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2353

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2353

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2353

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/01/07

Recorder Job Number: 2533

Committee Clerk Signature

Monica Spaulding

Minutes:

Roll was taken and all members were present.

Sen. Dever, Chairman, opened the hearing on SB 2353.

Robert Evans, Secretary of the ND Veterans Coordinating Council, introduced the bill. See attachment # 1.

Senator Dever, referring to page 1, line 10-11, asked if veterans who had enlisted were included.

Robert responded they are included. At the request of Senator Horne, Robert went through and explained the bill.

Senator Marcellais stated that when he was serving on a school board, only the military who had served during wartime were considered veterans. He asked whether this bill would fix that.

Robert said in his estimation it will, but it is arguable.

Senator Oehlke referred to page 4, line 4 and 5 "to furnish proof of the applicant's status as a veteran." His questioned if there is one place that says definitively if someone is a veteran or not.

Robert responded that the DD 214, the military discharge document, gives dates of entry and discharge, character of service, and locations of service, medals or expeditionary medals.

Robert feels by defining veterans and wartime veterans, it will clear up a lot of confusion.

Senator Horne asked about page 5, lines 28-31. He asked if the purpose of that part of the bill is to ensure that someone returning from the military will be given back their job they held previous to their time in service.

Robert said it is not intended for people to return to a previously held job. It is for veterans who are seeking a new job.

Senator Lee asked if there is anything else that is looked at to determine if someone is a veteran other than the DD 214.

Robert said no, only the DD 214.

Senator Horne asked about lines 27-31 on page 5 of the bill. He asked if the intention of this part of the bill is to pay someone from the date they were passed over for a job that should have been awarded to them due to veterans' preference.

Robert said that is the intent. They want the penalty to be stronger.

Senator Dever asked if the date it would take effect would be the day a different person was hired for the position.

Robert said that would be the case.

Senator Lee asked if there was a violation of this would the other employee be let go and the veteran would get the job or would a penalty just be paid.

Robert said in the past the employee was moved to another position so the veteran could have the job or the veteran was offered an alternate position.

Senator Dever asked if a veteran gets 5 points for being a veteran and a disabled veteran gets 10 points in the hiring process.

Robert said that is the case.

Bob Hanson, Commissioner of Veterans' Affairs for the State of North Dakota, spoke in support of the bill. He read page 1, lines 22 through page 2, line 2 except for the underlined portion. He commented that there has been no declaration of war by Congress since WWII so that leaves a lot of veterans who are not eligible for veterans' benefits.

Senator Horne asked if the bill has possibly been too broadly drawn and would dilute the intent of the veterans' preference law.

Bob Hanson responded that he didn't think so. The vast majority of the veterans in North Dakota have been involved in the conflicts in Vietnam, Korea, and WWII. It takes care of those young man and women.

Senator Oehlke asked if a person from Moorhead applied for a job in Fargo would he come under the provisions of this bill.

Bob Hanson replied that it is just for North Dakota residents.

Lieutenant Colonel Dave Thiele, advocate for the ND National Guard, spoke in favor of improving the veterans' preference law. He feels the veterans' preference has been diluted to the point that it is almost meaningless. He feels we need to "put some teeth back into our law."

If two equal applicants apply the veteran is to get the job. He feels there must be consequences. He offered to help draft a bill to get appropriate consequences into it.

Senator Dever asked if Colonel Thiele was suggesting further improvements to the bill.

Colonel Thiele said the current bill would add two periods of service, the first gulf war and the War on Terror which started on 9-11. There is a distinction between those who were awarded the Expeditionary Badge or Campaign Medal and those who weren't. If one had that and one

didn't, the one who did would be entitled to veterans' preference.

Senator Oehlke asked about the Guard unit after 9/11 that didn't leave Camp Grafton even though they were on high alert. Would they qualify and if so would they qualify at a different level?

Colonel Thiele said under the current rules that service member would not qualify for veterans' preference because he or she had not been awarded the Expeditionary Badge or Campaign Medal or not served in the Theater of Operations.

