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THE CLERK OF THE CIRCUIT COURT AND COMPTROLLER
SEMINOLE COUNTY FLORIDA**

**SPECIAL REVIEW
OF
SENIOR FLORIDA RETIREMENT SELECTION (FRS)**

Report No.110116



***Prepared by:
The Office of the Clerk of the Circuit Court and Comptroller***

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SPECIAL REVIEW OF FRS- SENIOR MANAGEMENT CLASSIFICATION

Purpose

The objective of this review was to determine if Seminole County is in compliance with Florida Statute (FS) 121.055 and the Florida Retirement System (FRS) Employer Guidelines.

Background

Employees of Seminole County have the distinct privilege to participate in the Florida Retirement System (FRS). Although there are several broad categories of classifications; this review we are presenting the four primary categories:

- Regular FRS
- Senior Management
- Special Risk
- Elected Officer Class

For the purposes of this review, we are evaluating compliance with FS 121.055 which is the Senior Management Service Class. To define those members to be included, the legislature provided the following references. These are positions defined as Compulsory (i.e. County Manager) and additional positions as designated by management.

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Per FS 121.055 (1)(b)1:

“Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

- a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50.*
- b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.*
- c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:
 - (I) Heads an organizational unit; or*
 - (II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.”**

The results of the review are included in the report that follows.

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Scope and Objectives

The following was included in the scope of this review:

- Florida Statutes regarding Senior Management Classification;
- County Personnel files for FRS Election Options;
- County funding of Senior Management versus Regular Pension;
- FRS Employer Guidelines;
- County Records for advertisement of Senior Management Election;
- Continuous contracts with Senior Management;
- Statistical comparison of state and county wide records of Senior Management Classifications; and,
- Other retirement records as considered necessary.

The results of this review are included in the Overall Evaluation below.

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Senior Management Classifications

There are two types of Senior Management Service Classifications: (1) Compulsory; and (2) Non-Compulsory.

Compulsory

Compulsory by definition is one that is required by law as defined by FS 121.055. The County Manager by law would be considered a Compulsory position.

Non Compulsory

These positions are those that the local agency designates to be considered a Senior Management Service position. A senior management position by definition is an employee that is in a managerial or policymaking position; head of an organizational unit; responsible for effecting or recommending personnel, budget, expenditure, or policy decisions in its area of responsibility.

Also, per FS 121.055 (1)(b)(1)(C):

Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

- (I) Heads an organizational unit; or*
- (II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.*

The county is prohibited from classifying employees as senior management that have “continuing contracts” and without civil service protection. Although Seminole County does have employees with continuing contracts they still appear eligible for this program because by definition they do not have civil service protection. The contracts do have termination clauses within the contract that limits their civil service protection.

Per FS 121.055 (1)(b)(1) a, the employer is required to publish in a newspaper a notice of intent to designate a position or positions for inclusion in the class. Here is what is included in this requirement:

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Per FS 121.055 (1)(b)(1)a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50.

Also, the County is required to complete Form SMSD-1 Florida Retirement System Senior Management Service Class Designated Position Form. The requirement for this is Florida Administrative Code 60S-1.0057 (2) (C) (2).

Overall Evaluation

The County is, for the most part, in compliance with FS 121.055 regarding contributions for those employees classified in Senior Management.

The state law allows the local agencies to identify up to 10 non elective full time positions and one additional full time position for every 100 regularly established FRS positions; not to exceed 1% of the regularly established positions. The County is in compliance with this requirement.

The County does not, however, have documentation to support the designation of these positions. As new Senior Management positions are created the law requires accountability and compliance with statutory requirements. The proposed designated positions are required to be advertised in a newspaper of general circulation for 2 consecutive weeks.

The County's Human Resources (HR) Division is working with FRS to update the records accordingly.

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OPPORTUNITIES FOR IMPROVEMENT

1. Compliance with the Florida Statutes should be supported.

Per FS 121.055 (1)(b)(1):

- a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50.
- b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.
- c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:
 - (I) Heads an organizational unit; or
 - (II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.”

The Office of the Clerk of the Circuit Court and Comptroller also discussed the process with members within the Florida Retirement System. This is a summary of the discussion with FRS regarding the process concerning compliance with Section 121.055, Florida Statutes is as follows.

