

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 970

INTRODUCER: Senator Hays

SUBJECT: Employment of Veterans

DATE: March 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	Favorable
2.			CM	

I. Summary:

SB 970 authorizes, but does not require, a private sector employer to establish a voluntary veterans' preference in employment process for an honorably discharged veteran or the spouse of a service-disabled veteran.

II. Present Situation:

In the United States there are over 21 million living veterans, of which, over 1.5 million reside in Florida.¹ Included in this number are nearly 160,000 women veterans in Florida.² For the purpose of obtaining state benefits, Florida Statutes defines the term "veteran" to mean a person who has served in the active military and who has been honorably discharged or released from active duty under honorable conditions.³

Additionally, Florida Statutes defines "service-disabled veteran" to mean a permanent Florida resident with a service-connected disability as determined by the U.S. Department of Veterans Affairs (USDVA) or who has been terminated from military service by reason of disability by the U.S. Department of Defense.⁴ Veterans who have been determined by the USDVA to have a service-connected disability are eligible for monthly disability compensation by the USDVA, which varies with the degree of disability and the number of dependents. A disability is determined to be service-connected, if the disability was incurred or aggravated in the line of duty in the active military service.⁵ There are approximately 249,000 service-disabled veterans living in Florida.⁶

¹ U.S. Census Bureau, Florida Quick Facts. Available at: <http://quickfacts.census.gov/qfd/states/12000.html>.

² Florida Department of Veterans Affairs. *Fast Facts*. Available at: http://floridavets.org/?page_id=50

³ Section 1.01(14), F.S.

⁴ Section 295.187(3)(b), F.S.

⁵ 38 U.S.C. § 101

⁶ See *supra* note 2.

Veterans' Preference in Public Employment

The general unemployment rate in the United States in 2013 was 7.2-percent. The unemployment rate among veterans who have served in the U.S. Armed Forces since September 2001 was 9.0-percent during the same period.⁷ The federal government and nearly all of the states provide preference to veterans to address employment needs of veterans. The forms of veterans' preference vary, but generally pertain to preference in appointment, preference in promotion, preference in retention, and additional employment protections not accorded to nonveterans.

The federal government provides preference over non-veterans in hiring and retention to an honorably discharged veteran who served on active duty during specified periods, served in a military campaign, has a service-connected disability, or is a Purple Heart recipient.⁸

Florida Statutes requires all state government entities, counties, cities, towns, villages, special tax school districts, and special districts (government employers) to grant employment preference in hiring and retention⁹ to the following persons:¹⁰

- A veteran with a service-connected disability;
- The spouse of a veteran who has a permanent and total service-connected disability that prevents the veteran from qualifying for employment;
- The spouse of a military servicemember who is missing in action, was 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;
- A wartime veteran¹¹ who was honorably discharged; and
- The unmarried widow or widower of a veteran who died as a result of a service-connected disability.

Florida's veterans' preference provisions define a tiered point system in which points (5 points or 10 points) are added to the final score of the examination used to determine qualification for employment.¹² For positions in which an examination is not used to determine eligibility, first or second preference in appointment is provided to applicants depending on their status that qualifies them for veterans' preference.¹³

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

⁷ U.S. Department of Labor, Bureau of Labor Statistics, Databases, Tables & Calculators by Subject. Available at: <http://www.bls.gov/webapps/legacy/cpsatab5.htm>.

⁸ 5 U.S.C. § 2108

⁹ Section 295.08, F.S., exempts certain positions from veterans' preference requirement such as persons employed on a temporary basis without benefits, heads of departments, and positions which require membership in the Florida Bar.

¹⁰ Section. 295.07(1)(a)-(d), F.S.

¹¹ Section 1.01(14), F.S. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized or a veteran must have served during one of the following periods of wartime service: (a) Spanish-American War, including the Philippine Insurrection and the Boxer Rebellion; (b) Mexican Border Period; (c) World War I; (d) World War II; (e) Korean Conflict; (f) Vietnam Era; (g) Persian Gulf War; (h) Operation Enduring Freedom; and (i) Operation Iraqi Freedom.

¹² Section 295.08, F.S.

¹³ Section 295.085, F.S.

Veterans' Preference in Private Employment

While the majority of states grant some form of employment preference to veterans in the public sector, private employers have been hesitant to favor veterans due to long-standing federal laws that prohibit discrimination in hiring.¹⁴ Title VII of the Civil Rights Act of 1964 (Act) prohibits veterans' preference in employment as unlawfully discriminatory due to the potential disparate impact on women. However, Section 712 of the Act contains an exception which provides that veterans' preferences permitted pursuant to federal, state, or local law are not subject to challenge under Title VII.¹⁵

Since 2011, four states have enacted statutes that allow private employers to create voluntary veterans' preference policies. These include the states of Washington, Minnesota, Arkansas, and North Dakota.¹⁶

III. Effect of Proposed Changes:

The bill creates s. 295.188, F.S., to authorize, but not require, a private sector employer to establish a voluntary veterans' preference in employment process for an honorably discharged veteran or the spouse of a service-disabled veteran. The bill also clarifies that the provisions in the bill do not violate any state or local equal employment opportunity law.

The bill has an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Title VII of the Civil Rights Act of 1964 prohibits veterans' preferences in employment as unlawfully discriminatory due to the potential disparate impact on women. However, Section 712 of the Act provides an exception for veterans' preference processes that are authorized by federal, state, or local law.

¹⁴ NCSL, Giving Veterans Hiring Preference, by Jennifer Schultz, Vol. 21, No. 46, December 2013, available at: <http://www.ncsl.org/research/military-and-veterans-affairs/giving-veterans-hiring-preference.aspx?TabId=27550>.

¹⁵ EEOC, Policy Guidance on Veterans' Preference Under Title VII, August 10, 1990. Available at: http://www.eeoc.gov/policy/docs/veterans_preference.html

¹⁶ See *supra* Note 14.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 295.188 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.