

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 10, 1998 Revised: 3/12/98 _____

Subject: Veterans' Preference in Employment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>WM</u>	<u>Withdrawn</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 142 amends a number of “veterans’ preference” provisions of chapter 295, Florida Statutes. In addition to several clarifications of the law, the bill requires state residency in order to declare veterans’ preference, provides equity for military retirees, allows veterans from other states to benefit from Florida’s Veteran’s Preference law after they have established residency in Florida, and authorizes Public Employees Relations Commission (PERC) discretion to award reasonable attorney’s fees, up to a maximum of \$7,500, where the public employer is found to have violated the veteran’s preference statute.

This bill renumbers s. 295.15 as s. 295.065; renumbers subsection (2) of s. 295.085 as 295.07(2); substantially amends sections 295.07, 295.08, 295.085, 295.101, 295.11, and 295.14; repeals section 295.151; and creates s. 295.155 of the Florida Statutes.

II. Present Situation:

The Florida “veterans’ preference” law was enacted in 1947. Chapter 24201, L.O.F., provided that honorably discharged war veterans, their wives, and widows “be entered ahead of all others having the same rating.”

The “veterans’ preference” law is now found in s. 110.2135 and chapter 295, F.S. Section 295.07, F.S., provides that the state and its political subdivisions 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 widows or widowers of veterans who died of a service-connected disability. Positions which are exempt from the State’s Career Service System are exempt from the veterans’ preference law, except for the University Support Personnel System in the State University System and all career service positions within the state’s

community colleges and the School for the Deaf and the Blind. Also, any positions in political subdivisions of the state which are filled by elected officers, as well as other specified positions, are exempt from the veterans' preference law.

Current state law does not require a veteran to be a resident of the State of Florida in order to qualify for veterans' preference. Ten states require residency status in order to qualify for veterans' preference: Alaska, Idaho, Iowa, New Hampshire, New York, Nevada, North Dakota, Oklahoma, Tennessee, and Texas.

Presently, s. 295.08, F.S., provides preference points for certain war veterans and certain spouses of veterans, provided the covered war veterans and spouses have, otherwise, obtained a qualifying score on the examination for the position.

Ten points are added to the ratings of those disabled veterans who:

- Served on active duty in any branch of the Armed Forces of the U.S., were separated under honorable conditions and have established a present existence of a service-connected disability compensable under federal public law; or
- Are receiving compensation, disability retirement benefits, or pension by reason of certain federal public laws.

Further, ten points are added to the ratings of 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; or
- Any person 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 are added to the rating of any person who is:

- A veteran of any war as defined in s. 1.01(14), F.S., which includes, most recently, World Wars I and II, Korean Conflict, Vietnam Era and Persian Gulf War; or
- An unremarried widow or widower of a veteran who died of a service-connected disability.

However, s. 295.08, F.S., provides that certain veterans who are 30 percent or more disabled are to be placed at the top of the employment list and given an "absolute preference" when applying for positions that have competitive examinations.

Section 295.085, F.S., provides special consideration for applicants in which the appointment or employment of the applicant is not subject to a written examination. Under this circumstance, preference must be given first to disabled veterans and to the spouse of any person who has a total and permanent service-connected disability. Preference next applies to veterans of specified wars and the widow or widower of any veteran who died of a service-connected disability.

Section 295.09, F.S., provides that when an employee of the state or any of its political subdivisions has left employment to serve in the Armed Forces of the United States and is later honorably discharged or separated, such person must be reemployed or reinstated by the previous employer in the same or an equivalent position provided such person returns to the position within one year of the military separation date. In the case of extended active duty, a person must be reemployed or reinstated within one year of the date of discharge or separation subsequent to the separation. Such person must also be awarded preference in promotion and shall be promoted ahead of all others who are as well or less qualified for the position.

Section 295.101, F.S., providing for the expiration of veterans' employment preference, became law on October 1, 1987 pursuant to chapter 87-356, L.O.F. This provision states that a veteran's employment preference has expired after an eligible person has applied and has been employed by any state or any agency of a political subdivision of the state.

Section 295.11, F.S., provides a process for an aggrieved veteran to seek relief. A veteran may submit a written complaint against a prospective employer to the Florida Department of Veterans' Affairs (FDVA) if the veteran is not successful in gaining employment and feels veterans' preference rights were not appropriately considered. The FDVA investigates the complaint and, if the department's resolution is not satisfactory, the complainant may request that the complaint be submitted to the PERC for a hearing. As provided in s. 295.14, F.S., subsequent to the hearing, if PERC determines that a violation occurred, PERC may award lost wages. Because of the construction of current law, such lost wages can be awarded only in cases where violations of the reinstatement, reemployment or promotion provisions occurred. Current law does not allow for an award of lost wages in cases where initial employment preference was violated.

