REPORT OF THE
DEPARTMENT OF VETERANS' AFFAIRS RELATING TO

PREFERENCE FOR VETERANS FOR EMPLOYMENT WITH THE COMMONWEALTH

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 15

COMMONWEALTH OF VIRGINIA
RICHMOND
1998

SENATE BILL NO. 714

Findings and Recommendations to the Governor and 1998 General Assembly.

Preface

The Virginia Department of Veterans' Affairs, in conjunction with the Department of Personnel and Training, the Virginia Association of Counties and the Virginia Municipal League, veterans' organizations, and any other interested person has conducted a study concerning the effect of the provisions of this act on the personnel system of the Commonwealth and the Commonwealth's political subdivisions if Subsection 15.1-7.5 of the Code of Virginia were to be amended in a manner consistent with the act.

Senate Bill 714 amended and reenacted Subsection 2.1-112 of the *Code of Virginia* to provide for a grade or rating increase, consistent with federal and state law, if a veteran applied for employment with the Commonwealth which is based on passing a written examination. Passing of a written examination will result in a five percent increase. However, if the veteran has a service-connected disability rating fixed by the United States Veterans Administration, the grade or rating shall be increased by ten percent. In the event employment is not based on passing a written examination, in a manner consistent with federal and state law, the veteran's military service shall be taken into consideration by the Commonwealth during the selection process, provided that such veteran meets all knowledge, skills and ability requirements for the available position. A veteran is defined as any person who has received an honorable discharge and has provided more than 180 consecutive days of full-time, active-duty service in the United States Army, Navy, Air Force Marines, Coast Guard, or reserve components thereof, including the National Guard, or has a service-connected disability rating fixed by the United States Veterans Administration.

Subsection 15.1-7.5 of the *Code of Virginia* - Preferences for veterans in local government employment currently reads as follows:

"Consistent with the requirements and obligations to protected classes under federal or state law, any county, city, or town may take into consideration or give preference to an individual's status as an honorably discharged veteran of the armed forces of the United States in its employment policies and practices. Additional consideration may also be given to veterans who have a service connected disability rating fixed by the United States Veterans Administration. "Veterans" as used in this section refers to the same class as included in Subsection 2.1-112 with regard to the state service."

FINDINGS

The following agencies and organizations were contacted to provide their views on Senate Bill 714 and the resulting impact.

Charles E. James, Director, Department of Personnel and Training
Michael Amyx, Director, Virginia Municipal League
James Campbell, Director, Virginia Association of Counties
Virginia Veterans Service Organizations
Division of Legislative Service

To assess the impact of Senate Bill 714 on the personnel system of the Commonwealth of Virginia, the Department of Personnel and Training sent a questionnaire to state agencies. The questionnaire was designed to determine the number of agencies that administer written examinations as a requirement for employment and to determine the extent of contact with applicants. (Attachment 1) enclosed, contains a copy of the questionnaire and a compilation of the results. In summary, only four agencies administer written examinations to which a percentage preference can be assigned, and these examinations are administered to a limited number of classifications within the agencies. The agencies and the classifications are as follows:

Department of Planning and Budget:	DPB Analyst and Program Support Technician
Department of State Police:	Trooper, Electronic Technician Sr. and Clerical
Department of Game & Inland Fisheries:	Game Wardens
Department of Employee Relations Counselors:	Employee Relations Counselors

The Department of Personnel and Training further reports that a fiscal impact will be incurred for revisions to the state application form to comply with the changes which will become effective July 1, 1998, and for the issuance of policy guidance to state agencies regarding the *Code of Virginia* revisions.

The Virginia Municipal League (VML) opposes the extension of Senate Bill 714 for local governments. Reasons cited for their opposition are:

- VML has a long-standing position in support of local governments to manage their own work forces. Many services provided by local government are labor-intensive, therefore, personnel costs constitute a large portion of local budget. Consequently, local governing bodies must raise the revenues to pay their work forces and must retain the authority to manage that work force.

- The primary problem foreseen by the VML is that the bill states that if a veteran is denied employment by the state, he is entitled, to the extent permitted by the law, to request and inspect information regarding the reasons for denial. The extent of this entitlement is unclear, and the extent to which it creates problems with privacy is unclear.

The Virginia Association of Counties does not support a statutory mandate for preferential treatment for veterans seeking employment with county governments.

The American Ex-Prisoners of War, Inc., Department of Virginia, expressed approval for Senate Bill 714 as it is currently written.

The Military Order of the Purple Heart, Department of Virginia, believes that Senate Bill 714, as currently worded, will be only marginally effective in providing veterans with increased hiring opportunities. This organization believes that priority should be given Purple Heart recipients in the hiring process.

The Disabled American Veterans views Senate Bill 714 as "feel good" legislation that contains sufficient loopholes to enable circumvention of the stated intention of the bill. They echo the sentiments of the Military Order of the Purple Heart in the belief that the bill will be marginally effective in promoting the hiring of veterans especially since the number of positions to which a point preference can be applied for written examinations are severely limited. They further express the concern that a serious deficiency exists in the entire legislation insofar as provisions for oversight and enforcement. The question they ask is, "What incentives are contained in the legislation that encourages a State employer to comply with the intent and provisions of the law?"

The American Legion prefers that the bill be further amended as follows:
(Attachment 2)

- Provide a clear advantage for veterans in lieu of the five or ten percent increase on written examination.

- Require state agencies to develop qualifications and experience criteria as broadly as possible to allow maximum numbers of veterans to compete.

- Require preferential hiring for Purple Heart recipients.

- Develop a complaint process through the Commissioner of Labor and Industry.

- Require the maintenance of statistics on a statewide and agency level, detailing number of positions advertised and number of veterans offered employment.

- Provide veterans service organizations with a voice in issues related to policies, procedures and programs affecting employment of veterans.

Documentation regarding the introduction of the Senate Bill 714 has been provided to the Department of Veterans' Affairs by the Division of Legislative Services. This documentation is the culmination of research related to the issue of a veteran's preferential right to employment.

In summary, the research of the Division of Legislative Services reveals that "*veterans' preference laws are looked upon positively by both federal and state jurisdictions and that statutes which obligate the state to apply veterans' preference in specified employment situations usually withstand constitutional attack. Only highly unrestrained preferences (such as a veterans' preference in promotional situations) face opposition.*" (Attachment 3)

SUMMARY OF FINDINGS

The impact on the personnel system of the Commonwealth of Virginia would be minimal primarily due to the limited number of agencies and job classifications that administer written examinations as an employment requirement.

Local government is primarily concerned with the impact this legislation would have on their ability to manage their workforce and to privacy issues related to the veteran's ability to inspect information regarding reasons for denial of employment.

Veterans service organizations are more concerned with the effectiveness of this legislation in providing employment opportunities for veterans. Thus, their comments correlate to the provisions of the legislation and not the impact on the personnel system of the Commonwealth or the impact on local governments.

RECOMMENDATIONS

Our recommendations are in two parts.

I.. Should Senate Bill 714 be expanded to political sub-divisions?

We recommend that the provisions of Senate Bill 714 be expanded to political sub-divisions. We recognize the privacy concerns expressed by the Virginia Municipal League. However, we believe that veterans preference in hiring is of paramount concern. We further are of the opinion that veterans who contest a hiring decision can get adequate disclosure of the process without violating the privacy of individuals.

