more than once, unless the employee was rehired after an unauthorized break in service. Probationary contracts are awarded to all newly hired personnel, regardless of prior employment in another FCS institution or another state.

The bill defines administrative personnel to include those employees that perform management activities, such as developing broad policies for an FCS institution and executing those policies through the direction of personnel at all levels within the institution. Additional responsibilities of administrative personnel include developing, coordinating, and administering instructional and noninstructional activities of the institution. The definition of administrative personnel specifically excludes the president of the FCS institution appointed by the FCS BOT.

Educational support personnel are defined as employees hired as an education or administrative paraprofessional; a member of an operations, maintenance, or comparable department; or a secretary or clerical, or comparable level support employee.

The term instructional personnel is defined to include a teacher, faculty member, professor, or employee who provides direct instructional services to students and also includes employees who provide any direct support to students. Employees that provide direct support to students include, but are not limited to, those providing media services and technology resources, counselors, advisers, those performing educational evaluations or placement services or similar functions, instructional specialists, librarians, resource specialists, instructional trainers, and adjunct educators.

Upon successful completion of the one-year probationary contract, an FCS BOT may award the employee an annual contract. An annual contract may only be awarded if the president of the institution recommends employment to the FCS BOT based upon the employee's effective performance, educational and experiential qualifications, and capacity to meet the educational needs of the institution and the community. In addition, the FCS BOT must approve the recommendation of the president in accordance with the policies and procedures adopted by the institution.

An FCS BOT is authorized to award annual contracts to personnel that have obtained permanent or classified status as of July 1, 2011, on their employment anniversary date.

The bill provides that any employee under any type of contract may be dismissed at any time during the term of a contract based upon the recommendation of the president. The president's recommendation must be based upon just cause factors enumerated in s. 1012.335(5), as defined by the State Board of Education rule; the policies adopted by the FCS BOT; or both. Just cause includes immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, and being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude. The bill requires the president to notify the employee in writing of the recommendation and the FCS BOT must provide the employee a hearing in accordance with policies and procedures established by the FCS BOT.

In addition, the bill specifies that a contract does not create an expectancy of employment beyond the term of the contract, nor does non-renewal of a contract entitle an employee to an explanation or statement of the reasons for non-renewal or a hearing.¹⁰

The bill effectively ends the practice of “last hired, first fired” for FCS institutions. FCS institutions, when making workforce reductions, must retain employees based upon educational and programmatic needs and the performance of employees within the affected program areas. Specifically, employees with the lowest performance must be released before higher performing employees. The bill requires an FCS BOT to adopt a performance evaluation policy that sets forth the criteria and process for evaluating performance. The policy for evaluating performance must be readily available and accessible by all employees. The bill prohibits FCS institutions from prioritizing retention of employees based upon seniority or the type of contract an employee holds. These provisions provide institutions the flexibility needed to retain high performing employees and respond more efficiently and effectively to shifting programmatic and institutional needs.

Additionally, the bill eliminates the specific eligibility for upper-division faculty at St. Petersburg College to receive tenure after their fifth year of teaching. St. Petersburg College will be governed by the same laws that govern all other FCS institutions.

The bill also repeals all rules implementing the law being amended by the bill, specifically including rules 6A-14.041 and 6A-14.0411, F.A.C. Additionally, all policies adopted by an FCS BOT and all policies, practices, and procedures followed by an FCS institution which are contrary to or inconsistent with the bill are revoked and prohibited.

B. SECTION DIRECTORY:

Section 1. Amends s. 1007.33, F.S., to remove eligibility for certain faculty at St. Petersburg College to be awarded continuing contracts.

Section 2. Amends s. 1012.83, F.S., to authorize annual contracts based upon specified criteria.

Section 3. Amends s. 1012.855, F.S., to remove a reference to State Board of Education rules regarding tenure.

Section 4. Repeals certain State Board of Education rules and Florida College System polices, practices, and procedures.

Section 5. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁰ These requirements are currently found in Rule 6A-14.041, F.A.C.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.