

HOUSE BILL NO. 882

INTRODUCED BY RUSSELL, GERVAIS, WHALEN, SQUIRES,  
DRISCOLL, YELLOWTAIL, KIMBERLEY

IN THE HOUSE

FEBRUARY 15, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FEBRUARY 16, 1991                   FIRST READING.

FEBRUARY 22, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

FEBRUARY 23, 1991                   PRINTING REPORT.

FEBRUARY 25, 1991                   SECOND READING, DO PASS.

FEBRUARY 26, 1991                   ENGROSSING REPORT.

                                      THIRD READING, PASSED.  
                                      AYES, 64; NOES, 35.

                                      TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

                                      FIRST READING.

MARCH 26, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1991                    SECOND READING, CONCURRED IN.

APRIL 1, 1991                    ON MOTION, TAKEN FROM THIRD  
READING AND PLACED ON SECOND READING  
THIS LEGISLATIVE DAY.

APRIL 2, 1991                    ON MOTION, CONSIDERATION PASSED  
UNTIL THE 70TH LEGISLATIVE DAY.

APRIL 3, 1991                    ON MOTION, CONSIDERATION PASSED  
UNTIL THE 71ST LEGISLATIVE DAY.

APRIL 4, 1991                    SECOND READING, CONCURRED IN.

APRIL 5, 1991

THIRD READING, CONCURRED IN.  
AYES, 38; NOES, 12.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 11, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 882  
 2 INTRODUCED BY Frank Whaley  
 3 Cheryl Yellowtail  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT A STATE  
 5 AGENCY THAT OPERATES WITHIN OR CONTRACTS FOR A STATE  
 6 CONSTRUCTION PROJECT WITHIN AN INDIAN RESERVATION GIVE A  
 7 PREFERENCE IN HIRING TO QUALIFIED INDIAN RESIDENTS OF THE  
 8 RESERVATION; AMENDING SECTION 49-3-103, MCA; AND PROVIDING  
 9 AN APPLICABILITY DATE."

STATEMENT OF INTENT

10  
 11  
 12 A statement of intent is required for this bill because  
 13 [sections 1 and 2] direct the commissioner of labor and  
 14 industry to adopt rules to implement [sections 1 and 2]. It  
 15 is the intent of the legislature that the rules also be  
 16 designed to assist the commissioner of labor and industry to  
 17 enforce the provisions of [sections 1 and 2] and to  
 18 investigate complaints of any violations of law, as provided  
 19 in [sections 1 and 2].

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Hiring preference for  
 23 residents of Indian reservations for state jobs within  
 24 reservation. (1) A state agency that operates within an  
 25 Indian reservation shall give a preference in hiring for a

1 position of employment with the state agency to an Indian  
 2 resident of the reservation who has substantially equal  
 3 qualifications for the position.

4 (2) The commissioner of labor and industry shall  
 5 enforce this section, investigate complaints of its  
 6 violation, and may adopt rules to implement this section.

7 (3) For the purposes of this section, the following  
 8 definitions apply:

9 (a) "Indian" means a person who is enrolled or who is a  
 10 lineal descendant of a person enrolled upon an enrollment  
 11 listing of the bureau of Indian affairs or upon the  
 12 enrollment listing of a recognized Indian tribe, domiciled  
 13 in the United States.

14 (b) "Position" means a permanent, temporary, or  
 15 seasonal position as defined in 2-18-101 for a state  
 16 position. The term does not include:

- 17 (i) a state elected office;
- 18 (ii) appointment by an elected official to a body, such
- 19 as a board, commission, committee, or council;
- 20 (iii) appointment by an elected official to a public
- 21 office if the appointment is provided for by law; or
- 22 (iv) engagement as an independent contractor or
- 23 employment by an independent contractor.

24 (c) "State agency" means a department, office, board,  
 25 bureau, commission, agency, or other instrumentality of the



1 executive or judicial branches of the government of this  
2 state.

3 NEW SECTION. Section 2. Hiring preference for  
4 residents of Indian reservations for state construction  
5 projects within reservation. (1) For any contract awarded  
6 for a state construction project by a state agency, except a  
7 project partially funded with federal-aid money from the  
8 United States department of transportation or when residency  
9 preference laws are specifically prohibited by federal law,  
10 there must be inserted in the bid specification and the  
11 contract a provision, in language approved by the  
12 commissioner of labor and industry, implementing the  
13 requirements of this subsection. The bid specification and  
14 the contract must provide that a preference in hiring for  
15 positions of employment be given to Indian residents of the  
16 reservation who have substantially equal qualifications for  
17 any position. For the purposes of this section, the  
18 definitions in [section 1] apply.