“The position must be a managerial or policy making position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who heads an organization unit; or has responsibility to effect personnel, budget, expenditure, or policy decisions in his or her area of responsibility.

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Please advertise the position for 2 consecutive calendar weeks in a newspaper of general circulation in the county or counties affected. After the position has been advertised, please complete FORM SMSD-1 and send the form to the Division. The effective date for the SMSC will be the first of the month following receipt of the form by the Division.

If the member is in the Pension Plan and wants to upgrade time in the position prior to the position's SMSC effective date, it is an option. The upgrade is optional and either the member or the agency can pay for the cost of the upgrade.”

There was nothing in the official records documenting compliance with this requirement.

Over the past several years, many of the positions have not changed, new positions have been created, and different responsibilities have been assigned. For example:

- A new position was created with the title “Chief Administrator for the Office of Organizational Excellence”. Although the incumbent had previously been in a Senior Management position, the specific steps outlined in FS 121.055 need to be adhered to for Senior Management Classification.
- A new position was created with the title “Chief Administrator of Office of Economic Development and Community Relations”.
- A new position was created as “Chief Information Officer”. Three individuals have assumed this role since it was created.
- There have also been changes to the County Manager’s Office. A new Assistant County Manager position had been created.
- The County at one time had a HR Director and now there is an established HR Manager classified as Senior Management.

From an audit perspective, there should be a complete trail of documents showing compliance with the statutory requirements.

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In summary, by not maintaining complete and auditable files there is no assurance that Seminole County is in compliance with Florida Statutes.

Current Status

We did receive an email on July 7th, 2016 from the County Manager's Office that HR was actively working with FRS to get the classifications in accordance with Florida Statutes. Noted below is the email received from Mr. Bruce McMenemy (Deputy County Manager).

"To update you on your question about Senior Management FRS classifications. HR is still in the process of working with FRS relative to the 4 positions you inquired about. I will further update you as additional information is available."

Another follow up email was received on July 17th, 2016 from the County Manager's Office. Noted below is the email received from Mr. Bruce McMenemy:

"While HR is still working with FRS, they have been notified that Jon Sellers job title has been changed with FRS in Senior Management Class to Chief Information Officer. I will update further as information is available."

The email indicates that the County HR Division is continuing to work with FRS to comply with Florida Statutes.

Recommendation

1. Establish complete and auditable files to include Form SMSD-1 and copies of newspaper advertisements for the 2 consecutive weeks as required by FS 121.555. Also, establish internal written procedures to address this requirement.

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2. Reconcile County records with FRS records. FRS records indicate the County has 21 Senior Management positions when in actuality there are only 16 active Seminole County Senior Management positions.

Management Response

All Senior Management Service Class (SMSC) positions designated by the County have been approved by FRS. FRS approval is based on the County adhering to all requirements by FRS.

Most of the County's FRS designations were established over ten (10) ago. FRS documentation is not kept in the personnel file of the employee who encumbers the position. The designation is based on the position and not the person/employee, therefore personnel files would not contain any forms used to designate the position as SMSC.

The 21 positions currently recorded for Seminole County are the FRS eligible positions based on Seminole County's total employee population as allowable by Florida State Statute (FS. 121.055 (1)(b)(1)(b)). FRS establishes position numbers regardless of whether they are currently being utilized. It is not necessary to "give back" the vacant, available positions the County is not currently using. The positions only serve as placeholders in the event the County should need them.

Human Resources concurs that all requests for newly established FRS positions should, and will be advertised for 2 consecutive weeks and such advertisement will be included with the SMSCD-1 and submitted to FRS for approval.

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Audit Comment - (Status – Open)

We commend the County Manager's Office for taking the initiative to work with FRS to get the appropriate job titles updated in the FRS system. We appreciate the commitment by this office to ensure compliance with state law.

Just to clarify the significance of the issue noted. There should always be checks and balances to ensure compliance with public laws. This is why our office asked for documentation to support compliance. The intent of the law is to protect the taxpayers and make certain that all positions created were publically advertised so that the public can either challenge or support the positions created.

Also, to provide clarity regarding the management comment regarding the 21 positions noted above. Just for clarification; noted below is an excerpt from the management response:

“The 21 positions currently recorded for Seminole County are the FRS eligible positions based on Seminole County's total employee population as allowable by Florida State Statute (FS. 121.055 (1)(b)(1)(b))”

The response indicates that the County could have 21 employee positions as Senior Management Classification.