II. Recommendations concerning implementation and clarifying Senate Bill 714.

Determining the full impact of the legislation on the personnel system of the Commonwealth and local governments, and to address the concerns of the veterans service organizations is difficult because the language in Paragraphs B and C of Senate Bill 714 is vague. It is recommended that these two sections be clarified, specifically as follows:

Section B. -- In a manner consistent with state and federal law, if a veteran applies for employment with the Commonwealth which is not based on the passing of any examination, such veteran's military service ***shall be taken into consideration*** by the Commonwealth during the selection process, provided that such veteran meets all of the knowledge, skills and ability requirements for the available position.

What emphasis is to be placed on the veterans' military service, and in what way does this consideration provide a hiring preference?

Section C.-- If any veteran is denied employment with the Commonwealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for denial.

It is recommended that this legislation clearly state the extent of the veterans entitlement to inspect information regarding the reasons for denial. It is also recommended that the Department of Personnel and Training be instructed to put in place a system for monitoring the preferential hiring of veterans by state agencies.

It is further recommended that an appeal process for veterans denied employment with the Commonwealth be established consistent with avenues of appeal available to other classifications afforded protection under state and federal laws.

972817701

SENATE BILL NO. 714
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on General Laws
on January 22, 1997)
(Patron Prior to Substitute—Senator Marye)

A BILL to amend and reenact § 2.1-112 of the Code of Virginia, relating to preference for veterans for employment with the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-112 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-112. Grade or rating increase and other preferences for veterans.

A. In ~~the event a person who has served in the armed forces of the United States in World War I, World War II, Korean War or Vietnam War, having an honorable discharge, is an applicant for a position in the state service which is filled after an examination given by the Merit System Council under the merit system plan applicable to personnel employed by the Virginia Employment Commission, the state and local boards of public welfare, the State Board of Health, and the Virginia Department for the Visually Handicapped, or any other state agency whose employees are so examined,~~ *a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is based on the passing of any written examination,* the *veteran's* grade or rating ~~of the applicant~~ on such examination shall be increased by five percent. ~~If such applicant shall have~~ *However, if the veteran has* a ~~service connected~~ *service-connected* disability rating fixed by the United States Veterans Administration, his grade or rating shall be increased by ten percent *on such written examination.* Such ~~additions~~ *increases* shall *apply* only ~~be made~~ if ~~any such applicant~~ *the veteran* passes such examination.

B. ~~In the event that~~ *In a manner consistent with federal and state law, if* any ~~person mentioned in subsection A~~ *veteran* applies for employment with ~~any agency of~~ the Commonwealth ~~where examinations are not required of the applicants~~ *which is not based on the passing of any examination,* such ~~person shall be assured that his~~ *veteran's military* service ~~with the armed forces~~ shall be taken into consideration by the ~~agency~~ *Commonwealth* during the selection process, provided that such ~~person~~ *veteran* meets all of the knowledge, skill, and ability requirements for the ~~vacancy~~ *available position.* ~~Each agency of the Commonwealth shall take affirmative action consistent with its obligations for protected classes.~~

C. If any veteran is denied employment with the Commonwealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial.

D. For purposes of this section, "veteran" means any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the United States Army, Navy, Air Force, Marines, Coast Guard, or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Veterans Administration.

2. That the provisions of this act shall become effective on July 1, 1998.

3. That the Department of Veterans' Affairs, in conjunction with the Department of Personnel and Training, the Virginia Association of Counties, the Virginia Municipal League, veterans' organizations, and any other interested person, is requested to study the effect of the provisions of this act on (i) the personnel system of the Commonwealth and (ii) the Commonwealth's political subdivisions if § 15.1-7.5 of the Code of Virginia were to be amended in a manner consistent with this act. The Department shall submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

972817701
SB714S1

ATTACHMENT I

COMMONWEALTH of VIRGINIA

CHARLES E. JAMES, SR.
DIRECTOR

Department of Personnel and Training

JAMES MONROE BUILDING
101 N. 14TH STREET
RICHMOND, VIRGINIA 23219
(804) 225-2131
(V/TDD) (804) 371-7671

September 22, 1997

Mr. Donald W. Duncan, Director
Department of Veterans' Affairs
270 Franklin Road, S. W., Room 1012
Poff Federal Building
Roanoke, Virginia 24011-2215

Dear Mr. Duncan:

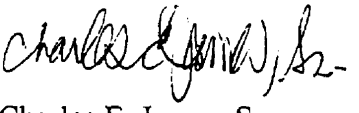
The questionnaires sent to state agencies to assess the impact of SB 714 on the personnel system of the Commonwealth have been returned and compiled. This questionnaire was designed to address new requirements in the *Code of Virginia* which are to become effective on July 1, 1998.

I have enclosed a summary of the results of each question. In addition, I have enclosed a list of the specific response provided by each agency for your information. If you have any questions concerning the information enclosed, please contact Carol Rauschberg at (804) 225-2149.

All agencies of the Commonwealth will, of course, continue to be subject to provisions of the *Code of Virginia, Section 2.1-112*, which address veteran's preference. The Department of Personnel and Training will revise the state application form in order to comply with the changes which will be effective July 1, 1998. Since many state agencies have a large supply of the current state application, there will be a fiscal impact due to the need for revisions and the re-issuance of applications. It will also be necessary for the Department of Personnel and Training to issue policy guidance to state agencies concerning the *Code of Virginia* revisions. At the present time the state hiring policy, (Policy No. 2.10.VI.B.1.c.) states that "Any person who has served in the armed forces of the United States in World War I, World War II, Korean War, or Vietnam War, having an honorable discharge, shall be assured that his or her service with the armed forces shall be taken into consideration by the agency during the selection process, provided that such person meets all of the knowledge, skill, and ability requirements for the vacancy. Each agency of the Commonwealth shall take affirmative action consistent with its obligations for protected classes." This section will be updated to reflect the revisions to the *Code of Virginia*.

Please let me know if I can be of any further assistance.

Sincerely,



Charles E. James, Sr.

enclosures

cc: Michael E. Thomas
Secretary of Administration

QUESTIONNAIRE
SENATE BILL 714

A BILL to amend and reenact Section 2.1-112 of the Code of Virginia, relating to preference for veterans for employment with the Commonwealth.

NAME OF AGENCY: _____

NAME/TITLE OF PERSON COMPLETING THIS QUESTIONNAIRE _____

_____

PHONE NO.

( ) _____

DO YOU ADMINISTER A WRITTEN EXAMINATION AS A REQUIREMENT FOR EMPLOYMENT IN YOUR AGENCY?

YES _____ NO _____

IF YES, FOR WHICH CLASSES DO YOU ADMINISTER AN EXAMINATION?

_____

_____

DO YOU ACKNOWLEDGE ALL APPLICATIONS RECEIVED FOR POSITIONS ADVERTISED BY YOUR AGENCY?

YES _____ NO _____

IF "NO", PLEASE EXPLAIN WHY YOU ARE UNABLE TO DO SO.

_____

DO YOU NOTIFY ALL APPLICANTS FOLLOWING THE INTERVIEW SELECTION PROCESS, OR DO YOU NOTIFY ONLY THOSE APPLICANTS WHO WERE INTERVIEWED FOR THE VACANCY?

