

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1109 Substitution of Work Experience for Postsecondary Education Requirements
SPONSOR(S): State Affairs Committee and Constitutional Rights, Rule of Law & Government Operations
Subcommittee, Barnaby, Porras, and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1310

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1109 passed the House on May 3, 2023, as CS/CS/SB 1310.

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," which provides that a public employer may only include a postsecondary degree as a baseline requirement for a job as an alternative to a specified number of years of direct experience to qualify for the job. The bill specifies the number of years that may be substitute for an associate degree, a bachelor's degree, a master's degree, a professional degree, and a doctoral degree.

The bill also allows an agency to substitute verifiable, related work experience in lieu of postsecondary educational requirements when contracting for services if the person seeking the contract is otherwise qualified for such contract.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 16, 2023, ch. 2023-256, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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.

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 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

Local Government Personnel Process

As public employers,¹⁸ counties, municipalities, school districts, and other local government entities are responsible for their own hiring and personnel policies¹⁹ subject to general law.²⁰

Substitution of Work Experience for Postsecondary Education Requirements

Current law allows the head of an employing agency²¹ to substitute verifiable, related work experience for postsecondary educational requirements for a position of employment if the candidate seeking the position is otherwise qualified.²² Work experience may not be substituted for any required licensure, certification, or registration.²³ 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.²⁴

Competitive Solicitation for Commodities or Contractual Services

Florida law requires state agencies to use a competitive solicitation process²⁵ when procuring commodities or contractual services in excess of \$35,000.²⁶ A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive

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 “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.

¹⁹ 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).

²⁰ Art. VIII, ss. 1(f), 1(g), 2(b), art. IX, s. 4(b), Fla. Const. See also s. 448.095, F.S.

²¹ “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.

²² S. 112.219(1), F.S.

²³ S. 112.219(2), F.S.

²⁴ S. 112.219(3), F.S.

²⁵ S. 287.057(1), F.S.

²⁶ 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.

vendors in accordance with the terms of a competitive process, regardless of procurement method.²⁷ 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.²⁸
- 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.²⁹
- 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.³⁰

Effect of Proposed Changes

The bill creates the “Expanding Public Sector Career Opportunities Act.” The bill limits a public employer³¹ may only include a postsecondary degree³² as a baseline requirement for a job except as an alternative to a specified number of years of direct experience to qualify for the job. The number of years of direct experience required may not exceed:

- 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; or
- Nine years of experience for a doctoral degree.

The bill also allows an agency³³ to substitute verifiable, related work experience in lieu of postsecondary educational requirements when contracting for services if the person seeking the contract is otherwise qualified for such contract.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁷ S. 287.012(6), F.S.

²⁸ S. 287.057(1)(a), F.S.

²⁹ S. 287.057(1)(b), F.S.

³⁰ S. 287.057(1)(c), F.S.

³¹ The bill defines “public employer” to mean “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.

³² The bill defines “postsecondary degree” to mean an associate degree, a bachelor’s degree, or a graduate degree from an accredited college or university.

³³ Section 287.012(1), F.S., defines the term “agency” to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization of the executive branch of state government, but does not include the university and college boards of trustees or the state universities and colleges.

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.