19 (2) The commissioner of labor and industry shall  
20 enforce this section, investigate complaints of its  
21 violation, and may adopt rules to implement this section.

22 **Section 3.** Section 49-3-103, MCA, is amended to read:

23 "49-3-103. (Temporary) Permitted distinctions. (1)  
24 Nothing in this chapter prohibits any public or private  
25 employer:

1 (a) from enforcing a differentiation based on marital  
2 status, age, or physical or mental handicap when based on a  
3 bona fide occupational qualification reasonably necessary to  
4 the normal operation of the particular business or where the  
5 differentiation is based on reasonable factors other than  
6 age;

7 (b) from observing the terms of a bona fide seniority  
8 system or any bona fide employee benefit plan, such as a  
9 retirement, pension, or insurance plan, that is not a  
10 subterfuge to evade the purposes of this chapter, except  
11 that an employee benefit plan may not excuse the failure to  
12 hire any individual; or

13 (c) from discharging or otherwise disciplining an  
14 individual for good cause.

15 (2) The application of an employment preference as  
16 provided for in Title 39, chapter 29 or 30, and 10-2-402 by  
17 a public employer as defined in 39-29-101 and 39-30-103 may  
18 not be construed to constitute a violation of this chapter.  
19 (Terminates July 1, 1991--sec. 19, Ch. 646, L. 1989.)

20 **49-3-103. (Effective July 1, 1991) Permitted**  
21 **distinctions.** (1) Nothing in this chapter shall prohibit any  
22 public or private employer:

23 (a) from enforcing a differentiation based on marital  
24 status, age, or physical or mental handicap when based on a  
25 bona fide occupational qualification reasonably necessary to

1 the normal operation of the particular business or where the  
2 differentiation is based on reasonable factors other than  
3 age;

4 (b) from observing the terms of a bona fide seniority  
5 system or any bona fide employee benefit plan, such as a  
6 retirement, pension, or insurance plan, which is not a  
7 subterfuge to evade the purposes of this chapter, except  
8 that no such employee benefit plan shall excuse the failure  
9 to hire any individual; or

10 (c) from discharging or otherwise disciplining an  
11 individual for good cause.

12 (2) The application of an employment preference as  
13 provided for in Title 39, chapter 30, [sections 1 and 2],  
14 and 10-2-402 by a public employer as defined in 39-30-103  
15 may not be construed to constitute a violation of this  
16 chapter."

17 NEW SECTION. Section 4. Codification instruction. (1)  
18 [Section 1] is intended to be codified as an integral part  
19 of Title 2, chapter 18, and the provisions of Title 2,  
20 chapter 18, apply to [section 1].

21 (2) [Section 2] is intended to be codified as an  
22 integral part of Title 18, chapter 1, and the provisions of  
23 Title 18, chapter 1, apply to [section 2].

24 NEW SECTION. Section 5. Applicability. [This act]  
25 applies to hiring for vacancies in state agency or state

1 construction project positions within an Indian reservation  
2 that occur after [the effective date of this act].

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

1 House BILL NO. 882  
 2 INTRODUCED BY Russell Adams Whaley  
 3 Michael Yellowtail Randy Wiley  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT A STATE  
 5 AGENCY THAT OPERATES WITHIN OR CONTRACTS FOR A STATE  
 6 CONSTRUCTION PROJECT WITHIN AN INDIAN RESERVATION GIVE A  
 7 PREFERENCE IN HIRING TO QUALIFIED INDIAN RESIDENTS OF THE  
 8 RESERVATION; AMENDING SECTION 49-3-103, MCA; AND PROVIDING  
 9 AN APPLICABILITY DATE."