S. F. (Buckshot) Hoffner spoke in support of the bill. He stated he served in the legislature for 18 years and during part of that time there was not nearly as much attention paid to veterans as there is now. He is happy to see the emphasis given now to veterans. He wanted to make a point of how much a person's life is disrupted when you go into war.

Oppositions: -

Neutral: - Chuck Klein stated he is a Vietnam era veteran and a disabled veteran and an HR Director for the city of Bismarck. He had two concerns with the bill. He feels the definition of service is too broad and is unclear. He also feels the penalty is too prohibitive for small organizations. Most small organizations don't have that kind of a budget. One other area he is concerned about is the personnel system. He feels it isn't clear enough.

Senator Dever asked how often this came up.

Chuck responded that veterans' preference has been exercised about 6 times in 16 years.

There was only one case that went to the ND Supreme Court. He feels that the present law works well.

Neutral: - Bob Frantsvog spoke on behalf of the ND League of Cities. He expressed that the original intent of the bill drafting was the put into law what had been practiced. He supports that position. He feels there may be some problems with page 5, line 29-31. He knows sometimes HR decisions are made and later it comes to light that the decision was wrong. This bill could

put a lot of strain on a small political subdivision if they would have to go back a number of years and pay back pay to compensate someone for the time elapsed while it was being contested.

Senator Oehlke asked how many instances Bob has run into in his 35 years.

Bob stated that the city attorney he worked with had a very liberal interpretation of veterans' preference and he cannot remember having to ever go back and hire someone or make a change.

Senator Oehlke asked if there was ever a case where a veteran was hired and should not have been and the other applicant came after the City of Minot for discrimination.

Bob said he doesn't recall any.

Senator Dever asked if it is possible now for someone to get back pay and benefits.

Bob said he didn't know.

Neutral: -

Chairman Dever closed the hearing on SB 2353.

The committee will act on this bill at a later date.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2353

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/02/07

Recorder Job Number: 2707

Committee Clerk Signature *Veronica Spaulding*

Minutes:

Roll was taken and all members were present.

Sen. Dever, Chairman, opened discussion on SB 2353.

Senator Marcellais asked if the DD214 is the only proof that someone is a veteran to be used in establishing veterans' preference.

Colonel Thiele said it generally is the document that will be used. He mentioned that not all DD214's are created equal. In determining veterans' preference, you may have to go beyond the DD214 so it is better not to put it in the bill.

There was mention that on state and federal applications it asks for the DD214.

Senator Nelson said she has trouble with the part on page 5, lines 29 and 30 that refers to back pay and benefits. Even moving someone to another job can cause a hardship financially especially for small agencies.

Senator Dever expressed some of the same concerns and asked what if they had taken another job. Should they get back pay?

Senator Lee said her notes from Mr. Klein's comments indicated that even an HR Dept. the size of the City of Bismarck would have a hard time finding another job for someone. He had

three reservations. The definition of service was very broad, the definition of the HR system was not clear, and the penalty clause would make them create another job.

Senator Dever mentioned that the bill did not have a fiscal note on it. If the committee needs more time, that would be possible.

Senator Marcellais asked if veterans' preference is only supposed to be for wartime veterans or for all veterans. He feels this bill would clarify it so veterans wouldn't need to go to court to exercise veterans' preference.

Senator Dever said the bill does raise concerns for human resources people.

Senator Oehlke said the bill is basically good but it needs correction. He feels this bill is necessary so it doesn't become more difficult to recruit for the National Guard if they don't get preference in the job market.

Senator Dever clarified that it is already in federal law that they can return to their jobs even if their job has been filled.

Senator Lee asked if there would be someone in HR that could help with the definition of HR since that was one of the concerns of Mr. Klein.

Colonel Thiele clarified that the deployed or mobilized troops currently are entitled to veterans' preference. This bill would make all veterans entitled to veterans' preference. This would affect those who served in the Gulf Wars and in the War on Terror which would be anyone who served beginning on 9/11/01 and going until it ends. He said he finds the language of this bill confusing but the bottom line is, if two candidates are equally qualified for a job and one is a veteran, the veteran gets the job. See attachment # 1 for how he prefers the bill to read. He feels this makes it clearer and if it is more clear then it will be more easily followed. If there is any service time after 9/11/01 of more than 30 days, they will be entitled to veterans'

preference. He feels number four under Section 1 makes it very clear. The penalty clause is worded so they cannot double dip.

