

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1310

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator DiCeglie and others

SUBJECT: Substitution of Work Experience for Postsecondary Education Requirements

DATE: April 25, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<b>Fav/CS</b>
3.	<u>McVaney</u>	<u>Twogood</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1310 limits a public employer (state agency or branch, state university and public college, county, city, special district, school board, or any other governmental entity) from including postsecondary education requirements as a baseline requirement for a job except as an alternative to a specified number of years of direct experience to qualify for a job.

An agency is permitted 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 the contract.

The bill's impact on state or local government revenues and expenditures is indeterminate.

The bill takes effect July 1, 2023.

**II. Present Situation:**

**State Employment Policy**

According to the employment policy of the state, conditions of employment in state government must be made without regard to age, sex, color, religion, national origin, political affiliation, marital status, or disability.<sup>1</sup> The state and its political subdivisions must comply with the

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<sup>1</sup> Section 110.105(2)(a), F.S.

Americans with Disabilities Act,<sup>2</sup> Equal Employment Opportunity Act,<sup>3</sup> Florida Civil Rights Act,<sup>4</sup> and Fair Labor Standards Act.<sup>5</sup> In addition, the state and its political subdivisions must give preference to veterans for positions of employment.<sup>6</sup>

### State Hiring Process

The State's employment process is decentralized with each state agency being responsible for its recruitment, selection, and hiring decisions.<sup>7</sup> Selection of candidates for employment is based on an assessment of the specific knowledge, skills, and abilities necessary for the successful performance of the position's duties.<sup>8</sup> After assembling a pool of candidates, an agency's hiring official compares candidates' education, experience, and any necessary license or certification requirements.<sup>9</sup> Candidates who appear to possess the required knowledge, skills, abilities, licensure and certifications will proceed further in the selection process.<sup>10</sup> 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.<sup>11</sup> The job-related information gained during the selection process assists the hiring official in making the final selection decision. The final selection decision is the sole responsibility of the employing agency.<sup>12</sup> Agencies are required to document the qualifications of the selected candidate to ensure the candidate meets the minimum requirements specified by the employing agency, any licensure or certification requirements, and possess the requisites for the position.<sup>13</sup>

Section 110.201 F.S., authorizes the Department of Management Services (DMS), in consultation with agencies, to create rules relating to employees and positions in the Career Service.<sup>14</sup> The statute allows the DMS to adopt rules providing alternative requirements. Section 110.2035, F.S., requires employing agencies to maintain, on a current basis, a position description of each authorized and established position within the agency. The position description must include a description of the assigned duties and responsibilities, along with any

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<sup>2</sup> U.S. Department of Labor, *Employers' Responsibilities, Americans with Disabilities Act*, available at <https://www.dol.gov/general/topic/disability/employersresponsibilities> (last visited Mar. 25, 2023).

<sup>3</sup> U.S. Equal Employment Opportunity Commission, *Overview*, available at [https://www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%2%20\(40%20or](https://www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%2%20(40%20or) (last visited Mar. 25, 2023).

<sup>4</sup> Section 760.02(7), F.S.

<sup>5</sup> U.S. Department of Labor, *Wages and the Fair Labor Standards Act*, available at <https://www.dol.gov/agencies/whd/flsa> (last visited Mar. 25, 2023).

<sup>6</sup> Section 296.07, F.S.

<sup>7</sup> DMS, *Job Candidate Program Manual, Division of Human Resource Management*, available at [https://www.dms.myflorida.com/content/download/99277/573474/Job\\_Candidate\\_Program\\_Manua\\_l\\_Final\\_3-21-17.pdf](https://www.dms.myflorida.com/content/download/99277/573474/Job_Candidate_Program_Manua_l_Final_3-21-17.pdf) (last visited Mar. 25, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 110.211(1), F.S.

<sup>13</sup> Section 110.213(2), F.S.

<sup>14</sup> The Career Service system provides uniform pay, job classifications, benefits and recruitment for the majority of non-management jobs within state agencies.

other pertinent information concerning the position.<sup>15</sup> The position description serve as a record of the official assignment of duties to the position.<sup>16</sup>

The DMS has established rules<sup>17</sup> that provide agencies with discretion to establish the duties for any given position, which includes:

- An accurate description of the duties and responsibilities assigned to the position;
- The job related knowledge, skills, and abilities;
- Any licensure, certification, or registration; and
- Any position designators.<sup>18</sup>

### **County and Municipal Powers**

Section 125.74, F.S., of the County Administration Law of 1974, enumerates specific powers and duties which the county administrator possesses, including the power to recommend to the board of county commissioners (Board) position classifications and pay plans for all positions in county service. The county administrator is also responsible for selecting, employing, and supervising all personnel, and filling all vacancies, positions, or employment under the jurisdiction of the Board, although the employment of department heads requires confirmation by the Board.<sup>19</sup>

Section 166.021, F.S., of Florida's Municipal Home Rule Powers Act, contains general provisions that govern the exercise of municipal powers under the framework established in article VIII, section 2(b) of the Florida Constitution. Section 166.021(1), F.S., grants municipalities the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. The statute grants municipalities the ability to exercise any power for municipal purposes, except when expressly prohibited by law.<sup>20</sup>

### **Hiring Authority of Elected Officers**

Section 27.25, F.S., grants the state attorney the authority to employ assistant state attorneys, an executive director, and other staff.

Section 27.53, F.S., grants the public defender the authority to employ assistant public defenders and other staff.

Section 28.06, F.S., grants the clerk of the court the authority to appoint a deputy or deputies.