_____

_____

COMMENTS:

PLEASE FAX YOUR RESPONSE TO THE DEPARTMENT OF PERSONNEL & TRAINING BY AUGUST 29, 1997
(804) 371-7401

QUESTIONNAIRE
SENATE BILL 714

A BILL to amend and reenact Section 2.1-112 of the Code of Virginia, relating to preference for veterans for employment with the Commonwealth.

1.) Do you administer a written examination as a requirement for employment in your agency?

Yes 4 No 165

If yes, for which classes do you administer an examination?

See attached

2.) Do you acknowledge all applications received for positions advertised by your agency?

Yes 142 No 26

If "no", please explain why you are unable to do so.

See attached

3.) Do you notify all applicants following the interview selection process, or do you notify only those applicants who were interviewed for the vacancy?

All 74 Applicants interviewed 94

DO YOU ADMINISTER A WRITTEN EXAMINATION AS A REQUIREMENT FOR EMPLOYMENT IN YOUR AGENCY? IF YES, FOR WHICH CLASSES DO YOU ADMINISTER AN EXAMINATION?

YES

DEPT. OF PLANNING & BUDGET	DPB ANALYST; PROG. SUPPORT TECH.
DEPT. OF STATE POLICE	S.P. TROOPER; ELECTRONIC TECH. SR.; CLERICAL
DEPT. OF GAME & INLAND FISHERIES	GAME WARDENS
DEPT. OF EMPLOYEE REL. COUNSELORS	STATE EMPLOYEE RELATIONS COUNSELOR

NO

DEPT. OF MILITARY AFFAIRS
DEPT. OF EMERGENCY SERVICES
DEPT. OF PERSONNEL & TRAINING
DEPT. OF VETERANS' AFFAIRS
STATE BOARD OF ELECTIONS
COUNCIL ON INFORMATION MANAGEMENT
DEPT. OF INFORMATION TECHNOLOGY
DEPT. OF CRIMINAL JUSTICE SERVICES
SCIENCE MUSEUM OF VIRGINIA
VIRGINIA COMMISSION FOR THE ARTS
DEPT. OF THE STATE INTERNAL AUDITOR
DEPT. OF ACCOUNTS
DEPT. OF THE TREASURY
DEPT. OF MOTOR VEHICLES
STATE COMPENSATION BOARD
DEPT. OF TAXATION
DEPT. OF HOUSING & COMMUNITY DEVELOPMENT
CHARITABLE GAMING COMMISSION
DEPT. OF LABOR & INDUSTRY
VIRGINIA EMPLOYMENT COMMISSION
SERCRETARY OF HEALTH/HUMAN RESOURCES
SECRETARY OF FINANCE
DEPT. OF GEN. SERVICES *****WRITING SAMPLES REQUIRED FOR PROFESSIONAL OR MGMT POSITIONS**
DEPT. OF CONSERVATION & RECREATION
DEPT. OF EDUCATION
LIBRARY OF VIRGINIA
WOODROW WILSON REHABILITATION CENTER
COLLEGE OF WILLIAM & MARY
(VIRGINIA INSTITUTE OF MARINE SCIENCE)
UNIVERSITY OF VIRGINIA
VIRGINIA TECH *****FOR SELECT POSITIONS REQUIRE A TYPING TEST ADMINISTERED BY VEC**
VIRGINIA COMMONWEALTH UNIVERSITY
VIRGINIA MILITARY INSTITUTE
VIRGINIA STATE UNIVERSITY
NORFOLK STATE UNIVERSITY *****REQUIRE ALL SECRETARIAL APPLICANTS TO TAKE A TYPING TEST**
LONGWOOD COLLEGE
MARY WASHINGTON COLLEGE
JAMES MADISON UNIVERSITY
RADFORD UNIVERSITY
VA. SCHOOL FOR THE DEAF & BLIND/STAUNTON
VA. SCHOOL FOR THE DEAF & BLIND/HAMPTON
OLD DOMINION UNIVERSITY
DEPT. OF PROFESSIONAL & OCCUPATIONAL REGULATION

DEPT. OF HEALTH PROFESSIONS
DEPT OF MINORITY BUSINESS ENTERPRISE
VIRGINIA MUSEUM OF FINE ARTS
FRONTIER CULTURE MUSEUM OF VIRGINIA
RICHARD BLAND COLLEGE
CHRISTOPHER NEWPORT UNIVERSITY
STATE COUNCIL OF HIGHER EDUCATION
GEORGE MASON UNIVERSITY
VA COMMUNITY COLLEGE SYSTEM (CENTRAL OFFICE)

- NEW RIVER C. C.
- SOUTHSIDE VA C. C. ***TYPING SKILLS TEST FOR CLERICAL POSITIONS
- PAUL D. CAMP C. C.
- RAPPAHANNOCK C. C. ***MAY REQUEST WORK SAMPLES, E.G., CLERICAL, TECHNICAL
- DANVILLE C. C.
- NORTHERN VIRGINIA C. C.
- PIEDMONT C. C.
- J. SERGEANT REYNOLDS C. C.
- EASTERN SHORE C. C. *** COMPUTER POS. MAY HAVE TO DEMO. COMPETENCY-TEST
- PATRICK HENRY C. C.
- VIRGINIA WESTERN C. C. ***SKILLS BASED TEST FOR CLERICAL POSITIONS
- DABNEY S. LANCASTER C. C.
- WYTHEVILLE C. C.
- JOHN TYLER C. C.
- BLUE RIDGE C. C.
- CENTRAL VIRGINIA C. C.
- THOMAS NELSON C. C.
- SOUTHWEST VIRGINIA C. C.
- TIDEWATER C. C.
- VIRGINIA HIGHLANDS C. C.
- GERMANNA C. C.
- LORD FAIRFAX C. C.
- MOUNTAIN EMPIRE C. C.

DEPT. OF REHABILITATIVE SERVICES
VA. REHAB. CENTER F/T BLIND
DEPT. OF AGRICULTURE
STATE MILK COMMISSION
DEPT. OF BUSINESS ASSISTANCE
VIRGINIA MARINE RESOURCES COMMISSION
VIRGINIA RACING COMMISSION
VIRGINIA PORT AUTHORITY
CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT
DEPT OF MINES, MINERALS & ENERGY
VIRGINIA DEPT. OF FORESTRY ***EXERCISE FOR OFFICE SERVICES SPEC. & COMPUTER POS.
GUNSTON HALL
DEPT. OF HISTORIC RESOURCES
JAMESTOWN-YORKTOWN FOUNDATION
DEPT. OF ENVIRONMENTAL QUALITY
VA DEPT. OF TRANSPORTATION
MOTOR VEHICLE DEALER BOARD
DEPT. OF RAIL & PUBLIC TRANSPORTATION
DEPARTMENT OF HEALTH ***WORK SAMPLES/EXERCSES REQUESTED ON OCCASION
DEPT. OF MEDICAL ASSISTANCE SERVICES
VA BOARD FOR PEOPLE W/DISABILITIES
DEPT. OF CORRECTIONS ***PROGRAM TO TEST CORRECTIONS OFFICERS TO BEGIN IN 1998

(CENTRAL OFFICE AND 38 FACILITIES)

DEPT. F/T VISUALLY HANDICAPPED

DMHMRSAS FACILITIES

DMHMRSAS CENTRAL OFFICE

CENTRAL STATE HOSP.

