



Constitutional Rights, Rule of Law & Government Operations Subcommittee

**January 11, 2024
11:00 AM – 1:00 PM
Sumner Hall (404 HOB)**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Constitutional Rights, Rule of Law & Government Operations Subcommittee

Start Date and Time: Thursday, January 11, 2024 11:00 am

End Date and Time: Thursday, January 11, 2024 01:00 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 151 Cost-of-living Adjustment of Retirement Benefits by Busatta Cabrera

Consideration of the following bill(s) with proposed committee substitute(s):

PCS for HB 149 -- Continuing Contracts

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/09/2024 4:07PM by Lacher.Tamara

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 Cost-of-living Adjustment of Retirement Benefits

SPONSOR(S): Busatta Cabrera

TIED BILLS: **IDEN./SIM. BILLS:** SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Villa	Miller
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits for employees of state and county government agencies, district school boards, state colleges, and universities. It also serves as the retirement plan for employees of the cities, special districts, and independent hospitals that have elected to join the system. Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan.

Current law provides an FRS Pension Plan member whose effective retirement date was before July 1, 2011, with a 3 percent annual cost-of-living adjustment (COLA). However, in 2011, the COLA was eliminated for service earned on or after July 1, 2011. Accordingly, members initially enrolled in the FRS on or after July 1, 2011, do not receive a COLA when they retire. For retirees with years of service prior to 2011, the COLA amount is prorated.

The bill restores the annual COLA to 3 percent for all retired FRS Pension Plan members beginning July 1, 2024. It removes the COLA conditional restoration language in current law.

The bill will have a significant fiscal impact on state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer, and the Attorney General, commonly referred to as the “Board of Trustees.”¹ The SBA has responsibility for investing the assets of the Florida Retirement System (FRS) Pension Plan² and administering the FRS Investment Plan,³ which combined represent approximately \$190.8 billion, or approximately 84.4 percent of the \$225.4 billion in assets managed by the SBA, as of October 31, 2023.⁴ The SBA also manages over 25 other investment portfolios, with combined assets of approximately \$34.6 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.

Florida Retirement System

The FRS was established in 1970 when the Legislature consolidated the Teachers’ Retirement System, the State and County Officers and Employees’ Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group. The FRS was amended in 1998 to include the Deferred Retirement Option Program (DROP) under the defined benefit plan and in 2000 was amended to provide a defined contribution plan alternative to the defined benefit plan for FRS members effective July 1, 2002.⁵

The FRS is a multiple-employer, contributory plan⁶ governed by the Florida Retirement System Act.⁷ As of June 30, 2023, the FRS has 646,277 active members,⁸ 455,601 retired members and beneficiaries, and 27,767 members in DROP.⁹ It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and state universities. The FRS also serves as the retirement plan for the employees of the 181 cities, 153 special districts, and two independent hospitals that have elected to join the system.¹⁰

The FRS is a low-cost system compared to other retirement systems. The cost to administer the FRS in 2022 was \$19 per active member and annuitant compared to the peer average of \$115 for other similar pension systems. Further, the number of staff to administer the FRS is 1.3 positions per 10,000 members versus an average of 3.4 per 10,000 members of other similar retirement systems.¹¹

¹ See also art. XII, s. 9, FLA. CONST.

² S. 121.151, F.S.

³ S. 121.4501(8), F.S. See also, rule 19-13.001, F.A.C.

⁴ State Board of Administration, *Performance Report Month Ending: October 31, 2023*, <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Trustees/2023/October%202023%20Monthly%20Trustee%20Report.pdf?ver=2023-12-22-140235-787>, (last visited January 5, 2024).

⁵ DMS, *Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Comprehensive Financial Report Fiscal Year Ended June 30, 2023*, at p. 33. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports [hereinafter *Annual Report*] (last visited January 4, 2024).

⁶ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent of their salaries for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011, at 3 percent of salary regardless of membership class.

⁷ Ch. 121, F.S.

⁸ As of June 30, 2022, the FRS Pension Plan, which is a defined benefit plan, had 441,816 members, and the investment plan, which is a defined contribution plan, had 204,461 members. Annual Report, *supra* note 5, at p. 188.

⁹ *Id.*

¹⁰ *Id.*, at 226.

