

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1310

INTRODUCER: Community Affairs Committee and Senator DiCeglie and others

SUBJECT: Substitution of Work Experience for Postsecondary Education Requirements

DATE: April 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	<u>McVaney</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1310 requires public employers (state agencies and branches, state universities and public colleges, counties, cities, special districts, school boards, and all other governmental entities) to prioritize direct work experience over postsecondary education in their hiring considerations. Postsecondary education may be considered in hiring decisions only (a) as an alternative for direct work experience or (b) if the position requires advanced accreditation or licensure that is available only to a person holding a specific postsecondary degree.

The bill grants authority to the Department of Management Services to enforce the new requirements either (a) through appeals by applicants who allege the lack of a postsecondary degree is the sole basis for the applicant not being hired by the public employer or (b) notices from any person that a job posting for a public sector job required a postsecondary degree without including information justifying the requirement for the degree.

The bill's impact state or local government revenues and expenditures is indeterminate. However, the Department of Management Services may incur costs associated the resolution of appeals and reports of noncompliance by public employers.

The bill takes effect July 1, 2023.

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.¹ The state and its political subdivisions must comply with the Americans with Disabilities Act,² Equal Employment Opportunity Act,³ Florida Civil Rights Act,⁴ and Fair Labor Standards Act.⁵ In addition, the state and its political subdivisions must give preference to veterans for positions of employment.⁶

State Hiring Process

The State's employment process is decentralized with each state agency being responsible for its recruitment, selection, and hiring decisions.⁷ 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.⁸ After assembling a pool of candidates, an agency's hiring official compares candidates' education, experience, and any necessary license or certification requirements.⁹ Candidates who appear to possess the required knowledge, skills, abilities, licensure and certifications will proceed further in the selection process.¹⁰ 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.¹¹ 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.¹² 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.¹³

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

¹ Section 110.105(2)(a), F.S.

² U.S. Department of Labor, *Employers' Responsibilities, Americans with Disabilities Act*, available at <https://www.dol.gov/general/topic/disability/employersresponsibilities> (last visited Mar. 25, 2023).

³ U.S. Equal Employment Opportunity Commission, *Overview*, available at [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 Mar. 25, 2023).

⁴ Section 760.02(7), F.S.

⁵ U.S. Department of Labor, *Wages and the Fair Labor Standards Act*, available at <https://www.dol.gov/agencies/whd/flsa> (last visited Mar. 25, 2023).

⁶ Section 296.07, F.S.

⁷ DMS, *Job Candidate Program Manual, Division of Human Resource Management*, available at https://www.dms.myflorida.com/content/download/99277/573474/Job_Candidate_Program_Manua_l_Final_3-21-17.pdf (last visited Mar. 25, 2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 110.211(1), F.S.

¹³ Section 110.213(2), F.S.

Service.¹⁴ 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 must include a description of the assigned duties and responsibilities, along with any other pertinent information concerning the position.¹⁵ The position description serve as a record of the official assignment of duties to the position.¹⁶

The DMS has established rules¹⁷ that provide 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.¹⁸

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.¹⁹

Section 166.021, F.S., of Florida's Municipal Home Rule Powers Act, contains general provisions that govern the exercise of municipal powers under the framework established in article VIII, section 2(b) of the Florida 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.²⁰

Hiring Authority of Elected Officers

Section 27.25, F.S., grants the state attorney the authority to employ assistant state attorneys, an executive director, and other staff.

Section 27.53, F.S., grants the public defender the authority to employ assistant public defenders and other staff.

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

¹⁵ Section 110.2035(5)(a), F.S.

¹⁶ *Id.*

¹⁷ Rule 60L-31.003, F.A.C.

¹⁸ Rule 60L-31.003(1), F.A.C.

¹⁹ Section 125.74(k), F.S.

²⁰ Section 166.021(a), F.S.

Section 28.06, F.S., grants the clerk of the court the authority to appoint a deputy or deputies.

Section 30.53, F.S., preserves the independence of sheriffs concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel.

Authority of Special Districts

A “special district” is a unit of local government created for a special purpose operating within a limited geographic boundary.²¹ Special districts are created by general law, special act, local ordinance, or administrative rule of the Governor and Cabinet.²² Special districts are created to provide a wide variety of services, such as mosquito control,²³ children’s services,²⁴ fire control and rescue,²⁵ and drainage and water control.²⁶

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

Substitution of work experience for postsecondary educational requirements

Section 112.219, F.S., allows an employing agency to substitute equivalent work experience in lieu of a postsecondary education. 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.

Veteran Preference in Hiring and Retention

Section 295.07, F.S., directs the state and its political subdivisions to give preference to disabled veterans, spouses, widows and widowers of veterans, and current members of the reserve component of the United State Armed Forces or the Florida National Guard. The state and its

²¹ Section 189.012(6), F.S.

²² *Id.*

²³ Section 388.021(1), F.S.

²⁴ Section 125.901(1), F.S.

²⁵ Section 191.002, F.S.

²⁶ Section 298.01, F.S.

