



House Veterans and Emergency Preparedness Committee Veterans Preference - HB 4096 | February 11, 2016

Summary

House Bill 4096 addresses the issue of veterans' preference in employment. During the 2015 Legislative Session, this committee considered Senate Bill 87 A-Engrossed and amendments, but the bill did not move out of committee.

Going forward, it would be beneficial to carefully consider the work that has already been done and the following documents when contemplating veterans' preference legislation:

- The comprehensive analysis prepared of existing statutes and rules prepared by Legislative Counsel in May 2015
- The extensive work of the stakeholders work group that is reflected in the 2015 proposed legislation, SB 87 A-Engrossed.
- The 2015 –A6 proposed amendments to A-Engrossed Senate Bill 87 dated May 19, 2015

Consideration of Legislative Counsel Memorandum dated May 14, 2015

During the 2015 Legislative Session, in response to a request by the House Veterans and Emergency Preparedness Committee, Legislative Counsel researched the existing statutes and rules establishing and implementing veterans' preference. This comprehensive analysis was presented in the form of a memorandum to the committee dated May 14, 2015 (Attachment A). The memorandum prepared by BeaLisa Sydlik, Deputy Legislative Counsel, addresses issues and concerns about the statutory language that may have created confusion in application of the veterans' preference and interview rights by public employers.

The Legislative Counsel memorandum should be carefully considered and be used to ensure that any changes to existing statute address the issues raised in the memorandum.

The key issues the memorandum addresses are:

- **The existing BOLI rules are inconsistent with statutes.** The existing BOLI rules for applying veterans' preference “differ from the enabling legislation in that the statutes do not specifically state that there are no limitations to the number of times a person can claim the preference nor do they state that the preference must be applied at each stage of the application process.”
- **The statutes are ambiguous.** The memorandum lists the issues raised by ambiguity in the statutes and rules and states that “Interpretation and application of both the veterans' preference and the interview requirement has been made difficult by the lack of definitions of terms used in the relevant statutes, as follows:”

- “Initial application screening” is an undefined term used in ORS 408.230 (1)(a).
 - “Application examination” is an undefined term used in ORS 408.230 (1)(a).
 - “Minimum qualifications” is an undefined term used in ORS 408.230 (1)(b).
 - “Special qualifications” is an undefined term used in ORS 408.230 (1)(b).
 - “Special consideration” is an undefined term used in ORS 408.230 (2).
- **Undefined and unclear terminology results in inconsistent application of the law.** The memorandum states that “terms are essential to determining when a public employer is required to grant a preference. Since the terms are undefined, there is considerable debate and inconsistency in what they mean and how they are applied. For the preference to be uniformly applied by all public employers, the terms must be clearly defined * * *. Without clear definitions, ambiguity and inconsistent application of the laws result.”
 - **The statutory instructions for applying the preference are incomplete.**
 - **The statutes and rules providing regarding mandatory hiring are in conflict.** Regarding the conflicts in law and rule, the memorandum states: “It is difficult to reconcile these provisions, since they appear to both require appointment by the public employer and leave the decision to appoint a veteran or disabled veteran to the discretion of the public employer.”

Consideration of SB 87 A-Engrossed (2015) and the -6A House amendments (2015)

Senate Bill 87 A-Engrossed (2015) is the result of a 13- member stakeholder work group. Near the end of the 2015 Legislative Session, this House considered -6A Amendments dated 5/19/15 (See Attachments B, C and D).

Careful consideration should be given to SB 87 A-Engrossed because it addresses each of the issues raised in the Legislative Counsel memo.

1. SB 87: Legislative intent is stated in Section 1 of the bill.

- Legislative Counsel issues addressed:
 - The statutes are ambiguous.
 - The existing BOLI rules are inconsistent with statutes.

2. SB 87: A veteran’s rights and benefits are clear and easy to understand.

- Legislative Counsel issues addressed:
 - The statutes are ambiguous.
 - The existing BOLI rules are inconsistent with statutes.
 - Undefined and unclear terminology results in inconsistent application of the law.
 - The statutory instructions for applying the preference are incomplete.
 - The statutes and rules providing regarding mandatory hiring are in conflict.

3. SB 87: Holds employers accountable and requires public employers to follow a prescribed selection process for applying veterans' preference.

- Legislative Counsel issues addressed:
 - The statutes are ambiguous.
 - The statutory instructions for applying the preference are incomplete.
 - The statutes and rules providing regarding mandatory hiring are in conflict.

4. SB 87: Provides a fair, genuine and meaningful preference at every key stage in the hiring process.

- Legislative Counsel issues addressed:
 - Undefined and unclear terminology results in inconsistent application of the law.
 - The statutory instructions for applying the preference are incomplete.
 - The statutes and rules providing regarding mandatory hiring are in conflict.

5. SB 87 requires employers to give more defined opportunities for qualified and competitive veterans to have an initial interview.

- Legislative Counsel issues addressed:
 - The statutory instructions for applying the preference are incomplete.

6. SB 87 makes clear that an employer is required to give a veteran greater preference than a non-veteran (and give a disabled veteran is greater preference than a veteran) during the final selection stage.

- Legislative Counsel issues addressed:
 - The statutes are ambiguous.
 - The existing BOLI rules are inconsistent with statutes.
 - Undefined and unclear terminology results in inconsistent application of the law.
 - The statutory instructions for applying the preference are incomplete.
 - The statutes and rules providing regarding mandatory hiring are in conflict.

7. SB 87 has clear and straightforward methods to apply veterans' preference that the employer can implement and explain. A clear and universal language was developed and defined.

- Legislative Counsel issues addressed:
 - Undefined and unclear terminology results in inconsistent application of the law.
 - The statutory instructions for applying the preference are incomplete.
 - The statutes and rules providing regarding mandatory hiring are in conflict.

The -6A Amendments require the employer to request information about transferable skills from the veteran; defines that the top five veterans must be interviewed; and require the employer to consider transferrable skills.

Summary

Senate Bill 87 benefits veterans, the public and public employers. It is a carefully constructed and consensus-driven bill that provides fair and meaningful preference to veterans, provides clarity and holds employers accountable for applying preference within strict parameters. The -6A Amendments proposed are helpful amendments.

Attachments

Attachment A: Legislative Counsel Memorandum Dated May 14, 2015

Attachment B: SB 87 A Engrossed

Attachment C: SB 87A-Engrossed -6A Amendments dated 5/19/15

Attachment D: Report of the Stakeholder Work Group to House Veterans and Emergency Preparedness Committee dated May 19, 2015

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Attachment A

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STATE OF OREGON Legislative Counsel Committee

May 14, 2015

To: Representative John Lively
Chair, House Committee on Veterans and Emergency Preparedness

From: BealLisa Sydlik, Deputy Legislative Counsel

Subject: Research Request Regarding Veterans' Preference in Public Employment

This memorandum addresses your request for a comparison of the Oregon Administrative Rules (OAR) of the Bureau of Labor and Industries (BOLI) to the statutes establishing and implementing the veterans' preference and interview rights of veterans contained in ORS 408.225 to 408.237. The memorandum also addresses issues and concerns about the statutory language that may have created confusion in application of the preference and interview rights by public employers. Please note that this memorandum is focused on the current rules and statutes involving the veterans' preference and interviews and does not address any proposed legislation introduced this session.

The Veterans' Preference: BOLI Administrative Rules and Applicable Statutes

OAR 839-006-0435 to 839-006-0470 set forth BOLI's rules for application of ORS 408.225 to 408.237. The rules, for the most part, repeat verbatim the language of the statutes but with some important exceptions, as follows:

839-006-0445(2): This rule states that, except as specifically provided in the rule, "there are no limitations to the number of times a person can claim the preference."