¹¹ Email from Jeff Ivey, Deputy Chief of Staff, Department of Management Services, RE: 2022 CEM Slides (Mar. 13, 2023) on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

Membership of the FRS is divided into the following membership classes:¹²

- Regular Class¹³ consists of 550,931 members (85.27 percent of the total 2023 FRS membership). This class is for all members who are not assigned to another class.
- Special Risk Class¹⁴ includes 75,495 members (11.68 percent). This class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency medical technicians, among others.
- Special Risk Administrative Support Class¹⁵ has 93 members (0.014 percent). This class is for former Special Risk Class members who provide administrative support within an FRS special risk employing agency. Members of this class must maintain the certification required for their former Special Risk Class position and be subject to recall into those positions if needed.
- Elected Officers' Class¹⁶ has 2,105 members (0.33 percent). This class is for elected state and county officers and those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers.
- Senior Management Service Class¹⁷ has 7,714 members (1.19 percent). This class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service Class designation.

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The investment plan, which is a defined contribution plan; and
- The pension plan, which is a defined benefit plan.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the pension plan. The earliest that any member could participate in the investment plan was July 1, 2002. The SBA is primarily responsible for administering the investment plan.¹⁸

A member vests immediately in all employee contributions paid to the investment plan.¹⁹ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.²⁰ Vested benefits are payable upon termination of employment with the FRS employer or death, as a lump-sum distribution, direct rollover distribution, or periodic distribution.²¹

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

FRS Pension Plan

¹² Annual Report, *supra* note 5, at 191.

¹³ S. 121.021(12), F.S.

¹⁴ S. 121.0515, F.S.

¹⁵ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the FRS. S. 121.0515(8), F.S.

¹⁶ S. 121.052, F.S.

¹⁷ S. 121.055, F.S.

¹⁸ S. 121.4501(8), F.S.

¹⁹ S. 121.4501(6)(a), F.S.

²⁰ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. S. 121.4501(6)(b) – (d), F.S.

²¹ S. 121.591, F.S.

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement.²² Investment management is provided by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.²³ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁴ A member vests immediately in all employee contributions paid to the pension plan.²⁵

For non-special risk members of the pension plan initially enrolled before July 1, 2011, normal retirement is the earlier of 30 years of service or age 62.²⁶ Those members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of credible service or attain age 65.²⁷ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earlier of 25 years of credible service or age 55.²⁸

Cost-of-living Adjustment

For an FRS Pension Plan member whose effective retirement date was before July 1, 2011, the member receives a 3 percent annual cost-of-living adjustment (COLA).²⁹ In 2011, the COLA was eliminated for service earned on or after July 1, 2011.³⁰ Accordingly, for members initially enrolled in the FRS on or after July 1, 2011, the COLA is zero. For retirees with years of service prior to 2011, the COLA amount is prorated.³¹

Below are examples of potential COLAs, dependent on the years of service before July 1, 2011.

Total Years of Service	Years of Service before July 1, 2011	COLA
30	30	3.00%
30	25	2.50%
30	20	2.00%
30	15	1.50%
30	10	1.00%
30	5	0.50%
30	0	0.00%

²² See s. 121.025, F.S.

²³ S. 121.021(45)(a), F.S.

²⁴ S. 121.021(45)(b), F.S.

²⁵ S. 121.091(5)(a), F.S.

²⁶ S. 121.021(29)(a)1., F.S.

²⁷ S. 121.021(29)(a)2., F.S.

²⁸ S. 121.021(29)(b), F.S.

²⁹ S. 121.101(3), F.S.

³⁰ Ch. 2011-68, s. 17, Laws of Fla.

³¹ Section 121.101(4)(c), F.S., explains that the COLA is prorated by taking the product of 3 percent multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned. Example: A member with 10 years of service prior to July 1, 2011 retires after 30 years of service. Divide 10 by 30 and multiply by 3 percent. In this example, the member's COLA would be 1.0%.

The chart below shows the number of retirees receiving a full COLA (Tier I) and a reduced COLA (Tier II) as of March 21, 2023.³²

FRS Employer	Tier I Retirees Receiving a 3% COLA	Tier II Retirees Receiving a 0.00% to 2.99% COLA
State	61,167	25,570
State Universities	14,430	6,236
Counties	64,904	37,009
State Boards	135,984	72,628
State Colleges	9,402	4,972
Others	8,868	6,723
Total	294,755	151,913

Current law provides for the restoration of the COLA effective June 30, 2016, subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for such purpose.³³ To date, the Legislature has not provided funding to restore the COLA to current or future retirees.

Effect of the Bill

The bill restores the annual COLA to 3 percent for all retired FRS Pension Plan members beginning July 1, 2024. It removes the conditional COLA restoration language in current law.

