Session Law 89-149

Florida Senate & House of Representatives

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S 390 GENERAL BILL/1ST ENG by Ros-Lehtinen and others (Similar H 1013)

Executive Agency/Affirmative Action; requires head of each executive agency to develop & implement affirmative action plan in accordance with rules approved by Administration Commission & adopted by D.O.A.; requires such agencies to establish annual goals & annually submit plan & goals to dept. for approval; requires each state attorney & public defender to develop & implement affirmative action plan, etc. Amends 110.112. Effective Date: 06/27/89.

03/09/89 SENATE Prefiled
03/24/89 SENATE Referred to Governmental Operations; Personnel, Retirement and Collective Bargaining; Appropriations

04/04/89 SENATE Introduced, referred to Governmental Operations; Personnel, Retirement and Collective Bargaining; Appropriations

04/14/89 SENATE On Committee agenda—Governmental Operations, 04/18/89, 3:45 pm, Room–H–(428); Extension of time granted Committee Governmental Operations

04/18/89 SENATE Comm. Report: Favorable by Governmental Operations—SJ 180

04/19/89 SENATE Now in Personnel, Retirement and Collective Bargaining—SJ 180

04/28/89 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining

05/01/89 SENATE On Committee agenda—Personnel, Retirement and Collective Bargaining, 05/03/89, 1:00 pm, Room—H–(428)

05/03/89 SENATE Comm. Report: Favorable by Personnel, Retirement and Collective Bargaining—SJ 256

05/04/89 SENATE Now in Appropriations—SJ 256

05/18/89 SENATE Extension of time granted Committee Appropriations

05/25/89 SENATE Withdrawn from Appropriations—SJ 457; Placed on Calendar

05/30/89 SENATE Placed on Special Order Calendar—SJ 560; Passed as amended; YEAS 39 NAYS 0—SJ 580

06/02/89 HOUSE In Messages

06/02/89 HOUSE Received, placed on Calendar—HJ 1129; Read second time; Read third time; Passed; YEAS 116 NAYS 0—HJ 1150

06/27/89 HOUSE Signed by Officers and presented to Governor

06/27/89 Approved by Governor; Chapter No. 89–149

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST STAFF DIRECTOR REFERENCE ACTION
1. Hosack Stengle 1. GO Favorable
2. Hanna Jones 2. PRCB Favorable
3. 3. AP Withdrawn
4. 4. 4. 4.

SUBJECT: BILL NO. AND SPONSOR:
State Employment; Affirmative Action Plans SB 390 by Senators Ros-Lehtinen, Meek, and Casas

I. SUMMARY:
A. Present Situation:

Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, prohibits discrimination on the basis of race, color, religion, sex, and national origin. The Florida Human Rights Act of 1977, which is contained in ch. 760, F.S., also prohibits such discrimination, as well as discrimination on the basis of age, marital status, and handicap, and provides remedies for unlawful discrimination in employment practices.

The state policy, as enacted in 1979 and contained in s. 110.112, F.S., is to assist in providing equal employment opportunity through programs of affirmative action that will allow full utilization of women and minorities. Section 110.112, F.S., requires each agency head to adopt an affirmative action plan, to appoint an affirmative action-equal opportunity officer, and to report annually to the Governor on the status of the implementation of the affirmative action plan. The law also provides that any person claiming to be aggrieved by an unlawful employment practice may file a complaint with the Florida Commission on Human Relations.

Subsequent to the enactment of the state law, then-Governor Bob Graham issued Executive Order 79-50, which expressed the state's commitment to equal opportunity employment and directed that state agencies report to the Governor on the status of their affirmative action plans through the Department of Administration (DOA). The Department, which is responsible for administering a personnel system for state employees, adopted rules in Chapter 22A-15, F.A.C., setting forth equal employment opportunity procedures to be followed by agencies for applicants for career service positions.

Since 1979, agencies have submitted reports on the status of their respective equal opportunity programs to DOA. The Department maintains statistics on equal opportunity employment of state employees; however, the primary responsibility for such programs has remained with each respective agency. Each agency employs an equal-opportunity employment officer and administers affirmative action programs in conjunction with its overall responsibility to administer respectively, the state's laws and policies regarding personnel management.

