

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1498
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Veteran Affairs & Military Installations
4/17/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Chapter 657, Government Code, outlines a hiring preference for veterans for public entities. This preference has existed since directly after the Second World War. Under the current statute, it is unclear how the hiring preference is to be applied, what entities are considered "public entities," and what a veteran can do if he or she feels the preference has been denied.

The bill would amend the Government Code to modify the qualifications of a veteran for veteran's employment preference; to modify the reporting requirements by a state agency to the comptroller of public accounts concerning the entity's hiring procedures; and to establish the complaint process for a veteran who wishes to appeal a hiring decision, including a review by the public entity and the State Office of Administrative Hearings (SOAH).

C.S.S.B. 1498 amends current law relating to veteran's employment preferences.

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, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Section 657.001, Government Code, by amending Subdivision (2), and adding Subdivisions (3) and (4), to define "minimum qualifications" and "public work of this state" and to redefine "public entity."

SECTION 3. Amends Subchapter A, Chapter 657, Government Code, as added by this Act, by amending Section 657.0015, as follows:

Sec. 657.0015. EXCEPTIONS. Provides that this chapter does not apply to appointments made by the governor, or the employment of a head of a division or department in a state office or agency headed by a single elected state official, or a person who advises or reports directly to an elected state official.

SECTION 4. Amends Sections 657.002(a) and (b), Government Code, as follows:

(a) Provides that a veteran qualifies for a veteran's employment preference if the veteran meets the minimum qualifications for the position, rather than the veteran is competent.

(b) Provides that a veteran's surviving spouse who has not remarried or an orphan of a veteran qualifies for a veteran's employment preference if the spouse or orphan meets the minimum qualifications for the position, rather than is competent.

SECTION 5. Amends Sections 657.003(a) and (b), Government Code, as follows:

(a) Entitles an individual who qualifies for a veteran's employment preference 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 greater qualifications for the position, rather than a greater qualification.

(b) Entitles an individual who has an established service-connected disability and is entitled to a veteran's employment preference for employment or appointment in a position over all other applicants for the same position who are without a service-connected disability and who do not have greater qualifications for the position. Deletes existing text entitling the individual to employment or appointment in a position for which a competitive examination is not held. Makes a conforming change.

SECTION 6. Amends Section 657.005(a), Government Code, to require the officer, chief executive, or individual whose duty is to appoint or employ, if the applicant is of good moral character and can perform the duties of the position and no other applicant for the position has greater qualifications than the applicant entitled to a veteran's employment preference, to appoint or employ the applicant for the position.

SECTION 7. Amends Section 657.007(b), Government Code, to provide that the preference granted under this section applies only to the extent that a reduction in workforce by an employing public entity involves other employees of the same classification, rather than a similar type or classification.

SECTION 8. Amends Section 657.008, Government Code, as follows:

Sec. 657.008. REPORTING REQUIREMENTS. (a) Requires a state agency, rather than a public entity, to file quarterly with the comptroller of public accounts (comptroller) a report that states any measures taken by the state agency during the quarter to inform individuals entitled to a hiring preference under this chapter of their rights under this chapter; the appeals process available through the state agency to an individual entitled to a hiring preference under this chapter who alleges that the state agency violated the individual's rights under this chapter; the percentage of the total number of employees hired by the state agency, rather than entity, during the reporting period who are persons entitled to a preference under this chapter; and the percentage of the total number of employees hired by the state agency, rather than entity, during the reporting period who are persons entitled to a preference under this chapter. Deletes existing text requiring a state agency to file quarterly with the comptroller a report that states the number of complaints filed with the governing body of the entity under Section 657.010 (Complaint Regarding Employment Decision of Public Entity or Public Work) during that quarter and the number of those complaints resolved by the governing body. Makes nonsubstantive and conforming changes.

(b) Requires the comptroller to file annually with the legislature a report that compiles and analyzes information that the comptroller receives from state agencies, rather than public entities, under Subsection (a).

SECTION 9. Amends Chapter 657, Government Code, by adding Subchapters B and C, as follows:

SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

Sec. 657.051. COMPLAINT PROCEDURE. (a) Authorizes an individual who is entitled to a veteran's employment preference under this chapter to appeal a hiring decision made by a public entity not later than the 30th day after the date the individual receives notice of the hiring decision.

(b) Requires the individual to state in the complaint the name of the public entity and the allegations that form the basis of the complaint.

Sec. 657.052. DECISION. (a) Requires the public entity, not later than the 30th day after the date the public entity receives a complaint, to issue a decision on the complaint and notify the applicant of the decision.

(b) Requires the public entity, if the public entity determines that the individual should have been offered the position because of the preference granted under this chapter, to appoint or employ the applicant for the position or for the next similar position that becomes available for which the individual meets the minimum qualifications.

Sec. 657.053. REQUEST FOR HEARING. Authorizes the applicant, if a state agency determines under Section 657.052 that the applicant is not entitled under this chapter to be appointed or employed for the position, to request a hearing under Subchapter C.

SUBCHAPTER C. HEARING

Sec. 657.101. COMPLAINT; HEARING. (a) Authorizes an applicant for employment with a state agency who is entitled to a veteran's employment preference under this chapter to appeal the state agency's hiring decision after following the complaint procedure in Subchapter B by filing a request for a hearing with the state agency.

(b) Requires the applicant to request a hearing not later than the 30th day after the date the applicant receives notice of the decision issued under Section 657.052.

(c) Requires the state agency, not later than the 10th day after the state agency receives a request for a hearing, to refer the case to the State Office of Administrative Hearings (SOAH) for a hearing.

Sec. 657.102. HEARING PROCEDURES. (a) 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.

(b) Provides that a hearing conducted under this subchapter is a contested case under Chapter 2001 (Administrative Procedure).

Sec. 657.103. DECISION. (a) Requires the individual responsible for making hiring decisions for the state agency, 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 meets the minimum qualifications.

(b) Requires the administrative law judge to render the final decision in the contested case. Provides that the decision of the administrative law judge is not subject to judicial review.

Sec. 657.104. REPORT. Requires SOAH to report to the governor, the comptroller, and the legislature the number of hearings requested under this subchapter.

SECTION 10. Repealer: Section 657.010 (Complaint Regarding Employment Decision of Public Entity or Public Work), Government Code.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2009.