STATEMENT OF INTENT

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 11 A statement of intent is required for this bill because  
 12 [sections 1 and 2] direct the commissioner of labor and  
 13 industry to adopt rules to implement [sections 1 and 2]. It  
 14 is the intent of the legislature that the rules also be  
 15 designed to assist the commissioner of labor and industry to  
 16 enforce the provisions of [sections 1 and 2] and to  
 17 investigate complaints of any violations of law, as provided  
 18 in [sections 1 and 2].  
 19  
 20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Hiring preference for  
 23 residents of Indian reservations for state jobs within  
 24 reservation. (1) A state agency that operates within an  
 25 Indian reservation shall give a preference in hiring for a

1 position of employment with the state agency to an Indian  
 2 resident of the reservation who has substantially equal  
 3 qualifications for the position.

4 (2) The commissioner of labor and industry shall  
 5 enforce this section, investigate complaints of its  
 6 violation, and may adopt rules to implement this section.

7 (3) For the purposes of this section, the following  
 8 definitions apply:

9 (a) "Indian" means a person who is enrolled or who is a  
 10 lineal descendant of a person enrolled upon an enrollment  
 11 listing of the bureau of Indian affairs or upon the  
 12 enrollment listing of a recognized Indian tribe, domiciled  
 13 in the United States.

14 (b) "Position" means a permanent, temporary, or  
 15 seasonal position as defined in 2-18-101 for a state  
 16 position. The term does not include:

- 17 (i) a state elected office;
- 18 (ii) appointment by an elected official to a body, such  
 19 as a board, commission, committee, or council;
- 20 (iii) appointment by an elected official to a public  
 21 office if the appointment is provided for by law; or
- 22 (iv) engagement as an independent contractor or  
 23 employment by an independent contractor.

24 (c) "State agency" means a department, office, board,  
 25 bureau, commission, agency, or other instrumentality of the



1 executive or judicial branches of the government of this  
2 state.

3 **NEW SECTION. Section 2. Hiring preference for**  
4 **residents of Indian reservations for state construction**  
5 **projects within reservation. (1) For any contract awarded**  
6 **for a state construction project by a state agency, except a**  
7 **project partially funded with federal-aid money from the**  
8 **United States department of transportation or when residency**  
9 **preference laws are specifically prohibited by federal law,**  
10 **there must be inserted in the bid specification and the**  
11 **contract a provision, in language approved by the**  
12 **commissioner of labor and industry, implementing the**  
13 **requirements of this subsection. The bid specification and**  
14 **the contract must provide that a preference in hiring for**  
15 **positions of employment be given to Indian residents of the**  
16 **reservation who have substantially equal qualifications for**  
17 **any position. For the purposes of this section, the**  
18 **definitions in [section 1] apply.**

19 (2) The commissioner of labor and industry shall  
20 enforce this section, investigate complaints of its  
21 violation, and may adopt rules to implement this section.

22 **Section 3. Section 49-3-103, MCA, is amended to read:**

23 **"49-3-103. (Temporary) Permitted distinctions. (1)**  
24 **Nothing in this chapter prohibits any public or private**  
25 **employer:**

1 (a) from enforcing a differentiation based on marital  
2 status, age, or physical or mental handicap when based on a  
3 bona fide occupational qualification reasonably necessary to  
4 the normal operation of the particular business or where the  
5 differentiation is based on reasonable factors other than  
6 age;

7 (b) from observing the terms of a bona fide seniority  
8 system or any bona fide employee benefit plan, such as a  
9 retirement, pension, or insurance plan, that is not a  
10 subterfuge to evade the purposes of this chapter, except  
11 that an employee benefit plan may not excuse the failure to  
12 hire any individual; or

13 (c) from discharging or otherwise disciplining an  
14 individual for good cause.

15 (2) The application of an employment preference as  
16 provided for in Title 39, chapter 29 or 30, and 10-2-402 by  
17 a public employer as defined in 39-29-101 and 39-30-103 may  
18 not be construed to constitute a violation of this chapter.  
19 (Terminates July 1, 1991--sec. 19, Ch. 646, L. 1989.)

20 **49-3-103. (Effective July 1, 1991) Permitted**  
21 **distinctions. (1) Nothing in this chapter shall prohibit any**  
22 **public or private employer:**

23 (a) from enforcing a differentiation based on marital  
24 status, age, or physical or mental handicap when based on a  
25 bona fide occupational qualification reasonably necessary to

1 the normal operation of the particular business or where the  
2 differentiation is based on reasonable factors other than  
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4 (b) from observing the terms of a bona fide seniority  
5 system or any bona fide employee benefit plan, such as a  
6 retirement, pension, or insurance plan, which is not a  
7 subterfuge to evade the purposes of this chapter, except  
8 that no such employee benefit plan shall excuse the failure  
9 to hire any individual; or

10 (c) from discharging or otherwise disciplining an  
11 individual for good cause.

