

SENATE BILL NO. 2  
SPECIAL SESSION - DECEMBER 1983

INTRODUCED BY MAZUREK, H. HAMMOND, TVEIT, HAPPEY  
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE NO. 4

IN THE SENATE

December 12, 1983	Introduced and referred to Committee on Judiciary.
December 13, 1983	Committee recommend bill do pass as amended. Report adopted.  Statement of Intent attached.
December 14, 1983	Bill printed and placed on members' desks.  On motion rules suspended. Bill referred to second reading for consideration this day.  Second reading, do pass as amended.  On motion rules suspended. Bill placed on calendar for third reading this day.  Third reading, passed. Ayes, 42; Noes, 7. Transmitted to House.

IN THE HOUSE

December 14, 1983	Introduced and referred to Committee on Judiciary.
December 15, 1983	Committee recommend bill be concurred in as amended. Report adopted.  Statement of Intent amended.  On motion rules suspended and bill placed on second reading this day.

Second reading, concurred in as amended.

Statement of Intent amended.

On motion rules suspended and bill placed on third reading this day.

Third reading, concurred in.  
Returned to Senate with amendments.

Statement of Intent returned to Senate with amendments.

#### IN THE SENATE

December 15, 1983

Returned to Senate with amendments and Statement of Intent as amended.

December 16, 1983

Second reading, amendments not concurred in.

On motion Conference Committee requested and appointed.

Conference Committee dissolved.

On motion, Free Conference Committee requested and appointed.

Free Conference Committee reported.

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted.  
Ayes, 36, Noes, 14.

IN THE HOUSE

December 17, 1983

Free Conference Committee report rejected.

IN THE SENATE

December 17, 1983

On motion, Senate reconsider action taken in adopting Free Conference Committee report on 12/16/83. Ayes, 48; Noes, 0.

On motion, new Free Conference Committee requested and appointed.

New Free Conference Committee reported.

On motion, rules suspended. Bill referred to second reading for consideration this day.

Second reading, new Free Conference Committee report adopted.

On motion, rules suspended. Bill placed on calendar for third reading this day.

Third reading, new Free Conference Committee report adopted.

IN THE HOUSE

December 17, 1983

New Free Conference Committee report adopted.

Sent to enrolling.

Reported correctly enrolled.

1                    SENATE    BILL NO. 2  
2    INTRODUCED BY MAZUREK  
3                    BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE NO. 4  
4  
5    A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PREFERENCE IN  
6    PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND  
7    HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; AMENDING  
8    SECTIONS 10-2-402, 49-3-103, AND 49-3-201, MCA; REPEALING  
9    SECTIONS 10-2-201 THROUGH 10-2-206, MCA; AND PROVIDING AN  
10   IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
11  
12   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13        NEW SECTION. Section 1. Short title. [Sections 1  
14   through 10] may be cited as the "Montana Veterans and  
15   Handicapped Persons Employment Preference Act".  
16        NEW SECTION. Section 2. Purposes. The purposes of  
17   [sections 1 through 10] are to reward veterans for service  
18   to their country, recognize past employment discrimination  
19   against handicapped persons, and facilitate the  
20   habilitation, rehabilitation, and readjustment of veterans  
21   and handicapped persons.  
22        NEW SECTION. Section 3. Definitions. For the purposes  
23   of [sections 1 through 10], the following definitions apply:  
24        (1) "Active duty" means full-time duty other than for  
25   training in the regular components of the United States

1   army, air force, navy, marine corps, or coast guard with  
2   full pay and allowances. The term does not include monthly  
3   drills, summer encampments, initial training, or other  
4   inactive or active duty for training in the national guard  
5   or reserves.  
6        (2) "Disabled veteran" means an individual who:  
7        (a) served on active duty;  
8        (b) has been separated from service under honorable  
9   conditions; and  
10        (c) suffers a service-connected disability determined  
11   by the United States veterans administration to be 30% or  
12   more disabling.  
13        (3) "Eligible spouse" means:  
14        (a) the unmarried surviving spouse of a veteran who  
15   died while on active duty or whose death resulted from a  
16   service-connected disability; or  
17        (b) the spouse of:  
18        (i) a veteran determined by the United States veterans  
19   administration to have a 100% service-connected disability  
20   who is unable to use his employment preference because of  
21   his disability;  
22        (ii) a person on active duty determined by the United  
23   States government to be missing in action or a prisoner of  
24   war; or  
25        (iii) a handicapped person determined by the department

