

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7133      PCB VMAS 15-01      Military and Veteran Support

**SPONSOR(S):** Veteran & Military Affairs Subcommittee, Smith

**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 7076

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Veteran & Military Affairs Subcommittee	12 Y, 0 N	Thompson	Kiner
1) Local & Federal Affairs Committee		Thompson	Kiner

### SUMMARY ANALYSIS

The bill makes various changes to current law related to military and veteran support. In part, the bill:

- Requires Florida Department of Veterans' Affairs (FDVA) to include a section on agricultural farming opportunities for veterans, in the FDVA Florida Veterans' Benefits Guide;
- Requires the section to include information on federal, state, and local agricultural programs available to veterans;
- Requires FDVA to make the section available to military institutions in the state;
- Expands the current authorization for local governing bodies to assist honorably discharged veterans who have wartime service, to also include any veteran who has wartime service, regardless of discharge, any veteran who has an honorable discharge, and any veteran who has received a general discharge under honorable conditions;
- Revises the Department of Business and Professional Regulation's general licensure fee waiver program to allow the waiver to apply to a veteran with a general discharge under honorable conditions; and
- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) and Department of Military Affairs (DMA) to create a pilot program to provide on-site commercial driver license testing opportunities available to qualified members of the Florida National Guard.

Provisions of the bill may have a positive fiscal impact to veterans and their families.

The effective date of the bill is July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Agricultural Careers for Veterans

###### **Present Situation**

Generally, more and more veterans returning to the United States from Afghanistan and Iraq are unable to find employment. Due to the fact that many of these veterans are from rural America, the farming industry is one solution to fill the unemployment gap.

###### *2014 federal Farm Bill*

Periodically, Congress establishes agricultural and food policy in a multi-year, omnibus farm bill. The Federal Agricultural Act of 2014<sup>1</sup> (Farm Bill), provides opportunities to veterans to pursue agricultural farming jobs. Among other things, the Farm Bill creates a definition for “veteran farmer or rancher” to mean a farmer or rancher who has served in the Armed Forces and who has not operated a farm or ranch, or has operated a farm or ranch for not more than 10 years.<sup>2</sup>

The veteran farmer or rancher classification allows veterans to receive additional assistance for agricultural programs, including the following:<sup>3</sup>

- **Conservation Reserve Program (CRP) Transition Incentive Program-** This program allows retiring farmers with land in the CRP to receive additional payments for leasing or selling the land to a beginning farmer or rancher, a socially disadvantaged farmer or rancher, or a veteran farmer or rancher. The purpose is to make land available to new farmers while ensuring that land coming out of the CRP is farmed or grazed in a sustainable manner.
- **Conservation Programming Preference for Veteran Farmers-** The USDA is required to set aside a portion of funding for the Environmental Quality Incentives Program (EQIP) and a portion of the acres available for the Conservation Stewardship Program (CSP) for beginning and socially disadvantaged farmers and ranchers. The amount is five percent for beginning farmers and ranchers and five percent for socially disadvantaged farmers and ranchers. Under the Farm Bill, a preference must be given to veteran farmers and ranchers that fall within one of the set-aside categories.
- **Value-Added Development Grants-** Under this program, private farmers may directly receive grants for their business to assist them in developing business plans and strategies to market value-added products. The USDA must also give a priority to veteran farmers and ranchers.

There are also numerous outreach and advocacy programs under the Farm Bill, including the following:<sup>4</sup>

- **Beginning Farmer and Rancher Development Grants-** This program administers grants to organizations that provide training, education, outreach, and technical assistance to beginner farmers and ranchers. Under the Farm Bill, assistance for veteran farmers is a priority and five percent of funding is set aside for programs serving veterans.
- **Outreach and Assistance Program for Socially Disadvantaged Farmers and Ranchers-** This program allows the USDA to provide additional technical assistance to veterans focused on enabling farm ownership and operation as well as outreach to encourage participation in the USDA programs.

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<sup>1</sup> Pub. L. No. 113-79, H.R. 2642, 113<sup>th</sup> Cong.

