

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1109 Expanding Public Sector Career Opportunities
SPONSOR(S): State Affairs Committee, Constitutional Rights, Rule of Law & Government Operations
Subcommittee, Barnaby, Porras and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	15 Y, 0 N, As CS	Wagoner	Miller
2) State Affairs Committee	18 Y, 0 N, As CS	Wagoner	Williamson

SUMMARY ANALYSIS

State agencies must make hiring decisions without regard to age, sex, color, religion, national origin, political affiliation, marital status, or disability. Hiring decisions are determined based on an assessment of the specific knowledge, skills, and abilities (KSAs) necessary for the successful performance of the position's duties. Qualified candidates must also have any required licenses, certifications, or registrations. Agencies must document the qualifications of the selected candidate to ensure the candidate meets the minimum requirements specified by the employing agency; meets any licensure, certification, or registration requirements; and possesses the requisite KSAs for the position.

Local governments, such as counties, municipalities, and independent special districts, are responsible for making their own hiring decisions subject to the requirements of the State Constitution and general law.

The bill creates the "Expanding Public Sector Career Opportunities Act." The bill provides a correlation of different postsecondary degrees that may be substituted for direct experience, both by public employers considering an applicant and agencies procuring for contractual services.

The bill prohibits public employers from denying an applicant consideration for employment solely due to lack of a postsecondary degree, with certain exceptions, and requires public employers to determine for each employment position baseline requirements that an applicant must meet. A public employer may substitute related work experience for educational requirements both when hiring employees and when procuring contracts for certain services. The bill directs the Department of Management Services to adopt rules as necessary to implement a process to review requests by applicants who are denied consideration for employment or services contracts based solely on a lack of postsecondary education requirements and gives the Public Employees Relations Commission jurisdiction to hear and decide such cases. The bill exempts from its requirements executive branch appointments requiring Cabinet or Senate approval, as well as the appointment of department heads, secretaries, and executive directors.

The bill may have an indeterminate fiscal impact on the Department of Management Services, but does not appear to have a fiscal impact on local governments. See Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Employment Policy

According to the state's employment policy, conditions of employment in state government must be made without regard to age, sex, color, religion, national origin, political affiliation, marital status, or disability.¹ The state and its political subdivisions must comply with the Americans with Disabilities Act,² Equal Employment Opportunity Act,³ Florida Civil Rights Act,⁴ and Fair Labor Standards Act.⁵ In addition, the state and its political subdivisions must give preference to veterans for positions of employment.⁶

State Hiring Process

The State of Florida's employment process is decentralized, so each state agency is responsible for its own recruitment, selection, and hiring decisions.⁷ Recruitment of candidates for employment must be done in a manner that assures open competition while placing special emphasis on efforts to attract minorities, women, or other groups that are underrepresented in the workforce of the employing agency.⁸

Selection of candidates for employment is based on an assessment of the specific knowledge, skills, and abilities (KSAs) necessary for the successful performance of the position's duties. After assembling a pool of candidates, an agency's hiring official compares candidates' education, experience, and any necessary license or certification requirements. Candidates who appear to possess the required KSAs and any required licensure or certifications may proceed further in the selection process. The hiring official then determines the candidates who will be asked to participate in additional selection procedures, such as oral interviews or work sample exercises.⁹

The job-related information gained during the selection process assists the hiring official in making the final selection decision which is the sole responsibility of the employing agency.¹⁰ Agencies must document the qualifications of the selected candidate to ensure the candidate meets the minimum requirements specified by the employing agency; meets any licensure, certification, or registration requirements; and possesses the requisite KSAs for the position.¹¹

Current law authorizes the Department of Management Services (DMS), in consultation with agencies, to create rules relating to employees and positions in the Career Service, including rules to provide

¹ S. 110.105(2)(a), F.S. This policy applies to employment by officials, officers, commissions, boards, departments, or other entities of the executive branch of state government. See s. 110.107(30), F.S. The legislative and judicial branches of state government may not deprive any person of any right because of race, religion, national origin, or physical disability. Art. I, s. 2, Fla. Const.

² U.S. Department of Labor, *Employers' Responsibilities, Americans with Disabilities Act*, www.dol.gov/general/topic/disability/employersresponsibilities (last visited March 8, 2023).

³ U.S. Equal Employment Opportunity Commission, *Overview*, [www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%20\(40%20or](http://www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%20(40%20or) (last visited March 8, 2023).

⁴ S. 760.02(7), F.S.

⁵ U.S. Department of Labor, *Wages and the Fair Labor Standards Act*, www.dol.gov/agencies/whd/flsa (last visited March 8, 2023).

⁶ S. 110.2135(1), F.S.