1 of social and rehabilitation services to have a 100%  
2 disability who is unable to use his employment preference  
3 because of his disability.

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

11 (5) (a) "Initial hiring" means a personnel action for  
12 which applications are solicited from outside the ranks of  
13 the current employees of:

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

16 (ii) a legislative agency, such as the consumer  
17 counsel, environmental quality council, office of the  
18 legislative auditor, legislative council, or office of the  
19 legislative fiscal analyst, for a position within the  
20 legislative branch;

21 (iii) a judicial agency, such as the office of supreme  
22 court administrator, office of supreme court clerk, state  
23 law library, or similar office in a state district court for  
24 a position within the judicial branch;

25 (iv) a unit, as defined in 20-25-201, for a position

1 within the Montana university system;

2 (v) the office of commissioner of higher education for  
3 a position within that office;

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

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

7 (viii) a city or town for a municipal position,  
8 including a city or municipal court position; and

9 (ix) a county for a county position, including a  
10 justice's court position.

11 (b) A personnel action limited to current employees of  
12 a specific public entity identified in subsections (a)(i)  
13 through (a)(ix) of this subsection (5), current employees in  
14 a reduction-in-force pool who have been laid off from a  
15 specific public entity identified in subsections (a)(i)  
16 through (a)(ix) of this subsection (5), or current  
17 participants in a federally authorized employment program is  
18 not an initial hiring.

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

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

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, 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; or

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

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

(i) any department, office, board, bureau, commission, agency, college, including a community college, postsecondary vocational-technical center or program, university, 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 special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(8) "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.

(9) "Under honorable conditions" means a discharge or separation from active duty characterized 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.

(10) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

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

(b) The term does not include a person receiving retirement pay from the United States based on length of military service.

(11) "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and

ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

NEW SECTION. Section 4. 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 veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in [section 5] and claims a preference as required by [section 8], 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 disabled veteran 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 subsection (5)(b) of [section 3] or to any other personnel action that is not an initial hiring.

NEW SECTION. Section 5. Eligibility requirements. No

veteran, disabled veteran, eligible spouse, or handicapped person is entitled to receive employment preference as provided in [section 4] 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 he is applying.

NEW SECTION. Section 6. Certification of handicapped persons. The department of social and rehabilitation services shall certify persons as handicapped for the purpose of employment preference as provided in [sections 1 through 10].

NEW SECTION. Section 7. Duration of employment preference. Subject to [section 5]:

(1) a handicapped person, the spouse of a handicapped person as described in subsection (3)(b)(iii) of [section 3], a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of [section 3] qualifies for employment preference as long as the disabling

1 condition exists;

2 (2) a veteran, as defined in [section 3], who is not a  
3 disabled veteran, as defined in [section 3], qualifies for  
4 employment preference for life. However, once he has  
5 obtained a position because of the application of the  
6 employment preference, he may not use the preference again.

7 (3) the surviving spouse of a veteran as described in  
8 subsection (3)(a) of [section 3] qualifies for employment  
9 preference for as long as the spouse remains unmarried; and

10 (4) the spouse of a person described in subsection  
11 (3)(b)(ii) of [section 3] qualifies for employment  
12 preference for as long as the person is missing in action or  
13 a prisoner of war.

14 NEW SECTION. Section 8. Enforcement of preference.

15 (1) A public employer shall, by posting and on the  
16 application form, give notice of the preferences that  
17 [sections 1 through 10] provide in public employment.

