

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – By authorizing an eligible person to claim a veterans' preference after employment with a government employer, this bill may provide greater flexibility and mobility to those persons who find it necessary to relocate in order to accommodate the needs of family members, such as moving from one city to another in the state to care for elderly family members or to live in closer proximity to other family members.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Employment Preference Generally

The Florida Statutes have included some form of veterans' employment preference since 1947.¹ Currently, s. 295.07, F.S., requires all state government entities, counties, cities, towns, villages, special tax school districts, and special districts ("government employers") to grant employment preferences in hiring and retention to certain veterans and spouses of veterans who are Florida residents.² All advertisements and written job announcements issued by those entities must include notice that veterans and spouses of veterans receive preference in employment and are encouraged to apply for the position.³

Unlike government employers, private employers in Florida are not required to comply with veterans' preference requirements.

Government employers are not required to track the number of persons who claim veterans' preference; therefore, statistics indicating the number of eligible persons who have claimed a veterans' preference, or the number of persons who have been hired as a result of the preference requirements, are unavailable.

Persons Eligible for Employment Preference and Exceptions

Pursuant to s. 295.07(1), F.S., the following persons are eligible to claim the veterans' employment preference:

- Disabled veterans who served on active duty in any branch of the Armed Forces, were honorably discharged, and who have a service-connected disability which is compensable under laws administered by the U.S. Department of Veterans' Affairs (USDVA);
- Disabled veterans who are receiving compensation, disability retirement benefits, or pension under laws administered by the USDVA and the Department of Defense;
- 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;

¹ ch. 24201, L.O.F. (1947).

² § 295.07, F.S., requires the state and political subdivisions of the state to comply with veterans preference requirements. Section 1.01, F.S., defines "political subdivision" as "counties, cities, towns, villages, special tax school districts, special road and bridge districts, and all other districts in the state. Rule 55A-7.004, F.A.C., contains a definition applicable specifically to veterans' preference statutes, and includes all the entities listed above, but also includes all Career Service System positions under the Florida Community College System and the School for the Deaf and the Blind among those required to give employment preference to veterans and spouses of veterans.

³ § 295.065, F.S.

- The spouse of any person missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in the line of duty by a foreign government or power;
- A veteran who served at least 1 day during a specified wartime period; and
- The unremarried widow or widower of a veteran who died of a service-connected disability.

The statute also exempts the following government positions from the veterans' preference requirements⁴:

- Positions that are exempt from the state Career Service System, including certain legislative branch personnel, judicial branch personnel, and personnel of the Office of the Governor; however, all positions under the University Support Personnel System of the State University System as well as all Career Service System positions under the Florida Community College System and the School for the Deaf and the Blind are included;
- Positions in political subdivisions of the state which are filled by officers elected by popular vote or persons appointed to fill vacancies in such offices and the personal secretary of each officer;
- Members of boards and commissions;
- Persons employed on a temporary basis without benefits;
- Heads of departments;
- Positions that require licensure as a physician, licensure as an osteopathic physician, or licensure as a chiropractic physician; and
- Positions that require membership in The Florida Bar.

Veterans' Preference Expiration After Government Employment

Pursuant to s. 295.101, F.S., a veteran's employment preference expires after an eligible person has applied and been employed by a state government entity, county, city, town, village, special tax school district, or special district. This statute was interpreted in 1991 by the First District Court of Appeal, which determined that the veterans' employment preference expires after an eligible person is employed by a government employer; therefore, the veteran did not have a valid claim for violation of veteran's preference in employment when he was not subsequently hired by a city.⁵

Federal law provides a similar veterans' employment preference with respect to certain positions within the federal government, but the preference does not expire after an eligible person obtains employment with the federal government.⁶

If an Examination Determines Qualification for Employment

If an examination is used to determine qualification for employment, points are added to the final examination score as follows⁷:

- 10 points for certain veterans with a service connected disability; for the spouse of a veteran with a total, permanent, service connected disability; and for the spouse of any person missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power;
- 5 points for a veteran who served during wartime and for an unremarried widow or widower of any veteran who died from a service-connected disability.⁸

⁴ § 295.07(4), F.S.