<sup>2</sup> U.S. Department of Agriculture website on “Natural Resources Conservation Service,” available at <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=stelprdb1256753> (last visited March 6, 2015)

<sup>3</sup> Farmer Veteran Coalition, available at <http://www.farmvetco.org/archives/2872>, (last visited March 6, 2015)

<sup>4</sup> *Id.*

## Proposed Changes

The bill requires the Department of Veterans' Affairs, through a direct-support organization under s. 292.055, F.S., and in consultation with the Department of Agriculture and Consumer Services (DACs), to include a section on agricultural farming opportunities in the state for veterans of the United States Armed Forces, in the FDVA Florida Veterans' Benefits Guide. The section must include:

- Information on federal, state and local agricultural farming programs, incentives, assistance, and grants, available to veterans; and
- Federal and state agricultural farming outreach and advocacy programs, available to veterans.

The Department of Veterans' Affairs must:

- Make the guides available to all military installations in the state of Florida; and
- Provide a consolidated description of and link to the section on its website.

## Military Discharges

### Present Situation

Florida 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 only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs (VA) 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 during certain periods of wartime service.<sup>5</sup>

Federal law defines a “veteran” as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”<sup>6</sup>

### *Types of Discharges*

There are currently five types of discharges issued by the military services, including:<sup>7</sup>

- **Honorable Discharge-** Any discharge under honorable conditions satisfies the character of discharge requirement for basic eligibility for VA benefits.
- **General Discharge under Honorable Conditions-** This means a servicemember's service has been honest, faithful and satisfactory. However, this characterization of service is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military conduct or performance of duty. This discharge means a member is eligible for most veteran benefits except for education benefits such as the GI Bill or Post-9/11 GI Bill.
- **Other than Honorable Discharge-** This discharge is warranted when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of servicemembers. Examples include abuse of authority, serious misconduct that endangers other members of the military, and use of deliberate force to seriously hurt another person. Generally, a servicemember that has this discharge is ineligible for all VA benefits.
- **Bad Conduct Discharge-** This is a punitive discharge that's imposed by court-martial (criminal trial conducted by the military). A servicemember is not entitled to any VA benefits.
- **Dishonorable Discharge-** This discharge is given when a serious crime has been committed such as desertion, rape, or murder. This discharge is only given if a servicemember is convicted at a general court-martial. The servicemember is not entitled to any VA benefits.

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<sup>5</sup> s. 1.01(14), F.S.

<sup>6</sup> 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

<sup>7</sup> Congressional Research Service, “Who is a Veteran?” Basic Eligibility for Veterans' Benefits, January 23, 2014, at page 3.

Generally, in order to receive federal VA benefits, the veteran's character of discharge or service must be under other than dishonorable conditions (e.g., honorable, under honorable conditions, general). However, individuals receiving undesirable, bad conduct, and other types of dishonorable discharges may qualify for VA benefits depending on a determination made by VA.<sup>8</sup>

A discharge characterized by the military as under honorable conditions is binding on VA and allows for VA to provide benefits if other eligibility requirements are met. If a discharge was not characterized as under honorable conditions, benefits are not payable unless VA determines the discharge was "under conditions other than dishonorable." Under federal law, certain situations resulting in a discharge under less than honorable conditions constitute a legal bar to the payment of benefits.<sup>9</sup>

A release or discharge for any of the following reasons constitutes a statutory bar to benefits, unless it is determined that the servicemember was insane at the time he/she committed the offense that resulted in the discharge:<sup>10</sup>

- Sentence of a general court-martial;
- Being a conscientious objector;
- Desertion;
- Resignation by an officer for the good of the service;
- Absence without official leave (AWOL) for a continuous period of 180 days or more, without compelling circumstances to warrant such prolonged unauthorized absence (as determined by VA); or
- Requesting release from service as an alien during a period of hostilities.