839-006-0450(2): This rule states that "[a]t each stage of the application process a public employer will grant a preference to a veteran or disabled veteran. . . ."

These rules differ from the enabling legislation in that the statutes do not specifically state that there are no limitations to the number of times a person can claim the preference nor do they state that the preference must be applied at each stage of the application process. ORS 408.230 (1) requires a public employer to "grant a preference to a veteran or disabled veteran." (Emphasis added.) ORS 408.230 (2) states that "[t]he employer shall grant the preference in the following manner. . . ." (Emphasis added.) Finally, there is no language in the enabling legislation that states a preference must be applied "[a]t each stage of the application process" as set forth in OAR 839-006-0450 (2).

Under ORS 174.127, references in the statute laws of this state to the singular number may include the plural and the plural number may include the singular. However, the object and purpose of a statute must also be considered when determining the meaning of a statute.

Application of ORS 174.127 is qualified.¹ A court will not follow a general principle of statutory construction if to do so would result in a strained interpretation of the statute.

Whether use of the words “a” and “the” in ORS 408.230 (1) and ORS 408.230 (2) means the right to a preference is singular or plural is determined by examining the text and context of the statute, including related statutes and case law and then looking to legislative history as necessary. See State v. Gaines, 346 Or. 160, 171-172, 206 P.3d 1042 (2009); State v. Klein, 352 Or. 302, 309 (2012).

The related statutes pertaining to the veterans’ preference (ORS 408.225 to 408.237) do not clarify whether the veterans’ preference is singular or plural. With respect to case law, our office could find only one case that addressed the issue. In Brown v. Dearborn, 52 Or. App. 237, 628 P.2d 405 (1981), the Oregon Court of Appeals held that veterans who had received preference points on entrance examinations for a position with a city police department were not entitled to receive additional preference points when they subsequently took an examination for promotion within the department after the Legislative Assembly had extended the veterans’ preference to promotional examinations. In that case, it was pointed out that there were nonparty veterans who had not had preference points applied at the time of their entrance examinations but were accorded the preference points at the time they took their promotional examinations. The court’s holding that veterans who had received the preference points at the time of the entrance examination could not also receive the preference later when applying for promotions supports a conclusion that the veterans’ preference was intended, at least as it existed in 1981, to apply only once and not on multiple occasions.

This interpretation is supported by the legislative history of the most recent versions of the veterans’ preference laws in Oregon.

1995: ORS 408.235, as it existed in 1995, provided that a veteran was eligible to use “the preference provided for in ORS 408.230 only for a position for which application is made within 15 years of discharge or release from service. . . .” ORS 408.235 (2) then provided that “the preference” could be used only for “a position” applied for by July 1, 1999. Also, ORS 408.235 (3) in 1995 stated that “[o]nce a veteran has used the preference provided for in ORS 408.230 and has successfully completed trial service and attained regular employee status, the veteran may not use the preference again.” (Emphasis added.) Thus, the veterans’ preference has historically been limited in the number of times and the circumstances in which it may be used.²

2007: The veterans’ preference laws were largely rewritten but still provide that “[a] public employer shall grant a preference to a veteran or disabled veteran. . . .” and that “[t]he employer shall grant the preference in the following manner”. The restriction that the preference could be used only for a position for which application was made within 15 years of discharge or release was retained. However, the limitations that a veteran whose service was during the Vietnam War had to apply for public employment by July 1, 1999, and that once a veteran had successfully completed trial service and attained regular employee status could not use the preference again, were removed.³ General J. Michael Caldwell, then deputy director of the Oregon Military Department, testified at a legislative hearing that the preference allowed veterans’ applications for public employment to get through the first phase of an application

¹ See, State of Oregon v. John Daily Brooks, Jr., 187 Or. App. 388, 397 (2003).

² See chapter 777, Oregon Laws 1995.

³ See chapter 525, Oregon Laws 2007.

process, that otherwise veteran applications often did not get to the next step, and that the legislation would help move applicants to the next stage of the application process. While these statutory changes imply that the preference could be accorded for different positions that were applied for, there was no testimony given at hearings in 2007 that the preference would apply more than once per position or at each stage of the application process for a single position.⁴

2011: ORS 408.230 was amended to add the requirements that a veteran or disabled veteran who applies for a vacant civil service position or who seeks a promotion to a civil service position must meet "minimum qualifications and any special qualifications for the position." This legislation, however, retained reference to granting of "a preference" and that "[t]he employer shall grant the preference in the following manner."⁵ There was no testimony given at hearings in 2011 that the preference would apply more than once per position applied for or at each stage of the application process.

Interviews: BOLI Administrative Rules and Applicable Statutes

839-006-0450(6): This rule mirrors the language of ORS 408.237. Both the rule and the statute provide that, when an interview is a component of the selection process for a civil service position or for an eligibility list, a public employer must interview each veteran who:

- (a) Meets the minimum qualifications and special qualifications for the position or list;
- and
- (b) Submits application materials that show sufficient evidence, as determined by the public employer, of "transferable skills required and requested by the public employer" for the position or list. (Emphasis added.)

The term "transferable skills" is defined in both the rule and the statute as "a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying."⁶

ORS 408.237 was enacted in 2011. It is clear from the language of the statute and from the testimony before legislative committees that only those veterans who meet not only minimum and special qualifications, but who also demonstrate transferable skills to the employer's satisfaction, must be interviewed.

Testimony before the House Committee on Veterans Affairs and the Senate Committee on Veterans' and Military Affairs in 2011⁷ regarding House Bill 3207 (chapter 484, Oregon Laws 2011) demonstrates the following legislative intent and considerations:

- There are concerns that veterans have high unemployment, one reason being that they cannot get interviews.
- Veterans do better in interviews than on tests.
- Not every veteran should be interviewed; to do so would lead to false hopes.
- Veterans need training on how to present their military training and expertise to show that they have "transferable skills" for a civil service position.

⁴ April 10 and 26, 2007, and May 22, 2007, hearings before Senate Committee on Education and General Government.

⁵ See chapter 82, Oregon Laws 2011.

⁶ OAR 839-006-0440(10) and ORS 408.237 (1)(b).

⁷ March 1 and 29, 2011, public hearings and work sessions before the House Committee on Veterans Affairs, and May 11, 18 and 25, 2011, before the Senate Committee on Veterans' and Military Affairs.

- The League of Oregon Cities and the Association of Oregon Counties are concerned that some civil service positions have hundreds of applicants who meet the minimum and special qualifications. The requirement that veterans also have “transferable skills” narrows the interview pool to something manageable.
- Legislators do not intend to dictate to employers how many persons they must interview; some legislators considered the concept of putting a cap on the number of applicants who may be interviewed.
- A proposal that every veteran be interviewed was eventually overruled in committee because of logistical and budgetary concerns. This was narrowed down to interviews only for veterans with transferable skills.
- Veterans bear the responsibility for demonstrating they have the transferable skills required for the position.
- The interview requirement of the legislation does not affect the veterans’ preference law already in effect.
- The Oregon Department of Veterans’ Affairs will work with veterans to develop instructions and methods for translating transferable skills into the qualifications for civil service positions.

Issues Raised by Ambiguity in the Statutes and Rules

Interpretation and application of both the veterans’ preference and the interview requirement has been made difficult by the lack of definitions of terms used in the relevant statutes, as follows:

- “Initial application screening” is an undefined term used in ORS 408.230 (1)(a).
- “Application examination” is an undefined term used in ORS 408.230 (1)(a).
- “Minimum qualifications” is an undefined term used in ORS 408.230 (1)(b).
- “Special qualifications” is an undefined term used in ORS 408.230 (1)(b).
- “Special consideration” is an undefined term used in ORS 408.230 (2).

