

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/CS/SB 514

**INTRODUCER:** Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Burgess and others

**SUBJECT:** Substitution of Work Experience for Postsecondary Educational Requirements

**DATE:** February 14, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limonas-Borja</u>	<u>McVane</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Limonas-Borja</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 514 creates s. 112.219, F.S., to allow governmental agencies, during the employee hiring process, to substitute equivalent work experience as an alternative to a postsecondary education, if the applicant is otherwise qualified for the position. The bill specifies that work experience may not be substituted for any required licensure, certification, or registration as established by the employing agency and indicated on the position description. The bill defines employing agencies to include any agency or unit of government of the state or any county, municipality, or political subdivision. The bill requires employing agencies who opt to substitute work experience for postsecondary education, to include a notice in the advertisements for such position that substitution is authorized and a description of what education and work equivalencies apply.

The implementation of the bill does not abridge state and federal laws and regulations governing equal opportunity.

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect July 1, 2022.

## II. Present Situation:

### State Employment Policy

According to the employment policy of the state, conditions of employment in state government must be made without regard to age, sex, color, religion, national origin, political affiliation, marital status, or disability.<sup>1</sup> The state and its political subdivisions must comply with the Americans with Disabilities Act,<sup>2</sup> Equal Employment Opportunity Act,<sup>3</sup> Florida Civil Rights Act,<sup>4</sup> and Fair Labor Standards Act.<sup>5</sup> In addition, the state and its political subdivisions must give preference to veterans for positions of employment.<sup>6</sup>

### State Hiring Process

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

Section 110.201 F.S., authorizes the Department of Management Services (DMS), in consultation with agencies, to create rules relating to employees and positions in the Career

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

<sup>2</sup> U.S. Department of Labor, *Employers' Responsibilities, Americans with Disabilities Act*, <https://www.dol.gov/general/topic/disability/employersresponsibilities> (last visited Jan. 28, 2022).

<sup>3</sup> U.S. Equal Employment Opportunity Commission, *Overview*, [https://www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%2%20\(40%20or](https://www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%2%20(40%20or) (last visited Jan. 28, 2022).

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

<sup>5</sup> U.S. Department of Labor, *Wages and the Fair Labor Standards Act*, <https://www.dol.gov/agencies/whd/flsa> (last visited Jan. 28, 2022).

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

<sup>7</sup> Job Candidate Program Manual, Division of Human Resource Management, Department of Management Services, available at [https://www.dms.myflorida.com/content/download/99277/573474/Job\\_Candidate\\_Program\\_Manua\\_l\\_Final\\_3-21-17.pdf](https://www.dms.myflorida.com/content/download/99277/573474/Job_Candidate_Program_Manua_l_Final_3-21-17.pdf) (last visited January 19, 2022).

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

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

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

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

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

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

Service.<sup>14</sup> The statute allows the DMS to adopt rules providing alternative requirements. Section 110.2035, F.S., requires employing agencies to maintain, on a current basis, a position description of each authorized and established position within the agency. The position description shall include a description of the assigned duties and responsibilities, along with any other pertinent information concerning the position.<sup>15</sup> The position description shall serve as a record of the official assignment of duties to the position.<sup>16</sup>

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

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

### **County and Municipal Powers**

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

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

### **Authority of Special Districts**

A "special district" is a unit of local government created for a special purpose operating within a limited geographic boundary.<sup>21</sup> Special districts are created by general law, special act, local ordinance, or administrative rule of the Governor and Cabinet.<sup>22</sup> Special districts are created to

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

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

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

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

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

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

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

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

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

provide a wide variety of services, such as mosquito control,<sup>23</sup> children's services,<sup>24</sup> fire control and rescue,<sup>25</sup> and drainage and water control.<sup>26</sup>

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

### III. Effect of Proposed Changes:

**Section 1** creates s. 112.219, F.S., to authorize a head of an employing agency to substitute equivalent work experience in lieu of a postsecondary education, beginning July 1, 2022. Work experience may not be substituted for any required licensure, certification, or registration as established by the agency and indicated on the position description. The section requires any employing agency that elects to substitute work experience for post-secondary education to include a notice in the job advertisement that substitution is authorized and a description of what education and work experience equivalencies apply. This section does not abridge state and federal laws and regulations governing equal opportunity employment.

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

**Section 2** provides an effective date of July 1, 2022.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

None.

#### C. Trust Funds Restrictions:

None.

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

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

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

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

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

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is no fiscal impact to the government sector because the bill codifies current practice.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 112.219 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Community Affairs on February 8, 2022:**

The CS amends a typographical error in the title.

**CS by Governmental Oversight and Accountability on February 2, 2022:**

The CS:

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

- Reorganizes the substantive provisions of the bill into Chapter 112, instead of creating multiple new sections within the distinct chapters.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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