12 (2) The application of an employment preference as  
13 provided for in Title 39, chapter 30, sections 1 and 2,  
14 and 10-2-402 by a public employer as defined in 39-30-103  
15 may not be construed to constitute a violation of this  
16 chapter."

17 NEW SECTION. Section 4. Codification instruction. (1)  
18 [Section 1] is intended to be codified as an integral part  
19 of Title 2, chapter 18, and the provisions of Title 2,  
20 chapter 18, apply to [section 1].

21 (2) [Section 2] is intended to be codified as an  
22 integral part of Title 18, chapter 1, and the provisions of  
23 Title 18, chapter 1, apply to [section 2].

24 NEW SECTION. Section 5. Applicability. [This act]  
25 applies to hiring for vacancies in state agency or state

1 construction project positions within an Indian reservation  
2 that occur after [the effective date of this act].

-End-



1 *House* BILL NO. *882*  
 2 INTRODUCED BY *Trussell* *Harmon* *Whaley* *Spencer*  
 3 *Wilcoxon* *Trumbull*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT A STATE  
 5 AGENCY THAT OPERATES WITHIN OR CONTRACTS FOR A STATE  
 6 CONSTRUCTION PROJECT WITHIN AN INDIAN RESERVATION GIVE A  
 7 PREFERENCE IN HIRING TO QUALIFIED INDIAN RESIDENTS OF THE  
 8 RESERVATION; AMENDING SECTION 49-3-103, MCA; AND PROVIDING  
 9 AN APPLICABILITY DATE."

10  
 11 STATEMENT OF INTENT  
 12 A statement of intent is required for this bill because  
 13 [sections 1 and 2] direct the commissioner of labor and  
 14 industry to adopt rules to implement [sections 1 and 2]. It  
 15 is the intent of the legislature that the rules also be  
 16 designed to assist the commissioner of labor and industry to  
 17 enforce the provisions of [sections 1 and 2] and to  
 18 investigate complaints of any violations of law, as provided  
 19 in [sections 1 and 2].

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 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Hiring preference for  
 23 residents of Indian reservations for state jobs within  
 24 reservation. (1) A state agency that operates within an  
 25 Indian reservation shall give a preference in hiring for a

1 position of employment with the state agency to an Indian  
 2 resident of the reservation who has substantially equal  
 3 qualifications for the position.

4 (2) The commissioner of labor and industry shall  
 5 enforce this section, investigate complaints of its  
 6 violation, and may adopt rules to implement this section.

7 (3) For the purposes of this section, the following  
 8 definitions apply:

9 (a) "Indian" means a person who is enrolled or who is a  
 10 lineal descendant of a person enrolled upon an enrollment  
 11 listing of the bureau of Indian affairs or upon the  
 12 enrollment listing of a recognized Indian tribe, domiciled  
 13 in the United States.

14 (b) "Position" means a permanent, temporary, or  
 15 seasonal position as defined in 2-18-101 for a state  
 16 position. The term does not include:

- 17 (i) a state elected office;
- 18 (ii) appointment by an elected official to a body, such
- 19 as a board, commission, committee, or council;

20 (iii) appointment by an elected official to a public  
 21 office if the appointment is provided for by law; or

22 (iv) engagement as an independent contractor or  
 23 employment by an independent contractor.

24 (c) "State agency" means a department, office, board,  
 25 bureau, commission, agency, or other instrumentality of the

1 executive or judicial branches of the government of this  
2 state.

3 **NEW SECTION. Section 2.** Hiring preference for  
4 residents of Indian reservations for state construction  
5 projects within reservation. (1) For any contract awarded  
6 for a state construction project by a state agency, except a  
7 project partially funded with federal-aid money from the  
8 United States department of transportation or when residency  
9 preference laws are specifically prohibited by federal law,  
10 there must be inserted in the bid specification and the  
11 contract a provision, in language approved by the  
12 commissioner of labor and industry, implementing the  
13 requirements of this subsection. The bid specification and  
14 the contract must provide that a preference in hiring for  
15 positions of employment be given to Indian residents of the  
16 reservation who have substantially equal qualifications for  
17 any position. For the purposes of this section, the  
18 definitions in [section 1] apply.