ORS 408.230 (1) requires a public employer to grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or who seeks a promotion to a civil service position with a higher maximum salary if the veteran or disabled veteran:

- (a) Successfully completes an initial application screening or an application examination for the position; or
 - (b) Successfully completes a civil service test administered by the employer; and
 - (c) Meets the minimum qualifications and any special qualifications for the position.
- (Emphasis added.)

These terms are essential to determining when a public employer is required to grant a preference. Since the terms are undefined, there is considerable debate and inconsistency in what they mean and how they are applied. For the preference to be uniformly applied by all public employers, the terms must be clearly defined to take into account the various types of civil service positions that exist, the different requirements for each type of civil service position, and the fact that public employers have different processes for screening potential candidates, including components such as reference checks, background and criminal history checks, psychological and physical examinations, single or multiple interviews, nonscored and pass-fail tests, and the use of telephone, online or in-person interviews. Without clear definitions, ambiguity and inconsistent application of the laws result.

Incomplete Statutory Instructions for Applying the Preference

ORS 408.230 (2) sets forth how the preference required by subsection (1) of that statute shall be applied:

(a) ORS 408.230 (2)(a) provides that when there has been “an initial application screening used to develop a list of persons for interviews, the employer shall add five preference points to a veteran’s score and 10 preference points to a disabled veteran’s score.” (Emphasis added.) The term “initial application screening” is not defined in statute or rule; thus, there are application screenings that may be done not to develop a list of persons for interviews but for other reasons, such as to determine qualifications, to perform background or criminal history checks, to administer examinations or to do reference checks. The statute does not address how the preference is to be applied when an initial application screening is done for a purpose other than to develop a list of persons for interviews.

(b) ORS 408.230 (2)(b) provides that when there has been “an application examination, given after the initial application screening, that results in a score, the employer shall add . . . five preference points to a veteran’s score and 10 preference points to a disabled veteran’s score.” (Emphasis added.) The term “application examination” is not defined anywhere in statute or rule; thus, there are application examinations that may conceivably be administered before or without an initial application screening even taking place. The statute leaves unexplained how the preference should be applied when an “application examination” is done before or without an “application screening.”

(c) ORS 408.230 (2)(c) provides that when “an application examination that consists of an interview, an evaluation of the veteran’s performance, experience or training, a supervisor’s rating or any other method of ranking an applicant that does not result in a score, the employer shall give a preference to the veteran or disabled veteran.” (Emphasis added.) The public employer is required to “apply methods by which the employer gives special consideration in the employer’s hiring decision to veterans and disabled veterans.” (Emphasis added.) Since neither “methods” nor “special consideration” is defined or explained in the statute, the instruction to employers appears to be that the employer shall develop or create such methods and special consideration in the public employer’s discretion.

These three scenarios are the only circumstances listed in rule or statute to provide instruction to public employers as to how to apply the required preference. However, the number and type of different hiring processes and decisions that public employers across the state use and make cannot possibly be addressed by these three scenarios alone.

Conflicting Statute and Rule Provisions Regarding Mandatory Hiring

ORS 408.230 (4) and OAR 839-006-0460(1) provide that a public employer must appoint a veteran or disabled veteran to a vacant civil service position if the results of the veteran’s or disabled veteran’s application examination, when combined with the preference, are equal to or higher than the results of an application examination for an applicant who is not a veteran or disabled veteran. Neither this statute nor this rule addresses whether the public employer must appoint a veteran or disabled veteran when only an initial application screening, or an application examination that does not result in a score, is the basis of the hiring decision.

ORS 408.230 (3) and OAR 839-006-0460(2) state generally that providing for a preference does not mean a public employer is required to appoint a veteran or disabled

veteran to a civil service position. ORS 408.230 (5) and OAR 839-006-0460(3) state that a public employer may base a decision not to appoint a veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil service position. These latter provisions conflict with the requirements of ORS 408.230 (4) and OAR 839-006-0460(1) that a public employer must appoint a veteran or disabled veteran if the combined results of the application examination and the preference are equal to or higher than the results of another applicant who is not a veteran or disabled veteran. It is difficult to reconcile these provisions, since they appear to both require appointment by the public employer and leave the decision to appoint a veteran or disabled veteran to the discretion of the public employer.

Conclusion

The BOLI rules that state that a veteran or disabled veteran is entitled to use the veterans' preference an unlimited number of times and that the preference applies multiple times at each stage of the application process for a civil service position is not necessarily supported by the legislative intent as reflected in the text and content of the relevant statutes, the existing case law or the legislative history. Furthermore, the lack of definitions and the ambiguity and vagueness of the statutes and how to apply them makes it difficult for public employers to discern and comply with the legislative intent.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Attachment B

78th OREGON LEGISLATIVE ASSEMBLY--2015 Regular Session

A-Engrossed Senate Bill 87

Ordered by the Senate April 23
Including Senate Amendments dated April 23

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Veterans and Emergency Preparedness)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies law regarding requirement that public employer grant preference to veteran and disabled veteran in selection process for competitive position. Requires public employer to use either tested and scored selection process or sorted or ranked selection process to make hiring or promotion decision. Establishes how eligibility for preference is determined and how preference and interviews are granted.

Makes violation of Act unlawful employment practice.

Becomes operative March 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to preferences for veterans in public employers' employment selection processes; creating
3 new provisions; amending ORS 408.225 and 659A.885; repealing ORS 408.230, 408.235 and 408.237;
4 and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** (1) **The Legislative Assembly finds that:**

7 (a) **Veterans have obtained skills through military education and experience that are**
8 **transferable to employment with public employers.**

9 (b) **It is challenging to describe military education and experience and to translate them**
10 **into civilian education and experience.**

11 (c) **The first interview in a selection process is the most critical phase for veterans be-**
12 **cause the first interview provides veterans with the opportunity to present and describe**
13 **transferable military skills that are relevant to the positions for which veterans have applied.**

14 (d) **The interest of the state in providing veterans with a preference in selection pro-**
15 **cesses for public employment competitive positions must be balanced with the interest of**
16 **public employers in managing merit-based competitive selection processes that are fair and**
17 **reasonable to implement.**

18 (e) **It is not beneficial to a veteran to be granted an interview if the veteran is not rela-**
19 **tively competitive with other applicants.**

20 (f) **It is not beneficial to a veteran, and it is not a reasonable expectation of a public**
21 **employer, to require a public employer to interview every veteran who applies for a com-**
22 **petitive position and meets only the minimum qualifications for the position.**

23 (2) **It is the policy of the State of Oregon that:**

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in boldfaced type.

1 (a) Public employers shall give a preference to veterans and disabled veterans in the se-
2 lection processes for competitive positions.

3 (b) Public employers must make hiring decisions for competitive positions based on the
4 results of a merit-based competitive selection process that includes, but is not limited to,
5 consideration of the skills, abilities, knowledge and experience of all applicants.

6 (c) Application of the veterans' preference should be easy to understand and implement
7 and uniformly granted.

8 (d) The veterans' preference that is granted for first interviews provides the best oppor-
9 tunity during the selection processes for public employment competitive positions for veter-
10 ans to describe and explain their transferable skills that are derived from military education
11 and experience.

12 (e) The veterans' preference must be granted in a merit-based competitive selection
13 process and does not apply to employment processes for assignments and transfers.

14 **SECTION 2.** ORS 408.225 is amended to read:

15 408.225. *[(1)]* As used in *[ORS 408.225 to 408.237]* this section and section 5 of this 2015 Act:

16 (1) "Applicant" means a person who has:

17 (a) Submitted a complete application for a competitive position as required by the public
18 employer; and

19 (b) Not withdrawn from consideration for the competitive position.

20 (2)(a) "Assignment" means a change made by an employer to the duties of an employee
21 within the employee's existing position and may include an increase in the employee's salary.