Section 295.151, F.S., provides that military retirees who retire on the basis of longevity are prohibited from claiming veterans' preference under personnel systems where numerically-scored exams are used for selection. However, the law allows eligibility of military retirees (for longevity) in claiming veterans' preference under personnel systems where selection for the position does not include the use of numerically-scored exams.

III. Effect of Proposed Changes:

Section 1 renumbers the intent section related to veterans' preference from s. 295.15, F.S., to s. 295.065, F.S., which places the legislative intent immediately prior to the sections in ch. 295, F.S., which relate to veterans' preference in appointment and retention.

Section 2 relocates and renumbers subsection (2) of s. 295.085, F.S., as s. 295.07(2), F.S. This subsection requires the Department of Veterans' Affairs to adopt rules and procedures which ensure that eligible persons are given special consideration in the employing agency's selection and retention processes. In addition, this section of the bill establishes that a person must be a Florida resident to be eligible for veterans' preference for employment and retention.

Section 3 retitles s. 295.08, F.S., to clarify that the provisions of this section apply to positions for which a numerically based selection process is used for employment. This section removes obsolete criterion with regard to applying veterans' preference points by eliminating the phrase, "the lowest range of the salary is over \$9,000 per annum."

Section 4 retitles s. 295.085, F.S., to clarify that the veterans' preference provisions in this section apply to positions for which a numerically based selection process is not used for employment. This section also specifies that the veterans' preference also applies in retention circumstances, which is consistent with s. 295.07, F.S. This section deletes subsection (2) of s. 295.085, F.S., which was relocated and renumbered as s. 295.07(2), F.S.

Section 5 amends s. 295.101, F.S., to clarify that a veteran's employment preference expires once a veteran is employed with "the" state or political subdivision rather than "any" state or political subdivision. This would allow former non resident veterans who were previously employed by another state or political subdivision of another state to benefit from Florida's Veteran's Preference law after they have established residency in Florida.

Section 6 amends s. 295.11(1) and (3), F.S., to clarify that when a veteran's preference complaint is not satisfactorily resolved and the complainant requests a hearing before the PERC, any department of the state or any political subdivision of the state may testify at the hearing either telephonically or in person at the discretion of PERC.

Section 7 amends subsection (1) of s. 295.14, F.S., to authorize PERC discretion to award loss of any wages, reasonable attorney's fees for actual hours worked and costs up to a maximum of \$7,500 to the veteran seeking redress where the public employer is found to have violated ss. 295.07, 295.08, and 295.085(1), F.S., which relate to initial employment preference. This discretion would be in addition to the current law that allows for PERC to award loss of wages incurred as a result of an agency's violation of s. 295.09(1)(a) or (b), F.S., which relates to reinstatement, reemployment or promotion preference.

Sections 8 and 9 repeals s. 295.151, F.S., and creates s. 295.155, F.S., to provide that military retirees would be eligible for veterans' preference in appointment and retention pursuant to s. 295.07, F.S.

Section 10 provides an effective date "upon becoming a law."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Qualified veterans may benefit in the public sector job market because the increased penalty provision will permit an investigation and/or hearing to occur at the initial employment stage, rather than only at the time of reinstatement or reemployment.

C. Government Sector Impact:

According to the fiscal information provided by the FDVA, each case brought before the FDVA costs approximately \$250 to process.

According to PERC, there were 93 veterans' cases filed in 1993. In 1994, 36 veterans filed a total of 122 cases. Five veterans accounted for 59 cases, or 48% of the total. In 1995, PERC heard 46 veterans' cases. In 1996, 14 cases were filed, and 6 hearings were held. No veteran prevailed in any case. In 1997, 26 cases were filed and 5 cases are still pending.

Based on information provided to the FDVA by PERC staff, alleged violations of veterans' hiring preference statutes are one of the least frequent causes of cases heard by the PERC. PERC estimates that they expend approximately \$1000 per case.

According to the FDVA, the residency requirement contained in section 2 of the bill may result in three fewer processed cases annually, with an anticipated savings of \$750. Counties and municipalities may anticipate saving \$1,500 processing six fewer cases annually. However, these savings may be offset by provisions in sections 8 and 9 of the bill, which

allow military retirees to benefit from the veteran's preference law. In addition, by providing that veterans' preference expires when the veteran has been employed by "the" state rather than "any" state (section 5), more veterans may be eligible to use veterans' preference when seeking employment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Reform and Oversight:
Increases the maximum attorney's fee level from \$7,500 to \$10,000.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
