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# **Constitutional Rights, Rule of Law & Government Operations Subcommittee**

**February 1, 2024  
11:30 AM – 2:30 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, February 01, 2024 11:30 am  
**End Date and Time:** Thursday, February 01, 2024 02:30 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 229 Public Service Commission Rules by Payne  
HB 629 Florida Women's Historical Marker Initiative by Basabe, Plakon  
HB 1013 State Board of Administration by Stevenson  
HB 1227 Tuskegee Airmen Commemoration Day by Antone, Bankson  
HR 1261 Haudenosaunee Nationals by Shoaf  
HB 1471 Public Employees by Black  
HB 1679 Florida African American Heritage Preservation Network by McClure

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

PCS for HB 781 -- Unsolicited Proposals for Public-private Partnerships  
PCS for HB 1339 -- Department of Management Services

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](http://www.myfloridahouse.gov).

**NOTICE FINALIZED on 01/30/2024 4:03PM by Lacher.Tamara**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 229 Public Service Commission Rules

**SPONSOR(S):** Payne

**TIED BILLS:** IDEN./SIM. BILLS: SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	15 Y, 0 N	Bauldree	Keating
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Miller	Miller
3) State Administration & Technology Appropriations Subcommittee			
4) Commerce Committee			

### SUMMARY ANALYSIS

The role of the Florida Public Service Commission (PSC) is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. The PSC is funded through a trust fund, primarily deriving revenues from regulatory assessment fees (RAFs), which are fees imposed by the PSC on the entities which it regulates. The RAFs applicable to each regulated industry are capped by statute and may be adjusted by the PSC under that cap. Since the PSC must establish the rate of each RAF by rule, the PSC must go through the rulemaking process required under Florida law.

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms. An agency begins the rulemaking process by filing a notice of rule development that must indicate the subject, purpose and effect, legal authority for and preliminary text of the proposed rule, if any. Notices are published by the Department of State in the Florida Administrative Register. The agency then must publish a notice of proposed rule providing certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. If the projected impact of the proposed rule will exceed \$1 million in the aggregate for the five-year period after the rule is implemented, the rule cannot go into effect until ratified by the Legislature.

Under current law, for the 2023-2024 state fiscal year only, rules adopted by the PSC to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., which include its authority to administer and set the rates for RAFs, are exempted from the SERC and rule ratification requirements, but the exemption expires on July 1, 2024.

The bill exempts rules adopted by the PSC to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., which include its authority to administer and set the rates for RAFs, from the legislative ratification requirement. The bill removes the current one-year exemption from the SERC requirement for such rules.

The bill has no fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.<sup>1</sup> The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.<sup>2</sup>

The Legislature annually sets the PSC's budget,<sup>3</sup> however, the PSC does not receive any funding from Florida's General Revenue Fund. Instead, the PSC is funded through the Florida Public Service Regulatory Trust Fund,<sup>4</sup> primarily deriving revenues from regulatory assessment fees (RAFs), which are credited to the trust fund and withdrawn in accordance with the PSC's budget.<sup>5</sup>

##### *Regulatory Assessment Fees*

RAFs are fees imposed by the PSC on the entities which it regulates. Florida law requires the PSC to impose RAFs by rule to fund the operations of the Commission.<sup>6</sup> The PSC rules establishing RAFs are industry specific and implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S. Under current law, rules establishing RAFs must meet certain requirements:

- RAFs cannot exceed a maximum rate established by statute for each industry;<sup>7</sup>
- RAFs for each industry must be sufficient to cover the PSC's cost to regulate the entities in that industry;<sup>8</sup> and
- RAFs imposed on one industry cannot be used to offset the cost of regulating any other industry.<sup>9</sup>

RAFs are specific to each entity the PSC regulates and are generally calculated based on gross operating revenues derived from intrastate business, excluding sales for resale between certain specified types of entities.<sup>10</sup> However, regardless of gross operating revenue, entities in most regulated industries must pay a minimum annual regulatory assessment fee specific to that industry.<sup>11</sup>

Since the PSC must establish the rate of each RAF by rule, the PSC must go through the rulemaking process required under Florida law.

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<sup>1</sup> S. 350.001, F.S.

<sup>2</sup> Florida Public Service Commission, <http://www.psc.state.fl.us/about> (last visited November 7, 2023).

<sup>3</sup> See s. 350.113, F.S.

<sup>4</sup> S. 350.113, F.S.

<sup>5</sup> Florida Public Service Commission (PSC), "Agency Analysis of 2024 House Bill 229," p. 1 (Nov. 6, 2023), available at <https://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=32087&yr=2024> (last visited January 30, 2024).

<sup>6</sup> *Id.*

<sup>7</sup> See ss. 364.336, 366.14, 367.145, and 368.109, F.S.; PSC *supra* note 5.

<sup>8</sup> See s. 350.113(3), F.S.; PSC, "Agency Analysis," *supra* note 5.

<sup>9</sup> *E.g.*, s. 367.145(3), F.S.; PSC, "Agency Analysis," *supra* note 5.

<sup>10</sup> See Rules 25-4.0161, -6.0131, -7.0131, -7.101, and -30.120, F.A.C.

<sup>11</sup> See Rules 25-4.0161, -6.0131, -7.0131, and -30.120, F.A.C.

## Agency Rulemaking and Rule Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>12</sup> The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.<sup>13</sup> If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.<sup>14</sup>

Rulemaking authority is delegated by the Legislature<sup>15</sup> by law authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>16</sup> a rule. If an agency statement meets the definition of a rule, the agency does not have discretion whether to engage in rulemaking.<sup>17</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>18</sup> The grant of rulemaking authority itself need not be specific or detailed.<sup>19</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>20</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, could be ruled unconstitutional if it allows the agency to make the law.<sup>21</sup> Because of this constitutional limitation on delegated rulemaking, the Legislature must include minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.<sup>22</sup>

### *Statement of Estimated Regulatory Costs*

An agency begins the rulemaking process by filing a notice of rule development that must indicate the subject, purpose and effect, legal authority for and preliminary text of the proposed rule, if any.<sup>23</sup> Notices are published by the Department of State in the Florida Administrative Register.<sup>24</sup> The agency then must publish a notice of proposed rule providing certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule.<sup>25</sup>

A SERC must be prepared if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year of implementation of the rule.<sup>26</sup> Preparation of a SERC also is triggered when a substantially

<sup>12</sup> S. 120.52(16), F.S.; *Florida Dep’t of Fin. l Servs. v. Capital Collateral Reg’l Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

<sup>13</sup> *Dep’t of Admin. v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977)

<sup>14</sup> *McDonald v. Dep’t of Banking & Fin.*, 346 So. 2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See *State of Florida, Dep’t of Admin. v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dep’t of Admin. v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Dep’t of Health & Rehab. Servs.*, 452 So. 2d 976, 977–978 (Fla. 1st DCA 1984); *Dep’t of Transp. v. Blackhawk Quarry Co.*, 528 So. 2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So. 2d 243 (Fla. 1988); *Dep’t of Natural Res. v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dep’t of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Ass’n*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dep’t of Financial Servs. v. Capital Collateral Reg’l Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Ins. Reg.*, 38 So. 3d 200 (Fla. 1st DCA 2010).

<sup>15</sup> *SW. Florida Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

<sup>16</sup> S. 120.52(17), F.S.

<sup>17</sup> S. 120.54(1)(a), F.S.

<sup>18</sup> Ss. 120.52(8) & 120.536(1), F.S.

<sup>19</sup> *Save the Manatee Club, Inc.*, 773 So. 2d at 599.

<sup>20</sup> *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Askew v. Cross Keys Waterways*, 372 So. 2d 913, 918-919 (Fla. 1978); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass’n*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

<sup>21</sup> *Connerv. Joe Hatton, Inc.*, 216 So. 2d 209 (Fla. 1968).

<sup>22</sup> *Sarasota County v. Barg*, 302 So. 2d 737 (Fla. 1974).

<sup>23</sup> S. 120.54(2)(a), F.S.

<sup>24</sup> S. 120.55(1)(b), F.S.

<sup>25</sup> S. 120.54(3)(a)1., F.S.

<sup>26</sup> S. 120.54(3)(b)1., F.S.

affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.<sup>27</sup> The SERC must provide an economic analysis projecting the proposed rule's effect on specified aspects of the state's economy, including a potential increase in regulatory costs and the rule's potential impact over the five-year period after the rule goes into effect.<sup>28</sup> Each SERC must discuss the proposed rule's likely adverse impact on economic growth, private-sector job creation or employment, and private-sector investment; the likely adverse impact on business competitiveness,<sup>29</sup> productivity, or innovation;<sup>30</sup> and whether the proposed rule is likely to increase regulatory costs, including any transactional costs.<sup>31</sup> If the analysis shows the projected impact of the proposed rule will exceed \$1 million in the aggregate for the five-year period after the rule is implemented, the rule cannot go into effect until ratified by the Legislature.<sup>32</sup>

### *Legislative Ratification*

Current law distinguishes between a rule being "adopted" and becoming enforceable or "effective."<sup>33</sup> A rule must be filed for adoption before it may go into effect.<sup>34</sup> As a rule subject to ratification becomes effective only if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification. A rule requiring legislative ratification must be submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session.<sup>35</sup>

Exemptions to the legislative ratification requirement have been made for certain rules, including adoption of federal standards,<sup>36</sup> triennial updates of the Florida Building Code<sup>37</sup> and the Florida Fire Prevention Code,<sup>38</sup> the adjustment of tolls by the Florida Department of Transportation,<sup>39</sup> and certain rules pertaining to nutrient pollution in Florida waters.<sup>40</sup> The exemption to ratification for adoption of federal standards was implemented as consistent with existing rulemaking policy.<sup>41</sup> The exemptions for updates of the Florida Building Code and the Florida Fire Prevention Code, and the adjustment of tolls, were adopted because the respective statutory procedures for such updates and adjustments ensured sufficient legislative oversight and public participation sufficient to test the economic impacts of the proposed changes.<sup>42</sup> In 2013, certain rulemaking by the Department of Environmental Regulation establishing specific requirements for nutrients in Florida waters was exempted from the ratification requirement because of the extensive public interaction between the Clean Water Act<sup>43</sup> and Florida-developed standards.<sup>44</sup>

Rules adopted by the PSC pertaining to rates, charges, terms, and conditions of utility pole attachments,<sup>45</sup> including attachments to a utility pole made redundant by subsequent replacement,<sup>46</sup>

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<sup>27</sup> S. 120.541(1)(a), F.S.

<sup>28</sup> S. 120.541(2)(a), F.S.

<sup>29</sup> This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>30</sup> S. 120.541(2)(a)2., F.S.

<sup>31</sup> S. 120.541(2)(a)3., F.S.

<sup>32</sup> S. 120.541(3), F.S.

<sup>33</sup> S. 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

<sup>34</sup> S. 120.54(3)(e)6, F.S.

<sup>35</sup> S. 120.541(3), F.S.

<sup>36</sup> S. 120.541(4)(a), F.S. See s. 120.54(6), F.S.

<sup>37</sup> S. 120.541(4)(b), F.S., for amendments expressly authorized by s. 553.73, F.S. See also s. 120.80(16)(d), F.S.

<sup>38</sup> S. 120.541(4)(c), F.S., for amendment expressly authorized by s. 633.202, F.S. See also s. 120.80(17), F.S.

<sup>39</sup> S. 120.80(18), F.S.

<sup>40</sup> Ch. 2013-71, ss. 2, 4, Laws of Fla.; ch. 2012-3, s. 1(1), Laws of Fla.

<sup>41</sup> See s. 120.54(6), F.S.

<sup>42</sup> See "Final Bill Analysis for CS/CS/CS/HB 993 & HB 7239 (2011)," pp. 7-11, at

<https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0993z1.RRS.DOCX&DocumentType=Analysis&BillNumber=0993&Session=2011> (last visited January 30, 2024).

<sup>43</sup> 33 U.S.C. Sec. 1251, et. seq

<sup>44</sup> See "Final Bill Analysis for CS/HB 7115," p.7, at

<https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h7115z.ANRS.DOCX&DocumentType=Analysis&BillNumber=7115&Session=2013> (last visited January 30, 2024).

<sup>45</sup> S. 366.04(8), F.S.

<sup>46</sup> S. 366.97, F.S.

are exempt from the SERC and rule ratification requirements.<sup>47</sup> For the 2023-2024 state fiscal year only, rules adopted by the PSC to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S.,<sup>48</sup> are exempted from the SERC and rule ratification requirements, but the exemption expires on July 1, 2024.<sup>49</sup> These sections provide the PSC's authority to administer and set rates for RAFs.

### **Effect of Proposed Changes**

The bill exempts rules adopted by the PSC to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., from the legislative ratification requirement in s. 120.541(3), F.S. These sections provide the PSC's authority to administer and set rates for RAFs. Because the PSC's budget is set by the Legislature, the PSC will not be able to withdraw additional RAF revenue from the trust fund without Legislative approval.

The bill removes the current one-year exemption from the SERC requirement for such rules.

The bill provides an effective date of July 1, 2024.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 120.80, F.S., relating to exceptions and special requirements for rulemaking.

**Section 2:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The Public Service Commission indicates no fiscal impact.<sup>50</sup>

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

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<sup>47</sup> S. 120.80(13)(g)1., F.S.

<sup>48</sup> As discussed above, the PSC rules establishing RAFs implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S.

<sup>49</sup> S. 120.80(13)(g)2., F.S. See ch. 2023-240, s. 51, Laws of Fla.

<sup>50</sup> PSC, "Agency Analysis," *supra* note 5 at p. 3.



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 exempts from the legislative rule ratification requirement in s. 120.541(3), F.S., rulemaking by the PSC under ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to Public Service Commission rules;  
 3           amending s. 120.80, F.S.; removing the expiration and  
 4           revising the scope of an exemption from certain  
 5           provisions relating to statements of estimated  
 6           regulatory costs for certain rules adopted by the  
 7           Public Service Commission; providing an effective  
 8           date.

9

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

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12           Section 1. Paragraph (g) of subsection (13) of section  
 13 120.80, Florida Statutes, is amended to read:

14           120.80 Exceptions and special requirements; agencies.—

15           (13) FLORIDA PUBLIC SERVICE COMMISSION.—

16           (g)1. Rules adopted by the Florida Public Service  
 17 Commission to implement ss. 366.04(8) and (9) and 366.97 are not  
 18 subject to s. 120.541.

19           2. ~~For the 2023-2024 fiscal year,~~ Rules adopted by the  
 20 Florida Public Service Commission to implement ss. 350.113,  
 21 364.336, 366.14, 367.145, and 368.109 are not subject to s.  
 22 120.541(3) ~~s. 120.541. This subparagraph expires July 1, 2024.~~

23           Section 2. This act shall take effect July 1, 2024.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 629 Florida Women's Historical Marker Initiative

**SPONSOR(S):** Constitutional Rights, Rule of Law & Government Operations Subcommittee, Basabe and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 716

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

### SUMMARY ANALYSIS

The Division of Historical Resources (Division) in the Department of State is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division also is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.

The Florida Historical Marker Program is designed to raise public awareness of Florida's rich cultural history and to enhance the enjoyment of the state's historic sites by citizens and tourists. The Division is responsible for administering all aspects of the Florida Historic Marker Program, including the application process, selection and designation of properties, persons or events to be marked, and the placement and maintenance of the markers. Currently, there are approximately 1,200 markers throughout the state.

The bill establishes The Florida Women's Historical Marker Initiative within the Division to recognize the contributions of 100 women, living or deceased, to the history of Florida with the placement of historical markers by the Florida Historical Marker Program. These markers must be placed throughout the state within the next 10 years with 10 markers be placed each year. The first 10 markers must be placed by December 31, 2025, and the final marker must be placed by December 31, 2035.

The bill also creates The Women's Historical Marker Selection Committee to select those women who will be recognized by the initiative.

The bill may have an indeterminate but negative impact on the budget of the Division. See Financial Comments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Department of State

The Department of State (DOS)<sup>1</sup> is comprised of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Arts and Culture, and Administration.<sup>2</sup>

The Secretary of State (Secretary) is the agency head of DOS, appointed by and serving at the pleasure of the Governor, confirmed by the Senate, and acts as the custodian of state records.<sup>3</sup> As the chief administrator of the Division of Historical Resources (Division) and the divisions of Arts and Culture and of Library and Information Services, the Secretary also serves as Florida's Chief Arts and Culture Officer.<sup>4</sup>

##### Division of Historical Resources

The Division is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division is also charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>5</sup> Some of the Division's responsibilities include:

- Developing a comprehensive statewide historic preservation plan;
- Directing and conducting a comprehensive statewide survey, and maintaining an inventory, of historic resources;
- Cooperating with governmental agencies, private organizations, and individuals to ensure that historic resources are taken into consideration at all levels of planning and development;
- Providing public information, education, and technical assistance relating to historic preservation programs; and
- Taking necessary or appropriate action to locate, acquire, protect, preserve, operate, interpret, and promote historic resources to foster an appreciation of Florida history and culture.<sup>6</sup>

The Division also is responsible for encouraging, promoting, maintaining, and operating Florida history museums, providing support and working to promote the use of resources for educational and cultural purposes.<sup>7</sup> The Division directly oversees the following museums:

- The Museum of Florida History, which is the state's official history museum and showcases Florida's diverse history from prehistoric times to the present day;<sup>8</sup>
- Mission San Luis, a living history museum showcasing the life of the Apalachee Indians and Spanish settlers and hosting workshops such as pottery and blacksmithing;<sup>9</sup>

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<sup>1</sup> S. 20.10, F.S.

<sup>2</sup> S. 20.10(2), F.S.

<sup>3</sup> S. 20.10(1), F.S.

<sup>4</sup> S. 15.18, F.S.

<sup>5</sup> S. 267.031, F.S.

<sup>6</sup> S. 267.031(5)(a), (b), (d), (f), and (i), F.S.

<sup>7</sup> S. 267.071(2), F.S.

<sup>8</sup> See Florida Department of State, *Museum of Florida History*, available at <https://museumoffloridahistory.com/explore/exhibits/> (last visited January 25, 2024).

<sup>9</sup> See Florida Department of State, *Mission San Luis*, available at <https://missionsanluis.org/learn/> (last visited January 25, 2024).

- The Knott House Museum, showcasing the history of Tallahassee and its role in the Civil War, including the reading of the Emancipation Proclamation on the steps of the Knott House in 1865;<sup>10</sup> and
- The Grove Museum, the mission of which is to preserve and interpret the Call-Collins House, its surrounding area and historical collections, to further public dialogue about civil rights and American history.<sup>11</sup>
- Currently, the Division provides support for the Florida Museum of Black History Task Force (Task Force), including staffing and necessary expenditures. The purpose of the Task Force is to provide recommendations to the Division for the planning, location, construction, operation, and administration of a Florida Museum of Black History.<sup>12</sup>

Other museums recognized by the state include:

- Certain state railroad museums;<sup>13</sup>
- The Florida Museum of Transportation and History;<sup>14</sup>
- The John and Mable Ringling Museum of Art;<sup>15</sup>
- The Ringling Museum of the Circus;<sup>16</sup>
- The Florida Historic Capitol Museum;<sup>17</sup>
- The Florida Agricultural Museum;<sup>18</sup> and
- The Florida Museum of Natural History.<sup>19</sup>

### *Florida Heritage Trails*

In order to raise awareness of the state's cultural and historical resources, in 1991 the Division started the Florida Heritage Trails series with the publication of the first edition of the Florida Black Heritage Trail. Each volume identifies historical sites throughout Florida that are related to the volume topic and offers profiles and biographical sketches of significant individuals.<sup>20</sup> Subsequently, additional titles have been released including the Woman's Heritage Trail<sup>21</sup>, which was published in 2001. The most recent titles, the Florida Seminole Wars Heritage Trail<sup>22</sup> and the Florida Historic Golf Trail,<sup>23</sup> were published in 2015.

### *Florida Historical Marker Program*

The Florida Historical Marker Program is designed to raise public awareness of Florida's rich cultural history and to enhance the enjoyment of the state's historic sites by citizens and tourists.<sup>24</sup> The Division is responsible for administering all aspects of the Florida Historic Marker Program, including the application process, selection and designation of properties, persons or events to be marked, and the

<sup>10</sup> See Florida Department of State, *About the Knott House*, available at <https://museumoffloridahistory.com/visit/knott-house-museum/about-the-knott-house/> (last visited January 25, 2024).

<sup>11</sup> See Florida Department of State, *The Gove Museum*, available at <https://thegrovemuseum.com/> (last visited January 25, 2024). The Grove was the home to several generations of the Call and Collins families, including former Governor LeRoy Collins. The Grove Advisory Council advises the division on the operation, maintenance, and preservation of the museum. S. 267.075, F.S.

<sup>12</sup> S. 267.0722, F.S.

<sup>13</sup> See s. 15.045, F.S.

<sup>14</sup> S. 15.046, F.S.

<sup>15</sup> See ss. 265.27, F.S., and 1004.45, F.S.

<sup>16</sup> S. 1004.45, F.S.

<sup>17</sup> S. 272.129, F.S. The Florida Historic Capitol Museum Council provides guidance and support to the museum director and support staff. S. 272.131, F.S.

<sup>18</sup> See s. 570.69, F.S.

<sup>19</sup> S. 1004.56, F.S.

<sup>20</sup> Florida Department of State, *Florida Heritage Trails*, available at <https://dos.fl.gov/historical/preservation/heritage-trails/> (last visited January 25, 2024).

<sup>21</sup> Florida Department of State, *Florida Women's Heritage Trail*, available at <https://dos.fl.gov/historical/preservation/heritage-trails/womens-heritage-trail/> (last visited January 25, 2024).

<sup>22</sup> Florida Department of State, *Seminole Wars Heritage Trail*, available at <https://dos.fl.gov/historical/preservation/heritage-trails/seminole-wars-heritage-trail/> (last visited January 26, 2024).

<sup>23</sup> Florida Department of State, *Florida Historic Golf Trail*, available at <http://www.floridahistoricgolftrail.com/> (last visited January 25, 2024).

<sup>24</sup> S. 267.074, F.S. & Rule 1A-48.002(3), F.A.C.

placement and maintenance of the markers.<sup>25</sup> Currently, there are approximately 1,100 markers throughout the state.<sup>26</sup>

These markers tell stories of the places and people who created Florida, by identifying places such as churches, schools, archaeological sites, battlefields, and homes that represent Florida's past.<sup>27</sup> There are distinct categories of Official Florida Historical Markers:

- "Florida Heritage Landmark" markers identify and interpret heritage landmark properties and recognize the resources of the state that are usually more than fifty years old, are of exceptional significance in the areas of architecture, archaeology, and history, and where the properties largely and visibly retain the distinctive physical characteristics that were present during the historical period for which the property is being recognized.<sup>28</sup>
- "Florida Heritage" markers identify people, events and places, including buildings, structures, objects and archaeological sites that do not meet the criteria for Florida Heritage Landmark designation but are still of local, regional, or statewide historic significance relating to Florida history, culture, and ethnic heritage.<sup>29</sup>
- A "Special Marker" is established by the Division to guide the public to places of historic or cultural interest and to facilitate the identification and interpretation of various topics, including historic and scenic trails, byways, greenways, and occasions of special significance to the history and culture of Florida.<sup>30</sup>
- "Historic Highway" markers identify state historic highways.<sup>31</sup>

#### State Historical Marker Council

Although the Division administers the Florida Historical Marker Program, the State Historical Marker Council was created to provide assistance, advice, and recommendations to the division in evaluating proposals for Official Florida Historical Markers and identifying goals for the State Historical Marker Program.<sup>32</sup> The council consists of three members who represent different areas of the state and are appointed by the Secretary of State to 2-year terms.<sup>33</sup> The qualifications for membership are through the demonstration of special interest, experience, or education in interpretation of the state's history and historical properties and have professional training and experience in one or more of the following fields:

- History;
- Historic preservation;
- Architecture;
- Architectural history; or
- Archaeology.<sup>34</sup>

#### Florida Commission on the Status of Women

Within the Office of the Attorney General, the Florida Commission on the Status of Women (Commission) was established to study the changing and developing roles of women in American society.<sup>35</sup> The areas the Commission is directed to study include, but are not limited to:

- The socioeconomic factors that influence the status of women;<sup>36</sup>
- The development of individual potential;<sup>37</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Florida Department of State, *Florida Historical Marker List*, <https://apps.flheritage.com/markers/> (last visited January 26, 2024).