22 (b) "Assignment" does not include moving a current employee to a different position that
23 has a higher maximum salary rate.

24 (3) "Combat zone" means an area designated by the President of the United States by
25 executive order in which, on the dates designated by executive order, the Armed Forces of
26 the United States are or have engaged in combat.

27 *[(a)(A)]* (4)(a) "*[Civil service]* Competitive position" means *[any]* a position with a public em-
28 ployer for which a hiring or promotion decision is made or required to be made based on the results
29 of a *[merit based,]* merit-based competitive selection process that includes, but is not limited to,
30 consideration of an applicant's or employee's relative skills, ability, knowledge,*]* and experience
31 *[and other skills]*.

32 (b) "Competitive position" does not include an assignment or transfer.

33 *[(B)]* A "civil service position" need not be labeled a "civil service position."

34 *[(b)]* "Combat zone" means an area designated by the President of the United States by executive
35 order in which, on the dates designated by executive order, the Armed Forces of the United States are
36 or have engaged in combat.]

37 (5) "Compiled list" means a list of the names of applicants that is compiled during a
38 tested and scored selection process or a sorted or ranked selection process as described in
39 section 5 of this 2015 Act.

40 *[(c)]* (6) "Disabled veteran" means a *[person]* veteran who has a disability rating from the
41 United States Department of Veterans Affairs, a *[person]* veteran whose discharge or release from
42 active duty was for a disability incurred or aggravated in the line of duty or a *[person]* veteran who
43 was awarded the Purple Heart for wounds received in combat.

44 (7) "Employment test" means a test administered by a public employer to an applicant
45 to establish the applicant's eligibility for placement on a compiled list for a competitive po-

1 sition and that is graded by giving a numerical score or as “pass” or “fail.” An employment
2 test may include but is not limited to an oral examination, a written examination, an evalu-
3 ation of experience and training, an evaluation of application materials, a skills-based as-
4 sessment or performance testing.

5 (8) “Hiring or promotion decision” means a public employer’s offer of employment for a
6 competitive position to an applicant based on a selection process. A hiring or promotion de-
7 cision does not include an assignment or transfer.

8 [(d)] (9) “Honorable conditions” has the meaning given that term in rules adopted by the De-
9 partment of Veterans’ Affairs.

10 (10) “Initial interview” means the first interview between an applicant and a public em-
11 ployer.

12 (11) “Interview” means a conversation between an applicant and a public employer for
13 the purpose of determining the applicant’s suitability for employment in a competitive posi-
14 tion.

15 (12) “Preference” means special consideration that is given by a public employer to
16 qualified applicants who are veterans or disabled veterans during a selection process for a
17 competitive position.

18 (13) “Preferred qualifications” means certain qualities that a public employer desires in
19 an applicant for a competitive position and that the public employer may use to:

20 (a) Narrow the number of applicants in a selection process; or

21 (b) Identify the most qualified applicants in a selection process.

22 (14) “Promotion” means the selection of a current employee of a public employer for a
23 different position that has a higher maximum salary rate.

24 [(e)] (15) “Public employer” means a public body, as that term is defined in ORS 174.109, and
25 any person authorized to act on behalf of the public body[, *with respect to control, management or*
26 *supervision of any employee*].

27 (16) “Rank order” means the placement of applicants in order of qualification, after
28 granting the preference required under section 5 (1) of this 2015 Act, on a compiled list
29 during a selection process.

30 (17) “Required qualifications” means the minimum requirements, including but not lim-
31 ited to certain specified skills, transferable skills, knowledge, experience, training, education,
32 performance on an employment test, licensing, certification or results of reference or back-
33 ground checks, that are specific to a competitive position and that an applicant must have
34 to be considered in the selection process.

35 (18) “Selection process” means the process by which a public employer makes a hiring
36 or promotion decision for a competitive position and includes a tested and scored selection
37 process and a sorted or ranked selection process as described in section 5 of this 2015 Act.

38 (19) “Transfer” means a public employer’s movement of an employee from one employ-
39 ment position to a different employment position with the same maximum salary rate, or a
40 public employer’s movement of an employee to a new work location or different shift or
41 schedule without a change in the employee’s employment position.

42 (20) “Transferable skill” means a skill that a veteran or disabled veteran has obtained
43 through military education or experience that is sufficient to meet any required qualifica-
44 tions or preferred qualifications and that complies with the provisions of section 5 (2) of this
45 2015 Act.

1 [(f)] (21)(a) "Veteran" means a person who **has been discharged or released from service**
2 **with the Armed Forces of the United States and who:**

3 (A) Served on active duty with the Armed Forces of the United States:

4 (i) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and
5 was discharged or released under honorable conditions;

6 (ii) For a period of more than 178 consecutive days beginning after January 31, 1955, and was
7 discharged or released from active duty under honorable conditions;

8 (iii) For 178 days or less and was discharged or released from active duty under honorable
9 conditions because of a service-connected disability;

10 (iv) For 178 days or less and was discharged or released from active duty under honorable
11 conditions and has a disability rating from the United States Department of Veterans Affairs; or

12 (v) For at least one day in a combat zone and was discharged or released from active duty under
13 honorable conditions;

14 (B) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed
15 Forces of the United States and was discharged or released from active duty under honorable con-
16 ditions; or

17 (C) Is receiving a nonservice-connected pension from the United States Department of Veterans
18 Affairs.

19 [(2)] (b) As used in **this subsection [(1)(f) of this section]**, "active duty" does not include attend-
20 ance at a school under military orders, except schooling incident to an active enlistment or a reg-
21 ular tour of duty, or normal military training as a reserve officer or member of an organized reserve
22 or a National Guard unit.

23 **SECTION 3. ORS 408.235 and 408.237 are repealed.**

24 **SECTION 4. ORS 408.230 is repealed and section 5 of this 2015 Act is enacted in lieu**
25 **thereof.**

26 **SECTION 5. (1) A public employer shall grant a preference as provided in this section to**
27 **an applicant for a competitive position who is a veteran or disabled veteran.**

28 (2)(a) In determining whether an applicant who is a veteran or disabled veteran has met
29 the required qualifications or preferred qualifications for a competitive position, a public
30 employer shall give the same weight to transferable skills of the veteran or disabled veteran
31 as the public employer gives to similar education and experience that is obtained outside of
32 the military.

33 (b) It is the responsibility of the applicant who is a veteran or disabled veteran to submit
34 sufficient information and materials to demonstrate how education or experience obtained
35 in the military qualifies as one or more transferable skills for a competitive position.

36 (c) It is the responsibility of the applicant who is a veteran or disabled veteran to de-
37 scribe and explain how education or experience obtained in the military qualifies as one or
38 more transferable skills for a competitive position during an interview.

39 (d) The determination of whether military education or experience is a transferable skill
40 for a competitive position is within the public employer's sole discretion.

41 (3) The provisions of this section do not require a public employer to interview every
42 veteran or disabled veteran who is an applicant for a competitive position.

43 (4) A public employer is not required to hire a veteran or disabled veteran who does not
44 successfully complete a preemployment check including, but not limited to, a medical, ref-
45 erence or background check.

1 (5) A public employer may end a selection process at any time without making a hiring
2 or promotion decision.

3 (6) For purposes of applying the preference required by subsection (1) of this section, a
4 public employer shall use one of the following selection processes:

5 (a) The tested and scored selection process described in subsection (7) of this section; or

6 (b) The sorted or ranked selection process described in subsection (8) of this section.

7 (7) For the tested and scored selection process:

8 (a) An applicant who is a veteran or a disabled veteran is eligible for the preference re-
9 quired by subsection (1) of this section if the veteran or disabled veteran has:

10 (A) Met the required qualifications for the competitive position; and

11 (B) Achieved at least the minimum qualifying score on one or more employment tests
12 as required by the public employer.

