



Committee on Military & Veterans' Affairs

**Wednesday, March 7, 2007
1:45 - 3:00 PM
12 HOB**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Military & Veterans' Affairs

Start Date and Time: Wednesday, March 07, 2007 01:45 pm

End Date and Time: Wednesday, March 07, 2007 03:00 pm

Location: 12 HOB

Duration: 1.25 hrs

Consideration of the following bill(s):

HB 37 Periods of Wartime Service for Veterans by Meadows

HB 699 Preference in Public Employment for Veterans by Sachs

Recommendations for administrative changes to trust funds within the Department of Military Affairs.



NOTICE FINALIZED on 03/05/2007 16:07 by Villar.Melissa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 37
SPONSOR(S): Meadows
TIED BILLS:

Periods of Wartime Service for Veterans

IDEN./SIM. BILLS: SB 156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Military & Veterans' Affairs</u>	_____	Camechis 	Camechis 
2) <u>Government Efficiency & Accountability Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill amends the current statutory definition of "veteran" in s. 1.01(14), F.S. As a result, veterans who served during Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), but were not deployed into an area of operation, are eligible for wartime service benefits.

Currently, s. 1.01(14), F.S., includes a general definition of the term "veteran" that is used in determining eligibility of veterans for benefits provided by the state. Under the current definition, a person who has served in the active military, naval, or air service and who has been discharged or released from active duty under honorable conditions is eligible for standard veterans' benefits. A veteran is eligible for enhanced benefits for wartime service if the veteran served in a campaign or expedition for which a campaign badge has been authorized or served during a period of wartime service specified in the definition. Wartime service benefits include: potential credits with the Florida Retirement System; government employment hiring and retention preferences; nursing home admittance preferences; a local business tax exemption; and, an additional homestead property tax exemption.

Under the current definition, a veteran who was deployed into an area of operation during OEF or OIF, and who received a campaign badge, is eligible for all standard veterans' benefits as well as enhanced wartime service benefits. However, a veteran who served on active duty during OEF or OIF without being deployed into an area of operation is eligible for standard veterans' benefits but not wartime service benefits.

This bill appears to have an insignificant fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill expands the number of veterans who are eligible for certain wartime service benefits; however, the bill appears to have an insignificant fiscal impact on state and local governments.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Operation Enduring Freedom

Operation Enduring Freedom (OEF) is the official name of the American military response to the September 11, 2001, terrorist attacks on the United States. On October 7, 2001, President Bush addressed the nation, announcing that “strikes against al Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan” had begun.¹ Today, OEF comprises several subordinate operations: Operation Enduring Freedom – Afghanistan; Operation Enduring Freedom - Philippines; and Operation Enduring Freedom - Horn of Africa. The term "OEF" typically refers to the war in Afghanistan. The U. S. Department of Defense (DOD) has authorized award of a campaign medal for members serving in direct support of OEF beginning on or after October 24, 2001, and ending on an undetermined future date.²

Operation Iraqi Freedom

On March 19, 2003, President Bush announced the commencement of Operation Iraqi Freedom (OIF), indicating that “American and coalition forces are in the early stages of military operations to disarm Iraq, to free its people and to defend the world from grave danger... On my orders, coalition forces have begun striking selected targets of military importance to undermine Saddam Hussein's ability to wage war. These are opening stages of what will be a broad and concerted campaign.”³ The DOD has also authorized a campaign medal for members serving in direct support of OIF beginning on or after March 19, 2003, and ending on an undetermined future date.⁴ Section 295.0185, F.S., as well as several Federal laws, refers to March 19, 2003 as the beginning date of OIF.

PRESENT SITUATION

Definition of “Veteran”

Section 1.01(14), F.S., defines the term “veteran” for purposes of determining eligibility of veterans for certain benefits provided by the state. A person who has served in the active military, naval, or air service and who has been discharged or released from active duty under honorable conditions is considered a “veteran” eligible for standard veterans’ benefits. A veteran is eligible for enhanced benefits for wartime service if the veteran served in a campaign or expedition for which a campaign badge has been authorized OR the veteran served during one of the following periods of wartime service:

(a) Spanish-American War: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion.