Employees of the judicial branch are specifically exempt from the Career Service as provided in s. 110.205, F.S., 1988 Supp. The Justice Administrative Commission is created in s. 43.16, F.S., as a centralized office to provide administrative services and assistance on behalf of certain employees of the judicial branch. Although the office administers personnel policies on behalf of these employees, in accordance with the directive in Executive Order 79-50, the office has generally
submitted an update on their affirmative action programs to DOA.

On November 10, 1988, Governor Martinez and the Cabinet adopted a resolution reaffirming the state's commitment to equal employment opportunity. The resolution provides that all state supervisory personnel shall be trained in the basic principles of equal employment opportunity. The Department of Administration is directed to coordinate the training.

Chapter 88-290, L.O.F., amended ch. 110, F.S., assigning additional duties to the Department of Administration, and reassigning other of its responsibilities to employing agencies. The Department is required to establish supervisory training programs for all executive agencies, except the State University System, for improving managerial, administrative, and technical skills of state supervisors. The Department is directed to administer a program to offer basic skills to new supervisors and persons promoted or employed into a supervisory position so that they attend the training program within 6 months of the date of employment or promotion. The Department also must establish continuing education programs for supervisors to ensure such persons update their management skills on a regular basis. The Department estimates that there are approximately 10,000 supervisors employed within executive agencies.

According to the Department of Administration, affirmative action is an area of emphasis in its newly-developed supervisory training programs. The Department has elevated the affirmative action program within the agency and directed some of its existing resources to the office. Four additional personnel program analysts have been assigned to the equal employment opportunity section. The Department has contracted with Harbridge House Inc. to provide affirmative action training programs to supervisory personnel.

According to the Department of Administration, under an affirmative action plan, employing agencies should strive to employ a work force which is representative of the available labor market. Additionally, this representation should be reflected in each level of employment. Statistics maintained by the Department indicate that although 55 percent of the state's labor force are females, middle-level management is comprised of only 30 percent females, and Senior Management is comprised of only 17 percent females. Blacks represent 26 percent of the Career Service employees, yet are employed in middle-level management at a rate of only 6 percent, and in the Senior Management at a rate of only 4 percent. Hispanics represent approximately 4 percent of the state's work force, as compared to 10 percent of the available state labor market.

Chapter 88-290, L.O.F., directed the Department of Administration to audit the personnel programs of state agencies to ensure that the agencies are in compliance with state laws and regulations. The audit reviews are submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. Effect of Proposed Changes:

Section 110.112, F.S., would be amended to specify certain duties of employing agencies in developing and implementing affirmative actions to encourage equal employment opportunity. The Department of Administration's responsibilities for the implementation of affirmative action plans by executive agencies would be expanded. The oversight of the affirmative action plans of public defenders and state's attorneys would be assigned to the Judicial Administrative Commission.

Each agency head in the executive branch would be required to develop and implement an affirmative action plan in accordance
with rules adopted by Department of Administration and approved by the Administration Commission. Such plans must be designed to meet affirmative action annual goals established by the agency head, to ensure the full utilization of groups underrepresented in the work force of executive agencies as compared to the available work force in the state.

Each executive agency would be required to submit its affirmative action plan and annual goals to the Department of Administration for approval on or before July 1 of each year. The Department of Administration would report annually to the Governor on the results of each executive agency's affirmative action plan for the previous fiscal year.

All supervisors would be mandated to be trained in the principles of equal employment opportunity and affirmative action, the development and implementation of affirmative action plans, and the establishment of annual affirmative action goals. The training would be provided by the Department of Administration, which would be authorized to contract for such training services. Each participating agency would be required to reimburse the Department for costs incurred through such contract.

Each agency head would be required to annually submit to the Department of Administration its plan for providing affirmative action training. The plan would be required to identify the individuals scheduled for training and the time period in which the training would be received.

The Department of Administration would review and audit executive branch agencies for compliance with the rules adopted by the Department regarding affirmative action plans. The post-audit reports would be submitted by the Department of Administration to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

The state attorneys and public defenders would be required to develop and implement affirmative action plans and report annually on the results of their respective plans to the Justice Administrative Commission. These offices would be required to establish affirmative action goals to ensure the full utilization of groups underrepresented in the work force of the executive branch as compared to the labor force in the state overall.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.

B. Government:

The Department of Administration estimates that it could provide the required training for a non-recurring cost of approximately $13,000. The Department maintains that the costs for it to administer the provisions of this bill will be absorbed within its current training budget.