18 (2) A job applicant who believes he has an employment  
19 preference shall claim the preference in writing before the  
20 time for filing applications for the position involved has  
21 passed. Failure to make a timely employment preference claim  
22 is a complete defense to an action under subsection (4).

23 (3) If an applicant for a position makes a timely  
24 written employment preference claim, the public employer  
25 shall give written notice of its hiring decision to each

1 applicant claiming preference.

2 (4) (a) An applicant who believes he has not been  
3 accorded his rights under [sections 1 through 10] may,  
4 within 30 days of receipt of the notice of the hiring  
5 decision, submit to the public employer a written request  
6 for an explanation of the public employer's hiring decision.  
7 Within 15 days of receipt of the request, the public  
8 employer shall give the applicant a written explanation.

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

15 (c) (i) Upon filing of the petition, the court shall  
16 order the public employer to appear in court at a specified  
17 time not less than 10 or more than 30 days after the day the  
18 petition was filed and show cause why the applicant was not  
19 hired for the position. The public employer has the burden  
20 of making a clear showing that the applicant was not  
21 substantially equally qualified with the person hired.

22 (ii) The time to appear provided in subsection  
23 (4)(c)(i) may be waived by stipulation of the parties. If a  
24 time to appear has been specified pursuant to subsection  
25 (4)(c)(i), the court may, on motion of one of the parties or



on stipulation of all of the parties, grant a continuance.

(iii) If the public employer does not carry its burden of proof under subsection (4)(c)(i), 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 [sections 1 through 10], and a court may not grant any other relief in an action for violation of [sections 1 through 10].

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

(e) The Montana Rules of Civil Procedure apply to a proceeding under this subsection (4) to the extent that they do not conflict with this subsection (4).

**NEW SECTION.** Section 9. Adoption of rules. The department of administration shall adopt rules implementing [sections 1 through 10] and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of [sections 1 through 10]. The department of administration's rules apply to all public employers, local

as well as state.

**NEW SECTION.** Section 10. Conflicts with federal law. [Sections 1 through 10] do not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

Section 11. Section 10-2-402, MCA, is amended to read:

"10-2-402. Superintendent to be given veteran's preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall ~~give preference to veterans as defined in 10-2-202 apply the preference granted to veterans and disabled veterans, but not the preference granted to other persons, by [sections 1 through 10].~~"

Section 12. Section 49-3-103, MCA, is amended to read:

"49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on marital status, age, or physical or mental handicap;

(a) when based on the preference provided in [sections 1 through 10];

(b) when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business; or

(c) where the differentiation is based on reasonable

1 factors other than age;

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

8 (3) from discharging or otherwise disciplining an  
9 individual for good cause."

10 Section 13. Section 49-3-201, MCA, is amended to read:

11 "49-3-201. Employment of state and local government  
12 personnel. (1) State except as provided in [sections 1  
13 through 10], state and local government officials and  
14 supervisory personnel shall recruit, appoint, assign, train,  
15 evaluate, and promote personnel on the basis of merit and  
16 qualifications without regard to race, color, religion,  
17 creed, political ideas, sex, age, marital status, physical  
18 or mental handicap, or national origin.

19 (2) All state and local governmental agencies shall:

20 (a) promulgate written directives to carry out this  
21 policy and to guarantee equal employment opportunities at  
22 all levels of state and local government;

23 (b) regularly review their personnel practices to  
24 assure compliance; and

25 (c) conduct continuing orientation and training

1 programs with emphasis on human relations and fair  
2 employment practices.

3 (3) The department of administration shall insure that  
4 the entire examination process, including appraisal of  
5 qualifications, is free from bias.

6 (4) Appointing authorities shall exercise care to  
7 insure utilization of minority group persons."

8 NEW SECTION. Section 14. Repealer. Subject to section  
9 16(3)(a) of this act, sections 10-2-201 through 10-2-206,  
10 MCA, are repealed.

