

By: Chavez

H.B. No. 4388

A BILL TO BE ENTITLED

AN ACT

relating to veteran's employment preferences.

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

SECTION 1. Chapter 657, Government Code, is amended by designating Sections 657.001 through 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, Government Code, is amended by amending Subdivision (2) and adding Subdivisions (3) and (4) to read as follows:

(2) "Minimum qualifications" means the experience and education to perform the essential tasks of a job identified in the posting for the job.

(3) "Public entity" means:

(A) a state agency, including:

(i) a ~~public~~ department, commission, board, authority, office, or other agency in the executive branch of state government created by the constitution or a statute of this state; or

(ii) a university system or an institution of higher education as defined by Section 61.003, Education Code; or

(B) a county, municipality, or district, a district or other authority created under Section 52, Article III,

1 or Section 59, Article XVI, Texas Constitution, or any other
2 political subdivision of this state.

3 (4) "Public work of this state" means a project that is
4 the subject of a public work contract with a governmental entity to
5 which Chapter 2253 applies.

6 SECTION 3. Subchapter A, Chapter 657, Government Code, as
7 added by this Act, is amended by adding Section 657.0015 to read as
8 follows:

9 Sec. 657.0015. EXCEPTIONS. This chapter does not apply to:

10 (1) appointments made by the governor; or

11 (2) the employment of:

12 (A) a head of a division or department in a state
13 office or agency headed by a single elected state official; or

14 (B) a person who advises or reports directly to
15 an elected state official.

16 SECTION 4. Sections 657.002(a) and (b), Government Code,
17 are amended to read as follows:

18 (a) A veteran qualifies for a veteran's employment
19 preference if the veteran:

20 (1) served in the military for not less than 90
21 consecutive days during a national emergency declared in accordance
22 with federal law or was discharged from military service for an
23 established service-connected disability;

24 (2) was honorably discharged from military service;
25 and

26 (3) meets the minimum qualifications for the
27 position ~~[is competent]~~.

(b) A veteran's surviving spouse who has not remarried or an orphan of a veteran qualifies for a veteran's employment preference if:

(1) the veteran was killed while on active duty;

(2) the veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law; and

(3) the spouse or orphan meets the minimum qualifications for the position ~~[is competent]~~.

SECTION 5. Sections 657.003(a), (b), and (c), 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 qualifications for the position ~~[qualification]~~.

(b) An individual who has an established service-connected disability and is entitled to a veteran's employment preference is entitled to preference for employment or appointment in a position ~~[for which a competitive examination is not held]~~ over all other applicants for the same position who are without a service-connected disability and who do not have ~~[a]~~ greater qualifications for the position ~~[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 entitled to a veteran's employment preference who meets the minimum

1 qualifications [~~otherwise is qualified~~] for that position and who
2 has received at least the minimum required score for the test is
3 entitled to have an additional [~~a service~~] credit added to the
4 individual's test score of:

5 (1) at least 10 percent; or

6 (2) for an [~~of 10 points added to the test score. An~~]

7 individual who has an established service-connected disability, at
8 least 15 percent [~~is entitled to have a service credit of five~~
9 ~~additional points added to the individual's test score~~].

10 SECTION 6. Section 657.005(a), Government Code, is amended
11 to read as follows:

12 (a) The individual whose duty is to appoint or employ an
13 applicant for a position with a public entity or public work of this
14 state or an officer or the chief administrator of the entity or work
15 who receives an application for appointment or employment by an
16 individual entitled to a veteran's employment preference, before
17 appointing or employing any individual, shall investigate the
18 qualifications of the applicant for the position. If the applicant
19 is of good moral character and can perform the duties of the
20 position and no other applicant for the position has greater
21 qualifications than the applicant entitled to a veteran's
22 employment preference, the officer, chief executive, or individual
23 whose duty is to appoint or employ shall appoint or employ the
24 applicant for the position.

25 SECTION 7. Section 657.007(b), Government Code, is amended
26 to read as follows:

27 (b) The preference granted under this section applies only

1 to the extent that a reduction in workforce by an employing public
2 entity involves other employees of the same ~~[a similar type or]~~
3 classification.