<sup>27</sup> See Florida Department of State, Florida Division of Historical Resources, *Historical Markers*, <https://dos.fl.gov/historical/preservation/historical-markers/> (last visited January 26, 2024).

<sup>28</sup> S. 267.074(2)(a), F.S. & Rule 1A-48.002(3)(a), F.A.C.

<sup>29</sup> S. 267.074(2)(c), F.S. & Rule 1A-48.002(3)(b), F.A.C.

<sup>30</sup> S. 267.074(2)(d), F.S. & Rule 1A-48.002(3)(d), F.A.C.

<sup>31</sup> S. 267.074(2)(b), F.S. & Rule 1A-48.002(3)(c), F.A.C.

<sup>32</sup> S. 267.0743, F.S.

<sup>33</sup> S. 267.0743(1) & (2), F.S.

<sup>34</sup> S. 267.0743(1), F.S.

<sup>35</sup> S. 14.24(1), F.S.

<sup>36</sup> S. 14.24(4)(a), F.S.

<sup>37</sup> S. 14.24(4)(b), F.S.

- The encouragement of women to utilize their capabilities and assume leadership roles;<sup>38</sup>
- The coordination of efforts of numerous women's organizations interested in the welfare of women;<sup>39</sup>
- The identification and recognition of contributions made by women to the community, state, and nation; and<sup>40</sup>
- The implementation of ideas where working conditions, financial security, and legal status of both sexes are improved.<sup>41</sup>

The Commission consists of 22 members who represent rural and urban interests and the ethnic and cultural diversity of the state's population. The Speaker of the House of Representatives, the President of the Senate, the Attorney General, and the Governor each appoint four members, and the Chief Financial Officer and the Commissioner of Agriculture each appoint three members. All members are appointed to terms of 4 years and may not serve more than 8 consecutive years on the Commission.<sup>42</sup>

### **Effect of the Bill**

The bill establishes The Florida Women's Historical Marker Initiative within the Division to recognize the contributions of 100 women, living or deceased, to the history of this state with the placement of historical markers by the Florida Historical Marker Program.

The bill also creates The Women's Historical Marker Selection Committee to select those women who will be recognized by the initiative. Membership shall consist of the following:

- Three members appointed by the Governor, two of whom must be noted Florida historians;
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House;
- One member appointed by the Secretary of State;
- A member of the Florida Commission on the Status of Women;
- A representative of the Division of Historical Resources;
- A member of the State Historical Marker Council; and
- Two members of the general public.

The bill sets the following criteria for women to be recognized by a Florida Women's Historical Marker:

- A woman must have been born in, resided in, or been employed in this state and must have significantly contributed to the State of Florida, her county, or her specific community;
- A woman recognized for a specific contribution or achievement may be living, but such contribution or achievement must have occurred more than 30 years before being selected for a Historical Marker;
- A woman may be recognized for a lifetime achievement, but such woman must have been deceased for at least 30 years before such recognition; and
- At least one woman from each of the state's 67 counties must be recognized, and the remaining 33 women recognized shall be selected by the Women's Historical Marker Selection Committee.

The bill also directs The Florida Historical Marker Program to place 100 Historical Markers, recognizing one woman for each marker, throughout the state within the next 10 years, with 10 markers to be placed each year. The first 10 markers must be placed by December 31, 2025, and the final marker must be placed by December 31, 2035.

### **B. SECTION DIRECTORY:**

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<sup>38</sup> S. 14.24(4)(c), F.S.

<sup>39</sup> S. 14.24(4)(d), F.S.

<sup>40</sup> S. 14.24(4)(e), F.S.

<sup>41</sup> S. 14.24(4)(f), F.S.

<sup>42</sup> S. 14.24(1), F.S.



- Section 1. Cites this act as the "Florida Women's Historical Marker Initiative."
- Section 2. Creates an unnumbered section of law establishing The Florida Women's Historical Marker Initiative.
- 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:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill establishes the Florida Women's Historical Marker Initiative within the Division of Historical Resources. The Division may incur additional workload and costs associated with the placing of 100 new historical markers.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 bill neither authorizes nor requires executive branch rulemaking.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates an unnumbered section of general law. The next available statute number for codification is s. 267.0744, F.S.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**



26 | themselves reflected in the state's history and gain  
 27 | encouragement in the development and fulfillment of their own  
 28 | aspirations, NOW, THEREFORE,

29 |  
 30 | Be It Enacted by the Legislature of the State of Florida:

31 |  
 32 |       Section 1. This act may be cited as the "Florida Women's  
 33 | Historical Marker Initiative."

34 |       Section 2. (1) The Florida Women's Historical Marker  
 35 | Initiative is established within the Division of Historical  
 36 | Resources of the Department of State. The purpose of the  
 37 | initiative is to recognize the contributions of 100 women,  
 38 | living or deceased, to the history of this state with the  
 39 | placement of historical markers by the Florida Historical Marker  
 40 | Program.

41 |       (2) (a) The Women's Historical Marker Selection Committee  
 42 | is established to select those women who will be recognized by  
 43 | the initiative. The membership of the committee must consist of:

44 |       1. Three members appointed by the Governor, two of whom  
 45 | must be noted Florida historians.

46 |       2. One member appointed by the President of the Senate.

47 |       3. One member appointed by the Speaker of the House of  
 48 | Representatives.

49 |       4. One member appointed by the Secretary of State.

50 |       5. A member of the Florida Commission on the Status of

51 Women.

52 6. A representative of the Division of Historical  
53 Resources.

54 7. A member of the State Historical Marker Council.

55 8. Two members of the general public.

56 (b) In selecting women to be recognized by the initiative,  
57 the committee shall conduct its own research and solicit input  
58 from the general public.

59 (3)(a) A woman selected by the Women's Historical Marker  
60 Selection Committee to be recognized must have been born in,  
61 resided in, or been employed in this state and must have  
62 significantly contributed to the state of Florida, her county,  
63 or her specific community.

64 (b) A woman recognized for a specific contribution or  
65 achievement may be living, but such contribution or achievement  
66 must have occurred more than 30 years before such recognition. A  
67 woman may be recognized for a lifetime achievement, but such  
68 woman must have been deceased for at least 30 years before such  
69 recognition.

70 (c) At least one woman from each of the state's 67  
71 counties must be recognized, and the remaining 33 women  
72 recognized shall be selected by the Women's Historical Marker  
73 Selection Committee.

74 (4) The Florida Historical Marker Program shall place 100  
75 historical markers, recognizing one woman for each marker,

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76 | throughout the state within the next 10 years, with 10 markers  
77 | placed each year. The first 10 markers must be placed by  
78 | December 31, 2025. The final marker must be placed by December  
79 | 31, 2035.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1013 State Board of Administration

**SPONSOR(S):** Stevenson

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1028

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 State Board of Administration (SBA) is responsible for investing the assets of the Florida Retirement System (FRS) Pension Plan and administering the FRS Investment Plan, which combined represent approximately \$190.8 billion, or 84.4 percent, of the \$225.4 billion in assets managed by the SBA. 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, and the Florida Prepaid College Plan.

The SBA's authority to invest the funds, including FRS assets, is governed by an authorized list of investments established in law, known as the "legal list." The legal list specifies the permitted types of investments as well as the total percentage that may be invested in each type. Currently, the SBA may invest 30 percent of any fund in alternative investments. Alternative investments are investments in a private equity fund, venture fund, hedge fund, or distress fund, or a direct investment in a portfolio company through an investment manager.

Alternative investments are generally illiquid and involve obligations contracted over multiple year periods. In response to this, the SBA employs a strategy of selling its interests on the secondary market to generate liquidity and rebalance its alternative investment portfolio. However, this approach represents a complete exit from the SBA's position.

Over the past several years, other financial instruments have gained prominence in the institutional investment landscape that allow fund managers to realize liquidity without necessitating the sale of portfolio assets. These tools include net asset value-based (NAV) facilities and collateralized fund obligations (CFOs). NAV facilities allow fund managers to borrow against committed capital, offering short-term access to cash without having to sell illiquid portfolio assets. CFOs involve issuing different tranches of debt securities, each with distinct risk and return profiles, with the cash flows from the underlying portfolio allocated to repay those tranches.

Unsecured debt instruments are not secured by any specific collateral and generally have higher associated interest rates.

The bill authorizes the SBA, or an affiliated limited liability entity, to issue securities and borrow money through loans or other financial obligations, including bonds, equity securities, and other security instruments, any of which may be unsecured, secured by alternative investments or related cash flows, guaranteed by the related fund, or governed by financial covenants. The bill caps such authorization at no more than 5 percent of any fund.

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



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### 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.”<sup>1</sup> The SBA has responsibility for investing the assets of the Florida Retirement System (FRS) Pension Plan<sup>2</sup> and administering the FRS Investment Plan,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, considering all relevant substantive factors. A nine-member Investment Advisory Council (IAC) provides recommendations to the SBA on investment policy, strategy, and procedures and serves as a resource to the Board of Trustees.<sup>6</sup>

The SBA’s authority to invest the funds, including FRS assets, is governed by an authorized list of investments established in law, known as the “legal list.”<sup>7</sup> The legal list specifies the permitted types of investments as well as the total percentage that may be invested in each type of investment and provides that:

- No more than 80 percent of any fund may be invested in domestic equity securities;
- No more than 75 percent of any fund may be invested in internally managed equity securities;
- No more than 3 percent of equity assets may be invested in the equity securities of any one issuing entity, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the SBA that such higher percentage is in the best interest of the fund;
- No more than 25 percent of any fund may be invested in specific instruments, such as certain bonds or other obligations of other states or of municipalities or other political subdivisions, notes secured by first mortgages insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs, investment-grade group annuity contracts of the pension investment type, certain interests in real property, certain bonds or instruments issued by the government of Israel, foreign government general obligations, or other asset-backed securities;
- No more than 50 percent of any fund may be invested in foreign corporate or commercial securities or obligations; and
- No more than 30 percent of any fund may be invested in alternative investments.<sup>8,9</sup>

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<sup>1</sup> See also Art. XII, s. 9, FLA. CONST.

<sup>2</sup> S. 121.151, F.S.

<sup>3</sup> S. 121.4501(8), F.S. See also, R. 19-13.001, F.A.C.

<sup>4</sup> 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 10, 2024), herein “State Board of Administration 2023 Report.”

<sup>5</sup> *Id.*

<sup>6</sup> S. 215.444(1), F.S.

<sup>7</sup> S. 215.47, F.S.

<sup>8</sup> “Alternative investment” means an investment by the SBA in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager. S. 215.4401(3)(a), F.S.

<sup>9</sup> S. 215.47, F.S.

In addition, the SBA may invest up to 5 percent of any fund as it deems appropriate. However, before making such investment, the SBA must present a proposed plan for such investment to the IAC. The proposed plan must include a detailed analysis of the investment, the expected benefits and potential risks, and methods for monitoring and measuring performance.<sup>10</sup>

In 2023, the Legislature authorized the SBA to hold certain interests in real property and related personal property through limited liability entities or joint ventures. The SBA and its affiliated limited liability entities and joint ventures may issue securities and borrow money through loans or other financial obligations, including bonds, equity securities, and other security instruments, any of which may be unsecured, or secured by investments in real property or related cash flows, guaranteed by the related fund, or governed by financial covenants.<sup>11</sup>

### Alternative Investments

To diversify its investments, the SBA invests in multiple asset classes: global equities, fixed income, real estate, cash equivalents, strategic investments, and private equity.<sup>12</sup> The table below shows the asset allocation and valuation data for FRS Pension Plan assets over the past two years.<sup>13</sup>

Asset Class	Dollar Value (billions) 10/31/22	Percentage of Fund 10/31/22	Dollar value (billions) 10/31/23	Percentage of Fund 10/31/23	Total Percent Change from 2022-2023
<b>Global Equities</b>	\$84,976	48.6%	\$84,791	48.1%	(0.5)
<b>Fixed Income</b>	\$28,675	16.4%	\$29,263	16.6%	0.2
<b>Real Estate</b>	\$21,506	12.3%	\$20,977	11.9%	(0.4)
<b>Cash Equivalents</b>	\$2,098	1.2%	\$2,292	1.3%	0.1
<b>Strategic Investments</b>	\$20,282	11.6%	\$21,330	12.1%	0.5
<b>Private Equity</b>	\$17,310	9.9%	\$17,628	10.0%	0.1
<b>Total</b>	<b>\$174,847</b>	<b>100%</b>	<b>\$176,281</b>	<b>100%</b>	<b>0.82</b>

As noted above, the SBA may not invest more than 30 percent of any fund in alternative investments through participation in alternative investment vehicles<sup>14</sup> or in securities or investments that are not publicly traded and not otherwise authorized by the legal list. The use of alternative investment vehicles was first authorized in 1996 at a maximum of 5 percent of a fund.<sup>15</sup> In 2007, the use was expanded to include a broader spectrum of alternative investments, including private equity funds, venture funds, hedge funds, and distress funds.<sup>16</sup> In 2008, the maximum threshold was increased to 10 percent of a

<sup>10</sup> S. 215.47(6), F.S.

<sup>11</sup> Ch. 2023-111, Laws of Fla., codified in part in s. 215.47(2)(e), F.S. The proceeds of such loans or financing obligations may be loaned to or otherwise used as a source of funding for affiliated limited liability entities or joint ventures.

<sup>12</sup> The SBA categorizes their investments in the asset classes in the following manner:

- Global equity: primarily consists of equities in companies located in the United States and abroad.
- Fixed income: primarily consists of investment grade bonds.
- Real estate: primarily consists of directly owned real properties, real estate-based joint ventures, open-end and closed-end funds, and publicly traded real estate securities.
- Cash equivalents: primarily consists of short-term securities that have a high credit quality and liquidity.
- Strategic investments: contains investments not suitable for inclusion in the other asset classes, such as hedge funds, private debt, infrastructure, and timberland.
- Private equity: primarily consists of equity investments in non-publicly traded entities through limited partnerships.

State Board of Administration, *Summary Overview of the State Board of Administration of Florida*, [https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview\\_20211025.pdf?ver=2021-10-28-120954-217](https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217) (last visited January 10, 2024).

<sup>13</sup> See State Board of Administration, *Performance Report Month Ending: October 31, 2022*, <https://www.sbafla.com/fsb/Portals/FSB/Content/Trustees/2022/October%202022%20Monthly%20Trustee%20Report.pdf?ver=2023-01-03-095602-000> (last visited January 10, 2024); see also State Board of Administration *2023 Report*, *supra* note 4.

<sup>14</sup> "Alternative Investment Vehicle" means the limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company. S. 215.4401(3)(a)2., F.S.

<sup>15</sup> Ch. 96-177, s. 5, Laws of Fla., authorized the SBA to invest up to 5 percent of a fund in private equity through participation in limited partnerships and limited liability companies.

<sup>16</sup> Ch. 2007-98, s. 1, Laws of Fla.

fund.<sup>17</sup> In 2012, the threshold was increased to 20 percent.<sup>18</sup> In 2023, the threshold was increased to the present limit of 30 percent.<sup>19</sup>

Alternative investments are generally illiquid and involve obligations contracted over multiple year periods. In response to this, the SBA employs a strategy of selling its interests on the secondary market to generate liquidity and rebalance its alternative investment portfolio. However, this approach represents a complete exit from the SBA's position.<sup>20</sup>

Over the past several years, additional financial instruments have gained prominence in the institutional investment landscape that allow fund managers to realize liquidity without necessitating the sale of portfolio assets. These tools include net asset value-based (NAV) facilities and collateralized fund obligations (CFOs). NAV facilities allow fund managers to borrow against committed capital, offering short-term access to cash without having to sell illiquid portfolio assets.<sup>21</sup> CFOs represent a structured finance approach that securitizes future cash flows. CFOs involve issuing different tranches of debt securities, each with distinct risk and return profiles, with the cash flows from the underlying portfolio allocated to repay those tranches.<sup>22</sup>

Unsecured debt instruments are not secured by any specific asset and instead typically rely on the borrower's creditworthiness. Interest rates on unsecured debt instruments are generally higher due to the inherent associated risk.<sup>23</sup>

## Effect of the Bill

The bill authorizes the SBA, or an affiliated limited liability entity, to issue securities and borrow money through loans or other financial obligations, including bonds, equity securities, and other security instruments, any of which may be unsecured; secured by alternative investments or related cash flows; guaranteed by the related fund; or governed by financial covenants. The bill caps such authorization at no more than 5 percent of any fund.

### B. SECTION DIRECTORY:

Section 1 amends s. 215.47, F.S., relating to Investments; authorized securities; loan of securities.

Section 2 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

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<sup>17</sup> Ch. 2008-31, s. 3, Laws of Fla., increased the threshold to 10 percent and expanded this limitation to authorize SBA to invest in securities or investments that are not publicly traded and are not otherwise authorized in s. 215.47, F.S.

<sup>18</sup> Ch. 2012-112, s. 1, Laws of Fla.

<sup>19</sup> Ch. 2023-111, s. 3, Laws of Fla.

<sup>20</sup> See State Board of Administration, Agency Analysis of 2023 HB 1139 (dated March 18, 2023), on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

<sup>21</sup> See Mayer Brown, *The Advantages of Net Asset Value Credit Facilities*, <https://www.mayerbrown.com/en/perspectives-events/publications/2023/03/the-advantages-of-net-asset-value-credit-facilities> (last visited January 10, 2024).

<sup>22</sup> See Mayer Brown, *Collateralized Fund Obligations: A Growing CDO/CLO and Fund Finance Liquidity Solution*, <https://www.mayerbrown.com/en/perspectives-events/publications/2023/08/collateralized-fund-obligations-a-growing-cdo-clo-and-fund-finance-liquidity-solution#:~:text=A%20close%20sibling%20of%20collateralized,and%20equity%2C%20and%20other%20similar> (last visited January 10, 2024).

<sup>23</sup> Mark Henricks and Mitch Strohm, *Unsecured vs. Secured Debts: What's the Difference*, Forbes Advisor (dated August 12, 2021), <https://www.forbes.com/advisor/debt-relief/unsecured-vs-secured-debts/> (last visited January 10, 2024).

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The SBA indicates the bill will have a positive fiscal impact on the funds under its management. The SBA emphasizes that the capacity to generate liquidity and strategically rebalance or reposition alternative investment portfolios is integral to the effectiveness of a well-managed and high-performing alternative investment program. The SBA asserts that it currently faces a disadvantage by not having all options available to generate liquidity or adjust its alternative investment portfolio as necessary, should the market conditions warrant.<sup>24</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires additional executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>24</sup> See State Board of Administration, Agency Analysis of 2023 HB 1139 (dated March 18, 2023), on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.



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26 |       Section 2.   This act shall take effect upon becoming a law. |



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1227 Tuskegee Airmen Commemoration Day

**SPONSOR(S):** Antone and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1312

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Poreda	Miller
2) State Affairs Committee			

**SUMMARY ANALYSIS**

Florida Law provides designations for legal holidays and special observances. Recognition of a legal holiday or special observance could apply statewide or may be limited to a particular region of the state. Some holidays or special observances may also require a commemoration or observance of the day, week, or month.

The “Tuskegee Airmen” was the name given to the African American fighter pilots who trained near Tuskegee University. They formed part of the 332<sup>nd</sup> Fighter Group, comprised of four squadrons of African American pilots, in the 15<sup>th</sup> Air Force during World War II, also known as the “Red Tails.” The 332<sup>nd</sup> compiled a stellar record of service in over 200 missions flown, particularly in the performance of defending heavy bombers from enemy interceptors.

The bill designates the fourth Thursday in March as a legal holiday, to be known as “Tuskegee Airmen Commemoration Day.”

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



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Legal Holidays and Special Observances

Florida law designates a number of legal holidays and special observances.<sup>1</sup> Recognition of a legal holiday or special observance may apply statewide or may be limited to a particular region. For example, “Gasparilla Day”<sup>2</sup> is a legal holiday observed only in Hillsborough County, while “Bill of Rights Day”<sup>3</sup> applies throughout the state.

Depending on the holiday or special observance, certain actions may be required to be performed for the commemoration or observance of the date, day, or month. For example, April 2 is designated as “Florida State Day,” which is to be known as “Pascua Florida Day,”<sup>4</sup> regardless of whether the Governor issues a proclamation. However, the Governor is required to proclaim September 11 as “9/11 Hero’s Day” and public schools must observe such day.<sup>5</sup>

Florida law currently recognizes 21 legal holidays<sup>6</sup> and 38 special observances.<sup>7</sup> The state also recognizes nine paid holidays that are observed by all state branches and agencies.<sup>8</sup> Several of these recognitions are for historically significant events, acts of heroism and military service.

##### The Tuskegee Airmen

Before the “Tuskegee Airmen,” no African American had ever been a United States military pilot. The Army Air Forces established several African American organizations, including fighter and bombardment groups and squadrons. The first aviation cadet class began in July 1941 and completed training nine months later in March 1942 at an air base in Tuskegee, AL.<sup>9</sup> During the following years, between 1941 and 1946, roughly 1,000 African American pilots were trained.<sup>10</sup>

The 99<sup>th</sup> Pursuit Squadron (99<sup>th</sup>) was the first operational fighter squadron of African American pilots. They were eventually transferred into the 332<sup>nd</sup> Fighter Group (332<sup>nd</sup>) in the 15<sup>th</sup> Air Force and consisted of 4 squadrons comprised entirely of African American pilots. In June 1944, the 332<sup>nd</sup> began flying heavy bomber escort missions and out of 311 missions flown, 179 were escorting bombers, from June 1944 through the end of the war.<sup>11</sup> The 332<sup>nd</sup> established an enviable record for bomber escort missions, many without the loss of a single bomber to enemy

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<sup>1</sup> See ch. 683, F.S.

<sup>2</sup> S. 683.08, F.S.

<sup>3</sup> S. 683.25, F.S.

<sup>4</sup> S. 683.06(1), F.S.

<sup>5</sup> S. 683.335(1), F.S.

<sup>6</sup> S. 683.01, F.S.

<sup>7</sup> See ss. 683.04 - 683.335, F.S.

<sup>8</sup> S. 110.117(1), F.S. Paid state holidays include New Year’s Day, the Birthday of Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day.

<sup>9</sup> The National WWII Museum, *The Tuskegee Airmen*, available at, <https://www.nationalww2museum.org/sites/default/files/2017-07/tuskegee-airmen.pdf> (Last Visited January 25, 2024)

<sup>10</sup> Tuskegee University, *Tuskegee Airmen Facts*, Available at <https://www.tuskegee.edu/support-tu/tuskegee-airmen/tuskegee-airmen-facts> (Last Visited January 25, 2024)

<sup>11</sup> National Museum of the United States Air Force, *Escort Excellence*, available at

<https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/195963/escort-excellence/> (Last visited January 26, 2024)

aircraft.<sup>12</sup> The Tuskegee Airmen flew more than 15,000 combat sorties<sup>13</sup> between May 1943 and June 1945. Eighty-Four Tuskegee Airmen died during World War II.<sup>14</sup>

Bomber crews often requested escort by these “Red Tails,” a nicknamed acquired from the painted tails of 332<sup>nd</sup> fighter planes which were a distinctive deep red, because when they were escorting bombers enemy fighter pilots were discouraged from attacking by the sight of the “Red Tails.”<sup>15</sup> They were so successful, pilots from the 332<sup>nd</sup> received numerous combat awards including the Legion of Merit, a Silver Star, Twenty-five Bronze Stars, Ninety-six Distinguished Flying Crosses, and 1,031 Air Medals.<sup>16</sup> The 99<sup>th</sup> received two Presidential Unit Citations (June-July 1943 and May 1944) for outstanding tactical air support and aerial combat. The 332<sup>nd</sup> received the Presidential Unit Citation for its longest bomber escort mission to Berlin, Germany, on March 24, 1945, when they destroyed three German ME-262 jet fighters<sup>17</sup> and damaged 5 additional aircraft without losing any of the bombers or any of its own aircraft to enemy fire.<sup>18</sup> The Tuskegee Airmen were collectively, not individually, awarded the Congressional Gold Medal by President George W. Bush and the U.S. Congress on March 29, 2007.<sup>19</sup>

On April 28, 2023, the Florida House of Representatives adopted by publication a resolution recognizing the service and sacrifice of the Tuskegee Airmen and designating March 23, 2023, as “Tuskegee Airmen Commemoration Day” in Florida.<sup>20</sup>

### Effect of the Bill

The bill designates the fourth Thursday in March as a legal holiday, to be known as “Tuskegee Airmen Commemoration Day.”