11 NEW SECTION. Section 15. Severability. If a part of  
12 this act is invalid, all valid parts that are severable from  
13 the invalid part remain in effect. If a part of this act is  
14 invalid in one or more of its applications, the part remains  
15 in effect in all valid applications that are severable from  
16 the invalid applications.

17 NEW SECTION. Section 16. Effective date --  
18 applicability -- saving clause. (1) This act is effective on  
19 passage and approval.

20 (2) Except as provided in subsection (3)(b), this act  
21 applies only to positions that are filled after the  
22 effective date of this act.

23 (3) (a) Subject to the applicable statute of  
24 limitations and to subsection (3)(c), a claim for violation  
25 of 10-2-201 through 10-2-206, whether or not it is pending

1 in court on the effective date of this act, may be pursued  
2 under and must be governed by 10-2-201 through 10-2-206.

3 (b) However, the only relief that may be granted on a  
4 claim described in subsection (3)(a) is that provided in  
5 section 8(4)(c)(iii) of this act, and the court may grant no  
6 other relief, including that provided in 10-2-206 or any  
7 judicial construction of 10-2-206.

8 (c) A claim under 10-2-201 through 10-2-206 must be  
9 filed within 60 days after the effective date of this act.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 2

3  
4 A statement of intent is provided to address the nature  
5 of the employment preference granted in the bill. The  
6 legislature intends that public employers seek and hire the  
7 most qualified persons for positions in public employment.  
8 It is also the intent of the legislature that the nature of  
9 the preference is a relative one in that it is to be applied  
10 among two or more applicants for a position who have  
11 substantially equal qualifications. Substantially equal  
12 qualifications does not mean a situation in which two or  
13 more applicants are exactly equally qualified. It means a  
14 range within which two applicants must be considered to be  
15 substantially equal in view of the qualifications set for  
16 the job. Qualifications should include job-related  
17 knowledge, skill, and abilities. The legislature recognizes  
18 that public employers use a variety of scored and unscored  
19 selection procedures such as conventional written  
20 examinations, training and experience requirements,  
21 performance tests, structured oral interviews, or  
22 combinations of these. The legislature does not intend to  
23 specify the type of selection procedure to be used by a  
24 public employer.

25 A statement of intent is also required for this bill

1 because section 9 requires the department of administration  
2 to adopt rules implementing sections 1 through 10 and to  
3 consult with the department of social and rehabilitation  
4 services in formulating rules for the certification of  
5 handicapped persons.

6 The legislature intends the rules to adequately provide  
7 for the administration of the employment preference law, but  
8 to include only those rules that are reasonably necessary to  
9 implement sections 1 through 10.

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

18 Rules adopted by the department apply to all initial  
19 hirings to positions by all public employers. In formulating  
20 its rules the department should take this into consideration  
21 and adopt rules that can be used and applied by the broad  
22 spectrum of state and local public employers subject to  
23 sections 1 through 10.

24 It is the intent of the legislature that the department  
25 formulate and adopt rules relating, but not limited, to the

1 following matters and take into account the following  
2 considerations.

3 (1) Claiming preference -- documentation and  
4 verification. Rules relating to the job application process  
5 should include the manner in which a preference should be  
6 claimed when a job is applied for. They should prescribe the  
7 means by which the applicant must document and submit  
8 evidence of such things as the applicant's status as a  
9 veteran, disabled veteran, handicapped person, or eligible  
10 spouse, and the requisite residency and citizenship  
11 requirements. It is the intent of the legislature that rules  
12 for claiming and documenting a preference do not place  
13 unreasonable burdens upon applicants and that once an  
14 applicant has substantially complied with the rules, a  
15 public employer should make every reasonable attempt to  
16 verify the existence of the preference.

17 (2) Handicapped persons -- certification. The rules  
18 should provide that a person will not be denied handicapped  
19 status and certification merely because of his current or  
20 former employment, should address the matter of what  
21 constitutes a physical impairment that substantially limits  
22 one or more major life activities, and outline in what  
23 instances a physical impairment limits a person's ability to  
24 obtain, retain, or advance in employment. The department may  
25 wish to do this by a combination of a statement of general

1 principles and specific examples.

