

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIR JAN BROWN, on January 10, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Jan Brown, Chair (D)
Vicki Cocchiarella, Vice-Chair (D)
Beverly Barnhart (D)
Gary Beck (D)
Ernest Bergsagel (R)
Fred "Fritz" Daily (D)
Ervin Davis (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Gary Feland (R)
Gary Forrester (D)
Patrick Galvin (D)
Harriet Hayne (R)
Betty Lou Kasten (R)
John Phillips (R)
Richard Simpkins (R)
Jim Southworth (D)
Wilbur Spring (R)
Carolyn Squires (D)

Staff Present: Sheri Heffelfinger, Legislative Council, and Judy Burggraff, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: The committee was requested to leave all materials they wished to save in their books, and the materials would be 3-hole punched and placed in notebooks by an aide; otherwise they would be discarded.

Proxy votes - Chair Brown informed the committee if they planned to be absent and wanted to vote, to fill out a proxy form and give it to the committee vice-chair or their seat mate. Be specific to vote on just the bill or also include votes on the amendments.

HEARING ON HB 11Presentation and Opening Statement by Sponsor:

ROBERT J. "BOB" PAVLOVICH, H.D. 70, SILVER BOW COUNTY, presented the bill, which is an act to remove the provision that made the elimination of employment preference provided to veterans and their eligible spouses under the Montana Veterans' and Handicapped Persons' Employment Preference Act temporary. Last session HB 700 put this law into effect, passing the House with a vote of 81 - 18 and the Senate on a vote of 47 - 0. The governor then added an amendment, a sunset clause, to the bill because "there was a little problem the administration thought they might have." "We worked with it for 1 1/2 years, and we did not have a problem," REP. PAVLOVICH said.

Proponents' Testimony:

Mike Micone, Commissioner of State Department of Labor and Industry, stated the Department had been working with the legislation under consideration for 1 1/2 years and had experienced no problems.

REP. BOB GERVAIS, representing the American Native Veteran's Association, said the native Americans have the highest percentage of veterans of all veterans' groups in the United States, and they support the bill.

Patricia Harold, a mother and member of the support group of Desert Shield in Helena, presented written testimony. EXHIBIT 1

Dan Antonietti, Director of Veterans Employment and Training, U.S. Department of Labor, said if the bill it wasn't passed, Montana would be the only state without a veterans' preference. Mr. Antonietti said "that is not the kind of support we want to show our servicemen and women."

Tom Pouliot, Commander for the Veterans of Foreign Wars (V.F.W.), said there are young women and men in Saudi Arabia who were called to serve their country. They did not volunteer; they have gone because their country called. The V.F.W. feels they deserve this entitlement as they have taken time out from their civilian careers.

Rich Brown, Administrator of the Montana Veterans Affairs, declared the Montana Board of Veterans Affairs has endorsed this bill.

Hal Manson, representing the American Legion of Montana, stated this is a matter the American Legion has been very interested in since the court case threw out the original preference law.

George Poston, representing the United Veterans Committee of Montana, said they definitely supported the bill and feel there will be many people coming home that will need it.

Dick Baumberger, representing the Disabled American Veterans (D.A.V.) Department of Montana, stated they strongly urged the committee's support of the bill.

John Mahan, past national commander of Veterans of Foreign Wars (V.F.W.) of the U.S., stated "the bill now in existence is one of the best bills in the United States, and we think it should not have the sunset provision on it, particularly with things that are happening today."

John Denherder, Legislative Director of the Department of Montana Disabled Veterans, remarked that he would like to see the sunset clause stricken and a new effective date placed on the bill. He also mentioned he would like to see a standardized form for preference created by the Department of Administration.

John Sloan, member of D.A.V., V.F.W. a Purple Heart and a national service officer for 40 years, requested the committee's support of the bill saying that people could be coming back with all "kinds of disabilities" and they are "giving up the best years of their lives."

John Morgan, retired military, and present commander of Helena D.A.V. and member of Purple Hearts, requested the committee to keep the bill and eliminate the sunset clause.

Gail Dreher, whose husband is a Vietnam veteran and is currently serving in Desert Shield, urged the committee's support of the bill.

REPS. PHILLIPS AND HAYNE requested they be listed as proponents.

