

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.

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.¹ 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.² The classification of a position determines the types of benefits assigned, its compensation, and collective bargaining.³

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.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

Career Service System

The majority of employees in the SPS are categorized as Career Service.¹⁰ 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.¹¹

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

² S. 110.2035(1), F.S.

³ See ch. 110, F.S.

⁴ S. 110.602, F.S.

⁵ S. 110.604, F.S.

⁶ S. 110.603(2), F.S.

⁷ S. 110.402, F.S.

⁸ S. 110.401, F.S.

⁹ S. 110.403(1)(a), F.S.

¹⁰ 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).

¹¹ S. 110.227(1) and (5), F.S.; see also s. 60L-36.005(3), F.A.C.

All position under the SPS are classified as Career Service unless specifically exempted by statute.¹² 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.¹³ 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;¹⁴
- 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;¹⁵
- 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.¹⁶

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 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

¹² S. 110.205(1), F.S.

¹³ S. 110.205(4), F.S.

¹⁴ 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.

¹⁵ 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.

¹⁶ S. 110.205(2) and (6), F.S.

the right to remain in Career Service by opting to serve in a position not exempted by the employing agency.¹⁷

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.¹⁸

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.¹⁹ 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.²⁰

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.²¹ The Florida Legislature has established educational opportunities for young people in the state for training in trades, occupations, and professions suited to their abilities.²² 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.²³

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.²⁴

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.²⁵

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

¹⁷ S. 110.205(2)(n)1.a., F.S.

¹⁸ S. 110.205(2)(n)1.b., F.S.

¹⁹ S. 110.211(1), F.S.

²⁰ *Id.*

²¹ 29 C.F.R. 29.1 and 29.13.

²² See ch. 446, F.S.

²³ S. 446.092, F.S. See also 29 C.F.R. §29.4.

²⁴ 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).

²⁵ *Id.*

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.²⁶

Potential candidates for apprenticeships may apply with a registered sponsor, who determines whether the candidate meets the required qualifications.²⁷ 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.²⁸

The sponsor operates and administers the apprenticeship program.²⁹ 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.³⁰

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.³¹ 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.³²

OIR is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, claims, solvency, and administrative supervision.³³ 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.³⁴

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.³⁵ 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.³⁶ The commissioners must appoint a person who is not a commissioner to serve as the executive director who supervises and directs all of the necessary activities to fulfill FGC's responsibilities.³⁷ 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.³⁸

²⁶ S. 446.021(2), F.S.

²⁷ 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).

²⁸ S. 1009.25(1)(b), F.S.

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

³⁰ 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.

³¹ S. 20.121(3), F.S.

³² S. 20.121(3)(d), F.S.

³³ S. 20.121(3)(a)1., F.S.

³⁴ S. 20.121(3)(a)2., F.S.

³⁵ S. 16.71(1)(a) and (b), F.S.

³⁶ S. 16.71(2)(a) and (a)2., F.S.

³⁷ S. 16.71(4), F.S.

³⁸ S. 16.712(1)(a), F.S.

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.³⁹ 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 Commission⁴⁰ 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.⁴¹ 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.⁴²

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.⁴³ 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 persons⁴⁴ and no person is eligible to serve for more than two consecutive six-year terms.⁴⁵

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.⁴⁶

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.⁴⁷ 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.⁴⁸

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.⁴⁹ CHR is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination and act upon complaints alleging a discriminatory practice.⁵⁰

³⁹ Ss. 20.22(1)(f), F.S. and 120.65(1), F.S.

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

⁴¹ S. 120.65(4), F.S.

⁴² 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).

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

⁴⁴ "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.

⁴⁵ Ss. 947.02(1), and 947.03(1), F.S.

⁴⁶ S. 947.02(2), (3), and (4), F.S.

⁴⁷ See parts I and II of ch. 760, F.S.

⁴⁸ S. 760.04, F.S.

⁴⁹ S. 760.03, F.S.

⁵⁰ See s. 760.06, F.S.

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.⁵¹ 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.⁵²

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 responsibilities⁵³ 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.⁵⁴ 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,⁵⁵ 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.⁵⁶ 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.

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 program⁵⁷ in a related field.

The PCS makes other technical and conforming changes.

⁵¹ S. 447.205, F.S.

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

⁵³ 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.

⁵⁴ 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.

⁵⁵ 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.

⁵⁶ 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.

⁵⁷ 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.

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.⁵⁸ The Act was enacted, in part, to provide the federal government with an efficient and economic system to dispose of surplus property.⁵⁹ 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.⁶⁰ In addition, these entities can obtain personal property donated by federal agencies through the Federal Surplus Personal Property Donation Program (FSPPDP).⁶¹ 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.⁶² While there are typically no costs for surplus property received through the FSPPDP, recipients may be charged for shipping, handling, and other administrative expenses.⁶³

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.⁶⁴ 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.⁶⁵ 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.⁶⁶ GSA may suspend the transfer of surplus property to a state that is acting out of compliance with its approved plan.⁶⁷ Florida's plan was approved by GSA in 1977.⁶⁸

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-exempt educational, health, and homeless assistance organizations).⁶⁹ Accordingly, DMS is authorized to act as an agent for state and local government entities and make any necessary payments on their behalf.⁷⁰ The state's participation in the program has led to sizable cost savings in asset procurement

⁵⁸ 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 (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 (last visited January 16, 2024).

⁵⁹ 40 U.S.C. § 101(2).