4 SECTION 8. Section 657.008, Government Code, is amended to
5 read as follows:

6 Sec. 657.008. REPORTING REQUIREMENTS. (a) A state agency
7 ~~[public entity]~~ shall file quarterly with the comptroller a report
8 that states:

9 (1) any measures taken by the state agency during the
10 quarter to inform individuals entitled to a hiring preference under
11 this chapter of their rights under this chapter;

12 (2) the appeals process available through the state
13 agency to an individual entitled to a hiring preference under this
14 chapter who alleges that the state agency violated the individual's
15 rights under this chapter;

16 (3) the percentage of the total number of employees
17 hired by the state agency ~~[entity]~~ during the reporting period who
18 are persons entitled to a preference under this chapter; and

19 (4) ~~[(2)]~~ the percentage of the total number of the
20 agency's ~~[entity's]~~ employees who are persons entitled to a
21 preference under this chapter~~[, and~~

22 ~~[(3) the number of complaints filed with the governing~~
23 ~~body of the entity under Section 657.010 during that quarter and the~~
24 ~~number of those complaints resolved by the governing body].~~

25 (b) The comptroller shall file annually with the
26 legislature a report that compiles and analyzes information that
27 the comptroller receives from state agencies ~~[public entities]~~

under Subsection (a).

SECTION 9. Chapter 657, Government Code, is amended by adding Subchapters B and C to read as follows:

SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

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

(b) The individual must state in the complaint:

(1) the name of the public entity; and

(2) the allegations that form the basis of the complaint.

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

(b) If the public entity determines that an individual should have been offered the position because of the preference granted under this chapter, the public entity shall offer to appoint or employ the applicant:

(1) for the position; or

(2) for the next similar position that becomes available for which the individual meets the minimum qualifications.

Sec. 657.053. REQUEST FOR HEARING. If a state agency

1 determines under Section 657.052 that the applicant is not entitled
2 under this chapter to be appointed or employed for the position, the
3 applicant may request a hearing under Subchapter C.

4 SUBCHAPTER C. HEARING

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

11 (b) The applicant must request a hearing not later than the
12 30th day after the date the applicant receives notice of the
13 decision issued under Section 657.052.

14 (c) Not later than the 10th day after the date the state
15 agency receives a request for a hearing, the state agency shall
16 refer the case to the State Office of Administrative Hearings for a
17 hearing.

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

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

25 Sec. 657.103. DECISION. (a) If the administrative law
26 judge determines that the applicant should have been offered the
27 position applied for because of the preference granted under this

1 chapter, the individual responsible for making hiring decisions for
2 the state agency shall:

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

5 (2) offer to appoint or employ the applicant for the
6 next similar position that becomes available for which the
7 applicant meets the minimum qualifications.

8 (b) The administrative law judge shall render the final
9 decision in the contested case. The decision of the administrative
10 law judge is not subject to judicial review.

11 Sec. 657.104. REPORT. The State Office of Administrative
12 Hearings shall report to the governor, the comptroller, and the
13 legislature the number of hearings requested under this subchapter.

14 SECTION 10. Section 657.010, Government Code, is repealed.

15 SECTION 11. The changes in law made by this Act to Chapter
16 657, Government Code, apply to an application for employment only
17 if the application is submitted on or after the effective date of
18 this Act. An application submitted before the effective date of
19 this Act is governed by the law in effect at the time the
20 application is submitted, and the former law is continued in effect
21 for that purpose.

22 SECTION 12. The changes in law made by this Act to Chapter
23 657, Government Code, apply only to a public work for which a public
24 entity first advertises or otherwise solicits bids, proposals,
25 offers, or qualifications to perform any portion of the work on or
26 after the effective date of this Act. A public work for which a
27 public entity first advertised or otherwise solicited bids,

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1 proposals, offers, or qualifications to perform any portion of the
2 work before that date is governed by the law in effect when the
3 first advertisement or solicitation was given, and the former law
4 is continued in effect for that purpose.

5 SECTION 13. This Act takes effect September 1, 2009.