

HOUSE BILL NO. 9

Special Session

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Special Session House BILL NO. 9

INTRODUCED BY

Frank Richard Manning LaPorte

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PREFERENCE IN PUBLIC EMPLOYMENT FOR CERTAIN VETERANS, THEIR ELIGIBLE SPOUSES, AND HANDICAPPED PERSONS, APPLYING THE PREFERENCE TO INITIAL HIRING AND PROMOTIONS; PROVIDING FOR ENFORCEMENT OF THE PREFERENCE; AUTHORIZING AND REQUIRING CERTAIN AGENCIES TO ADOPT RULES; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP A COMPREHENSIVE JOB CLASSIFICATION PLAN FOR SUBMISSION TO THE 49TH LEGISLATURE; AMENDING SECTIONS 7-18-102, 10-2-201, 10-2-202, 10-2-204, 10-2-206, AND 10-2-402, MCA; REPEALING SECTION 10-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 10-2-201, MCA, is amended to read:

"10-2-201. ~~Purpose~~^{PURPOSES}. The ~~purpose~~^{PURPOSES} of 10-2-201, 10-2-202, 10-2-204 through 10-2-206 and [section 5] ~~is to provide for preference of veterans, their dependents and unmarried surviving spouses, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof~~ are to facilitate

the rehabilitation, readjustment, and reintegration of certain military veterans into the civilian labor force, to facilitate the rehabilitation and entry of handicapped persons into the civilian labor force, and to recognize past employment discrimination against those handicapped persons."

Section 2. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201, 10-2-202, 10-2-204 through 10-2-206 and [section 5], the following definitions apply:

- ~~(i) The term "veterans" means persons:~~
- ~~(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon conditions other than dishonorable; or~~
- ~~(b) who after January 31, 1955,~~
- ~~(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and~~
- ~~(ii) were honorably discharged;~~
- ~~(2) The term "war or declared national emergency" includes:~~
- ~~(a) The Civil War;~~
- ~~(b) The Spanish-American War;~~
- ~~(c) The Philippine insurrection;~~

1 ~~(d) World War I between April 6, 1917, and November~~
2 ~~11, 1918, both dates inclusive;~~

3 ~~(e) World War II between September 16, 1940, and~~
4 ~~December 31, 1946, both dates inclusive;~~

5 ~~(f) The Korean conflict, military expedition, or~~
6 ~~police action between June 26, 1950, and January 31, 1955,~~
7 ~~both dates inclusive; and~~

8 ~~(g) The Vietnam conflict between August 5, 1964, and~~
9 ~~May 7, 1975, both dates inclusive;~~

10 ~~(3) The term "surviving spouse" means an unmarried~~
11 ~~surviving spouse of a veteran;~~

12 ~~(4) The word "percent" means percent of the total~~
13 ~~aggregate points of the examination referred to;~~

14 (1) "Active duty" means full-time duty other than for
15 training in the regular components of the United States
16 army, air force, navy, marine corps, or coast guard with
17 full pay and allowances. The term does not include monthly
18 drills, summer encampments, initial training, or other
19 inactive or active duty for training in the national guard
20 or reserves.

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

1 (a) a temporary position as defined in 2-18-101 for a
2 state position or a similar temporary position with a public
3 employer other than the state;

4 (b) a state or local elected official;

5 (c) employment as an elected official's immediate
6 secretary, legal advisor, or administrative, legislative, or
7 other immediate or first-line aide;

8 (d) appointment by an elected official to a body, such
9 as a board, commission, committee, or council;

10 (e) appointment by an elected official to a public
11 office if the appointment is provided for by law;

12 (f) a department head appointment by the governor or
13 an executive department head appointment by a mayor, city
14 manager, county commissioner, or other chief administrative
15 or executive officer of a local government; or

16 (c) engagement as an independent contractor or
17 employment by an independent contractor.

18 (3) "Disabled veteran" means an individual who:

19 (a) served on active duty;

20 (b) has been separated from service under honorable
21 conditions; and

22 (c) suffers a service-connected disability determined
23 by the United States veterans administration to be
24 disabling.

25 (4) "Eligible spouse" means:

1 (a) the unmarried surviving spouse of a wartime
 2 veteran who died while on active duty or whose death
 3 resulted from a service-connected disability;

4 (b) the spouse of a disabled veteran determined by the
 5 United States veterans administration to have a 100%
 6 service-connected disability who is prevented from entering
 7 the work force because of his disability; or

8 (c) the spouse of a wartime veteran, as defined in
 9 subsection (11)(a)(i) of this section, who was on active
 10 duty and who is officially known to the United States
 11 government as missing in action or as a prisoner of war.