2 Rules should provide for a certification process that  
3 allows, when appropriate, permanent certification of those  
4 impairments considered to be permanent in nature. A  
5 procedure for extension or loss of certification should be  
6 provided for those instances in which a handicap is or may  
7 be temporary.

8 (3) Military conflicts. The legislature intends the  
9 rules to apply federal law to determine what constitutes a  
10 campaign or expedition for which a campaign badge is  
11 authorized by the Congress of the United States or  
12 department of defense.

13 (4) Separations and discharges. The legislature  
14 intends the rules to apply federal law and further define  
15 separations under honorable conditions and the various types  
16 of discharges.

17 (5) Hiring decision notices and explanations. The  
18 legislature intends the rules to provide for the form and  
19 content of written notices of hiring decisions, including  
20 whether the position was obtained as the result of  
21 application of the preference by the public employer,  
22 written requests for explanations of hiring decisions, and  
23 written explanations of hiring decisions.

24 (6) Reopening of selection process. The legislature  
25 intends the rules to provide for a method of reopening the

1 selection process for a job should a court order the  
2 selection process reopened, and include a method of giving  
3 notice to those who applied for the job informing them of  
4 the reopening and the reason therefor.

5 (7) Jobs subject to federal law. The legislature  
6 intends the rules to identify or provide a method of  
7 identifying work or positions to which the employment  
8 preference does not apply by virtue of section 10.

SENATE BILL NO. 2

INTRODUCED BY MAZUREK, H. HAMMOND, IVEIT, HAFLEY

INTRODUCED BY \_\_\_\_\_

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PREFERENCE IN  
PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND  
HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; ~~RECONCILING~~  
~~THE PREFERENCE STATUTES WITH THE HUMAN RIGHTS STATUTES;~~  
AMENDING SECTIONS SECTION 10-2-402, 49-3-103, AND 49-3-201,  
MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
DATE."

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

~~NEW SECTION.~~ Section 1. Short title. [Sections 1  
through 10] may be cited as the "Montana Veterans and  
Handicapped Persons Employment Preference Act".

~~NEW SECTION.~~ Section 2. Purposes. The purposes of  
[sections 1 through 10] are to reward ~~RECOGNIZE~~ veterans for  
service to their country, recognize past employment  
discrimination against handicapped persons, and facilitate  
the habilitation, rehabilitation, and readjustment of  
veterans and handicapped persons.

~~NEW SECTION.~~ Section 3. Definitions. For the purposes

of [sections 1 through 10], the following definitions apply:

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

(2) "Disabled veteran" means an individual who:

(a) served on active duty;

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

(c) suffers a service-connected disability determined  
by the United States veterans administration to be 30% or  
more disabling.

(3) "Eligible spouse" means:

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

(b) the spouse of:

(i) a veteran determined by the United States veterans  
administration to have a 100% service-connected disability  
who is unable to use his employment preference because of  
his disability;

(ii) a person on active duty determined by the United

1 States government to be missing in action or a prisoner of  
2 war; or

3 (iii) a handicapped person determined by the department  
4 of social and rehabilitation services to have a 100%  
5 disability who is unable to use his employment preference  
6 because of his disability.

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

14 (5) (a) "Initial hiring" means a personnel action for  
15 which applications are solicited from outside the ranks of  
16 the current employees of:

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

19 (ii) a legislative agency, such as the consumer  
20 counsel, environmental quality council, office of the  
21 legislative auditor, legislative council, or office of the  
22 legislative fiscal analyst, for a position within the  
23 legislative branch;

24 (iii) a judicial agency, such as the office of supreme  
25 court administrator, office of supreme court clerk, state

1 law library, or similar office in a state district court for  
2 a position within the judicial branch;

3 ~~(iv) a unit as defined in 28-25-201v for a position~~  
4 ~~within the Montana university system;~~

