

STORAGE NAME: h1287.ca

DATE: March 15, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1287

RELATING TO: Veterans/Employment Preference

SPONSOR(S): Representatives Stabins, Fasano and others

COMPANION BILL(S): SB 142 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 9 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 1287 amends a number of "veterans' preference" provisions in current law. In addition to several clarifications of the law, the bill requires state residency in order to declare veterans' preference, provides equity for military retirees, allows veterans from other states to benefit from Florida's Veterans' Preference law after they have established residency in Florida, and authorizes Public Employees Relations Commission (PERC) discretion to award reasonable attorney's fees, up to a maximum of \$7,500, where the public employer is found to have violated the veterans' preference statute.

This bill may have a fiscal impact on state and local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida "veterans' preference" law was originally enacted in 1947. Chapter 24201, L.O.F., provided that honorably discharged war veterans, their wives, and widows "be entered ahead of all others having the same rating."

The "veterans' preference" law was subsequently codified into s. 110.2135 and chapter 295, F.S. Section 295.07, F.S., as currently written, provides that the state and its political subdivisions must give preference in appointment and retention in certain positions of employment to certain disabled veterans, certain spouses of disabled veterans, veterans of specified wars and widows or widowers of veterans who died of a service-connected disability. Positions which are exempt from the State's Career Service System are also exempt from the veterans' preference law except for the University Support Personnel System in the State University System and all career service positions within the state's community colleges and the School for the Deaf and the Blind. Also, any positions in political subdivisions of the state which are filled by elected officers, as well as members of boards and commissions, persons employed on a temporary basis without benefits, city managers and county managers, heads of departments, management positions, policy making positions, positions which require licensure as a physician, licensure as an osteopathic physician, licensure as a chiropractic physician, and positions which require that the employee be a member of the Bar, are exempt from the veterans' preference law.

Current state law does not require a veteran to be a resident of the State of Florida in order to qualify for veterans' preference. Ten states require residency status in order to qualify for veterans' preference: Alaska, Idaho, Iowa, New Hampshire, New York, Nevada, North Dakota, Oklahoma, Tennessee, and Texas.

Presently, s. 295.08, F.S., provides preference points for certain war veterans and certain spouses of veterans, provided the covered war veterans and spouses have, otherwise, obtained a qualifying score on the examination for the position.

Ten points are added to the ratings of those disabled veterans who:

Served on active duty in any branch of the Armed Forces of the U.S., were separated under honorable conditions and have established a present existence of a service-connected disability compensable under federal public law; or

Are receiving compensation, disability retirement benefits, or pension by reason of certain federal public laws.

Further, ten points are added to the ratings of the spouse of:

Any person who has a total disability, permanent in nature, resulting from a service-connected disability and who, because of this disability, cannot qualify for employment; or

Any person missing in action, captured in the line of duty by a hostile force or forcibly detained or interned in the line of duty by a foreign government or power.

Five points are added to the rating of any person who is:

A veteran of any war as defined in s. 1.01(14), F.S., which includes, most recently, World Wars I and II, Korean Conflict, Vietnam Era and Persian Gulf War; or

An unremarried widow or widower of a veteran who died of a service-connected disability.

However, s. 295.08, F.S., provides that certain veterans who are 30 percent or more disabled are to be placed at the top of the employment list and given an "absolute preference" when applying for positions that have competitive examinations.

Section 295.085, F.S., provides special consideration for applicants in which the appointment or employment of the applicant is not subject to a written examination. Under this circumstance, preference must be given first to disabled veterans and to the spouse of any person who has a total and permanent service-connected disability. Preference next applies to veterans of specified wars and the widow or widower of any veteran who died of a service-connected disability.