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

19 (6) (a) "Initial hiring" means a personnel action for
 20 which applications are solicited from outside the ranks of
 21 the current employees of:

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

24 (ii) a legislative agency, such as the consumer
 25 counsel, environmental quality council, office of the

1 legislative auditor, legislative council, or office of the
 2 legislative fiscal analyst, for a position within the
 3 legislative branch;

4 (iii) a judicial agency, such as the office of supreme
 5 court administrator, office of supreme court clerk, state
 6 law library, or similar office in a state district court for
 7 a position within the judicial branch;

8 (iv) a unit, as defined in 20-25-201, for a position
 9 within the Montana university system;

10 (v) the office of commissioner of higher education for
 11 a position within that office;

12 (vi) a college for a position within that college;

13 (vii) a center or program for a position within the
 14 postsecondary vocational-technical education system;

15 (viii) a city or town for a municipal position,
 16 including a city or municipal court position;

17 (ix) a county for a county position, including a
 18 justice's court position; and

19 (x) any other political subdivision of the state not
 20 staffed by employees of a city, town, or county for a
 21 position with that political subdivision.

22 (b) A personnel action limited to current employees of
 23 a specific public entity identified in subsections (a)(i)
 24 through (a)(x) of this subsection (6), current employees in
 25 a reduction-in-force pool who have been laid off from a

1 specific public entity identified in subsections (a)(i)
 2 through (a)(x) of this subsection (6), or current
 3 participants in a federally authorized employment program is
 4 not an initial hiring.

5 (7) "Promotion" means any change in duties or
 6 responsibilities occurring within the ranks of the employees
 7 of any office of those entities specified in subsections
 8 (a)(i) through (a)(x) of subsection (6) of this section,
 9 that is not an initial hiring and is accompanied by an
 10 increase in pay.

11 (8) "Public employer" means:

12 (a) any department, office, board, bureau, commission,
 13 agency, college, community college, postsecondary
 14 vocational-technical center or program, university, or other
 15 instrumentality of the executive, judicial, or legislative
 16 branch of the government of the state of Montana; and

17 (b) any county, city, town, or other political
 18 subdivision of the state, including a school district, or
 19 special purpose district or authority.

20 (9) "Termination" means any permanent or temporary
 21 discharge, layoff, or staff reduction of any employee from
 22 any office of those entities listed in subsections (a)(i)
 23 through (a)(x) of subsection (6) of this section.

24 (10) "Under honorable conditions" means a discharge or
 25 separation from active duty characterized as under honorable

1 conditions. The term includes honorable discharges and
 2 general discharges but does not include dishonorable
 3 discharges or other administrative discharges characterized
 4 as other than honorable.

5 (11) (a) "Wartime veteran" means a person who:

6 (i) served on active duty in a campaign or expedition
 7 for which a campaign badge was authorized by the United
 8 States congress or the United States department of defense;
 9 and

10 (ii) has been separated from service under honorable
 11 conditions.

12 (b) The term does not include a retired member of the
 13 United States armed forces who is receiving a military
 14 retirement allowance other than a medical retirement
 15 allowance and does not include any other retired member of a
 16 public retirement system, except social security, that is
 17 supported in whole or in part by tax revenues."

18 Section 3. Section 10-2-204, MCA, is amended to read:

19 "10-2-204. Credit for examination or interview. (1)

20 When Whenever written or oral examinations or a structured
 21 interview are required is given for employment--disabled
 22 initial hiring or promotion in an applicable position with a
 23 public employer, wartime veterans, disabled veterans, and
 24 their eligible spouses, their surviving spouses, and other
 25 dependents and handicapped persons shall have added to their

1 examination ~~and interview~~ ratings a credit of ~~10 points.~~ ~~++~~
 2 ~~other veterans, their spouses, surviving spouses, and~~
 3 ~~dependents shall have added to their examination ratings a~~
 4 ~~credit of 5~~ the following percentage of total possible
 5 points:

- 6 (a) wartime veterans -- 5%;
 7 (b) disabled veterans and handicapped persons -- 10%;
 8 (c) eligible spouses -- 10%.