5 ~~(v) the office of commissioner of higher education for~~  
6 ~~a position within that office;~~

7 ~~(vi) a college for a position within that college;~~

8 ~~(vii) a center or program for a position within the~~  
9 ~~postsecondary vocational-technical education system;~~

10 ~~(viii) (IV) a city or town for a municipal position,~~  
11 including a city or municipal court position; and

12 ~~(ix) (V) a county for a county position, including a~~  
13 ~~justice's court position.~~

14 (b) A personnel action limited to current employees of  
15 a specific public entity identified in subsections (a)(i)  
16 through (a)~~(ix)~~(V) of this subsection (5), current employees  
17 in a reduction-in-force pool who have been laid off from a  
18 specific public entity identified in subsections (a)(i)  
19 through (a)~~(ix)~~(V) of this subsection (5), or current  
20 participants in a federally authorized employment program is  
21 not an initial hiring.

22 (6) "Position" means a permanent or seasonal position  
23 as defined in 2-18-101 for a state position or a similar  
24 permanent or seasonal position with a public employer other  
25 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; or

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

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

(i) any department, office, board, bureau, commission, agency, college, ~~including a community college, postsecondary vocational-technical center or program, university~~ 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 COMMUNITY COLLEGE, A POSTSECONDARY VOCATIONAL-TECHNICAL CENTER OR PROGRAM, 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.

(8) "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.

(9) "Under honorable conditions" means a discharge or separation from active duty characterized 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.

(10) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

(ii) has been separated from service under honorable

1 conditions.

2 (b) The term does not include a person--receiving  
3 retirement--pay--from--the--United--States--based--on--length--of  
4 military--service RETIRED MEMBER OF THE UNITED STATES ARMED  
5 FORCES WHO IS ELIGIBLE FOR OR RECEIVING A MILITARY  
6 RETIREMENT ALLOWANCE BASED ON LENGTH OF SERVICE AND DOES NOT  
7 INCLUDE ANY OTHER RETIRED MEMBER OF A PUBLIC RETIREMENT  
8 SYSTEM, EXCEPT SOCIAL SECURITY, THAT IS SUPPORTED IN WHOLE  
9 OR IN PART BY TAX REVENUES.

10 (1) "War or declared national emergency" means:

11 (a) World War I, beginning on April 6, 1917, and  
12 ending on November 11, 1918, both dates inclusive;

13 (b) World War II, beginning on December 7, 1941, and  
14 ending on December 31, 1946, both dates inclusive;

15 (c) the Korean conflict, military expedition, or  
16 police action, beginning on June 27, 1950, and ending on  
17 January 31, 1955, both dates inclusive; and

18 (d) the Vietnam conflict, beginning on August 5, 1964,  
19 and ending on May 7, 1975, both dates inclusive.

20 NEW SECTION. Section 4. Employment preference in  
21 initial hiring. (1) (a) Except as provided in 10-2-402, in  
22 an initial hiring for a position, if a job applicant who is  
23 a veteran, disabled veteran, handicapped person, or eligible  
24 spouse meets the eligibility requirements contained in  
25 [section 5] and claims a preference as required by [section

1 8], a public employer shall hire the applicant over any  
2 other applicant with substantially equal qualifications who  
3 is not a preference eligible applicant.

4 (b) In an initial hiring, a public employer shall hire  
5 a disabled veteran over any other preference eligible  
6 applicant with substantially equal qualifications.

7 (2) The employment preference provided for in  
8 subsection (1) does not apply to a personnel action  
9 described in subsection (5)(b) of [section 3] or to any  
10 other personnel action that is not an initial hiring.

11 NEW SECTION. Section 5. Eligibility requirements. No  
12 veteran, disabled veteran, eligible spouse, or handicapped  
13 person is entitled to receive employment preference as  
14 provided in [section 4] unless:

15 (1) he is a United States citizen;

16 (2) he has resided continuously in the state for at  
17 least 1 year immediately before applying for employment;

18 (3) if applying for municipal or county employment, he  
19 has resided for at least 30 days immediately before applying  
20 for employment in the city, town, or county in which  
21 employment is sought; and

22 (4) he meets those requirements considered necessary  
23 by a public employer to successfully perform the essential  
24 duties of the position for which he is applying.