EASTERN STATE HOSP. *****SOME WK. SAMPLES, NOT NUMERICALLY SCORED**

SOUTHWESTERN VIRGINIA MENTAL HEALTH INST.

WESTERN STATE HOSP.

CENTRAL VIRGINIA TRAINING CENTER

DEJARNETTE CENTER FOR HUMAN DEVELOPMENT

SOUTHEASTERN VIRGINIA TRAINING CENTER F/T MR

CATAWBA HOSP.

NORTHERN VIRGINIA TRAINING CENTER F/T MR

SOUTHSIDE VA TRAINING CENTER

NORTHERN VIRGINIA MENTAL HEALTH INST.

PIEDMONT GERIATRIC HOSP.

SOUTHWESTERN VIRGINIA TRAINING CENTER

SOUTHERN VIRGINIA MENTAL HEALTH INST.

HIRAM W. DAVIS MEDICAL CENTER

DEPT. OF CORRECTIONAL EDUCATION

DEPT. F/T DEAF & HARD OF HEARING

DEPT. FOR RIGHTS OF VIRGINIANS W/DISABILITIES

DEPT. OF SOCIAL SERVICES

VIRGINIA PAROLE BOARD

DEPT. OF JUVENILE JUSTICE

DEPT. OF AVIATION

GOVERNOR'S EMPLOYMENT & TRAINING DEPT.

VIRGINIA MUSEUM OF NATURAL HISTORY

COMMONWEALTHS' ATTORNEYS SERVICES COUNCIL

DEPT. OF FIRE PROGRAMS

ALCOHOLIC BEVERAGE CONTROL

COMMONWEALTH COMPETITION COUNCIL

DO YOU ACKNOWLEDGE ALL APPLICATIONS RECEIVED FOR POSITIONS ADVERTISED BY YOUR AGENCY?

YES

DEPT. OF PLANNING & BUDGET
DEPT. OF EMERGENCY SERVICES
DEPT. OF PERSONNEL & TRAINING
DEPT. OF VETERANS' AFFAIRS
STATE BOARD OF ELECTIONS
DEPT. OF STATE POLICE
COUNCIL ON INFORMATION MANAGEMENT
DEPT. OF INFORMATION TECHNOLOGY
DEPT. OF CRIMINAL JUSTICE SERVICES
VIRGINIA COMMISSION FOR THE ARTS
DEPT. OF THE STATE INTERNAL AUDITOR
DEPT. OF ACCOUNTS
DEPT. OF THE TREASURY
DEPT. OF MOTOR VEHICLES
STATE COMPENSATION BOARD
DEPT. OF TAXATION
DEPT. OF HOUSING & COMMUNITY DEVELOPMENT
CHARITABLE GAMING COMMISSION
DEPT. OF LABOR & INDUSTRY
VIRGINIA EMPLOYMENT COMMISSION
DEPT. OF GENERAL SERVICES
DEPT. OF CONSERVATION & RECREATION
DEPT. OF EDUCATION
LIBRARY OF VIRGINIA
WOODROW WILSON REHABILITATION CENTER
VIRGINIA COMMONWEALTH UNIVERSITY
VIRGINIA MILITARY INSTITUTE
VIRGINIA STATE UNIVERSITY
LONGWOOD COLLEGE
RADFORD UNIVERSITY
VA. SCHOOL FOR THE DEAF & BLIND/HAMPTON
DEPT. OF HEALTH PROFESSIONS
DEPT OF MINORITY BUSINESS ENTERPRISE
VIRGINIA MUSEUM OF FINE ARTS
FRONTIER CULTURE MUSEUM OF VIRGINIA
CHRISTOPHER NEWPORT UNIVERSITY
STATE COUNCIL OF HIGHER EDUCATION
GEORGE MASON UNIVERSITY
DEPT. OF REHABILITATIVE SERVICES
VA. REHAB. CENTER F/T BLIND

VDCC COLLEGES:

NEW RIVER COMMUNITY COLLEGE
SOUTHSIDE VA COMMUNITY COLLEGE
PAUL D. CAMP COMMUNITY COLLEGE
RAPPAHANNOCK COMMUNITY COLLEGE
DANVILLE COMMUNITY COLLEGE
NORTHERN VIRGINIA COMMUNITY COLLEGE
PIEDMONT COMMUNITY COLLEGE
J. SERGEANT REYNOLDS COMMUNITY COLLEGE
EASTERN SHORE COMMUNITY COLLEGE
PATRICK HENRY COMMUNITY COLLEGE
VIRGINIA WESTERN COMMUNITY COLLEGE

WYTHEVILLE COMMUNITY COLLEGE
JOHN TYLER COMMUNITY COLLEGE
BLUE RIDGE COMMUNITY COLLEGE
CENTRAL VIRGINIA COMMUNITY COLLEGE
SOUTHWESTERN VIRGINIA COMMUNITY COLLEGE
TIDEWATER COMMUNITY COLLEGE
VIRGINIA HIGHLANDS COMMUNITY COLLEGE
MOUNTAIN EMPIRE COMMUNITY COLLEGE

DEPT. OF AGRICULTURE
STATE MILK COMMISSION
DEPT. OF BUSINESS ASSISTANCE
DEPT. OF GAME & INLAND FISHERIES
VIRGINIA RACING COMMISSION
VIRGINIA PORT AUTHORITY
CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT
VIRGINIA DEPT. OF FORESTRY
GUNSTON HALL
VIRGINIA MARINE RESOURCES COMMISSION
DEPT. OF HISTORIC RESOURCES
JAMESTOWN-YORKTOWN FOUNDATION
VA DEPT. OF TRANSPORTATION
MOTOR VEHICLE DEALER BOARD
DEPT. OF RAIL & PUBLIC TRANSPORTATION
DEPT. OF MEDICAL ASSISTANCE SERVICES
VA BOARD FOR PEOPLE W/DISABILITIES
DEPT. OF CORRECTIONS (NOTIFY THOSE NOT INTERVIEWED IN WRITING; CALL THOSE OFFERED INTERVIEWS)
(CENTRAL OFFICE AND 38 FACILITIES)
DEPT. F/T VISUALLY HANDICAPPED
DMHMRSAS FACILITIES

DMHMRSAS CENTRAL OFFICE
CENTRAL STATE HOSP.
EASTERN STATE HOSP.
SOUTHWESTERN VIRGINIA MENTAL HEALTH INST.
WESTERN STATE HOSP.
CENTRAL VIRGINIA TRAINING CENTER
DEJARNETTE CENTER FOR HUMAN DEVELOPMENT
SOUTHEASTERN VIRGINIA TRAINING CENTER F/T MR
CATAWBA HOSP.
NORTHERN VIRGINIA TRAINING CENTER F/T MR
SOUTHSIDE VA TRAINING CENTER
PIEDMONT GERIATRIC HOSP.
SOUTHWESTERN VIRGINIA TRAINING CENTER

DEPT. OF CORRECTIONAL EDUCATION
DEPT. F/T DEAF & HARD OF HEARING
DEPT. FOR RIGHTS OF VIRGINIANS W/DISABILITIES
DEPT. OF SOCIAL SERVICES
VIRGINIA PAROLE BOARD (SUPPORTED BY THE DEPT. OF CORRECTIONS)
DEPT. OF AVIATION
GOVERNOR'S EMPLOYMENT & TRAINING DEPT.
VIRGINIA MUSEUM OF NATIURAL HISTORY
COMMONWEALTHS' ATTORNEYS SERVICES COUNCIL
DEPT. OF FIRE PROGRAMS
DEPT. OF EMPLOYEE RELATIONS COUNSELORS
ALCOHOLIC BEVERAGE CONTROL

COMMONWEALTH COMPETITION COUNCIL

DO YOU ACKNOWLEDGE ALL APPLICATIONS RECEIVED FOR POSITIONS ADVERTISED BY YOUR AGENCY?
NO

IF "NO", PLEASE EXPLAIN WHY YOU ARE UNABLE TO DO SO.