Opponents' Testimony: None

Questions From Committee Members:

REP. SIMPKINS questioned REP. PAVLOVICH regarding whether a general discharge is on the equivalent level as an honorable discharge. John Denherder was requested to respond, saying he believed that a general discharge includes pregnant women and those dismissed from the service with an honorable reason.

Closing by Sponsor:

REP. PAVLOVICH offered to give a short synopsis of the bill if any new members would like the information. No one requested this. He requested the committee's support.

EXECUTIVE ACTION ON HB 11

Motion: REP. DAILY moved H.B. 11 DO PASS.

Discussion:

REP. BARNHART commented that she was going to vote nay on the bill as she worked at the Displaced Homemakers Center and the Veterans Preference Bill is detrimental to some of the women she works with.

CHAIR BROWN informed the committee that Sheri Heffelfinger had copies of the Veterans Preference Bill for the committee members reference. EXHIBIT 2

Ms. Heffelfinger commented that there may not be provisions for reservists in the bill as they are not considered an active duty component unless they are activated. They must be active for 180 days to be considered a veteran.

REP. SQUIRES and REP. PHILLIPS discussed the term "honorable." REP. PHILLIPS gave history on the problem which began in 1982 when there was a special session of the legislature. "At that time," he said, "there was a debate on whether it must be a general or honorable discharge. . . . Through the years this bill has become modeled after the federal preference discharge, which does include general discharge."

REP. SOUTHWORTH said he also sympathizes with Rep. Barnhart's statement regarding women's rights, but many women are now serving. He thinks that matter has taken care of itself.

Recommendation and Vote: The motion carried 17 - 1 with REP. BARNHART voting nay.

EXECUTIVE ACTION ON HB 16

Discussion:

CHAIR BROWN said she has recently received telephone calls from printers who said if they had known about the bill prior to the hearing, they would have attended. She said that Ms. Heffelfinger has prepared amendments on the bill. EXHIBIT 3 Some people requested that executive action be deferred until the first of the week so they could have time to look at the bill and the proposed amendments. If agreeable with the committee, they could discuss the bill today and defer action until Tuesday.

REP. DAILY asked Ms. Heffelfinger if the following should be added to amendment number 2 on line 16: "if there is no responsible resident bidder, the work may be done by a nonresident bidder," and "may be performed by a nonresident

bidder outside Montana," because the bill says that it has to be printed in Montana. Ms. Heffelfinger thought it would be a good point to clarify.

REP. ROGER DEBRUYCKER requested "responsible nonresident bidder" be included in the amendment.

REP. KASTEN asked the committee if they would object to adding "lowest" responsible bidder. Ms. Heffelfinger stated that there was nothing in the bill stating that the nonresident bidder has to be the lowest bidder. REP. SQUIRES said in the bid process there is a mechanism that must be followed. She thought that the mechanism, criteria or format would take care of the "lowest responsible bidder." Ms. Heffelfinger replied that the Montana Procurement Act has provisions on bidding, but that she would have to research the act. REP. SQUIRES requested Ms. Heffelfinger research the act to see if it would be exclusionary to the amendment.

REP. COCCHIARELLA requested Ms. Heffelfinger to clarify if the amendment addresses the issue of a resident bidder accepting the bid and taking on the work and then for some unforeseen reason, such as having the press break down, having to have the printing done out of state. She said she had talked to Rep. Driscoll that morning and been informed there were some cases such as that. Ms. Heffelfinger said that it did address the issue because the work is being contracted to a "resident printer."

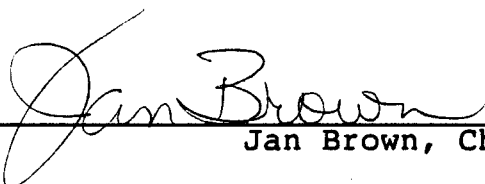
REP. COCCHIARELLA said it is not being printed in the state within the definition of resident printer.

REP. ROGER DEBRUYCKER questioned why federally funded projects were being exempted. Ms. Heffelfinger said the amendment had been requested by the Montana Historical Society to cover their concerns regarding federally funded projects. The practice now with any federally funded project, is that federal law prohibits a preference. She said she checked with the Legal Services Division of the Legislative Council and was told they feel the federal law supersedes the state law.

REP. KASTEN asked if Ms. Heffelfinger had looked at putting in a cost effective amendment to guard against skyrocketing costs. Ms. Heffelfinger said she would look into that.

ADJOURNMENT

Adjournment: 9:30 a.m.