Section 295.09, F.S., provides that when an employee of the state or any of its political subdivisions has left employment to serve in the Armed Forces of the United States and is later honorably discharged or separated, such person must be reemployed or reinstated by the previous employer in the same or an equivalent position provided such person returns to the position within one year of the military separation date. In the case of extended active duty, a person must be reemployed or reinstated within one year of the date of discharge or separation subsequent to the separation. Such person must also be awarded preference in promotion and shall be promoted ahead of all others who are as well or less qualified for the position.

Section 295.101, F.S., providing for the expiration of veterans' employment preference, became law on October 1, 1987 pursuant to chapter 87-356, L.O.F. This provision states that a veteran's employment preference has expired after an eligible person has applied and has been employed by any state or any agency of a political subdivision of the state.

Section 295.11, F.S., provides a process for an aggrieved veteran to seek relief. A veteran may submit a written complaint against a prospective employer to the Florida Department of Veterans' Affairs (FDVA) if the veteran is not successful in gaining employment and feels veterans' preference rights were not appropriately considered. The FDVA investigates the complaint and, if the department's resolution is not satisfactory, the complainant may request that the complaint be submitted to the PERC for a hearing. As provided in s. 295.14, F.S., subsequent to the hearing, if PERC determines that a violation occurred, PERC may award lost wages. Because of the construction of current law, such lost wages can be awarded only in cases where violations of the reinstatement, reemployment or promotion provisions occurred. Current law does not allow for an award of lost wages in cases where initial employment preference was violated.

Section 295.151, F.S., provides that military retirees who retire on the basis of longevity are prohibited from claiming veterans' preference under personnel systems where numerically-scored exams are used for selection. However, the law allows eligibility of

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military retirees (for longevity) in claiming veterans' preference under personnel systems where selection for the position does not include the use of numerically-scored exams.

According to the fiscal information provided by the FDA, each case brought before the FDA costs approximately \$250 to process.

According to PERC, there were 93 veterans' cases filed in 1993. In 1994, 36 veterans filed a total of 122 cases. Five veterans accounted for 59 cases, or 48% of the total. In 1995, PERC heard 46 veterans' cases. In 1996, 14 cases were filed, and 6 hearings were held. No veteran prevailed in any case. In 1997, 26 cases were filed and 5 cases are still pending.

Based on information provided to the FDA by PERC staff, alleged violations of veterans' hiring preference statutes are one of the least frequent causes of cases heard by the PERC. PERC estimates that they expend approximately \$1,000 per case.

B. EFFECT OF PROPOSED CHANGES:

HB 1287 amends a number of "veterans' preference" provisions of chapter 295, Florida Statutes. In addition to several clarifications of the law, the bill:

- requires state residency in order to declare veterans' preference;
- provides equity for military retirees;
- allows veterans from other states to benefit from Florida's Veterans' Preference law after they have established residency in Florida; and
- authorizes Public Employees Relations Commission (PERC) discretion to award reasonable attorney's fees, up to a maximum of \$7,500, where the public employer is found to have violated the veterans' preference statute.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The Florida Department of Veterans' Affairs and the Public Employee Relations Commission (PERC) must adopt rules and regulations to comply with provisions of this bill.

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- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. See 1a(1)

- (3) any entitlement to a government service or benefit?

Yes, the bill expands veterans' preference entitlements and benefits.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill renumbers s. 295.15 as s. 295.065; renumbers subsection (2) of s. 295.085 as 295.07(2); substantially amends sections 295.07, 295.08, 295.085, 295.101, 295.11, and 295.14; repeals section 295.151; and creates s. 295.155 of the Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1 renumbers the intent section related to veterans' preference from s. 295.15, F.S., to s. 295.065, F.S., which places the legislative intent immediately prior to the sections in ch. 295, F.S., which relate to veterans' preference in appointment and retention.

Section 2 relocates and renumbers subsection (2) of s. 295.085, F.S., as s. 295.07(2), F.S. This subsection requires the Department of Veterans' Affairs to adopt rules and procedures which ensure that eligible persons are given special consideration in the employing agency's selection and retention processes. In addition, this section of the bill establishes that a person must be a Florida resident to be eligible for veterans' preference for employment and retention.