DEPT. OF MILITARY AFFAIRS	NOTIFY ALL APPL. AT THE CONCLUSION OF THE PROCESS
SCIENCE MUSEUM OF VA	WE ARE IN THE PROCESS OF DEVELOPING AN ACK. CARD
SEC. OF HEALTH/HUMAN RES.	ALL POSITIONS SERVE AT THE PLEASURE OF THE GOVERNOR
SEC. OF FINANCE	ALL POSITIONS SERVE AT THE PLEASURE OF THE GOVERNOR
COLLEGE OF WILLIAM & MARY	COSTLY IN TIME & DOLLARS (VIMS INCLUDED IN W&M REPLY)
UNIVERSITY OF VIRGINIA	OVER 15,000/ANNUALLY (& 60,000 UPDATES)-COST PROHIBITIVE*
VIRGINIA TECH	VOLUME-OVER -12,000/YEAR—LACK OF STAFF TO SUPPORT THIS TASK
NORFOLK STATE UNIVERSITY	DO NOT HAVE ADEQUATE STAFF TO RESPOND BEFORE INTERVIEWS
MARY WASHINGTON COLLEGE	NOTIFY ALL APPLICANTS ONCE-SEE BELOW
JAMES MADISON UNIVERSITY	COST, TIME, LOCAL MKT. UNEMP. RATE IS LOW & PEOPLE APPLY FOR JOBS 5-6 TIMES PER WK.. JOB LINE GIVES STATUS TO APPLICANTS.
VA. SCHOOL F/T D/B/STAUNTON	NO CLERICAL SUPPORT TO PROVIDE THIS SERVICE
OLD DOMINION UNIVERSITY	NOTIFY ALL AFTER SELECTION HAS BEEN MADE
DEPT. OF PROF. OCC. REGULATION	ACKNOWLEDGE APPLICATION IF APPLICANT CALLS
RICHARD BLAND COLLEGE	ALL NOTIFIED AFTER HIRING PROCESS IS COMPLETED
VA COMM COLLEGE SYS. C. O.	NOTIFY ALL AT END OF PROCESS
DABNEY S. LANCASTER C. C.	TIME/POSTAGE. MOST APPL. CALL TO CHECK STATUS OF APPLICATION
THOM. NELSON C. C.	HRLY & CLASSIFIED APPL. NOT ACKNOWLEDGED--STAFF/$$$
GERMANNA C. C.	LACK OF TIME / PERSONNEL RESOURCES
LORD FAIRFAX C. C.	LACK OF SUPPORT PERSONNEL
DEPT OF MINES/MINERALS/ENERGY	COST OF MAILING; TIME SPENT TO PROCESS TWO MAILINGS
DEPT. OF ENVIR. QUALITY	NOTIFY THOSE APPLICANTS NOT SELECTED FOR AN INTERVIEW)
DEPARTMENT OF HEALTH	RECRUITMENT DECENTRALIZED; PRACTICES VARY **
NOVA MENTAL HEALTH INST.	LOW STAFFING; WILL BE IMPLEMENTING A SYSTEM TO SEND POSTCARDS
SOVA. MENTAL HEALTH INST.	NOTIFY ALL APPL. AFTER INTERVIEW-DIFFERENT LTR. FOR EACH GROUP
HIRAM DAVIS MEDICAL CENTER	98% NOTIFIED AFTER INTERVIEW PROCESS
DEPT OF JUVENILE JUSTICE	VOLUME OF WK. TOO GREAT

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* UVA "WE VIEW THIS AS THE APPLICANTS RESPONSIBILITY TO CALL OR CONTACT US; TOTAL COST WOULD APPROXIMATE $70,000 IN MAILINGS (STAMPS) ALONE.

** HEALTH RECRUITMENT IS DECENTRALIZED AND POLICY DOES NOT REQUIRE ACKNOLDGEMENT OF APPL.; 2/3 OF WK. UNITS DO ACKNOWLEDGE. THOSE WHO DO NOT REPORT VARIABLES SUCH AS VOLUME; LACK OF MONETARY, STAFF RESOURCES; ALTERNATIVE BUSINESS PRIORITIES; AND TIME CONSTRAINTS

DO YOU NOTIFY ALL APPLICANTS FOLLOWING THE INTERVIEW SELECTION PROCESS, OR DO YOU NOTIFY ONLY THOSE APPLICANTS WHO WERE INTERVIEWED FOR THE VACANCY?

ALL

DEPT. OF MILITARY AFFAIRS
DEPT. OF EMERGENCY SERVICES
STATE BOARD OF ELECTIONS
DEPT. OF CRIMINAL JUSTICE SERVICES
SCIENCE MUSEUM OF VIRGINIA
STATE COMPENSATION BOARD
DEPT. OF LABOR & INDUSTRY
DEPT. OF CONSERVATION & RECREATION
LIBRARY OF VIRGINIA
COLLEGE OF WILLIAM & MARY
(VIRGINIA INSTITUTE OF MARINE SCIENCE)
VIRGINIA MILITARY INSTITUTE
NORFOLK STATE UNIVERSITY
LONGWOOD COLLEGE
MARY WASHINGTON COLLEGE
VA. SCHOOL FOR THE DEAF & BLIND/STAUNTON
VA. SCHOOL FOR THE DEAF & BLIND/HAMPTON
OLD DOMINION UNIVERSITY LETTER TO THOSE INTERVIEWED; POSTCARD TO OTHER APPLICANTS
DEPT. OF PROFESSIONAL & OCCUPATIONAL REGULATION
VIRGINIA MUSEUM OF FINE ARTS
FRONTIER CULTURE MUSEUM OF VIRGINIA
RICHARD BLAND COLLEGE
CHRISTOPHER NEWPORT UNIVERSITY
STATE COUNCIL OF HIGHER EDUCATION
VDCC COLLEGES
VDCC CENTRAL OFFICE
NEW RIVER COMMUNITY COLLEGE
SOUTHSIDE VA COMMUNITY COLLEGE
PAUL D. CAMP COMMUNITY COLLEGE
DANVILLE COMMUNITY COLLEGE
PIEDMONT COMMUNITY COLLEGE
J. SERGEANT REYNOLDS COMMUNITY COLLEGE
EASTERN SHORE COMMUNITY COLLEGE
PATRICK HENRY COMMUNITY COLLEGE
VIRGINIA WESTERN COMMUNITY COLLEGE
DABNEY S. LANCASTER COMMUNITY COLLEGE
WYTHEVILLE COMMUNITY COLLEGE
JOHN TYLER COMMUNITY COLLEGE
BLUE RIDGE COMMUNITY COLLEGE
CENTRAL VIRGINIA COMMUNITY COLLEGE
THOMAS NELSON COMMUNITY COLLEGE
SOUTWEST VIRGINIA C. C. (EITHER LTR.-SCREENED OUT; OR LTR-AFTER INTERVIEW)
TIDEWATER COMMUNITY COLLEGE
VIRGINIA HIGHLANDS COMMUNITY COLLEGE
GERMANNA COMMUNITY COLLEGE
LORD FAIRFAX COMMUNITY COLLEGE
MOUNTAIN EMPIRE COMMUNITY COLLEGE
DEPT. OF AGRICULTURE (ALL INTERNAL APPLICANTS)
STATE MILK COMMISSION
VIRGINIA MARINE RESOURCES COMMISSION

