

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1219 Veterans' Employment

**SPONSOR(S):** Raburn

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	12 Y, 0 N, As CS	Thompson	Thompson
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	White	Topp
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law requires the state and its political subdivisions to grant a preference in hiring to all veterans, Guard members, U.S. Reserve Forces, Gold Star Mothers, Fathers, and legal guardians, and authorizes private sector employers to establish a veterans' preference process for honorably discharged veterans and certain spouses. However, Florida law does not provide a policy concerning the recruitment and employment of veterans by state agencies. In addition, Florida law does not provide a policy regarding the tracking of statistical data concerning these practices.

The bill revises the section of Florida law governing veterans' preference in appointment and retention.

Specifically, the bill:

- Requires each state agency, and allows each political subdivision of the state, to develop and implement a written veterans' recruitment plan;
- Requires each veterans' recruitment plan to establish and meet annual goals for ensuring the full use of veterans in the agency's or subdivision's workforce;
- Requires the Department of Management Services (DMS) to collect statistical data for each state agency on the number of persons who claim veterans' preference, the number of persons who were hired through veterans' preference, and the number of persons who were hired as a result of the veterans' recruitment plan; and
- Requires DMS to annually update the statistical data on its website and include the statistics in its annual workforce report.

The bill requires each veterans' recruitment plan to apply to the same veterans and veterans' family members that are addressed in the Florida law governing veterans preference in appointment and retention.

The fiscal impact to the state and each political subdivision of the state is indeterminate but likely insignificant. The effects of the bill will likely have a positive fiscal impact on veterans and their family members.

The effective date of the bill is October 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Military and Veteran Presence in Florida

Current law defines a “veteran” as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions.<sup>1</sup> Currently, there are 21.8 million veterans in the United States, of which, over 1.6 million reside in Florida.<sup>2</sup> This makes Florida the state with the third largest veteran population, behind only California and Texas.<sup>3</sup> Approximately 299,000 of Florida’s veterans are service-disabled.<sup>4</sup>

Florida’s overall unemployment rate for calendar year 2014 was 6.3 percent.<sup>5</sup> The unemployment rate among Florida veterans was 5.0 percent compared to 5.3 percent nationally.<sup>6</sup> The unemployment rate among Florida Post-9/11 era veterans averaged 4.8 percent compared to 7.2 percent nationally.<sup>7</sup>

##### Veterans’ Preference in Employment

The Florida statutes have included some form of veterans’ employment preference since 1947.<sup>8</sup> The purpose of the veterans’ preference statute is to reward those who served their country in a time of need and to recognize the qualities and traits developed by military service.<sup>9</sup> In 2014, the Legislature:

- Expanded Florida’s veterans’ preference in public employment process to increase the field of persons eligible for veterans’ preference to include all veterans, Guard members, U.S. Reserve Forces, and Gold Star Mothers, Fathers, and legal guardians; and
- Authorized private sector employers to establish a veterans’ preference process for honorably discharged veterans and certain spouses.<sup>10</sup>

The law specifically 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 retention to certain veterans, and family members of certain military servicemembers and veterans.<sup>11</sup> All advertisements and written job announcements must include notice that veterans and

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<sup>1</sup> s. 1.01(14), F.S.

<sup>2</sup> U.S. Census Bureau, *A Snapshot of Our Nation’s Veterans*, available at: <http://www.census.gov/library/infographics/veterans.html> (last viewed January 20, 2016).

<sup>3</sup> Florida Department of Veterans’ Affairs, *Fast Facts*, available at: [http://floridavets.org/?page\\_id=50](http://floridavets.org/?page_id=50) (last viewed January 20, 2016).

<sup>4</sup> U.S. Department of Veterans Affairs, *Veterans Benefits Administration, Annual Benefits Report, Fiscal Year 2014*, page 22 of 80, available at: <http://www.benefits.va.gov/REPORTS/abr/ABR-IntroAppendix-FY13-09262014.pdf> (Last visited January 18, 2016).

<sup>5</sup> See Florida Department of Economic Opportunity, *Local Area Unemployment Statistics*, available at: <http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/local-area-unemployment-statistics> (last visited January 20, 2016).

<sup>6</sup> United States Congress Joint Economic Committee, *Economic Snapshot: Florida* (Oct. 2015), available at: [http://www.jec.senate.gov/public/\\_cache/files/2cb3bde9-27db-4584-86fc-f2ce46e4bb2e/florida.pdf](http://www.jec.senate.gov/public/_cache/files/2cb3bde9-27db-4584-86fc-f2ce46e4bb2e/florida.pdf) (last visited January 20, 2016).

<sup>7</sup> Id.