⁵ Drayovitch v. City of Jacksonville, 587 So.2d 588 (Fla. 1st DCA 1991).

⁶ Veterans' preference rights are defined by the Veterans' Preference Act of 1944 ("VPA"), Pub.L. No. 78-359, 58 Stat. 387 (codified at 5 U.S.C. §§ 2108, 3309- 3320), and its attendant regulations, see 5 C.F.R. §§ 302.101- 302.403 (2005); see also Veterans Employment Opportunities Act of 1998 ("VEOA"), Pub.L. No. 105-339, 112 Stat. 3182 (codified at 5 U.S.C. § 3330a et seq.).

⁷ § 295.08, F.S.

⁸ Rule 55A-7.010, F.S.C., provides further procedures for calculating points if the highest possible exam score is other than 100.

In order for points to be awarded, the applicant must first obtain a qualifying score on the examination.⁹ Section 295.08, F.S., requires each government employer to enter the names of persons eligible for preference on an appropriate register or list in accordance with their respective ratings. However, for most positions, the names of all persons qualified to receive a 10-point preference whose service-connected disabilities have been rated to be 30 percent or more must be placed at the top of the appropriate register or employment list, in accordance with their respective ratings.¹⁰

A Florida court determined that s. 295.08, F.S., gives an absolute preference for veterans to be placed at the top of the employment list only if the candidate has a 30 percent or more disability rating.¹¹ The court further declared that there are no statutory provisions suggesting that veterans receiving a 5 or 10 point exam score augmentation must be hired over more qualified non-veterans.¹²

If an Examination Does Not Determine Qualification for Employment

If an examination is not used to determine qualifications for a position, first preference is given to disabled veterans with a service connected disability; the spouse of a veteran with any total, permanent, service-connected disability; and the spouse of any person missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power. Second preference is given to veterans who served during wartime and the unremarried widow or widower of a veteran who died of a service-connected disability who possesses the minimum qualifications necessary to discharge the duties of the position involved.¹³

In 1988, the Florida Attorney General opined that:

While mandating veterans' preference during the employment selection process, Ch. 295, F.S., by providing a means for reviewing the employment of a nonveteran over a preferred veteran, contemplates that nonveterans may be hired. Based upon this statutory scheme, I am unable to conclude that veterans' preference mandates that eligible veterans be hired over nonveterans. I have found no evidence of legislative intent to require the employment of veterans in all instances.¹⁴

In 1990, the First District Court of Appeal followed the opinion of the Attorney General concluding that there is not a mandatory hiring preference for minimally qualified veterans over more qualified non-veterans.¹⁵ In addition, the court concluded that a potential employer is not required to pass a person who is eligible for a veterans' preference through the screening process if he or she does not meet the minimum qualifications for the position.¹⁶

The Florida Department of Veterans' Affairs (FDVA) is responsible for promulgating rules or procedures to ensure that eligible persons are given special consideration in the selection and retention processes of government employers. These procedures must ensure that, for positions that do not require an examination, eligible persons are given special consideration at each step of the employment selection process and are given special consideration in the retention of employees where layoffs are necessitated.¹⁷

In 1988, the Florida Attorney General opined that "veterans' preference provides special consideration for eligible veterans at each step of the employment selection process, but does not require the

⁹ Rule 55A-7.010(1), F.A.C.

¹⁰ 295.08, F.S.

¹¹ Harris v. State, Public Employees Relations Com'n, 568 So.2d 475 (Fla. 1st DCA 1990).

¹² Id.

¹³ § 295.085, F.S.

¹⁴ AGO 88-24

¹⁵ Harris v. State, Public Employees Relations Com'n, 568 So.2d 475 (Fla. 1st DCA 1990).