⁶⁰ 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.

⁶¹ See 41 C.F.R. 102-37.

⁶² 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 (last visited January 15, 2024).

⁶³ See 41 C.F.R. 102-37.55.

⁶⁴ 41 C.F.R. §§102-37.140 and 102-37.150.

⁶⁵ See 41 C.F.R. §102-37.130.

⁶⁶ 41 C.F.R. §§102-37.160 and 102-37.165.

⁶⁷ 41 C.F.R. §102-37.170.

⁶⁸ S. 217.001, F.S.

⁶⁹ 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).

⁷⁰ S. 217.15, F.S.

for state and local agencies.⁷¹ However, in order to maintain the state program as a self-supporting operation, DMS applies a service charge related to the donated property.⁷²

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.⁷³ 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.⁷⁴

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 procurement⁷⁵ and its responsibilities include creating uniform agency procurement rules,⁷⁶ implementing the online procurement program,⁷⁷ and procuring state term contracts.⁷⁸ DMS is also responsible for registering vendors that wish to provide goods or services to the state⁷⁹ and maintaining lists of vendors who may not submit bids, proposals, or replies to agency solicitations.⁸⁰

Current law sets forth the procurement and contracting procedures for most state agencies.⁸¹ In general, the law requires the use of a competitive solicitation⁸² process when agencies wish to procure commodities or contractual services that cost more than \$35,000,⁸³ with certain exceptions.⁸⁴

⁷¹ 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 (last visited January 15, 2024).

⁷² 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 (last visited January 17, 2024).

⁷³ S. 217.07, F.S.

⁷⁴ 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.

⁷⁵ See ss. 287.032 and 287.042, F.S.

⁷⁶ See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

⁷⁷ See s. 287.057(24), F.S.

⁷⁸ See ss. 287.042(2) and 287.056, F.S.

⁷⁹ 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 (last visited January 21, 2024).

⁸⁰ Ss. 287.1351, 287.133, 287.134, and 287.137, F.S.

⁸¹ 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.

⁸² "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.

⁸³ Ss. 287.017, 287.057, F.S.

⁸⁴ See s. 287.057(3), F.S.

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.⁸⁵
- 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.⁸⁶
- 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.⁸⁷

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.⁸⁸
- 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.⁸⁹
- Single source purchases - A commodity or contractual service that is available from a single source may be exempt from the competitive solicitation requirements.⁹⁰
- 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 continuing education events; and contracts for which state or federal law prescribes with whom the agency must contract or the rate of payment.⁹¹

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.⁹² 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.⁹³

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

⁸⁵ S. 287.057(1)(a), F.S.

⁸⁶ S. 287.057(1)(b), F.S.

⁸⁷ 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.

⁸⁸ S. 287.057(3)(a), F.S.

⁸⁹ S. 287.057(3)(b), F.S.

⁹⁰ S. 287.057(3)(c), F.S.

⁹¹ S. 287.057(3)(d), (e), (f), and (11), F.S.

⁹² S. 287.057(15)(a), F.S.

⁹³ S. 287.057(16), F.S.

disseminate uniform procedures⁹⁴ to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment.⁹⁵

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.⁹⁶ The certification⁹⁷ 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.⁹⁸

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.⁹⁹

Preference to Florida Businesses

Current law provides that when an agency, university, college, school district, or other political subdivision¹⁰⁰ 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.¹⁰¹ Out-of-state vendors must submit with the bid, proposal, or reply documents a 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.¹⁰²

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.¹⁰³

Florida Opportunity Fund

The Florida Opportunity Fund (Fund) was created by the Legislature in 2007 to utilize a "fund-of-funds"¹⁰⁴ model emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida.¹⁰⁵ The Fund is organized as a private, not-for-profit corporation and is not an instrumentality of the state.¹⁰⁶ The Fund has a five member board of directors appointed by the Governor that is responsible for selecting an investment manager.¹⁰⁷ While not precluded from investing in funds with a wider geographic spread of portfolio investment, the Fund must require an

⁹⁴ 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.

⁹⁵ S. 287.057(15)(b), F.S.

⁹⁶ 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 (last visited January 16, 2024) (providing training dates for 2024).

⁹⁷ A certified contract manager must complete training every five years for certification renewal. S. 287.057(15)(c), F.S.

⁹⁸ S. 287.057(15)(c), F.S.

⁹⁹ S. 287.057(15)(d), F.S.

¹⁰⁰ The term "other political subdivision of this state" does not include counties or municipalities. S. 287.057(1)(c), F.S.

¹⁰¹ S. 287.084(1)(a), F.S.

¹⁰² S. 287.084(2), F.S.

¹⁰³ S. 287.092, F.S.

¹⁰⁴ 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.

¹⁰⁵ Ch. 2007-189, Laws of Fla.

¹⁰⁶ S. 288.9624(1)(a), F.S.

¹⁰⁷ S. 288.9624(1)(b) and (3) F.S.

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.¹⁰⁸

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.¹⁰⁹ According to the Fund, as of June 30, 2022, \$31 million has been committed to investments in nine venture capital funds.¹¹⁰

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, 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.

¹⁰⁸ S. 288.9624(4), F.S.

¹⁰⁹ S. 288.9624(5), F.S.

¹¹⁰ Florida Opportunity Fund, *Fund of Funds Program*, available at <https://www.floridaopportunityfund.com/fund-of-funds-program/> (last visited January 16, 2024).

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