There was some discussion about the path the drafting of this bill had taken. Senator Dever asked if the wording of this bill would cover the conflicts going forward from here.

Senator Marcellais asked if there is any veterans' preference for the spouse of a veteran who was killed.

Colonel Thiele said he knows a decedent's children get free tuition but he is not sure what else.

Bob Hanson said the reason they want to leave the specific dates out is because they will always need to be changed.

Senator Marcellais said the dates are what they go by.

Bob Hanson said anyone who served should be eligible. Page 1, paragraphs 2 and 3 should really be joined together.

Senator Lee asked why we are talking about a wartime veteran who died when we are talking about employment.

Senator Nelson said it is in the definition section.

Colonel Thiele said on page 5, line 20 it addresses a qualified veterans' spouse. That is why it is mentioned in the definitions.

Senator Dever wanted to consider the earlier draft of the bill.

Senator Lee mentioned it may be good to blend the two. She isn't sure why the 180 days was taken out. There are good reasons for including "other than training" which isn't in this one.

Senator Nelson asked why they inserted the words on personnel systems.

Colonel Thiele said that part causes angst for HR people. Maybe that part can be deleted unless there is a very good reason for it.

There was discussion about the penalty and the meaning of the last sentence on attachment #1. This part would prevent "double dipping."

Colonel Thiele said reinstatement to a previous job is part of current law.

Senator Dever assigned a subcommittee. It will include Senator Oehlke as the chairman of the subcommittee. He suggested Tog Anderson who is in HR with the state of North Dakota as a resource. Senator Dever asked when a veteran is given 5 points or 10 points, what is the scale.

Colonel Thiele said it is very complex with all the different veteran classifications such as combat and non combat, and combat and non combat disabled. There is also a difference in disabilities. There may be a 10 % ear disability or a 100% disability so it is very complex. He said all disabilities are lumped into the same pool. He is not sure what the solution is.

Senator Dever closed the discussion on SB 2353.

The committee will wait until a later date to act on this bill.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2353

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 2/08/07

Recorder Job Number: 3091

Committee Clerk Signature

Minutes:

Roll was taken and all members were present.

Chairman Dever opened discussion on SB 2353.

Senator Dever mentioned that he had assigned a subcommittee to look into this and that it was a hog house bill.

Senator Oehlke expressed his thanks to those who served on the subcommittee including Senator Marcellais, Senator Horne, Laurie Sterioti Hammeren, Jerry Maddock, Lyle Schuchard, Gene Kouba, Gerald Meske, and Marshall Flagg. See attachment # 1 for the result of the subcommittee's work. Senator Oehlke asked Laurie to present the revisions the subcommittee had made.

Laurie referred to Section 2, number 4 under the definitions. She said that not all agencies are part of an established merit system as defined under the federal merit system but they do have a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position. The changes were made accordingly.

The next change was on page 4, the definition of justifiable cause in paragraph one. The last sentence in 8 was put in there because of a Supreme Court case. She consulted with Tog

Anderson in the Attorney General's office and Colonel Thiele. She said from the perspective of HR, they would rather delete the last sentence. She feels Section 3 defines veterans' preference and makes the last sentence in the justifiable clause paragraph unnecessary.

The last change was on page 7 and addressed the penalty. The phrase "less amounts otherwise earnable through due diligence" is to address cases that drag on for an extended period of time. The applicant may have secured other employment. Their earnings from the other employment can be deducted from the amount the offending agency would have been liable to pay them. The idea is to make them whole, not to go beyond that.

Senator Lee asked if the penalty clause refers to what someone could have earned or what they did earn. If they chose not to work because a case was pending, then a whole lot of money could be owed.