<sup>8</sup> s. 1, ch. 24201, L.O.F. (1947).

<sup>9</sup> *Yates v. Rezeau*, 62 So.2d 726, 727 (Fla. 1952); Ch. 98-33, at 244, L.O.F.

<sup>10</sup> CS/CS/HB 7015 was approved by the Governor on March 31, 2014, ch. 2014-1, L.O.F., became effective on July 1, 2014, except as otherwise provided.

<sup>11</sup> Section 295.07(1), 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 FCS and the School for the Deaf and the Blind among those required to give employment preference to veterans and spouses of veterans.

eligible family members receive preference in employment and are encouraged to apply for the position.<sup>12</sup>

Florida's veterans' preference in employment statutes does not require a government employer to hire a veteran over a more qualified non-veteran.<sup>13</sup> In addition, a potential government employer is not required to pass a person who is eligible for veterans' preference through the screening process if he or she does not meet the minimum qualifications for the position.<sup>14</sup>

In addition, beginning in 2014, private employers in Florida were authorized to provide veterans' preference requirements.<sup>15</sup>

### 1. *Persons Eligible for Employment Preference and Exceptions*

Pursuant to Florida law, the following persons are eligible to claim veterans' employment preference:<sup>16</sup>

- a) Disabled Veterans who have served on active duty in any branch of the Armed Forces and who presently have an existing service-connected disability which is compensable under public laws administered by the DVA or are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the DVA and the Department of Defense.
- b) The spouse of a Veteran:
  - a. who has a total and permanent service-connected disability and who, because of this disability, cannot qualify for employment; or
  - b. Who is missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power.
- c) A Veteran of any war, who has served at least one day during that war time period as defined in s. 1.01 (14), F.S., or who has been awarded a campaign or expeditionary medal. (Active duty for training shall not be allowed for eligibility under this provision.)
- d) The unremarried widow or widower of a Veteran who died of a serviceconnected disability.
- e) The mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions as verified by the U.S. Department of Defense.
- f) A Veteran as defined in s. 1.01(14), F.S., "Active Duty for Training" may not be allowed under this paragraph. The term "veteran" is defined as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions.
- g) A current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

Florida law exempts the following government positions from the veterans' preference requirements:<sup>17</sup>

- 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 SUS as well as all Career Service System positions under the FCS 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;

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<sup>12</sup> s. 295.065, F.S.

<sup>13</sup> Harris v. State, Public Employees Relations Com'n., 568 So.2d 475 (Fla. 1st DCA 1990).

<sup>14</sup> Id.

<sup>15</sup> s. 295.188, F.S.

<sup>16</sup> s. 295.07(1)(a)-(g), F.S.

<sup>17</sup> s. 295.07(4)(a)-(b), F.S.

- 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.

## 2. *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 follows:<sup>18</sup>

<b>Category</b>	<b>Proposed</b>
Disabled Veteran	15
Spouse of Person With Total Disability, Missing in Action, Captured in Line of Duty, Etc.	15
Wartime Veteran	10
Un-remarried widow/widower of Person Who Died of a Service-Connected Disability	10
Gold Star Family	10
Veteran	5
National Guard/Reserve	5

In order for points to be awarded, the applicant must first obtain a qualifying score on the examination.<sup>19</sup>

Florida law 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.<sup>20</sup> For most positions, the names of all persons qualified to receive a fifteen-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.<sup>21</sup> A Florida court determined that this provision 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.<sup>22</sup>

However, the court further declared that there are no statutory provisions suggesting that veterans receiving a five or ten point exam score augmentation must be hired over more qualified non-veterans.<sup>23</sup>

## 3. *If an Examination Does Not Determine Qualification for Employment*

If an examination is not used to determine qualifications for a position, preference is given as follows:<sup>24</sup>

- First preference is given to disabled veterans who have served on active duty in any branch of the Armed Forces and who presently have an existing service-connected disability which is compensable under public laws administered by the DVA or are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the DVA and the Department of Defense; and the spouse of a veteran who has a total and permanent service-connected disability and who, because of this disability, cannot qualify for employment, or who is missing in action, captured in line of duty by a hostile force, or detained or interned in

<sup>18</sup> s. 295.08, F.S.; Rule 55A-7.010, F.A.C., provides further procedures for calculating points if the highest possible exam score is other than 100.

<sup>19</sup> Rule 55A-7.010(1), F.A.C.

<sup>20</sup> s. 295.08, F.S.

<sup>21</sup> Id.

<sup>22</sup> *Harris v. State, Public Employees Relations Com'n.*, 568 So.2d 475 (Fla. 1st DCA 1990).

<sup>23</sup> Id.