Section 30.53, F.S., preserves the independence of sheriffs concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel.

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<sup>15</sup> Section 110.2035(5)(a), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Rule 60L-31.003, F.A.C.

<sup>18</sup> Rule 60L-31.003(1), F.A.C.

<sup>19</sup> Section 125.74(k), F.S.

<sup>20</sup> Section 166.021(a), F.S.

### **Authority of Special Districts**

A “special district” is a unit of local government created for a special purpose operating within a limited geographic boundary.<sup>21</sup> Special districts are created by general law, special act, local ordinance, or administrative rule of the Governor and Cabinet.<sup>22</sup> Special districts are created to provide a wide variety of services, such as mosquito control,<sup>23</sup> children’s services,<sup>24</sup> fire control and rescue,<sup>25</sup> and drainage and water control.<sup>26</sup>

Special districts cooperate and coordinate their activities within the units of general-purpose local government in which they are located.<sup>27</sup> Chapter 189, F.S., does not expressly provide special districts the authority to employ people or the ability to set out any requirements regarding education or work experience.

### **Substitution of work experience for postsecondary educational requirements**

Section 112.219, F.S., allows an employing agency to substitute equivalent work experience in lieu of a postsecondary education. Work experience may not be substituted for any required licensure, certification, or registration as established by the agency and indicated on the position description. The section requires any employing agency that elects to substitute work experience for post-secondary education to include a notice in the job advertisement that substitution is authorized and a description of what education and work experience equivalencies apply. This section does not abridge state and federal laws and regulations governing equal opportunity employment.

This section defines the term “employing agency” to mean any agency or unit of government of the state or any county, municipality, or political subdivision thereof, including special districts, authorized to employ personnel to carry out the responsibilities of the agency or unit of government.

### **Veteran Preference in Hiring and Retention**

Section 295.07, F.S., directs the state and its political subdivisions to give preference to disabled veterans, spouses, widows and widowers of veterans, and current members of the reserve component of the United State Armed Forces or the Florida National Guard. The state and its political subdivisions may waive postsecondary educational requirements if the veteran or current member of the armed forces is otherwise qualified for the position.

Section 295.11, F.S., authorizes the Department of Veterans’ Affairs (DVA) to investigate any complaint that indicates a person has applied for a job with the state or a political subdivision and the job was awarded to a nonveteran. The DVA issues its opinion as to the merit or lack of

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<sup>21</sup> Section 189.012(6), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 388.021(1), F.S.

<sup>24</sup> Section 125.901(1), F.S.

<sup>25</sup> Section 191.002, F.S.

<sup>26</sup> Section 298.01, F.S.

<sup>27</sup> Section 189.011(3), F.S.

merit to the parties and to the Public Employees Relation Commission (PERC). If the DVA opines that the claim lacks merit and the PERC agrees, no hearing is necessary. Otherwise, the PERC will hold a hearing and render a decision that is deemed final agency action.

### ***Public Employees Relations Commission***

The PERC is created by law,<sup>28</sup> consisting of a chair and two other members to be appointed by the Governor, subject to confirmation by the Senate. Relevant to this discussion, the PERC is authorized to hear appeals relating to certain employers not employing a preferred veteran applicant.<sup>29</sup> The appeal hearing must be held within 30 days of the filing of the claim, unless an extension of time is granted for good cause.<sup>30</sup>

## **III. Effect of Proposed Changes:**

**Section 1** provides that s. 112.219, F.S., may be cited as the “Expanding Public Sector Career Opportunities Act.”

**Section 2** amends s. 112.219, F.S., to use the term “public employer”<sup>31</sup> instead of “employing agency,” in the context of allowing such employers to substitute work experience for postsecondary educational requirements.

This section also limits a public employer (state agency or branch, state university and public college, county, city, special district, school board, or any other governmental entity) from including postsecondary education requirements as a baseline requirement for a job except as an alternative to a specified number of years of direct experience to qualify for a job.

**Section 3** amends s. 287.057, F.S., to allow an agency<sup>32</sup> to substitute verifiable, related work experience in lieu of postsecondary educational requirements for a contract for services if the person seeking to contract is otherwise qualified for the position.

**Section 4** provides that the bill takes effect July 1, 2023.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to

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<sup>28</sup> Section 447.205, F.S.

<sup>29</sup> Section 447.207(9)(c), F.S.

<sup>30</sup> Section 447.208(1), F.S.

<sup>31</sup> “Public employer” is defined in s. 448.095(1)(i), F.S., as 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.

<sup>32</sup> “Agency” is defined in s. 287.012(1), F.S., as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. The term does not include the university and college boards of trustees or the state universities and colleges.

raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The overall impact on state and local government expenditures is indeterminate. Public employers will experience some additional workload in modifying position descriptions and reviewing knowledge, skills, and abilities of each position.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 112.219 and 287.057 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on April 24, 2023:**

The committee substitute removes the mechanism for an applicant to appeal a hiring consideration to the Department of Management Services.

**CS by Community Affairs on March 29, 2023:**

The committee substitute:

- Amends ch. 112, F.S., rather than ch. 110, F.S., to establish the new policy for considering applicants for public employment opportunities.
- Replaces the term “employing agency” with “public employer” in s. 112.219, F.S.
- Moves the bill provisions allowing an agency to substitute work experience in lieu of postsecondary education for contracts for services to the procurement statute in ch. 287, F.S., and omits verbiage pertaining to licensure requirements.

- B. **Amendments:**

None.