13 (b) The public employer must convert the scores on all employment tests completed by
14 an applicant to a single score based on a 100-point scoring system such that the maximum
15 score that an applicant who is not a veteran or a disabled veteran may receive is 100 points.
16 For employment tests graded by giving a "pass" or "fail," all applicants with a "pass" must
17 be assigned a score of 100 points and all applicants with a "fail" must be assigned a score
18 of zero points.

19 (c) A public employer may require applicants to achieve a minimum qualifying score on
20 an employment test in order to be placed on a compiled list.

21 (d) For an applicant who is a veteran or disabled veteran and who has achieved the
22 minimum qualifying score on any required employment test, the public employer shall apply
23 the preference required by subsection (1) of this section by adding five points to the score
24 of an applicant who is a veteran and 10 points to the score of an applicant who is a disabled
25 veteran.

26 (e) The public employer shall place all applicants who have achieved the minimum quali-
27 fying score on all required employment tests, including any preference points to which an
28 applicant is entitled under paragraph (d) of this subsection, in rank order on a compiled list.

29 (f) The public employer shall consider all applicants on the compiled list in rank order
30 using one of the following approaches:

31 (A) The public employer may make a hiring or promotion decision that makes an offer
32 of employment to, or that makes an offer of an initial interview to, only the highest ranked
33 applicant on the list. If that applicant declines the position or declines to interview or, if
34 after the initial interview, the public employer determines that the applicant is not suitable
35 for employment in the competitive position, the public employer may make a hiring or pro-
36 motion decision that makes an offer of employment to, or that makes an offer of an initial
37 interview to, the next highest ranked applicant on the list. The public employer may offer
38 employment or an initial interview to subsequent applicants under similar circumstances
39 until the public employer makes a hiring or promotion decision or otherwise ends the se-
40 lection process.

41 (B)(i) The public employer may make concurrent offers of an initial interview to more
42 than one of the highest ranked applicants on the compiled list. After completing initial
43 interviews, the public employer may take additional steps in the selection process to deter-
44 mine the suitability of an applicant for employment in the competitive position, including but
45 not limited to additional interviews or additional employment tests. The preference required

1 by subsection (1) of this section for an applicant who is a veteran or disabled veteran does
2 not apply to the additional steps taken under this sub-subparagraph.

3 (ii) After completing initial interviews and taking any additional steps under sub-
4 subparagraph (i) of this subparagraph, the public employer may make a hiring or promotion
5 decision. The public employer is required to apply the preference required by subsection (1)
6 of this section by making an offer of employment for a competitive position to a veteran if
7 the veteran is equal to or more qualified and suitable for the position than an applicant who
8 is not a veteran. If a disabled veteran is equal to or more qualified and suitable for the po-
9 sition than an applicant who is a veteran or an applicant who is not a veteran or a disabled
10 veteran, the public employer shall make an offer of employment to the disabled veteran.

11 (g) A public employer that makes an offer of an initial interview under this subsection
12 shall consider transferable skills in the manner described in subsection (2) of this section.

13 (8) For the sorted or ranked selection process:

14 (a) An applicant who is a veteran or a disabled veteran is eligible for the preference re-
15 quired by subsection (1) of this section if the veteran or disabled veteran has met the re-
16 quired qualifications for the competitive position.

17 (b) After determining that an applicant is eligible for the preference under paragraph (a)
18 of this subsection, the public employer shall:

19 (A) Sort into groups those applicants with similar characteristics that are of particular
20 relevance and importance in the context of the preferred qualifications for the competitive
21 position; or

22 (B) Place applicants in rank order based upon one or more aspects of the preferred
23 qualifications for the competitive position.

24 (c) After sorting or ranking applicants as described in paragraph (b) of this subsection,
25 a public employer shall establish and apply a method for giving preference to an applicant
26 who is a veteran or disabled veteran. The method must give a preference to an applicant who
27 is a veteran, and the method must give an applicant who is a disabled veteran a greater
28 preference than the preference granted to an applicant who is a veteran.

29 (d) Examples of methods that may be established and applied under paragraph (c) of this
30 subsection include:

31 (A) Moving a veteran who is eligible for the preference to a group that is of greater rel-
32 evance and importance than the group to which the veteran was originally sorted, and
33 moving a disabled veteran who is eligible for the preference to a group that is of even greater
34 relevance and importance than the group to which an eligible veteran may be sorted; and

35 (B) Moving a veteran who is eligible for the preference to a higher rank than the rank
36 in which the veteran was originally placed, and moving a disabled veteran who is eligible for
37 the preference to a rank that is even higher than the rank in which an eligible veteran may
38 be placed.

39 (e) After applying the preference as described in paragraph (c) of this subsection, the
40 public employer shall place all applicants in rank order on a compiled list.

41 (f) The public employer shall offer initial interviews to applicants based on rank order
42 on the compiled list. The number of applicants selected for an initial interview is in the
43 public employer's sole discretion except that:

44 (A) The public employer shall interview no more than 10 percent, not to exceed a maxi-
45 mum of 10, of the highest ranked applicants who are veterans or disabled veterans.

1 (B) Notwithstanding subparagraph (A) of this paragraph, a public employer shall inter-
2 view a minimum of five of the highest ranked applicants who are veterans or disabled vet-
3 erans. If the number of highest ranked applicants who are veterans or disabled veterans is
4 less than five, the public employer shall interview all of the highest ranked applicants who
5 are veterans or disabled veterans.

6 (g) A public employer that makes an offer of an initial interview under this subsection
7 shall consider transferable skills in the manner described in subsection (2) of this section.

8 (h) After completing initial interviews, the public employer may take additional steps in
9 the selection process to determine the suitability of an applicant for employment in the
10 competitive position, including but not limited to additional interviews or additional employ-
11 ment tests. The preference required by subsection (1) of this section for an applicant who is
12 a veteran or disabled veteran does not apply to the additional steps taken under this sub-
13 section.

14 (i) After completing initial interviews and taking any additional steps under paragraph
15 (h) of this subsection, the public employer may make a hiring or promotion decision. The
16 public employer is required to apply the preference required by subsection (1) of this section
17 by making an offer of employment for a competitive position to a veteran if the veteran is
18 equal to or more qualified and suitable for the position than an applicant who is not a vet-
19 eran. If a disabled veteran is equal to or more qualified and suitable for the position than
20 an applicant who is a veteran or an applicant who is not a veteran or a disabled veteran, the
21 public employer shall make an offer of employment to the disabled veteran.

22 (9) If a public employer does not make an offer of employment to a veteran or disabled
23 veteran for a competitive position, upon written request of the veteran or disabled veteran,
24 the public employer, in writing, shall provide the public employer's reasons for the decision.

25 (10) The Employment Department may provide training to veterans on how to show evi-
26 dence of transferable skills in an application for a competitive position or for placement on
27 an eligibility list.

28 (11) Violation of this section is an unlawful employment practice under ORS chapter
29 659A.

30 (12) A veteran or disabled veteran claiming to be aggrieved by a violation of this section
31 may file a verified written complaint with the Commissioner of the Bureau of Labor and In-
32 dustries in accordance with ORS 659A.820.

33 **SECTION 6.** ORS 659A.885 is amended to read:

34 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
35 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
36 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
37 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
38 court may order back pay in an action under this subsection only for the two-year period imme-
39 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
40 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
41 year period immediately preceding the filing of the action. In any action under this subsection, the
42 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
43 cept as provided in subsection (3) of this section:

44 (a) The judge shall determine the facts in an action under this subsection; and

45 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall

1 review the judgment pursuant to the standard established by ORS 19.415 (3).