Jan Brown, Chair



JUDY BURGGRAFF, Secretary

JB/jb

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 1/18/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, VICE-CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

1/10/11
10:22
B9HX

STANDING COMMITTEE REPORT

January 10, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 11 (first reading copy -- white) do pass .

Signed: 
Jan Brown, Chairman

EXHIBIT 1

DATE 1-10-91

HB 11

January 9, 1991

Jan Brown, Chair
State Administration Committee
House of Representatives
State Capitol Building
Helena, Mt 59620

Dear Ms. Brown,

I am a member of the Helena Desert Shield Support Group. I have a daughter now serving in the Marines and is stationed in Saudia Arabia.

I would ask that you and the committee support HB 11 -repealing the Sunset provision for veterans' employment preference.

Thank you.

Sincerely,

Patricia Herold

Patricia Herold
714B Canyon Ferry Road
Helena, MT 59601
475-3297 or
444-6800 ext. 1226

the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school."

Section 6. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective July 1, 1989.

Approved May 5, 1989.

CHAPTER NO. 645

[HB 626]

AN ACT TO PROVIDE THE FACTORS THE PUBLIC SERVICE COMMISSION SHALL WEIGH AND BALANCE IN DETERMINING PUBLIC CONVENIENCE AND NECESSITY WITH RESPECT TO THE DUTY OF A RAILROAD TO FURNISH SHIPPING AND PASSENGER FACILITIES; AMENDING SECTION 69-14-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-202, MCA, is amended to read:

"69-14-202. Duty to furnish shipping and passenger facilities.
(1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. *In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and*

testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 5, 1989.

CHAPTER NO. 646

[HB 700]

AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN INITIAL HIRING TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of administration to adopt rules to implement [sections 1 through 5]. The legislature intends the rules to adequately provide for the administration of the point preference provided for in [section 2] and the retention preference provided for in [section 5], but to include only those rules that are reasonably necessary.

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those persons and organizations that have shown past interest in the employment preference law, is afforded sufficient time and opportunity to participate in the rulemaking procedure. The department should give ample notice and hold necessary hearings to ensure adequate public participation.

Rules adopted by the department apply to both state and local government employers. In formulating its rules, the department should take this into consideration and adopt rules that can be used and applied by the broad spectrum of public employers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

- (2) "Armed forces" means the United States:
- (a) army, navy, air force, marine corps, and coast guard; and
 - (b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration.
- (3) "Disabled veteran" means a person:
- (a) whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or
 - (b) who has received a purple heart medal.
- (4) "Eligible relative" means:
- (a) the unmarried surviving spouse of a veteran or disabled veteran;
 - (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;
 - (c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces if:
 - (i) her husband is totally and permanently disabled; or
 - (ii) she is the widow of the father of the veteran and has not remarried;
 - (d) the mother of a service-connected permanently and totally disabled veteran if:
 - (i) her husband is totally and permanently disabled; or
 - (ii) she is the widow of the father of the veteran and has not remarried.
- (5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:
- (a) a state or local elected office;
 - (b) appointment by an elected official to a body such as a board, commission, committee, or council;
 - (c) appointment by an elected official to a public office if the appointment is provided for by law;
 - (d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or
 - (e) engagement as an independent contractor or employment by an

(6) "Public employer" means:

- (a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;
- (b) a unit of the Montana university system or a vocational-technical center;
- (c) a school district or community college; and
- (d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training.

Section 2. Point preference in initial hiring for certain applicants. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

- (a) 5 percentage points if the applicant is a veteran; and
 - (b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.
- (2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:
- (a) is a United States citizen; and
 - (b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.
- (3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

Section 3. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in [section 2].

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely

preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

Section 4. Enforcement of preference. (1) An applicant who believes he is entitled to but has not been given the point preference provided in [section 2] may, within 30 days of receipt of the notice of the hiring decision provided for in [section 3], submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under [section 2] and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of [section 2]. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of [section 2].

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

Section 5. Retention during reduction in force. (1) Subject to the restriction in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over

other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

Section 6. Adoption of rules. The department of administration shall adopt rules implementing [sections 1 through 5]. The department's rules apply to all local and state public employers.

Section 7. Section 10-2-402, MCA, is amended to read:

10-2-402. Superintendent to be given veterans' preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall apply the preference granted to veterans and disabled veterans under [section 2], but not the preference granted to other persons under [section 2] or Title 39, chapter 30."

