Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Jacqui Irwin, Chair
AB 160 (Voepel) – As Introduced January 7, 2019

SUBJECT: Employment policy: voluntary veterans' preference

SUMMARY: Enacts the "Voluntary Veterans' Preference Employment Policy Act" to authorize a private employer to establish and maintain a veteran' preference employment policy. Specifically, **this bill**:

1) Authorizes an employer with a veterans' preference employment policy to require a veteran to submit a United States Department of Defense form (DD 214) to be eligible for the preference.

2) Specifies the granting of a veterans' preference, in and of itself, does not violate any local or state equal employment opportunity law or regulation.

3) Requires the Department of Veterans Affairs to assist any private employer in determining if an applicant is a veteran, to the extent permitted by law.

EXISTING LAW:

Federal Law:

1) Establishes the Uniformed Services Employment and Reemployment Rights Act (USERRA), which prohibits discrimination and retaliation against active duty military and veterans on the basis of the person's military membership, application for membership, performance of service, application for service, or obligation. (38 U.S.C. Sec. 4311.)

2) Prohibits an employer's use of the employee's military membership, performance of service, application for service, or obligation as a motivating factor as cause for an adverse employment decision against the employee. (38 U.S.C. Sec. 4311.)

State Law:

1) Establishes the California Fair Employment and Housing Act (FEHA). The FEHA provides that it is an unlawful employment practice for an employer to discriminate against a person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

2) Allows employers, under the California Fair Employment and Housing Act (FEHA) to use veterans' status as a factor in employee selection or to give special consideration to Vietnam–era veterans.

FISCAL EFFECT: According to the Assembly Appropriations Committee which analyzed the substantially similar AB 353 (Voepel, 2017):

> Ongoing General Fund administrative costs to the Department of Veteran Affairs in the range of $195,000 to $365,000. It is difficult to estimate the number of inquiries the department would receive related to veteran verification. There are 1.8 million veterans in California; roughly half are of working age. For illustration, if the department were to process 2,500 inquires annually administrative costs would be in the lower end of this range.

COMMENTS:

This bill seeks to establish the Voluntary Veterans' Preference Employment Policy Act to allow private employers to give veteran preference in employment decisions. The initiative captured by this bill is the subject of the current priorities of the Department of Defense's "Key DoD Personnel and Readiness Issues Supporting Service Members and Families 2017":

> Allow private sector employers to offer hiring preference to veterans: Private sector employers attempting to offer hiring preferences to veterans may be risking claims of discrimination from applicants lacking military experience. States may establish laws or policies that protect private sector employers from discrimination claims when offering hiring preference to veterans.

According to the author:

> "Veterans often have a diverse skillset to offer the workforce once they transition into civilian life. The public sector enjoys a Voluntary Veterans preference but the private sector's Voluntary Veterans Preference is now very much outdated. AB 160 gives private sector employers the option to a Voluntary Veterans Preference to all veterans who have served."

According to the National Conference of State Legislatures (NCSL), similar veteran's preference laws have been enacted in 37 states across the country (including 33 states in the past three years): Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia and Wyoming.

Argument in opposition: According to the American Civil Liberties Union, "whatever rationale there may have been decades ago when the current Vietnam veteran's preference was enacted with respect to gender discrimination, we do not believe it is necessary or appropriate to expand that exemption in light of the subsequent addition of veterans as a protected class under the FEHA. To do so would be to elevate one protected group over another."

Previous legislation: AB 353 (Voepel, 2017) was substantially similar to this bill and died in the Senate Committee on Judiciary.

AB 1383 (Jones, 2016) was substantially similar to this bill and died in the Senate Committee on Judiciary.

AB 556 (Salas, Chapter 691, Statutes of 2013) incorporated protection from discrimination and retaliation for military employees and veterans into FEHA.

SB 36 (Baca, Chapter 201, Statutes of 1999) requires any city, county, or city and county, general law or chartered, when it has established a civil service system, to implement a veterans' preference system, or adopt a resolution identifying reasons that the local agency does not do so.

SB 1150 (Fletcher and Burns, Chapter 123, Statutes of 1945) requires military veterans' preference on civil service employment lists.

This bill is double referred to the Labor and Employment Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion, Department Of California
AMVETs, Department of California
California Association of County Veterans Service Officers
California State Commanders Veterans Council
National Guard Association of California
Society for Human Resource Management
Vietnam Veterans of America, California State Council

Oppose

American Civil Liberties Union of California

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