

MINUTES OF THE HOUSE COMMITTEE ON VETERANS, MILITARY AND HOMELAND
SECURITY

The meeting was called to order by Chairman Don Myers at 1:30 P.M. on March 20, 2007 in Room 241-N of the Capitol.

All members were present except:

Representative Bob Bethell- excused
Representative Marti Crow- excused
Representative Kenny Wilk- excused

Committee staff present:

Art Griggs, Revisor of Statutes Office
Athena Andaya, Kansas Legislative Research
Betty Caruthers, Committee Assistant

Conferees appearing before the committee: George Vega, State Personnel Division
Kraig Knowlton, State Personnel Division

Others attending:

See attached list.

Moved by Representative Kelsey, seconded by Representative Phelps for approval of the House Committee on Veterans, Military and Homeland Security held on March 14, 2007 be approved.

Motion carried.

Chairman Myers announced the discussion of **HB 2562 - Veterans preference in employment.**

Vice-Chairman Goico requested providing the Committee with a hand-out of the Sub-Committee report. This was approved and made available to the Committee. (Attachment 1)

Chairman Myers requested that Revisor, Art Griggs give an overview of the changes for the **Substitute for HB 2562.** (Attachment 2)

Vice-Chairman Goico requested that he be able to present the Sub-Committee report to the Committee which Chairman Myers approved being done. As a part of this Representative Goico suggested the Legislature look at this in about two years for review. He also talked about giving notification of rejection in a certified letter. Representative Goyle wanted more specificity in addition to competency. Representative Lukert questioned veterans getting preferential treatments with promotions. George Vega with the State Personnel Dept. stated that the State allows preference with initial hires as well as promotions. Representative Craft questioned the definition being used for veterans. Representative Goyle questioned limiting it to combat veterans.

Chairman Myers suggested the possibility of this bill going back to the Sub-Committee for further work while Vice-Chairman Goico voiced the possibility of continuing the present discussions and possible working of the bill.

Representative Johnson moved, seconded by Representative Goyle to work the 3/20 noon version of the Substitute for HB 2562.

Motion carried.

Moved by Representative Ruff, seconded by Representative Goico to add - 'notification within 30 days' to page 3 end of line 1 and 'acting in good faith' to page 2 line 4 after means.

Motion carried.

Moved by Representative Johnson, seconded by Representative Goyle to utilize DD form 214 which is the same as the State Personnel use for required identification and status.

CONTINUATION SHEET

MINUTES OF THE House Committee on Veterans, Military and Homeland Security at 1:30 P.M. on March 20, 2007 in Room 241-N of the Capitol.

Motion carried.

Representative Craft questioned why the 9/11/01 date was being utilized.

Representative Craft made a conceptual motion, seconded by Representative Ruff to strike the 9/11/07 part.

Motion carried.

Representative Goico moved to request a Legislative post audit study in two years. Seconded by Representative Ruff.

Motion carried.

Moved by Representative Proehl, seconded by Representative Johnson to insert the word 'completely' after the word can and before the word perform on page 2 line 33.

Motion carried.

Moved by Representative Ruff, seconded by Representative Goico to removed the second word 'initial' and replace it with 'first' promotion on page 2 line 21.

Motion carried.

Moved by Representative Lukert, seconded by Representative Light to strike the words 'and 1st promotion'.

Motion failed.

Moved by Representative Ruff, seconded by Representative Craft to switch sections a and b and start the bill as it reads on page 2 line 9.

Representative Ruff withdrew her motion.

Chairman Myers recognized Kraig Knowlton who spoke to sub-section C page 2 line 35 where he had concerns regarding the word 'shall' which could signify absolute or guaranteed preference.

Moved by Representative Ruff, seconded by Representative Lukert that on page 2 line 35 strike the word 'appoint' and replace it with 'consider the veteran for appointment.' In line 35 the word 'veteran' will also be stricken. This modification was approved as part of the motion.

Motion carried.

Moved by Representative Craft, page 2 line 19 section C, to read 'veterans shall be offered a preference for consideration for initial employment and first promotion.' No second.

Motion died for lack of a second.

