

By: Kolkhorst

H.B. No. 863

Substitute the following for H.B. No. 863:

By: Noriega

C.S.H.B. No. 863

A BILL TO BE ENTITLED

AN ACT

relating to an employment preference for veterans at state agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Section 657.001(2), Government Code, is amended to read as follows:

(2) "Public entity" means a ~~[public]~~ department, commission, board, authority, office, or other state agency with statewide authority in the executive branch of state government created under the constitution or a statute.

SECTION 3. Sections 657.003(a), (c), and (d), Government Code, are amended to read as follows:

(a) An individual who qualifies for a veteran's employment preference is entitled to a preference in employment with or appointment to a public entity ~~[or for a public work of this state]~~ over other applicants for the same position who do not have a greater qualification.

(c) If a public entity ~~[or public work of this state]~~ requires a competitive examination under a merit system or civil service plan for selecting or promoting employees, an individual

1 entitled to a veteran's employment preference who otherwise is  
2 qualified for that position and who has received at least the  
3 minimum required score for the test is entitled to have a service  
4 credit of 10 points added to the test score. An individual who has  
5 an established service-connected disability is entitled to have a  
6 service credit of five additional points added to the individual's  
7 test score.

8 (d) An individual entitled to a veteran's employment  
9 preference is not disqualified from holding a position with a  
10 public entity [~~or public work of this state~~] because of age or an  
11 established service-connected disability if the age or disability  
12 does not make the individual incompetent to perform the duties of  
13 the position.

14 SECTION 4. Section 657.004, Government Code, is amended to  
15 read as follows:

16 Sec. 657.004. PREFERENCE REQUIRED FOR PUBLIC ENTITIES [~~AND~~  
17 ~~PUBLIC WORKS~~]. (a) An individual whose duty is to appoint or  
18 employ individuals for a public entity [~~or public work of this~~  
19 ~~state~~] shall give preference in hiring to individuals entitled to a  
20 veteran's employment preference so that at least 40 percent of the  
21 employees of the public entity [~~or public work~~] are selected from  
22 individuals given that preference. A public entity [~~or public~~  
23 ~~work~~] that does not have 40 percent of its employees who are  
24 entitled to the preference shall, in filling vacancies, give  
25 preferences to individuals entitled to a veteran's employment  
26 preference until it does have at least 40 percent of its employees  
27 who are entitled to the preference.

1 (b) A public entity [~~or public work~~] shall, when possible,  
2 give 10 percent of the preferences granted under this chapter to  
3 qualified veterans discharged from the armed services of the United  
4 States within the preceding 18 months.

5 (c) A public entity [~~or public work~~] that has at least 40  
6 percent of its employees who are entitled to the preference is  
7 exempt from the requirements of Section 657.005.

8 SECTION 5. Section 657.005(a), Government Code, is amended  
9 to read as follows:

10 (a) The individual whose duty is to appoint or employ an  
11 applicant for a position with a public entity [~~or public work of~~  
12 ~~this state~~] or an officer or the chief administrator of the entity  
13 [~~or work~~] who receives an application for appointment or employment  
14 by an individual entitled to a veteran's employment preference,  
15 before appointing or employing any individual, shall investigate  
16 the qualifications of the applicant for the position. If the  
17 applicant is of good moral character and can perform the duties of  
18 the position, the officer, chief executive, or individual whose  
19 duty is to appoint or employ shall appoint or employ the applicant  
20 for the position.

21 SECTION 6. Subchapter A, Chapter 657, Government Code, as  
22 designated by this Act, is amended by adding Section 657.0081 to  
23 read as follows:

24 Sec. 657.0081. OUTLINE OF PROCEDURES REQUIRED. A public  
25 entity shall prepare and make available for public inspection a  
26 statement of:

27 (1) any measures taken by the entity to ensure that

1 veterans receive the employment preference required by this  
2 chapter; and

3 (2) any remedies available through the entity for an  
4 individual entitled to a hiring preference under this chapter if  
5 the individual is not hired or appointed for a position with the  
6 entity.

7 SECTION 7. Chapter 657, Government Code, is amended by  
8 adding Subchapters B and C to read as follows:

9 SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

10 Sec. 657.051. COMPLAINT PROCEDURE. (a) An individual who  
11 is entitled to a veteran's employment preference in applying for  
12 employment with or appointment to a public entity may file a  
13 complaint with the public entity if the person is not employed or  
14 appointed for the position.

15 (b) The individual must state in the complaint that the  
16 individual is:

17 (1) qualified for the position sought; and

18 (2) entitled to a veteran's employment preference.

19 Sec. 657.052. INVESTIGATION. Not later than the third day  
20 after the date the public entity receives the complaint, the public  
21 entity shall investigate the hiring decision to determine whether  
22 the public entity has complied with this chapter.

23 Sec. 657.053. DECISION. (a) If the public entity  
24 determines that the applicant should have been offered the position  
25 because of the preference granted under this chapter, the public  
26 entity shall:

27 (1) offer to appoint or employ the applicant for the

1 position; or

2 (2) offer to appoint or employ the applicant for the  
3 next similar position that becomes available for which the  
4 applicant is qualified.

5 (b) If the public entity determines that the applicant is  
6 not entitled under this chapter to be appointed or employed for the  
7 position, the applicant may request a hearing under Subchapter C.

8 [Sections 657.054-657.100 reserved for expansion]

9 SUBCHAPTER C. HEARING

10 Sec. 657.101. COMPLAINT; HEARING. An applicant for  
11 employment with or appointment to a public entity who is entitled to  
12 a veteran's employment preference under this chapter may file a  
13 complaint with the State Office of Administrative Hearings if an  
14 individual whose duty is to appoint or employ individuals for the  
15 public entity fails to comply with this chapter.

16 Sec. 657.102. HEARING PROCEDURES. (a) The State Office of  
17 Administrative Hearings shall conduct a hearing on the complaint  
18 not later than the 90th day after the date the office receives the  
19 complaint. An administrative law judge employed by the office  
20 shall conduct the hearing.

21 (b) A hearing conducted under this subchapter is a contested  
22 case under Chapter 2001.

23 Sec. 657.103. DECISION; APPEAL. (a) If the administrative  
24 law judge determines that the applicant should have been offered  
25 the position applied for because of the preference granted under  
26 this chapter, the individual whose duty is to appoint or employ  
27 individuals for the public entity shall:

1           (1) offer to appoint or employ the applicant for the  
2 position; or

3           (2) offer to appoint or employ the applicant for the  
4 next similar position that becomes available for which the  
5 applicant is qualified.

6           (b) The administrative law judge shall render the final  
7 decision in the contested case. Consequently, the State Office of  
8 Administrative Hearings is the entity:

9           (1) with which a motion for rehearing or a reply to a  
10 motion for rehearing is filed under Section 2001.146;

11           (2) that acts on a motion for rehearing or extends a  
12 time period under Section 2001.146; and

13           (3) that is responsible for sending to the parties, in  
14 accordance with Section 2001.142, a copy of the decision that may  
15 become final under Section 2001.144 or of an order ruling on a  
16 motion for rehearing.

17           (c) The decision of the administrative law judge is subject  
18 to judicial review as provided by Subchapter G, Chapter 2001.

19           SECTION 8. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.