

By: Van de Putte

S.B. No. 1498

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. Subsections (a) and (b), Section 657.002,
17 Government Code, 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~~].

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

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

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

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

10 SECTION 5. Subsections (a) and (b), Section 657.003,
11 Government Code, are amended to read as follows:

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

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

24 SECTION 6. Subsection (a), Section 657.005, Government
25 Code, is amended to read as follows:

26 (a) The individual whose duty is to appoint or employ an
27 applicant for a position with a public entity or public work of this

1 state or an officer or the chief administrator of the entity or work
2 who receives an application for appointment or employment by an
3 individual entitled to a veteran's employment preference, before
4 appointing or employing any individual, shall investigate the
5 qualifications of the applicant for the position. If the applicant
6 is of good moral character and can perform the duties of the
7 position and no other applicant for the position has greater
8 qualifications than the applicant entitled to a veteran's
9 employment preference, the officer, chief executive, or individual
10 whose duty is to appoint or employ shall appoint or employ the
11 applicant for the position.

12 SECTION 7. Subsection (b), Section 657.007, Government
13 Code, is amended to read as follows:

14 (b) The preference granted under this section applies only
15 to the extent that a reduction in workforce by an employing public
16 entity involves other employees of the same [~~a similar type or~~]
17 classification.

18 SECTION 8. Section 657.008, Government Code, is amended to
19 read as follows:

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

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

26 (2) the appeals process available through the state
27 agency to an individual entitled to a hiring preference under this

1 chapter who alleges that the state agency violated the individual's
2 rights under this chapter;

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

6 (4) [~~(2)~~] the percentage of the total number of the
7 agency's [~~entity's~~] employees who are persons entitled to a
8 preference under this chapter [~~, and~~

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

12 (b) The comptroller shall file annually with the
13 legislature a report that compiles and analyzes information that
14 the comptroller receives from state agencies [~~public entities~~]
15 under Subsection (a).

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

18 SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

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

25 (b) The individual must state in the complaint:

26 (1) the name of the public entity; and

27 (2) the allegations that form the basis of the

1 complaint.

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

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

10 (1) for the position; or

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

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

18 SUBCHAPTER C. HEARING

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

25 (b) The applicant must request a hearing not later than the
26 30th day after the date the applicant receives notice of the
27 decision issued under Section 657.052.

1 (c) Not later than the 10th day after the date the state
2 agency receives a request for a hearing, the state agency shall
3 refer the case to the State Office of Administrative Hearings for a
4 hearing.

5 Sec. 657.102. HEARING PROCEDURES. (a) The State Office of
6 Administrative Hearings shall conduct a hearing on the complaint
7 not later than the 90th day after the date the office receives the
8 complaint. An administrative law judge employed by the office
9 shall conduct the hearing.

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

12 Sec. 657.103. DECISION. (a) If the administrative law
13 judge determines that the applicant should have been offered the
14 position applied for because of the preference granted under this
15 chapter, the individual responsible for making hiring decisions for
16 the state agency shall:

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

19 (2) offer to appoint or employ the applicant for the
20 next similar position that becomes available for which the
21 applicant meets the minimum qualifications.

22 (b) The administrative law judge shall render the final
23 decision in the contested case. The decision of the administrative
24 law judge is not subject to judicial review.

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

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

2 SECTION 11. The changes in law made by this Act to Chapter
3 657, Government Code, apply to an application for employment only
4 if the application is submitted on or after the effective date of
5 this Act. An application submitted before the effective date of
6 this Act is governed by the law in effect at the time the
7 application is submitted, and the former law is continued in effect
8 for that purpose.

9 SECTION 12. The changes in law made by this Act to Chapter
10 657, Government Code, apply only to a public work for which a public
11 entity first advertises or otherwise solicits bids, proposals,
12 offers, or qualifications to perform any portion of the work on or
13 after the effective date of this Act. A public work for which a
14 public entity first advertised or otherwise solicited bids,
15 proposals, offers, or qualifications to perform any portion of the
16 work before that date is governed by the law in effect when the
17 first advertisement or solicitation was given, and the former law
18 is continued in effect for that purpose.

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