¹ Presidential address to the Nation. <http://www.whitehouse.gov/news/releases/2001/10/20011007-8.html>.

² Department of Army. Afghanistan Campaign Medal Page. Office of the Administrative Assistant to the Secretary of the Army, Institute of Heraldry. Available at: <http://www.tioh.hqda.pentagon.mil/Awards/AfghanistanCampaignMedal.htm>. Accessed January 16, 2007.

³ Presidential address to the Nation. <http://www.whitehouse.gov/news/releases/2003/03/20030319-17.html>

⁴ Department of Army. Iraq Campaign Medal Page. Office of the Administrative Assistant to the Secretary of the Army, Institute of Heraldry. Available at: <http://www.tioh.hqda.pentagon.mil/Awards/IraqCampaignMedal.htm>. Accessed January 16, 2007.

- (b) Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.
- (c) World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.
- (d) World War II: December 7, 1941, to December 31, 1946.
- (e) Korean Conflict: June 27, 1950, to January 31, 1955.
- (f) Vietnam Era: February 28, 1961, to May 7, 1975.
- (g) Persian Gulf War: August 2, 1990, to January 2, 1992.

As of November 30, 2006, 122,977 veterans who were deployed abroad in OEF or OIF lived in Florida; however, it is unknown how many other veterans in Florida served on active duty during these conflicts but were not deployed abroad in either campaign.⁵ Veterans who were deployed abroad in OEF or OIF in an area of operation receive campaign badges and are, therefore, eligible for wartime service benefits under the current definition. However, veterans who served on active duty during OEF or OIF, but are not deployed abroad in an area of operation, are not currently eligible for wartime service benefits.⁶

Standard Veterans' Benefits

All veterans, including veterans who served abroad in OEF or OIF and those who served during OEF or OIF but were not deployed abroad, who meet the eligibility criteria set forth in the definition qualify for the following standard benefits:

- Homestead property tax exemption for certain disabled veterans [ss. 196.081; 196.101; 196.24, F.S.];
- Homestead property tax exemptions for spouses of deceased veterans [s. 196.081, F.S.];
- Disabled Veteran Identification Card [s. 295.17, F.S.];
- Educational benefits for select veterans, spouses, and the children of deceased or disabled Florida veterans [ss. 295.01-295.0185, F.S.];
- Waiver of fee for commission as a notary public [s. 113.01, F.S.];
- Disabled veterans' preference in employment and retention [ss. 295.07 & 295.101, F.S.];
- Disabled veterans exemption from certain building license or permit fees [s. 295.16, F.S.];
- One tuition deferment per academic year [s. 1009.27, F.S.];
- Admission to the Florida State Veterans' home program administered by the Florida Department of Veterans Affairs;
- Fee waiver for filing certification of discharge or separation [s. 28.222, F.S.];
- Fee waiver for hunting and fishing licenses [s. 372.562, F.S.];
- Free disabled veteran motor vehicle license plate [s. 320.084, F.S.];
- Free parking permit for disabled veterans [s. 320.0848, F.S.];
- Military motor vehicle license plates for ex-POWs, Florida National Guard or Reserve members, survivors of Pearl Harbor, recipients of the Purple Heart Medal, and recipients of the Medal of Honor;
- Driver's license fee waiver for disabled veterans [s. 322.21, F.S.]; and
- Waiver of toll road fees for certain disabled veterans [s. 338.155, F.S.].

Wartime Service Benefits

Currently, veterans of OEF and OIF who were deployed abroad in an area of operation and who received a campaign badge are eligible for wartime service benefits; however, veterans who served during either operation, but were not deployed abroad, are not eligible for wartime service benefits. These benefits include:

⁵ Florida Department of Veteran Affairs, Legislative Analysis (undated).

⁶ Florida Department of Veteran Affairs, Legislative Analysis (undated).