2 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
3 10.090, 10.092, 25.337, 25.424, 171.120, [408.230, 408.237 (2),] 476.574, 652.355, 653.060, 659A.030,
4 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
5 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
6 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
7 659A.318, 659A.320 or 659A.421 or **section 5 of this 2015 Act.**

8 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
9 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
10 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

11 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
12 compensatory damages or \$200, whichever is greater, and punitive damages;

13 (b) At the request of any party, the action shall be tried to a jury;

14 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
15 ment pursuant to the standard established by ORS 19.415 (1); and

16 (d) Any attorney fee agreement shall be subject to approval by the court.

17 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
18 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
19 compensatory damages or \$200, whichever is greater.

20 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
21 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
22 of this section, compensatory damages or \$250, whichever is greater.

23 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
24 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
25 penalty in the amount of \$720.

26 (7) Any individual against whom any distinction, discrimination or restriction on account of
27 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
28 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
29 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
30 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
31 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
32 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
33 section:

34 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
35 compensatory and punitive damages;

36 (b) The operator or manager of the place of public accommodation, the employee or person
37 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
38 damages awarded in the action;

39 (c) At the request of any party, the action shall be tried to a jury;

40 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

41 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
42 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
43 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
44 and

45 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the

1 judgment pursuant to the standard established by ORS 19.415 (1).

2 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
3 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
4 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
5 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
6 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
7 manner as a person or group of persons may file a civil action under this section. In a civil action
8 filed under this subsection, the court may assess against the respondent, in addition to the relief
9 authorized under subsections (1) and (3) of this section, a civil penalty:

10 (a) In an amount not exceeding \$50,000 for a first violation; and

11 (b) In an amount not exceeding \$100,000 for any subsequent violation.

12 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
13 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
14 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
15 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
16 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
17 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
18 appealing an adverse decision of the trial court.

19 (10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145
20 or 659A.421 or discrimination under federal housing law:

21 (a) "Aggrieved person" includes a person who believes that the person:

22 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

23 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
24 occur.

25 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
26 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
27 tifies that the case is of general public importance. The court may allow an intervenor prevailing
28 party costs and reasonable attorney fees at trial and on appeal.

29 **SECTION 7.** Section 5 of this 2015 Act, the amendments to ORS 408.225 and 659A.885 by
30 sections 2 and 6 of this 2015 Act and the repeal of ORS 408.230, 408.235 and 408.237 by sections
31 3 and 4 of this 2015 Act apply to selection processes for competitive positions commenced on
32 or after the operative date of this 2015 Act.

33 **SECTION 8.** (1) Section 5 of this 2015 Act, the amendments to ORS 408.225 and 659A.885
34 by sections 2 and 6 of this 2015 Act and the repeal of ORS 408.230, 408.235 and 408.237 by
35 sections 3 and 4 of this 2015 Act become operative on March 1, 2016.

36 (2) A public employer may take any action before the operative date specified in sub-
37 section (1) of this section that is necessary to enable the public employer to exercise, on and
38 after the operative date specified in subsection (1) of this section, all the duties, functions
39 and powers conferred on public employers by section 5 of this 2015 Act, the amendments to
40 ORS 408.225 and 659A.885 by sections 2 and 6 of this 2015 Act and the repeal of ORS 408.230,
41 408.235 and 408.237 by sections 3 and 4 of this 2015 Act.

42 **SECTION 9.** This 2015 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
44 on its passage.

Attachment C

SB 87-A6
(LC 1181)
5/19/15 (BLS/ps)

PROPOSED AMENDMENTS TO A-ENGROSSED SENATE BILL 87

1 On page 4 of the printed A-engrossed bill, delete lines 33 to 40 and insert:

2 “(b) It is the responsibility of the public employer to request from the
3 veteran or disabled veteran sufficient information and materials to demon-
4 strate how education or experience obtained in the military qualifies as one
5 or more transferable skills for a competitive position.”.

6 On page 6, line 25, after “method” insert “described in paragraph (d) of
7 this subsection”.

8 Delete lines 29 and 30 and insert:

9 “(d) A public employer must establish and apply one of the following
10 methods for giving preference to an applicant who is a veteran or disabled
11 veteran:”.

12 In line 34, delete the second “and” and insert “or”.

13 In line 43, delete “except that:” and delete lines 44 and 45 and insert “but
14 must include a minimum of the five highest ranked applicants on the com-
15 piled list who are veterans and disabled veterans. If the number of highest
16 ranked applicants who are veterans and disabled veterans is less than five,
17 the public employer shall offer initial interviews to all of the highest ranked
18 applicants who are veterans and disabled veterans.”.

19 On page 7, delete lines 1 through 5.

20 In line 24, after “decision” insert “, including a review of the veteran’s
21 or disabled veteran’s transferable skills”.

22 On page 9, line 32, after “date” insert “specified in section 8”.

Attachment D

Report of the Stakeholder Work Group on Veterans' Preference in Employment House Veterans and Emergency Preparedness Committee Senate Bill 87 | May 19, 2015

Summary

Senate Bill 87 is a carefully considered and comprehensive approach to veterans' preference in public employment that was developed by a diverse stakeholder work group. The existing statutes on veterans' preference are unclear, confusing and provide no real guidance on implementation for public employers. The existing statutes were rewritten. The result of this work is a clear and uniform method by which a public employer gives special consideration to qualified veterans and disabled veterans during hiring processes for vacant competitive positions. There is no known fiscal impact.

An important goal for the stakeholders was to ensure veterans and disabled veterans receive no less than the level of special consideration that is provided in current statutes. For the veteran, Senate Bill 87 is designed to apply a fair and meaningful preference at every key stage in the hiring process and creates more defined opportunities for qualified and competitive veterans to have an initial interview. After screening applicants for those who meet the required qualifications for the position, the key stages in a hiring process are the evaluation stage, the initial interview stage, and the final selection process.

Preference is applied at each of these key stages using methods that move veterans ahead of other non-veteran applicants, and disabled veterans are given a greater preference than veterans. The initial interview stage is emphasized in Senate Bill 87 because it provides the best opportunity for a veteran to describe and explain their transferable military education and experience, and because reinforces the purpose and intent of HB 3207 (2011).

A new and significant benefit to veterans is the requirement that employers interview at least five veterans during an unscored hiring process. Another new benefit to veterans in Senate Bill 87 is the requirement that an employer give the same weight to a veteran's transferrable skills as the employer gives to skills and experience obtained outside of the military. Finally, during the final selection stage, if a veteran or disabled veteran is equally or better qualified than any other candidate, the employer must offer the position to the veteran. Currently only veterans who take

scored examinations are given this final hiring preference in statute; Senate Bill 87 provides this preference at the final selection stage for all hiring processes.

For the public employer, Senate Bill 87 outlines clear and straightforward methods to apply veterans' preference that the employer can implement and explain. The stakeholder group needed to design methods for applying veterans' preference that can be used by all public employers, which includes the State of Oregon and political subdivisions, large and small cities, counties, police and fire districts, governmental authorities, and public corporations or entities. Public employers in Oregon all have different procedures and terminology for hiring processes. The stakeholders agreed on terminology that was clearly defined, universally functional and easy to understand.

Senate Bill 87 has defined terms, states the legislative intent, policy and purposes and applies preference using methods that are easily understood by veterans and public employers. The changes to the statute resolve the significant problems with the current statute and give veterans meaningful preference.