25 NEW SECTION. Section 6. Certification of handicapped

persons. The department of social and rehabilitation services shall certify persons as handicapped for the purpose of employment preference as provided in [sections 1 through 10].

**NEW SECTION.** Section 7. Duration of employment preference. Subject to [section 5]:

(1) a handicapped person, the spouse of a handicapped person as described in subsection (3)(b)(iii) of [section 3], a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of [section 3] qualifies for employment preference as long as the disabling condition exists;

(2) a veteran, as defined in [section 3], who is not a disabled veteran, as defined in [section 3], qualifies for employment preference for life. However, once he has obtained a **PERMANENT** position because of the application of the employment preference, he may not use the preference again.

(3) the surviving spouse of a veteran as described in subsection (3)(a) of [section 3] qualifies for employment preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of [section 3] qualifies for employment preference for as long as the person is missing in action or a prisoner of war.

**NEW SECTION.** Section 8. Enforcement of preference.

(1) A public employer shall, by posting ~~and~~ **OR** on the application form, give notice of the preferences that [sections 1 through 10] provide in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim is a complete defense to an action under subsection (4).

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

(4) (a) An applicant who believes he has not been accorded his rights under [sections 1 through 10] may, within 30 days of receipt of the notice of the hiring decision, 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.

(b) 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 which on their face entitle the applicant to an

1 employment preference.

2 (c) (i) Upon filing of the petition, the court shall  
3 order the public employer to appear in court at a specified  
4 time not less than 10 or more than 30 days after the day the  
5 petition was filed and show cause why the applicant was not  
6 hired for the position. The public employer has the burden  
7 of making a clear showing that the applicant was not  
8 substantially equally qualified with the person hired.

9 (ii) The time to appear provided in subsection  
10 (4)(c)(i) may be waived by stipulation of the parties. If a  
11 time to appear has been specified pursuant to subsection  
12 (4)(c)(i), the court may, on motion of one of the parties or  
13 on stipulation of all of the parties, grant a continuance.

14 (iii) If the public employer does not carry its burden  
15 of proof under subsection (4)(c)(i), the court shall order  
16 the public employer to reopen the selection process for the  
17 position involved and shall grant the applicant reasonable  
18 attorney fees and court costs. The remedy provided by this  
19 section is the only remedy for a violation of [sections 1  
20 through 10], and a court may not grant any other relief in  
21 an action for violation of [sections 1 through 10].

22 (d) Failure of an applicant to file a petition under  
23 subsection (4)(b) within 90 days bars the filing of a  
24 petition. If a public employer fails to provide an  
25 explanation under subsection (4)(a) within 15 days and a

1 petition is filed under subsection (4)(b), the court shall  
2 order the public employer to reopen the selection process.

3 (e) The Montana Rules of Civil Procedure apply to a  
4 proceeding under this subsection (4) to the extent that they  
5 do not conflict with this subsection (4).

6 ~~NEW SECTION.~~ Section 9. Adoption of rules. The  
7 department of administration shall adopt rules implementing  
8 [sections 1 through 10] and shall consult with the  
9 department of social and rehabilitation services in adopting  
10 rules governing certification of handicapped persons for  
11 purposes of [sections 1 through 10]. The department of  
12 administration's rules apply to all public employers, local  
13 as well as state.

14 ~~NEW SECTION.~~ Section 10. Conflicts with federal law.  
15 [Sections 1 through 10] do not apply to work or positions  
16 subject to federal laws or regulations if application of the  
17 employment preference conflicts with those laws or  
18 regulations.