#### B. SECTION DIRECTORY:

Section 1. Amends s. 683.01, F.S., relating to Legal Holidays.

Section 2. Provides an effective date of July 1, 2024.

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<sup>12</sup> The Tuskegee Museum, *Who are the Tuskegee Airmen of World War II?*, available at <https://tuskegeemuseum.org/history/> (Last Visited January 25, 2024). For a number of years the 332<sup>nd</sup> Group was believed to have completed over 200 escort missions without losing a single escorted bomber to enemy interceptors. However, further research of the operational records for the Group and the escorted Bomber wings of the 15<sup>th</sup> Air Force showed some bomber losses to enemy air action but significantly lower than other fighter groups flying similar escort missions. See Dr. Danial L. Haulman, Air Force Research Agency, “The Tuskegee Airmen and the ‘Never Lost a Bomber’ Myth,” (December 3, 2010), available at <https://www.afhra.af.mil/Portals/16/documents/Studies/AFD-141118-047.pdf> (last visited January 25, 2024). See also Daniel L. Haulman, Ph.D., “Table of 332<sup>nd</sup> Fighter Group Missions for the Fifteenth Air Force,” available at [https://tuskegeearmen.org/wp-content/uploads/2020/11/TAI\\_Resources\\_312\\_Missions.pdf](https://tuskegeearmen.org/wp-content/uploads/2020/11/TAI_Resources_312_Missions.pdf) (last visited January 26, 2024). This historical clarification does not detract from the Group’s record as one of the premier fighter groups in operation during the war.

<sup>13</sup> A “Sortie” is defined as one mission or attack by a single plane. A single mission by a squadron of six planes, results in six sorties.

<sup>14</sup> Tuskegee University, “TUSKEGEE EXPERIENCE”, Available at [https://www.tuskegee.edu/Content/Uploads/Tuskegee/files/TuskegeeExperience\(1\).pdf](https://www.tuskegee.edu/Content/Uploads/Tuskegee/files/TuskegeeExperience(1).pdf) (Last Visited January 25, 2024)

<sup>15</sup> The Tuskegee Museum, *Who are the Tuskegee Airmen of World War II?*, Available at <https://tuskegeemuseum.org/history/> (Last Visited January 25, 2024)

<sup>16</sup> Tuskegee University, “TUSKEGEE EXPERIENCE”, Available at [https://www.tuskegee.edu/Content/Uploads/Tuskegee/files/TuskegeeExperience\(1\).pdf](https://www.tuskegee.edu/Content/Uploads/Tuskegee/files/TuskegeeExperience(1).pdf) (Last Visited January 25, 2024)

<sup>17</sup> The Messerschmitt Me 262 was the world’s first operational jet-powered fighter aircraft and was one of the most technologically advanced aviation designs in use during World War II, See the Military Aviation Museum, *Messerschmitt Me 262 Schwalbe*, Available at <https://www.militaryaviationmuseum.org/aircraft/messerschmitt-me-262-schwalbe/> (Last Visited January 25, 2024)

<sup>18</sup> Tuskegee University, *Tuskegee Airmen Facts*, Available at <https://www.tuskegee.edu/support-tu/tuskegee-airmen/tuskegee-airmen-facts> (Last Visited January 25, 2024)

<sup>19</sup> Congressional Approval occurred on April 11, 2006 with the Ceremony on March 29, 2007, History, Art & Archives United States House of Representatives, *Congressional Gold Medal Recipients*, Available at <https://history.house.gov/Institution/Gold-Medal/Gold-Medal-Recipients/> (Last Visited January 25, 2024) and Tuskegee University, *Tuskegee Airmen CGM Ceremony*, Available at <https://www.tuskegee.edu/Content/Uploads/Tuskegee/files/TuskegeeAirmenCGMCeremony.pdf> (Last Visited January 25, 2024)

<sup>20</sup> Florida House of Representatives, *HR 8015 (2023)-Tuskegee Airmen Commemoration Day*, available at <https://myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=78516&SessionId=99> (Last Visited January 25, 2024)

## 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:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 bill neither authorizes nor requires executive branch rulemaking.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES



HB 1227

2024

26 | flight training facility for the student pilots who would become  
27 | the famed Tuskegee Airmen, and

28 |       WHEREAS, the 99th Fighter Pursuit Squadron, the first black  
29 | flying squadron, trained at Dale Mabry Field near Tallahassee to  
30 | prepare for combat overseas, and the Eglin Field ranges in  
31 | Okaloosa County were used by the first class of advanced  
32 | training cadets, as well as pilots in the advanced training  
33 | stage, for gunnery and combat tactics, and

34 |       WHEREAS, the outstanding performance of the Tuskegee Airmen  
35 | was unprecedented in military aviation history, and

36 |       WHEREAS, the month of March is significant to the Tuskegee  
37 | Airmen, as it is the month in which the first cadets received  
38 | their wings; the first maintenance crew began training at  
39 | Chanute Field, Illinois; the first Pursuit Squadron, the 99th,  
40 | was activated; Eleanor Roosevelt visited Kennedy Field and flew  
41 | with Chief Alfred Anderson, an African American Instructor  
42 | Pilot; and President George W. Bush presented the Tuskegee  
43 | Airmen with the Congressional Gold Medal, and

44 |       WHEREAS, General Daniel "Chappie" James, Jr., born in  
45 | Pensacola, became the first African American to achieve the rank  
46 | of four-star general in the Armed Forces; Second Lieutenant  
47 | Charles P. Bailey, Sr., born in Punta Gorda, was the first  
48 | aviator from Florida to become a Tuskegee Airman pilot of the  
49 | 99th Fighter Pursuit Squadron; and Lieutenant Alvin J. Downing,  
50 | born in Jacksonville, was a Special Service Officer and renowned

51 musician and educator in the Army Air Forces Band and in the St.  
 52 Petersburg and Clearwater areas, and

53 WHEREAS, Second Lieutenant Alphonso Simmons of the 100th  
 54 Fighter Squadron from Jacksonville became a casualty of war on  
 55 March 3, 1945; and the first Tuskegee Airman aviator from  
 56 Florida to earn his wings and the first Floridian Tuskegee  
 57 Airman of the 301st Fighter Squadron, First Lieutenant James  
 58 Polkinghorne, Jr., of Pensacola was a casualty lost on a combat  
 59 mission over Italy on May 5, 1944, and

60 WHEREAS, Lieutenant Colonel George E. Hardy, residing in  
 61 Sarasota County, is a famed "Red Tail" P-51 pilot of the 332nd  
 62 Fighter Group; Lieutenant Daniel K. Keel, Jr., residing in Lake  
 63 County, is one of only five triple-rated airmen, serving as  
 64 pilot, bombardier, and navigator; and Callie Odom Gentry,  
 65 residing in Pasco County, is a female Tuskegee Airman who was a  
 66 stenographer during the war, and

67 WHEREAS, Tuskegee Airman Chief Master Sergeant Richard R.  
 68 Hall, Jr., formerly of Winter Park, was an aircraft mechanic in  
 69 the 99th Fighter Pursuit Squadron, served 30 years in the  
 70 military, and was one of the first African American Chief Master  
 71 Sergeants; Lieutenant Colonel Robert C. Hughes, formerly of  
 72 Brevard County, was a Caucasian flight instructor; and  
 73 Lieutenant Raymond Cassagnol, formerly of Seminole County, was  
 74 one of five Haitian-born pilots, NOW, THEREFORE,

75

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

77

78 Section 1. Paragraphs (h) through (u) of subsection (1) of  
79 section 683.01, Florida Statutes, are redesignated as paragraphs  
80 (i) through (v), respectively, and new paragraph (h) is added to  
81 that subsection, to read:

82 683.01 Legal holidays.—

83 (1) The legal holidays, which are also public holidays,  
84 are the following:

85 (h) Tuskegee Airmen Commemoration Day, the fourth Thursday  
86 in March.

87 Section 2. This act shall take effect July 1, 2024.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HR 1261 Haudenosaunee Nationals

**SPONSOR(S):** Shoaf

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

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Poreda	Miller
2) State Affairs Committee			

**SUMMARY ANALYSIS**

The “Haudenosaunee Confederacy” (Confederacy), meaning “People of the long house”, is currently made up of six tribes: Mohawk, Oneida, Onondaga, Seneca, Tuscarora, and Cayuga (which includes the smaller Wyandot, Delaware, and Tutela tribes within the Cayuga nation). They are all primarily located in the Great Lakes region of the United States and Canada. Well-established before the time of initial contact with European colonists, the longstanding purpose of the Confederacy is to unite the member nations and provide a peaceful means of decision making.

Lacrosse is an international team sport played competitively all over the world and will be included as an official event at the 2028 Olympic Games. This modern game originated with Haudenosaunee Confederacy approximately four hundred years ago. Since 1990, The Haudenosaunee Nationals Lacrosse Organization has competed as an indigenous sports organization in the World Lacrosse Championship. They won bronze medals by placing third in 2014, 2018, and 2023. They also competed in the 2022 World Games, finishing in fifth place.

HR 1261 encourages the International Olympic Committee to recognize the Haudenosaunee Nationals as an independent lacrosse team and allow the team to participate in the 2028 Olympic Games in Los Angeles, California.

Resolutions are not subject to action by the Governor and do not have the effect of law. In addition, they are not subject to the constitutional single-subject limitation or title requirements.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Tribal Sovereignty and Federal Recognition

Federal law recognizes Indian tribes as “distinct, independent political communities, retaining their original natural rights.”<sup>1</sup> Indian tribes recognized by the federal government have a government-to-government relationship with the United States.<sup>2</sup> There are currently 574 federally recognized Indian tribes in the United States, 347 of which are in the contiguous 48 states and 227 federally recognized native entities within the State of Alaska.<sup>3</sup>

Historically, tribes secured federal recognition by treaties, acts of Congress, executive branch actions, or federal court decisions.<sup>4</sup> Today, a tribe may gain federal recognition through one of three processes:

- An act of Congress;
- Administrative proceeding under 25 C.F.R. Part 83; or
- A decision by a federal court.<sup>5</sup>

Some non-recognized tribes have expressed that the administrative process for recognition can be costly and time-consuming.<sup>6</sup> Since 1978, the FAP has resulted in the acknowledgement of 18 tribes (out of 52 completed applications).<sup>7</sup>

##### State Recognition of Indian Tribes

There are currently 63 state-recognized tribes across 11 states: Alabama, Connecticut, Georgia, Louisiana, Maryland, Massachusetts, New York, North Carolina, South Carolina, Vermont, and Virginia.<sup>8</sup> The method of determining which tribes to recognize varies, from giving a decision-making role to other tribes in the state (e.g., North Carolina<sup>9</sup>), an advisory role to other tribes (e.g. Vermont<sup>10</sup>), or providing for recognition as determined solely by the legislature (e.g., Georgia<sup>11</sup>).

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<sup>1</sup> *Worcester v. Georgia*, 31 U.S. 515, 519 (1832).

<sup>2</sup> Bureau of Indian Affairs, *Frequently Asked Questions*, <https://www.bia.gov/frequently-asked-questions> (last visited January 12, 2024).

<sup>3</sup> 88 Fed. Reg. 2112 (January 12, 2023). See also Congressional Research Service, “the 574 Federally Recognized Indian Tribes in the United States (updated January 18, 2024),” p. 1, available at <https://crsreports.congress.gov/product/pdf/R/R47414> (last visited January 27, 2024).

<sup>4</sup> Bureau of Indian Affairs, *Frequently Asked Questions*, *supra*, n. 2.

<sup>5</sup> Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454. If a tribe has previously had its relationship with the United States expressly terminated by an act of Congress, that tribe’s recognition may only be restored by a subsequent act.

<sup>6</sup> National Congress of American Indians (NCAI), *Federal Recognition*, <https://www.ncai.org/policy-issues/tribal-governance/federal-recognition> (last visited January 12, 2024). See “Testimony of Rev. John Norwood,” U.S. Senate Committee on American Indian Affairs (July 12, 2012), available at <https://www.indian.senate.gov/wp-content/uploads/John%20Norwood%20UPDATED%20testimony.pdf> (last visited January 27, 2024).

<sup>7</sup> Bureau of Indian Affairs, *Petitions Resolved*, <https://www.bia.gov/as-ia/ofa/petitions-resolved> (last visited Jan. 12, 2024).

<sup>8</sup> Natl. Conf. of State Legislatures, *State Recognition of American Indian Tribes*, <https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes> (last visited January 12, 2024)

<sup>9</sup> N.C. Gen. Stat. s. 143B-406(a)(10).

<sup>10</sup> Vt. Stat. Ann. tit. 1, s. 852(c)(5).

<sup>11</sup> Ga. Code Ann. S. 44-12-300.

State recognition of a tribe can provide certain benefits. State-recognized tribes are eligible to apply to several federal grant programs.<sup>12</sup> Members of state-recognized tribes are also allowed to market their arts and crafts products as being genuine<sup>13</sup> and may access certain scholarship programs.<sup>14</sup>

### Haudenosaunee Confederacy

The “Haudenosaunee Confederacy” (Confederacy), meaning “People of the long house”, was once called the “Iroquois Confederacy” or “Iroquois League” by the French, and the “League of Five Nations” by the English.<sup>15</sup> The Confederacy is currently made up of six tribes: Mohawk, Oneida, Onondaga, Seneca, Tuscarora, and Cayuga (which includes the smaller Wyandot, Delaware, and Tutela tribes within the Cayuga nation).<sup>16</sup> They are all primarily located in the Great Lakes region of the United States and Canada. The Confederacy’s creation was intended as a way to unite the nations and create a peaceful means of decision making. Often described as one of the oldest participatory democracies in the world, the Confederacy’s constitution has been noted for some similarities to the United States Constitution.<sup>17</sup>

Europeans first encountered the Haudenosaunee in the 1500s, and, initially, their relations were based on fur trade. In the 1790s, after the conclusion of the Revolutionary War, Haudenosaunee reservations were established in the United States and Canada.<sup>18</sup>

### *Haudenosaunee Lacrosse*

Lacrosse is an international team sport played competitively all over the world and will be included as an official event at the 2028 Olympic Games.<sup>19</sup> This modern game originated with the Confederacy. Four hundred years ago, explorers to Haudenosaunee territory saw the game of lacrosse being played. Among the Haudenosaunee the game is called “Tewaarathon”, which means “they bump hips.” In lacrosse, a player must catch, carry and pass a ball using a lacrosse stick, a long stick with a net at one end. Historically, Haudenosaunee people played lacrosse on a field that could be as short as one hundred yards or as long as two miles. Teams could have from a handful to hundreds of players. Lacrosse was sometimes played to resolve disputes and get rid of bad feelings between clans and nations within the Haudenosaunee. The game was, and still is, played to bring together families, communities, and nations.<sup>20</sup>

The Haudenosaunee Nationals Lacrosse Organization is an indigenous sports organization that competes on the world stage. The governing body for the Confederacy, the Grand Council of Chiefs, has sanctioned the Haudenosaunee Nationals Lacrosse Organization to assemble both men’s and women’s teams that collectively and officially represent the Confederacy in international lacrosse competition.<sup>21</sup>

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<sup>12</sup> See Natl. Conf. of State Legislatures, *State Recognition of American Indian Tribes*, <https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes> (last visited Jan. 12, 2024) (“Departments of Housing and Urban Development, Labor, Education, and Health and Human Services have statutory and regulatory authority to provide funding for state-recognized tribes”). See also U.S. Dept. of Health and Human Services, *Tribal Programs*, <https://www.acf.hhs.gov/tribal-programs> (last visited January 12, 2024) (state-recognized tribes eligible for Administration for Native Americans programs).

<sup>13</sup> Dept. of the Interior Indian Arts and Crafts Board, *The Indian Arts and Crafts Act of 1990*, <https://www.doi.gov/iacb/act> (last visited January 12, 2024).

<sup>14</sup> American Indian College Fund, *Scholarships*, <https://collegefund.org/students/scholarships/> (last visited January 12, 2024).

<sup>15</sup> Haudenosaunee Confederacy, *Who We Are*, available at <https://www.haudenosauneeconfederacy.com/who-we-are/> (last visited January 27, 2024).

<sup>16</sup> Haudenosaunee Confederacy, *The League of Nations*, available at <https://www.haudenosauneeconfederacy.com/the-league-of-nations/> (last visited January 27, 2024).

<sup>17</sup> National Museum of the American Indian, *Haudenosaunee Guide for Educators*, available at <https://americanindian.si.edu/sites/1/files/pdf/education/HaudenosauneeGuide.pdf> (last visited January 27, 2024).

<sup>18</sup> *Id.*

<sup>19</sup> See, World Lacrosse, “Lacrosse to return to the Olympic Games in 2028,” available at <https://worldlacrosse.sport/olympics/> (last visited January 27, 2024).

<sup>20</sup> National Museum of the American Indian, *Haudenosaunee Guide for Educators*, *supra*, n. 17.

<sup>21</sup> The Haudenosaunee Nationals Lacrosse Organization, *About Us*, available at <https://haudenosaunee-nationals-lacrosse.com/pages/about-haudenosaunee-nationals-lacrosse> (last visited January 27, 2024).

Haudenosaunee Nationals Men's Lacrosse Team has been recognized and competed in the World Lacrosse Championship<sup>22</sup> since 1990<sup>23</sup> and won bronze medals by placing 3<sup>rd</sup> in 2014, 2018, and 2023.<sup>24</sup> They also competed in the 2022 World Games<sup>25</sup> placing in 5<sup>th</sup> place.<sup>26</sup> The Haudenosaunee Nationals Lacrosse Organization currently is attempting to have its teams compete in the 2028 Olympic games being held in Los Angeles, California, after the sport of Lacrosse was added to the official list of sports to be played.<sup>27</sup>

### International Olympic Committee

The International Olympic Committee (IOC) is the governing body of the National Olympic Committees (NOCs) and of the worldwide Olympic Movement, the IOC's term for all entities and individuals involved in the Olympic Games.<sup>28</sup> There are currently 106 active members and 41 honorary members of the IOC.<sup>29</sup> According to the Olympic Charter, any competitor in the Olympic Games must be a national of the country of the NOC which is entering the games.<sup>30</sup>

Currently, the Confederacy is not a recognized NOC by the IOC. However, the IOC Executive Board, does have the ability to make determinations relating the country which a competitor may represent in the Olympic Games.<sup>31</sup>

### **Effect of the House Resolution**

The Resolution encourages the International Olympic Committee to recognize the Haudenosaunee Nationals as an independent lacrosse team and allow the team to participate in the 2028 Olympic Games in Los Angeles, California.

### **B. SECTION DIRECTORY:**

Not Applicable

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<sup>22</sup> World Lacrosse, formerly the Federation of International Lacrosse, is the international governing body of lacrosse, responsible for the men's, women's, and indoor versions of the sport. It was established in 2008 by the merger of the previously separate men's and women's international lacrosse associations. *See* World Lacrosse, available at <https://worldlacrosse.sport/> (last visited January 27, 2024).

<sup>23</sup> World Lacrosse, *The Game*, "History," available at <https://worldlacrosse.sport/events/2023-world-lacrosse-mens-championship/history/> (last visited January 27, 2024).

<sup>24</sup> *Id.*

<sup>25</sup> The World Games are an international multi-sport event comprising sports and sporting disciplines that are not contested in the Olympic Games. They are usually held every four years, one year after a Summer Olympic Games, over the course of 11 days. The World Games are governed by the International World Games Association, under the patronage of the International Olympic Committee. *See* the World Games, available at <https://www.theworldgames.org/> (last visited January 27, 2024).

<sup>26</sup> The World Games, The World Games 2022, Birmingham (USA), available at <https://www.theworldgames.org/results#edition=13&sport=54&discipline=269&category=797&country=> (last visited January 27, 2024).

<sup>27</sup> New York Times, *Lacrosse Is Coming to the Olympics. Will Its Inventors Be There?*, available at <https://www.nytimes.com/2023/10/19/sports/olympics/lacrosse-2028-olympics-haudenosaunee.html> (last visited January 27, 2024); Associated Press, *Lacrosse at the Olympics gives Indigenous communities a chance to see their sport shine*, available at <https://apnews.com/article/lacrosse-olympics-haudenosaunee-c9c7a18770d50e0b7105db4fe8520c21> (last visited January 27, 2024); *see*, World Lacrosse, "Lacrosse to return to the Olympic Games in 2028," available at <https://worldlacrosse.sport/olympics/> (last visited January 27, 2024).

<sup>28</sup> *See* International Olympic Committee, *Overview*, available at <https://olympics.com/ioc/overview> (last visited January 27, 2024).

<sup>29</sup> International Olympic Committee, *Members*, available at <https://olympics.com/ioc/members> (last visited January 27, 2024).

<sup>30</sup> Olympic Charter, The Olympic Games, Rules 40 & 41, International Olympic Committee, *Olympic Charter*, available at [https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf?\\_ga=2.244513221.1919463586.1706292939-478148114.1706119559](https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf?_ga=2.244513221.1919463586.1706292939-478148114.1706119559) (last visited January 27, 2024).

<sup>31</sup> *Id.*

## 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:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This resolution does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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House Resolution

A resolution encouraging the International Olympic Committee to recognize the Haudenosaunee Nationals as an independent lacrosse team and allow the team to participate in the 2028 Olympic Games in Los Angeles, California.

WHEREAS, the Haudenosaunee Nationals is an indigenous sports organization that was formed and sanctioned by the sovereign Grand Council of the Haudenosaunee in 1983, and

WHEREAS, as the governing body for the entire confederacy, the Grand Council of the Haudenosaunee has sanctioned the Haudenosaunee Nationals to assemble teams that collectively and officially represent the Six Nations Haudenosaunee Confederacy in international lacrosse competition, and

WHEREAS, the Six Nations Haudenosaunee Confederacy consists of the Mohawk, Oneida, Cayuga, Seneca, Onondaga, and Tuscarora nations that were once commonly referred to as the Iroquois Nations, and

WHEREAS, the Six Nations Haudenosaunee Confederacy was founded before European Colonization, making it one of the first and most long-lasting participatory democracies in the world, and it was influential in the development of the United States Constitution, and

25           WHEREAS, the Six Nations Haudenosaunee Confederacy was  
 26           created as a way to unite the nations and instill a peaceful  
 27           means of decision making, united by a common goal to live in  
 28           peace, and

29           WHEREAS, the Six Nations Haudenosaunee Confederacy  
 30           maintains many ancient traditions, including the game of  
 31           lacrosse, which was created by the members of the confederacy  
 32           over 1,000 years ago, and

33           WHEREAS, the Haudenosaunee believe that the game of  
 34           lacrosse is a gift from the Creator to be used for enjoyment and  
 35           as spiritual "medicine," and is the Haudenosaunee's gift of  
 36           peace to the world, and

37           WHEREAS, today, the sport of lacrosse is one of the fastest  
 38           growing youth sports in the United States, and

39           WHEREAS, the sport of lacrosse was formally accepted and  
 40           debuted at the 2022 World Games in Birmingham, Alabama, and

41           WHEREAS, the Haudenosaunee Nationals played as an  
 42           independent team in the 2022 World Games after the Irish  
 43           national team voluntarily withdrew to allow the Haudenosaunee  
 44           Nationals to participate, and

45           WHEREAS, in October 2023, the International Olympic  
 46           Committee admitted lacrosse as an official Olympic sport to be  
 47           played in the 2028 Olympic Games in Los Angeles, California, and

48           WHEREAS, the Haudenosaunee Nationals have petitioned the  
 49           International Olympic Committee to be recognized as an

HR 1261

2024

50 independent team in the 2028 Olympic Games, but the Committee  
51 has not yet agreed, NOW, THEREFORE,

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53 Be It Resolved by the House of Representatives of the State of  
54 Florida:

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56       That the Florida House of Representatives encourages the  
57 International Olympic Committee to recognize the Haudenosaunee  
58 Nationals as an independent lacrosse team and allow the team to  
59 participate in the 2028 Olympic Games in Los Angles California.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Constitutional Rights,  
2 Rule of Law & Government Operations Subcommittee  
3 Representative Shoaf offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 47-59 and insert:

7 played in the 2028 Olympic Games in Los Angeles, California, and

8 WHEREAS, the Haudenosaunee Nationals have petitioned the  
9 International Olympic Committee to be recognized as an  
10 independent team in the 2028 Olympic Games, but the Committee  
11 has not yet agreed, NOW, THEREFORE,

12  
13 Be It Resolved by the House of Representatives of the State of  
14 Florida:  
15

Amendment No.