9 (2) The ~~In the case of a written or oral examination~~
 10 the fact that an applicant has claimed a veterans' credit
 11 may not be made known to the examiners until ratings of all
 12 applicants have been recorded, after which such credits
 13 shall be added to the examination rating and the records
 14 shall show the examination rating and the veteran's credit.

15 ~~(3) The benefits of this section are in addition to~~
 16 ~~and not in derogation of the preference in appointment and~~
 17 ~~employment or both given by 10-2-203."~~

18 Section 4. Section 10-2-206, MCA, is amended to read:
 19 "10-2-206. Enforcement of preference. (1) Any person
 20 entitled to preference in 10-2-201, 10-2-202, and 10-2-204
 21 through 10-2-206 who has applied for ~~any appointment or~~
 22 ~~employment upon public works of the state of Montana or any~~
 23 ~~county and city thereof or in any public department of the~~
 24 ~~state and who has been denied employment or appointment~~
 25 initial hiring or promotion in or to any applicable position

1 with any public employer and who has been denied initial
 2 hiring or promotion and feels that the spirit of 10-2-201,
 3 10-2-202, and 10-2-204 through 10-2-206 has been violated
 4 and that such person is in fact qualified physically and
 5 mentally and possesses business capacity, competency, and
 6 education to discharge the duties of the position applied
 7 for ~~may~~ petition by verified petition the district court of
 8 the state of Montana in the county in which the work is to
 9 be performed. The petition shall set forth the facts of the
 10 application, qualifications, competency, and such person's
 11 honorable discharge or other qualifications warranting the
 12 applicant to preference under 10-2-201, 10-2-202, and
 13 10-2-204 through 10-2-206. Upon filing of such petition, any
 14 judge in the court shall issue an order to show cause to the
 15 ~~appointing authority employer~~ directing the ~~appointing~~
 16 ~~authority employer~~ to appear in the court at a specified
 17 time and place, not less than 5 or more than 10 days after
 18 the filing of the verified petition, to show cause, if any
 19 exists, why the veteran or person entitled to preference
 20 should not be employed by the ~~appointing authority employer~~.
 21 The district court has jurisdiction upon the proper showings
 22 to issue its order directing and ordering the ~~appointing~~
 23 ~~authority employer~~ to comply with this law in giving the
 24 preference provided for.

25 (2) Upon proper proof, the district court shall, in

1 ~~ordering relief under subsection (1), grant an award of~~
 2 ~~backpay, reasonable attorney fees, and costs."~~

3 ~~NEW SECTION.~~ Section 5. No application of preference
 4 to terminations -- seniority. (1) Section 10-2-204 does not
 5 apply to the termination of an employee from an applicable
 6 position with a public employer.

7 (2) Employees in applicable positions of public
 8 employment may be terminated only in reverse order of that
 9 in which they were hired.

10 Section 6. Section 2-18-102, MCA, is amended to read:

11 "2-18-102. Personnel administration -- general policy
 12 setting. (1) Except as otherwise provided by law or
 13 collective bargaining agreement, the department shall:

14 (a) encourage and exercise leadership in the
 15 development of effective personnel administration within the
 16 several agencies in the state and make available the
 17 facilities of the department to this end;

18 (b) foster and develop programs for recruitment and
 19 selection of capable persons for permanent, seasonal,
 20 temporary, and other types of positions and for the
 21 improvement of employee effectiveness, including training,
 22 safety, health, counseling, welfare, discipline, grievances,
 23 and evaluation for productivity and retention in permanent
 24 status;

25 (c) foster, develop, and promote job sharing in

1 agencies;

2 (d) investigate from time to time the operation and
 3 effect of parts 1 and 2 of this chapter and the policies
 4 made thereunder and report the findings and recommendations
 5 to the governor;

6 (e) establish policies, procedures, and forms for the
 7 maintenance of records of all employees in the state
 8 service;

9 (f) apply and carry out parts 1 and 2 and the policies
 10 thereunder and perform any other lawful acts which may be
 11 necessary or desirable to carry out the purposes and
 12 provisions of parts 1 and 2.

13 (2) The department may delegate authority granted to
 14 it under parts 1 and 2 to agencies in the state service that
 15 effectively demonstrate the ability to carry out the
 16 provisions of parts 1 and 2, provided that such agencies
 17 remain in compliance with policies, procedures, timetables,
 18 and standards established by the department.

