

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 Commerce and Tourism

BILL: SB 970

INTRODUCER: Senator Hays

SUBJECT: Employment of Veterans

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon</u>	<u>Ryon</u>	<u>MS</u>	Favorable
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Pre-meeting

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 veterans, of which, over 1.5 million reside in Florida.¹ Approximately 75 percent of Florida's veteran population are wartime veterans, including more than 231,000 veterans of the Afghanistan and Iraq wars and 498,000 Vietnam-era veterans. There are 187,000 military retirees who call Florida home.² The national unemployment rate for nonveterans 18 and over for 2013 was 7.2 percent.³ The total unemployment rate among veterans was 6.6 percent for the same period; however, for those who have served in the armed forces during Gulf War era II, the unemployment rate was 9 percent.⁴

For the purpose of obtaining state benefits, Florida law defines the term "veteran" to mean a person who has served in the active military and who has been honorably discharged or released

¹ U.S. Census Bureau, State & County Quick Facts, Florida, available at <http://quickfacts.census.gov/qfd/states/12000.html> (last visited Mar. 10, 2014).

² Florida Department of Veterans' Affairs, Fast Facts, available at http://floridavets.org/?page_id=50 (last visited on Mar. 10, 2014). Additionally, Florida is home to 160,000 women veterans, 164,000 World War II Veterans, and 249,000 disabled veterans.

³ U.S. Department of Labor, Bureau of Labor Statistics, Data Retrieval: Labor Force Statistics (CPS), available at <http://www.bls.gov/webapps/legacy/cpsatab5.htm> (last visited Mar. 10, 2014). To retrieve this data, select total unemployment rate for nonveterans, 18 years and over.

⁴ U.S. Department of Labor, Bureau of Labor Statistics, Data Retrieval: Labor Force Statistics (CPS), available at <http://www.bls.gov/webapps/legacy/cpsatab5.htm> (last visited Mar. 10, 2014). To retrieve this data, select the total unemployment rate for veterans, 18 years and over and the total unemployment rate for Gulf War-era II veterans. Gulf War era II includes veterans who served on active duty from September 2001 to present.

from active duty under honorable conditions.⁵ Additionally, Florida law 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, or who has been terminated from military service by reason of disability by the U.S. Department of Defense.⁶ 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.⁷ There are approximately 249,000 service-disabled veterans living in Florida.⁸

Florida has a large active-duty military population with more than 61,000 military personnel and 12,000 Florida National Guard members. Another 25,000 civilian personnel are directly associated with the military presence in Florida.⁹

Florida’s military installations and defense businesses provide a \$73 billion annual economic impact, and account for more than 758,000 jobs in Florida, representing the third largest sector of the state economy after agriculture and tourism.¹⁰

Veterans’ Preference in Public Employment

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, promotion, and retention, and provide additional employment protections not accorded to nonveterans.

The federal government provides preference over nonveterans 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. Preference is also given to spouses, widows or widowers, and mothers of such individuals when the veteran is unable to use the preference.¹¹

Florida law 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 retention¹² to the following persons:¹³

- A veteran with a service-connected disability;

⁵ Section 1.01(14), F.S.

⁶ Section 295.187(3)(b), F.S.

⁷ 38 U.S.C. s. 101(16).

⁸ See *supra* note 2.

⁹ Enterprise Florida, Inc. (EFI), *Florida Defense Factbook*, January 2013, available at <http://www.floridadefense.org/documents/HAAS%20Study%202013/Factbook%202013%20FINAL.pdf> (last visited on Mar. 10, 2014).

¹⁰ EFI, *Florida’s Military Profile*, (Sept. 2013), available at http://www.enterpriseflorida.com/wp-content/uploads/Military_Install_Map1.pdf (last visited Mar. 10, 2014).

¹¹ 5 U.S.C. s. 2108. See also Office of Personnel Management, *Feds Hire Vets, Veterans’ Preference*, available at <http://www.fedshirevets.gov/job/vetpref/index.aspx>, and Family Member Preference (Derived Preference), available at <http://www.fedshirevets.gov/job/familypref/index.aspx> (last visited Mar. 12, 2014).

¹² Section 295.07(4)(b), F.S., exempts certain positions from the veterans’ preference requirement such as persons employed on a temporary basis without benefits, heads of departments, positions that require licensure as a physician, and positions which require membership in the Florida Bar.

¹³ Section. 295.07(1)(a)-(d), F.S.

- 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 service member who is missing in action, was captured in the line of duty by a hostile force, or was forcibly detained or interned in the line of duty by a foreign government or power;
- A wartime veteran¹⁴ who was honorably discharged; and
- The unremarried 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.¹⁵ 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.¹⁶

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

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.¹⁷ Title VII of the Civil Rights Act of 1964 (act), as amended, prohibits veterans' preference in employment as unlawfully discriminatory due to the potential disparate impact on women.¹⁸ However, the act contains an exception that provides that veterans' preferences permitted pursuant to federal, state, or local law are not subject to challenge under Title VII.¹⁹

¹⁴ 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.

¹⁵ Section 295.08, F.S. Ten points are given to an individual with a service-connected disability or the spouse of an individual with a service-connected disability or whose spouse is missing in action, 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. Five points is given to an individual who is a wartime veteran or the unremarried widow or widower or a veteran who died as the result of a service-connected disability.

¹⁶ Section 295.085, F.S. An individual must meet the minimum qualifications for the position for which he or she is applying. First preference is given to an individual with a service-connected disability or the spouse of an individual with a service-connected disability or whose spouse is missing in action, 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. Second preference is given to an individual who is a wartime veteran or the unremarried widow or widower or a veteran who died as the result of a service-connected disability.

¹⁷ Jennifer Schultz, National Conference of State Legislatures, *Giving Veterans Hiring Preference*, LegisBrief, Vol. 21, No. 46, (December 2013) (on file with the Senate Commerce and Tourism Committee).

¹⁸ U.S. Equal Employment Opportunity Commission, "Policy Guidance on Veterans' Preference under Title VII," Aug. 10, 1990, available at http://www.eeoc.gov/policy/docs/veterans_preference.html (last visited Mar. 10, 2014).

¹⁹ *Id.* 42 U.S.C. s. 2000e-11. However, the preference may be challenged when evidence shows disparate treatment in its application.

Since 2011, four states have enacted statutes that allow private employers to create voluntary veterans' preference policies: Washington, Minnesota, Arkansas, and North Dakota.²⁰

III. Effect of Proposed Changes:

SB 970 creates s. 295.188, F.S., to authorize, but not require, a private sector employer to establish a voluntary veterans' preference in employment for an honorably discharged veteran or the spouse of a service-disabled veteran. The bill also states that these provisions 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Veteran or other persons authorized under this bill seeking employment may benefit from private employers who implement a plan that provides preferential treatment of veterans in hiring and retention practices.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²⁰ See *supra* note 18.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