Section 3 retitles s. 295.08, F.S., to clarify that the provisions of this section apply to positions for which a numerically based selection process is used for employment. This

section removes obsolete criterion with regard to applying veterans' preference points by eliminating the phrase, "the lowest range of the salary is over \$9,000 per annum."

Section 4 retitles s. 295.085, F.S., to clarify that the veterans' preference provisions in this section apply to positions for which a numerically based selection process is not used for employment. This section also specifies that the veterans' preference also applies in retention circumstances, which is consistent with s. 295.07, F.S. This section deletes subsection (2) of s. 295.085, F.S., which was relocated and renumbered as s. 295.07(2), F.S.

Section 5 amends s. 295.101, F.S., to clarify that a veteran's employment preference expires once a veteran is employed with "the" state or political subdivision rather than "any" state or political subdivision. This would allow former non resident veterans who were previously employed by another state or political subdivision of another state to benefit from Florida's Veterans' Preference law after they have established residency in Florida.

Section 6 amends s. 295.11(1) and (3), F.S., to clarify that when a veterans' preference complaint is not satisfactorily resolved and the complainant requests a hearing before the PERC, any department of the state or any political subdivision of the state may testify at the hearing either telephonically or in person at the discretion of PERC.

Section 7 amends subsection (1) of s. 295.14, F.S., to authorize PERC discretion to award loss of any wages, reasonable attorney's fees for actual hours worked and costs up to a maximum of \$7,500 to the veteran seeking redress where the public employer is found to have violated s. 295.07, s. 295.08, and s. 295.085(1), F.S., which relate to initial employment preference. This discretion would be in addition to the current law that allows for PERC to award loss of wages incurred as a result of an agency's violation of s. 295.09(1)(a) or (b), F.S. which relates to reinstatement, reemployment or promotion preference.

Section 8 and 9 repeals s. 295.151, F.S., and creates s. 295.155, F.S., to provide that military retirees would be eligible for veterans' preference in appointment and retention pursuant to s. 295.07, F.S.

Section 10 provides an effective date "upon becoming law."

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Florida Department of Veterans' Affairs and the Public Employee Relations Commission (PERC) may incur minimal costs associated with the adoption of rules and regulations to comply with provisions of this bill.

State agencies which are found to have violated the law may be subject to attorney's fees.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A1 above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Cities and counties which are found to have violated the law may be subject to attorney's fees.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

Qualified veterans may benefit in the public sector job market because the increased penalty provision will permit an investigation and/or hearing to occur at the initial employment state, rather than only at the time of reinstatement or reemployment.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

According to the FDVA, the residency requirement contained in Section 2 of the bill may result in three fewer processed cases annually, with an anticipated savings of \$750. Counties and municipalities may anticipate saving \$1,500 processing six fewer cases

annually. However, these savings may be offset by provisions in sections 8 and 9 of the bill, which allow military retirees to benefit from the veterans' preference law. In addition, by providing that veterans' preference expires when the veteran has been employed by "the" state rather than "any" state (Section 5), more veterans may be eligible to use veterans preference when seeking employment.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities and counties to raise revenues, and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill will not reduce the amount of the local Government half Cent Sales Tax shared with municipalities and counties, and it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

The Senate Committee on Governmental Reform and Oversight adopted an amendment to Senate Bill 142 by Senator Brown-Waite to change the attorneys' fees cap from \$7,500 to \$10,000 at their meeting March 12, 1998.

Mr. Paul Piller of Piller and Associates, indicates that he is not in favor of this bill.

The Florida League of Cities does not support the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments are necessary to conform the House Bill with the Senate companion bill. One amendment involves grammatically conforming language. The other amendment would change the attorneys' fees cap from \$7,500 to \$10,000.

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VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

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Victoria Minetta

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