B. SECTION DIRECTORY:

Section 1 amends s. 121.101, F.S., relating to cost-of-living adjustment benefits.

Section 2 provides a declaration of important state interest.

Section 3 provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³² Fla. H.R. Appropriations Committee Staff Analysis for CS/CS/HB 239 (2023) at p. 5, available at: <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0239c.APC.DOCX&DocumentType=Analysis&BillNumber=0239&Session=2023> (dated March 30, 2023).

³³ S. 121.101(5), F.S.

D. FISCAL COMMENTS:

Revising employer contribution rates for the restoration of the COLA will have a significant fiscal impact on funds paid into the FRS Trust Fund. An actuarial study for the restoration of COLA has not been completed for Fiscal Year 2024-25. However, an actuarial study was completed for Fiscal Year 2023-24. The actuarial study for Fiscal Year 2023-24 provides that the estimated amount to restore the COLA for the 2023-24 fiscal year was as follows:³⁴

Employer Contribution Group	Estimated Increase in Contributions
State Agencies	\$331.8 Million
School Boards	\$796.7 Million
State Universities	\$204.2 Million
Colleges	\$61.7 Million
Counties	\$863.3 Million
Other	\$143.1 Million
Total:	\$2,400.8 Million

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill will result in increased employer contribution rates from county and municipal participants in the FRS; however, an exception may apply as the Legislature has determined that this bill satisfies an important state interest and all similarly situated persons are required to comply with the act.

2. Other:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

B. RULE-MAKING AUTHORITY:

³⁴ Memorandum to Ms. Andrea Simpson, State Retirement Director, Florida Department of Management Services, Division of Retirement, *Re: Special Actuarial Study of Prospective Minimum COLA Rate for Tier I and Tier II Members and Beneficiaries*, (dated February 14, 2023) on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

The bill neither provides additional rulemaking authority nor appears to require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 32, the bill references the cost-of-living benefit instead of the cost-of-living adjustment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to cost-of-living adjustment of
 3 retirement benefits; amending s. 121.101, F.S.;
 4 revising how the cost-of-living adjustment of benefits
 5 for certain retirees and beneficiaries is calculated;
 6 providing a declaration of important state interest;
 7 providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

11 Section 1. Subsection (5) of section 121.101, Florida
 12 Statutes, is amended, and subsection (3) of that section is
 13 republished, to read:

14 121.101 Cost-of-living adjustment of benefits.—

15 (3) Commencing July 1, 1987, the benefit of each retiree
 16 and annuitant whose effective retirement date is before July 1,
 17 2011, shall be adjusted annually on July 1 as follows:

18 (a) For those retirees and annuitants who have never
 19 received a cost-of-living adjustment under this section, the
 20 amount of the monthly benefit payable for the 12-month period
 21 commencing on the adjustment date shall be the amount of the
 22 member's initial benefit plus an amount equal to a percentage of
 23 the member's initial benefit; this percentage is derived by
 24 dividing the number of months the member has received an initial
 25 benefit by 12, and multiplying the result by 3.

26 (b) For those retirees and annuitants who have received a
27 cost-of-living adjustment under this subsection, the adjusted
28 monthly benefit shall be the amount of the monthly benefit being
29 received on June 30 immediately preceding the adjustment date
30 plus an amount equal to 3 percent of this benefit.

31 (5) Notwithstanding subsection (4), beginning July 1,
32 2024, and each July 1 thereafter, the cost-of-living benefit of
33 each retiree and annuitant shall be adjusted subject to the
34 availability of funding and the Legislature enacting sufficient
35 employer contributions specifically for the purpose of funding
36 the expiration of the cost-of-living adjustment specified in
37 subsection (4), in accordance with s. 14, Art. X of the State
38 Constitution, the cost-of-living adjustment formula provided for
39 in subsection (4) shall expire effective June 30, 2016, and the
40 benefit of each retiree and annuitant shall be adjusted on each
41 July 1 thereafter, as provided in subsection (3).

42 Section 2. The Legislature finds that a proper and
43 legitimate state purpose is served when employees and retirees
44 of the state and its political subdivisions, and the dependents,
45 survivors, and beneficiaries of such employees and retirees, are
46 extended the basic protections afforded by governmental
47 retirement systems that provide fair and adequate benefits and
48 that are managed, administered, and funded in an actuarially
49 sound manner as required by s. 14, Art. X of the State
50 Constitution and part VII of chapter 112, Florida Statutes.