Moved by Representative Goico, seconded by Representative Colloton, page 2 line 3, add 'or pay grade of O4 or above' and remove '20 years or more of service.'

Motion carried.

Chairman Myers adjourned the meeting at 3:20.

Next meeting scheduled for Wednesday, March 21, 2007.

Approved: _____

MEETING NOTES OF THE SUBCOMMITTEE ON HB 2562
HOUSE COMMITTEE ON VETERANS, MILITARY AND HOMELAND SECURITY

The meeting was called to order by Chairperson Mario Goico at 1:35 p.m. on March 19, 2006 in Room 241-N of the Capitol.

Members Present:

Representative Pat Colloton
Representative Barbara Craft
Representative Raj Goyle
Representative Richard Proehl
Representative L. Candy Ruff

Committee Staff Present:

Art Griggs, Revisor of Statutes Office
Athena Andaya, Kansas Legislative Research Department

Others Attending: See attached list.

Chairperson Goico distributed a document that he drafted in order to limit and facilitate the discussions on the bill draft that will be presented to the House Committee on Veterans, Military, and Homeland Security. Chairperson Goico stated that he would focus the Subcommittee's attention on the following policy issues: To whom does the veterans preference apply, exceptions of applicability, which entities are required to apply the veterans preference, definitions, to what jobs does the veterans preference apply, how does the veterans preference apply, when does the veterans preference apply, notification of rejection, appeals process and federal law.

TO WHOM DOES THE VETERANS PREFERENCE APPLY

Discussion was focused on whether the veterans preference should apply to combat veterans, disabled veterans, unmarried widows of combat veterans and orphans, and wife's of prisoner of war. It was agreed by consensus of the Subcommittee that the veterans preference should apply to combat veterans, unmarried widows of combat veterans who died during combat, spouses of 100% disabled combat veterans (as determined by the United States Department of Veterans Affairs), and a spouse of a prisoner of war.

WHICH ENTITIES ARE REQUIRED TO APPLY THE VETERANS PREFERENCE

Discussion was had on which entities are required to apply the veterans preference. It was agreed by consensus of the Subcommittee that the veterans preference should be applied by the state, counties and cities (towns?) as it is specified under current law.

EXCEPTIONS OF APPLICABILITY

It was agreed by consensus of the Subcommittee that the veterans preference should not apply to an office filled by election; conscientious objectors; military retirees at the rank of major or lieutenant commander (O4), or higher; and major key employees for which there is no selection process, such as a position as a private secretary or deputy of an official or department who holds a confidential relationship to the appointing or employing officer. Additionally, the Subcommittee agreed that there should be no quotas. The principle of exception of applicability in the selection process is one of the basic requirements in order to provide viability to this statute. The manager must be given the discretion, if it is truly a key position, not to open the selection process. The subcommittee believes that the department/agency heads should designate any number of such deputies and thus ignore veterans preference.

DEFINITIONS

After discussion, it was agreed by consensus of the subcommittee that competency shall be defined by the hiring authority and set forth beforehand in writing when the announcement for the job is made to include consideration of experience, training, education and or licensure or certification that provides "appropriate job-related evidence that an applicant possesses the required knowledge, skills, preferred skills, and abilities necessary to the discharge of the duties involved", and any other required qualifications. The Subcommittee also agreed that the agency must provide detailed qualifications in the announcement to include: the required basic qualifications for such position, any preferred qualifications for such position; performance standards for the position; and the process that will be used for selection. The subcommittee agreed to require notification to what the veterans preference will apply. Also the subcommittee added that good faith must be met if veteran is not hired.

TO WHAT JOBS DOES THE VETERANS PREFERENCE APPLY

After discussion, it was agreed by consensus of the Subcommittee that the veterans preference applies to permanent, not temporary, classified and unclassified service, exempt or nonexempt or "at will" employment.

HOW DOES THE VETERANS PREFERENCE APPLY

After discussion, it was agreed by consensus of the Subcommittee that line 29, page 1, "any benefit of employment" should be deleted and that the granting of absolute veteran preference removed.

