

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §4.16, Veterans Employment Preference, relating to Job Application Procedures, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeal, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the repeal of §4.16 is proposed for adoption and is authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

Deborah Moore
Interim Director, Human Resources

Recommended by:

P. D. [Signature]
Executive Director

113111 MAY 31 12

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of §4.16, Veterans Employment Preference, concerning Job
4 Application Procedures.

5

6 EXPLANATION OF PROPOSED REPEAL

7 Government Code, Chapter 657, enacted by the legislature in
8 1993, established a state veteran's preference program for
9 employment with a public entity. The chapter contains the
10 details of the procedure that a state agency is to follow in
11 applying preferences for veterans. In April 1996, the
12 commission adopted §4.16, which contains language from
13 Government Code, Chapter 657.

14

15 In 2009 the legislature adopted a similar preference program for
16 individuals who were under the permanent managing
17 conservatorship of the Department of Family and Protective
18 Services on the day preceding their 18th birthdays; those
19 individuals are commonly referred to as foster children
20 (Government Code, Chapter 672, Employment Preference for Former
21 Foster Children). In reviewing the rules of the department
22 related to employment preferences, staff determined that rules
23 related to the employment preference programs are not required
24 because the statutes that provide for the preferences describe
25 the procedural requirements that a state agency must follow and

1 do not expressly require additional rules and because
2 implementation or interpretation of those statutes is
3 unnecessary. Therefore, this proposal repeals §4.16 as being
4 redundant of the statutory provisions.

5

6 FISCAL NOTE

7 James Bass, Chief Financial Officer, has determined that for
8 each of the first five years in which the repeal as proposed is
9 in effect, there will be no fiscal implications for state or
10 local governments as a result of enforcing or administering the
11 repeal.

12

13 Debbie Moore, Interim Director, Human Resources Division, has
14 certified that there will be no significant impact on local
15 economies or overall employment as a result of enforcing or
16 administering the repeal.

17

18 PUBLIC BENEFIT AND COST

19 Ms. Moore has also determined that for each year of the first
20 five years in which the section is in effect, the public benefit
21 anticipated as a result of enforcing or administering the repeal
22 will be maintaining a fair and competitive hiring process.

23 There are no anticipated economic costs for persons required to
24 comply with the section as proposed. There will be no adverse
25 economic effect on small businesses.

1

2 SUBMITTAL OF COMMENTS

3 Written comments on the proposed repeal of §4.16 may be
4 submitted to Debbie Moore, Interim Director, Human Resources
5 Division, Texas Department of Transportation, 125 East 11th
6 Street, Austin, Texas 78701-2483. The deadline for receipt of
7 comments is 5:00 p.m. on July 16, 2012. In accordance with
8 Transportation Code, §201.810(a)(5), a person who submits
9 comments must disclose, in writing with the comments, whether
10 the person does business with the department, may benefit
11 monetarily from the proposed repeal, or is an employee of the
12 department.

13

14 STATUTORY AUTHORITY

15 The repeal is proposed under Transportation Code, §201.101,
16 which provides the Texas Transportation Commission with the
17 authority to establish rules for the conduct of the work of the
18 department.

19

20 CROSS REFERENCE TO STATUTE

21 Government Code, Chapters 657 and 672.

1 SUBCHAPTER B. JOB APPLICATION PROCEDURES

2 §4.16. Veterans Employment Preference.

3 (a) Policy.

4 (1) In compliance with Government Code, Chapter 657, an
5 individual who qualifies for a veteran's employment preference
6 is entitled to a preference in employment with the department
7 over other applicants for the same position who do not have a
8 greater qualification.

9 (2) An individual who has an established service-
10 connected disability and is entitled to a veteran's employment
11 preference, is entitled to preference for employment in a
12 position over all other applicants for the same position without
13 a service-connected disability and who do not have a greater
14 qualification.

15 (3) The veteran's employment preference does not apply to
16 a position:

17 (A) of private secretary or deputy of an official of
18 the department; or

19 (B) in which the employee is in a strictly confidential
20 relation to the appointing or employing official.

21 (b) Eligibility.

22 (1) A veteran qualifies for a veteran's employment
23 preference if the veteran:

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

5 (B) was honorably discharged from military service; and

6 (C) is competent.

7 (2) A surviving spouse qualifies for a veteran's
8 employment preference if the:

9 (A) veteran was killed while on active duty;

10 (B) veteran served in the military for not less than 90
11 consecutive days during a national emergency declared in
12 accordance with federal law;

13 (C) surviving spouse is competent; and

14 (D) surviving spouse has not remarried.

15 (3) An orphan qualifies for a veteran's employment
16 preference if the:

17 (A) veteran was killed while on active duty;

18 (B) veteran served in the military for not less than 90
19 consecutive days; and

20 (C) orphan is competent.

21 (c) Listing positions with Texas Workforce Commission.

22 Beginning January 31, 1995, the department will provide
23 information regarding an open position that is subject to the

1 veteran's employment preference to the Texas Workforce
2 Commission.

3 (d) Percentage of workforce requirement.

4 (1) The department will give preference in hiring to
5 qualified individuals so that at least 40% of the employees of
6 the department are selected from individuals given that
7 preference.

8 (2) The department will give 10% of the preferences
9 granted under this section to qualified veterans discharged from
10 the armed services of the United States within the preceding 18
11 months.

12 (3) The requirements of this subsection do not apply if
13 at least 40% of its employees are entitled to the preference.

14 (e) Investigation of eligibility.

15 (1) An applicant who is given a veteran's employment
16 preference shall provide proof, in the form of a Department of
17 Defense Form 214 (DD Form 214), of his or her eligibility for
18 such preference to the hiring supervisor.

19 (2) An applicant with an established service-connected
20 disability shall furnish a document to the hiring supervisor
21 that establishes the disability and which is issued by a branch
22 of the military.

23 (3) An applicant who is a surviving spouse or orphan

1 shall provide proof in the form of a DD Form 214 and a death
2 certificate for the veteran.

3 (4) A hiring supervisor, upon receipt of an employment
4 application from a qualified individual who is entitled to a
5 veteran's employment preference, shall investigate the
6 qualifications of the applicant for the position, by reviewing
7 the information contained on the employment application and
8 obtained during interviews for the position before making an
9 offer of employment.

10 (f) Reduction in workforce.

11 (1) An individual entitled to a veteran's employment
12 preference is also entitled to a preference in retaining
13 employment if the department reduces its workforce.

14 (2) The preference granted under this subsection applies
15 only to the extent that a reduction in workforce by the
16 department involves other employees of a similar type or
17 classification.

18 (g) Reporting requirements. The department shall file
19 quarterly with the comptroller a report that states:

20 (1) the percentage of the total number of employees hired
21 by the department during the reporting period who are persons
22 entitled to a veteran's employment preference under this
23 section; and

1 (2) the percentage of the total number of the
2 department's employees who are persons entitled to a veteran's
3 employment preference under this section.

4 (h) Federal law and grants. To the extent that this
5 section conflicts with federal law or a limitation provided by a
6 federal grant to a public entity, this section will be construed
7 to operate in harmony with the federal law or limitation of the
8 federal grant.

9 The provisions of this §4.16 adopted to be effective April 23,
10 1996, 21 TexReg 3220; readopted by review, filed on June 28,
11 1999, 24 TexReg 5220; readopted by review, filed on January 26,
12 2001, 26 TexReg 1377; readopted by review filed on February 27,
13 2004, 29 TexReg 2758; readopted by review published November 30,
14 2007, 32 TexReg 8865.