Generally, in order to receive VA benefits and services, the veteran's character of discharge or service must be under other than dishonorable conditions (e.g., honorable, under honorable conditions, general). However, most education benefits require the veteran to have an honorable discharge. Most notably, the Montgomery G.I. Bill and the Post-9/11 G.I. Bill are federal programs that require an honorable discharge to access these benefits.

#### *Local Governing Bodies Authorized to Assist War Veterans*

Current law authorizes the board of county commissioners of each county and the governing body of each city, to aid and assist veterans of the U.S. Armed Forces in presenting claims for, and securing, the following benefits and privileges:

- Compensation;
- Hospitalization;
- Education;
- Loans;
- Career training, and
- Other state or federal benefits or privileges to which they may become entitled.<sup>11</sup>

The law applies to honorably discharged veterans who have who have wartime service and their dependents.

#### *Florida Department of Business and Professional Regulation License Fee Waiver*

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<sup>8</sup> US Department of Veterans Affairs Veterans Benefits Administration, available at: [http://www.benefits.va.gov/benefits/character\\_of\\_discharge.asp](http://www.benefits.va.gov/benefits/character_of_discharge.asp) (last visited March 7, 2015).

<sup>9</sup> US Department of Veterans Affairs factsheet on claims for benefits involving other-than-honorable discharges, available at: [http://www.benefits.va.gov/BENEFITS/docs/COD\\_Factsheet.pdf](http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf) (last visited March 7, 2015).

<sup>10</sup> 38 U.S.C. § 5303.

<sup>11</sup> s. 292.10, F.S.

The Florida Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>12</sup> DBPR is the agency charged with licensing and regulating various businesses and professionals in the state, including but not limited to, cosmetologists, veterinarians, real estate agents and pari-mutuel wagering facilities.<sup>13</sup> Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR. The current statute waives the initial licensing fee, the initial application fee and initial unlicensed activity fee for honorably discharged veterans of the U.S. Armed Forces and their spouses within 60 months prior to applying for licensure.

## **Proposed Changes**

The bill expands the authorization of local governing bodies to assist honorably discharged veterans who have wartime service, to additionally include any veteran who has wartime service, regardless of discharge, any veteran who has an honorable discharge, and any veteran who has received a general discharge under honorable conditions.

The bill revises the DBPR general licensing fee waiver requirement for an honorably discharged veteran, to also require the waiver to apply to a veteran with a general discharge under honorable conditions.

## **Troops to Truckers**<sup>14</sup>

### **Present Situation**

Active duty and recently separated servicemembers that have experience driving large trucks in the military are currently eligible to obtain a Florida Commercial Driver License (CDL) without retaking the skills tests normally required. FMCSA Regulation 49 CFR, Section 383.77, gives states the authority to substitute two years of commercial motor vehicle safe driving experience in the military for the skills test portion of the commercial driver license skills test. The process allows states to assist veterans and active duty personnel in their transition from their military occupation to a civilian career.

Current law gives DHSMV the authority to waive the knowledge, endorsement, and skills tests for an applicant who is otherwise qualified and who surrenders a driver license issued by the U.S. Armed Forces, if the driver applies for a Florida license of an equal or lesser classification.<sup>15</sup> DHSMV implements this provision pursuant to agency rule.<sup>16</sup> The provision:

- Allows active duty, and those who are within 90 days of separation, to qualify for the skills test waiver;
- Requires the applicant to meet all the test waiver requirements within 120 days of separation; and
- Requires the applicant to have driven military vehicles two years prior to the waiver application, that in the civilian world would have required a CDL.

Specifically, applicants who seek a waiver of CDL skills testing due to military experience must do the following:

- Pass all required written knowledge exams for the CDL class and endorsements they will be issued.
- Apply for the CDL qualification waiver while on active duty status or within 90 days of separation of service. The applicant must provide a military active duty identification card or DD-214

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<sup>12</sup> Chapter 93-220, L.O.F.

<sup>13</sup> DBPR website, available at: <http://www.myfloridalicense.com/dbpr/index.html> (last visited March 8, 2015).

<sup>14</sup> Information on the “Troops to Truckers” program is available at: <http://www.troopstotruckers.com/> (last visited March 10, 2015).

