

BILL ANALYSIS

Senate Research Center
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H.B. 863
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State Affairs
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Chapter 657, Government Code allows for a veterans preference for certain veterans who served during a national emergency or who were discharged with a service disability. However, it does not provide a means of enforcing these provisions. The purpose of H.B. 863 is to promote employment opportunities for qualified military veterans and strengthen the state law already in place that requires veterans to be given hiring preference at all public departments, agencies, boards, and commissions.

H.B. 863 amends the Government Code to establish enforcement procedures for current law which entitles veterans to receive employment preference with respect to public entities. The bill also requires public entities to report on measures taken to ensure that veterans receive the employment preference and remedies that are available through the entity if an individual feels they have been aggrieved. Under the procedures set forth in the bill, if an entitled individual feels that a public entity failed to comply with the law, the individual may file a complaint with the hiring entity. If this fails to settle the complaint, the entitled individual may then file a complaint with the State Office of Administrative Hearings (SOAH). SOAH's administrative law judge issues final decision, but the decision is subject to judicial review. H.B. 863 also clarifies which entities are required to provide preference.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 657, Government Code, by designating Sections 657.001-657.009 as Subchapter A, and adding a heading for Subchapter A, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Section 657.001(2), Government Code, to redefine "public entity."

SECTION 3. Amends Sections 657.003(a), (c), and (d), Government Code, as follows:

- (a) Deletes existing text entitling an individual who qualifies for a veteran's employment preference to a preference for a public work of this state.
- (c) Makes a conforming change.
- (d) Makes a conforming change.

SECTION 4. Amends Section 657.004, Government Code, as follows:

Sec. 657.004. New heading: PREFERENCE REQUIRED FOR PUBLIC ENTITIES.
Makes conforming changes.

SECTION 5. Amends Section 657.005(a), Government Code, to make conforming changes.

SECTION 6. Amends Subchapter A, Chapter 657, Government Code, as designated by this Act, by adding Section 657.0081, as follows:

Sec. 657.0081. **OUTLINE OF PROCEDURES REQUIRED.** Requires a public entity to prepare and make available for public inspection a statement of any measures taken by the entity to ensure that veterans receive the employment preference required by this chapter and any remedies available through the entity for an individual entitled to a hiring preference under this chapter if the individual is not hired or appointed for a position with the entity.

SECTION 7. Amends Chapter 657, Government Code, by adding Subchapters B and C as follows:

SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

Sec. 657.051. **COMPLAINT PROCEDURE.** Authorizes an individual who is entitled to a veteran's employment preference in applying for employment with or appointment to a public entity to file a complaint with the public entity if the person is not employed or appointed for the position. Requires the individual to state certain information in the complaint.

Sec. 657.052. **INVESTIGATION.** Requires the public entity, not later than the third day after the date the public entity receives the complaint, to investigate the hiring decision to determine whether the public entity has complied with this chapter.

Sec. 657.053. **DECISION.** (a) Requires the public entity, if the public entity determines that the applicant should have been offered the position because of the preference granted under this chapter, to offer to appoint or employ the applicant for the position or offer to appoint or employ the applicant for the next similar position that becomes available for which the applicant is qualified. Authorizes the applicant, if the public entity determines that the applicant is not entitled under this chapter to be appointed or employed for the position, to request a hearing under Subchapter C.

[Reserves Sections 657.054-657.100 for expansion.]

SUBCHAPTER C. HEARING

Sec. 657.101. **COMPLAINT; HEARING.** Authorizes an applicant for employment with or appointment to a public entity who is entitled to a veteran's employment preference under this chapter to file a complaint with the State Office of Administrative Hearings (SOAH) if an individual whose duty is to appoint or employ individuals for the public entity fails to comply with this chapter.

Sec. 657.102. **HEARING PROCEDURES.** Requires SOAH to conduct a hearing on the complaint not later than the 90th day after the date SOAH receives the complaint. Requires an administrative law judge employed by SOAH to conduct the hearing. Provides that a hearing conducted under this subchapter is a contested case under Chapter 2001.

Sec. 657.103. **DECISION; APPEAL.** Requires the individual whose duty is to appoint or employ individuals for the public entity, if the administrative law judge determines that the applicant should have been offered the position applied for because of the preference granted under this chapter, to offer to appoint or employ the applicant for the position or offer to appoint or employ the applicant for the next similar position that becomes available for which the applicant is qualified. Requires the administrative law judge to render the final decision in the contested case. Provides that, consequently, SOAH is the entity with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146, that acts on a motion for rehearing or extends a time period under Section 2001.146, and that is responsible for sending to the parties, in accordance with Section 2001.142, a copy of the decision that may become final under Section 2001.144 or of an order ruling on a motion for rehearing. Provides that the

decision of the administrative law judge is subject to judicial review as provided by Subchapter G, Chapter 2001.

SECTION 8. Effective date: upon passage or September 1, 2005.