This statement is not totally correct. The County currently has 16 positions in the Senior Management Classification and this is the absolute cap based on the total population of employees.

The HR Division is planning to leave all 21 position numbers open in case they want to use one of these positions at a later date. In theory, there is no problem with doing this as if at a later date there is reorganization and the position is needed the FRS system would have a position number already available.

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Here is another take on whether to keep all 21 positions open. We compared other Florida County's FRS positions to Seminole County. Here is what was available as a public record. This information is from Florida Division of Retirement Services and is ranked by most efficient to least.

County	Total Senior Management	Total FRS Members	Total FRS Members to Senior Management
Marion	4	1,359	340
Pasco	8	2,161	270
Hardee	1	193	193
Indian River	6	812	135
Brevard	22	2,420	110
Orange	62	6,725	108
Pinellas	20	2,079	104
Polk	18	1,804	100
Hillsborough	52	5,091	98
Volusia	32	3,005	94
Manatee	22	1,793	82
Osceola	20	1,374	69
Seminole	21	1,277	61
Citrus	10	561	56
Hernando	18	781	43
Lake	18	731	41
Sumter	5	199	40
Total	339	32,365	95

In the chart above, Seminole County has one Senior Management for every 61 employees. This indicates that Seminole County might be "top heavy". Taking an average of the 17 Central Florida counties noted above, there is on average 95 County Employees for every Senior Management position. Although we fully understand that HR would not want to go through the process again to reestablish a position; there is, however, a public perception issue that should be considered. Also, unless there is a major increase in the workforce, it may be several years before new Senior Management positions would be needed in Seminole County.

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2. Financial Adjustments should be processed as necessary.

Some financial adjustments might be required based on requirements of Florida Statutes and FRS Employee handbook.

According to FRS guidelines the following process needs to be followed:

“The position must be a managerial or policy making position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who heads an organization unit; or has responsibility to effect personnel, budget, expenditure, or policy decisions in his or her area of responsibility.

Please advertise the position for 2 consecutive calendar weeks in a newspaper of general circulation in the county or counties affected.

After the position has been advertised, please complete FORM SMSD-1 and send the form to the Division. The effective date for the SMSC will be the first of the month following receipt of the form by the Division.

If the member is in the Pension Plan and wants to upgrade time in the position prior to the position's SMSC effective date, it is an option. The upgrade is optional and either the member or the agency can pay for the cost of the upgrade.”

Positions that have not been formally approved by: (1) filing Form SMSD-1 with FRS; and, (2) by advertising the position publically in a general circulation newspaper, may require some financial adjustment.

Take for example, two new positions recently created; (1) Chief Administrator of Organizational Excellence; and, (2) Chief Administrator of Economic Development and Community Service.

According to FRS, the proper financial treatment would be to fund these positions as regular FRS and then change the position to Senior Member Classification once the procedural steps have been approved. The local agency and/or member can upgrade and make the appropriate funding adjustment.

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Example of Funding Differences-New Positions

Year	Chief Administrator of Organizational Excellence		Chief Administrator of Economic Development and Community Service **	
	Senior Management	IF Regular Employee rate	Senior Management	IF Regular Employee rate
2015	\$26,034.76	\$8,949.10	\$6,490.85	\$2,198.95
2016 *	\$8,489.50	\$2,876.05	\$8,784.23	\$2,975.90
Total:	\$34,524.26	\$11,825.15	\$15,275.08	\$5,174.85
Net Difference:	\$22,699.11		\$10,100.23	
* 2016 figures (1/1/16 to 5/31/16)			** Chief Administrator of Economic Development started on 9/14/15	

It appears that the intent of management was to classify and fund these positions as Senior Management from inception so there most likely would be no need to make any adjustments except comply with the legal requirements.

For future purposes, the proper treatment is to fund as regular FRS until such time as the procedural requirements are complied with in accordance with the law.

By not complying with Florida Statutes, the employee is receiving additional benefits he is not entitled to.

Recommendation

1. Contact FRS and make arrangements for any applicable financial adjustments.
2. Establish an internal written procedure to ensure all position upgrades are administered in accordance with Florida Statutes.

Management Response

See management response noted on page 9.

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