

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1109 Expanding Public Sector Career Opportunities

SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Constitutional Rights, Rule of Law & Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Constitutional Rights, Rule of Law & Government Operations Subcommittee		Wagoner	Miller

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. The final employment selection decision is the sole responsibility of the employing agency. Agencies must document the qualifications of the selected candidate to ensure the candidate meets the minimum requirements specified by the employing agency, any licensure, certification, or registration requirements, and possess 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 that public employers may not deny an applicant consideration for employment solely due to lack of a postsecondary degree. A public employer may substitute related work experience for educational requirements both when hiring employees and when procuring contracts for certain services. "Public employer" is defined to include any entity within state or local government, whether in the executive, judicial, or legislative branch, as well as public education entities. The bill exempts political appointments or other positions hired by elected officials from the requirements of the new statute and directs the Department of Management Services to adopt rules as necessary to implement an appeal process for applicants who are denied consideration for employment or services contracts based solely on a lack of postsecondary education requirements.

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

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, any licensure, certification, or registration requirements, and possesses the requisite KSAs for the position.¹¹

¹ S. 110.105(2)(a), F.S.

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).

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.

The head of an employing agency¹² may substitute verifiable, related work experience for postsecondary educational requirements for a position if the candidate is otherwise qualified.¹³ Work experience may not be substituted for any required licensure, certification, or registration. If an employing agency elects to substitute postsecondary education requirements for related work experience, the agency is required to provide notice in all of the position's advertisements.

Local Government Personnel Process

As public employers,¹⁴ counties, municipalities, school districts, and other local government entities are responsible for their own hiring and personnel policies¹⁵ subject to general law.¹⁶ As with the state, local government entities may substitute verifiable, related work experience for postsecondary educational requirements for a position if the candidate is otherwise qualified but such experience may not be substituted for required licensure, certification, or registration.¹⁷

Competitive Solicitation for Commodities or Contractual Services

Florida law requires state agencies use a competitive solicitation process¹⁸ when procuring commodities or contractual services in excess of \$35,000.¹⁹ 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.²⁰ 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,²¹ request for proposals,²² or invitation to negotiate.²³

Invitation to Bid

An agency must use an invitation to bid (ITB) if the agency can define the scope of work or specific commodity sought. An ITB must include a detailed description of the commodity or contractual service sought and whether the agency contemplates renewal of the contract. If the agency anticipates renewing the contract, then each bid submitted in response to such an ITB must include the price for each year for which the contract may be renewed. Bid evaluations must include consideration of the total cost for each year of the contract, including renewal years, and the contract must be awarded to the responsible²⁴ and responsive²⁵ vendor who submits the lowest responsive bid.²⁶

Request for Proposals

¹² The statute defines "employing agency" as "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. 122.219(5), F.S.

¹³ S. 122.219, F.S.

¹⁴ "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.

¹⁵ 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).

¹⁶ Art. VIII, ss. 1(f), 1(g), 2(b), art. IX, s. 4(b), Fla. Const. See also s. 448.095, F.S.

¹⁷ S. 112.219, F.S.

¹⁸ S. 287.057(1), F.S.

¹⁹ 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.

²⁰ S. 287.012(6), F.S.

²¹ S. 287.057(1)(a), F.S.

²² S. 287.057(1)(b), F.S.

²³ S. 287.057(1)(c), F.S.

²⁴ A "responsible vendor" is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. Section 287.012(25), F.S.

²⁵ A "responsive vendor" is a vendor that has submitted a bid, proposal, or reply that conforms in all material aspects to the solicitation. Section 287.012(27), F.S.

²⁶ S. 287.057(1)(a), F.S.

An agency must use a request for proposal (RFP) 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. A vendor may respond with various versions of services or commodities to meet the specification of the solicitation document. Before issuing an RFP, the agency must specify in writing the reasons an ITB is not practicable. An RFP must include a statement describing the commodities or contractual services sought, the relative importance of price and other evaluation criteria, and whether the agency contemplates renewal of the contract. The contract is awarded by written notice to the responsible and responsive vendor whose proposal is most advantageous to the state.²⁷

Invitation to Negotiate

An invitation to negotiate (ITN) is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem. The ITN identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value. Before issuing an ITN, the agency head must specify in writing the reasons an ITB or an RFP are not practicable. An ITN must include questions being explored, the facts being sought, and the specific goals of the solicitation. The agency may select one or more vendors to begin negotiations and then award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state.²⁸

Effect of Proposed Changes

The bill creates the “Expanding Public Sector Career Opportunities Act providing that public employers may not deny an applicant consideration for employment solely due to lack of a postsecondary degree. 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 public agencies procuring contractual services.

“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. Under the bill “hiring consideration” refers to the several steps during the employment application process, including interviewing the applicant, moving the applicant to a subsequent round of the hiring process, including the applicant on a list of applicants for consideration, and extending an 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. Public agencies are authorized to use the same correlation of postsecondary degrees for required experience when procuring contractual services. However, where the public employer or agency seeking to contract substantiates the need for a particular postsecondary degree as necessary for the specific position, direct experience may not be substituted for such required degree.

The bill exempts political appointments or other positions hired by elected officials from the requirements of the new statute and directs the Department of Management Services to adopt rules necessary to implement an appeal process for applicants who are denied consideration for employment or services contracts based solely on a lack of postsecondary education requirements.

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.

²⁷ S. 287.057(1)(b), F.S.

²⁸ S. 287.057(1)(c), F.S.

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

Section 4 creates s. 287.057(28), F.S. relating to procurement of commodities or contractual services.

Section 5 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:

None.

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