16 That the Florida House of Representatives encourages the  
17 International Olympic Committee to recognize the Haudenosaunee  
18 Nationals as an independent lacrosse team and allow the team to  
19 participate in the 2028 Olympic Games in Los Angeles California.  
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21 -----

22 **T I T L E A M E N D M E N T**

23 Remove line 5 and insert:

24 participate in the 2028 Olympic Games in Los Angeles,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1471 Public Employees  
**SPONSOR(S):** Black and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1746

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

### SUMMARY ANALYSIS

Collective bargaining is a constitutional right of public employees in Florida. A public employee desiring to join an employee organization must sign and date a membership authorization form with the bargaining agent and may revoke membership upon written request. An employee organization authorized to represent public employees in collective bargaining is known as a certified bargaining agent. To become a certified bargaining agent, the employee organization must register with and be certified by the Public Employees Relations Commission (PERC). A registration must be renewed annually. The initial and renewal applications must include an audited financial statement certified by an independent certified public accountant (CPA) and other specified information. In addition, bargaining agents must provide their members with an annual audited financial statement. Employee organizations are prohibited from having membership dues and assessments deducted and collected by public employers, and if the dues paying membership of a bargaining agent drops below 60 percent of the employees eligible for representation during the last registration period, the employee organization must petition PERC for recertification. Employee organizations refusing to cooperate in a PERC investigation or misrepresenting certain information may have their registration or certification revoked.

The foregoing provisions do not apply to a bargaining agent certified to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters. PERC may also waive certain statutory provisions for bargaining agents certified to represent mass transit employees. However, the provisions relating to audited financial statements apply to every employee organization.

The bill removes the requirement for audited financial statements and instead requires financial statements be prepared by an independent CPA. The financial statement submitted with a registration renewal application must include the employee organization's disbursements reported by category for the preceding fiscal year. The bill requires a bargaining agent certified to represent a bargaining unit for which less than 60 percent of the employees in the unit both submitted membership authorization forms, without a subsequent revocation, and paid dues to the employee organization during its last registration period to petition PERC for recertification.

The bill specifies that an employee organization intentionally misrepresenting registration information or refusing to permit PERC to inspect membership authorization forms or revocation requests constitutes a failure to cooperate with a PERC investigation that may result in the revocation of a registration or certification.

The bill specifies the exemptions from certain provisions applies to a bargaining unit with a majority of employees eligible for representation employed as law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians, or paramedics. For mass transit employees the dues deduction exemption may only be applied to those employees who submit a membership authorization form to their employer as part of the authorization for dues deduction.

The bill does not appear to have a fiscal impact on local governments, but may have an indeterminate, but likely insignificant, negative fiscal impact on the state. See Fiscal Analysis.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Right-to-Work

The State Constitution provides that the “right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.”<sup>1</sup> Accordingly, Florida is regarded as a “right-to-work” state.

##### Collective Bargaining

The State Constitution also guarantees that “the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.”<sup>2</sup> To implement this constitutional provision, the Legislature enacted ch. 447, F.S., which provides that public employees have the right to form, join, participate in, and be represented by an employee organization<sup>3</sup> of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.<sup>4</sup>

The purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.<sup>5</sup> Through collective bargaining, public employees<sup>6</sup> negotiate with their public employer<sup>7</sup> to determine the terms and conditions of their employment.<sup>8</sup> Each employee is subject to the negotiated collective bargaining agreement regardless of union membership.<sup>9</sup>

The Public Employees Relations Commission (PERC) is responsible for assisting in resolving disputes between public employees and public employers.<sup>10</sup>

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<sup>1</sup> Art. I, s. 6, FLA. CONST.

<sup>2</sup> *Id.*

<sup>3</sup> “Employee organization” means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer. S. 447.203(11), F.S.

<sup>4</sup> S. 447.301(1) and (2), F.S.

<sup>5</sup> S. 447.201, F.S.

<sup>6</sup> S. 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
  - 1. Federal license requirement.
  - 2. Federal autonomy regarding investigation and disciplining of appointees.
  - 3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

<sup>7</sup> The term “public employer” means the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. S. 447.203(2), F.S.

<sup>8</sup> S. 447.301(2), F.S.

<sup>9</sup> See s. 447.309(1), F.S.

<sup>10</sup> S. 447.201(3), F.S.

## *Registration of an Employee Organization*

An employee organization seeking to become a certified bargaining agent<sup>11</sup> for a unit<sup>12</sup> of public employees must register with and be certified by PERC. To register, the employee organization must submit an application, under oath, to PERC that includes the following information:

- The name and address of the organization and of any parent organization or organization with which it is affiliated;
- The names and addresses of the principal officers and all representatives of the organization;
- The amount of the initiation fee and of the monthly dues which members must pay;
- The current annual audited financial statement of the organization;
- The name of its business agent, if any; the name of its local agent for service of process, if different from the business agent; and the addresses where such person or persons can be reached;
- A pledge, in a form prescribed by PERC, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin;
- A copy of the current constitution and bylaws of the employee organization; and
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated.<sup>13</sup>

A registration granted to an employee organization is valid for one year and must be renewed annually by filing an application under oath with PERC. The renewal application must reflect any changes in the information provided to PERC in conjunction with the employee organization's preceding application for registration or previous renewal, whichever is applicable. Each application for renewal of registration must include a current annual audited financial statement, certified by an independent certified public accountant (CPA), containing the following information:

- Assets and liabilities at the beginning and end of the fiscal year;
- Receipts of any kind and the sources thereof;
- Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and employee who received during the fiscal year more than \$10,000 in the aggregate from the employee organization and any affiliated employee organization;
- Direct and indirect loans made to any officer, employee, or member which aggregated more than \$250 during the fiscal year; and
- Direct and indirect loans to any business enterprise.<sup>14</sup>

In addition, on or after October 1, 2023, certain employee organizations<sup>15</sup> certified as bargaining agents for public employees must also submit the following information and documentation, as of the thirtieth day immediately preceding the date of renewal, in their registration renewal applications:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization;
- The number of employees in the bargaining unit who have submitted signed membership authorization forms without a subsequent revocation of such membership;
- The number of employees in the bargaining unit who paid dues to the employee organization;
- The number of employees in the bargaining unit who did not pay dues to the employee organization; and

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<sup>11</sup> "Bargaining agent" means the employee organization which has been certified by PERC as representing the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative. S. 447.203(12), F.S.

<sup>12</sup> "Bargaining unit" means either that unit determined by PERC, that unit determined through local regulations promulgated pursuant to s. 447.603, F.S., or that unit determined by the public employer and the public employee organization and approved by PERC to be appropriate for the purposes of collective bargaining. However, no bargaining unit shall be defined as appropriate which includes employees of two employers that are not departments or divisions of the state, a county, a municipality, or other political entity. S. 447.203(8), F.S.

<sup>13</sup> S. 447.305(1), F.S.

<sup>14</sup> S. 447.305(2), F.S.

<sup>15</sup> Employee organizations that have been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters are exempt from providing this information. S. 447.305(9), F.S.

- Documentation provided by an independent CPA retained by the employee organization which verifies the information provided.<sup>16</sup>

### *Certification of an Employee Organization*

After registering with PERC, an employee organization may begin the certification process. In order to be certified, an employee organization selected by a majority of public employees in a unit as their representative must request recognition by the public employer. If satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, the employer will recognize the employee organization as the collective bargaining representative for that unit. Following recognition by the employer, the employee organization must immediately petition PERC for certification. If the unit proposed by the employee organization is deemed appropriate, PERC will immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate, PERC may dismiss the petition.<sup>17</sup>

However, if the employer refuses to recognize the employee organization, the employee organization may file a petition with PERC for certification as the bargaining agent. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit.<sup>18</sup> Upon finding the petition to be sufficient, PERC must order an election by secret ballot to determine whether the employee organization will be certified.<sup>19</sup> The petitioning employee organization is placed on the ballot along with any other registered employee organization that submits dated statements signed by at least 10 percent of the employees in the proposed unit.<sup>20</sup> When an employee organization is selected by a majority of the employees voting in an election, PERC must certify that employee organization as the exclusive collective bargaining representative of all employees in the unit.<sup>21</sup> PERC may pass on the cost of the election to the public employer and employee organization.<sup>22</sup>

### *Certified Bargaining Agent*

The certified bargaining agent and the chief executive of the public employer must bargain collectively and in good faith to determine the wages, hours, and terms and conditions of employment of the employees in the unit.<sup>23</sup> Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent. Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the unit.<sup>24</sup> A collective bargaining agreement may not provide for a term of existence of more than three years and must contain all of the terms and conditions of employment.<sup>25</sup> The bargaining agent also has the authority to process grievances to settle disputes between the employer and the employees in the unit.<sup>26</sup> In addition, bargaining agents are required to provide their members with an annual audited financial report that includes a detailed breakdown of revenues and expenditures and an accounting of membership dues and assessments.<sup>27</sup>

### *Revocation of Certification*

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file a petition to revoke certification with PERC. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented by the certified bargaining agent. A petition

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<sup>16</sup> S. 447.305(3), F.S.

<sup>17</sup> S. 447.307(1)(a), F.S.

<sup>18</sup> S. 447.307(2), F.S.

<sup>19</sup> S. 447.307(3)(a), F.S.

<sup>20</sup> S. 447.307(2), F.S.

<sup>21</sup> S. 447.307(3)(b), F.S.

<sup>22</sup> See s. 447.307(3)(a), F.S.; see also R. 60CC-2.006, F.A.C.

<sup>23</sup> S. 447.309(1), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> S. 447.309(5), F.S.

<sup>26</sup> See s. 447.401, F.S.

<sup>27</sup> S. 447.305(11), F.S.

PERC finds to be insufficient may be dismissed. If PERC finds the petition to be sufficient, it must immediately order an election by secret ballot.<sup>28</sup> If a majority of employees voting in the election vote against the certified bargaining agent, the employee organization's certification is revoked; otherwise, the employee organization's certification is retained.<sup>29</sup>

An employee organization that applies for a registration renewal must petition for recertification as a bargaining agent if less than 60 percent of its unit members paid dues during its last registration period. If the employee organization fails to petition PERC for recertification within one month of its registration renewal application, the certification is revoked.<sup>30</sup>

PERC may initiate an investigation to confirm the validity of the information submitted in an initial or renewal registration application. PERC may revoke or deny an employee organization's registration or certification if it finds that the employee organization failed to cooperate with the investigation or intentionally misrepresented the information submitted on the application.<sup>31</sup>

### Membership in an Employee Organization

Beginning July 1, 2023, a public employee who desires to be a member of an employee organization must sign and date a membership authorization form with the bargaining agent. The form must be prescribed by PERC and contain certain information and statements. A member of an employee organization may revoke membership at any time upon the organization receiving the employee's written revocation. Employee organizations are required to retain submitted membership authorization forms and revocation requests for inspection by PERC.<sup>32</sup> However, the requirement for a signed membership form and the provisions relating to the revocation of a membership do not apply to members of an employee organization certified as a bargaining agent to represent law enforcement officers,<sup>33</sup> correctional officers,<sup>34</sup> correctional probation officers,<sup>35</sup> or firefighters.<sup>36,37</sup>

### Membership Dues and Assessments

Generally, an employee organization may not have its dues and uniform assessments deducted from the salaries of employees in the unit and collected by the public employer. However, an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters may have its dues and uniform assessments deducted and collected by the public employer from the salaries of those employees who authorize the deductions. Such authorization is revocable by the employee upon 30 days' written notice to the

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<sup>28</sup> S. 447.308(1), F.S. However, no petition may be filed within 12 months after PERC verifies an election, or where a collective bargaining agreement is in effect, only during the period extending from 150 days to 90 days immediately preceding the expiration date. S. 447.307(3)(d), F.S.

<sup>29</sup> S. 447.308(2) and (3), F.S.

<sup>30</sup> S. 447.305(6), F.S. This provision does not apply to an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters.

<sup>31</sup> S. 447.305(8), F.S. This provision does not apply to an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters.

<sup>32</sup> S. 447.301(1), F.S.

<sup>33</sup> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S. S. 943.10(1), F.S.

<sup>34</sup> "Correctional officer" means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. S. 943.10(2), F.S.

<sup>35</sup> "Correctional probation officer" means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. S. 943.10(3), F.S.

<sup>36</sup> "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408, F.S. S. 633.102, F.S.

<sup>37</sup> S. 447.301(1)(b)6., F.S.



employer and employee organization. The deductions commence upon the bargaining agent's written request to the employer. The right to deductions remains in force for as long as the employee organization remains the certified bargaining agent for that group of employees.<sup>38</sup>

### Federal Transit Funds

As a precondition to a grant of federal assistance by the United States Department of Transportation's Federal Transit Administration (FTA), the Federal Transit Act<sup>39</sup> requires fair and equitable protective arrangements be made to protect the labor rights of transit employees affected by such assistance. Specifically, the statute requires the following matters be included in such protective arrangements:

- The preservation of rights, privileges, and benefits under existing collective bargaining agreements;
- The continuation of collective bargaining rights;
- The protection of employees against a worsening of their positions with respect to their employment;
- Assurances of employment to employees of acquired mass transportation systems and priority of reemployment for employees terminated or laid off; and
- Paid training or retraining programs.<sup>40</sup>

The U.S. Department of Labor must certify that protective arrangements are in place and meet the above requirements before the FTA may release grant funds. Accordingly, states and local governments that violate the provisions of this law risk losing access to federal funding for public transportation projects. In the 2022-2023 fiscal year, Florida received approximately \$529.4 million to improve public transportation options throughout the state.<sup>41</sup>

PERC may waive certain requirements upon a petition by a public employer that the employer's protective arrangement covering mass transit employees does not meet federal requirements and would jeopardize the public employer's continued eligibility to receive federal funding. Specifically, PERC may waive the following statutory requirements to the extent necessary for the public employer to continue to be able to receive federal funds:

- The prohibition on dues and assessment deductions;
- The requirement to petition the commission for recertification if the bargaining unit has fewer than 60 percent of its unit members paying dues during the prior registration period; or
- The revocation of certification in certain circumstances.<sup>42</sup>

### **Effect of the Bill**

The bill specifies that membership authorization forms must be submitted by employees to the applicable bargaining agent.

The bill amends the exemptions relating to the prohibition of dues deduction and collection, requirements for membership authorization forms and revocation requests, the requirement to petition PERC for recertification, and the revocation of certification in certain circumstances. Specifically, the bill provides that those provisions do not apply to a bargaining unit that has a majority of employees eligible for representation employed as law enforcement officers, correctional officers, correctional probation

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<sup>38</sup> S. 447.303, F.S.

<sup>39</sup> 49 U.S.C. ch. 53.

<sup>40</sup> 49 U.S.C. § 5333(b).

<sup>41</sup> This figure is as of March 2023. See The White House, *Investing in America*, available at <https://www.whitehouse.gov/wp-content/uploads/2023/03/Florida-Fact-Sheet-March-Edition.pdf> (last visited January 26, 2024).

<sup>42</sup> S. 447.207(12), F.S.

officers, firefighters, 911 public safety telecommunicators,<sup>43</sup> emergency medical technicians,<sup>44</sup> or paramedics.<sup>45</sup>

The bill amends the information that must be included in an employee organization's initial and renewal registration applications to no longer require an audited financial statement. Instead, an application must include the current annual financial statement of the employee organization, prepared by an independent CPA. In addition, an initial application must include the amount of the initiation fee and the amount and collection frequency of the dues and uniform assessments that a member must pay. A renewal application's financial statement must include the employee organization's disbursements by category for the preceding fiscal year.

The bill requires an employee organization certified as a bargaining agent representing a bargaining unit for which less than 60 percent of the employees in the unit have both submitted membership authorization forms, without a subsequent revocation, and paid dues to the employee organization during its last registration period to petition PERC for recertification as the exclusive representative of all employees in the bargaining unit within 30 days after the date on which the employee organization applies for renewal of registration.

The bill specifies that an employee organization intentionally misrepresenting registration information or refusing to permit PERC to inspect membership authorization forms or revocation requests constitutes a failure to cooperate with a PERC investigation that, consequently, may result in the revocation or denial of an employee organization's registration or certification.

The bill amends the current requirement for bargaining agents to provide their members with an annual audited financial report that includes a detailed breakdown of revenue and expenditures. Instead, the bill requires bargaining agents to provide their members with an annual financial report prepared by an independent CPA that includes a detailed breakdown of revenues and expenditures in such categories as PERC may prescribe.

The bill specifies that PERC's authority to waive the prohibition on dues and assessment deductions regarding bargaining units containing mass transit employees only applies to those mass transit employees that have provided a copy of their membership authorization form to their employer as part of the authorization for dues and assessment deductions under a waiver.

The bill makes other clarifying, technical, and conforming changes.

## B. SECTION DIRECTORY:

Section 1 amends s. 447.207, F.S., relating to the Public Employees Relations Commission; powers and duties.

Section 2 amends s. 447.301, F.S., relating to public employees' rights; organization and representation.

Section 3 amends s. 447.303, F.S., relating to dues; deduction and collection.

Section 4 amends s. 447.305, F.S., relating to registration of employee organizations.

Section 5 provides an effective date of July 1, 2024.

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<sup>43</sup> The bill defines "911 public safety telecommunicator" to mean a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel.

<sup>44</sup> The bill defines "emergency medical technician" to mean a person who is certified by the Department of Health to perform basic life support pursuant to part III, ch. 401, F.S.

<sup>45</sup> The bill defines "paramedic" to mean a person who is certified by the Department of Health to perform basic and advanced life support pursuant to part III, ch. 401, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill requires certain employee organizations in which less than 60 percent of the eligible employees in the unit have submitted membership authorization forms to recertify with PERC in order to remain the bargaining agent. The dollar amount of expenditures required by the bill depends on the amount of elections that will need to be held pursuant to the recertification process; however, these costs should be minimal and absorbed within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate, positive fiscal impact on employee organizations as a result of the bill only requiring financial statements to be prepared by an independent CPA as opposed to being audited.

However, the bill will have an indeterminate, negative fiscal impact on employee organizations whose membership fails to submit membership authorization forms due to costs relating to recertifying as the bargaining agent.

### 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 authorizes PERC to specify categories of disbursements to be reported in registration renewal applications and categories of revenues and expenditures to be reported to bargaining agent members. PERC has sufficient rulemaking authority under ch. 447, F.S., to implement these provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**



26 petition; revising the actions for which the  
 27 commission may revoke or deny an employee  
 28 organization's registration or certification; revising  
 29 applicability; conforming provisions to changes made  
 30 by the act; providing an effective date.  
 31

32 Be It Enacted by the Legislature of the State of Florida:  
 33

34 Section 1. Paragraph (a) of subsection (12) of section  
 35 447.207, Florida Statutes, is amended to read:

36 447.207 Commission; powers and duties.—

37 (12) Upon a petition by a public employer after it has  
 38 been notified by the Department of Labor that the public  
 39 employer's protective arrangement covering mass transit  
 40 employees does not meet the requirements of 49 U.S.C. s. 5333(b)  
 41 and would jeopardize the employer's continued eligibility to  
 42 receive Federal Transit Administration funding, the commission  
 43 may waive, to the extent necessary for the public employer to  
 44 comply with the requirements of 49 U.S.C. s. 5333(b), any of the  
 45 following for an employee organization that has been certified  
 46 as a bargaining agent to represent mass transit employees:

47 (a) The prohibition on dues and assessment deductions  
 48 provided in s. 447.303(1) as it applies to a mass transit  
 49 employee who has provided a copy of his or her membership  
 50 authorization form to the employer as part of the authorization

51 of dues and assessment deductions under a waiver.

52 Section 2. Paragraph (b) of subsection (1) of section  
53 447.301, Florida Statutes, is amended to read:

54 447.301 Public employees' rights; organization and  
55 representation.—

56 (1)

57 (b)1. ~~Beginning July 1, 2023,~~ A public employee who  
58 desires to be a member of an employee organization must sign and  
59 date a membership authorization form, as prescribed by the  
60 commission, and submit the executed form to ~~with~~ the bargaining  
61 agent.

62 2. The membership authorization form must identify the  
63 name of the bargaining agent; the name of the employee; the  
64 class code and class title of the employee; the name of the  
65 public employer and employing agency, if applicable; the amount  
66 of the initiation fee and of the monthly dues which the member  
67 must pay; and the name and total amount of salary, allowances,  
68 and other direct or indirect disbursements, including  
69 reimbursements, paid to each of the five highest compensated  
70 officers and employees of the employee organization disclosed  
71 under s. 447.305(2)(d) ~~s. 447.305(2)(e)~~.

72 3. The membership authorization form must contain the  
73 following statement in 14-point type:

74

75 The State of Florida is a right-to-work state.

76 Membership or non-membership in a labor union is not  
 77 required as a condition of employment, and union  
 78 membership and payment of union dues and assessments  
 79 are voluntary. Each person has the right to join and  
 80 pay dues to a labor union or to refrain from joining  
 81 and paying dues to a labor union. No employee may be  
 82 discriminated against in any manner for joining and  
 83 financially supporting a labor union or for refusing  
 84 to join or financially support a labor union.

85  
 86 4. A public employee may revoke membership in the employee  
 87 organization at any time of the year. Upon receipt of the  
 88 employee's written revocation of membership, the employee  
 89 organization must revoke a public employee's membership. The  
 90 employee organization may not limit an employee's right to  
 91 revoke membership to certain dates. If a public employee must  
 92 complete a form to revoke membership in the employee  
 93 organization, the form may not require a reason for the public  
 94 employee's decision to revoke his or her membership.

95 5. An employee organization must retain for inspection by  
 96 the commission such membership authorization forms and any  
 97 revocations.

98 6. This paragraph does not apply to members of ~~an employee~~  
 99 ~~organization that has been certified as a bargaining unit the~~  
 100 majority of whose employees eligible for representation are



101 employed as agent to represent law enforcement officers,  
 102 correctional officers, or correctional probation officers as  
 103 those terms are defined in s. 943.10(1), (2), or (3),  
 104 respectively;~~;~~~~or~~ firefighters as defined in s. 633.102; 911  
 105 public safety telecommunicators as defined in s. 401.465(1); or  
 106 emergency medical technicians or paramedics as defined in s.  
 107 401.23.

108 7. The commission may adopt rules to implement this  
 109 paragraph.