- Government employment hiring and retention preference for certain wartime veterans [s. 295.07, F.S.];
- Priority admittance to State Veteran Nursing Homes [s. 296.08, F.S.];
- Waiver of occupational license taxes for disabled wartime veterans [s. 205.171, F.S.];
- Certain Florida Retirement System (FRS) benefits [s. 121.021, F.S.]; and
- A \$5,000 additional homestead property tax exemption for certain wartime veterans [s. 196.24, F.S.].

Effects of Proposed Changes

This bill revises s. 1.01(14), F.S., as follows, to add Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) to the list of campaigns or expeditions that qualify a veteran for wartime service benefits provided under state law:

(14) The term "veteran" means 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, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. 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: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion.

(b) Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(c) World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.

(d) World War II: December 7, 1941, to December 31, 1946.

(e) Korean Conflict: June 27, 1950, to January 31, 1955.

(f) Vietnam Era: February 28, 1961, to May 7, 1975.

(g) Persian Gulf War: August 2, 1990, to January 2, 1992.

(h) Operation Enduring Freedom: October 7, 2001, to the conclusion of the operation.

(i) Operation Iraqi Freedom: March 19, 2003, to the conclusion of the operation.

As a result of this revision, veterans who served during OIF or OEF, but were not deployed into an area of operation, will be eligible for wartime service benefits. Veterans who were deployed abroad into an area of operation in either OEF or OIF are eligible for all veteran benefits, including wartime service benefits, under current law.

As of November 30, 2006, 122,977 Florida veterans had been deployed in OEF or OIF; however, the number of veterans in Florida who served on active duty during the campaigns, but were not deployed, is unknown.⁷ Therefore, the number of veterans who will receive wartime service benefits as a result of this bill is unknown.

C. SECTION DIRECTORY:

Section 1. Amends s. 1.01(14), F.S., redefining the term "veteran".

Section 2. Provides an effective date of July 1, 2007.

⁷ Florida Department of Veteran Affairs, Legislative Analysis (undated).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: This bill appears to have an insignificant fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill appears to have an insignificant fiscal impact on local governments.
2. Expenditures: This bill appears to have an insignificant fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: As a result of this bill, veterans who served during OEF or OIF, but were not deployed abroad, are eligible for certain wartime service benefits, including: government employment hiring and retention preference for certain wartime veterans; priority admittance to State Veteran Nursing Homes; waiver of occupational license taxes for disabled wartime veterans; certain Florida Retirement System benefits; and a \$5,000 additional homestead property tax exemption for certain wartime veterans.

The bill does not appear to have a fiscal impact on private businesses in Florida.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision may apply because the bill may reduce revenues of certain cities and counties by increasing the number of veterans eligible for an additional \$5,000 property tax homestead exemption pursuant to s. 196.24, F.S.; however, the bill appears to be exempt from the mandates provision because the fiscal impact of the bill on cities and counties appears to be insignificant.

2. Other: None

B. RULE-MAKING AUTHORITY:

This bill does not grant any agency a specific power, impose a duty to be implemented by an agency, or require an agency to adopt rules to facilitate implementation.⁸

- C. DRAFTING ISSUES OR OTHER COMMENTS:** The bill revises the definition of “veteran” in s. 1.01(14), F.S., to include veterans who served during “Operation Enduring Freedom: October 7, 2001, to the conclusion of the operation” or during “Operation Iraqi Freedom: March 19, 2003, to the conclusion of the operation”. It appears that the uncertainty of the operation ending dates may result in implementation difficulties in the future. On January 23, 2007, Senator Geller, the sponsor of the Senate companion to this bill, offered an amendment in the Senate Military Affairs and Domestic Security Committee to clarify the ending dates of the operations. Under Senator Geller’s amendment, the operations end “on the date thereafter prescribed by presidential proclamation or by law.” This amendment appears to provide clarity regarding the future ending date of the operations for purposes of determining eligibility for benefits until such time as the Legislature amends the statute to provide a specific ending date. The amendment is also consistent with previous legislative enactments as further described below.