19 (3) The department shall develop and issue as rules
 20 personnel policies for the state. The department shall also
 21 adopt rules governing the application of the preference
 22 provided in 10-2-201, 10-2-202, 10-2-204 through 10-2-206,
 23 and [section 5], which rules shall be applicable to all
 24 public employers as defined in 10-2-202. Adequate public
 25 notice shall be given to all interested parties of proposed

1 changes or additions to the personnel policies before the
2 date they are to take effect. If requested by any of the
3 affected parties, the department shall schedule a public
4 hearing on proposed changes or additions to the personnel
5 policies before the date they are to take effect."

6 NEW SECTION. Section 7. Department to develop job
7 classification plan -- submission to legislature. (1) The
8 department of administration shall develop a comprehensive
9 plan for the classification of all applicable positions with
10 public employers, as defined in 10-2-202. The classification
11 plan shall include:

12 (a) an appropriate title for each class of positions,
13 a description of the duties and responsibilities of
14 positions in each class, and minimum requirements of
15 training, experience, skills, knowledge, abilities, and
16 other qualifications necessary for entry into each class by
17 initial hiring or promotion. Whenever possible, identical
18 requirements must be stated for similar positions with two
19 or more public employers.

20 (b) salary rates for each class of applicable
21 positions, adjusted to the responsibilities of each class.
22 In developing the salary rates, the department shall
23 consider the amount of funds available to public employers,
24 the prevailing rates of pay for similar positions in both
25 the public and private sectors, the cost of living,

1 financial policies of public employers, and other relevant
2 factors.

3 (c) the use of written examinations and structured
4 oral interviews for entry, by promotion or initial hiring,
5 as defined in 10-2-202, into each class of position;

6 (d) the rating of each individual by a numerical
7 score, taking into account the results of all written
8 examinations, structured interviews, and any points added as
9 a result of the application of the preference provided for
10 in 10-2-201, 10-2-202, and 10-2-204 through 10-2-206; each
11 individual must be listed on a register according to the
12 class of position for which he is eligible and his numerical
13 score; and

14 (e) such other matters relevant to a classification
15 plan, patterned after the rules of the state merit system
16 council, as the department considers appropriate.

17 (2) The plan must contain those statutes and rules
18 proposed for adoption, amendment, or repeal as the
19 department considers necessary in order to ensure the
20 workability and application of the plan to all public
21 employers.

22 (3) The department shall make copies of the plan
23 available to all interested persons, hold public hearings on
24 the plan in order to obtain accurate and comprehensive views
25 on the plan by the public and public employers, and shall

1 establish a period during which written comments will be
2 accepted for the same purpose. The department shall consider
3 all written and oral comments in development of a proposed
4 job classification plan, and submit that plan to the 49th
5 legislature by January 1, 1985.

6 NEW SECTION. Section 8. Conflicts with federal law.
7 Sections 2-18-102, 10-2-201, 10-2-202, 10-2-204 through
8 10-2-206, and [sections 5 and 7] do not apply to work or
9 positions subject to federal laws or regulations if
10 application of the employment preference conflicts with
11 those laws or regulations.

12 Section 9. Section 10-2-402, MCA, is amended to read:

13 "10-2-402. Superintendent to be given veteran's
14 preference. In the selection of the superintendent of the
15 Montana veterans' home, the department of institutions shall
16 apply the employment preference provided in 10-2-201,
17 10-2-202, and 10-2-204 through 10-2-206, except that the
18 department shall give preference only to wartime and
19 disabled veterans as defined in 10-2-202."

20 NEW SECTION. Section 10. Extension of authority. Any
21 existing authority of the department of administration to
22 make rules on the subject of the provisions of this act is
23 extended to the provisions of this act.

24 NEW SECTION. Section 11. Repealer. Subject to section
25 13(4)(a) of this act, section 10-2-203, MCA, is repealed.

1 NEW SECTION. Section 12. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

7 NEW SECTION. Section 13. Effective date --
8 applicability -- saving clause. (1) This act is effective on
9 passage and approval.

10 (2) This act applies only to applicable positions as
11 defined in 10-2-202 that are filled after the effective date
12 of this act.

13 (3) This act does not apply to any applicable position
14 covered by any collective bargaining agreement.

15 (4) (a) Subject to the applicable statute of
16 limitations and to subsection (4)(b), a claim for violation
17 of 10-2-203, whether or not it is pending in court on the
18 effective date of this act, may be pursued under and shall
19 be governed by 10-2-201 through 10-2-206.

20 (b) A claim under 10-2-203 must be filed within 60
21 days after the effective date of this act.

-End-