



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |                                         |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

**Section 1:** Section 1.01(14), F.S., defines the term “veteran.” It also sets parameters for who qualifies as a wartime veteran during seven enumerated periods.<sup>1</sup> Each war lists a time period for which the period begins and ends, except for the Persian Gulf War which period runs from “August 2, 1990, and ending on the date thereafter prescribed by presidential proclamation or by law.”<sup>2</sup>

**Proposed Changes:** The bill amends the definition of “veteran” found in s. 1.01(14), F.S., for purposes of receiving benefits as a wartime veteran. Specifically, this bill clarifies that to qualify as a wartime veteran; the service member must have served in the military during a time in which a campaign badge was authorized. This will provide for veterans’ preference for active duty personnel who served in hostile campaigns, expeditions or operations other than those war time periods specifically identified in s. 1.01(14), F.S.

Federal law provides for an ending date, January 2, 1992, to the Persian Gulf War.<sup>3</sup> This bill adopts that date to close the window on the time period covering the Persian Gulf War. The definition of a wartime veteran is also amended in this bill to include future wars. The time period for defining wartime veteran for future wars will begin on the date Congress declares war and end on the date of concurrent resolution of Congress or by presidential proclamation.

**Section 2:** Historically, federal and state law provided for veterans’ preference for individuals who voluntarily or involuntarily served on federal active duty military service. Section 295.07, F.S., provides that the state and its political subdivisions<sup>4</sup> 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.

**Proposed Changes:** This bill amends s. 295.07(1), F.S., to clarify which wartime veterans qualify for the special consideration. For federal and state entitlement purposes, active duty for training has never been allowable as a period counting for

<sup>1</sup> Those events include: Spanish-American War; Mexican Border Period; World War I; World War II; Korean Conflict; Vietnam Era; Persian Gulf War. See s. 1.01(14), F.S.

<sup>2</sup> Section 1.01(14)(g), F.S.

<sup>3</sup> See Pub. L. 105-85.

<sup>4</sup> While the term “political subdivision” is not defined in Chapter 295, F.S., the term is generally defined in s. 1.01(8), F.S., to include: “counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.”

wartime service for veteran's preference.<sup>5</sup> This phrase, however, was stricken from s. 295.07(1)(c), F.S., when ch. 92-80, L.O.F. was enacted. This bill amends that section to exclude active duty for training purposes so that the entitlement program remains consistent with the intent of the law. Additionally, the bill requires that a veteran must have served at least one day during a wartime period as defined in s. 1.01(14), F.S. Additionally, the bill specifically excludes service members in an active duty for training status.

**Section 3:** Section 295.182, F.S., was enacted in 1999, creating the "Florida World War II Veterans Memorial Act."<sup>6</sup> This section requires construction of a memorial to honor the residents of Florida who served in the Armed Forces of the United States during World War II. The 1999 law required construction to begin by June 30, 2005, if sufficient funds were raised. The law initially only permitted the "the Department of Veterans' Affairs [to] receive private contributions and matching state funds specifically appropriated by the Legislature for the purpose of matching private donations" to go into a Florida World War II Veterans Memorial Matching Trust Fund.<sup>7</sup>

In 2002, the Legislature added provisional language in the appropriations bill which permitted the Department of Veterans' Affairs to receive contributions from public bodies for the 2002-03 fiscal year only.<sup>8</sup>

**Proposed Changes:** This bill amends s. 295.182, F.S., by limiting the provisional language added in 2002. This change would allow the Department of Veterans' Affairs to continue to accept public as well as private donations for the duration of the Florida World War II Veterans Memorial fundraising campaign.

**Section 4:** Part I of ch. 296, F.S., establishes the "Veterans' Domiciliary Home of Florida Act." The Domiciliary, located in Lake City, Florida, is an assisted living facility for Florida's veterans. Current law requires each resident "who receives a pension, compensation, or gratuity from the United States Government, or income from any other source of more than \$100 per month shall contribute to his or her maintenance and support while a resident of the home[.]"<sup>9</sup> This dollar amount was set in statute in 1989, prior to the Domiciliary opening.<sup>10</sup> This \$100 is used primarily to cover incidental expenses such as snacks, entertainment, etc. for a resident.

**Proposed Changes:** Section 296.10, F.S., is amended to provide a veteran resident a cost of living adjustment to the money he or she is allowed to retain. This adjustment is tied to the increase in social security, which also governs the same percent increase in VA pensions and retirement income. For example, if this year's cost of living adjustment is 2.6 percent, then the adjusted amount available for a resident's personal use would be \$102.60.

**Section 5:** Provides an effective date of upon becoming law.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 1.01, F.S., relating to the definition of "veteran."

**Section 2:** Amends s. 295.07, F.S., relating to preference in appointment and retention of veterans.

<sup>5</sup> Active duty for training is full-time duty performed by a member of a reserve component of a uniformed service in the active military or naval service of the United States for training purposes.

<sup>6</sup> See ch. 99-160, L.O.F.

<sup>7</sup> Section 2, ch. 99-160, L.O.F.

<sup>8</sup> See s. 14, ch. 2002-402, L.O.F.

<sup>9</sup> Section 296.10(1), F.S.

<sup>10</sup> See s. 8, ch. 89-168, L.O.F.

**Section 3:** Amends s. 295.182, F.S., relating to Florida World War II Veterans Memorial Matching Trust Fund.

**Section 4:** Amends s. 296.10, F.S., relating to adjustments in contribution to support a veteran resident in the Veterans' Domiciliary Home of Florida.

**Section 5:** Provides an effective date of upon becoming law.

## II. 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:

None.

### D. FISCAL COMMENTS:

The Department of Veterans' Affairs provided the following fiscal comment:

There would be a small reduction in the Florida Department of Veterans' Affairs Operations and Maintenance Trust Fund. The amount of reduction is based on the actual percentage change of the Cost-of-Living Adjustment, times 12 months, times the total number of residents who are eligible to received the contribution to support. The Department of Veterans' Affairs estimates the fiscal impact to the Operations and Maintenance Trust Fund would be an incremental reduction of less than \$5,000 annually.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Section 2 of the bill, which defines a future wartime veteran as one who serves during “a period beginning on the date of any future declaration of war by the Congress of the United States and ending on the date prescribed by presidential proclamation or concurrent resolution of the Congress of the United States,” may create an unlawful delegation of state legislative power.

Article II, section 3 of the Florida Constitution prohibits the Legislature from delegating any of its law-making power to other branches of government. Florida courts have “consistently held that it is an unconstitutional delegation of legislative power for the legislature to adopt future legislative or administrative actions of jurisdictions outside of Florida.”<sup>11</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

An amendment by the bill sponsor was adopted in the Judiciary Committee meeting on March 18, 2003. This amendment removed language from the bill which defined wartime veterans based upon future congressional and/or presidential actions. This amendment addressed the constitutional concern raised above.

---

<sup>11</sup> *Gallagher v. Motors Ins. Corp.*, 605 So.2d 62 (Fla. 1992); see also *Eastern Air Lines, Inc. v. Dept. of Revenue*, 455 So.2d 311, 314 (Fla. 1984); *State v. Welch*, 279 So.2d 11 (Fla. 1973).