<sup>24</sup> s. 295.085, F.S.

line of duty by a foreign government or power (i.e., those listed above in points a. and b. under “Persons Eligible for Employment Preference and Exceptions”); and

- Second preference is given to a veteran of any war; the unmarried widow or widower of a veteran who died of a service connected disability; the mother, father, legal guardian, or unmarried widow or widower of a service member who died as a result of military service under combat-related conditions; a veteran as defined in s. 1.01(14), F.S.; a current member of any reserve component of the U.S. Armed Forces or the Florida National Guard. (i.e., those listed above in points c. through g. under “Persons Eligible for Employment Preference and Exceptions”).

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 non-veteran over a preferred veteran, contemplates that non-veterans may be hired. Based upon this statutory scheme, I am unable to conclude that veterans' preference mandates that eligible veterans be hired over non-veterans. I have found no evidence of legislative intent to require the employment of veterans in all instances.<sup>25</sup>

The DVA 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.<sup>26</sup> 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.<sup>27</sup>

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 employment of a preferred veteran over a non-veteran who is the ‘most qualified’ applicant for the position. However, the employing agency is required to document and justify the decision to hire a non-veteran over the preferred veteran.<sup>28</sup>

#### 4. *Complaint and Appeal Process*

When a government employer selects a non-veteran over a person who is eligible for veterans' preference, the eligible person may file a written complaint with the DVA. DVA must investigate the complaint and may file an opinion with the Public Employees Relations Commission (PERC) as to the merit or lack of merit in each case. DVA must conduct all investigations within existing amounts appropriated by the Florida Legislature.<sup>29</sup>

Jurisdiction to effectuate the purposes of the veterans' preference requirements rests with the PERC for appropriate administrative determination. If, upon preliminary review, the PERC agrees with the DVA'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 PERC must dismiss the complaint “without the necessity of holding a hearing.”<sup>30</sup>

When a government employer selects a non-veteran over a person who is eligible for veterans' 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 over a veteran with a

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<sup>25</sup> See Attorney General's Opinion 88-24.

<sup>26</sup> s. 295.07(2), F.S.

<sup>27</sup> Id.

<sup>28</sup> See Attorney General's Opinion 88-24.

<sup>29</sup> s. 295.11, F.S.

<sup>30</sup> s. 295.11, F.S.

lesser preference. The burden then shifts to the employer to show that the non-veteran applicant was more qualified.<sup>31</sup>

If the PERC 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.<sup>32</sup> However, attorney's fees and costs may not exceed \$10,000.<sup>33</sup>

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 the suit and reasonable attorney's fees incurred in the action and pay damages as the court may award, any law to the contrary notwithstanding.<sup>34</sup>

##### 5. *State Government Veterans' Preference Provision*

With respect to non-exempt positions in the state's career service system, Florida law 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.<sup>35</sup> 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 one year.<sup>36</sup> At the end of one year, if the disabled veteran's performance is satisfactory, the veteran will acquire permanent employment status and will be subject to the employment rules of the Florida Department of Management Services (DMS) and the veteran's employing agency.<sup>37</sup>

##### 6. *Federal Gold Star Mother Act*

Pursuant to the United States Code, federal employers are required to grant employment preference to the mother of either (a) a service-connected permanently and totally disabled veteran; or (b) an individual who lost his life under honorable conditions while serving in the U.S. Armed Forces during specified periods of active duty, provided that:<sup>38</sup>

- Her husband is totally and permanently disabled;
- She is widowed, divorced, or separated from the father and has not remarried; or
- She has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed.

The U.S. Department of Veterans Affairs (USDVA) is the federal agency tasked with making the official determination of the existence of a service-connected disability. The term "disabled veteran" is defined as an individual who has served on active duty in the armed forces, has been separated under honorable conditions, and has established the existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a public statute administered by the USDVA or a military department.<sup>39</sup>

The term "service-connected" is further defined in the U.S. Code to mean that the disability or death suffered by the veteran was incurred or aggravated in the line of duty in active military, naval, or air

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<sup>31</sup> West Coast Regional Water Supply Authority v. Harris, 604 So.2d 892, 893 (Fla. 1st DCA 1992); *See also 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).

<sup>32</sup> s. 295.14(1), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> s. 295.14(2), F.S.

<sup>35</sup> s. 110.2135(1), F.S.

<sup>36</sup> s. 110.2135(2), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> 5 U.S.C. § 2108(3)(F), (G)

<sup>39</sup> 5 USC 2108(2). *See also* s. 295.07(1)(a)1., F.S.

service.<sup>40</sup> There are instances in which a veteran's service-connected disability is not determined by the USDVA. In this instance, the Department of Defense (DoD) would determine the existence of a disability and provide compensation to the veteran. The secretaries of the military departments have the authority to make the final determination of disability in each case.<sup>41</sup> When that determination is made the servicemember may decide whether to receive military retirement benefits from the DoD or disability compensation from the USDVA.

