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DATE: February 4, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 1141

RELATING TO: Public Employment

SPONSOR(S): Representative Bennett

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (2) STATE ADMINISTRATION (SGC)
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill applies preferential appointment and retention requirements provided in general law for certain veterans and their spouses and widowers to most public employee positions that are exempt from the state's Career Service System. The bill requires the Executive Director of the Department of Veterans' Affairs to fill any vacant select exempt position in the Department with a qualified veteran.

The bill has no direct fiscal impact on state or local government.

The Sponsor has agreed to offer a strike-everything amendment which reinstates the elimination of the exemption and requires all select exempt positions be advertised in the Florida Administrative Weekly and through the State of Florida electronic job advertisement sites. The amendment adds a provision that requires the Executive Director of the FDVA Department to fill any select exempt position in the Department with a qualified veteran. In the event no qualified veteran has applied by the closing date, the Executive Director may offer the position to a non-veteran applicant.

(See section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:")

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

As discussed in the "EFFECT OF PROPOSED CHANGES" section, by removing certain positions from exempt status this bill places an additional obligation on state agencies to provide veterans' preference in employment.

As discussed in the "EFFECT OF PROPOSED CHANGES" section, this bill entitles certain veterans to preference in appointment and retention for additional public employment positions.

B. PRESENT SITUATION:

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

This law is now found in s. 110.2135 and ch. 295, F.S. Section 295.07, F.S., provides that the state and its political subdivisions must give preference in appointment and retention in positions of employment to certain disabled veterans, certain spouses of disabled veterans, veterans of specified wars and un-remarried widows or widowers of veterans who died of a service-connected disability.

While the term "political subdivision" is not defined in Chapter 295, F.S., the term is generally defined in section 1.01(8), F.S., to include:

[C]ounties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

A person must be a Florida resident to be eligible for veterans' preference for this benefit.

Section 295.07(2), F.S., requires the Department of Veterans' Affairs to adopt rules to ensure that veterans are given special consideration in the employing agency's selection and retention processes. The rules must include the award of point values as articulated in section 295.08, F.S., if applicable, or, where point values are not relevant, must include procedures to ensure that veterans are given special consideration at each step of the employment selection process, unless the sponsoring governmental entity is a party to a collective bargaining agreement, in which case the collective bargaining agreement must comply within 90 days following ratification of a successor collective bargaining agreement or extension of any existing collective bargaining agreement.

The following positions are exempt from the veterans' preference law:

- Positions that are exempt from the state Career Service System under section 110.205(2), F.S., except for positions in the University Support Personnel System of the State University System and all career service positions within the state's community colleges and the School for the Deaf and the Blind;
- Positions in political subdivisions of the state that are filled by elected officers or persons appointed to fill vacancies in such offices, and the personal secretary of each such officer;
- Members of boards and commissions;
- Persons employed on a temporary basis without benefits;
- Heads of departments;
- Positions that require licensure as a physician, osteopathic physician, chiropractic physician; and
- Positions that require the employee be a member of the Florida Bar.

Career Service System Exemptions:

Pursuant to s. 110.205(2), F.S., the following positions are exempt from the state's Career Service System:

- (a) All officers of the executive branch elected by popular vote and persons appointed to fill vacancies in such offices.
- (b) All members, officers, and employees of the legislative branch, except for the members, officers, and employees of the Florida Public Service Commission.
- (c) All members, officers, and employees of the judicial branch.
- (d) All officers and employees of the State University System and the Correctional Education Program within the Department of Corrections, and the academic personnel and academic administrative personnel of the Florida School for the Deaf and the Blind.
- (e) The Chief Information Officer, deputy chief information officers, chief technology officers, and deputy chief technology officers in the State Technology Office.
- (f) All members of state boards and commissions, however selected.
- (g) Judges, referees, and receivers.
- (h) Patients or inmates in state institutions.
- (i) All positions that are established for a limited period of time for the purpose of conducting a special study, project, or investigation and any person paid from an other-personal-services appropriation.
- (j) The appointed secretaries, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; and the directors of all divisions and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors, district administrators, deputy district administrators, the Director of

Central Operations Services of the Department of Children and Family Services, and the State Transportation Planner, State Highway Engineer, State Public Transportation Administrator, district secretaries, district directors of planning and programming, production, and operations, and the managers of the offices specified in s. 20.23(3)(d)2., of the Department of Transportation.

(k) The personal secretary to the incumbent of each position exempted in paragraphs (a), (e), and (j). Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules of the Selected Exempt Service.

(l) All officers and employees in the office of the Governor, including all employees at the Governor's mansion, and employees within each separate budget entity, as defined in chapter 216, assigned to the Governor.