<sup>15</sup> s. 322.12, F.S.

<sup>16</sup> Rulemaking Authority: s. 322.02(6), F.S. Law Implemented: s. 322.12, F.S.

(military discharge papers). The skills test waiver process must be completed, and the CDL issued, within 120 days of separation from service.

- Certify that for at least 2 years immediately preceding the application, he or she operated a motor vehicle representative of the CDL class and endorsements for which he or she is applying.
- Present the Certification for Waiver of Skill Test for Military Personnel form,<sup>17</sup> filled out in its entirety, and signed by his or her commanding officer or designee.<sup>18</sup>

## **Proposed Changes**

The bill requires DHSMV and DMA to create a pilot program to make commercial driver license testing opportunities available to qualified members of the Florida National Guard. The testing must be held at a Florida National Guard Armory, Armed Forces Reserve Center, or Camp Blanding Joint Training Center. The pilot program must be accomplished using existing funds appropriated to each department.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 292.10, F.S., relating to local governing bodies authorized to assist war veterans.

Section 2. Requires DVA in coordination with DACS to include a section on agricultural farming opportunities for veterans, in the Florida Veterans' Benefits Guide.

Section 3. Amends s. 455.213, F.S., relating to DBPR general licensing provisions.

Section 4. Requires DHSMV and the DMA to create a commercial driver license testing pilot program.

Section 5. Provides an effective date of July 1, 2015.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

##### Section 2

The Florida Veterans' Benefits Guide is a yearly publication printed by the Florida Veterans Foundation, which is the FDVA's Direct Support Organization. The cost to print and distribute the Guide (currently 100,000 copies) is paid through donations collected by the Foundation. Section 2 requires that the Guide contain information on agricultural farming opportunities for veterans. Because this information will be placed in a currently existing Guide, the cost of which is covered by donations, there will not be a negative fiscal impact to state funds.

In terms of making the Guide "available" to all military installations in the state of Florida, this can be accomplished through email.

##### Section 3

DBPR currently administers a licensure fee waiver program for honorably discharged veterans. DBPR's current practice is to allow veterans with a general discharge under honorable conditions to

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<sup>17</sup> A copy of the Certification for Waiver of Skill Test for Military Personnel form is available at: <http://www.flhsmv.gov/html/HSMV71054.pdf> (last visited March 8, 2015).

<sup>18</sup> Rule 15A-7.018, F.A.C., Military Qualifications for Waiver of Commercial Driver License Skills Test.

take advantage of the licensure fee waiver program; however, the extent to which veterans with a discharge under this category know about DBPR's existing practice is unknown.

The bill merely codifies DBPR's current practice, and therefore, its provisions will have not have a negative fiscal impact on state funds.

#### Section 4

DHSMV operates a program titled 'Florida Licensing on Wheels (FLOW),' which provides a convenient method to renew a driver license, obtain a replacement driver license, change a name or address on a driver license, get an identification card, etc.

The bill requires DHSMV to partner with DMA to jointly create a pilot program with the purpose of providing on-site commercial driver license testing opportunities to qualified members of the Florida National Guard. This requirement may be incorporated into DHSMV's existing FLOW program and will not have a negative fiscal impact on state funds.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

Expanding the list of veterans that local governing bodies are authorized to assist will create a positive fiscal impact to these newly eligible veterans and their family members if the local governing body decides to provide such authorized assistance.

Providing farming information for veterans could potentially increase career opportunities in agriculture for veterans and returning servicemembers, and thereby create an indeterminate positive fiscal impact to these individuals, their families, and local businesses.

Expanding the DBPR general licensing fee waiver may encourage additional applicants, and create an indeterminate positive fiscal impact to these veterans and their families.

A successful pilot program providing commercial driver license testing opportunities for members of the Florida National Guard will likely lead to recruiting and training of new commercial motor vehicle drivers. As a result, this will create an expanded workforce and correlating positive fiscal impact to qualified servicemembers, veterans, and the Florida trucking industry overall.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

None.