

BILL ANALYSIS

C.S.H.B. 863
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Defense Affairs & State-Federal Relations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Chapter 657 of the Government Code allows for 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 the bill is to promote the 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

CSHB 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). The SOAH administrative law judge issues final decision, but the decision is subject to judicial review. CSHB 863 also seeks to clarify which entities are required to provide preference.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 2. Section defines "public entity" by adding authority, office, or other state agency with statewide authority in the executive branch of state government created under the constitution or statute.

The bill strikes the language that refers to "public work" throughout the bill. Therefore, this Section of code applies to preference required for public entities only; "public works" is no longer applicable.

SECTION 6. 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. The statement also should contain a statement of 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 provides a complaint process that an individual who feels that they were improperly denied preference in employment can follow. The individual can file a complaint with the hiring entity, who must investigate the hiring decision within three days. If the public entity determines that the applicant should have been offered the position, the entity must 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. If the public entity determines that the applicant is not entitled to preference under this chapter, the applicant can request a hearing at the State Office of Administrative Hearings under Subchapter C of this Act.

SUBCHAPTER C of the bill directs SOAH to conduct a hearing within 90 days and the hearing is considered a contested case under Chapter 2001, Government Code. If the law judge determines that the position should have been offered, the entity is directed to either offer the position to the veteran or offer the next similar position.

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

EFFECTIVE DATE

If the Act does not receive the necessary vote for immediate effect, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original HB 863 allowed for a motion, petition, or other appropriate pleading with the district court to seek compliance by the applicant, and the applicant could apply to the district attorney, criminal district attorney, or county attorney for representation, and if the attorney reasonably believed that a preference entitlement exists, he or she was required to appear and represent the individual in an amicable adjustment of the claim or file or prosecute the motion, pleading, or other appropriate pleading on the individual's behalf. The bill also prohibited the charging of court costs or fees for such filings with a district court. This provision of enforcement of veterans preference has been replaced with the SOAH procedure in the substitute.

The substitute also clarifies exactly which state entities are required to offer the preference and clarifies the internal review process that applicable state entities must follow prior to an individual applying for a SOAH hearing.