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, positions in the Department of Health, the Department of Children and Family Services, and the Department of Corrections that are assigned primary duties of serving as the superintendent or assistant superintendent, or warden or assistant warden, of an institution; positions in the Department of Corrections that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator; positions in the Department of Transportation that are assigned primary duties of serving as regional toll managers and managers of offices as defined in s. 20.23(3)(d)3. and (4)(d); positions in the Department of Environmental Protection that are assigned the duty of an Environmental Administrator or program administrator; those positions described in s. 20.171 as included in the Senior Management Service; and positions in the Department of Health that are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

(n) In addition to those positions exempted by other paragraphs of this subsection, each department head may designate a maximum of 20 policymaking or managerial positions, as defined by the department and approved by the Administration Commission, as being exempt from the Career Service System. In addition, each department may designate one additional position in the Senior Management Service if that position reports directly to the agency head or to a position in the Senior Management Service and if any additional costs are absorbed from the existing budget of that department.

(o) The executive director, deputy executive director, general counsel, official reporters, and division directors within the Public Service Commission and the personal secretary and personal assistant to each member of the Public Service Commission.

(p) All military personnel of the Department of Military Affairs.

(q) The staff directors, assistant staff directors, district program managers, district program coordinators, district subdistrict administrators, district administrative services directors, district attorneys, and the Deputy Director of Central Operations Services of the Department of Children and Family Services and the county health department directors and county health department administrators of the Department of Health.

(r) All positions not otherwise exempt under this subsection which require as a prerequisite to employment: licensure as a physician pursuant to chapter 458, licensure as an osteopathic physician pursuant to chapter 459, licensure as a chiropractic physician pursuant to chapter 460, including those positions which are occupied by employees who are exempted from licensure pursuant to s. 409.352; licensure as an engineer pursuant to chapter 471, which are supervisory positions; or for 12 calendar months, which require as a prerequisite to employment that the

employee have received the degree of Bachelor of Laws or Juris Doctor from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar, except for any attorney who serves as an administrative law judge pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Unless otherwise fixed by law, the department shall set the salary and benefits for these positions in accordance with the rules established for the Selected Exempt Service.

(s) The statewide prosecutor in charge of the Office of Statewide Prosecution of the Department of Legal Affairs and all employees in the office. The Department of Legal Affairs shall set the salary of these positions.

(t) The executive director of each board or commission established within the Department of Business and Professional Regulation or the Department of Health.

(u) All officers and employees of the State Board of Administration. The State Board of Administration shall set the salaries and benefits of these positions.

(v) Positions that are leased pursuant to a state employee lease agreement expressly authorized by the Legislature pursuant to s. 110.191.

(w) All managers, supervisors, and confidential employees of the State Technology Office. The State Technology Office shall set the salaries and benefits of these positions in accordance with the rules established for the Selected Exempt Service.

Chapter 2001-43, L.O.F., added the additional exemption:

Effective July 1, 2001, managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. Excluded are employees also designated as special risk or special risk administrative support and attorneys who serve as administrative law judges pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Additionally, registered nurses licensed under chapter 464, dentists licensed under chapter 466, psychologists licensed under chapter 490 or chapter 491, nutritionists or dietitians licensed under part X of chapter 468, pharmacists licensed under chapter 465, psychological specialists licensed under chapter 491, physical therapists licensed under chapter 486, and speech therapists licensed under part I of chapter 468 are excluded, unless otherwise collectively bargained.

C. EFFECT OF PROPOSED CHANGES:

This bill applies preferential appointment and retention requirements provided in general law for certain veterans and their spouses and widowers to most public employee positions that are exempt from the state's Career Service System. The bill requires the Executive Director of the Department of Veterans' Affairs to fill any vacant select exempt position in the Department with a qualified veteran.

Under the bill's provisions the following public employment positions remain exempt from veterans preference: positions in political subdivisions of the state that are filled by elected officers or persons appointed to fill vacancies in such offices, and the personal secretary of each such officer; members of boards and commissions; persons employed on a temporary basis without benefits;

heads of departments; positions that require licensure as a physician, osteopathic physician, chiropractic physician; and positions that require the employee be a member of the Florida Bar.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (4) of s. 295.07, F.S., is amended to delete the exemption from veterans' preference requirements for those positions that are exempt from the state Career Service System under s. 110.205(2), F.S.

A new subsection (5) is added to section 295.07, F.S., to provide that the executive director of the Department of Veterans' Affairs shall fill any vacant select exempt position in the department with a qualified veteran as defined in subsection (1).

Section 2. An effective date of July 1, 2002, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Qualified veterans will receive preference in hiring or retention for the positions that are exempt from the state Career Service System, and any vacant select exempt position in the Department of Veterans' Affairs.

D. FISCAL COMMENTS:

None.

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:

This bill will not reduce the authority of counties and municipalities to raise total aggregate revenues.

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

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Chapter No. 2001-273 (SB 1344) amended section 295.07, F.S., to eliminate the exemption of the positions of city and county managers, management positions, and policymaking positions from being subject to "the veterans' preference" for appointment and retention for positions of employment in state and local governments.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of the bill is submitting a strike-everything amendment to the bill, which reinstates the elimination of the exemption and requires all select exempt positions be advertised in the Florida Administrative Weekly and through the State of Florida electronic job advertisement sites. The amendment adds a provision that requires the Executive Director of the FDVA Department to fill any select exempt position in the Department with a qualified veteran. In the event no qualified veteran has applied by the closing date, the Executive Director may offer the position to a non-veteran applicant.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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