⁷ Job Candidate Program Manual, Division of Human Resource Management, Department of Management Services, available at https://www.dms.myflorida.com/content/download/99277/573474/Job_Candidate_Program_Manual_Final_3-21-17.pdf (last visited March 8, 2023). Employment with the legislative branch of state government is controlled exclusively by the Legislature and is under no executive branch authority. S. 11.135, F.S. See also art. II, s. 3, art. III, s. 4, Fla. Const.

⁸ S. 110.211, F.S.

⁹ S. 110.213(2), F.S.

¹⁰ S. 110.213(1), F.S.

¹¹ S. 110.213(2), F.S.

alternative requirements.¹² Current law also requires employing agencies to maintain a position description of each authorized and established position within the agency, which must include a description of the assigned duties and responsibilities, along with any other pertinent information concerning the position. The position description serves as a record of the official assignment of duties to the position.¹³

Certain senior executive branch offices, such as department heads,¹⁴ secretaries,¹⁵ or executive directors,¹⁶ are filled by appointment, with some appointments subject to Cabinet or Senate approval.¹⁷

Public Employees Relations Commission

The Public Employees Relations Commission (PERC) is responsible for resolving disputes between public employees and public employers.¹⁸ PERC has full authority to adopt rules necessary to accomplish its duties.¹⁹

PERC processes charges of unfair labor practices and charges relating to public employers or employee organizations.²⁰ A charge of engaging in an unfair labor practice must be made in writing, provide specific information, clearly and concisely state the facts of the matter, provide any other relevant information, be signed, and be accompanied by a sworn statement supporting a prima facie violation of the applicable labor law.²¹ Upon receiving a charge of an unfair labor practice, the charge and supporting evidence first are reviewed to determine if they establish a prima facie violation. If not, the charge may be summarily dismissed by PERC, after which the parties are notified in writing. The party making the charge may request review of the decision.²²

PERC is authorized to hear appeals and enter orders in matters under specific statutes²³ relating to termination or transfer of State Career Service Employees aged 65 or older,²⁴ age discrimination,²⁵ and reasons for not hiring a preferred veteran candidate.²⁶ These appeal proceedings before PERC are the exclusive administrative review of such complaints²⁷ and are subject to judicial review.²⁸

¹² S. 110.105(2)(a), F.S.

¹³ See s. 110.2035, F.S.

¹⁴ "Head of the department" means the individual under whom, or the board under which, direct administration of the department is placed by statute. Where direct administration of a department is placed under an officer or board appointed by and serving at the pleasure of the Governor, that officer or board remains subject to the Governor's supervision and direction. S. 20.03(4), F.S.

¹⁵ "Secretary" means an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution. S. 20.03(5), F.S.

¹⁶ "Executive director" means the chief administrative employee or officer of a department headed by a board or by the Governor and the Cabinet. S. 20.03(6), F.S.

¹⁷ See art. IV, s. 6(a), Fla. Const.

¹⁸ S. 447.201(3), F.S.

¹⁹ S. 447.207(1)-(2), F.S.

²⁰ S. 110.227(1), F.S. See ch. 60CC-5, F.A.C.

²¹ R. 60CC-5.001, F.A.C.

²² R. 60CC-5.002, F.A.C.

²³ S. 447.207(9), F.S.

²⁴ S. 110.124, F.S.

²⁵ S. 112.044(4), F.S.

²⁶ S. 295.11, F.S.

²⁷ S. 447.207(10), F.S.

²⁸ S. 447.504, F.S.

Local Government Personnel Process

As public employers,²⁹ counties, municipalities, school districts, and other local government entities are responsible for their own hiring and personnel policies³⁰ subject to general law.³¹

Substitution of Work Experience for Postsecondary Education Requirements

Current law allows the head of an employing agency³² to substitute verifiable, related work experience for postsecondary educational requirements for a position of employment if the candidate seeking the position is otherwise qualified.³³ Work experience may not be substituted for any required licensure, certification, or registration.³⁴ If an employing agency elects to substitute postsecondary education requirements for related work experience, the agency must provide notice in all of the advertisements for the position.³⁵

Competitive Solicitation for Commodities or Contractual Services

Florida law requires state agencies to use a competitive solicitation process³⁶ when procuring commodities or contractual services in excess of \$35,000.³⁷ A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.³⁸ Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods:

- Invitation to bid – An agency must use an invitation to bid if the agency can define the scope of work or specific commodity sought.³⁹
- Request for proposal – An agency must use a request for proposal when the purposes and uses for the contractual service or commodity sought can be specifically defined and the agency is capable of identifying necessary deliverables.⁴⁰
- Invitation to negotiate – An invitation to negotiate is a solicitation used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem.⁴¹

Effect of Proposed Changes

The bill creates the “Expanding Public Sector Career Opportunities Act.” The bill provides a correlation of different postsecondary degrees that may be substituted for direct experience, both by public employers considering an applicant and by agencies procuring for contractual services.

