

1-1 By: Van de Putte S.B. No. 1498
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Veteran Affairs and
1-4 Military Installations; April 20, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 4,
1-6 Nays 0; April 20, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1498 By: Van de Putte
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to veteran's employment preferences.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 657, Government Code, is amended by
1-13 designating Sections 657.001 through 657.009 as Subchapter A and
1-14 adding a heading for Subchapter A to read as follows:

1-15 SUBCHAPTER A. GENERAL PROVISIONS

1-16 SECTION 2. Section 657.001, Government Code, is amended by
1-17 amending Subdivision (2) and adding Subdivisions (3) and (4) to
1-18 read as follows:

1-19 (2) "Minimum qualifications" means the experience and
1-20 education to perform the essential tasks of a job identified in the
1-21 posting for the job.

1-22 (3) "Public entity" means:

1-23 (A) a state agency, including:

1-24 (i) a [public] department, commission,
1-25 board, authority, office, or other agency in the executive branch
1-26 of state government created by the constitution or a statute of this
1-27 state; or

1-28 (ii) a university system or an institution
1-29 of higher education as defined by Section 61.003, Education Code;
1-30 or

1-31 (B) a county, municipality, or district, a
1-32 district or other authority created under Section 52, Article III,
1-33 or Section 59, Article XVI, Texas Constitution, or any other
1-34 political subdivision of this state.

1-35 (4) "Public work of this state" means a project that is
1-36 the subject of a public work contract with a governmental entity to
1-37 which Chapter 2253 applies.

1-38 SECTION 3. Subchapter A, Chapter 657, Government Code, as
1-39 added by this Act, is amended by adding Section 657.0015 to read as
1-40 follows:

1-41 Sec. 657.0015. EXCEPTIONS. This chapter does not apply to:

1-42 (1) appointments made by the governor; or

1-43 (2) the employment of:

1-44 (A) a head of a division or department in a state
1-45 office or agency headed by a single elected state official; or

1-46 (B) a person who advises or reports directly to
1-47 an elected state official.

1-48 SECTION 4. Subsections (a) and (b), Section 657.002,
1-49 Government Code, are amended to read as follows:

1-50 (a) A veteran qualifies for a veteran's employment
1-51 preference if the veteran:

1-52 (1) served in the military for not less than 90
1-53 consecutive days during a national emergency declared in accordance
1-54 with federal law or was discharged from military service for an
1-55 established service-connected disability;

1-56 (2) was honorably discharged from military service;
1-57 and

1-58 (3) meets the minimum qualifications for the
1-59 position [is competent].

1-60 (b) A veteran's surviving spouse who has not remarried or an
1-61 orphan of a veteran qualifies for a veteran's employment preference
1-62 if:

1-63 (1) the veteran was killed while on active duty;

2-1 (2) the veteran served in the military for not less
 2-2 than 90 consecutive days during a national emergency declared in
 2-3 accordance with federal law; and

2-4 (3) the spouse or orphan meets the minimum
 2-5 qualifications for the position [~~is competent~~].

2-6 SECTION 5. Subsections (a) and (b), Section 657.003,
 2-7 Government Code, are amended to read as follows:

2-8 (a) An individual who qualifies for a veteran's employment
 2-9 preference is entitled to a preference in employment with or
 2-10 appointment to a public entity or for a public work of this state
 2-11 over other applicants for the same position who do not have [~~a~~]
 2-12 greater qualifications for the position [~~qualification~~].

2-13 (b) An individual who has an established service-connected
 2-14 disability and is entitled to a veteran's employment preference is
 2-15 entitled to preference for employment or appointment in a position
 2-16 [~~for which a competitive examination is not held~~] over all other
 2-17 applicants for the same position who are without a
 2-18 service-connected disability and who do not have [~~a~~] greater
 2-19 qualifications for the position [~~qualification~~].

2-20 SECTION 6. Subsection (a), Section 657.005, Government
 2-21 Code, is amended to read as follows:

2-22 (a) The individual whose duty is to appoint or employ an
 2-23 applicant for a position with a public entity or public work of this
 2-24 state or an officer or the chief administrator of the entity or work
 2-25 who receives an application for appointment or employment by an
 2-26 individual entitled to a veteran's employment preference, before
 2-27 appointing or employing any individual, shall investigate the
 2-28 qualifications of the applicant for the position. If the applicant
 2-29 is of good moral character and can perform the duties of the
 2-30 position and no other applicant for the position has greater
 2-31 qualifications than the applicant entitled to a veteran's
 2-32 employment preference, the officer, chief executive, or individual
 2-33 whose duty is to appoint or employ shall appoint or employ the
 2-34 applicant for the position.

2-35 SECTION 7. Subsection (b), Section 657.007, Government
 2-36 Code, is amended to read as follows:

2-37 (b) The preference granted under this section applies only
 2-38 to the extent that a reduction in workforce by an employing public
 2-39 entity involves other employees of the same [~~a similar type or~~]
 2-40 classification.