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51 Therefore, the Legislature determines and declares that this act
52 fulfills an important state interest.

53 Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 149 Continuing Contracts
SPONSOR(S): 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		Villa	Miller

SUMMARY ANALYSIS

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA), which requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

The CCNA explicitly states it does not prohibit a continuing contract between a firm and an agency. A continuing contract is a contract for professional services entered into in accordance with the CCNA between a government agency and a firm whereby the firm provides professional services to the agency for several projects. The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another. Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed \$4 million, for study activities if the fee for professional services for each study does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.

Rules adopted by the Florida Department of Transportation (FDOT) establish minimum qualification standards by type of work for consultants who seek to provide professional services to FDOT, including for geotechnical and materials testing. Geotechnical testing involves testing soil and rock for the purpose of classifying materials and identifying their physical properties. Materials testing involves testing or investigating various types of highway materials and products and reporting results and recommendations.

The PCS increases the maximum limit for continuing contracts covered by the CCNA from an estimated per-project construction cost of \$4 million to \$7.5 million plus an annual increase based on the Consumer Price Index (CPI) beginning with the CPI announced for the year 2026.

The PCS also provides that, for a geotechnical and materials testing continuing contract, FDOT must select at least three qualified firms and award work to the selected firms on a sequential, rotational basis provided such distribution is not detrimental to the state interests. If the work is not awarded on such basis, FDOT must certify in writing the reasons for awarding the project out-of-sequence and publish the certification on its website and provide a copy to each selected firm.

The PCS may have a positive, yet indeterminate fiscal impact on state and local government expenditures by increasing the dollar threshold for entering into continuing contracts. However, the fiscal impact of requiring FDOT to select three qualified firms under certain continuing contracts and award work on a sequential, rotational basis is indeterminate at this time. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Consultant's Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,¹ which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),² which is modeled after the Brooks Act. The CCNA requires state and local government agencies³ to procure the professional services⁴ of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.⁵

CCNA Procurement Process

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive solicitation.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project,⁶ when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.⁷

The public notice must include a general description of the project and indicate how interested firms⁸ may apply for consideration.⁹ A firm that wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services pursuant to law and the agency's regulations.¹⁰ In determining whether a firm is qualified, the agency must consider the capabilities, adequacy of personnel, past record, and experience of the firm as well as whether the firm is a certified

¹ Pub. L. 92-582, 86 Stat. 1278 (1972).

² Ch. 73-19, Laws of Fla., codified as s. 287.055, F.S.

³ "Agency" means the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S. S. 287.055(2)(b), F.S.

⁴ "Professional services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. S. 287.055(2)(a), F.S.

⁵ S. 287.055, F.S.

⁶ (f) "Project" means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under s. 287.055(3)(a), F.S. A project may include:

- A grouping of minor construction, rehabilitation, or renovation activities.
- A grouping of substantially similar construction, rehabilitation, or renovation activities. S. 287.055(2)(f), F.S.

⁷ S. 287.055(3)(a)1., F.S. As used in the statute, CATEGORY TWO refers to purchases of \$35,000 or more and CATEGORY FIVE refers to purchases of \$325,000 or more. S. 287.017, F.S.

⁸ "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state. S. 287.055(2)(c), F.S.

⁹ S. 287.055(3)(a)1., F.S.

¹⁰ S. 287.055(3)(c), F.S.

minority business enterprise.¹¹ Each agency must encourage firms desiring to provide professional services to the agency to submit annual statements of qualifications and performance data.¹²

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested firms and conduct discussions with at least three firms regarding their qualifications, approach to the project, and ability to furnish the required services.¹³ The agency must then select at least three firms, ranked in order of preference, that it considers the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency must consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm; and the volume of work previously awarded to each firm by the agency, with the goal of equitably distributing contracts among qualified firms, provided such distribution does not violate the principle of selecting the most highly qualified firms. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation¹⁴ to be paid.^{15,16}

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked firm. If the agency is unable to negotiate a satisfactory contract with that firm at a price the agency determines to be fair, competitive, and reasonable, negotiations with the firm must be formally terminated. The agency must then negotiate with the remaining ranked firms, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked firms, the agency must select additional firms, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.¹⁷

Continuing Contracts under the CCNA

The CCNA expressly does not prohibit a continuing contract¹⁸ between a firm and an agency.¹⁹ A continuing contract is one for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects where the estimated cost of each project does not exceed a specified amount.²⁰ The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.²¹

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million, for study activities if the fee for professional services for each individual study under the contract does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.²² The maximum per-project and per-study limits were put in place by the Legislature in 1988²³ and subsequently increased three times. In 1988, the maximum per-project and per-study

¹¹ S. 287.055(3)(c) and (d), F.S.

