

SUBJECT: Creating appeal procedures for veteran's employment preference

COMMITTEE: Defense Affairs and State-Federal Relations — committee substitute recommended

VOTE: 5 ayes — Corte, Noriega, Herrero, Merritt, Raymond
0 nays
4 absent — Escobar, Garcia, Hodge, Moreno

WITNESSES: For — None
Against — None
On — John Brieden, Texas Veterans Commission; Cruz Montemayor, Texas Veterans Commission; John Moore, Texas Workforce Commission

BACKGROUND: Government Code, ch. 657 establishes employment preferences for competent, honorably discharged veterans who have served at least 90 consecutive days during a national emergency or who were discharged because of a recognized service-connected disability. The preference also extends to a veteran's surviving spouse, if unmarried, or a veteran's orphan if the veteran was killed during active duty and had served at least 90 consecutive days during a national emergency, provided the orphan or spouse is competent.

If those eligible for the veteran's employment preference seek work or appointment to a public work or public entity – a public department, commission, board, or agency – they are entitled to a position above other applicants who are not more qualified. At least 40 percent of state entity or work employees should be those eligible for the veteran's employment preference, and a work or entity that has not met that goal should fill vacancies using that preference until it hits that percentage. At that point, a public work or entity is not required to employ the preference when filling positions. The preference also is extended to job retention in the event that a public entity downsizes as long as the jobs cut are of a similar type or classification.

DIGEST: CSHB 1275 would create Government Code, sec. 657.010, establishing a procedure under which those entitled to a veteran's employment preference would be able to pursue an appeal of a government employment decision. A veteran aggrieved by the decision of a state entity or public work regarding either a hiring or job elimination would be able to appeal the decision by bringing a cause of action against the entity or work. A person appealing the employment decision who prevailed would be entitled to reasonable damages incurred and reasonable attorney's fees and costs incurred.

The bill would take effect September 1, 2007, and would only apply to employment decisions made on or after that date.

SUPPORTERS SAY: Although the state has had a veteran's hiring preference since troops returned home from World War II, it has not codified any enforcement or appeals process for those public entities and public works that do not adhere to this policy. CSHB 1275 would provide a way for a veteran to contest an employment decision and would specify potential compensation for improper actions.

Veterans groups have sought a change in statute governing the veteran's employment preference for the better part of a decade. The federal government has a civil service test, on which it applies its veterans' preference by adding points to the test of an eligible candidate. The state used to implement a similar test, upon which those eligible for the preference would receive an additional 10 points.

Without a system through which an agency can easily apply a veteran's preference, it is more difficult for an eligible veteran to determine whether he or she had been properly considered for a public position. A person eligible for the benefit has little recourse, other than appealing the decision to the agency that made it. A lawsuit filed against the agency would be dismissed because the state cannot be sued on those grounds.

OPPONENTS SAY: Any attempt to revise the enforcement of the veteran's employment preference should contain a more comprehensive approach that would clarify existing eligibility and delineate a more thorough complaint and appeal process. Any appeal options should be conducted through the State Office of Administrative Hearings, a more appropriate and expedient venue for such a challenge than the court system.

Current provisions need to be strengthened in order to proceed with a complaint and appeal process because they are vague, such as references to public entities, or are difficult to measure, such as requirements that an applicant be competent. CSSB 1454 by Van de Putte would clarify these vagaries and further define minimum standards for qualification under the preference. The bill also would create a complaint and hearing process that would not be as daunting or cost-prohibitive as a court challenge.

NOTES:

The original version of CSHB 1275 would have allowed a person eligible for a veteran's employment benefit to challenge an employment decision of a public entity or public work in the same fashion as an appeal of an unlawful employment practice (Labor Code, ch. 21).

According to the LBB, CSHB 1275 would not have a fiscal impact but could increase employment cases against the state, the costs of which would be absorbed by the Office of the Attorney General and the respective state agencies involved in litigation.

A related bill, SB 1454 by Van de Putte, passed the Senate by 31-0 on April 18 and has been referred to the House Defense Affairs and State-Federal Relations Committee.