110 Section 3. Paragraph (a) of subsection (2) of section  
 111 447.303, Florida Statutes, is amended to read:

112 447.303 Dues; deduction and collection.—

113 (2)(a) An employee organization that has been certified as  
 114 a bargaining agent to represent a bargaining unit the majority  
 115 of whose employees eligible for representation are employed as  
 116 law enforcement officers, correctional officers, or correctional  
 117 probation officers as those terms are defined in s. 943.10(1),  
 118 (2), or (3), respectively;~~;~~~~or~~ firefighters as defined in s.  
 119 633.102; 911 public safety telecommunicators as defined in s.  
 120 401.465(1); or emergency medical technicians or paramedics as  
 121 defined in s. 401.23 has the right to have its dues and uniform  
 122 assessments for the bargaining unit deducted and collected by  
 123 the employer from the salaries of those employees who authorize  
 124 the deduction and collection of said dues and uniform  
 125 assessments. However, such authorization is revocable at the

126 employee's request upon 30 days' written notice to the employer  
 127 and employee organization. Said deductions shall commence upon  
 128 the bargaining agent's written request to the employer.

129 Section 4. Paragraphs (c) and (d) of subsection (1) and  
 130 subsections (2), (3), (6), (8), (9), and (11) of section  
 131 447.305, Florida Statutes, are amended to read:

132 447.305 Registration of employee organization.—

133 (1) Every employee organization seeking to become a  
 134 certified bargaining agent for public employees shall register  
 135 with the commission pursuant to the procedures set forth in s.  
 136 120.60 prior to requesting recognition by a public employer for  
 137 purposes of collective bargaining and prior to submitting a  
 138 petition to the commission requesting certification as an  
 139 exclusive bargaining agent. Further, if such employee  
 140 organization is not registered, it may not participate in a  
 141 representation hearing, participate in a representation  
 142 election, or be certified as an exclusive bargaining agent. The  
 143 application for registration required by this section shall be  
 144 under oath and in such form as the commission may prescribe and  
 145 shall include:

146 (c) The amount of the initiation fee and the amount and  
 147 collection frequency of the ~~monthly~~ dues and uniform assessments  
 148 that a member ~~which members~~ must pay.

149 (d) The current annual ~~audited~~ financial statement of the  
 150 organization, prepared by an independent certified public

151 accountant licensed under chapter 473.

152 (2) A registration granted to an employee organization  
 153 pursuant to ~~the provisions of~~ this section runs ~~shall run~~ for 1  
 154 year after ~~from~~ the date of issuance. A registration must ~~shall~~  
 155 be renewed annually by filing an application for renewal under  
 156 oath with the commission, which application must ~~shall~~ reflect  
 157 any changes in the information provided to the commission in  
 158 conjunction with the employee organization's preceding  
 159 application for registration or previous renewal, whichever is  
 160 applicable. Each application for renewal of registration must  
 161 ~~shall~~ include a current annual ~~audited~~ financial statement,  
 162 prepared ~~certified~~ by an independent certified public accountant  
 163 licensed under chapter 473 and signed by the employee  
 164 organization's president and treasurer or corresponding  
 165 principal officers, containing all of the following information  
 166 in such detail as may be necessary accurately to disclose its  
 167 financial condition and operations for its preceding fiscal year  
 168 and in such categories as the commission may prescribe:

169 (a) Assets and liabilities at the beginning and end of the  
 170 fiscal year.†

171 (b) Receipts of any kind and the sources thereof.†

172 (c) Disbursements by category.

173 (d) ~~(e)~~ Salary, allowances, and other direct or indirect  
 174 disbursements, including reimbursed expenses, to each officer  
 175 and also to each employee who, during such fiscal year, received

176 more than \$10,000 in the aggregate from such employee  
 177 organization and any other employee organization affiliated with  
 178 it or with which it is affiliated or which is affiliated with  
 179 the same national or international employee organization.~~;~~

180 ~~(e)-(d)~~ Direct and indirect loans made to any officer,  
 181 employee, or member which aggregated more than \$250 during the  
 182 fiscal year, together with a statement of the purpose, security,  
 183 if any, and arrangements for repayment.~~;~~ ~~and~~

184 ~~(f)-(e)~~ Direct and indirect loans to any business  
 185 enterprise, together with a statement of the purpose, security,  
 186 if any, and arrangements for repayment.

187 (3) In addition to subsection (2), an employee  
 188 organization that has been certified as the bargaining agent for  
 189 public employees must include for each such certified bargaining  
 190 unit all of the following information and documentation as of  
 191 the 30th day immediately preceding the date upon which its  
 192 current registration is scheduled to end ~~of renewal in its~~  
 193 ~~application~~ for any renewal of registration on or after October  
 194 1, 2023:

195 (a) The number of employees in the bargaining unit who are  
 196 eligible for representation by the employee organization.

197 (b) The number of employees in the bargaining unit who  
 198 have submitted signed membership authorization forms without a  
 199 subsequent revocation of such membership.

200 (c) The number of employees in the bargaining unit who

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201 | paid dues to the employee organization.

202 |       (d) The number of employees in the bargaining unit who did  
203 | not pay dues to the employee organization.

204 |       (e) Documentation provided by an independent certified  
205 | public accountant retained by the employee organization which  
206 | verifies the information provided in paragraphs (a)-(d).

207 |       (6) Notwithstanding the provisions of this chapter  
208 | relating to collective bargaining, an employee organization  
209 | certified as a bargaining agent to represent a bargaining unit  
210 | for which ~~that had~~ less than 60 percent of the employees in the  
211 | unit have submitted membership authorization forms without  
212 | subsequent revocation and paid dues to the employee organization  
213 | ~~eligible for representation in the bargaining unit pay dues~~  
214 | during its last registration period must petition the commission  
215 | pursuant to s. 447.307(2) and (3) for recertification as the  
216 | exclusive representative of all employees in the bargaining unit  
217 | within 30 days ~~1 month~~ after the date on which the employee  
218 | organization applies for renewal of registration pursuant to  
219 | subsection (2). The certification of an employee organization  
220 | that does not comply with this section is revoked.

221 |       (8) The commission may conduct an investigation to confirm  
222 | the validity of any information submitted pursuant to this  
223 | section. The commission may revoke or deny an employee  
224 | organization's registration or certification if it finds that  
225 | the employee organization:

226 (a) Failed to cooperate with the investigation conducted  
 227 pursuant to this subsection, including a refusal to permit the  
 228 commission to inspect membership authorization forms or  
 229 revocations pursuant to s. 447.301(1)(b)5.; or

230 (b) Intentionally misrepresented the information it  
 231 submitted pursuant to this section ~~subsection (3)~~.

232  
 233 A decision issued by the commission pursuant to this subsection  
 234 is a final agency action that is reviewable pursuant to s.  
 235 447.504.

236 (9) Subsections (3)-(8) do not apply to a ~~an employee~~  
 237 ~~organization that has been certified as the bargaining~~ unit the  
 238 majority of whose employees eligible for representation are  
 239 employed as ~~agent to represent~~ law enforcement officers,  
 240 correctional officers, or correctional probation officers as  
 241 those terms are defined in s. 943.10(1), (2), or (3),  
 242 respectively; ~~or~~ firefighters as defined in s. 633.102; 911  
 243 public safety telecommunicators as defined in s. 401.465(1); or  
 244 emergency medical technicians or paramedics as defined in s.  
 245 401.23.

246 (11) Every employee organization shall keep accurate  
 247 accounts of its income and expenses, which accounts shall be  
 248 open for inspection at all reasonable times by any member of the  
 249 organization or by the commission. In addition, each employee  
 250 organization that has been certified as a bargaining agent must

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251 provide to its members an annual ~~audited~~ financial report  
252 prepared by an independent certified public accountant licensed  
253 under chapter 473 which ~~that~~ includes a detailed breakdown of  
254 revenues and expenditures in such categories as the commission  
255 may prescribe, and an accounting of membership dues and  
256 assessments. The employee organization must notify its members  
257 annually of all costs of membership.

258 Section 5. This act shall take effect July 1, 2024.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1679 Florida African American Heritage Preservation Network

**SPONSOR(S):** McClure

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 592

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

### SUMMARY ANALYSIS

Within the Department of State (DOS), the Division of Historical Resources (Division) is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The division is also charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.

The Florida African American Heritage Preservation Network (FAAHPN) is a professional association organized in 2001 by the John Gilmore Riley Center Museum. FAAHPN serves as an informational and technical assistance resource in response to a growing interest in preserving Florida's African American culture, that of the African Diaspora, and that of other related ethnically diverse historic resources globally.

The bill requires DOS to contract with FAAHPN, as authorized by and consistent with funding appropriated in the General Appropriations Act, and in accordance with the duties of the Division, to preserve Florida Black and African American history and culture. The bill specifies the duties of FAAHPN under any such contract include:

- Distributing funds to support member museums and their affiliates and institutions served, together with associated galleries and archives;
- Supporting member museums and affiliates in the areas of technology, equipment, content and exhibit creation, and preservation of documents and artifacts; and
- Providing professional and resource development to member museums and affiliates to enhance visitation and viewership of Florida Black History and African American museums.

The bill provides that certain other expenses will be eligible for funding under the contract, including expenses for interns, field training and virtual communication, traveling exhibits, and living history presentations.

Other than such funds as may be appropriated by the Legislature, the bill has no fiscal impact on the state, local governments, or the private sector.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Department of State

The Department of State (DOS)<sup>1</sup> is comprised of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Arts and Culture, and Administration.<sup>2</sup> The Secretary of State (Secretary) is the agency head of DOS, appointed by and serving at the pleasure of the Governor, confirmed by the Senate, and acts as the custodian of state records.<sup>3</sup> As the chief administrator of the Division of Historical Resources (Division), the Division of Arts and Culture, and Division of Library and Information Services, the Secretary also serves as Florida's Chief Arts and Culture Officer.<sup>4</sup>

##### Division of Historical Resources

The Division is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division is also charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>5</sup> Some of the Division's responsibilities include:

- Developing a comprehensive statewide historic preservation plan;
- Directing and conducting a comprehensive statewide survey, and maintaining an inventory, of historic resources;
- Cooperating with governmental agencies, private organizations, and individuals to ensure that historic resources are taken into consideration at all levels of planning and development;
- Providing public information, education, and technical assistance relating to historic preservation programs; and
- Taking necessary or appropriate action to locate, acquire, protect, preserve, operate, interpret, and promote historic resources to foster an appreciation of Florida history and culture.<sup>6</sup>

In order to raise awareness of the state's cultural and historical resources, the Division started the Florida Heritage Trails series in 1991 with the publication of the first edition of the Florida Black Heritage Trail.<sup>7</sup> Since then, additional titles have been released with the most recent title, the Florida Seminole Wars Heritage Trail, published in the summer of 2015. Each volume identifies historical sites throughout Florida that are related to the volume topic and offers profiles and biographical sketches of significant individuals.<sup>8</sup>

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<sup>1</sup> S. 20.10, F.S.

<sup>2</sup> S. 20.10(2), F.S.

<sup>3</sup> S. 20.10(1), F.S.

<sup>4</sup> S. 15.18, F.S.

<sup>5</sup> S. 267.031, F.S.

<sup>6</sup> S. 267.031(5)(a), (b), (d), (f), and (i), F.S.

<sup>7</sup> Florida Department of State, *Florida Heritage Trails*, available at <https://dos.fl.gov/historical/preservation/heritage-trails/> (Last Visited January 25, 2024)

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

The Division also is responsible for encouraging, promoting, maintaining, and operating Florida history museums, providing support and working to promote the use of resources for educational and cultural purposes.<sup>9</sup> The Division directly oversees the following museums:

- The Museum of Florida History, which is the state’s official history museum and showcases Florida’s diverse history from prehistoric times to the present day;<sup>10</sup>
- Mission San Luis, a living history museum showcasing the life of the Apalachee Indians and Spanish settlers and hosting workshops such as pottery and blacksmithing;<sup>11</sup>
- The Knott House Museum, showcasing the history of Tallahassee and its role in the Civil War, including the reading of the Emancipation Proclamation on the steps of the Knott House in 1865;<sup>12</sup> and
- The Grove Museum, the mission of which is to preserve and interpret the Call-Collins House, its surrounding area and historical collections, to further public dialogue about civil rights and American history.<sup>13</sup>

Currently, the Division provides support for the Florida Museum of Black History Task Force (Task Force), including staffing and necessary expenditures. The purpose of the Task Force is to provide recommendations to the Division for the planning, location, construction, operation, and administration of a Florida Museum of Black History to showcase the role of African American participation in defending and preserving Florida and the nation, the history of slavery in Florida, the history of segregation in the state, notable Florida African Americans, including Dr. Mary McLeod Bethune, the history of black colleges and universities in Florida, and the inherent worth and dignity of human life with a focus on preventing genocide.<sup>14</sup>

Other museums recognized by the state include:

- Certain state railroad museums;<sup>15</sup>
- The Florida Museum of Transportation and History;<sup>16</sup>
- The John and Mable Ringling Museum of Art;<sup>17</sup>
- The Ringling Museum of the Circus;<sup>18</sup>
- The Florida Historic Capitol Museum;<sup>19</sup>
- The Florida Agricultural Museum;<sup>20</sup> and
- The Florida Museum of Natural History.<sup>21</sup>

### Florida African American Heritage Preservation Network

The Florida African American Heritage Preservation Network (FAAHPN) is a professional association organized in 2001 by the John Gilmore Riley Center Museum.<sup>22</sup> FAAHPN serves as an informational and technical assistance resource in response to a growing interest in preserving Florida’s African American culture, that of the African Diaspora, and that of other related ethnically diverse historic

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<sup>9</sup> S. 267.071(2), F.S.

<sup>10</sup> See Florida Department of State, *Museum of Florida History*, available at <https://museumoffloridahistory.com/explore/exhibits/> (last visited January 25, 2024).

<sup>11</sup> See Florida Department of State, *Mission San Luis*, available at <https://missionsanluis.org/learn/> (last visited January 25, 2024).

<sup>12</sup> See Florida Department of State, *About the Knott House*, available at <https://museumoffloridahistory.com/visit/knott-house-museum/about-the-knott-house/> (last visited January 25, 2024).

<sup>13</sup> See Florida Department of State, *The Gove Museum*, available at <https://thegrovemuseum.com/> (last visited January 25, 2024). The Grove was the home to several generations of the Call and Collins families, including former Governor LeRoy Collins. The Grove Advisory Council advises the division on the operation, maintenance, and preservation of the museum. S. 267.075, F.S.

<sup>14</sup> S. 267.0722, F.S.

<sup>15</sup> See s. 15.045, F.S.

<sup>16</sup> S. 15.046, F.S.

<sup>17</sup> See ss. 265.27, F.S., and 1004.45, F.S.

<sup>18</sup> S. 1004.45, F.S.

<sup>19</sup> S. 272.129, F.S. The Florida Historic Capitol Museum Council provides guidance and support to the museum director and support staff. S. 272.131, F.S.

<sup>20</sup> See s. 570.69, F.S.

<sup>21</sup> S. 1004.56, F.S.

<sup>22</sup> See “John G. Riley Center & Museum,” available at <https://www.rileymuseum.org/> (last visited January 26, 2024).

resources globally.<sup>23</sup> Working with the Division and Visit Florida,<sup>24</sup> FAAHPN produced new editions of *The Florida Black Heritage Trail Guide* in 2005 and 2007 that detailed a microcosm of African American landmarks and legacies existing in various locations throughout the state of Florida.<sup>25</sup> FAAHPN also provides technical assistance and training to museum and historic preservation professionals to enhance content with the creation of living history exhibits and other educational products.<sup>26</sup>

The following chart is the history of funding requests by FAAHPN from the 2017-2018 fiscal year to the current fiscal year:

Spending Category	2017-2018 <sup>27</sup>	2018-2019 <sup>28</sup>	2019-2020 <sup>29</sup>	2020-2021 <sup>30</sup>	2021-2022 <sup>31</sup>	2022-2023 <sup>32</sup>	2023-2024 <sup>33</sup>	2024-2025 <sup>34</sup>
<b>Administrative</b>								
Executive Director Salary and Benefits	\$44,500	\$35,000	\$55,000	\$73,000	\$116,400	\$116,400	\$116,400	\$136,400
Expense/ Equipment/ Travel/ Supplies/ Other	\$5,000	\$15,000	\$10,000	\$7,250	\$10,000	\$10,000	\$10,000	\$25,000
Consultants/ Contracted Services/Study	\$18,000	\$25,000	\$54,000	\$57,750	\$56,000	\$56,000	\$56,000	\$60,000
<b>Operational</b>								
Salary and Benefits for others	\$67,500	\$0	\$86,400	\$95,150	\$145,600	\$145,600	\$145,600	\$195,600
Expense/Equipment/ Travel/Supplies/ Other	\$292,500	\$250,000	\$247,100	\$254,850	\$414,400	\$414,000	\$414,000	\$473,000
Consultants/ Contracted Services/Study	\$22,500	\$150,000	\$22,500	\$12,000	\$57,600	\$57,600	\$57,600	\$60,000
<b>Total</b>								

<sup>23</sup> The Florida African American Heritage Preservation Network, *About FAAHPN*, <http://faahpn.com/about-faahpn/> (last visited January 25, 2024).

<sup>24</sup> Visit Florida is the official state tourism marketing corporation. See “About Visit Florida,” available at <https://www.visitflorida.com/about-us/> (last visited January 26, 2024).

<sup>25</sup> See Florida Department of State, *The Florida Black Heritage Trail*, available at <https://dos.fl.gov/historical/preservation/heritage-trails/black-heritage-trail/> (Last Visited January 25, 2024)

<sup>26</sup> The Florida African American Heritage Preservation Network, *supra*, n. 24..

<sup>27</sup> The Florida House, *2017 Appropriations Project Bills*, available at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=projectbills&DocumentType=MemberBudgetRequests&Session=2017&BillNumber=2379&BillId=57497> (Last Visited January 25, 2024)

<sup>28</sup> The Florida House, *2018 Appropriations Project Bills*, available at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=projectbills&DocumentType=MemberBudgetRequests&Session=2018&BillNumber=2837&BillId=60976> (Last Visited January 25, 2024)

<sup>29</sup> The Florida House, *2019 Appropriations Project Bills*, available at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=projectbills&DocumentType=MemberBudgetRequests&Session=2019&BillNumber=2049&BillId=63214> (Last Visited January 25, 2024)

<sup>30</sup> The Florida House, *2020 Appropriations Project Bills*, available at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=projectbills&DocumentType=MemberBudgetRequests&Session=2020&BillNumber=2785&BillId=67486> (Last Visited January 25, 2024)

<sup>31</sup> The Florida House, *2021 Appropriations Project Bills*, available at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=projectbills&DocumentType=MemberBudgetRequests&Session=2021&BillNumber=2431&BillId=70857> (Last Visited January 25, 2024)

<sup>32</sup> The Florida House, *2022 Appropriations Project Bills*, available at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=projectbills&DocumentType=MemberBudgetRequests&Session=2022&BillNumber=4391&BillId=75141> (Last Visited January 25, 2024)

<sup>33</sup> The Florida House, *2023 Appropriations Project Forms*, available at <https://myfloridahouse.gov/api/document/apr?sessionId=99&name=0402AR.pdf> (Last Visited January 25, 2024)

<sup>34</sup> The Florida House, *2024 Appropriations Project Requests*, available at <https://myfloridahouse.gov/api/document/apr?sessionId=103&name=1443AR.pdf> (Last Visited January 25, 2024)

Spending Category	2017-2018 <sup>27</sup>	2018-2019 <sup>28</sup>	2019-2020 <sup>29</sup>	2020-2021 <sup>30</sup>	2021-2022 <sup>31</sup>	2022-2023 <sup>32</sup>	2023-2024 <sup>33</sup>	2024-2025 <sup>34</sup>
State Funds Requested	\$450,000	\$475,000	\$475,000	\$500,000	\$800,000	\$800,000	\$800,000	\$950,000
State Funds Received	\$450,000	\$450,000	\$475,000	\$325,000	\$720,000	\$800,000	\$800,000	TBD

### Effect of the Bill

The bill requires DOS to contract with FAAHPN, as authorized by and consistent with funding appropriated in the General Appropriations Act, and in accordance with the duties of the Division to preserve Florida Black and African American history and culture.

The functions of FAAHPN under the contract will include, but are not limited to:

- Distribution of funding to support member museums and their affiliates and institutions served, and the galleries and archives of such museums, affiliates, and institutions;
- Support to member museums and their affiliates in the areas of technology, equipment acquisition, content and exhibit development fabrication and installation, and preservation of documents and artifacts; and
- Provision of professional and resource development services to member museums and their affiliates to enhance visitation to and viewership of Florida Black History and African American museums, places, and spaces. Such professional and resource development services shall include conferences, workshops, and training and tourism and marketing expenditures.

Other expenses as determined by FAAHPN and related to their mission are eligible for funding under the contract, including:

- Intern expenses;
- Expenses related to field training sessions and virtual communication methods to maintain connectivity among the museums;
- Traveling exhibit expenses; and
- Expenses for living history presentations.

### B. SECTION DIRECTORY:

Section 1. Creates s. 267.0724, F.S., relating to Florida African American Heritage Preservation Network .

Section 2. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

*See Fiscal Comments*

D. FISCAL COMMENTS:

The contract between DOS and FAAHPN must be consistent with funding as may be appropriated in the General Appropriations Act.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

C. The bill neither authorizes nor requires executive branch rulemaking.

D. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES



26 include, but are not limited to, all of the following:

27 (1) Distribution of funding to support member museums and  
28 their affiliates and institutions served, and the galleries and  
29 archives of such museums, affiliates, and institutions.

30 (2) Support to member museums and their affiliates in the  
31 areas of technology, equipment acquisition, content and exhibit  
32 development fabrication and installation, and preservation of  
33 documents and artifacts.

34 (3) Provision of professional and resource development  
35 services to member museums and their affiliates to enhance  
36 visitation to and viewership of Florida Black History and  
37 African American museums, places, and spaces. Such professional  
38 and resource development services shall include conferences,  
39 workshops, and training and tourism and marketing expenditures.

40  
41 Other expenses as determined by the Florida African American  
42 Heritage Preservation Network and related to the network's  
43 mission are eligible for funding under the contract, including  
44 intern expenses, expenses related to field training sessions and  
45 virtual communication methods to maintain connectivity among the  
46 museums, traveling exhibit expenses, and expenses for living  
47 history presentations.

48 Section 2. This act shall take effect July 1, 2024.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 781 Unsolicited Proposals for Public-private Partnerships  
**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

Public-private partnerships (P3s) are contractual arrangements between public and private entities that facilitate increased private sector involvement in the funding and execution of public building and infrastructure projects. Current law authorizes a responsible public entity (RPE) (i.e., local government) to receive unsolicited proposals or to solicit proposals for a qualifying P3 and thereafter enter into a comprehensive agreement for the building, upgrading, operating, ownership, or financing of facilities.

If the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal, the RPE must publish notice in the Florida Administrative Register (FAR) and a newspaper of general circulation, and mail a copy of the notice to each affected local government, stating that the RPE has received the proposal and will accept other proposals for the same project. After the public notification period has expired, the RPE ranks the proposals received in order of preference and begins negotiations. However, before approving a comprehensive agreement, the RPE must determine the proposed project: is in the public's best interest, is for a facility that is owned by the RPE or one for which ownership will be conveyed to the RPE, and the facility will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the financed amounts.

The PCS authorizes an RPE to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process. To do so, an RPE must hold an initial duly noticed public meeting at which the proposal is presented and affected public entities and members of the public are able to provide comment. The RPE then must hold a second duly noticed public meeting at which the RPE determines that the proposal is in the public's interest based on specified factors.

The PCS provides that an RPE is authorized, but no longer required, to publish notice in the FAR and a newspaper of general circulation and mail a copy to each affected local government in the affected area if the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal. If the RPE decides to proceed with an unsolicited proposal without engaging in the public bidding process, the RPE must publish a report that provides the public interest determination, and specifically detailed information, in the FAR for at least 7 days.

The PCS amends the agreement approval process by no longer requiring the RPE to determine that an unsolicited proposed project will be owned by the RPE. If ownership will not be conveyed to the RPE within 10 years after the initial public operation begins, the public benefits apart from ownership must be identified and stated by the RPE. The RPE will only be required to determine the proposed project is in the public's best interest if the proposal was solicited.