In 1992, the Legislature amended the definition of “veteran” in s. 1.01(14), F.S., to include veterans of the Persian Gulf War.⁹ At that time, the federal government had not yet codified the ending date of the conflict. Therefore, the Legislature established the future ending date of the war as “the date thereafter prescribed by presidential proclamation or by law.” In 2003, the Legislature amended the statute to establish January 2, 1992, as the specific ending date of the Persian Gulf War¹⁰, which was the ending date of the war established by federal law.¹¹

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

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

It is anticipated that Representative Meadows will offer an amendment in the Committee on Military & Veterans’ Affairs to clarify the ending dates of the operations. The amendment will also conform this bill to its Senate companion.

⁸ See Florida Department of Veteran Affairs, Legislative Analysis (undated).

⁹ ch. 92-80, L.O.F.

¹⁰ ch. 2003-42, L.O.F.

¹¹ See Pub. L. 105-85.

1 A bill to be entitled
 2 An act relating to periods of wartime service for
 3 veterans; amending s. 1.01, F.S.; redefining the term
 4 "veteran" for purposes of construction of the Florida
 5 Statutes to include a person who served in the active
 6 military, naval, or air service in Operation Enduring
 7 Freedom or Operation Iraqi Freedom; providing an effective
 8 date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraphs (h) and (i) are added to subsection
 13 (14) of section 1.01, Florida Statutes, to read:

14 1.01 Definitions.--In construing these statutes and each
 15 and every word, phrase, or part hereof, where the context will
 16 permit:

17 (14) The term "veteran" means a person who served in the
 18 active military, naval, or air service and who was discharged or
 19 released therefrom under honorable conditions only or who later
 20 received an upgraded discharge under honorable conditions,
 21 notwithstanding any action by the United States Department of
 22 Veterans Affairs on individuals discharged or released with
 23 other than honorable discharges. To receive benefits as a
 24 wartime veteran, a veteran must have served in a campaign or
 25 expedition for which a campaign badge has been authorized or a
 26 veteran must have served during one of the following periods of
 27 wartime service:

28 (h) Operation Enduring Freedom: October 7, 2001, to the

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29 | conclusion of the operation.

30 | (i) Operation Iraqi Freedom: March 19, 2003, to the

31 | conclusion of the operation.

32 | Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 37**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Committee on Military &
2 Veterans' Affairs
3 Representative Meadows offered the following:

4
5 **Amendment**

6 Remove line(s) 28-31 and insert:

7 (h) Operation Enduring Freedom: October 7, 2001, and ending
8 on the date thereafter prescribed by presidential proclamation
9 or by law.

10 (i) Operation Iraqi Freedom: March 19, 2003, and ending on
11 the date thereafter prescribed by presidential proclamation or
12 by law.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 699 Preference in Public Employment for Veterans
SPONSOR(S): Sachs and others
TIED BILLS: IDEN./SIM. BILLS: SB 728

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Committee on Military & Veterans' Affairs, Camechis, Camechis.

SUMMARY ANALYSIS

Currently, s. 295.07, F.S., requires state government entities, counties, cities, towns, villages, special tax school districts, and special districts to grant employment preferences in hiring and retention to certain veterans and spouses of veterans who are Florida residents.

This bill repeals s. 295.101, F.S. As a result, if a person claims a veterans' preference, and is employed by a government entity, that person may claim a veterans' preference when applying for non-exempt government positions in the future.

The bill does not require government employers to create new positions for eligible persons, or affect the veterans' preferences for promotions or reinstatements. Further, the bill does not affect private employers in any way because private employers are not subject to veterans' preference hiring requirements.

This bill may have an indeterminate negative fiscal impact on state and 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.

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 employment of a preferred veteran over a nonveteran who is the 'most qualified' applicant for 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.

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.

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

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.

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 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.

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

- 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.

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.

²⁵ Id.

²⁶ § 295.14(1), F.S.

²⁷ § 295.14(2), F.S.

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

N/A

1 A bill to be entitled
 2 An act relating to preference in public employment for
 3 veterans; repealing s. 295.101, F.S., relating to the
 4 expiration of preference in public employment and
 5 retention in public employment given to specified veterans
 6 and spouses thereof after an application of such
 7 preference; amending s. 110.2135, F.S.; correcting a
 8 cross-reference, to conform; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 295.101, Florida Statutes, is repealed.