WHEN DOES THE VETERANS PREFERENCE APPLY

After discussion, it was agreed by consensus of the Subcommittee that the veterans preference should be limited to first promotion. A time limitation from initial employment was discussed but not agreed upon and this is left to the wisdom of the whole committee.

Assistant Revisor Griggs advised the Subcommittee that KSA 73-203 provides that ex-service members or their widows and orphans, defined as minor dependants of the service member, shall be retained when making reduction in employees. Therefore, the Subcommittee

deleted the reference to retention in employment on line 28, page 1 because it is already covered by existing law.

NOTIFICATION OF REJECTION

The Subcommittee discussed this topic and agreed to use the words of the chairman's draft. It was also agreed that the hiring authority should show how in good faith the veteran was not selected for the job opening. Further discussion on this point will be upon the discretion of the whole committee when the bill is worked.

APPEALS PROCESS

It was agreed by consensus of the Subcommittee that a veteran must exhaust his or her administrative remedies before filing a cause of action in District Court. Additionally, the Subcommittee agreed that reasonable attorneys fees, as determined by the court, should be awarded when it is determined by the court or a jury that the governmental entity failed to provide the veterans preference. The \$10,000 limitation on reasonable attorneys fees is deleted.

FEDERAL LAW

It was agreed by consensus that a statement that compliance with federal law should be included in the bill. Some elements of federal law might not agree with Kansas policy as defined by this statute. However, in those cases federal statutes prevails unless the legislature specifically addresses the issue.

With no further business before the Subcommittee, Chairperson Goico adjourned the meeting at 3:15 p.m.

3/20 Now

PROPOSED Substitute for HOUSE BILL NO. 2562

By Committee on Veterans, Military and Homeland Security

1 AN ACT relating to veterans; concerning veterans preference;
2 amending K.S.A. 73-201 and repealing the existing section.

3 Be it enacted by the Legislature of the State of Kansas:

4 Section 1. K.S.A. 73-201 is hereby amended to read as
5 follows: 73-201. (a) As used in this act: (1) "Veteran" means:

6 (A) Any person who entered the armed services before October
7 15, 1976, and separated from the armed services under honorable
8 conditions, if such person served: (i) On active duty during any
9 war (the official dates for war service are April 6, 1917 through
10 July 2, 1921, and December 7, 1941 through April 28, 1952); (ii)
11 during the period April 28, 1952 through July 1, 1955; (iii) in
12 any campaign or expedition for which a campaign badge or service
13 medal has been authorized; or (iv) for more than 180 consecutive
14 days since January 31, 1955, but before October 15, 1976,
15 excluding an initial period of active duty for training under the
16 "six-month" reserve or national guard program;

17 (B) any person who entered the armed services on or after
18 October 15, 1976, and separated from the armed services under
19 honorable conditions, if such person was awarded a service medal
20 or campaign badge;

21 (C) any person who separated from the armed services under
22 honorable conditions and has a disability certified by the United
23 States department of veterans affairs as being service connected,
24 has been issued the purple heart by the United States government
25 or has been released from active service with a service-connected
26 disability;

27 (D) the spouse of a veteran who has a 100% service connected
28 disability as determined by the United States department of
29 veteran affairs;

30 (E) the unremarried spouse of a veteran who died on or after
31 September 11, 2001, while, and as a result of, serving in
32 military service; and

33 (F) the spouse of a prisoner of war, as defined by K.S.A.
34 75-4364, and amendments thereto.

1 Notwithstanding the foregoing, the term "veteran" shall not
2 apply to any person who retired from the military with the rank
3 of major or above and twenty years or more of military service.

4 (2) "Competent" means the person is likely to successfully
5 meet the performance standards of the position based on what a
6 reasonable person knowledgeable in the operation of the position
7 would conclude from all information available at the time the
8 decision is made.

9 (b) In grateful recognition of the services, sacrifices and
10 sufferings of persons veterans who served in the army, navy, air
11 force or marine corps of the United States in world war I and
12 world war II, and of persons who have served with the armed
13 forces of the United States during the military, naval and air
14 operations in Korea, Viet Nam, Iraq, Afghanistan or other places
15 under the flags of the United States and the United Nations or
16 under the flag of the United States alone, and have been
17 honorably discharged therefrom, they the provisions of this
18 section are enacted.

