

HOUSE BILL 1009

Introduced by Pavlovich, et al.

3/23	Introduced
3/23	Referred to Appropriations
3/23	First Reading
3/23	Fiscal Note Requested
3/27	Hearing
3/27	Tabled in Committee
3/28	Fiscal Note Received
4/02	Fiscal Note Printed

1
2
3
4
5
6

Drewell

BILL NO. 1009

INTRODUCED BY *Reyes* *Harmon* *Don Brann*
Philips *Harmon* *Don Brann*
Don Brann *Harmon* *Don Brann*
 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN HONORARY
 CASH BENEFIT TO ELIGIBLE VETERANS OF OPERATION DESERT SHIELD
 AND OPERATION DESERT STORM WHO ARE RESIDENTS OF MONTANA;

7 ESTABLISHING APPLICATION PROCEDURES FOR THE BENEFIT;
 8 APPROPRIATING MONEY FROM THE GENERAL FUND TO THE BOARD OF
 9 EXAMINERS TO ADMINISTER THE BENEFIT; AMENDING SECTION
 10 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 11 AND A TERMINATION DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: ;

14 NEW SECTION. Section 1. Short title. [Sections 1
 15 through 12] may be cited as the "Desert Storm Veterans'
 16 Benefit Act".

17 NEW SECTION. Section 2. Purpose and intent of honorary
 18 benefit. The honorary benefit provided under the provisions
 19 of [sections 1 through 12] is given in recognition and
 20 appreciation of the valor and devotion of the servicemen
 21 who, through their military service in operation desert
 22 shield and operation desert storm, discharged the obligation
 23 of the state of Montana to contribute to the defense of this
 24 republic.

25 NEW SECTION. Section 3. Definitions. As used in

1 [sections 1 through 12], the following definitions apply:

2 (1) "Armed forces" means the United States army, navy,
 3 marine corps, air force, and coast guard and all other
 4 groups, branches, and services that are a part of the armed
 5 services and are under the control and subject to the
 6 discipline of the United States department of defense.

7 (2) "Board" means the board of examiners established
 8 under the provisions of 2-15-1007.

9 (3) "Desert storm" means the period from August 1,
 10 1990, through the formal declaration of a cease-fire and the
 11 demobilization of U.S. armed forces.

12 (4) "Military service for desert storm" means:

13 (a) military service performed in the Persian Gulf
 14 theater of operations by a full-time member of the regular
 15 armed forces; or

16 (b) military service performed by a member of the
 17 United States reserve or national guard who was called to
 18 active duty in support of desert storm.

19 (5) "Persian Gulf theater of operations" means the
 20 desert storm area of operations, including but not limited
 21 to the air space, surrounding waters, and territories of
 22 Saudi Arabia, Kuwait, Iraq, Israel, Jordan, Turkey, the
 23 United Arab Emirates, Bahrain, Qatar, Oman, Egypt, and
 24 Syria.

25 (6) "Resident" means:



1 (a) a person who at the beginning of his military
2 service for desert storm had his residence in Montana or a
3 person who had his home in Montana on August 1, 1990, and
4 was serving on active duty in any of the armed forces or
5 who, at the time of his last entry into active duty service
6 at some time during desert storm, had his home in Montana;

7 (b) the surviving beneficiary of a serviceman who was a
8 resident of Montana at the beginning of the serviceman's
9 military service for desert storm.

10 (7) "Serviceman" means a person entitled to receive a
11 payment under the provisions of [sections 1 through 12].

12 NEW SECTION. Section 4. Honorary benefit for military
13 service. (1) Except as provided in subsection (3), a
14 resident who was in military service for desert storm must
15 receive a lump-sum honorary benefit equal to \$120 for each
16 month or for each portion of a month greater than 14 days
17 spent in military service for desert storm.