The PCS may have an indeterminate fiscal impact on the state and local governments. See Fiscal Comments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Public-private Partnerships

Public-private partnerships (P3s) are contractual arrangements between public entities and private sector entities<sup>1</sup> that facilitate increased private sector involvement in the funding and execution of public building and infrastructure projects. These agreements enable the collaboration of skills and assets from both sectors to provide services or facilities for the benefit of the general public. In addition to resource sharing, both parties assume shared risks and potential rewards throughout the delivery of the service or facility.<sup>2</sup> Several statutes promote and offer direction for P3 projects, including those for services and facilities related to transportation,<sup>3</sup> housing,<sup>4</sup> and education.<sup>5</sup>

Current law grants responsible public entities (RPEs)<sup>6</sup> the authority to engage in P3 projects aimed at developing an extensive array of public-use facilities or projects that fulfill a public purpose. Examples of qualifying projects include those for mass transit, vehicle parking, airports or seaports, educational facilities, and public sector buildings or complexes such as courthouses or city halls.<sup>7</sup> The P3 law outlines specific requirements to which RPEs must adhere, including protocols for reviewing and approving proposals.<sup>8</sup>

##### *Procurement Procedures*

An RPE may receive unsolicited proposals or may solicit proposals for a qualifying P3 and thereafter enter into a comprehensive agreement for the building, upgrading, operating, ownership, or financing of facilities. To cover the costs associated with evaluating unsolicited proposals, a reasonable application fee may be established. The RPE opting not to assess the unsolicited proposal must refund the application fee.<sup>9</sup>

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<sup>1</sup> "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity. S. 255.065(1)(g), F.S.

<sup>2</sup> See Florida Department of Transportation, *Public-Private Partnerships*, <https://www.fdot.gov/comptroller/pfo/p3.shtm> (last visited January 7, 2024).

<sup>3</sup> See 334.30, F.S., relating to public-private transportation facilities.

<sup>4</sup> See 420.0003(2)(b), F.S., relating to state housing strategy.

<sup>5</sup> See 1013.35, F.S., relating to school district educational facilities plans.

<sup>6</sup> "Responsible public entity" means a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project. S. 255.065(1)(j), F.S. "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand. S. 255.065(1)(b), F.S. "Operate" means to finance, maintain, improve, equip, modify, or repair. S. 255.065(1)(f), F.S.

<sup>7</sup> "Qualifying project" means a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section. S. 255.065(1)(i), F.S.

<sup>8</sup> "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined. S. 255.065(1)(h), F.S.

<sup>9</sup> S. 255.065(3)(a), F.S.

An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the RPE:

- A comprehensive description of the qualifying project;
- A detailed account of the method proposed by the private entity to secure the necessary property interests required for the qualifying project;
- A description of the private entity's general plans for financing the qualifying project;
- The name and address of a designated contact person who can provide additional information about the proposal;
- The proposed user fees,<sup>10</sup> lease payments,<sup>11</sup> or other service payments throughout the term of the comprehensive agreement, along with the methodology for and circumstances allowing adjustments to these payments over time; and
- Any additional material or information reasonably requested by the RPE.<sup>12</sup>

If the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal, the public entity must publish notice in the Florida Administrative Register (FAR) and a newspaper of general circulation and mail a copy of the notice to each local government in the affected area.<sup>13</sup> The notice must be published at least once a week for two weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The specific timeframe for accepting proposals varies for each project based upon the complexity of the project and the public benefit derived from allowing a longer or shorter submission period. However, the duration for accepting additional proposals must range from a minimum of 21 days to a maximum of 120 days, unless an alternative timeframe that more adequately suits the needs of the qualifying project is approved by a majority vote of the RPE's governing body.<sup>14</sup>

#### *Project Qualification and Approval*

For an unsolicited proposal, after the public notification period has expired the RPE ranks the proposals received in order of preference. The RPE may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the negotiation outcome is unsatisfactory, the RPE may terminate negotiations and engage with each subsequent-ranked firm in order of preference. The RPE may reject all proposals at any point in the process until an agreement is reached.<sup>15</sup>

Before approving a comprehensive agreement, the RPE must determine that the proposed project:

- Is in the public's best interest;
- Is for a facility owned by the RPE or for which ownership will be conveyed to the RPE;
- Has adequate safeguards to prevent additional costs or service disruptions for the public in case of material default<sup>16</sup> or cancellation of the comprehensive agreement by the RPE;
- Includes measures to allow the RPE or the private entity to add capacity to the proposed project or other facilities serving similar predominantly public purposes;
- Will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the financed amounts.<sup>17</sup>

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<sup>10</sup> "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement. S. 255.065(1)(c), F.S.

<sup>11</sup> "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project. S. 255.065(1)(d), F.S.

<sup>12</sup> S. 255.065(4), F.S. Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.

<sup>13</sup> "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located. S. 255.065(1)(a), F.S.

<sup>14</sup> S. 255.065(3)(b), F.S.

<sup>15</sup> S. 255.065(5)(c), F.S.

<sup>16</sup> "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project. S. 255.065(1)(e), F.S.

<sup>17</sup> S. 255.065(3)(d), F.S.

## *Comprehensive Agreement*

The RPE and the private entity must enter into a comprehensive agreement before developing or operating a qualifying project. The comprehensive agreement must provide for:

- Delivery of performance and payment bonds, letters of credit, or other security related to the qualifying project's development or operation;
- Review of the qualifying project design by the RPE. This does not require the private entity to complete the project's design before executing the comprehensive agreement;
- Inspection of the qualifying project by the RPE;
- Maintaining a public liability insurance policy, a copy of which together with proofs of coverage are filed with the RPE, or satisfactory proof of self-insurance;
- Monitoring the maintenance practices of the private entity by the RPE to ensure proper upkeep of the qualifying project;
- Periodic filing of financial statements pertaining to the qualified project by the private entity;
- Procedures governing the rights and responsibilities of both parties in the event of a termination of the comprehensive agreement or a material default by the private entity;
- User fees, lease payments, or service payments that do not discourage use of the project, as may be established in the agreement; and
- Duties of the private entity, including the terms and conditions that the RPE determines serve the public purpose of the qualifying project.<sup>18</sup>

## **Effect of the PCS**

The PCS authorizes an RPE to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process. Accordingly, the RPE will no longer be required to provide notice of accepting additional bids or to rank received proposals in order of preference. However, an RPE may only abstain from the public bidding process if the RPE holds a duly noticed public meeting at which the proposal is presented, affected public entities and members of the public are able to provide comment, and the RPE then conducts a second duly noticed public hearing at which the RPE determines that the proposal is in the public's interest. In making the public interest determination, the RPE must consider all of the following factors:

- The benefits to the public;
- The financial structure of and the economic efficiencies achieved by the proposal;
- The qualifications and experience of the private entity that submitted the proposal and such entity's ability to perform the project;
- The project's compatibility with regional infrastructure plans; and
- Public comments submitted at the meeting. The RPE must provide a statement that explains why the proposal should proceed and addresses such comments.

The PCS provides that an RPE is authorized, but no longer required, to publish notice in the FAR and a newspaper of general circulation, and mail a copy of the notice to each local government in the affected area, of receiving an unsolicited proposal if an RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal. If the RPE decides to proceed with an unsolicited proposal without engaging in a public bidding process, the RPE must publish in the FAR for at least 7 days a report that provides the public interest determination, includes the factors considered in making such public interest determination, and the RPE's findings based on each considered factor.

The PCS amends the comprehensive agreement approval process. An RPE no longer will be required to determine that an unsolicited proposed project will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed. However, if ownership will not be conveyed to the RPE within 10 years after the initial public operation begins, the public benefits apart from ownership must be identified and stated by the RPE. In addition,

an RPE will only be required to determine a proposed project is in the public's best interest if the proposal was solicited.

**B. SECTION DIRECTORY:**

Section 1 amends s. 255.065, F.S., relating to public-private partnerships.

Section 2 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:**

The PCS authorizes RPEs to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if certain conditions are met. Accordingly, private entities may experience less competition when contracting with RPEs through such means resulting in more economically attractive contracts for the private entities. The financial impact to the private sector is indeterminate at this time.

**D. FISCAL COMMENTS:**

The PCS authorizes RPEs to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if certain conditions are met. Accordingly, private entities may experience less competition when contracting with RPEs through such means resulting in contracts more economically attractive for the private entities but possibly less advantageous to the taxpayers. Such costs may be offset, at least in part, by reducing the workload expenditures associated with the public bidding process. The fiscal impact to the state and local governments is indeterminate at this time.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS 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 authorizes nor requires additional executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**





26 Section 1. Present paragraphs (c) through (f) of  
 27 subsection (3) of section 255.065, Florida Statutes, are  
 28 redesignated as paragraphs (e) through (h), respectively, new  
 29 paragraphs (c) and (d) are added to that subsection, and  
 30 paragraph (b) and present paragraph (d) of that subsection and  
 31 paragraph (c) of subsection (5) of that section are amended, to  
 32 read:

33 255.065 Public-private partnerships.—

34 (3) PROCUREMENT PROCEDURES.—A responsible public entity  
 35 may receive unsolicited proposals or may solicit proposals for a  
 36 qualifying project and may thereafter enter into a comprehensive  
 37 agreement with a private entity, or a consortium of private  
 38 entities, for the building, upgrading, operating, ownership, or  
 39 financing of facilities.

40 (b)1. The responsible public entity may request a proposal  
 41 from private entities for a qualifying project or, if the  
 42 responsible public entity receives an unsolicited proposal for a  
 43 qualifying project and the responsible public entity intends to  
 44 enter into a comprehensive agreement for the project described  
 45 in the unsolicited proposal, the responsible public entity may  
 46 ~~shall~~ publish notice in the Florida Administrative Register and  
 47 a newspaper of general circulation at least once a week for 2  
 48 weeks stating that the responsible public entity has received a  
 49 proposal and will accept other proposals for the same project.

50 2. The timeframe within which the responsible public

51 | entity may accept other proposals shall be determined by the  
 52 | responsible public entity on a project-by-project basis based  
 53 | upon the complexity of the qualifying project and the public  
 54 | benefit to be gained by allowing a longer or shorter period of  
 55 | time within which other proposals may be received; however, the  
 56 | timeframe for allowing other proposals must be at least 21 days,  
 57 | but no more than 120 days, after the initial date of  
 58 | publication. If approved by a majority vote of the responsible  
 59 | public entity's governing body, the responsible public entity  
 60 | may alter the timeframe for accepting proposals to more  
 61 | adequately suit the needs of the qualifying project. A copy of  
 62 | the notice must be mailed to each local government in the  
 63 | affected area.

64 |       (c) The responsible public entity may proceed with an  
 65 | unsolicited proposal for a qualifying project without engaging  
 66 | in a public bidding process if the responsible public entity  
 67 | holds a duly noticed public meeting at which the proposal is  
 68 | presented and affected public entities and members of the public  
 69 | are able to provide comment and at a second duly noticed public  
 70 | meeting determines that the proposal is in the public's  
 71 | interest. In making the public interest determination, the  
 72 | responsible public entity must consider all of the following  
 73 | factors:

- 74 |           1. The benefits to the public.
- 75 |           2. The financial structure of and the economic

76 efficiencies achieved by the proposal.

77 3. The qualifications and experience of the private entity  
 78 that submitted the proposal and such entity's ability to perform  
 79 the project.

80 4. The project's compatibility with regional  
 81 infrastructure plans.

82 5. Public comments submitted at the meeting. The  
 83 responsible public entity must provide a statement that explains  
 84 why the proposal should proceed and addresses such comments.

85 (d) If the responsible public entity decides to proceed  
 86 with an unsolicited proposal without engaging in a public  
 87 bidding process, the responsible public entity must publish in  
 88 the Florida Administrative Register for at least 7 days a report  
 89 that includes all of the following:

90 1. The public interest determination required under  
 91 paragraph (c).

92 2. The factors considered in making such public interest  
 93 determination.

94 3. The responsible public entity's findings based on each  
 95 considered factor.

96 (f)-(d) Before approving a comprehensive agreement, the  
 97 responsible public entity must determine that the proposed  
 98 project:

99 1. Is in the public's best interest, if the proposal was  
 100 solicited. If the proposal was unsolicited, the responsible

101 public entity must determine that the proposed project has been  
 102 determined to be in the public's interest in accordance with  
 103 paragraph (c).

104 2. Is for a facility that is owned by the responsible  
 105 public entity or for a facility for which ownership will be  
 106 conveyed to the responsible public entity. For a proposed  
 107 project that was unsolicited, if ownership will not be conveyed  
 108 to the responsible public entity within 10 years after initial  
 109 public operation begins, the public benefits apart from  
 110 ownership must be identified and stated by the responsible  
 111 public entity in the public interest determination required  
 112 under paragraph (c).

113 3. Has adequate safeguards in place to ensure that  
 114 additional costs or service disruptions are not imposed on the  
 115 public in the event of material default or cancellation of the  
 116 comprehensive agreement by the responsible public entity.

117 4. Has adequate safeguards in place to ensure that the  
 118 responsible public entity or private entity has the opportunity  
 119 to add capacity to the proposed project or other facilities  
 120 serving similar predominantly public purposes.

121 5. If the proposal was solicited, will be owned by the  
 122 responsible public entity upon completion, expiration, or  
 123 termination of the comprehensive agreement and upon payment of  
 124 the amounts financed.

125 (5) PROJECT QUALIFICATION AND PROCESS.—

126 (c) After the public notification period has expired in  
 127 the case of an unsolicited proposal that is submitted and  
 128 noticed for public bidding, the responsible public entity shall  
 129 rank the proposals received in order of preference. In ranking  
 130 the proposals, the responsible public entity may consider  
 131 factors that include, but are not limited to, professional  
 132 qualifications, general business terms, innovative design  
 133 techniques or cost-reduction terms, and finance plans. The  
 134 responsible public entity may then begin negotiations for a  
 135 comprehensive agreement with the highest-ranked firm. If the  
 136 responsible public entity is not satisfied with the results of  
 137 the negotiations, the responsible public entity may terminate  
 138 negotiations with the proposer and negotiate with the second-  
 139 ranked or subsequent-ranked firms, in the order consistent with  
 140 this procedure. If only one proposal is received, the  
 141 responsible public entity may negotiate in good faith, and if  
 142 the responsible public entity is not satisfied with the results  
 143 of the negotiations, the responsible public entity may terminate  
 144 negotiations with the proposer. Notwithstanding this paragraph,  
 145 the responsible public entity may reject all proposals at any  
 146 point in the process until a contract with the proposer is  
 147 executed.

148 Section 2. This act shall take effect July 1, 2024.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1339 Department of Management Services  
**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

The Department of Management Services (DMS) must maintain a classification and compensation program for Selected Exempt Service (SES), Senior Management Service (SMS), and Career Service positions within the State Personnel System (SPS). Under the SPS, recruiting for Career Service positions must be done through open competition.

The Federal Surplus Personal Property Donation Program (FSPPDP) provides a mechanism for federal agencies to donate property to public agencies and eligible nonprofits. There are no costs for donated property; however, recipients may be charged for shipping and administrative costs. DMS is the designated state agency to procure and distribute federal surplus property. The Surplus Property Revolving Trust Fund is maintained in the State Treasury and the Chief Financial Officer is authorized to transfer any unexpended funds in the account to DMS.

State agencies must competitively procure commodities and contractual services and designate an employee to act as a contract manager who, when responsible for contracts exceeding \$10 million annually, must possess at least five years of experience in managing contracts exceeding \$5 million annually. For purchases of personal property, agencies, universities, colleges, school districts, and political subdivisions must apply a preference when the lowest bidder is out-of-state that is equal to that state's vendor preference, unless that state does not apply a preference, in which case the preference awarded to the lowest in-state bidder is five percent. The Florida Opportunity Fund invests in venture capital funds focusing on opportunities in Florida.

The PCS exempts specified positions from the Career Service. The PCS amends the term "department" for the purposes of Career Service exemptions to include specified state agencies. Accordingly, certain managerial positions within these "departments" will be exempt from the Career Service and the departments will have discretion to classify 20 policymaking or managerial positions in the SES and one in the SMS. The PCS specifies that open competition is not required for recruitment when an employing agency is filling a position with an apprentice participating in an apprenticeship program with the Department of Education in a related field.

The PCS provides that funds held in the Surplus Property Revolving Trust Fund may only be used for FSPPDP operating expenses.

The PCS reduces required experience for certain contract managers from five years to three. The PCS removes the current price preference framework and replaces it with one applicable only to state agencies. Agencies are required to apply a 5 percent price preference for competitive solicitations for commodities or contractual services in excess of \$35,000, and when all else is equal, preference is given to the vendor whose goods are entirely assembled in-state, who manufactures the largest percentage of goods in-state, or who employs the greater number of in-state individuals, respectively. The PCS applies a similar preference for U.S. vendors. Agencies must also apply a 5 percent price preference for vendors that receive investments from the Florida Opportunity Fund.

The PCS will likely have a fiscal impact on state and local governments. See Fiscal Analysis.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcs1339.CRG

**DATE:** 1/30/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### State Personnel System

##### **Present Situation**

The state personnel system (SPS) provides a means to recruit, select, train, develop, and maintain an effective and responsible workforce. The statutes include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.<sup>1</sup> The Department of Management Services (DMS) is charged with establishing and maintaining a classification and compensation program addressing Selected Exempt Service (SES), Senior Management Service (SMS), and Career Service positions.<sup>2</sup> The classification of a position determines the types of benefits assigned, its compensation, and collective bargaining.<sup>3</sup>

##### Selected Exempt Service System

The SES is created as a separate system of personnel administration that includes those positions exempted from Career Service. DMS is required to designate all positions in the SES as either managerial/policymaking, professional, or nonmanagerial/nonpolicy making.<sup>4</sup> SES employees serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.<sup>5</sup> The pay plan and benefits package is greater overall for SES positions than that provided in the Career Service but lesser overall than that provided in the SMS.<sup>6</sup>

##### Senior Management Service System

The SMS is created as a separate system of personnel administration that includes those positions exempted from Career Service and that are primarily policymaking or managerial in nature.<sup>7</sup> The SMS was created to attract, retain, and develop highly competent senior-level managers at the highest executive-management-level agency positions in order for the highly complex programs and agencies of state government to function effectively, efficiently, and productively.<sup>8</sup> SMS employees serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.<sup>9</sup>

##### Career Service System

The majority of employees in the SPS are categorized as Career Service.<sup>10</sup> Career Service employees are entitled to certain employment rights, and notably, those who have completed a 1-year probationary period may only be suspended or dismissed for cause and have notice and appeal rights. Such cause includes poor performance, negligence, inefficiency, insubordination, misconduct, habitual drug abuse, or criminal conviction.<sup>11</sup>

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<sup>1</sup> S. 110.105(1), F.S. Ch. 110, F.S., establishes the state's personnel management system.

<sup>2</sup> S. 110.2035(1), F.S.

<sup>3</sup> See ch. 110, F.S.

<sup>4</sup> S. 110.602, F.S.

<sup>5</sup> S. 110.604, F.S.

<sup>6</sup> S. 110.603(2), F.S.

<sup>7</sup> S. 110.402, F.S.

<sup>8</sup> S. 110.401, F.S.

<sup>9</sup> S. 110.403(1)(a), F.S.

<sup>10</sup> See Department of Management Services, *FY 2021-2022 Annual Workforce Report*, available at <https://dms-media.ccplatform.net/content/download/162666/file/FY%202021-22%20Annual%20Workforce%20Report%20-%201-3-24%20-%20Final.pdf> (last visited January 14, 2024).

<sup>11</sup> S. 110.227(1) and (5), F.S.; see also r. 60L-36.005(3), F.A.C.



All position under the SPS are classified as Career Service unless specifically exempted by statute.<sup>12</sup> For purposes of Career Service exemptions, the term “department” means all departments and commissions of the executive branch, whether created by the State Constitution or ch. 20, F.S.; the office of the Governor; and the Public Service Commission. However, the term “department” means DMS when used in the context of the authority to establish pay bands and benefits.<sup>13</sup> Currently, the following positions are exempted from the Career Service:

- Officers of the executive branch elected by popular vote;
- Members, officers, and employees of the legislative branch, except for those of the Florida Public Service Commission;
- Members, officers, and employees of the judicial branch;
- Officers and employees of the state universities and Florida School for the Deaf and the Blind;
- The state chief information officer, state chief data officer, and state chief information security officer;
- Members of state boards and commissions;
- Judges, referees, and receivers;
- Patients or inmates in state institutions;
- Positions established for a limited period to conduct a special study, project, or investigation;
- Certain department secretaries, department executive directors, division directors, and positions determined by DMS to have comparable managerial responsibilities;<sup>14</sup>
- Certain personal secretaries;
- Officers and employees in the Office of the Governor;
- Assistant division directors, deputy division directors, and bureau chief positions in any department, and those positions determined by DMS to have comparable managerial responsibilities;<sup>15</sup>
- Certain managerial positions and their secretaries in the Public Service Commission;
- Military personnel in the Department of Military Affairs;
- Certain managerial positions in the Department of Children and Families;
- Certain positions that require licensure, including physicians, osteopathic physicians, chiropractic physicians, and engineers;
- The statewide prosecutor and all employees in the Office of Statewide Prosecution in the Department of Legal Affairs;
- The executive director of each board or commission established within the Department of Business and Professional Regulation or the Department of Health;
- Officers and employees of the State Board of Administration;
- Positions leased through a state employee lease agreement;
- Certain managerial, confidential, and supervisory employees who spend a majority of their time communicating with and directing employees and who have authority to hire or fire employees;
- Officers and employees of the Justice Administration Commission, Office of the State Attorney, Office of the Public Defender, regional offices of capital collateral counsel, officers of the criminal conflict and civil regional counsel, and Statewide Guardian Ad Litem Office; and
- The chief inspector of the boiler inspection program of the Department of Financial Services.<sup>16</sup>

Each department head may also designate 20 policymaking or managerial positions as being exempt from Career Service. DMS is charged with setting the salary and benefits of these positions in accordance with the SES. However, if the agency head determines that the general counsel, chief Cabinet aide, public information administrator or comparable position for a Cabinet officer, inspector general, or legislative affairs director has both policymaking and managerial responsibilities, the salary

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<sup>12</sup> S. 110.205(1), F.S.

<sup>13</sup> S. 110.205(4), F.S.

<sup>14</sup> DMS sets the salary and benefits of these positions in accordance with the SMS, unless otherwise fixed by law. S. 110.205(2)(j), F.S.

<sup>15</sup> DMS sets the salary and benefits of these positions in accordance with the SES, unless otherwise fixed by law. S. 110.205(2)(m), F.S.

<sup>16</sup> S. 110.205(2) and (6), F.S.

and benefits for each such position will be established by DMS in accordance with the SMS. A Career Service employee in a position designated as a position in the SES pursuant to this authority must have the right to remain in Career Service by opting to serve in a position not exempted by the employing agency.<sup>17</sup>

In addition, each department may designate one additional position in the SMS if that position reports directly to the agency head or to a position in the SMS and if any additional costs are absorbed from that department's existing budget.<sup>18</sup>

### Recruitment

Recruiting for Career Service positions must be carried out in a manner that assures open competition based upon current and projected employing agency needs, taking into consideration the number and types of positions to be filled and the labor market conditions.<sup>19</sup> There must be a special emphasis placed on recruiting efforts to attract minorities, women, or other groups underrepresented in the workforce of the employing agency.<sup>20</sup>

### Apprenticeships

The federal government works in cooperation with states to oversee the nation's apprenticeship programs. States have the authority to register apprenticeship programs through federally-recognized State Apprenticeship Agencies.<sup>21</sup> The Florida Legislature has established educational opportunities for young people in the state for training in trades, occupations, and professions suited to their abilities.<sup>22</sup> The Department of Education (DOE) serves as the registering entity to ensure compliance with federal and state apprenticeship standards, provide technical assistance, and conduct quality assurance assessments.