## 7. Death Benefits for Family of Military Servicemembers

The United States Department of Defense (DOD) provides compensation to members of the United States Armed Forces through the death gratuity program.<sup>42</sup> The death gratuity program provides for a special tax free payment of \$100,000 to eligible survivors of members of the United States Armed Forces, who die while on active duty or while serving in certain reserve statuses. The death gratuity is the same regardless of the cause of death.<sup>43</sup> The longstanding purpose of the death gratuity has been to provide immediate cash payment to assist survivors of deceased members of the United States Armed Forces to meet their financial needs during the period immediately following a servicemember's death and before other survivor benefits, if any, become available.<sup>44</sup> The death gratuity is also payable if an eligible servicemember or former servicemember dies within 120 days of release or discharge from active duty, or active duty for training when the Secretary of the USDVA determines that the death resulted from injury or disease incurred or aggravated during such duty.<sup>45</sup>

According to the Department of Management Services (DMS), for fiscal year 2014-2015, 761 applicants claiming veterans' preference were marked as hired by the employing agency in People First.<sup>46</sup> However, government employers are not required to track the number of persons who claim veterans' preference; therefore, statistics indicating the number of eligible persons who requested veterans' preference, or the number of persons who were hired as a result of the preference requirements, are not always available.

In addition, Florida law does not provide a policy concerning the active recruitment of veteran employees.

### Proposed Changes

The bill revises the section of Florida law governing veterans' preference in appointment and retention.

Specifically, the bill:

- Requires each state agency, and allows each political subdivision of the state, to develop and implement a written veterans' recruitment plan;
- Requires each veterans' recruitment plan (developed and implemented by the state agency or political subdivision) to establish and meet annual goals for ensuring the full use of veterans in the agency's or subdivision's workforce;
- Requires the Department of Management Services (DMS) to collect statistical data for each state agency on the number of persons who claim veterans' preference, the number of persons who were hired through veterans' preference, and the number of persons who were hired as a result of the veterans' recruitment plan; and
- Requires DMS to annually update the statistical data on its website and include the statistics in its annual workforce report.

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<sup>40</sup> 38 USC 101(16).

<sup>41</sup> 10 USC 1201.

<sup>42</sup> DOD Military Compensation, Death Gratuity, available at: <http://militarypay.defense.gov/Benefits/DeathGratuity.aspx> (last viewed January 18, 2016).

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> According to DMS staff, this number only reflects data from State Personnel System agencies and does not include data for any other government employer

The bill requires each veterans' recruitment plan to apply to the same veterans and veterans' family members that are addressed in the Florida law governing veterans preference in appointment and retention (those veterans and their families listed and described on page 3 of this analysis).

**B. SECTION DIRECTORY:**

Section 1: Amends s. 295.07, F.S., relating to veterans' employment in the state workforce.

Section 2: Provides an effective date of October 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Requiring each state agency to develop and implement a written veterans' recruitment plan and to establish and meet new annual goals may create an indeterminate but likely insignificant negative fiscal impact to state agencies.

Requiring DMS to collect statistical data, annually update the data on its website, and include the data in its annual workforce report may create an indeterminate but likely insignificant negative fiscal impact to the department. There may be a programming impact to People First, but this should be insignificant and can be handled within existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Allowing each political subdivision of the state to develop and implement a written veterans' recruitment plan may create an indeterminate negative fiscal impact to these political subdivisions. However, this is an authorization for the political subdivisions of the state and not a requirement.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will likely have a positive fiscal impact to veterans in the state. Recruiting veterans to the state government workforce will likely increase the amount of veterans who are hired and, thereby, receive gainful employment.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2016, the Veteran & Military Affairs Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment revises the requirements of the proposed veterans' recruitment plan and places the plan in the veterans' preference section of law in order to enhance and accurately track the state's practices relating to the recruitment and employment of veterans in the workforce. This analysis is drafted to the committee substitute as passed by the Veteran & Military Affairs Subcommittee. Specifically, the amendment:

- Makes the proposed veterans' recruitment plan a component of the state's veterans' preference in employment and retention law;
- Requires each state agency, and allows each political subdivision of the state, to develop and implement a recruitment plan;
- Requires specific goals for a recruitment plan to be set and met by the agencies and political subdivisions; and
- Requires the Department of Management Services to collect and publish data on each agency's recruitment plan and veterans' preference performance.