¹⁶ Id.

¹⁷ § 295.07(2), F.S.

employment of a preferred veteran over a nonveteran who is the 'most qualified' applicant for the position. The employing agency, however, is required to document and justify the decision to hire a nonveteran over the preferred veteran....¹⁸

Complaint and Appeal Process

When a government employer selects a non-veteran over a person who is eligible for a veteran's preference, the eligible person may file a written complaint with the FDVA. The FDVA must investigate complaints and may file an opinion with the Public Employees Relations Commission (Commission) as to the merit or lack of merit in each case. The statute requires the FDVA to conduct all investigations within existing amounts appropriated by the Legislature to the FDVA.¹⁹

Jurisdiction to effectuate the purposes of the veterans' preference requirements rests with the Commission for appropriate administrative determination. If, upon preliminary review, the Commission agrees with the FDVA's determination that a case lacks merit and finds a complete absence of justiciable issues of either law or fact raised by the veterans' preference complaint, the Commission must dismiss the complaint "without the necessity of holding a hearing."²⁰

When a government employer selects a non-veteran over a person who is eligible for a veteran's preference, the initial burden is on the veteran to show minimal qualifications; a timely and proper application for a covered position; and that the employer selected a non-veteran or a veteran with a lesser preference. The burden then shifts to the employer to show that the non-veteran applicant was more qualified.²¹

If the Commission determines that a violation of the veterans' preference requirements has occurred, it must order the offending agency, employee, or officer to comply with the provisions and may issue an order to compensate the veteran for the loss of any wages and reasonable attorney's fees for actual hours worked, and costs of all work, including litigation, incurred as a result of the violation. However, attorney's fees and costs may not exceed \$10,000.²²

If reparation is sought through civil action in court, any agency, employee, or officer of a government employer found in violation of the veterans' preference requirements must also pay the costs of suit and reasonable attorney's fees incurred in the action and pay damages as the court may award, any law to the contrary notwithstanding.²³

State Government Veterans' Preference Provision

With respect to non-exempt positions in the state's career service system, s. 110.2135, F.S., requires the state to grant a preference in hiring and retention to an eligible person if the eligible person meets the minimum eligibility requirements for the position and has the knowledge, skills, and abilities required for the position. A disabled veteran employed as the result of being placed at the top of the appropriate employment list must be appointed for a probationary period of 1 year. At the end of 1 year, if the work of the disabled veteran has been satisfactorily performed, the veteran will acquire permanent employment status and will be subject to the employment rules of the Department of Management Services and the veteran's employing agency.

¹⁸ AGO 88-24

¹⁹ § 295.11, F.S.

²⁰ § 295.11, F.S.

²¹ West Coast Regional Water Supply Authority v. Harris, 604 So.2d 892 (Fla. 1st DCA 1992); See Cox v. Pasco County, 16 FPER Para. 21517 (1990); Rosete v. Department of Professional Regulation, 15 FPER Para. 20518 (1989); Varela v. Department of Health and Rehabilitative Services, 15 FPER Para. 20517 (1989).

²² § 295.14(1), F.S.

²³ § 295.14(2), F.S.

The veterans' preference provided under this section is subject to expiration as provided in s. 295.101, F.S., as previously discussed.

EFFECT OF PROPOSED CHANGES

Pursuant to s. 295.101, F.S., a veteran's employment preference expires after an eligible person has applied and been employed by a state government entity, county, city, town, village, special tax school district, or special district. This bill repeals s. 295.101, F.S., thereby requiring government employers to grant the veterans' employment preference to eligible individuals each time an employment application is submitted for a non-exempt government position, even if the eligible person was previously employed by a government entity in Florida after claiming the veterans' preference. In other words, if a person claims a veterans' preference under s. 295.07, F.S., and is employed by a government employer, that person may claim the preference each time he or she applies for a non-exempt government position in the future.