An apprenticeable occupation is a skilled trade that possesses all of the following characteristics:

- It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training;
- It is commonly recognized throughout the industry;
- It involves manual, mechanical, or technical skills and knowledge requiring a minimum of 2,000 hours of work and training, which hours are excluded from the time spent at related instruction; and
- It requires related instruction to supplement on-the-job training. Such instruction may be given in a classroom or through correspondence courses.<sup>23</sup>

### *Registered Apprenticeship*

Registered apprenticeships are industry-driven, high-quality career pathways where employers can develop and prepare their future workforce and individuals can obtain paid work experience, classroom instruction, mentorship, and a portable credential for specific occupations.<sup>24</sup>

The key components of a Florida registered apprenticeship program are business involvement, structured on-the-job training, related technical instruction, rewards for skill gains, and a nationally recognized credential.<sup>25</sup>

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<sup>17</sup> S. 110.205(2)(n)1.a., F.S.

<sup>18</sup> S. 110.205(2)(n)1.b., F.S.

<sup>19</sup> S. 110.211(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> 29 C.F.R. 29.1 and 29.13.

<sup>22</sup> See ch. 446, F.S.

<sup>23</sup> S. 446.092, F.S. See also 29 C.F.R. §29.4.

<sup>24</sup> Florida Department of Education, *Florida's Annual Apprenticeship and Preapprenticeship Report (2022-2023)*, available at <https://www.fldoe.org/core/fileparse.php/9904/urlt/2223ApprenticeshipReport.pdf> (last visited January 27, 2024).

<sup>25</sup> *Id.*

## Apprenticeship Programs

In Florida, an “apprentice” is a person at least 16 years of age engaged in learning a recognized skilled trade through actual work experience under the supervision of journeyworker craftspersons, which training should be combined with properly coordinated studies of related technical and supplementary subjects. An apprentice must enter into an apprentice agreement with a sponsor who may be either an employer, an association of employers, or a local joint apprenticeship committee.<sup>26</sup>

Potential candidates for apprenticeships may apply with a registered sponsor, who determines whether the candidate meets the required qualifications.<sup>27</sup> Sponsors may provide private classroom instruction or coordinate with a state-funded community college or school district. The apprentices are exempt from paying tuition and fees at a school district technical center, Florida College System (FCS) institution, or state university.<sup>28</sup>

The sponsor operates and administers the apprenticeship program.<sup>29</sup> An apprenticeship program is an organized course of instruction, registered and approved by the DOE, that contains all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices.<sup>30</sup>

## Financial Services Commission

The Financial Services Commission (FSC) is created within the Department of Financial Services and is composed of the Governor, the Attorney General, the Chief Financial Officer (CFO), and the Commissioner of Agriculture. FSC is a separate budget entity and is not subject to the control, supervision, or direction of the Department of Financial Services.<sup>31</sup> The Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR) are established within FSC. FSC appoints the directors of the offices upon a majority vote; however, both the Governor and CFO must be on the prevailing side. At a minimum, the director of OFR and the director of OIR each must have at least 5 years of experience in the subject area within the last 10 years.<sup>32</sup>

OIR is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, claims, solvency, and administrative supervision.<sup>33</sup> OFR is responsible for all activities relating to the regulation of banks, credit unions, and other financial institutions, and investment security industries. OFR includes the Bureau of Financial Investigation that functions as a criminal justice agency. The bureau has authority to conduct investigations within and outside this state as deemed necessary.<sup>34</sup>

## Florida Gaming Control Commission

The Florida Gaming Control Commission (FGC) is created within the Department of Legal Affairs, Office of the Attorney General, as a separate budget entity that is not subject to the direction or control of the department or Attorney General.<sup>35</sup> FGC is composed of five members who are appointed by the Governor subject to Senate confirmation. Commissioners serve four-year terms and at least one must be a certified public accountant with 10 years of experience, one must be an attorney with 10 years of experience, and one must have 10 years of experience in criminal investigations.<sup>36</sup> The commissioners must appoint a person who is not a commissioner to serve as the executive director who supervises

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<sup>26</sup> S. 446.021(2), F.S.

<sup>27</sup> Florida Department of Education, *What is Registered Apprenticeship?*, available at <https://www.fldoe.org/academics/career-adult-edu/apprenticeship-programs/what-is-apprenticeship.shtml> (last visited January 27, 2024).

<sup>28</sup> S. 1009.25(1)(b), F.S.

<sup>29</sup> Florida Department of Education, *Florida's Annual Apprenticeship and Preapprenticeship Report (2022-2023)*, *supra*, n. 24.

<sup>30</sup> S. 446.021(6), F.S. An apprenticeship agreement may not operate to invalidate any apprenticeship provision in a collective agreement between employers and employees that establishes higher apprenticeship standards. S. 446.081(1), F.S.

<sup>31</sup> S. 20.121(3), F.S.

<sup>32</sup> S. 20.121(3)(d), F.S.

<sup>33</sup> S. 20.121(3)(a)1., F.S.

<sup>34</sup> S. 20.121(3)(a)2., F.S.

<sup>35</sup> S. 16.71(1)(a) and (b), F.S.

<sup>36</sup> S. 16.71(2)(a) and (a)2., F.S.

and directs all of the necessary activities to fulfill FGC's responsibilities.<sup>37</sup> FGC generally has oversight authority of gambling within the state, including pari-mutual wagering, cardrooms, slot machine facilities, and gaming compacts, but not including the lottery.<sup>38</sup>

#### Division of Administrative Hearings

The Division of Administrative Hearings (DOAH) is created within DMS as a separate budget entity that is not subject to the direction and control of DMS.<sup>39</sup> However, DMS must provide administrative support and services to DOAH as requested by the division director. DOAH is headed by a director who serves as the chief administrative law judge. The director is appointed by the Administration Commission<sup>40</sup> subject to Senate confirmation. The division employees administrative law judges who preside over proceedings involving disputed issues of material fact arising under the Administrative Procedure Act.<sup>41</sup> DOAH also offers local governments and quasi-government agencies an impartial resource to hear and resolve disputes over government functions, including, employee discipline and termination, zoning decisions, code enforcement, and bid protests.<sup>42</sup>

#### Commission on Offender Review

The Commission on Offender Review (COR) is authorized by the State Constitution and has the power to grant or revoke the parole of persons imprisoned for a crime.<sup>43</sup> The three members on the COR are appointed by the Governor and Cabinet from a list of eligible applicants submitted by a parole qualifications committee and subject to Senate confirmation. However, membership of COR must include representation from minority persons<sup>44</sup> and no person is eligible to serve for more than two consecutive six-year terms.<sup>45</sup>

A parole qualifications committee consist of five members appointed by the Governor and Cabinet. The committee advertises statewide and receives applications for positions on COR. The committee determines an applicant's qualifications by investigations and evaluations of the applicants' character, habits, and philosophies. Upon a vacancy on COR, the committee will submit a list of three eligible applicants to the Governor and Cabinet without recommendation. If the Governor and Cabinet reject the list, the committee will reinstate the application and examination procedure.<sup>46</sup>

#### Florida Commission on Human Relations

Current law protects individuals in the state from discrimination in areas of employment, housing, certain public accommodations, and other opportunities based on race, color, religion, sex, national origin, age, handicap, and marital or familial status through the Florida Civil Rights Act of 1992 and the Florida Fair Housing Act.<sup>47</sup> The Florida Commission on Human Relations (CHR) is charged with carrying out the purposes of these acts. CHR is housed within DMS but not subject to DMS's direction or control.<sup>48</sup>

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<sup>37</sup> S. 16.71(4), F.S.

<sup>38</sup> S. 16.712(1)(a), F.S.

<sup>39</sup> Ss. 20.22(1)(f), F.S. and 120.65(1), F.S.

<sup>40</sup> The Administration Commission is composed of the Governor and Cabinet. S. 14.202, F.S.

<sup>41</sup> S. 120.65(4), F.S.

<sup>42</sup> S. 120.65(6), F.S. See State of Florida Division of Administrative Hearings, *We Hear You at DOAH*, available at <https://www.doah.state.fl.us/ALJ/services/> (last visited January 19, 2024).

<sup>43</sup> Art. IV, s. 8(c), FLA. CONST.; s. 20.32(1), F.S.

<sup>44</sup> "Minority person" means a lawful, permanent resident of Florida who is: an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; or a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of DMS. S. 288.703(4), F.S.

<sup>45</sup> Ss. 947.02(1), and 947.03(1), F.S.

<sup>46</sup> S. 947.02(2), (3), and (4), F.S.

<sup>47</sup> See parts I and II of ch. 760, F.S.

<sup>48</sup> S. 760.04, F.S.

CHR is composed of 12 members appointed by the Governor and subject to Senate confirmation. CHR's membership must be representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state. At least one of its members must be at least 60 years old. Members are appointed to four-year terms.<sup>49</sup> CHR is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination and act upon complaints alleging a discriminatory practice.<sup>50</sup>

#### Public Employees Relations Commission

The Public Employees Relations Commission (PERC) is composed of a full-time chair and two part-time members that are appointed by the Governor and subject to Senate confirmation. The commissioners serve for four-year terms. PERC is administratively housed within DMS but is not subject to DMS's direction or control.<sup>51</sup> PERC is charged with hearing labor cases involving unfair labor practices and adjudicating different employment related disputes, including career service appeals, Drug-Free Workplace Act appeals, and Whistle-Blower Act appeals.<sup>52</sup>

#### **Effect of the PCS**

The PCS amends the definition of the term "department" for the purposes of Career Service exemptions to include OIR, OFR, FGC, DOAH, COR, CHR, and PERC. Accordingly, these entities' department secretaries, department executive directors, division directors, and positions determined by DMS to have comparable managerial responsibilities<sup>53</sup> will be exempt from Career Service, together with the assistant division directors, deputy division directors, and bureau chief positions in those departments, and those positions determined by DMS to have comparable managerial responsibilities.<sup>54</sup> In addition, each of the department heads may designate 20 policymaking or managerial positions as being exempt from Career Service with their salary and benefits set in accordance with the SES, and may designate one additional position in the SMS if that position reports directly to the agency head or to a position in the SMS and if any additional costs are absorbed from that department's existing budget.

The PCS exempts from Career Service the general counsel, chief or senior Cabinet aide, public information administrator, communications director or comparable position, inspector general, chief information officer, agency information security manager,<sup>55</sup> and legislative affairs director of each department. The PCS requires DMS to establish the salary and benefits for these positions in accordance with the rules of the SMS.

The PCS exempts from Career Service personnel employed by or reporting to the inspector general, general counsel, state chief information security officer, state chief data officer, and agency information security manager.<sup>56</sup> The PCS requires DMS to establish the salaries and benefits for these positions in accordance with the rules of the SES unless otherwise fixed by law.

The PCS exempts from Career Service all actuaries at each department. The PCS requires DMS to establish the salaries and benefits for these positions in accordance with the rules of the SES unless otherwise fixed by law.

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<sup>49</sup> S. 760.03, F.S.

<sup>50</sup> See s. 760.06, F.S.

<sup>51</sup> S. 447.205, F.S.

<sup>52</sup> Ss. 447.503, 110.227(5), 112.0455(14), and 112.31895(4), F.S.

<sup>53</sup> Pursuant to current law these positions salary and benefits will be set by DMS in accordance with the SMS. S. 110.205(2)(j), F.S.

<sup>54</sup> Pursuant to current law these positions salary and benefits will be set by DMS in accordance with the SES. S. 110.205(2)(m), F.S.

<sup>55</sup> Pursuant to s. 282.318(4)(a), F.S., each state agency head is required to designate an information security manager to administer the cybersecurity program of the agency. Such designation must be provided annually in writing to DMS. The information security manager reports directly to the agency head.

<sup>56</sup> Pursuant to s. 282.318(4)(a), F.S., each state agency head is required to designate an information security manager to administer the cybersecurity program of the agency. Such designation must be provided annually in writing to DMS. The information security manager reports directly to the agency head.

For recruitment purposes, the PCS provides that open competition is not required when an employing agency fills a position with an apprentice participating in an apprenticeship program<sup>57</sup> in a related field.

The PCS makes other technical and conforming changes.

## **Federal Surplus Personal Property Donation Program**

### **Present Situation**

The Federal Property and Administrative Services Act of 1949 (Act) provides the legal framework for the acquisition and management of federal government property and services.<sup>58</sup> The Act was enacted, in part, to provide the federal government with an efficient and economic system to dispose of surplus property.<sup>59</sup> The General Services Administration (GSA) was created by the Act as the central federal agency responsible for overseeing various government functions, including procurement and property management. Pursuant to the Act, surplus federal property may be sold to public agencies and eligible nonprofits without going through the competitive bidding process or at discounted rates under certain circumstances.<sup>60</sup> In addition, these entities can obtain personal property donated by federal agencies through the Federal Surplus Personal Property Donation Program (FSPPDP).<sup>61</sup> Recipients are generally required to put the property to use in their state within one year and continue the property's use for a certain period of time.<sup>62</sup> While there are typically no costs for surplus property received through the FSPPDP, recipients may be charged for shipping, handling, and other administrative expenses.<sup>63</sup>

### **State Plan of Operation of the Federal Surplus Property Donation Program**

In order to receive donated personal property pursuant to the FSPPDP, a state must adopt a plan for the management and administration of the state program and have the plan approved by GSA.<sup>64</sup> The state plan must designate a State Agency for Surplus Property (SASP) that will be responsible for receiving the donated federal surplus property, distributing it to eligible donees, and enforcing compliance with any terms and conditions imposed on the donated property.<sup>65</sup> GSA must approve any amendments or modifications to a state plan. Before any major amendments are made to the state plan, the state must publish a general notice for 60 days and provide a 30-day comment period.<sup>66</sup> GSA may suspend the transfer of surplus property to a state that is acting out of compliance with its approved plan.<sup>67</sup> Florida's plan was approved by GSA in 1977.<sup>68</sup>

DMS is designated as Florida's SASP and is authorized to negotiate with the federal government and procure and distribute federal surplus property for public agencies and eligible nonprofits (i.e., tax-

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<sup>57</sup> The PCS defines "apprenticeship program" as an organized course of instruction, registered and approved by the Department of Education, which course shall contain all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices including such matters as the requirements for a written apprenticeship agreement. See s. 466.201(6), F.S.

<sup>58</sup> 63 Stat. 377; codified in 40 U.S.C. and 41 U.S.C. See also U.S. General Service Administration, *Guide to the Federal Surplus Personal Property Donation Program*, available at [https://www.gsa.gov/system/files/16-00098\\_PersPropDonat\\_Bro\\_final508.pdf](https://www.gsa.gov/system/files/16-00098_PersPropDonat_Bro_final508.pdf) (last visited January 15, 2024); U.S. General Services Administration, *Personal Property Disposal Guide*, available at [https://www.gsa.gov/system/files/19-00282\\_PersonalPropertyGuide\\_final\\_508\\_0.pdf](https://www.gsa.gov/system/files/19-00282_PersonalPropertyGuide_final_508_0.pdf) (last visited January 16, 2024).

<sup>59</sup> 40 U.S.C. § 101(2).

<sup>60</sup> See Federal Surplus Personal Property Sales Program 41 C.F.R. 102-38. Florida law authorizes the state, counties, and municipalities to enter into contracts with the United States for the lease or purchase of any surplus federal property, real or personal, or to accept donations from federal agencies without going through the competitive bidding process. See ss. 217.03, 217.16, and 217.18 F.S.

<sup>61</sup> See 41 C.F.R. 102-37.

<sup>62</sup> See e.g., 41 C.F.R. 102-37.450 and 102-37.460; see also U.S. General Service Administration, *Guide to the Federal Surplus Personal Property Donation Program*, available at [https://www.gsa.gov/system/files/16-00098\\_PersPropDonat\\_Bro\\_final508.pdf](https://www.gsa.gov/system/files/16-00098_PersPropDonat_Bro_final508.pdf) (last visited January 15, 2024).

<sup>63</sup> See 41 C.F.R. 102-37.55.

<sup>64</sup> 41 C.F.R. §§102-37.140 and 102-37.150.

<sup>65</sup> See 41 C.F.R. §102-37.130.

<sup>66</sup> 41 C.F.R. §§102-37.160 and 102-37.165.

<sup>67</sup> 41 C.F.R. §102-37.170.

<sup>68</sup> S. 217.001, F.S.

exempt educational, health, and homeless assistance organizations).<sup>69</sup> Accordingly, DMS is authorized to act as an agent for state and local government entities and make any necessary payments on their behalf.<sup>70</sup> The state's participation in the program has led to sizable cost savings in asset procurement for state and local agencies.<sup>71</sup> However, in order to maintain the state program as a self-supporting operation, DMS applies a service charge related to the donated property.<sup>72</sup>

The Surplus Property Revolving Trust Fund is maintained in the State Treasury and the CFO is authorized to transfer any unexpended funds in the account to DMS. The revolving trust fund must remain in existence as a separate trust fund as long as the FSPPDP exists.<sup>73</sup> In 2020, GSA provisionally approved Florida's plan contingent upon a statutory revision specifying that funds held in the Surplus Property Revolving Trust Fund account in the State Treasury that are generated by the FSPPDP may be used only for the direct and indirect operating expenses of the FSPPDP administered by DMS.<sup>74</sup>

### **Effect of the PCS**

The PCS provides that all funds held in the Surplus Property Revolving Trust Fund account in the State Treasury generated by the FSPPDP may be used only for the direct and indirect operating expenses of the FSPPDP administered by DMS.

## **Government Contracting and Procurement**

### **Present Situation**

DMS is statutorily designated as the primary state agency overseeing procurement<sup>75</sup> and its responsibilities include creating uniform agency procurement rules,<sup>76</sup> implementing the online procurement program,<sup>77</sup> and procuring state term contracts.<sup>78</sup> DMS is also responsible for registering vendors that wish to provide goods or services to the state<sup>79</sup> and maintaining lists of vendors who may not submit bids, proposals, or replies to agency solicitations.<sup>80</sup>

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<sup>69</sup> Ss. 217.01, 217.04, and 287.032(3), F.S. See also U.S. General Services Administration, *State Agencies for Surplus Property (SASP) Contracts*, available at <https://www.gsa.gov/buy-through-us/government-property-for-sale-or-lease/personal-property-for-reuse-and-sale/for-state-agencies-and-public-organizations/contact-a-state-agency?gsaredirect=sasp> (last visited January 21, 2024).

<sup>70</sup> S. 217.15, F.S.

<sup>71</sup> Department of Management Services, *Federal Property Assistance*, available at [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance/federal\\_property\\_assistance](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/federal_property_assistance) (last visited January 15, 2024).

<sup>72</sup> Department of Management Services, *Florida State Agency for Surplus Property (SASP)*, available at [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance/florida\\_state\\_agency\\_for\\_surplus\\_property\\_sasp](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/florida_state_agency_for_surplus_property_sasp) (last visited January 17, 2024).

<sup>73</sup> S. 217.07, F.S.

<sup>74</sup> Letter from Robert M. Noonan, Asst. Commissioner, General Supplies and Services Category, GSA Federal Acquisition Service, to Kelly Ferrel (Business Manager for DMS, Federal Property Assistance) (November 17, 2020), with Florida State Agency for Surplus Property Permanent State Plan of Operation (revised October 28, 2020), on file with the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

<sup>75</sup> See ss. 287.032 and 287.042, F.S.

<sup>76</sup> See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

<sup>77</sup> See s. 287.057(24), F.S.

<sup>78</sup> See ss. 287.042(2) and 287.056, F.S.

<sup>79</sup> See ss. 287.032 and 287.042, F.S.; see also Department of Management Services, *Vendor Registration and Vendor Lists*, available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists) (last visited January 21, 2024).

<sup>80</sup> Ss. 287.1351, 287.133, 287.134, and 287.137, F.S.

Current law sets forth the procurement and contracting procedures for most state agencies.<sup>81</sup> In general, the law requires the use of a competitive solicitation<sup>82</sup> process when agencies wish to procure commodities or contractual services that cost more than \$35,000,<sup>83</sup> with certain exceptions.<sup>84</sup> 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 (ITB) — An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.<sup>85</sup>
- Request for proposals (RFP) — An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.<sup>86</sup>
- Invitation to negotiate (ITN) — An 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 and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.<sup>87</sup>

The law provides the following exceptions to the competitive solicitation process:

- Emergency purchases - If the agency head determines in writing that emergency action is required due to an immediate danger to the public health, safety, or welfare or other substantial loss to the state, the agency may procure goods or services without using a competitive solicitation.<sup>88</sup>
- State term and agency contracts – Agencies may purchase from a state term contract procured by DMS or, with prior approval from DMS, agencies may purchase from another agency’s competitively-solicited contract. A state term contract is a contract for commodities or contractual services that is competitively procured by DMS and that is used by agencies and other eligible users.<sup>89</sup>
- Single source purchases - A commodity or contractual service that is available from a single source may be exempt from the competitive solicitation requirements.<sup>90</sup>
- Miscellaneous – Florida law specifies numerous commodities and contractual services that need not be competitively solicited, including: prescriptive assistive devices for medical, developmental, or vocational clients; artistic services; academic program reviews; lectures by individuals; legal services; specified health services; services for mentally or physically handicapped persons provided by certain not-for-profit corporations; specified Medicaid services; family placement services; prevention services related to mental health; specified training and education services for injured employees; Department of Transportation contracts for construction and maintenance of state roads; services or commodities provided by governmental entities; specified statewide public service announcement programs; specified

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<sup>81</sup> See ch. 287, F.S. “Agency” means 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. “Agency” does not include the university and college boards of trustees or the state universities and colleges. S. 287.012(1), F.S.

<sup>82</sup> “Competitive solicitation” means 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 the method of procurement. S. 287.012(6), F.S.

<sup>83</sup> Ss. 287.017, 287.057, F.S.

<sup>84</sup> See s. 287.057(3), F.S.

<sup>85</sup> S. 287.057(1)(a), F.S.

<sup>86</sup> S. 287.057(1)(b), F.S.

<sup>87</sup> S. 287.057(1)(c), F.S. “Best value” means the highest overall value to the state based on factors that include, but are not limited to, price, quality, design, and workmanship. S. 287.012(4), F.S.

<sup>88</sup> S. 287.057(3)(a), F.S.

<sup>89</sup> S. 287.057(3)(b), F.S.

<sup>90</sup> S. 287.057(3)(c), F.S.



continuing education events; and contracts for which state or federal law prescribes with whom the agency must contract or the rate of payment.<sup>91</sup>

### Contract Managers

A state agency must designate an employee to function as a contract manager for each contractual services contract. The contract manager is responsible for enforcing performance of the contract terms and conditions and serves as a liaison with the contractor.<sup>92</sup> In addition, each agency must designate at least one employee to serve as a contract administrator who is responsible for maintaining a contract file and financial information on all contractual services contracts and who serves as a liaison with the contract manager and DMS.<sup>93</sup>

Contract managers responsible for contracts in excess of \$35,000 must complete training conducted by the CFO for accountability in contracts and grant management. The CFO must establish and disseminate uniform procedures<sup>94</sup> to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment.<sup>95</sup>

Contract managers responsible for contracts in excess of \$100,000 annually must complete training in contract management and become a Florida certified contract manager within six months of being assigned to the contract.<sup>96</sup> The certification<sup>97</sup> is coordinated by DMS, and DMS and the Department of Financial Services (DFS) conduct the training jointly. The training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements and must include the use of case studies.<sup>98</sup>

In addition, a contract manager responsible for contracts in excess of \$10 million annually must possess at least five years of experience in managing contracts in excess of \$5 million annually.<sup>99</sup>

### Preference to Florida Businesses

Current law provides that when an agency, university, college, school district, or other political subdivision<sup>100</sup> of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bidder's principal place of business is outside Florida, the procuring entity must award a preference that the out-of-state vendor would receive in the vendor's state. If the out-of-state vendor's home state does not award a preference, then the lowest responsible and responsive bidder having a principal place of business in Florida is awarded a five percent preference.<sup>101</sup> Out-of-state vendors must submit with the bid, proposal, or reply documents a

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<sup>91</sup> S. 287.057(3)(d), (e), (f), and (11), F.S.

<sup>92</sup> S. 287.057(15)(a), F.S.

<sup>93</sup> S. 287.057(16), F.S.

<sup>94</sup> The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards. S. 17.03(3), F.S. The procedures must include procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency's receipt of goods and services. S. 287.057(15)(b), F.S.