There are currently approximately 10,000 supervisors to be trained. The Department has indicated that if agencies wish to provide intra-agency training, they may use their own agency programs, or they may purchase a training program including the instructional manual, video tapes and other training aids through a DOA contract at a cost of $800 per package. In addition to the materials costs, certain agencies may have to dedicate a position to this training effort at an additional cost. On the other hand, if agencies elect to send their supervisors to the DOA one-day training sessions, the cost would include up to $15 per person for workbooks, plus mileage, meals and incidental travel costs. According to DOA, this cost
would generally be covered within each agency's existing budget.

The Department also maintains that any expenses incurred would be offset by savings resulting from a reduction in the amount currently paid by the state in employment settlements and court costs associated with violations.

III. COMMENTS:

1. Statistics indicate that the State of Florida has paid $3.4 million in employment-settlements and court costs for cases handled by the Division of Risk Management of the Department of Insurance. The cases resulted from a total of 943 claims made against state agencies. The total cost is not known because statistics are not available for the cases handled by the Human Relations Commission and the Office of Attorney General.


3. The bill would require that annual goals for utilizing groups underrepresented in the work force would be based on the available labor market in the state. Many state positions are located in communities such as Tallahassee, however, in which the differences between the available labor market and that of the state may make it difficult to attain such a goal.

4. Paragraph (3)(b) of Section 2 of the bill would require state attorneys and public defenders to utilize groups underrepresented in "executive" agencies. State attorneys and public defenders are in the judicial branch. As well, the court system is not specifically included in or excluded from the provisions of the bill.

5. The bill does not specifically exempt the State University System (SUS) from its requirements for executive agencies. However, the Department of Administration has advised staff that the SUS would not be included in the requirements of this bill since they have authority under Part II of Ch. 240, F.S., to develop their Affirmative Action and Equal Employment Opportunity Programs.

6. The bill requires agencies to reimburse DOA for costs incurred through contracting to provide supervisory training. The bill does not specify if such reimbursement is to be equally distributed or based on the number of supervisors trained. As well, depending on the cost of future contracts, agencies may not have available funds for such reimbursement.

7. The bill requires agencies to submit their affirmative action plans and annual goals to DOA "for approval." It is not clear whether DOA will approve the affirmative action plans, the goals, or both.

8. The bill states that DOA "shall provide to all supervisory personnel in the executive agencies training in the principles of equal employment opportunity and affirmative action," etc. Also, the agencies are required to submit a plan to DOA which ensures that supervisory personnel receive the training provided by DOA. However, the Department has indicated that agencies may elect to provide intra-agency training rather than utilize the DOA sessions. The bill should be amended to reflect that agencies may make such an election for their supervisory training.

IV. AMENDMENTS: None.
I. SUMMARY:

A. PRESENT SITUATION:

In 1979, Executive Order 79-50 was enacted expressing the state's commitment to equal employment for all. Section 110.112, Florida Statutes (1979), currently provides that each state agency head develop and implement an affirmative action program to ensure freedom from discrimination as provided by the Human Rights Act of 1977. An affirmative action - equal employment opportunity officer is appointed and agency heads report annually to the Governor on the results of the agency affirmative action programs.

Starting May 1989, the Department will train all persons hired or promoted into supervisory positions under Section 110.1095, Florida Statutes, in basic supervisory skills which include affirmative action and equal employment opportunity.

Employees of the judicial branch are specifically exempt from the career service as provided in s. 110.205, F.S., 1988 Supp. The Justice Administrative Commission is created in s. 43.16, F.S., as a centralized office to provide administrative services and assistance on behalf of employees of the judicial branch. Although the office administers personnel policies on behalf of these employees, in accordance with the directive in Executive Order 79-50, the office has generally submitted an update on their affirmative action programs to the Department of Administration.
B. EFFECT OF PROPOSED CHANGES:

HB 1013 expands training in the area of affirmative action and equal employment opportunity to all supervisory personnel in executive branch agencies. Training would be provided by the Department of Administration, which would be authorized to contract for such training services. Each participating agency would be required to reimburse the department for costs incurred through such contract. The affirmative action plan developed by each agency head must be in accordance with rules approved by the Department of Administration and passed by a majority vote of the Administration Commission. Each agency is charged with establishing annual goals for its affirmative action plans which must be approved by the Department of Administration on or before July 1 of each year.