DEPT. OF GAME & INLAND FISHERIES
VIRGINIA RACING COMMISSION
CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT
DEPT OF MINES, MINERALS & ENERGY
VIRGINIA DEPT. OF FORESTRY
GUNSTON HALL
DEPT. OF HISTORIC RESOURCES (REPLY TO ALL, SPECIAL LETTER TO THOSE INTERVIEWED)
DEPT. OF MEDICAL ASSISTANCE SERVICES
DMHMRSAS FACILITIES

- CENTRAL STATE HOSPITAL
- EASTERN STATE HOSPITAL
- SOUTHWESTERN VIRGINIA MENTAL HEALTH INSTITUTE
- DEJARNETTE
- CATAWBA HOSPITAL
- NORTHERN VIRGINIA TRAINING CENTER
- NORTHERN VIRGINIA MENTAL HEALTH INSTITUTE
- PIEDMONT GERIATRIC HOSPITAL
- SOUTHERN VIRGINIA MENTAL HEALTH INST.
- HIRAM DAVIS MEDICAL CENTER

DEPT. OF CORRECTIONAL EDUCATION
DEPT. OF SOCIAL SERVICES
DEPT. OF JUVENILE JUSTICE
GOVERNOR'S EMPLOYMENT & TRAINING DEPT.
COMMONWEALTHS' ATTORNEYS SERVICES COUNCIL
ALCOHOLIC BEVERAGE CONTROL
COMMONWEALTH COMPETITION COUNCIL

DO YOU NOTIFY ALL APPLICANTS FOLLOWING THE INTERVIEW SELECTION PROCESS, OR DO YOU NOTIFY ONLY THOSE APPLICANTS WHO WERE INTERVIEWED FOR THE VACANCY?

ONLY THOSE INTERVIEWED

DEPT. OF PLANNING & BUDGET
DEPT. OF PERSONNEL & TRAINING
COUNCIL ON INFORMATION MANAGEMENT
DEPT. OF INFORMATION TECHNOLOGY
DEPT. OF VETERANS' AFFAIRS
VIRGINIA COMMISSION FOR THE ARTS
DEPT. OF THE STATE INTERNAL AUDITOR
DEPT. OF ACCOUNTS
DEPT. OF THE TREASURY
DEPT. OF MOTOR VEHICLES
DEPT. OF STATE POLICE
DEPT. OF TAXATION
DEPT. OF HOUSING & COMMUNITY DEVELOPMENT
CHARITABLE GAMING COMMISSION
VIRGINIA EMPLOYMENT COMMISSION
DEPT. OF GENERAL SERVICES
DEPT. OF EDUCATION
WOODROW WILSON REHABILITATION CENTER
UNIVERSITY OF VIRGINIA (APPLICATION ACTIVE 90 DAYS-REFERRED MULTIPLE TIMES)
VIRGINIA TECH
VIRGINIA STATE UNIVERSITY

JAMES MADISON UNIVERSITY
RADFORD UNIVERSITY
DEPT. OF HEALTH PROFESSIONS
DEPT OF MINORITY BUSINESS ENTERPRISE
VIRGINIA COMMONWEALTH UNIVERSITY
STATE COUNCIL OF HIGHER EDUCATION**
GEORGE MASON UNIVERSITY
VDCC COLLEGES:
- RAPPAHANNOCK COMMUNITY COLLEGE
- NORTHERN VIRGINIA COMMUNITY COLLEGE

DEPT. OF REHABILITATIVE SERVICES
VA. REHAB. CENTER F/T BLIND
DEPT. OF AGRICULTURE
DEPT. OF BUSINESS ASSISTANCE
VIRGINIA PORT AUTHORITY
JAMESTOWN-YORKTOWN FOUNDATION
DEPT. OF ENVIRONMENTAL QUALITY
VA DEPT. OF TRANSPORTATION
MOTOR VEHICLE DEALER BOARD
DEPT. OF RAIL & PUBLIC TRANSPORTATION
DEPT. OF HEALTH
VA BOARD FOR PEOPLE W/DISABILITIES
DEPT. OF CORRECTIONS (CENTRAL OFFICE AND 38 FACILITIES)
DEPT. F/T VISUALLY HANDICAPPED
DMHMRSAS FACILITIES
- DMHMRSAS CENTRAL OFFICE
- WESTERN STATE HOSPITAL
- CENTRAL VIRGINIA TRAINING CENTER
- SOUTHEASTERN VIRGINIA TRAINING CENTER
- SOUTHSIDE VA TRAINING CENTER
- SOUTHWESTERN VIRGINIA TRAINING CENTER

DEPT. F/T DEAF & HARD OF HEARING
DEPT FOR RIGHTS OF VIRGINIANS W/DISABILITIES
DEPT. OF AVIATION
VIRGINIA MUSEUM OF NATURAL HISTORY
DEPT. OF FIRE PROGRAMS
DEPT. OF EMPLOYEE RELATIONS COUNSELORS

**STATE COUNCIL OF HIGHER EDUCATION—THOSE APPLICANTS WHO ARE NOT SELECTED FOR AN INTERVIEW ARE NOTIFIED BEFORE THE INTERVIEW PROCESS, OTHERS ARE NOTIFIED AFTER.

ATTACHMENT II

WORKING DOCUMENT OF NOVEMBER 8, 1997

Further Proposed Amendment to Section 2.1-112 Code of Virginia (effective 7/1/98)
Prepared by Ben Trotter, The American Legion (Virginia) at the request
of the Board of Veterans' Affairs

A. For purposes of this section, "veteran" means any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the United States Army, Navy, Marines, Coast Guard, or reserve components thereof, including the National Guard, or, (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs ("Disabled Veteran").

B. In a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is based on the passing of any written examination, the veteran's grade or rating on such examination shall be increased by five percent. However, if the veteran is a disabled veteran, i.e., has a service-connected disability rating fixed by the United States Veterans Administration, his grade or rating shall be increased by ten percent on such written examination. Such increases shall apply only if the veteran passes such examination.

C. In a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is not based on the passing of any examination, such veteran's military service shall be taken into consideration by the Commonwealth during the selection process, provided that such veteran meets all of the knowledge, skill, and ability requirements for the available position.