¹² S. 287.055(3)(b), F.S.

¹³ S. 287.055(4)(a), F.S.

¹⁴ "Compensation" means the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated. S. 287.055(2)(d), F.S.

¹⁵ S. 287.055(4)(b), F.S.

¹⁶ The CCNA did not prohibit discussion of compensation in the competitive selection phase until 1988, when the Legislature enacted a provision that allows consideration of compensation to occur only during the competitive negotiation phase. Ch. 88-108, L.O.F.

¹⁷ S. 287.055(5), F.S.

¹⁸ See s. 287.055(2)(g), F.S.

¹⁹ S. 287.055(4)(d), F.S.

²⁰ S. 287.055(2)(g), F.S.

²¹ *Id.*

²² S. 287.055(2)(g), F.S. An entity may not use a continuing contract for work of a specified nature to exceed the monetary limits placed on construction projects and study activities. Op. Fla. Att'y Gen. 2013-28 (2013).

²³ Ch. 88-108, Laws of Fla.

limits were \$500,000 and \$25,000, respectively.²⁴ In 2002, the limits were increased to \$1 million and \$50,000,²⁵ in 2009, the limits were increased to \$2 million and \$200,000,²⁶ and in 2020, the last revision, the limits were increased to \$4 million and \$500,000.²⁷

Construction and Program Management Entities

Current law authorizes governmental entities²⁸ to contract with a construction management entity or a program management entity.²⁹ A construction management entity is responsible for construction project scheduling and coordination in both preconstruction and construction phases and is generally responsible for the successful, timely, and economical completion of a construction project.³⁰ A program management entity is responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services.³¹ Both construction and program management entities must be procured pursuant to the CCNA and must consist of, or contract with, licensed or registered professionals for the specific fields or areas of construction.³² The governmental entity procuring the services of a construction management or program management entity may choose to enter into a continuing contract³³ pursuant to the CCNA for construction projects where the estimated construction cost of each project does not exceed \$4 million.³⁴

Construction Cost

Construction costs have seen an upswing since 2020, largely driven by a confluence of factors exacerbated by the COVID-19 pandemic.³⁵ Escalating prices of essential materials, such as steel and lumber, influenced by disruptions in global supply chains, are prominent contributors as well as general inflation in the economy. In addition, labor shortages have led to higher wages, further impacting costs. However, construction input prices³⁶ have stabilized recently, falling about one percentage point from October 2022 to October 2023. The following chart shows the percent change to certain construction input and commodity prices as of October 2023:³⁷

	1-month	12-month	Since Feb. 2020
Inputs to Industries			
Inputs to construction	-1.2%	-1.1%	33.1%
Inputs to multifamily construction	-0.9%	0.8%	32.4%
Inputs to nonresidential construction	-1.1%	-0.7%	33.6%
Inputs to commercial construction	-0.7%	-0.3%	33.6%
Inputs to healthcare construction	-0.7%	-0.2%	33.4%
Inputs to industrial construction	-0.9%	1.1%	30.7%
Inputs to other nonresidential construction	-1.2%	-0.9%	33.7%
Inputs to maintenance and repair construction	-1.3%	-2.0%	31.8%
Inputs to highway and street construction	-1.2%	0.0%	31.4%
Commodities			

²⁴ *Id.*
²⁵ Ch. 2002-20, Laws of Fla.
²⁶ Ch. 2009-227, Laws of Fla.
²⁷ Ch. 2020-127, Laws of Fla.
²⁸ “Governmental entity” means a county, municipality, school district, special district as defined in ch. 189, F.S., or political subdivision of the state. S. 255.103(1), F.S.
²⁹ S. 255.103, F.S.
³⁰ S. 255.103(2), F.S.
³¹ S. 255.103(3), F.S.
³² S. 255.103, F.S.
³³ A continuing contract, for purposes of procuring a construction or program management entity, means a contract for work during a defined period on construction projects described by type, which may or may not be identified at the time of entering into the contract. S. 255.103(4), F.S.
³⁴ S. 255.103(4), F.S.
³⁵ Point Acquisitions, *Construction Costs Rising in 2022: Here’s Why It’s Happening*, <https://pointacquisitions.com/2022-rising-construction-costs/> (last visited November 30, 2023).
³⁶ Construction input prices refer to the costs associated with materials, labor, and other resources used in the construction industry.
³⁷ See United States Department of Labor Bureau of Labor Statistics, *Producer Price Index Detailed Reports for February 2020 and October 2023*, available at: <https://www.bls.gov/ppi/detailed-report/#2023> (last visited December 1, 2023).