Senate Bill 87 is the result eight months of collaboration and consensus-building by a 13-member stakeholder work group. Stakeholders developed language, definitions and methods that can be universally understood and implemented by all Oregon cities, counties, districts, authorities, public corporations and the State of Oregon. Note that five of the stakeholders are veterans or have served in the military. The stakeholders include:

Heidi Brown, Deputy City Attorney City of Portland	Cynthia Forest, Human Resources Manager, Oregon Military Department
Andy Smith, AOC Veterans Committee, Association of Oregon Counties	Kyle Abraham, Oregon Public Employers Labor Relations Association ("ORPLERA")
Kathryn Short, Senior Assistant County Attorney Multnomah County	Laurie Skillman, Senior Policy Analyst Oregon Department of Veterans' Affairs
Madilyn Zike, Chief Human Resources Officer State of Oregon	Twyla Lawson, Senior Recruitment Consultant State of Oregon DAS
Scott Winkels, Intergovernmental Relations Associate, League of Oregon Cities	Julie Owens, Human Resources Manager, Oregon Department of Veterans' Affairs
Jim Booker, Federal Programs Manager State of Oregon Employment Department	Dave Ferre, Deputy Director State Affairs Oregon Military Department
Amy Lippay, Human Resources Manager Multnomah County	

Veterans' Preference is Valued and Important

The stakeholders believe that veterans' preference is valued and important because it recognizes the sacrifices made by the men and women who have served in the Armed Forces, it restores veterans to a competitive position for public employment, and it acknowledges a greater obligation owed to service-connected disabled veterans. Veterans have proven to be valued employees due to their rigorous training, sense of teamwork, leadership skills and abilities to learn new skills and concepts.

Challenges with Existing Veterans Preference Statutes

The challenges the existing statutes create for veterans and public employers include:

- Unclear definitions, confusing language, and no methods provided for how public employers apply preference.
- Legislative intent unclear.
- ORS 408.237 (from HB 3207 (2011) on transferable skills/interviews) does not mesh with ORS 408.230 (preference).
- The lack of clarity in statutes has led to litigation.
- Problems with the current statutory 5-point and 10-point preference system.
- Large candidate pools and unclear interview requirements in ORS 408.237.
- Current definition of "disabled veteran" needs to be updated.

Summary of the Purposes of Senate Bill 87

The purposes of Senate Bill 87 are to:

- Provide veterans a meaningful, fair and uniform hiring process for veterans' preference
- Emphasize initial interviews for veterans and disabled veterans
- Establish clear and uniform methods for applying veterans' preference in hiring processes.
- Require employers to give the same weight to a veteran's transferrable skills as the employer give to skills and experience obtained outside of the military
- Define terms clearly. Use plain language that is easily understood by veterans/employers.
- Design universal methods for applying veterans' preference that can be used by all public employers,
- Apply veterans' preference in the context of a public employment competitive hiring process.

- Reconcile ORS 408.237 and 408.230.
- Establish legislative findings, policy and intent in the statute.

Two Key Interpretation Issues Addressed

Two important issues addressed by Senate Bill 87 are the interpretations that:

- A public employer must apply veterans' preference "at every stage" of the hiring process.
- A public employer must provide "every qualified veteran with an interview."

Senate Bill 87: "At every stage" is not in current statute. New preference has meaningful preference applied at three key stages and the adds a minimum of five veteran interviews.

Nothing in the current veterans' preference statutes suggests or requires the application of veterans' preference "at every stage" of the hiring process. The requirement that a public employer apply preference "at every stage" is only an interpretation, not found in statute.

Senate Bill 87 requires public employers to apply veterans' preference at three key stages in the hiring process, with a focus on the initial interview. The methods for applying veterans' preference are designed to apply a fair and more meaningful preference than the current statute. Preference is applied by using methods that move veterans ahead of other non-veteran applicants, and disabled veterans are given a greater preference than veterans.

After screening applicants for those who meet the required qualifications, the key stages where preference is applied are the 1) evaluation stage; 2) the initial interview stage where veterans can describe and explain their transferable skills; and 3) the final selection process.

A new law benefits veterans directly because it requires employers to interview at least five veterans; it requires employers to give the same weight to a veteran's transferrable skills as the employer gives to skills and experience obtained outside of the military and, during the final selection stage, if a veteran or disabled veteran is equally or better qualified than any other applicant, the employer must offer the position to the veteran. Currently only veterans who take scored examinations are given this final hiring preference in statute; Senate Bill 87 provides this preference at the final selection stage for all hiring processes.

Senate Bill 87: Interview every qualified and competitive veteran

The interpretation that a public employer must interview “every qualified veteran” demonstrates the problems with the inconsistent language in ORS 408.230 and 408.237, because the statutes can easily be interpreted to mean that “every qualified and *competitive* veteran must be interviewed.”

Interviewing every veteran who is minimally qualified has two unintended consequences. First, for large applicant pools for entry-level positions (often over 1,000 applicants) it is inefficient and not cost effective for employers to interview all “qualified veterans,” because it would often require interviewing more than 50 to 75 veteran applicants. Interviewing large numbers of veterans does not serve veterans well. It requires unnecessary sacrifices for the veteran, including time and expenses for travel or lost wages, and gives the veteran false hope about their chances for a job because, to most people, an interview means the individual has a *reasonable chance* of getting the job. The invitation to interview is not a statement to the candidate about the competitiveness of the candidate. Some consider this process is not respectful of a veteran’s time and efforts.

Senate Bill 87 resolves this issue by providing a method of applying veterans’ preference that is more meaningful to veterans and disabled veterans. During the evaluation stage, the public employer considers the skills, training, experience and knowledge a veteran or disabled veteran has that make the veteran competitive with other applicants and then uses preference to move the veteran or disabled veteran ahead of other applicants the employer will consider for an interview. Preference at this stage gives veterans a greater opportunity for an interview, where they may describe and explain their transferable skills. In addition, if an employer is using an unscored hiring process, the employer is required to interview at least five veterans, which is another form of preference.

Detailed Purposes of Senate Bill 87

1. Define terms clearly. Use plain language that is easily understood by veterans and employers.

One of the most important goals and purposes of Senate Bill 87 is to create a veterans’ preference statute that is clear and easy to understand for veterans, public employers and the public. All key terms are defined and existing definitions were clarified. Plain language was used.

2. Design methods for applying veterans' preference that can be used by all public employers, which includes the State of Oregon and political subdivisions, large and small cities, counties, police and fire districts, authorities, and public corporations or entities. Public employers in Oregon all have different procedures and terminology for hiring processes. The stakeholders agreed on terminology that was clearly defined, universally functional and easy to understand.

3. For the veteran and disabled veteran, provide veterans with a meaningful, fair and uniform hiring process for applying veterans' preference.

A key goal and purpose of Senate Bill 87 was to ensure that veterans and disabled veterans ("veterans") are given a meaningful, fair and uniformly applied preference and create opportunities for more qualified and competitive veterans to have an initial interview. After screening applicants for those who meet the required qualifications for the position, the key stages in a hiring process are the evaluation stage, the initial interview stage, and the final selection process.

Preference is applied at each of these key stages using methods that move veterans ahead of other non-veteran applicants, and gives disabled veterans a greater preference than veterans. The initial interview stage is very important because it provides the best opportunity for a veteran to describe and explain their transferable military education and experience. During the final selection stage, if a veteran or disabled veteran is equally or better qualified than any other candidate, the employer must offer the position to the veteran.

4. Emphasize initial interviews for veterans and disabled veterans.

The two hiring processes in Senate Bill 87 were developed with an emphasis on providing more veterans with an opportunity for an initial interview. It is a challenge to describe transferable military skills on a written application or resume. An initial interview provides a veteran with a valuable opportunity to describe and explain the veteran's military education and experiences. HB 3207 focused on providing interviews for veterans to explain their transferrable skills and the stakeholder group believed that it was important to maintain this focus in Senate Bill 87.