19 (2) The commissioner of labor and industry shall  
20 enforce this section, investigate complaints of its  
21 violation, and may adopt rules to implement this section.

22 **Section 3.** Section 49-3-103, MCA, is amended to read:

23 **\*49-3-103. (Temporary) Permitted distinctions.** (1)  
24 Nothing in this chapter prohibits any public or private  
25 employer:

1 (a) from enforcing a differentiation based on marital  
2 status, age, or physical or mental handicap when based on a  
3 bona fide occupational qualification reasonably necessary to  
4 the normal operation of the particular business or where the  
5 differentiation is based on reasonable factors other than  
6 age;

7 (b) from observing the terms of a bona fide seniority  
8 system or any bona fide employee benefit plan, such as a  
9 retirement, pension, or insurance plan, that is not a  
10 subterfuge to evade the purposes of this chapter, except  
11 that an employee benefit plan may not excuse the failure to  
12 hire any individual; or

13 (c) from discharging or otherwise disciplining an  
14 individual for good cause.

15 (2) The application of an employment preference as  
16 provided for in Title 39, chapter 29 or 30, and 10-2-402 by  
17 a public employer as defined in 39-29-101 and 39-30-103 may  
18 not be construed to constitute a violation of this chapter.  
19 (Terminates July 1, 1991--sec. 19, Ch. 646, L. 1989.)

20 **49-3-103. (Effective July 1, 1991) Permitted**  
21 **distinctions.** (1) Nothing in this chapter shall prohibit any  
22 public or private employer:

23 (a) from enforcing a differentiation based on marital  
24 status, age, or physical or mental handicap when based on a  
25 bona fide occupational qualification reasonably necessary to

1 the normal operation of the particular business or where the  
 2 differentiation is based on reasonable factors other than  
 3 age;

4 (b) from observing the terms of a bona fide seniority  
 5 system or any bona fide employee benefit plan, such as a  
 6 retirement, pension, or insurance plan, which is not a  
 7 subterfuge to evade the purposes of this chapter, except  
 8 that no such employee benefit plan shall excuse the failure  
 9 to hire any individual; or

10 (c) from discharging or otherwise disciplining an  
 11 individual for good cause.

12 (2) The application of an employment preference as  
 13 provided for in Title 39, chapter 30, [sections 1 and 2],  
 14 and 10-2-402 by a public employer as defined in 39-30-103  
 15 may not be construed to constitute a violation of this  
 16 chapter."

17 NEW SECTION. Section 4. Codification instruction. (1)  
 18 [Section 1] is intended to be codified as an integral part  
 19 of Title 2, chapter 18, and the provisions of Title 2,  
 20 chapter 18, apply to [section 1].

21 (2) [Section 2] is intended to be codified as an  
 22 integral part of Title 18, chapter 1, and the provisions of  
 23 Title 18, chapter 1, apply to [section 2].

24 NEW SECTION. Section 5. Applicability. [This act]  
 25 applies to hiring for vacancies in state agency or state

1 construction project positions within an Indian reservation  
 2 that occur after [the effective date of this act].

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2  
March 26, 1991

Page 1 of 2  
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 882 (third reading copy -- blue), respectfully report that House Bill No. 882 be amended and as so amended be concurred in:

1. Title, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 49-2-303, 49-2-403, AND"

2. Page 3, line 5.

Following: "awarded"

Insert: "by a state agency"

3. Page 3, line 6.

Following: "project"

Strike: "by a state agency"

Insert: "within the exterior boundaries of an Indian reservation"

4. Page 3.

Following: line 21

Insert: "Section 3. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or

mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section

(4) The application of a hiring preference as provided for in [sections 1 and 2] may not be construed to be a violation of this section.

Section 4. Section 49-2-403, MCA, is amended to read:  
"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination ~~unless the nature of the service requires the~~ discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Renumber: subsequent sections

Signed:   
Thomas E. Towe, Vice-Chairman

LB 3/26/91  
Amd. Cobrd.