HB 1013 also expands the oversight of the affirmative action plans of public defenders and state attorneys to the Judicial Administrative Commission. Each state attorney and public defender must establish goals for affirmative action and appoint an affirmative action - equal employment opportunity officer. Officers would be required to establish affirmative action goals to ensure the full utilization of groups under-represented in the work force of the executive branch as compared to the labor force in the state overall.

Executive branch agency actions, in carrying out the rules adopted by the Department, will be reviewed and audited by the Department. Reports of post-audits will be submitted to the Governor, the President of the Senate, the Speaker of the House, and the Auditor General.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   (see fiscal comments)

2. Recurring or Annualized Continuation Effects:
   (see fiscal comments)

3. Long Run Effects Other Than Normal Growth:
   None

4. Appropriations Consequences:
   (see fiscal comments)
B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None

2. Direct Private Sector Benefits:
   None

3. Effects on Competition, Private Enterprise, and Employment Markets:
   None

D. FISCAL COMMENTS:

The Department of Administration has indicated that it is developing an Affirmative Action/Equal Employment Opportunity training package within resources provided in the fiscal year 1988-89 budget.

Each agency will pay $15.00 per person trained. The Department has indicated that if agencies wish to provide intra-agency training, the instructional manual, video tapes and other training aids are available at a cost of $800 per package. In addition to cost of materials, certain agencies may have to dedicate a new position for this training effort. On the other hand, if agencies elect to send their supervisors to the Department's one-day training session, the cost would include up to $15 per person for workbooks, plus mileage, meals and incidental travel costs. According to the Department, these costs would generally be covered within each agency's existing budget.

III. LONG RANGE CONSEQUENCES:

Under this bill all supervisors will be trained in affirmative action and equal employment opportunity.
IV. COMMENTS:

1. There are approximately 10,000 employees in supervisory positions in agencies under the executive branch. The Department of Administration estimates training 1,800 supervisors per year.

2. Statistics indicate that the State of Florida has paid $3.4 million in employment-settlements and court costs for cases handled by the Division of Risk Management of the Department of Insurance. The cases resulted from a total of 943 claims made against state agencies. The total cost is not known because statistics are not available for the cases handled by the Human Relations Commission and the Office of The Attorney General.

3. The bill would require that annual goals for utilizing groups under-represented in the work force be based on the available labor market in the state. Many state positions, located in communities such as Tallahassee, may be difficult to attain according to the annual goals, as broad differences between the local labor market and the state labor market may exist.

4. Paragraph (3)(b) of Section 2 would require state attorneys and public defenders to utilize groups under-represented in "executive" agencies. State attorneys and public defenders are in the judicial branch. As well, the court system is not specifically included in or excluded from the provisions of the bill.

5. The bill does not specifically exempt the State University System (SUS) from its requirements for executive agencies. The Department of Administration has advised staff that SUS would not be included in the requirements of this bill since they have authority under Part II of Ch. 240, F.S., to develop their Affirmative Action and Equal Employment Opportunity Programs.

6. The bill requires agencies to reimburse the Department for costs incurred through contracting to provide supervisory training. The bill does not specify if such reimbursement is to be equally distributed or based on the number of supervisors trained. As well, depending on the costs of future contracts, agencies may not have available funds for such reimbursement.

7. The bill requires agencies to submit their affirmative action plans and annual goals to the Department "for approval." It is not clear whether the Department will approve the affirmative action plans, the goals, or both.

8. The bill states that the Department "shall provide to all supervisory personnel in the executive agencies training in the principles of equal employment opportunity and affirmative action," etc. Also, the agencies are required to submit a plan to the Department which ensures that supervisory personnel receive the training provided by the Department. However, the Department has indicated that agencies may elect to provide intra-agency training rather than utilize the Department.
sessions. The bill should be amended to reflect that agencies may make such an election for their supervisory training.


V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: ______________________
D. Reneé Morgan
Staff Director: ______________________
Ron Poppell

SECOND COMMITTEE OF REFERENCE:
Prepared by: ______________________
Staff Director: ______________________

APPROPRIATIONS:
Prepared by: ______________________
Theresa B. Frederick
Staff Director: ______________________
Dr. James A. Zingale