13 Section 2. Subsection (1) of section 110.2135, Florida
 14 Statutes, is amended to read:

15 110.2135 Preference in employment, reemployment,
 16 promotion, and retention.--

17 (1) Preference in employment, reemployment, promotion, and
 18 retention shall be given to an eligible veteran pursuant to ss.
 19 295.07, 295.08, 295.085, and 295.09, ~~and 295.101~~ as long as the
 20 veteran meets the minimum eligibility requirements and has the
 21 knowledge, skills, and abilities required for the particular
 22 position.

23 Section 3. This act shall take effect July 1, 2007.

Overview of Agency Trust Funds
 Department of Military Affairs
 March 2007

Line	Trust Fund Name	Statutory Authority	Purpose of Trust Fund	Source of Funds	Use of Funds	Unreserved Fund Balance June 30, 2006	Estimated Revenue 2006-07	Appropriations 2006-07	Estimated Non-Operating Disbursements 2006-07	Estimated Cash Balance June 30, 2007	2007 Session Proposed Council Bill for House
1	Cooperative Agreement Trust Fund	Section 250.175, F.S.	The fund is used to expend federal funds received by the department under the terms of cooperative agreements or grants between the federal and state governments.	The department shall deposit into the trust fund federal funds received by the department under cooperative agreements between the federal and state governments, which shall be used to perform the functions and tasks specified in the agreements. The department shall also deposit into the trust fund other funds received by the department. Department of Defense regulations prohibit the state from collecting indirect administration costs.	32 different cooperative agreement programs funded by the federal agreements and grants to support the National Guard that includes drug control and substance abuse projects, Forward March, About Face and the Youth Challenge Program.	6,832,553	25,995,347	30,863,901	1,963,999	\$0	Rename the Cooperative Agreement Trust Fund within the Department of Military Affairs as the Federal Grants Trust Fund, to conform to the statewide consistent use of certain trust funds as required by section 215.32(2)(b), F.S.
2	Camp Blanding Management Trust Fund	Section 250.175, F.S.	To be used for the operation of training requirements of the Florida National Guard at Camp Blanding.	The funds generated by revenue producing activities on the Camp Blanding Military Reservation are deposited into the trust fund.	Public Law 493 limits the use of funds to operating costs associated with training facilities at Camp Blanding of the Florida National Guard.	231,550	2,008,608	2,230,037	8,444	\$1,677	
3	Emergency Response Trust Fund	Section 250.175, F.S.	To be used for the operating costs incurred by the Florida National Guard when called to state active duty.	Reimbursements from the Federal Emergency Management Agency for the costs of activating the Florida National Guard and transfers of state funds approved by budget amendments processed under chapter 216 shall be deposited into the trust fund.	The trust fund shall be used to pay all operational costs incurred by the Florida National Guard when called to active duty.	0	364,150	0	364,150	\$0	Re-create the Emergency Response Trust Fund within the Department of Military Affairs, which corrects an inadvertent repeal in s. 14 of Chapter 2003-68, Laws of Florida.
4	Wellfare Transition Trust Fund	Section 250.175, F.S.	The fund is used exclusively for the purpose of providing services to individuals eligible for Temporary Aid to Needy Families.	Temporary Aid to Needy Families funds from the Department of Children and Families.	The trust fund is limited to the support of individuals eligible for Temporary Aid to Needy Families funding.	0	4,050,000	4,050,000	0	\$0	
5	Federal Law Enforcement Trust Fund	Section 250.175, F.S.	The fund is used to support law enforcement and counter-drug activities and drug interdiction programs of the Florida National Guard.	The National Guard shares in the proceeds from forfeited assets. Receipts and revenues from federal asset sharing programs obtained through illegal drug activities.	Used by the Florida National Guard to provide counter-drug assistance to federal agencies around the state. Fund is limited to the support of law enforcement and counter-drug activities.	106,359	525,000	525,000	0	\$106,359	

\$1,663,999 is Fixed Capital Outlay funds approved after July 1, \$300,000 FCO.

Costs associated with Tropical Storm Ernesto.