19 (c) Veterans shall be preferred for appointments--and
20 employed--to--fill--positions initial employment and initial
21 promotion in every public department and upon all public works of
22 the state of Kansas, and of the counties and cities of this
23 state, if competent to perform such services,--and--the--person. Any
24 veteran thus preferred shall not be disqualified from holding any
25 position in said service on account of his the veteran's age or
26 by reason of any physical or mental disability,--provided as long
27 as such age or disability does not render him the veteran
28 incompetent to perform the duties of the position applied for,--
29 and. When any such-ex-soldier,--sailor,--airman-or--marine veteran
30 shall apply for appointment to any such position, place, or
31 employment, the officer, board or person whose duty it is or may
32 be to appoint a person to fill such place shall, if the applicant
33 be a man-or-woman veteran of good reputation, and can perform the
34 duties of the position applied for by him-or-her the veteran,
35 appoint said-ex-soldier,--sailor,--airman-or-marine the veteran to

1 such position, place, or employment: ~~Provided~~ That.

2 (d) The provisions of this act shall not be applicable to
3 any persons classed as conscientious objectors. The provisions of
4 this act shall not be controlling over the provisions of any
5 statute, county resolution or city ordinance relating to
6 retirement, or termination on the basis of age, of employees of
7 the state or any county or city. Whenever under any statute,
8 county resolution or city ordinance retirement, or termination on
9 the basis of age, of any employee is required at a certain age,
10 or is optional with the employer at a certain age, such
11 provisions of such statute, resolution or ordinance shall be
12 controlling and shall not be limited by this section.

13 (e) All notices of job openings and all applications for
14 employment by the state and any city or county in this state
15 shall state that the job is subject to a veteran's preference,
16 how the preference works and how veterans may take advantage of
17 the preference. Each state agency, city and county shall have in
18 place at least 30 days prior to announcing the intent to fill a
19 position, a written statement of: (1) The minimum qualifications
20 for such position; (2) any preferred qualifications of such
21 position; (3) performance standards for the position; and (4) the
22 process that will be used for selection.

23 (f) Every human resource or employment center of the state
24 and any city or county shall openly display documents that
25 indicate that veterans are eligible for a preference in their
26 original employment and any initial promotion within the
27 employments of the governmental entity.

28 (g) Any veteran who alleges that a state agency, city or
29 county has not provided the veterans preference as required by
30 this act, after exhausting any available administrative remedy,
31 may bring an action in the district court. If the court or jury
32 finds that the state agency, city or county has failed to provide
33 the veterans preference, the veteran shall be entitled to
34 reasonable attorney fees.

35 New Sec. 2. (a) The provisions of section 1, and amendments

1 thereto, shall not apply to the following:

2 (1) An office filled by election;

3 (2) positions which are filled by officers elected by
4 popular vote or persons appointed to fill vacancies in such
5 offices and the personal secretary of each such officer, members
6 of boards and commissions, persons employed on a temporary basis
7 without benefits, heads of departments, positions that require
8 licensure as a physician, licensure as an osteopathic physician,
9 licensure as a chiropractic physician and positions that require
10 that the employee be admitted to practice law in Kansas;

11 (3) a key employee as defined in subsection (b);

12 (4) a job held by a patient, inmate or student in or
13 enrolled at a state institution; and

14 (5) temporary or casual employment positions.

15 (b) As used in this section, "key employee" means an
16 individual specifically hired for an at will position or for a
17 non-classified position, such as a position as a private
18 secretary or deputy of an official or department who holds a
19 confidential relationship to the appointing or employing officer
20 and positions in the unclassified service of the state of Kansas
21 as enumerated in K.S.A. 75-2935, and amendments thereto.

22 New Sec. 3. To the extent that this act conflicts with
23 federal law or a limitation provided by a federal grant to a
24 public entity, this act shall be construed to operate in harmony
25 with the federal law or limitation of the federal grant.

26 Sec. 4. K.S.A. 73-201 is hereby repealed.

27 Sec. 5. This act shall take effect and be in force from and
28 after its publication in the statute book.