2-41 SECTION 8. Section 657.008, Government Code, is amended to
 2-42 read as follows:

2-43 Sec. 657.008. REPORTING REQUIREMENTS. (a) A state agency
 2-44 [~~public entity~~] shall file quarterly with the comptroller a report
 2-45 that states:

2-46 (1) any measures taken by the state agency during the
 2-47 quarter to inform individuals entitled to a hiring preference under
 2-48 this chapter of their rights under this chapter;

2-49 (2) the appeals process available through the state
 2-50 agency to an individual entitled to a hiring preference under this
 2-51 chapter who alleges that the state agency violated the individual's
 2-52 rights under this chapter;

2-53 (3) the percentage of the total number of employees
 2-54 hired by the state agency [~~entity~~] during the reporting period who
 2-55 are persons entitled to a preference under this chapter; and

2-56 (4) [~~(2)~~] the percentage of the total number of the
 2-57 agency's [~~entity's~~] employees who are persons entitled to a
 2-58 preference under this chapter [~~, and~~]

2-59 [~~(3) the number of complaints filed with the governing~~
 2-60 ~~body of the entity under Section 657.010 during that quarter and the~~
 2-61 ~~number of those complaints resolved by the governing body].~~

2-62 (b) The comptroller shall file annually with the
 2-63 legislature a report that compiles and analyzes information that
 2-64 the comptroller receives from state agencies [~~public entities~~]
 2-65 under Subsection (a).

2-66 SECTION 9. Chapter 657, Government Code, is amended by
 2-67 adding Subchapters B and C to read as follows:

2-68 SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

2-69 Sec. 657.051. COMPLAINT PROCEDURE. (a) An individual who

3-1 is entitled to a veteran's employment preference under this chapter
3-2 may appeal a hiring decision made by a public entity by filing a
3-3 written complaint with the public entity not later than the 30th day
3-4 after the date the individual receives notice of the hiring
3-5 decision.

3-6 (b) The individual must state in the complaint:
3-7 (1) the name of the public entity; and
3-8 (2) the allegations that form the basis of the
3-9 complaint.

3-10 Sec. 657.052. DECISION. (a) Not later than the 30th day
3-11 after the date the public entity receives a complaint, the public
3-12 entity shall issue a decision on the complaint and notify the
3-13 applicant of the decision.

3-14 (b) If the public entity determines that an individual
3-15 should have been offered the position because of the preference
3-16 granted under this chapter, the public entity shall offer to
3-17 appoint or employ the applicant:

3-18 (1) for the position; or
3-19 (2) for the next similar position that becomes
3-20 available for which the individual meets the minimum
3-21 qualifications.

3-22 Sec. 657.053. REQUEST FOR HEARING. If a state agency
3-23 determines under Section 657.052 that the applicant is not entitled
3-24 under this chapter to be appointed or employed for the position, the
3-25 applicant may request a hearing under Subchapter C.

3-26 SUBCHAPTER C. HEARING

3-27 Sec. 657.101. COMPLAINT; HEARING. (a) An applicant for
3-28 employment with a state agency who is entitled to a veteran's
3-29 employment preference under this chapter may appeal the state
3-30 agency's hiring decision after following the complaint procedure in
3-31 Subchapter B by filing a request for a hearing with the state
3-32 agency.

3-33 (b) The applicant must request a hearing not later than the
3-34 30th day after the date the applicant receives notice of the
3-35 decision issued under Section 657.052.

3-36 (c) Not later than the 10th day after the date the state
3-37 agency receives a request for a hearing, the state agency shall
3-38 refer the case to the State Office of Administrative Hearings for a
3-39 hearing.

3-40 Sec. 657.102. HEARING PROCEDURES. (a) The State Office of
3-41 Administrative Hearings shall conduct a hearing on the complaint
3-42 not later than the 90th day after the date the office receives the
3-43 complaint. An administrative law judge employed by the office
3-44 shall conduct the hearing.

3-45 (b) A hearing conducted under this subchapter is a contested
3-46 case under Chapter 2001.

3-47 Sec. 657.103. DECISION. (a) If the administrative law
3-48 judge determines that the applicant should have been offered the
3-49 position applied for because of the preference granted under this
3-50 chapter, the individual responsible for making hiring decisions for
3-51 the state agency shall:

3-52 (1) offer to appoint or employ the applicant for the
3-53 position; or

3-54 (2) offer to appoint or employ the applicant for the
3-55 next similar position that becomes available for which the
3-56 applicant meets the minimum qualifications.

3-57 (b) The administrative law judge shall render the final
3-58 decision in the contested case. The decision of the administrative
3-59 law judge is not subject to judicial review.

3-60 Sec. 657.104. REPORT. The State Office of Administrative
3-61 Hearings shall report to the governor, the comptroller, and the
3-62 legislature the number of hearings requested under this subchapter.

3-63 SECTION 10. Section 657.010, Government Code, is repealed.

3-64 SECTION 11. The changes in law made by this Act to Chapter
3-65 657, Government Code, apply to an application for employment only
3-66 if the application is submitted on or after the effective date of
3-67 this Act. An application submitted before the effective date of
3-68 this Act is governed by the law in effect at the time the
3-69 application is submitted, and the former law is continued in effect

4-1 for that purpose.

4-2 SECTION 12. The changes in law made by this Act to Chapter
4-3 657, Government Code, apply only to a public work for which a public
4-4 entity first advertises or otherwise solicits bids, proposals,
4-5 offers, or qualifications to perform any portion of the work on or
4-6 after the effective date of this Act. A public work for which a
4-7 public entity first advertised or otherwise solicited bids,
4-8 proposals, offers, or qualifications to perform any portion of the
4-9 work before that date is governed by the law in effect when the
4-10 first advertisement or solicitation was given, and the former law
4-11 is continued in effect for that purpose.

4-12 SECTION 13. This Act takes effect September 1, 2009.

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