Lieutenant Colonel Dave Thiele, Adjutant General for the ND National Guard, said "earnable through due diligence" is a legal term and it implies both what they did earn and what they could earn. It also implies employment suitable for their background.

Senator Nelson questioned the definitions of veteran and wartime veteran.

Senator Dever said the new draft is what was taken to Legislative Council. Their concern is if it is defined by dates, then going forward it confuses things.

Senator Dever said the subcommittee felt it was best to define it by dates.

Colonel Thiele said the dates in there provide clarity. He explained that up until this point a veteran had to have been a combat veteran or have served during the Vietnam War to get veterans' preference. This bill is saying in addition to Vietnam there are two more periods of service that would make a veteran eligible for veterans' preference. Any veteran who served in the first Gulf War or the Global War on Terror would become eligible for veterans' preference

under this bill. This would be even if they hadn't served in the Theater of Operations. He felt strongly that leaving the dates in is the best way.

Senator Horne asked for clarification on the last sentence of number 8 at the top of page 4.

Colonel Thiele said the language of that sentence was the result of a Supreme Court case. He feels it will cause confusion and could be left out. If it is left in there he is concerned that it will be assumed to mean more than it is intended to mean. He feels if that last sentence were struck the bill without that sentence would accomplish what it was intended to.

Senator Dever said if the question came up it has already been addressed by the court.

Colonel Thiele said the bill being considered will help that situation a lot, even with taking that language out. The rest of the statute spells out how veterans' preference is to be applied.

Senator Oehlke said he feels that last sentence on justifiable cause just seems to muddy the waters.

Senator Oehlke raised a question about the wording on page 5, part d. He was wondering about the 5 points or 10 points that were added and whether that was on a 100 point scale.

Discussion followed about the fact that some states, cities, or counties may use a 100 point scale and some may not. The senators wanted to word this so there was consistency. Their intention was to make the scale always be 100 so the points added were more equitable. They discussed how best to word it to accomplish that. They considered using wording to say 5% would be added for veterans and 10% for disabled veterans.

There was also discussion about the wording of page 5, d. "the total is the veteran's examination grade." They felt it would be more accurate to say "the total is the veteran's examination score" because the total is actually the examination grade plus the points they receive for being a veteran.

Senator Lee asked if the potential employer knows when they get an applicant's "points" what his exam grade is and how many points were added due to the applicant's status as a veteran. Is it clear to the employer where the points came from, the exam grade or the status as a veteran?

Marshall Flagg from the Department of Human Services Human Resource Division said it is clear to the employer.

Gene Kouba, North Dakota Department of Veterans' Affairs, said he works with this law probably more than anyone in the state. He said the state is consistently on a 100 point scale, it is the cities and the counties that aren't. He is in favor of it being made more consistent.

The counties who are working on a 50 point scale are still adding 5 points to a veteran's score.

Laurie said they are in agreement with that because they want to give the veterans the best advantage. She would not like a % system that would decrease the number of points that could be added for veterans.

Marshall said if the senators wanted a percentage mentioned he suggested the words "at least 5%" and "at least 10%" to prevent limiting the cities or counties in what advantage they could offer to the veterans.

Gene Kouba expressed concern that there is not always a 100 point scale. Many times the examination is just weighing out qualifications from previous experience that apply and there is no defined number of possible points allowed. It would be hard to know what percent to add in cases like that.

Senator Nelson made a motion to adopt the amendments of the subcommittee with further changes.

Senator Lee seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Senator Oehlke made a motion to pass SB 2353 as amended.

Senator Lee seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: Oehlke

Date : 2-8-07
 Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2353

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

~~assentment to follow the amendments~~ ^{adopt} ~~the~~ ^{of the} ~~amendments~~ ^{sub-} ~~of the~~ ^{Committee} ~~with further~~ ^{changes.}

Motion Made By

Nelson

Seconded By

Lee

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

amendment to delete e.
 pg 5 4d after c, insert "an a hundred point scale, ^{proportional?}"
 pg 5 4d. applicant ~~x~~ ^{and} the total is the veterans' examination ~~grade~~ ^{score}.

top of page 4 ("in 8") delete the last sentence.