D. Each state agency shall develop and employ particular recruitment, screening, and selection processes to apply to any veteran who applies for employment which is not based on the passing of any examination and whose separation from military service occurred no more than 10 years before application. Such processes shall refer to both open and continuous recruitment as defined in the Department of Personnel and Training (DPT) Policies and Procedures Manual dated September 16, 1993. Such processes shall be designed to show a definite, clear advantage for veterans in lieu of a 5 or 10 percentage increase when written examinations are given. Some agencies and DPT may collaborate in developing innovative processes for such veterans in recruitment, screening, and referral. In the preparation of appropriate job descriptions pursuant to this section, the state agencies shall prepare qualifications and experience criteria as broadly as possible to allow maximum numbers of such veterans to compete. The veterans' recruitment, screening, and selection processes pursuant to this section shall include specific reference to disabled veterans who have been awarded the Purple Heart, who shall receive top priority.

E. If any veteran is denied employment with the Commonwealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial. Any veteran so denied may enter a complaint, on a complaint form to be developed by DPT and directed to the Commissioner of Labor and Industry for binding adjudication according to procedures developed by the Commissioner.

F. The DPT shall cause to be established and kept current a computerized reporting system detailing the following information which shall be reported to the General Assembly and the Governor during the first calendar quarter of the year 2000 (covering 1999 and as much of 1998 as possible) and each two years subsequently:

(i) By Virginia agency, as well as statewide, the number of positions under the Virginia Personnel Act for which open recruitment and, separately, continuous recruitment were employed.

(ii) By Virginia Agency and statewide, the number of veterans, disabled veterans, with separate reference to disabled veterans who received the Purple Heart, as well as non-veterans who applied for jobs with the Commonwealth, those who were offered such jobs, and those who accepted them through open recruitment and, separately, continuous recruitment as defined by DPT.

C. At the request of a representative appointed by a Virginia veterans' organization of a National veterans' organization chartered by the U. S. Congress, the state agencies and the DPT shall freely and openly discuss existing and proposed personnel procedures, policies and programs affecting the employment of veterans and shall consider, and provide written comment to, any written constructive input and criticism by the veterans' organization.

CIVIL RIGHTS ACT OF 1964 (PL 88-352)

TITLE VII - EQUAL EMPLOYMENT OPPORTUNITY

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

ATTACHMENT III

§ 2.1-112

(Effective July 1, 1998) Grade or rating increase and other preferences for veterans

A. In a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is based on the passing of any written examination, the veteran's grade or rating on such examination shall be increased by five percent. However, if the veteran has a service-connected disability rating fixed by the United States Veterans Administration, his grade or rating shall be increased by ten percent on such written examination. Such increases shall apply only if the veteran passes such examination.

B. In a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is not based on the passing of any examination, such veteran's military service shall be taken into consideration by the Commonwealth during the selection process, provided that such veteran meets all of the knowledge, skill, and ability requirements for the available position.

C. If any veteran is denied employment with the Commonwealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial.

D. For purposes of this section, "veteran" means any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the United States Army, Navy, Air Force, Marines, Coast Guard, or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Veterans Administration.

Go to (General Assembly Home)

Veteran's Preferential Right to Employment

I. Issue

A bill proposed by Senator Marye would mandate certain employment preferences for military veterans applying for positions with the Commonwealth. Is strengthening the current Virginia veterans' preference statute consistent with federal and state constitutional law?

II. Short Answer

Veterans' preference laws are looked upon positively by both federal and state jurisdictions. Statutes which obligate the state to apply a veterans' preference in specified employment situations usually withstand constitutional attack. Only highly unrestrained preferences (such as a veterans' preference in promotional situations) face opposition.

III. Overview

Civil service laws have generally favored honorably discharged veterans. "Compensating veterans for their past sacrifices by providing them with advantages over non-veteran citizens is a long-standing policy of our Federal and State Governments."[1] It also remains the policy of the Virginia General Assembly to look favorably upon provisions for the welfare of veterans.[2] Throughout the country, states recognize the veterans' preference as an earned benefit, not a gift.[3]

The majority of the states have codified a preference for appointments and/or examination scores.[4] Although some states allow a general preference in appointments without an examination[5], other statutes emphasize that the preference is only awarded when an examination is given: "[p]reference shall be granted only in the form of credits to be added to earned ratings in examinations."[6] Some states also favor the veteran's family members in appointments to public positions.[7] Under the federal Veterans' Preference Act of 1944 veterans are given "augmented scores" of five or ten points, depending upon their status in examinations for employment and retention preference in the event of a reduction in the work force.[8]

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[1] Attorney General of NY v. Soto-Lopez, 106 S.Ct. 2317, 23254 (1986).
[2] Peery v. Va. Board of Funeral Directors and Embalmers, 203 Va. 161 (1962).
[3] Report 104-675 accompanying H.R. 3586 (1996), page 6.
[4] I found 40 states with a veterans' preference statute, but I did not check the remaining ten for a variation of the term "veterans' preference" thus these states may have a comparable statute too.
[5] 51 Pa.C.S. § 7104(a) (1995).
[6] 29 De. C. § 5935 (1995).
[7] 77 AmJur 2d, U.S., § 122 (1975).
[8] Report 104-675 at 7.

IV. Case Law

Courts generally consider claims against veterans' preference laws under the state's constitutional prohibitions against special privileges and unreasonable classifications.[1] Most state constitutions permit reasonable classifications and prohibit unreasonable and arbitrary privileges.[2] "[T]he State may award certain benefits to all its bona fide veterans, because it then is making neither invidious nor irrational distinction among its residents. Resident veterans, as a group, may well deserve preferential treatment, and such differential treatment vis-à-vis non-veterans does not offend the Equal Protection Clause."[3]

An example of an unreasonable privilege would be to give a preference to veterans in promotional decisions for public employment.[4] Preference points on promotional examination scores have been held unconstitutional as "unreasonable and class legislation."[5] Moreover, "public policy prohibits an unrestrained preference as it does a preference credit based on factors not representative of their true value."[6] "Purposeful discrimination is the condition that offends the constitution."[7]

The United States Supreme Court decision in Personnel Admr. of Mass. v. Feeney is perhaps one of the lead cases regarding veterans' preferences and the equal protection clause.[8] Plaintiff alleged that the veterans' preference discriminated against women because most veterans were men and therefore men were receiving a discriminatory preference. The court rejected this claim. A state law which grants an absolute lifetime preference to a veteran over a qualifying non-veteran does not violate the equal protection clause on the basis of sex discrimination. When the basic classification is rationally based (here the classification of veterans), the uneven effects upon a particular group are ordinarily of no constitutional concern.[9] The distinction between the veteran and the non-veteran was not purposefully made to discriminate on the basis of sex.[10]

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[1] Hoffman v. Township of Whitehall, 677 A.2d 1200, 1203 (1996).
[2] Hoffman at 1203.
[3] Hooper v. Bernalillo County Assessor, 105 S.Ct. 2862, 2867 (1985).
[4] Hoffman at 1203.
[5] Sicuro v. Joa, 1996 WL 622075 (Pa. Comwlth.) quoting Maurer v. O'Neill, 83 A.2d 382, 383 (Pa. 1951).
[6] O'Neill at 383.
[7] Austin v. Berryman, 768 F.Supp. 188 (W.D. Va. 1991) quoting Personnel Admr. of Mass. v. Feeney, 99 S.Ct. 2282 (1979).
[8] Personnel Admr. of Mass. v. Feeney, 99 S.Ct. 2282 (1979). Feeney is a very well-cited and followed Supreme Court decision for the Court's interpretation of the Equal Protection Clause and purposeful sex discrimination. Courts upholding veterans' preference laws frequently cite Feeney as the authoritative case for the constitutionality of the preference.
[9] Feeney at 2292.
[10] Feeney at 2296.