Adhesives and sealants	0.1%	1.8%	28.9%
Concrete products	0.7%	9.7%	30.5%
Construction machinery and equipment	0.0%	6.0%	23.6%
Copper wire and cable	-1.3%	2.7%	24.2%
Crude petroleum	-2.9%	-3.0%	56.9%
Fabricated structural metal products	0.8%	-0.7%	42.3%
Insulation materials	-0.3%	1.6%	31.0%
Iron and Steel	-2.3%	-6.1%	40.79%
Lumber and wood products	-0.3%	-6.5%	22.3%
Natural gas	10.9%	-54.9%	40.8%
Plumbing fixtures and brass fittings	0.5%	1.4%	16.1%
Prepared asphalt, tar roofing, and siding products	0.7%	3.9%	34.4%
Steel mill products	-2.5%	-9.9%	47.0%
Switchgear, switchboard, industrial controls equipment	0.2%	6.3%	32.0%
Unprocessed energy materials	-0.3%	-16.2%	60.2%

Consumer Price Index

The Consumer Price Index (CPI) compiled by the United States Department of Labor, measures the average change over time in the prices paid by urban consumers for a specified grouping of consumer goods and services. The CPI encompasses various categories including food, housing, clothing, medical care, and transportation, providing a comprehensive view of price movements. It serves as a key indicator of inflation and aids policymakers, businesses, and the public by offering insights into inflation trends and potential economic impacts.³⁸ The CPI increased by approximately 19 percent from February 2020 to October 2023. Comparatively, the CPI increased approximately three percent from October 2022 to October 2023.³⁹

Department of Transportation

The Florida Department of Transportation (FDOT) is a decentralized agency⁴⁰ headed by the Secretary of Transportation. The Secretary is appointed by the Governor from among three persons nominated by the Florida Transportation Commission and subject to confirmation by the Senate.⁴¹ FDOT is the primary agency responsible for planning, designing, building, operating, and maintaining Florida's transportation system, including the state's roadways, bridges, airports, seaports, and other transportation-related infrastructure.⁴²

FDOT rules establish minimum qualification standards by type of work for consultants who seek to provide professional services to FDOT, including the following:

- Geotechnical Classification Lab Testing, which includes conducting tests on soil and rock according to FDOT specifications for the purpose of classifying materials. This type of work requires one professional engineer with a minimum of five years of experience in activities normally associated with geotechnical testing. In addition, the consultant must have at least one technician with a limerock bearing ratio technician qualification with at least two years of experience in geotechnical testing, and certain specialized equipment.⁴³
- Geotechnical Specialty Lab Testing, which includes conducting tests on soil and rock according to FDOT specifications for the purpose of identifying their physical properties. FDOT requires

³⁸ United States Department of Labor Bureau of Labor Statistics, *Consumer Price Indexes Overview*, <https://www.bls.gov/cpi/overview.htm> (last visited December 1, 2023).

³⁹ See United States Department of Labor Bureau of Labor Statistics, *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm (last visited December 1, 2023).

⁴⁰ S. 20.23, F.S.

⁴¹ S. 20.23(1)(a), F.S.

⁴² See s. 334.044, F.S.; see also Florida Department of Transportation, *About FDOT*, <https://www.fdot.gov/agencyresources/aboutfdot.shtm> (last visited November 28, 2023).

⁴³ R. 14-75.003(5)(h)1.b. and (5)(h)2.b., F.A.C.

the consultant to have at least one staff member with four years of experience performing such tests, or an equivalent bachelor's degree, and certain specialized equipment.⁴⁴

- Highway Materials Testing, which includes sampling and testing various materials and reporting results and recommendations. This type of work requires one professional engineer with a minimum of five years of experience in activities normally associated with highway materials testing. In addition, the consultant's personnel must include an individual with a limerock bearing ratio technician qualification, an asphalt plant level I qualification, a concrete field-testing technician level I qualification, and a nuclear gauge operator certification as provided by a gauge manufacturer, as well as certain specialized equipment.⁴⁵
- Construction Materials Testing, which includes conducting inspections and investigations of various highway materials or products and reporting results and recommendations. This type of work requires one professional engineer with at least three years of experience in bridge or roadway construction inspection.⁴⁶