²⁷ Section 189.011(3), F.S.

political subdivisions may waive postsecondary educational requirements if the veteran or current member of the armed forces is otherwise qualified for the position.

Section 295.11, F.S., authorizes the Department of Veterans' Affairs (DVA) to investigate any complaint that indicates a person has applied for a job with the state or a political subdivision and the job was awarded to a nonveteran. The DVA issues its opinion as to the merit or lack of merit to the parties and to the Public Employees Relation Commission (PERC). If the DVA opines that the claim lacks merit and the PERC agrees, no hearing is necessary. Otherwise, the PERC will hold a hearing and render a decision that is deemed final agency action.

Public Employees Relations Commission

The PERC is created by law,²⁸ consisting of a chair and two other members to be appointed by the Governor, subject to confirmation by the Senate. Relevant to this discussion, the PERC is authorized to hear appeals relating to certain employers not employing a preferred veteran applicant.²⁹ The appeal hearing must be held within 30 days of the filing of the claim, unless an extension of time is granted for good cause.³⁰

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “Expanding Public Sector Career Opportunities Act.”

Section 2 amends s. 112.219, F.S., to use the term “public employer”³¹ instead of “employing agency,” in the context of allowing such employers to substitute work experience for postsecondary educational requirements.

Section 3 creates s. 112.2195, F.S., to establish a policy on the way a public employer considers applicants.

A public employer must determine for each position the baseline requirements that an applicant must meet. The baseline requirements may include:

- Prior direct experience or specified certifications or courses; and
- A postsecondary degree, only as an alternative to the number of years of direct experience, ranging two to nine years depending on the level of the degree.

A public employer may not deny consideration of an applicant solely on the basis of the applicant lacking a postsecondary degree unless the public employer clearly demonstrates that the job duties require a postsecondary degree. In the job posting, the public employer must substantiate the necessity for the postsecondary degree on the basis that the degree is the best

²⁸ Section 447.205, F.S.

²⁹ Section 447.207(9)(c), F.S.

³⁰ Section 447.208(1), F.S.

³¹ “Public employer” is defined in s. 448.095(1)(i), F.S., as an entity within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor.

measure to determine whether an applicant possesses the specific skills required for the job or that the position requires advanced accreditation or licensure only available to a person who holds a specific postsecondary degree.

If an applicant is eliminated from a hiring consideration solely because of the lack of a postsecondary degree, the applicant may appeal the decision to the Department of Management Services (DMS).

A person (not limited to an applicant) may report to the DMS any job postings by a public employer which require a postsecondary degree, but fail to include the information substantiating the necessity of the degree.

If an appeal by an applicant or a report by a person are substantiated by the DMS, the public employer must reopen the hiring process, modify the job posting, or take other action as directed by the DMS.

None of these requirements apply to political appointments (undefined) or other positions hired by elected representatives in this state.

Section 4 amends s. 287.057, F.S., to allow an agency³² to substitute verifiable, related work experience in lieu of postsecondary educational requirements for a contract for services if the person seeking to contract is otherwise qualified for the position.

Section 5 provides that the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³² "Agency" is defined in s. 287.012(1), F.S., as 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. The term does not include the university and college boards of trustees or the state universities and colleges.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The overall impact on state and local government expenditures is indeterminate. Public employers will experience incur some additional workload in modifying position descriptions and reviewing knowledge, skills, and abilities of each position to determine whether a postsecondary degree is a necessary requirement in hiring considerations. Public employers who choose to require a postsecondary degree in its hiring considerations may incur new costs associated with appeals from applicants and others.

The DMS will incur additional cost associated with addressing the appeals from unsuccessful applicants and those persons reporting a job notice not in compliance with the new requirements.

VI. Technical Deficiencies:

On lines 137 through 139, the bill exempts from its application “political appointments or other employment positions hired by elected representatives in this state.” The bill does not define “political appointments.” Consideration should be given to defining the term so that public employers and the DMS will not incur the cost of appeals or reports of noncompliance.

In terms of the “other employment positions hired by elected representatives in this state” appears to exempt employees of the clerks of court, the sheriffs, the state attorneys and public defenders, the Legislature, and the Executive Office of the Governor, and potentially some portion of the employees of the Department of Financial Services (hired by the Chief Financial Officer), the Department of Agriculture and Consumer Services (hired by the Commissioner of Agriculture), the Department of Legal Affairs (hired by the Attorney General). If the exemption, as described above, is intended to be interpreted more broadly or more narrowly, consideration should be given to more concisely define the exemption.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.2195 and 112.219, and 287.057.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 29, 2023:

The committee substitute:

- Amends ch. 112, F.S., rather than ch. 110, F.S., to establish the new policy for considering applicants for public employment opportunities.
- Replaces the term “employing agency” with “public employer” in s. 112.219, F.S.
- Moves the bill provisions allowing an agency to substitute work experience in lieu of postsecondary education for contracts for services to the procurement statute in ch. 287, F.S., and omits verbiage pertaining to licensure requirements.

- B. **Amendments:**

None