The Court in dicta briefly addressed the underlying issue of veterans' preference laws:

> "Veteran's hiring preferences represent an awkward--and, many argue, unfair--exception to the widely shared view that merit and merit alone should prevail in the employment practices of the government. Absolute and permanent preferences, as the troubled history of this law demonstrates, have always been subject to the objection that they give the veteran more than a square deal. But the Fourteen Amendment 'cannot be made a refuge from ill-advised...laws.'"[1]

For appointments to state positions, case law concedes that between persons of equal qualifications, a preference may be given to the veteran.[2] Although the candidates are equal, the choice should go to the veteran in recognition of his service to the country. Yet if the applicant is afforded the preference points and still does not rank the highest among candidates, then the state does not have to hire the veteran.[3] Arguments made by non-veterans that the preference discriminates against them in violation of their federal constitutional rights have failed.[4] The preference's alleged discrimination does not raise a substantial constitutional question. "Encouragement and reward of military service are [the veterans' preference's] rational basis...If it is unwise and costly, this does not make it unconstitutional."[5]

A recent decision by the Pennsylvania Supreme Court touches upon the issues of qualification and absolute preference given to veterans. In Brickhouse v. Spring-Ford Area School District, the court stressed that the veteran must still demonstrate his ability to perform the job as demanded by the employer.[6] The preference goes beyond its scope when the privilege is unreasonable and arbitrary: "there must be a reasonable relations between the basis of the preference (being a veteran) and the object to be obtained (preferring veterans to properly perform public duties)."[7] If the ability to perform the job was not required, a "likelihood of absurd results...would be present in hundreds if not thousands of hirings."[8]

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[1] Feeney at 2297.
[2] 77 AmJur 2d, U.S., § 122 (1975).
[3] City of Bismarck v. Santineau, 509 N.W.2d 56, 60 (ND 1993).
[4] White v. Gates, 253 F.2d 868 (App. DC 1958), cert. denied 78 S.Ct. 1136 (1958). Please note that the U.S. Supreme Court subsequently denied the appeal of this decision. Courts in the Fourth Circuit and other jurisdictions generally cite this case for the decision's reading on a procedural element, not for the substantive question of constitutionality and veterans' preferences.
[5] White at 869.
[6] Brickhouse v. Spring-Ford Area School District, 656 A.2d 483, 486 (Pa. 1995).
[7] Brickhouse at 486.
[8] Id. at 487.

In comparison, other courts emphasize that a state statute which gives the veterans an absolute preference over non-veterans of the same job grade is constitutional and must be withheld. When the employer chooses to organize eligibility on the basis of category ratings, a veteran must be offered the position before a non-veteran in each category.[1] Again, the court decided to forego commenting on the wisdom of the rule and relied on Feeney to assert that an absolute preference for veterans in public employment remains constitutionally permissible.[2] Veterans' preference statutes are clearly designed to give veterans an advantage over other applicants; regardless that a veteran may be in some sense less qualified than the non-veteran.[3]

Other cases have resulted in the following conclusions regarding veterans' preference laws[4]:

- As a whole, statutes have usually withheld various constitutional attacks.
- Statutes that entirely exempt veterans from taking the qualifying examination are usually held invalid.
- Statutes which make the preference compulsory, regardless of fitness or capacity, to the appointment of officers or board members have been held unconstitutional.[5]
- In appointment situations, the discretion of the appointing person is broad, conclusive, and generally upheld unless the person acted arbitrarily, unwarrantably, and in abuse of discretion.
- Some courts have held that the preference law is mandatory, not merely directory. However, the veteran must in some sense be qualified for the public job.[6]
- Many preference laws also protect veterans from removal from their jobs except for proper cause.

V. 4th Circuit States' Statutory Language

All of the 4th Circuit states have veterans' preference laws. However, the language describing whom qualifies as a veterans greatly varies among the states.

A. Georgia:

"[A]ny veteran who has served as a member of the armed forces of the United States during the period of a war or armed conflict in which any branch of the armed force of the United States engaged...shall be given such veterans preference in any civil service program..."[7]

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[1] Denton v. Civil Service Commission of Illinois, 661 N.E.2d 520, 524 (Ill. App. 1996).
[2] Denton at 524.
[3] Denton at 525.
[4] 77 AmJur 2d, U.S., § 122 (1975).
[5] Brown v. Russel, 43 NE 1005 (Mass).
[6] Brickhouse at 486.
[7] Ga. Const. Art. 4, § 3, ¶ II (1996).

For eligibility and qualifications for office, veterans who are entitled to additional five points on a civil service exam must meet the following requirements: "served on active duty...for a period of more than 180 days, not counting service under an initial period of active duty for training..., any portion of which service occurred during a period of armed conflict..."[1]

"Notwithstanding the 180 days minimum,...five point preference to...any member of the National Guard or armed forces reserve who served active duty for any length of time during any portion of the time the armed forces of the United States were engaged in Operation Desert Shield or Operation Desert Storm if such service occurred in an area of imminent danger..." The statute defines areas of imminent danger as the Persian Gulf, the Red Sea, The Gulf of Oman and other specified areas in the Middle East.[2]

B. Maryland:
"An honorably discharged veteran of the military or naval services of the United States who was a bona fide resident of this State when the veteran entered the military or naval services of the United States shall receive a credit of five percent in all examinations for appointment.[3]

C. North Carolina:
"...veterans shall be granted preference in employment with every State department, agency, and institution." A period of war includes W.W.I, W.W.II, Korean conflict, the Vietnam hostilities, and "any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense."[4] An eligible veteran includes a disabled veteran's spouse, a surviving spouse or dependent of a veteran who dies in active duty or veteran who suffered disabling injury for service-related reasons during peacetime.

While the code provides that "in all evaluations of applicants for positions with this State or any of is departments, institutions or agencies, a preference shall be awarded...,"[5] North Carolina case law stresses that the minimum requirements of the position may not be ignored, regardless of the granted preference.[6] Moreover, the preference only applies to initial selection and reduction in force situations.[7]

D. South Carolina:
"[H]onorably discharged members of the United States Armed Forces...shall be given preference for appointment and employment in every public department

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[1] Ga. § 45-2-21(a).
[2] Ga. § 45-2-21(b).
[3] Md. Art. 29, § 11-105 (1957).
[4] N.C. § 128-15(a) (1995).
[5] N.C. § 128-15(c)(1995).
[6] Davis v. Vance County Dep't of Social Services, 372 S.E.2d 88 (1988).
[7] Dunn v. NC Dept. of Human Resources, 476 S.E.2d 283, 386 (1996).

...insofar as such preference may be practicable; age, loss of limb or other physical impairment which does not in fact incapacitate shall not be deemed to disqualify them, provided they possess the capacity of skill and knowledge necessary to discharge the duties of the position involved."[1]

E. **West Virginia:**

"[A] preference of five points in addition to the regular numerical score received on examination shall be awarded to all veterans having qualified for appointment by making a minimum passing grade..." "These awards shall be made for the benefit and preference in appointment of all veterans who have or shall take examinations, but shall not operate to the detriment of any person appointed to a position in a department or agency."[2]

12/4/96 del

[1] S.C. § 1-1-550 (1995).
[2] W.V. § 6-13-1 (1996).