18 (2) For the purposes of this section:

19 (a) a serviceman who, while in military service for
20 desert storm, suffered in the line of duty a disease or
21 injury from any cause, including injury from exposure to
22 weather conditions, and who was hospitalized by the armed
23 services is considered to have been in military service for
24 the time hospitalized; and

25 (b) a serviceman classified by the department of

1 defense as a prisoner of war is considered to have been in
2 military service for the time he is so classified.

3 (3) A payment may not be made to a person who has been
4 dishonorably discharged from military service unless or
5 until the person is restored by proper authority to an
6 honorable status.

7 (4) Payments made under the provisions of [sections 1
8 through 12] are exempt from state taxation as provided in
9 15-30-111.

10 NEW SECTION. Section 5. Serviceman's death before
11 payment -- beneficiaries. (1) (a) If a serviceman dies or is
12 killed before receiving a payment under the provisions of
13 [section 4], the amount to which he is entitled must be paid
14 as follows:

15 (i) to his surviving spouse if his spouse has not
16 remarried before making application for payment;

17 (ii) if there is no surviving spouse or if the spouse
18 has remarried before making application for payment, then to
19 the serviceman's child or children in equal shares; or

20 (iii) if there is no surviving child or children, then
21 to the serviceman's parents in equal shares or, if one
22 parent is deceased, to the surviving parent.

23 (b) If both parents are deceased, then no payment may
24 be made.

25 (2) A payment provided under the provisions of this

1 section may be made only to a person living at the time of
2 payment and may not be made to a person's estate.

3 NEW SECTION. Section 6. Application for payment. (1) A
4 claimant of the payment granted under the provisions of
5 [sections 1 through 12] shall apply to the board or to a
6 county clerk and recorder, as provided in [section 8], in
7 the form prescribed by the board.

8 (2) The board shall approve or disapprove each
9 application and the proof offered in support of the
10 application.

11 (3) Upon approval of an application, the board shall
12 immediately file it with the state auditor. The state
13 auditor shall immediately issue to the applicant a warrant
14 from the long-range building program fund in the capitol
15 projects fund type and shall deliver or mail the warrant to
16 the applicant at the address shown on the application.

17 NEW SECTION. Section 7. Application by guardian or
18 custodian. In the case of a minor or an incompetent person,
19 a claim must be filed by and payment must be made to his
20 guardian or to a custodian appointed for him by the
21 department of veterans affairs.

22 NEW SECTION. Section 8. Deadline for applications. (1)
23 All applications for a payment under the provisions of
24 [sections 1 through 12] must be made on or before July 1,
25 1993, and must be filed with the board or with a county

1 clerk and recorder.

2 (2) Upon receipt of an application, a county clerk and
3 recorder shall:

4 (a) give the applicant a receipt that states the exact
5 time of the filing;

6 (b) immediately endorse the application and the time of
7 filing;

8 (c) send the application and time of filing to the
9 board.

10 (3) An application filed in accordance with this
11 section preserves the right of the applicant to receive the
12 payment provided under the provisions of [section 4] despite
13 any defect in the application. A defect may be later
14 corrected under a procedure provided in rules adopted by the
15 board.

16 NEW SECTION. Section 9. Contents of the application --
17 warning against false statements. (1) Each application by a
18 serviceman for the payment provided for in [section 4] must
19 contain:

20 (a) the full name of the applicant;

21 (b) the current address of the applicant;

22 (c) the applicant's date and place of birth;

23 (d) the name under which the applicant served in the
24 armed forces;

25 (e) the beginning and ending dates of military service

1 for desert storm and the applicant's station and unit of
2 assignment during that service; and

3 (f) other documentation required by the board.

4 (2) Applications by the surviving spouse, child, or
5 parent of a deceased serviceman must contain:

6 (a) all the information concerning the serviceman
7 required in subsection (1), to the extent obtainable; and

8 (b) the necessary facts upon which the applicant claims
9 the right to the payment provided in [section 4].