Date : 2-8-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. amended 2353

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken to pass as amended

Motion Made By Peltke Seconded By Lee

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Peltke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2353: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2353 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 37-01-40, 37-19.1-01, and 37-19.1-02 and subsection 1 of section 37-19.1-04 of the North Dakota Century Code, relating to veterans and veterans' preferences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. AMENDMENT. Section 37-01-40 of the North Dakota Century Code is amended and reenacted as follows:

37-01-40. Veteran and wartime veteran defined - Uniform service dates for wartime veterans.

1. A "veteran" is ~~a person~~ an individual who has served on continuous federalized active military duty ~~for twenty-four months or~~, the full period for which the ~~person~~ individual was called or ordered to active military duty; ~~whichever is shorter~~ for reasons other than training, and who was discharged or released ~~therefrom~~ under other than dishonorable conditions. A discharge reflecting "expiration of term of service" or "completion of required service" or words to that effect qualifies the shorter term of service as making the ~~person~~ individual a veteran.
2. A "wartime veteran" is ~~a person~~ an individual who served in the active military forces, during a period of war armed conflict or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was discharged or released ~~therefrom~~ under other than dishonorable conditions. "Wartime veteran" also includes ~~a person~~ an individual who died in the line of duty in the active military forces, as determined by the armed forces.
3. Period of service dates for a wartime veteran begins with the date of any declaration of war by the Congress of the United States or presidential proclamation beginning hostilities or the beginning of an emergency condition recognized by the issuance of a presidential proclamation or a presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to presidential executive order and ending on a date prescribed by presidential proclamation or concurrent resolution of the Congress of the United States and dates determined by the United States department of defense.
4. Current uniform period of service dates for periods of armed conflict include:
 - a. The period beginning December 7, 1941, through December 31, 1946, known as world war II;
 - b. The period beginning June 27, 1950, through January 31, 1955, known as the Korean war;

- c. The period beginning August 5, 1964, through May 7, 1975, known as the Vietnam war;
 - d. The period beginning August 2, 1990, through January 2, 1992, known as the gulf war; and
 - e. The period beginning September 11, 2001, and ending on a date prescribed by presidential proclamation or by Congress as the last day of operation Iraqi freedom or operation enduring freedom, whichever occurs later.
5. The department of veterans affairs shall maintain a list of all period of service dates for emergency conditions in which the armed forces expeditionary medal has been awarded.

SECTION 2. AMENDMENT. Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-01. Definitions. As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ ~~persons~~ individuals either temporarily or permanently.
2. "Chief deputy" means the ~~person~~ individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include ~~a person~~ an individual appointed to a position that must be filled under an established personnel system.
3. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
4. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
5. "Personnel system" means a ~~personnel system based on merit principles~~ system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
- ~~6.~~ 6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs ~~persons~~ individuals either temporarily or permanently.
- ~~6.~~ 7. "Private secretary" means the ~~person~~ individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include ~~a person~~ an individual appointed to a position that must be filled under ~~an established~~ a personnel system.

7. ~~8.~~ "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

SECTION 3. AMENDMENT. Section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-02. Public employment preference to veterans - Residency requirements.

1. Veterans are entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for.
2. When a veteran applies for appointment or employment under subsection 1, the officer, board, or person whose duty it is to appoint or employ a ~~person~~ an individual to fill the available position shall, except where the veteran has been qualified for the position applied for under a personnel system, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall appoint or employ the veteran.
3. A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.
4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies ~~or governmental agencies, as defined herein, which now have, or which may hereafter have, an established filling positions through a personnel system~~ are governed by the following:
 - a. No distinction or discrimination may be made in the administration of the examination because the applicant may be a veteran.
 - b. Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.
 - c. The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.
 - d. Upon receipt of proof required in subdivision c, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant, ~~and the~~ The total is the veteran's examination grade score.
 - e. Upon request for the prescribed number of eligible ~~persons~~ individuals from the eligibility registry, ~~such~~ the number of eligible ~~persons~~ individuals must be certified from the top number of eligible