According to the FDVA, if s. 295.101, F.S., is repealed, "[p]ersons eligible under s. 295.07, F.S., would be able to retain their veterans' preference in situations such as, but not limited to, relocation to another area of the state due to spousal transfer or to move from one state entity to another (e.g. from a state agency to a local government)."²⁴

The bill does not require government employers to create new positions for eligible persons, or apply to promotions or reinstatements to employment after a servicemember returns from active duty. Further, the bill does not affect private employers in Florida because private employers are not required to comply with veterans' hiring preference requirements.

This bill also amends s. 110.2135(1), F.S., to delete a cross-reference to the repealed section.

C. SECTION DIRECTORY:

- Section 1. Repeals s. 295.101, F.S., regarding expiration of veterans' employment preference.
- Section 2. Amends s. 110.2135 (1), F.S., to delete a cross-reference to the repealed section.
- Section 3. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: This bill may have an indeterminate negative fiscal impact on state government due to a potential increase in the number of complaints filed and litigation initiated by eligible persons alleging violation of veterans' preference requirements. Please see Fiscal Comments for further detail.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: This bill may have an indeterminate negative fiscal impact on local governments due to a potential increase in the number of complaints filed and litigation initiated by eligible persons alleging violation of veterans' preference requirements. Due to the ability of eligible persons to

²⁴ Florida Department of Veterans' Affairs, Legislative Analysis (February 23, 2007)

claim a veterans' employment preference after initial government employment, local government entities, including school districts and special districts, may experience an increase in litigation alleging violations of the veterans' employment preference requirements; however, the frequency and cost of potential litigation is indeterminate. Please see Fiscal Comments for further detail.

- C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** This bill will benefit persons eligible to claim a veterans' preference by allowing those persons to claim a veterans' preference after initial employment with a government employer. As a result, eligible persons may have greater flexibility and mobility in seeking government employment.

Private employers are not required to grant veterans' employment preferences and are not affected by this bill.

FISCAL COMMENTS: Between 1999 and 2006, the FDVA received an average of approximately 90 complaints per year from veterans alleging that a government employer violated the veterans' employment preference requirements.²⁵ Allowing veterans to claim a veterans' preference after initial employment by a government employer may result in an increase in the number of complaints filed by veterans alleging violation of the veterans' preference requirements; however, the frequency and cost of potential future complaints is indeterminate. According to the FDVA, any additional complaints will be processed by the full-time employee currently assigned to the program. It should also be noted that s. 295.11, F.S., requires the FDVA to conduct all investigations within existing amounts appropriated to the FDVA.

If the number of complaints increases as a result of the repeal of s. 295.101, F.S., the Public Employees Relation Commission (Commission) may also experience an increase in the number of complaints it must investigate and adjudicate. Again, the frequency and cost of potential future complaints is indeterminate.

If the Commission determines that a violation of the veterans' preference requirements has occurred, it may issue an order to compensate the veteran for the loss of any wages and reasonable attorney's fees for actual hours worked, and costs of all work, including litigation, incurred as a result of the violation. However, attorney's fees and costs may not exceed \$10,000.²⁶

If reparation is sought through civil action in a court of competent jurisdiction, any agency, employee, or officer of the state found in violation of veterans' preference requirements must also pay the costs of suit and reasonable attorney's fees incurred in the action and pay damages as the court may award, any law to the contrary notwithstanding.²⁷

This bill does not require government employers to create new positions for eligible persons; however, these government employers are required to grant an employment preference to any eligible person who claimed a veterans' preference when obtaining previous government employment.

III. COMMENTS

- A. **CONSTITUTIONAL ISSUES:**

1. **Applicability of Municipality/County Mandates Provision:** Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

²⁵ Id.

²⁶ § 295.14(1), F.S.

²⁷ § 295.14(2), F.S.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not grant any agency a specific power, impose a duty that must be implemented by an agency, or require an agency to adopt rules to facilitate implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: The bill sponsor did not submit a statement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None