Section 8. Section 39-30-101, MCA, is amended to read:

39-30-101. Short title. This chapter may be cited as the "Montana Handicapped Persons' Employment Preference Act."

Section 9. Section 39-30-102, MCA, is amended to read:

39-30-102. Purposes. The purposes of this chapter are to recognize employment discrimination against handicapped persons and facilitate rehabilitation, rehabilitation, and readjustment of handicapped persons."

Section 10. Section 39-30-103, MCA, is amended to read:

39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of social and rehabilitation services to have a disability who is unable to use his employment preference because of disability.

(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications submitted from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the same branch;

- (ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;
- (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
- (iv) a city or town for a municipal position, including a city or municipal court position; and
- (v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

- (a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;
- (b) a state or local elected official;
- (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;
- (d) appointment by an elected official to a body such as a board, commission, committee, or council;
- (e) appointment by an elected official to a public office if the appointment is provided for by law;
- (f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

- (i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and
- (ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 11. Section 39-30-201, MCA, is amended to read:

"39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a handicapped person or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(3)(b) or to any other personnel action that is not an initial hiring."

Section 12. Section 39-30-202, MCA, is amended to read:

"39-30-202. Eligibility requirements. An eligible spouse or handicapped person is not entitled to receive employment preference as provided in 39-30-201 unless:

- (1) he is a United States citizen;
- (2) he has resided continuously in the state for at least 1 year immediately before applying for employment;
- (3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and
- (4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which an app

Section 13. Section 39-30-203, MCA, is amended to read:

"39-30-203. Duration of preference. Subject to 39-30-202, a handicapped person or eligible spouse qualifies for employment preference as long as the disabling condition exists."

Section 14. Section 39-30-207, MCA, is amended to read:

"39-30-207. Enforcement of preference. (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Section 15. Section 49-2-405, MCA, is amended to read:

"49-2-405. Veterans' and handicapped persons' employment preference. The application of an employment preference as provided for

in *Sections 1 through 6*, Title 39, chapter 30, and 10-2-402 by a public employer as defined in *Section 1* and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 16. Section 49-3-103, MCA, is amended to read:

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

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

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

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

(2) The application of an employment preference as provided for in *Sections 1 through 6*, Title 39, chapter 30, and 10-2-402 by a public employer as defined in *Section 1* and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 17. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Termination date.** [This act] terminates July 1, 1991.

Approved May 5, 1989.

CHAPTER NO. 647

[HB 739]

AN ACT ALLOCATING A PORTION OF THE LODGING FACILITY USE TAX ATTRIBUTABLE TO STATE AGENCY IN-STATE LODGING TO THE GENERAL FUND; REQUIRING STATE AGENCIES TO ACCOUNT FOR IN-STATE LODGING EXPENDITURES; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State agencies to account for in-state lodging expenditures.** Each state agency shall account for in-state lodging expenditures in a manner that will enable the department of revenue to determine total

EXHIBIT

DATE

1-10-91

HB

11

DATE 1-11-91
HB 16

Amendments to House Bill No. 16
First Reading Copy

For the Committee on State Administration

Prepared by Sheri S. Heffelfinger
January 9, 1991

1. Title, line 7.

Following: "bidder;"

Insert: "exempting federally-funded projects from the in-state preference"

2. Page 1, line 13.

Following: "Montana"

Insert: ", except for federally-funded projects,"

VISITORS' REGISTER

State Administration COMMITTEE

BILL NO. HB 11

DATE 1-10-91

SPONSOR Rep. Pavlovich

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Rich Brown	Montana Bd of Vets A-WARS	X	
John DenHerder	DEPT OF MT AMERICAN VET. DISABLED	X	
George Poston	United Veterans Comm. of MT.	X	
PATRICIA HEROLD	OPERATION DESERT SHIELD SUPPORT GROUP	X	
Bob Gowen	VET	X	
Dirk Baumberger	DAV Dept. of Mont.	X	
Rep. Darbuck	B-TTB	X	
Mike Muccone	DLI	X	
Don Antonietti	USDL - VETS	X	
John Llanos	DAV - MOPH	X	
Hal Mansson	American Legion	X	
Neil Droker	operation Desert Shield	X	
Lee Kuehlin	Dept. of Administration		
Sam Harlow	VFW	X	
John Mahan	VFW	X	
Larry Longfellow	VFW	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.