5. Establish clear and uniform methods for applying veterans' preference in hiring processes. Require employers to give the same weight to a veteran's transferrable skills as the employer gives to skills and experience obtained outside of the military

Currently, there are no methods in statute for applying veterans' preference. Senate Bill 87 establishes two clear, straightforward methods of applying preference in a uniform manner that are easy to understand and implement: a "tested and scored" process and a "sorted or ranked" process. A chart of these two processes is found in **Appendix A**.

Tested and Scored Process. One method is a "tested and scored" selection process, which uses test scores to establish a list of qualified applicants, based on a 100-point system.

- After scoring all applicants, the *employer must apply veterans' preference* by giving an additional 5 points to veterans and 10 points to disabled veterans.
- Employer may choose to select only the top ranked applicant to interview or offer the job.
- If an employer selects more than one applicant to offer an interview(s), at the final selection stage, *the employer must apply veterans' preference* as follows:
 - a) If a veteran is equal to or more qualified than a non-veteran, the employer must offer the position to the veteran, or
 - b) If a disabled veteran is equal to or more qualified than a veteran or non-veteran the employer must offer the position to the disabled veteran.
- In any interview or evaluation, the employer must give the same weight to a veteran's transferrable skills as the employer gives to skills and experience obtained outside of the military.

Sorted or Ranked Process. The second method, called the "sorted or ranked" selection process, does not use test scores. Qualified applicants are sorted into groups or ranks based on how closely the applicant's skills, experience, knowledge and training meet the employer's preferred qualifications for the position.

- After sorting or ranking, the *employer establishes and must apply a method to give veterans' preference* to a veteran and greater preference to a disabled veteran. For example, the employer could apply veterans' preference by moving a veteran up to the next highest group and moving a disabled veteran moved up two higher groups.
- The employer then offers initial interviews to applicants based on their ranking. The public *employer must apply veterans' preference* by offering an initial of the five highest-ranked veterans and disabled veterans. (Note: if there are fewer than five

veteran or disabled veteran applicants, the public employer shall offer interviews to all). The employer may have a series of interviews after the initial interview.

- When the employer makes a hiring decision from the final applicant pool *the employer must apply veterans' preference* by offering the position to an applicant as follows:
 - a) If a veteran is equal to or more qualified than a non-veteran, the employer must offer the position to the veteran, or
 - b) If a disabled veteran is equal to or more qualified than a veteran or non-veteran the employer must offer the position to the disabled veteran.
- In any interview or evaluation, the employer must give the same weight to a veteran's transferrable skills as the employer gives to skills and experience obtained outside of the military.

6. Apply veterans' preference is made in the context of a competitive hiring process.

Public employers are required to use a merit-based, competitive hiring process for vacant positions. Veteran's preference is granted in the *context* of a merit-based process, which includes, but is not limited to, consideration of an applicant's relative ability, knowledge, experience and other skills. ORS 408.230(3) states: "Preferences of the type described in subsection (1) of this section are not a requirement that the public employer appoint a veteran or disabled veteran to a civil service position."

7. Reconcile ORS 408.237 and 408.230.

The veterans' preference statute (ORS 408.230) and the statute on interviewing and transferrable skills (ORS 408.237) are reconciled in Senate Bill 87.

8. Establish Legislative findings and Legislative policy and intent in the statute.

The lack of clear legislative intent in the current statutes has created confusion and resulted in litigation. The Legislative findings and policy are set out in the beginning of Senate Bill 87. Clear Legislative intent, clear definitions and straightforward methodology with minimize the need for interpretation.

Summary

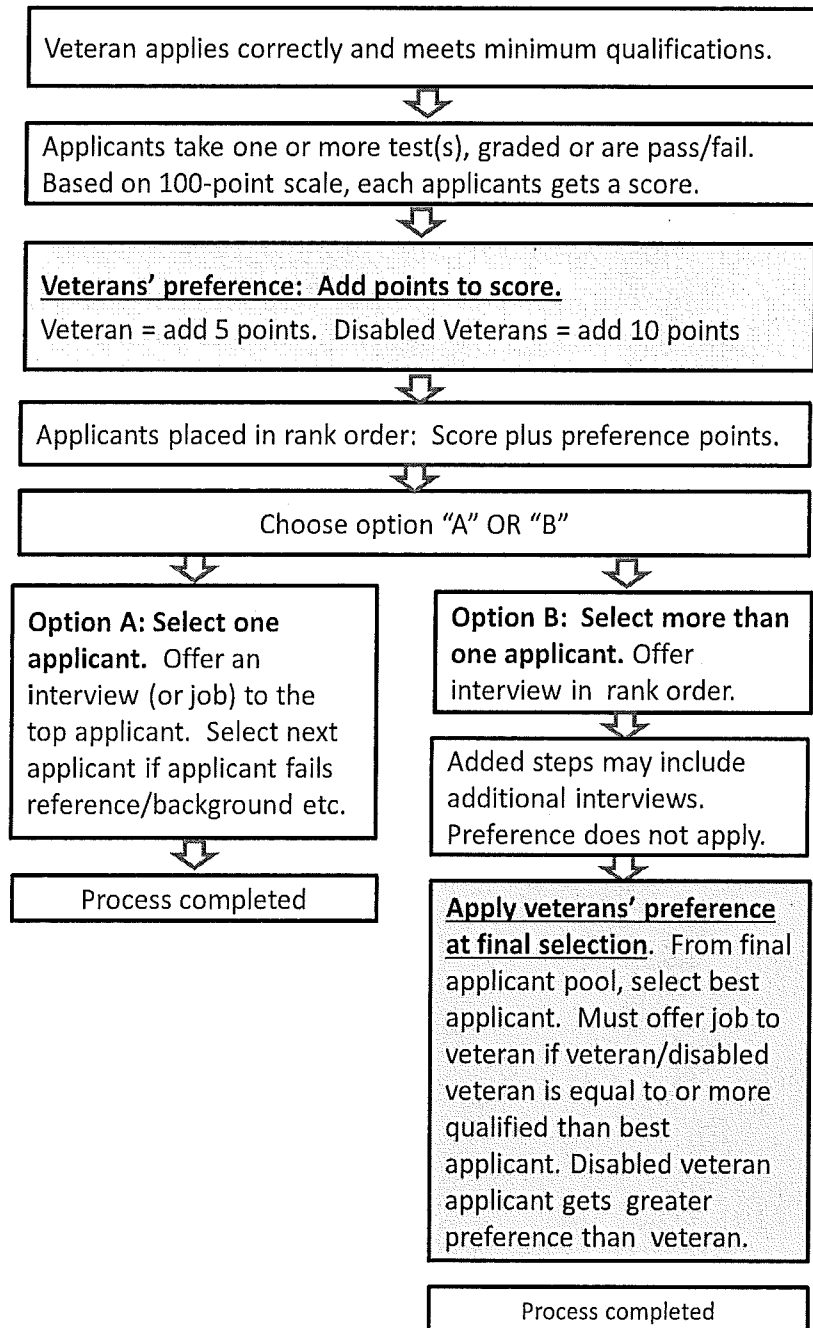
The revised statutes are beneficial to veterans because they are clear and easy to understand; they provide a fair and meaningful preference; they provide opportunities for qualified and competitive

veterans to interview and describe and explain their transferable skills; they require employers using an unscored process to interview at least five veterans; and during the final selection stage, if a veteran or disabled veteran is equally or better qualified than any other candidate, the employer must offer the position to the veteran. Under Senate Bill 87, a veteran receives no less than the level of special consideration that is provided in current statutes

Senate Bill 87 has defined terms, states the legislative intent, policy and purposes and applies preference using methods that are easily understood by veterans and public employers. The changes to the statute resolve the significant problems with the current statute and give veterans meaningful preference.

Appendix A: Two Methods of Applying Veterans' Preference

Veterans' Preference: Tested and Scored Selection Process



Unscored Sorted/Ranked/Unscored Method