SB 3/26 10:30  
Sec. of Senate

650941SC.SLB

SENATE  
HB 882

HOUSE BILL NO. 882

INTRODUCED BY RUSSELL, GERVAIS, WHALEN, SQUIRES,  
DRISCOLL, YELLOWTAIL, KIMBERLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT A STATE AGENCY THAT OPERATES WITHIN OR CONTRACTS FOR A STATE CONSTRUCTION PROJECT WITHIN AN INDIAN RESERVATION GIVE A PREFERENCE IN HIRING TO QUALIFIED INDIAN RESIDENTS OF THE RESERVATION; AMENDING SECTION SECTIONS 49-2-303, 49-2-403, AND 49-3-103, MCA; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 and 2] direct the commissioner of labor and industry to adopt rules to implement [sections 1 and 2]. It is the intent of the legislature that the rules also be designed to assist the commissioner of labor and industry to enforce the provisions of [sections 1 and 2] and to investigate complaints of any violations of law, as provided in [sections 1 and 2].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Hiring preference for residents of Indian reservations for state jobs within reservation. (1) A state agency that operates within an

Indian reservation shall give a preference in hiring for a position of employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

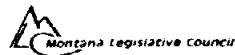
(3) For the purposes of this section, the following definitions apply:

(a) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position. The term does not include:

- (i) a state elected office;
- (ii) appointment by an elected official to a body, such as a board, commission, committee, or council;
- (iii) appointment by an elected official to a public office if the appointment is provided for by law; or
- (iv) engagement as an independent contractor or employment by an independent contractor.

(c) "State agency" means a department, office, board,



1 bureau, commission, agency, or other instrumentality of the  
2 executive or judicial branches of the government of this  
3 state.

4 NEW SECTION. Section 2. Hiring preference for  
5 residents of Indian reservations for state construction  
6 projects within reservation. (1) For any contract awarded  
7 BY A STATE AGENCY for a state construction project by--a  
8 state--agency WITHIN THE EXTERIOR BOUNDARIES OF AN INDIAN  
9 RESERVATION, except a project partially funded with  
10 federal-aid money from the United States department of  
11 transportation or when residency preference laws are  
12 specifically prohibited by federal law, there must be  
13 inserted in the bid specification and the contract a  
14 provision, in language approved by the commissioner of labor  
15 and industry, implementing the requirements of this  
16 subsection. The bid specification and the contract must  
17 provide that a preference in hiring for positions of  
18 employment be given to Indian residents of the reservation  
19 who have substantially equal qualifications for any  
20 position. For the purposes of this section, the definitions  
21 in [section 1] apply.

22 (2) The commissioner of labor and industry shall  
23 enforce this section, investigate complaints of its  
24 violation, and may adopt rules to implement this section.

25 SECTION 3. SECTION 49-2-303, MCA, IS AMENDED TO READ:

1 "49-2-303. Discrimination in employment. (1) It is an  
2 unlawful discriminatory practice for:

3 (a) an employer to refuse employment to a person, to  
4 bar him from employment, or to discriminate against him in  
5 compensation or in a term, condition, or privilege of  
6 employment because of his race, creed, religion, color, or  
7 national origin or because of his age, physical or mental  
8 handicap, marital status, or sex when the reasonable demands  
9 of the position do not require an age, physical or mental  
10 handicap, marital status, or sex distinction;

11 (b) a labor organization or joint labor management  
12 committee controlling apprenticeship to exclude or expel any  
13 person from its membership or from an apprenticeship or  
14 training program or to discriminate in any way against a  
15 member of or an applicant to the labor organization or an  
16 employer or employee because of race, creed, religion,  
17 color, or national origin or because of his age, physical or  
18 mental handicap, marital status, or sex when the reasonable  
19 demands of the program do not require an age, physical or  
20 mental handicap, marital status, or sex distinction;

21 (c) an employer or employment agency to print or  
22 circulate or cause to be printed or circulated a statement,  
23 advertisement, or publication or to use an employment  
24 application which expresses, directly or indirectly, a  
25 limitation, specification, or discrimination as to sex,

1 marital status, age, physical or mental handicap, race,  
 2 creed, religion, color, or national origin or an intent to  
 3 make the limitation, unless based upon a bona fide  
 4 occupational qualification;

5 (d) an employment agency to fail or refuse to refer for  
 6 employment, to classify, or otherwise to discriminate  
 7 against any individual because of sex, marital status, age,  
 8 physical or mental handicap, race, creed, religion, color,  
 9 or national origin, unless based upon a bona fide  
 10 occupational qualification.