10 (3) The board shall:

11 (a) cause to be printed a supply of application forms
12 and shall furnish to each county clerk and recorder in
13 Montana an adequate supply of application forms; and

14 (b) make accessible information for servicemen to
15 inform them of their right to the benefit under the
16 provisions of [sections 1 through 12].

17 (4) A person who, with intent to defraud, subscribes to
18 a false oath or makes a false representation, either in the
19 application or in the proof offered in support of an
20 application, for the purpose of obtaining payment under
21 [section 4] when he is not entitled to the payment is guilty
22 of false swearing.

23 NEW SECTION. Section 10. Rules -- law to be construed
24 liberally. (1) The board shall adopt all rules necessary for
25 the application procedure and for the adjudication of

1 questions of fact and of law regarding applications. The
2 board may accept and consider any form of evidence,
3 including affidavits and other forms of evidence that tend
4 to establish claims with reasonable certainty.

5 (2) It is the intent of the legislature that [sections
6 1 through 12] be administered liberally so that, to the
7 extent reasonably possible, a person entitled to payment
8 under the provisions of [section 4] is not denied payment.

9 NEW SECTION. Section 11. Assistance by state and
10 county officials. The attorney general and all other state
11 and county officers shall render without charge assistance
12 to the board in the administration of [sections 1 through
13 12] and to claimants in the preparation of their
14 applications and required documentation.

15 NEW SECTION. Section 12. Right to payment not subject
16 to legal process. The right to receive payment of the
17 honorary benefit provided for under the provisions of
18 [section 4] may not be assigned, pledged, mortgaged, or
19 otherwise encumbered and is not subject to attachment, to
20 levy under execution, or to other judicial process.

21 NEW SECTION. Section 13. Appropriation for desert
22 storm veterans' benefit. There is appropriated to the board
23 of examiners from the general fund up to \$5 million to
24 implement the provisions of [sections 1 through 12].

25 Section 14. Section 15-30-111, MCA, is amended to read:

1 **"15-30-111. Adjusted gross income.** (1) Adjusted gross
2 income shall be the taxpayer's federal income tax adjusted
3 gross income as defined in section 62 of the Internal
4 Revenue Code of 1954 or as that section may be labeled or
5 amended and in addition shall include the following:

6 (a) interest received on obligations of another state
7 or territory or county, municipality, district, or other
8 political subdivision thereof;

9 (b) refunds received of federal income tax, to the
10 extent the deduction of such tax resulted in a reduction of
11 Montana income tax liability;

12 (c) that portion of a shareholder's income under
13 subchapter S. of Chapter 1 of the Internal Revenue Code of
14 1954, that has been reduced by any federal taxes paid by the
15 subchapter S. corporation on the income; and

16 (d) depreciation or amortization taken on a title plant
17 as defined in 33-25-105(15).

18 (2) Notwithstanding the provisions of the federal
19 Internal Revenue Code of 1954, as labeled or amended,
20 adjusted gross income does not include the following which
21 are exempt from taxation under this chapter:

22 (a) all interest income from obligations of the United
23 States government, the state of Montana, county,
24 municipality, district, or other political subdivision
25 thereof;

1 (b) interest income earned by a taxpayer age 65 or
2 older in a taxable year up to and including \$800 for a
3 taxpayer filing a separate return and \$1,600 for each joint
4 return;

5 (c) all benefits, not in excess of \$3,600, received:

6 (i) under the Federal Employees' Retirement Act;

7 (ii) under the public employee retirement laws of a
8 state other than Montana; or

9 (iii) as an annuity, pension, or endowment under any
10 private or corporate retirement plan or system;

11 (d) all benefits paid under the teachers' retirement
12 law which are specified as exempt from taxation by 19-4-706;

13 (e) all benefits paid under The Public Employees'
14 Retirement System Act which are specified as exempt from
15 taxation by 19-3-105;