As of December 4, 2023, approximately 183 entities are qualified to do types of geotechnical and materials testing for FDOT, with many qualified to perform multiple types of work, including:

- Geotechnical Classification Lab Testing: approximately 58 companies.
- Geotechnical Specialty Lab Testing: approximately 30 companies.
- Highway Materials Testing: approximately 43 companies.
- Construction Materials Testing: approximately 155 companies.⁴⁷

Effect of the Bill

The PCS increases the maximum limit for continuing contracts covered by the CCNA from an estimated per-project construction cost of \$4 million to \$7.5 million plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for the year 2026.

The PCS also provides that FDOT must, for a geotechnical and materials testing continuing contract, select at least three qualified firms and award work to the selected firms on a sequential, rotational basis with the goal of equally distributing the work amongst the selected firms, provided such distribution is not detrimental to the interests of the state. If a project is not awarded on a sequential, rotational basis, at the time the project is awarded FDOT must certify in writing the reasons for awarding the project out-of-sequence, must publish the certification on its website for no less than 30 days, and must provide a copy to each of the selected firms under the contract.

B. SECTION DIRECTORY:

Section 1 amends s. 255.103, F.S., relating to construction management or program management entities.

Section 2 amends s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.

Section 3 provides an effective date of July 1, 2024.

⁴⁴ R. 14-75.003(5)(h)1.e. and (5)(h)2.d.(III), F.A.C.

⁴⁵ R. 14-75.003(5)(h)1.c. and (5)(h)2.c., F.A.C.

⁴⁶ R. 14-75.003(5)(i)1.c. and (5)(i)2.c., F.A.C.

⁴⁷ See Florida Department of Transportation Consultant Information (12/4/2023), at

<https://ssrs.fdot.gov/Reports/report/PDA%20Reports/Public%20Reports/InternetGroupX> (last visited Dec. 4, 2023).

STORAGE NAME: pcs0149.CRG

DATE: 1/9/2024

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services as defined in the CCNA, or that provide construction management or project management services, by allowing those entities to enter into larger contracts for projects under a continuing contract. Specifically, increasing the threshold for entering into continuing contracts would save those entities contractual and workload expenditures associated with having to undergo the CCNA procurement process for projects that exceed the current statutory threshold.

However, the fiscal impact on the private sector of requiring FDOT to select at least three qualified firms and award work on a sequential, rotational basis for certain continuing contracts is indeterminate at this time.

D. FISCAL COMMENTS:

The PCS may have a positive, yet indeterminate fiscal impact on state and local government expenditures by allowing the state or local government to enter into larger continuing contracts under the CCNA. By retaining a larger continuing contract under the CCNA, the state or a local government could potentially save on contractual and workload expenditures associated with the procurement of services on a per-project basis.

However, the fiscal impact on the state of requiring FDOT to select at least three qualified firms and award work on a sequential, rotational basis for certain continuing contracts is indeterminate at this time. The requirement for FDOT to certify in writing its reasons for awarding certain contracts out-of-sequence and publish the certification on its website and provide a copy to the selected firms will have a minimal fiscal impact on the agency that will be absorbed as part of its day-to-day operations.

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 expenditure 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 PCS neither provides nor requires any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

26 construction project. The construction management entity must
27 consist of or contract with licensed or registered professionals
28 for the specific fields or areas of construction to be
29 performed, as required by law. The construction management
30 entity may retain necessary design professionals selected under
31 the process provided in s. 287.055. At the option of the
32 governmental entity, the construction management entity, after
33 having been selected and after competitive negotiations, may be
34 required to offer a guaranteed maximum price and a guaranteed
35 completion date or a lump-sum price and a guaranteed completion
36 date, in which case, the construction management entity must
37 secure an appropriate surety bond pursuant to s. 255.05 and must
38 hold construction subcontracts. If a project, as defined in s.
39 287.055(2)(f), solicited by a governmental entity under the
40 process provided in s. 287.055 includes a grouping of
41 substantially similar construction, rehabilitation, or
42 renovation activities as permitted under s. 287.055(2)(f), the
43 governmental entity, after competitive negotiations, may require
44 the construction management entity to provide for a separate
45 guaranteed maximum price or a separate lump-sum price and a
46 separate guaranteed completion date for each grouping of
47 substantially similar construction, rehabilitation, or
48 renovation activities included within the project.