11 (2) The exceptions permitted in subsection (1) based on  
 12 bona fide occupational qualifications shall be strictly  
 13 construed.

14 (3) Compliance with 2-2-302 and 2-2-303, which prohibit  
 15 nepotism in public agencies, may not be construed as a  
 16 violation of this section.

17 (4) The application of a hiring preference as provided  
 18 for in [sections 1 and 2] may not be construed to be a  
 19 violation of this section."

20 **SECTION 4. SECTION 49-2-403, MCA, IS AMENDED TO READ:**

21 "49-2-403. Specific limits on justification. (1) Except  
 22 as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex,  
 23 marital status, age, physical or mental handicap, race,  
 24 creed, religion, color, or national origin may not comprise  
 25 justification for discrimination ~~unless the nature of the~~

1 ~~service--requires--the-discrimination~~ except for the legally  
 2 demonstrable purpose of correcting a previous discriminatory  
 3 practice.

4 (2) Age or mental handicap may represent a legitimate  
 5 discriminatory criterion in credit transactions only as it  
 6 relates to a person's capacity to make or be bound by  
 7 contracts or other obligations."

8 **Section 5. Section 49-3-103, MCA, is amended to read:**

9 "49-3-103. (Temporary) Permitted distinctions. (1)  
 10 Nothing in this chapter prohibits any public or private  
 11 employer:

12 (a) from enforcing a differentiation based on marital  
 13 status, age, or physical or mental handicap when based on a  
 14 bona fide occupational qualification reasonably necessary to  
 15 the normal operation of the particular business or where the  
 16 differentiation is based on reasonable factors other than  
 17 age;

18 (b) from observing the terms of a bona fide seniority  
 19 system or any bona fide employee benefit plan, such as a  
 20 retirement, pension, or insurance plan, that is not a  
 21 subterfuge to evade the purposes of this chapter, except  
 22 that an employee benefit plan may not excuse the failure to  
 23 hire any individual; or

24 (c) from discharging or otherwise disciplining an  
 25 individual for good cause.

1 (2) The application of an employment preference as  
 2 provided for in Title 39, chapter 29 or 30, and 10-2-402 by  
 3 a public employer as defined in 39-29-101 and 39-30-103 may  
 4 not be construed to constitute a violation of this chapter.  
 5 (Terminates July 1, 1991--sec. 19, Ch. 646, L. 1989.)

6 49-3-103. (Effective July 1, 1991) Permitted  
 7 distinctions. (1) Nothing in this chapter shall prohibit any  
 8 public or private employer:

9 (a) from enforcing a differentiation based on marital  
 10 status, age, or physical or mental handicap when based on a  
 11 bona fide occupational qualification reasonably necessary to  
 12 the normal operation of the particular business or where the  
 13 differentiation is based on reasonable factors other than  
 14 age;

15 (b) from observing the terms of a bona fide seniority  
 16 system or any bona fide employee benefit plan, such as a  
 17 retirement, pension, or insurance plan, which is not a  
 18 subterfuge to evade the purposes of this chapter, except  
 19 that no such employee benefit plan shall excuse the failure  
 20 to hire any individual; or

21 (c) from discharging or otherwise disciplining an  
 22 individual for good cause.

23 (2) The application of an employment preference as  
 24 provided for in Title 39, chapter 30, [sections 1 and 2],  
 25 and 10-2-402 by a public employer as defined in 39-30-103

1 may not be construed to constitute a violation of this  
 2 chapter."

3 NEW SECTION. Section 6. Codification instruction. (1)  
 4 [Section 1] is intended to be codified as an integral part  
 5 of Title 2, chapter 18, and the provisions of Title 2,  
 6 chapter 18, apply to [section 1].

7 (2) [Section 2] is intended to be codified as an  
 8 integral part of Title 18, chapter 1, and the provisions of  
 9 Title 18, chapter 1, apply to [section 2].

10 NEW SECTION. Section 7. Applicability. [This act]  
 11 applies to hiring for vacancies in state agency or state  
 12 construction project positions within an Indian reservation  
 13 that occur after [the effective date of this act].

-End-