16 (f) all benefits paid under the highway patrol
17 retirement law which are specified as exempt from taxation
18 by 19-6-705;

19 (g) all Montana income tax refunds or credits thereof;

20 (h) all benefits paid under 19-11-602, 19-11-604, and
21 19-11-605 to retired and disabled firefighters, their
22 surviving spouses and orphans or specified as exempt from
23 taxation by 19-13-1003;

24 (i) all benefits paid under the municipal police
25 officers' retirement system that are specified as exempt

1 from taxation by 19-9-1005;

2 (j) gain required to be recognized by a liquidating
3 corporation under 15-31-113(1)(a)(ii);

4 (k) all tips covered by section 3402(k) of the Internal
5 Revenue Code of 1954, as amended and applicable on January
6 1, 1983, received by persons for services rendered by them
7 to patrons of premises licensed to provide food, beverage,
8 or lodging;

9 (l) all benefits received under the workers'
10 compensation laws;

11 (m) all health insurance premiums paid by an employer
12 for an employee if attributed as income to the employee
13 under federal law;

14 (n) all benefits paid under an optional retirement
15 program that are specified as exempt from taxation by
16 19-21-212; and

17 (o) all money received because of a settlement
18 agreement or judgment in a lawsuit brought against a
19 manufacturer or distributor of "agent orange" for damages
20 resulting from exposure to "agent orange"; and

21 (p) any payment received pursuant to [section 4].

22 (3) In the case of a shareholder of a corporation with
23 respect to which the election provided for under subchapter
24 S. of the Internal Revenue Code of 1954, as amended, is in
25 effect but with respect to which the election provided for

1 under 15-31-202, as amended, is not in effect, adjusted
2 gross income does not include any part of the corporation's
3 undistributed taxable income, net operating loss, capital
4 gains or other gains, profits, or losses required to be
5 included in the shareholder's federal income tax adjusted
6 gross income by reason of the election under subchapter S.
7 However, the shareholder's adjusted gross income shall
8 include actual distributions from the corporation to the
9 extent they would be treated as taxable dividends if the
10 subchapter S. election were not in effect.

11 (4) A shareholder of a DISC that is exempt from the
12 corporation license tax under 15-31-102(1)(1) shall include
13 in his adjusted gross income the earnings and profits of the
14 DISC in the same manner as provided by federal law (section
15 995, Internal Revenue Code) for all periods for which the
16 DISC election is effective.

17 (5) A taxpayer who, in determining federal adjusted
18 gross income, has reduced his business deductions by an
19 amount for wages and salaries for which a federal tax credit
20 was elected under section 44B of the Internal Revenue Code
21 of 1954 or as that section may be labeled or amended is
22 allowed to deduct the amount of the wages and salaries paid
23 regardless of the credit taken. The deduction must be made
24 in the year the wages and salaries were used to compute the
25 credit. In the case of a partnership or small business

1 corporation, the deduction must be made to determine the
2 amount of income or loss of the partnership or small
3 business corporation.

4 (6) Married taxpayers filing a joint federal return who
5 must include part of their social security benefits or part
6 of their tier 1 railroad retirement benefits in federal
7 adjusted gross income may split the federal base used in
8 calculation of federal taxable social security benefits or
9 federal taxable tier 1 railroad retirement benefits when
10 they file separate Montana income tax returns. The federal
11 base must be split equally on the Montana return.

12 (7) A taxpayer receiving retirement disability benefits
13 who has not attained age 65 by the end of the taxable year
14 and who has retired as permanently and totally disabled may
15 exclude from adjusted gross income up to \$100 per week
16 received as wages or payments in lieu of wages for a period
17 during which the employee is absent from work due to the
18 disability. If the adjusted gross income before this
19 exclusion and before application of the two-earner married
20 couple deduction exceeds \$15,000, the excess reduces the
21 exclusion by an equal amount. This limitation affects the
22 amount of exclusion, but not the taxpayer's eligibility for
23 the exclusion. If eligible, married individuals shall apply
24 the exclusion separately, but the limitation for income
25 exceeding \$15,000 is determined with respect to the spouses

1 on their combined adjusted gross income. For the purpose of
2 this subsection, permanently and totally disabled means
3 unable to engage in any substantial gainful activity by
4 reason of any medically determined physical or mental
5 impairment lasting or expected to last at least 12 months.