49 (3) A governmental entity may select a program management
50 entity, pursuant to the process provided by s. 287.055, which is

51 to be responsible for schedule control, cost control, and
52 coordination in providing or procuring planning, design, and
53 construction services. The program management entity must
54 consist of or contract with licensed or registered professionals
55 for the specific areas of design or construction to be performed
56 as required by law. The program management entity may retain
57 necessary design professionals selected under the process
58 provided in s. 287.055. At the option of the governmental
59 entity, the program management entity, after having been
60 selected and after competitive negotiations, may be required to
61 offer a guaranteed maximum price and a guaranteed completion
62 date or a lump-sum price and guaranteed completion date, in
63 which case the program management entity must secure an
64 appropriate surety bond pursuant to s. 255.05 and must hold
65 design and construction subcontracts. If a project, as defined
66 in s. 287.055(2)(f), solicited by a governmental entity under
67 the process provided in s. 287.055 includes a grouping of
68 substantially similar construction, rehabilitation, or
69 renovation activities as permitted under s. 287.055(2)(f), the
70 governmental entity, after competitive negotiations, may require
71 the program management entity to provide for a separate
72 guaranteed maximum price or a lump-sum price and a separate
73 guaranteed completion date for each grouping of substantially
74 similar construction, rehabilitation, or renovation activities
75 included within the project.

76 (4) A governmental entity's authority under subsections
 77 (2) and (3) includes entering into a continuing contract for
 78 construction projects, pursuant to the process provided in s.
 79 287.055, in which the estimated construction cost of each
 80 individual project under the contract does not exceed \$7.5 ~~\$4~~
 81 million plus an annual percentage increase based on the Annual
 82 Consumer Price Index compiled by the United States Department of
 83 Labor, beginning with the Annual Consumer Price Index announced
 84 by the United States Department of Labor for the year 2026. For
 85 purposes of this subsection, the term "continuing contract"
 86 means a contract with a construction management or program
 87 management entity for work during a defined period on
 88 construction projects described by type which may or may not be
 89 identified at the time of entering into the contract.

90 Section 2. Subsections (10) and (11) of section 287.055,
 91 Florida Statutes, are renumbered as subsections (11) and (12),
 92 respectively, paragraph (g) of subsection (2) is amended, and a
 93 new subsection (10) is added to that section, to read:

94 287.055 Acquisition of professional architectural,
 95 engineering, landscape architectural, or surveying and mapping
 96 services; definitions; procedures; contingent fees prohibited;
 97 penalties.—

98 (2) DEFINITIONS.—For purposes of this section:

99 (g) A "continuing contract" is a contract for professional
 100 services entered into in accordance with all the procedures of

101 | this act between an agency and a firm whereby the firm provides
 102 | professional services to the agency for projects in which the
 103 | estimated construction cost of each individual project under the
 104 | contract does not exceed \$7.5 ~~\$4~~ million plus an annual
 105 | percentage increase based on the Annual Consumer Price Index
 106 | compiled by the United States Department of Labor, beginning
 107 | with the Annual Consumer Price Index announced by the United
 108 | States Department of Labor for the year 2026;~~7~~ for study
 109 | activity if the fee for professional services for each
 110 | individual study under the contract does not exceed \$500,000, or
 111 | for work of a specified nature as outlined in the contract
 112 | required by the agency, with the contract being for a fixed term
 113 | or with no time limitation except that the contract must provide
 114 | a termination clause. Firms providing professional services
 115 | under continuing contracts shall not be required to bid against
 116 | one another.

117 | (10) APPLICABILITY TO DEPARTMENT OF TRANSPORTATION.—
 118 | Notwithstanding any other provision of this section to the
 119 | contrary, for a geotechnical and materials testing continuing
 120 | contract, the Department of Transportation must select at least
 121 | three qualified firms and award work under the contract to the
 122 | selected firms on a sequential, rotating basis with the goal of
 123 | equally distributing the work amongst the selected firms,
 124 | provided such distribution is not detrimental to the interests
 125 | of the state. If a project is not awarded on a sequential,

126 | rotational basis, at the time the project is awarded the
127 | department shall certify in writing the reasons for awarding the
128 | project out-of-sequence, shall publish the certification on the
129 | department's website for no less than 30 days, and shall provide
130 | a copy on each of the selected firms under the contract.

131 | Section 3. This act shall take effect July 1, 2024.