²⁹ “Public employer” means an entity within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor.” S. 448.095(1)(i), F.S.

³⁰ See, e.g., s. 125.01(3), F.S. (plenary authority of counties to hire employees); s. 125.74(1)(k), F.S. (authority of county administrator to select and employ personnel); s. 166.021(1), F.S. (municipalities may exercise any power for municipal purposes); s. 189.031, F.S. (charter of independent district must specify each power of the district); s. 1012.23, F.S. (district school board authority over personnel matters).

³¹ Art. VIII, ss. 1(f), 1(g), 2(b), art. IX, s. 4(b), Fla. Const. See also s. 448.095, F.S.

³² “Employing agency” means any agency or unit of government of the state or any county, municipality, or political subdivision thereof, including special districts, that is authorized to employ personnel to carry out the responsibilities of the agency or unit of government. S. 112.219(5), F.S.

³³ S. 112.219(1), F.S.

³⁴ S. 112.219(2), F.S.

³⁵ S. 112.219(3), F.S.

³⁶ S. 287.057(1), F.S.

³⁷ S. 287.017, F.S., creates five purchasing categories and their corresponding threshold amounts: Category One: \$20,000; Category Two: \$35,000; Category Three: \$65,000; Category Four: \$195,000; Category Five: \$325,000.

³⁸ S. 287.012(6), F.S.

³⁹ S. 287.057(1)(a), F.S.

⁴⁰ S. 287.057(1)(b), F.S.

⁴¹ S. 287.057(1)(c), F.S.

The bill prohibits public employers from denying an applicant consideration for employment solely due to lack of a postsecondary degree, with certain exceptions, and requires public employers to determine for each employment position baseline requirements that an applicant must meet. "Direct experience" is defined as any previous work experience where the applicant's primary duties were consistent with the employment they are seeking and the skills acquired are transferable. "Hiring consideration" means all of the following:

- A decision to offer an applicant an interview.
- An interview held in good faith between the public employer and the applicant.
- A decision to move an applicant to a subsequent round in the hiring process.
- A decision to include the applicant on a list of applicants for consideration by another member of the public employer.
- A final offer of employment.

Public employers may use postsecondary degrees as part of the baseline requirements for a position only as an alternative to the number of years of required direct experience. The bill allows the substitution of two years of direct experience for an associate degree, four years of direct experience for a bachelor's degree, six years of direct experience for a master's degree, seven years of direct experience for a professional degree, and nine years of direct experience for a doctoral degree. Agencies are authorized to use the same correlation of postsecondary degrees for required experience when procuring contractual services. However, if the public employer or agency procuring for contractual services substantiates the need for a particular postsecondary degree, direct experience may not be substituted for such required degree.

At the request of an applicant eliminated from hiring consideration solely because of a lack of a postsecondary degree, the Department of Management Services (DMS) must review the decision. The bill requires DMS to review each request and upon completing the review, DMS must furnish a copy of the review findings to the complainant and the employing agency involved. The bill provides that the department's actions do not constitute final agency action. The department may advise PERC as to the merit or lack thereof of each requested review. PERC may agree with the department and dismiss the complaint or may hear the matter and render a final decision.

The bill exempts executive branch appointments requiring confirmation by either the Cabinet or the Senate, as well as the appointment of a head of a department, a secretary, or an executive director as those terms are defined by s. 20.03, F.S.

B. SECTION DIRECTORY:

Section 1 establishes the "Expanding Public Sector Career Opportunities Act."

Section 2 amends s. 112.219, F.S., relating to work experience substitution.

Section 3 creates s. 112.2195, F.S., relating to expanding public sector career opportunities.

Section 4 amends s. 287.057, F.S., relating to procurement of commodities or contractual services.

Section 5 amends s. 447.207, F.S., relating to jurisdiction and powers of PERC.

Section 6 provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely result in an increased workload to DMS because of the review process established by the bill and an increase in workload for PERC associated with the complaint review process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may expand opportunities for employment or contracts for services with state, regional, or local governments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides additional rulemaking authority for the Department of Management Services to implement the new statutory requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2023, the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS revised the bill by creating the guiding criteria for substituting relevant experience for a postsecondary education requirement for employment in a newly created s. 112.2195, F.S., and created s. 287.057(28), F.S., applying the requirement to consider relevant work experience in lieu of postsecondary educational requirements in the procurement of contractual services.

On March 31, 2023, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment authorized PERC to review cases relating to applicants being eliminated from hiring consideration solely because they lack a postsecondary degree. The amendment also

clarified that executive branch appointments requiring Cabinet or Senate approval, or appointments of department heads, secretaries, or executive directors, are exempt from the changes made in the bill.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.