6 (8) A person receiving benefits described in
7 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
8 exclude benefits described in subsection (2)(c) from
9 adjusted gross income unless the benefits received under
10 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
11 less than \$3,600, in which case the person may combine
12 benefits to exclude up to a total of \$3,600 from adjusted
13 gross income. (Subsection (2)(k) terminates on occurrence of
14 contingency--sec. 3, Ch. 634, L. 1983.)"

15 NEW SECTION. **Section 15. Effective date.** [This act] is
16 effective on passage and approval.

17 NEW SECTION. **Section 16. Termination date.** [This act]
18 terminates January 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB1009, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act providing an honorary cash benefit to eligible veterans of operation desert shield and operation desert storm who are residents of Montana; establishing application procedures for the benefit; appropriating money from the general fund to the board of examiners to administer the benefit.

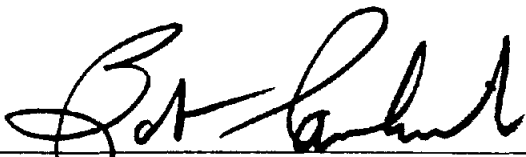
ASSUMPTIONS:

1. Approximately 5,000 residents will be eligible for the bonus. The average length of military service is 8 months.
2. Approximately 80% of the money for honorary benefits will be spent in FY92 and remaining 20% in FY93.
3. Since the proposed legislation is effective upon passage and approval, payments will start in FY92.
4. The Department of Administration will draft the rules, application forms, and review the applications for payment. All of these procedures would be subject to final review by the Board of Examiners. Department of Administration currently provides staff support to the Board of Examiners.
5. Although Section 11 states all state officers will render without charge assistance in the administration of the proposed legislation, the Department of Administration will need 1.00 FTE (grade 10) and associated operating costs/equipment to process the estimated 5,000 applications. Costs include the publication of public notices, printing, postage and other miscellaneous operating costs. The additional cost will be funded by the general fund.

FISCAL IMPACT:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	19,489	19,489	0	19,489	19,489
Operating Costs	0	6,241	6,241	0	2,936	2,936
Capital Outlay	0	3,870	3,870	0	0	0
Benefits and Claims	0	3,840,000	3,840,000	0	960,000	960,000
Total	0	3,869,600	3,869,600	0	982,425	982,425
<u>Funding:</u>						
General Fund	0	3,869,600	3,869,600	0	982,425	982,425
General Fund Impact (decrease)			(3,869,600)			(982,425)


ROD SUNDSTED, BUDGET DIRECTOR 3-28-91 DATE
 Office of Budget and Program Planning


ROBERT J. "BOB" PAVLOVICH, PRIMARY SPONSOR 4-2-91 DATE
 Fiscal Note for HB1009, as introduced **HB 1009-1**

TECHNICAL NOTES:

1. Section 6, page 5, line 13 states: "a warrant from the long-range building program fund in the capitol projects fund type" will be drawn to pay the benefit to the residents for Desert Storm. However, the title of the bill and Section 13 state that a general fund appropriation will be used as the funding source. These two sections contradict each other.
2. Section 13 appropriates money to the Board of Examiners to issue warrants. The Board of Examiners is not an entity in the Statewide Budgeting and Accounting System. The board is staffed by the Department of Administration. The appropriation should be made to the Department of Administration for the specific purpose of implementing the application procedures and payment of the honorary cash benefits for veterans of Operation Desert Storm.

HB 1009-1