<sup>95</sup> S. 287.057(15)(b), F.S.

<sup>96</sup> S. 287.057(15)(c), F.S. See also Department of Management Services, *Florida Certified Contract Manager*, available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/public\\_procurement\\_professional\\_development/florida\\_certified\\_contract\\_manager](https://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/florida_certified_contract_manager) (last visited January 16, 2024) (providing training dates for 2024).

<sup>97</sup> A certified contract manager must complete training every five years for certification renewal. S. 287.057(15)(c), F.S.

<sup>98</sup> S. 287.057(15)(c), F.S.

<sup>99</sup> S. 287.057(15)(d), F.S.

<sup>100</sup> The term "other political subdivision of this state" does not include counties or municipalities. S. 287.057(1)(c), F.S.

<sup>101</sup> S. 287.084(1)(a), F.S.

written opinion of an attorney, licensed in the vendor's state, explaining the preferences that the vendor's state provides to vendors for public contracts.<sup>102</sup>

In addition, any foreign manufacturing company with a factory in the state and employing over 200 employees working in the state has preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured.<sup>103</sup>

### Florida Opportunity Fund

The Florida Opportunity Fund (Fund) was created by the Legislature in 2007 to utilize a "fund-of-funds"<sup>104</sup> model emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida.<sup>105</sup> The Fund is organized as a private, not-for-profit corporation and is not an instrumentality of the state.<sup>106</sup> The Fund has a five member board of directors appointed by the Governor that is responsible for selecting an investment manager.<sup>107</sup> While not precluded from investing in funds with a wider geographic spread of portfolio investment, the Fund must require an investment fund to have a record of successful investment in Florida, be based in Florida, or have an office in Florida. In addition, the Fund must:

- Invest in seed and early stage venture capital funds that have experienced managers or management teams with demonstrated experience, expertise, and a successful history in the investment of venture capital funds, focusing on opportunities in this state;
- Negotiate for investment capital or loan proceeds from private, institutional, or banking sources;
- Negotiate any and all terms and conditions for its investments;
- Invest only in funds, businesses, and infrastructure projects that have raised capital from other sources so that the amount invested in such funds, businesses, or infrastructure projects is at least twice the amount invested by the Fund; and
- Form or operate other entities and accept additional funds from other public and private sources to further its purpose.<sup>108</sup>

In addition, the Fund is required to submit an annual report to the Governor and Legislature that includes an accounting of the investments disbursed, a description of the resulting benefits to the state, and independently audited financial statements.<sup>109</sup> According to the Fund, as of June 30, 2022, \$31 million has been committed to investments in nine venture capital funds.<sup>110</sup>

## **Effect of the PCS**

### Government Contracting and Procurement

For a contract manager who is responsible for a contract in excess of \$10 million annually, the PCS reduces the required minimum level of experience to at least three years of experience managing contracts totaling at least \$5 million annually.

The PCS replaces the current legal framework for preferences to Florida businesses with a new framework only applicable to state agencies. Accordingly, universities, colleges, school districts, and other political subdivisions of the state no longer will be required to apply the preferences to Florida businesses. In addition, out-of-state vendors will no longer be required to submit with their bids,

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<sup>102</sup> S. 287.084(2), F.S.

<sup>103</sup> S. 287.092, F.S.

<sup>104</sup> A "fund-of-funds" model of investing refers to a strategy where one investment fund invests in a portfolio of other funds rather than directly holding individual securities or assets.

<sup>105</sup> Ch. 2007-189, Laws of Fla.

<sup>106</sup> S. 288.9624(1)(a), F.S.

<sup>107</sup> S. 288.9624(1)(b) and (3) F.S.

<sup>108</sup> S. 288.9624(4), F.S.

<sup>109</sup> S. 288.9624(5), F.S.

<sup>110</sup> Florida Opportunity Fund, *Fund of Funds Program*, available at <https://www.floridaopportunityfund.com/fund-of-funds-program/> (last visited January 16, 2024).

proposals, or reply documents a written opinion from an attorney explaining the preferences that the vendor's state provides to vendors for public contracts. However, the new framework for preferences is applicable to all competitive solicitations for commodities and contractual services in excess of \$35,000 and not only for purchases of personal property.

For purposes of vendor preference, the PCS provides that a vendor is deemed to have its principal place of business in this state if the vendor meets all of the following criteria:

- Is incorporated in this state as a Florida business entity, not a foreign business entity, excluding cases in which incorporation is used to do business on behalf of a parent company or to benefit an owner outside of this state;
- Maintains a physical location in this state; and
- More than 50 percent of its workforce is domiciled in this state.

The PCS requires an agency to apply a 5 percent price preference for bids and proposals from vendors whose principal places of business are in this state for all competitive solicitations for commodities and contractual services in excess of \$35,000. For competitive solicitations in which an ITN is issued, the PCS requires an agency to apply a 5 percent preference to the total score of a vendor whose principal place of business is in this state, provided that a price increase resulting from awarding the preference must not exceed 15 percent, and to disclose this preference in the stated goals of the ITN in order to determine best value.

When two or more bids, proposals, or replies for competitive solicitations for commodities and contractual services in excess of \$35,000 are submitted by vendors whose principal places of business are in this state, and when all things stated in such bids, proposals, or replies are equal with respect to price, quality, and service, an agency must give priority in the following order:

- To the vendor whose goods are manufactured and assembled in their entirety in this state. A vendor may not substitute end products that would otherwise not qualify for this preference after the award of the contract or during the contract term unless pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace.
- To the vendor that manufactures a larger percentage of its goods in this state.
- To the vendor that employs the greater number of individuals domiciled in this state.

The PCS requires an agency to apply a 5 percent price preference for bids and proposals from vendors whose principal places of business are in the United States for all competitive solicitations for commodities and contractual services in excess of \$35,000. For competitive solicitations in which an ITN is issued, the PCS requires an agency to apply a 5 percent preference to the total score of a vendor whose principal place of business is in the United States, provided that a price increase resulting from awarding the preference must not exceed 15 percent, and to disclose this preference in the stated goals of the ITN in order to determine best value.

When two or more bids, proposals, or replies for competitive solicitations for contracts for commodities and contractual services are submitted by vendors whose principal places of business are in the United States, and when all things stated in such bids, proposals, or replies are equal with respect to price, quality, and service, an agency must give priority in the following order:

- To the vendor whose goods are manufactured and assembled in their entirety in this state, and if no such vendor, then in the United States. A vendor may not substitute end products that would otherwise not qualify for this preference after the award of the contract or during the contract term unless pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace.
- To the vendor that manufactures a larger percentage of its goods in in this state, and if no such vendor, then in the United States.
- To the vendor that employs the greater number of individuals domiciled in this state, and if no such vendor, then in the United States.

The PCS provides that these preferences take precedent over those applied to a foreign manufacturing company with a factory in the state and employing over 200 employees working in the state over other foreign companies.

The PCS provides that the preferences apply to any solicitation or renewal of any state contract executed on or after October 1, 2024, and makes other technical and conforming changes.

#### Florida Opportunity Fund

The PCS requires an agency to apply a 5 percent price preference for bids and proposals for competitive solicitations for commodities or contractual services in excess of \$35,000 from vendors that currently hold or maintain an investment from the Fund. For competitive solicitations in which an ITN is issued an agency must apply a 5 percent preference to the total score of a vendor that currently holds or maintains an investment from the Fund, provided that a price increase resulting from awarding the preference must not exceed 15 percent, and must disclose this preference in the stated goals of an ITN in order to determine best value.

#### B. SECTION DIRECTORY:

Section 1 amends s. 110.205, F.S., relating to career service; exemptions.

Section 2 amends s. 110.211, F.S., relating to recruitment.

Section 3 amends s. 217.07, F.S., relating to transfer of surplus property assets to department.

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

Section 5 amends s. 287.084, F.S., relating to preference to Florida businesses.

Section 6 creates s. 287.0841, F.S., relating to Florida Venture Capital Program preference.

Section 7 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:

The PCS removes the current in-state vendor preference framework and replaces it with another that requires a 5 percent price preference to in-state vendors and another 5 percent price preference to United States vendors for certain competitive solicitations. In addition, the PCS requires a 5 percent price preference be applied to competitive solicitations for vendors who currently hold an investment from the Fund. Accordingly, a vendor could potentially be awarded a 15 percent price preference under the PCS. The fiscal impact is indeterminate at this time but may be significant.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

2. Expenditures:

Currently, political subdivisions, excluding counties and municipalities, are required to comply with Florida's vendor preference law. The PCS removes the current vendor preference framework and replaces it with another that does not apply to local governments. Accordingly, local governments may experience a positive fiscal impact as a result of a reduced workload associated with no longer having to apply the vendor preference. Such fiscal impact is indeterminate at this time but likely minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS replaces the current vendor preference framework in state procurement with another that requires vendor preferences in certain situations. The fiscal impact of such change on the private sector is indeterminate at this time.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS 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 authorizes nor requires additional executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES



26 | stated goals of an invitation to negotiate to  
 27 | determine best value; providing an order of preference  
 28 | when multiple bids, proposals, or replies for certain  
 29 | competitive solicitations are submitted by such  
 30 | vendors; prohibiting such vendors from substituting  
 31 | end products that would otherwise not qualify for a  
 32 | certain preference after the award of the contract or  
 33 | during the contract term unless specified conditions  
 34 | exist; requiring agencies to consider a specified  
 35 | price preference for bids or proposals for certain  
 36 | competitive solicitations from vendors whose principal  
 37 | place of business is in the United States; prohibiting  
 38 | such preference from resulting in a price increase  
 39 | exceeding a certain percentage; requiring agencies to  
 40 | disclose such preference in the stated goals of an  
 41 | invitation to negotiate to determine best value;  
 42 | providing an order of preference when multiple bids,  
 43 | proposals, or replies for certain competitive  
 44 | solicitations are submitted by such vendors;  
 45 | prohibiting such vendors from substituting end  
 46 | products that would otherwise not qualify for a  
 47 | certain preference after the award of the contract or  
 48 | during the contract term unless specified conditions  
 49 | exist; providing and revising applicability; creating  
 50 | s. 287.0841, F.S.; requiring agencies to apply a price

51 preference for bids or proposals from vendors that  
 52 currently hold or maintain an investment from the  
 53 Florida Opportunity Fund; prohibiting such preference  
 54 from resulting in a price increase exceeding a certain  
 55 percentage; requiring agencies to disclose such  
 56 preference in the stated goals of an invitation to  
 57 negotiate to determine best value; providing an  
 58 effective date.

59

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

61

62 Section 1. Paragraph (n) of subsection (2) and subsection  
 63 (4) of section 110.205, Florida Statutes, are amended, and  
 64 paragraphs (y), (z), and (aa) are added to subsection (2) of  
 65 that section, to read:

66 110.205 Career service; exemptions.—

67 (2) EXEMPT POSITIONS.—The exempt positions that are not  
 68 covered by this part include the following:

69 (n)1.a. In addition to those positions exempted by other  
 70 paragraphs of this subsection, each department head may  
 71 designate a maximum of 20 policymaking or managerial positions,  
 72 as defined by the department and approved by the Administration  
 73 Commission, as being exempt from the Career Service System.  
 74 Career service employees who occupy a position designated as a  
 75 position in the Selected Exempt Service under this paragraph



76 shall have the right to remain in the Career Service System by  
 77 opting to serve in a position not exempted by the employing  
 78 agency. Unless otherwise fixed by law, the department shall set  
 79 the salary and benefits of these positions in accordance with  
 80 the rules of the Selected Exempt Service; ~~provided, however,~~  
 81 ~~that if the agency head determines that the general counsel,~~  
 82 ~~chief Cabinet aide, public information administrator or~~  
 83 ~~comparable position for a Cabinet officer, inspector general, or~~  
 84 ~~legislative affairs director has both policymaking and~~  
 85 ~~managerial responsibilities and if the department determines~~  
 86 ~~that any such position has both policymaking and managerial~~  
 87 ~~responsibilities, the salary and benefits for each such position~~  
 88 ~~shall be established by the department in accordance with the~~  
 89 ~~rules of the Senior Management Service.~~

90 b. In addition, each department may designate one  
 91 additional position in the Senior Management Service if that  
 92 position reports directly to the agency head or to a position in  
 93 the Senior Management Service and if any additional costs are  
 94 absorbed from the existing budget of that department.

95 2. If otherwise exempt, employees of the Public Employees  
 96 Relations Commission, the Commission on Human Relations, and the  
 97 Reemployment Assistance Appeals Commission, upon the  
 98 certification of their respective commission heads, may be  
 99 provided for under this paragraph as members of the Senior  
 100 Management Service, if otherwise qualified. However, the deputy

101 general counsel of the Public Employees Relations Commission  
 102 shall be compensated as members of the Selected Exempt Service.

103 (y) The general counsel, chief or senior Cabinet aide,  
 104 public information administrator, communications director or  
 105 comparable position, inspector general, chief information  
 106 officer, agency information security manager designated pursuant  
 107 to s. 282.318(4)(a), and legislative affairs director of each  
 108 department. The department shall establish the salary and  
 109 benefits for these positions in accordance with the rules of the  
 110 Senior Management Service.

111 (z) Personnel employed by or reporting to the inspector  
 112 general, general counsel, state chief information security  
 113 officer, state chief data officer, and agency information  
 114 security manager designated pursuant to s. 282.318(4)(a). Unless  
 115 otherwise fixed by law, the department shall establish the  
 116 salary and benefits for these positions in accordance with the  
 117 rules of the Selected Exempt Service.

118 (aa) All actuaries at each department. Unless otherwise  
 119 fixed by law, the department shall establish the salaries and  
 120 benefits for these positions in accordance with the rules of the  
 121 Selected Exempt Service.

122 (4) DEFINITION OF DEPARTMENT.—When used in this section,  
 123 the term "department" shall mean all departments and commissions  
 124 of the executive branch, whether created by the State  
 125 Constitution or chapter 20; the office of the Governor; the

126 Office of Insurance Regulation of the Financial Services  
 127 Commission; the Office of Financial Regulation of the Financial  
 128 Services Commission; the Florida Gaming Control Commission; the  
 129 Division of Administrative Hearings; the Commission on Offender  
 130 Review; the Florida Commission on Human Relations; the Public  
 131 Employees Relations Commission; and the Public Service  
 132 Commission; however, the term "department" shall mean the  
 133 Department of Management Services when used in the context of  
 134 the authority to establish pay bands and benefits.

135 Section 2. Subsection (1) of section 110.211, Florida  
 136 Statutes, is amended to read:

137 110.211 Recruitment.—

138 (1) Recruiting must ~~shall~~ be planned and carried out in a  
 139 manner that assures open competition based upon current and  
 140 projected employing agency needs, taking into consideration the  
 141 number and types of positions to be filled and the labor market  
 142 conditions, with special emphasis placed on recruiting efforts  
 143 to attract minorities, women, or other groups ~~that are~~  
 144 underrepresented in the workforce of the employing agency.  
 145 However, open competition is not required when an employing  
 146 agency is filling a position with an apprentice participating in  
 147 an apprenticeship program as defined in s. 446.021(6) in a  
 148 related field.

149 Section 3. Section 217.07, Florida Statutes, is amended to  
 150 read:

151           217.07 Transfer of surplus property assets to department.—  
 152 The Chief Financial Officer is authorized to transfer to the  
 153 department any funds unexpended in the Surplus Property  
 154 Revolving Trust Fund account in the State Treasury. This  
 155 revolving fund shall remain in existence as a separate trust  
 156 fund as long as the surplus property program exists. Upon  
 157 termination of the program, any remaining funds shall be  
 158 disposed of as provided by federal law. All funds held in the  
 159 Surplus Property Revolving Trust Fund account in the State  
 160 Treasury generated by the Federal Surplus Personal Property  
 161 Donation Program may be used only for the direct and indirect  
 162 operating expenses of the Federal Surplus Personal Property  
 163 Donation Program administered by the department.

164           Section 4. Paragraph (d) of subsection (15) of section  
 165 287.057, Florida Statutes, is amended to read:

166           287.057 Procurement of commodities or contractual  
 167 services.—

168           (15)

169           (d) Each contract manager who is responsible for contracts  
 170 in excess of \$10 million annually must, in addition to the  
 171 training required in paragraph (b) and the training and  
 172 certification required in paragraph (c), possess at least 3 ~~5~~  
 173 years of experience managing contracts totaling at least ~~in~~  
 174 ~~excess of~~ \$5 million annually.

175           Section 5. Section 287.084, Florida Statutes, is amended

176 to read:

177 287.084 Preference to Florida businesses.—

178 (1) For the purposes of this section, a vendor is deemed  
 179 to have its principal place of business in this state if the  
 180 vendor meets all of the following criteria:

181 (a) Is incorporated in this state as a Florida business  
 182 entity, not a foreign business entity, excluding cases in which  
 183 incorporation is used to do business on behalf of a parent  
 184 company or to benefit an owner outside of this state.

185 (b) Maintains a physical location in this state.

186 (c) More than 50 percent of its workforce is domiciled in  
 187 this state.

188 (2) For competitive solicitations for commodities or  
 189 contractual services in excess of the threshold amount provided  
 190 for CATEGORY TWO in s. 287.017, an agency must apply a 5-percent  
 191 price preference for a bid or proposal from a vendor whose  
 192 principal place of business is in this state. For competitive  
 193 solicitations pursuant to s. 287.057(1)(c), an agency must apply  
 194 a 5-percent preference to the total score of a vendor whose  
 195 principal place of business is in this state, provided that a  
 196 price increase resulting from applying such preference may not  
 197 exceed 15 percent, and must disclose such preference in the  
 198 stated goals of an invitation to negotiate in order to determine  
 199 best value.

200 (3) For competitive solicitations for commodities or

201 contractual services in excess of the threshold amount provided  
 202 for CATEGORY TWO in s. 287.017, an agency must give priority in  
 203 the following order for bids, proposals, or replies submitted by  
 204 vendors whose principal places of business are in this state,  
 205 and when all things stated in such bids, proposals, or replies  
 206 are equal with respect to price, quality, and service:

207 (a) To the vendor whose goods are manufactured and  
 208 assembled in their entirety in this state. A vendor may not  
 209 substitute end products that would otherwise not qualify for  
 210 such preference after the award of the contract or during the  
 211 contract term unless pricing or availability of supply is  
 212 affected by extreme and unforeseen volatility in the  
 213 marketplace.

214 (b) To the vendor that manufactures a larger percentage of  
 215 its goods in this state.

216 (c) To the vendor that employs the greater number of  
 217 individuals domiciled in this state.

218 (4) For all competitive solicitations for commodities or  
 219 contractual services in excess of the threshold amount provided  
 220 for CATEGORY TWO in s. 287.017, an agency must apply a 5-percent  
 221 price preference for a bid or proposal from a vendor whose  
 222 principal place of business is in the United States. For  
 223 competitive solicitations pursuant to s. 287.057(1)(c), an  
 224 agency must apply a 5-percent preference to the total score of a  
 225 vendor whose principal place of business is in the United

226 States, provided that a price increase resulting from applying  
 227 such preference may not exceed 15 percent, and must disclose  
 228 such preference in the stated goals of an invitation to  
 229 negotiate in order to determine best value.

230 (5) For competitive solicitations for commodities or  
 231 contractual services in excess of the threshold amount provided  
 232 for CATEGORY TWO in s. 287.017, an agency must give priority in  
 233 the following order for bids, proposals, or replies submitted by  
 234 vendors whose principal places of business are in the United  
 235 States, and when all things stated in such bids, proposals, or  
 236 replies are equal with respect to price, quality, and service:

237 (a) To the vendor whose goods are manufactured and  
 238 assembled in their entirety in this state, and if such vendor  
 239 does not exist, then in the United States. A vendor may not  
 240 substitute end products that would otherwise not qualify for  
 241 such preference after the award of the contract or during the  
 242 contract term unless pricing or availability of supply is  
 243 affected by extreme and unforeseen volatility in the  
 244 marketplace.

245 (b) To the vendor that manufactures a larger percentage of  
 246 its goods in this state, and if such vendor does not exist, then  
 247 in the United States.

248 (c) To the vendor that employs the greater number of  
 249 individuals domiciled in this state, and if such vendor does not  
 250 exist, then in the United States.

251 (6) Preferences applied under this section have precedence  
 252 over those applied pursuant to s. 287.092.

253 ~~(1)(a) When an agency, university, college, school~~  
 254 ~~district, or other political subdivision of the state is~~  
 255 ~~required to make purchases of personal property through~~  
 256 ~~competitive solicitation and the lowest responsible and~~  
 257 ~~responsive bid, proposal, or reply is by a vendor whose~~  
 258 ~~principal place of business is in a state or political~~  
 259 ~~subdivision thereof which grants a preference for the purchase~~  
 260 ~~of such personal property to a person whose principal place of~~  
 261 ~~business is in such state, then the agency, university, college,~~  
 262 ~~school district, or other political subdivision of this state~~  
 263 ~~shall award a preference to the lowest responsible and~~  
 264 ~~responsive vendor having a principal place of business within~~  
 265 ~~this state, which preference is equal to the preference granted~~  
 266 ~~by the state or political subdivision thereof in which the~~  
 267 ~~lowest responsible and responsive vendor has its principal place~~  
 268 ~~of business. In a competitive solicitation in which the lowest~~  
 269 ~~bid is submitted by a vendor whose principal place of business~~  
 270 ~~is located outside the state and that state does not grant a~~  
 271 ~~preference in competitive solicitation to vendors having a~~  
 272 ~~principal place of business in that state, the preference to the~~  
 273 ~~lowest responsible and responsive vendor having a principal~~  
 274 ~~place of business in this state shall be 5 percent.~~

275 ~~(b) Paragraph (a) does not apply to transportation~~



276 ~~projects for which federal aid funds are available.~~

277 ~~(c) As used in this section, the term "other political~~  
 278 ~~subdivision of this state" does not include counties or~~  
 279 ~~municipalities.~~

280 ~~(2) A vendor whose principal place of business is outside~~  
 281 ~~this state must accompany any written bid, proposal, or reply~~  
 282 ~~documents with a written opinion of an attorney at law licensed~~  
 283 ~~to practice law in that foreign state, as to the preferences, if~~  
 284 ~~any or none, granted by the law of that state to its own~~  
 285 ~~business entities whose principal places of business are in that~~  
 286 ~~foreign state in the letting of any or all public contracts.~~

287 (7)(3)(a) A vendor whose principal place of business is in  
 288 this state may not be precluded from being an authorized  
 289 reseller of information technology commodities of a state  
 290 contractor as long as the vendor demonstrates that it employs an  
 291 internationally recognized quality management system, such as  
 292 ISO 9001 or its equivalent, and provides a warranty on the  
 293 information technology commodities which is, at a minimum, of  
 294 equal scope and length as that of the contract.

295 (8)(b) This section subsection applies to any solicitation  
 296 or renewal of any state contract executed on or after October 1,  
 297 2024 July 1, 2012. However, the preferences in this section do  
 298 not apply to transportation projects for which federal funds are  
 299 available.

300 Section 6. Section 287.0841, Florida Statutes, is created

301 to read:

302 287.0841 Florida Opportunity Fund preference.—In addition  
 303 to the preferences considered in s. 287.084, for competitive  
 304 solicitations for commodities or contractual services in excess  
 305 of the threshold amount provided for CATEGORY TWO in s. 287.017,  
 306 an agency must apply a 5-percent price preference for a bid or  
 307 proposal from a vendor that currently holds or maintains an  
 308 investment from the Florida Opportunity Fund pursuant to s.  
 309 288.9624. For competitive solicitations pursuant to s.  
 310 287.057(1)(c), an agency must apply a 5-percent preference to  
 311 the total score of a vendor that currently holds or maintains an  
 312 investment from the Florida Opportunity Fund pursuant to s.  
 313 288.9624, provided that a price increase resulting from applying  
 314 such preference may not exceed 15 percent, and must disclose  
 315 such preference in the stated goals of an invitation to  
 316 negotiate in order to determine best value.

317 Section 7. This act shall take effect July 1, 2024.