19 Section 11. Section 10-2-402, MCA, is amended to read:  
20 "10-2-402. Superintendent to be given veteran's  
21 preference. In the selection of the superintendent of the  
22 Montana veterans' home, the department of institutions shall  
23 ~~give-preference-to-veterans-as-defined-in-10-2-202 apply the~~  
24 ~~preference-granted-to-veterans-and-disabled-veterans, but~~  
25 ~~not the preference granted to other persons, by [sections 1~~

through 10]."

Section 12. Section 49-3-103, MCA, is amended to read:

"49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on marital status, age, or physical or mental handicap;

(2) when based on the preference provided in [sections 1 through 10];

(3) when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business; or

(4) where the differentiation is based on reasonable factors other than age;

(5) 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, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(6) from discharging or otherwise disciplining an individual for good causes."

Section 13. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State. Except as provided in [sections 1 through 10], state and local government officials and

supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall: (a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons."

NEW SECTION. SECTION 12. THE APPLICATION OF AN EMPLOYMENT PREFERENCE AS PROVIDED FOR IN [SECTIONS 1 THROUGH 10] AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN [SECTION 3] MAY NOT BE CONSIDERED TO CONSTITUTE A VIOLATION OF THIS CHAPTER.

NEW SECTION. SECTION 13. THE APPLICATION OF AN

EMPLOYMENT PREFERENCE AS PROVIDED FOR IN SECTIONS 1 THROUGH 10] AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN SECTION 1] MAY NOT BE CONSIDERED TO CONSTITUTE A VIOLATION OF THIS CHAPTER.

NEW SECTION. Section 14. Repealer. Subject to section 16(f)(f) of this act, sections 10-2-201 through 10-2-206, whether or not repeated, SECTIONS 10-2-201 THROUGH 10-2-206, MCA, ARE REPEALED. THIS REPEAL APPLIES RETROACTIVELY TO BAR ANY CLAIM OF VIOLATION OR APPLICATION OF 10-2-201 THROUGH 10-2-206 THAT HAS NOT BEEN REDUCED TO JUDGMENT, WHETHER OR NOT THE JUDGMENT IS FINAL, ON THE EFFECTIVE DATE OF THIS ACT. CLAIMS UNDER 10-2-201 THROUGH 10-2-206 THAT HAVE BEEN REDUCED TO JUDGMENT, WHETHER OR NOT THE JUDGMENT IS FINAL, ON THE EFFECTIVE DATE OF THIS ACT ARE ENFORCEABLE. NO CLAIM FOR A VIOLATION OF 10-2-201 THROUGH 10-2-206 MAY BE MADE UNDER SECTION 8] OF THIS ACT.

NEW SECTION. Section 15. 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.

NEW SECTION. Section 16. Effective date -- applicability -- saving clause. (1) This act is effective on passage and approval.

(2) Except as provided in subsection (f)(f) SECTION 14, this act applies only to positions that are filled after the effective date of this act.

(f)(f) Subject to the applicable statute of limitations and to subsection (f)(f) a claim for violation of 10-2-201 through 10-2-206, whether or not it is pending in court on the effective date of this act, may be pursued under and must be governed by 10-2-201 through 10-2-206.

(b) However, the only relief that may be granted on a claim described in subsection (f)(f) is that provided in section 8(f)(f)(f)(f) of this act and the court may grant no other relief, including that provided in 10-2-206 or any judicial construction of 10-2-206.

(c) A claim under 10-2-201 through 10-2-206 must be filed within 60 days after the effective date of this act.

NEW SECTION. SECTION 12. CODIFICATION. INSTRUCTION. (1) SECTION 12 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 49, CHAPTER 2, AND THE PROVISIONS OF TITLE 49, CHAPTER 2, APPLY TO SECTION 12.

(2) SECTION 13 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 49, CHAPTER 3, AND THE PROVISIONS OF TITLE 49, CHAPTER 3, APPLY TO SECTION 13.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 2

3  
4 A statement of intent is provided to address the nature  
5 of the employment preference granted in the bill. The  
6 legislature intends that public employers seek and hire the  
7 most qualified persons for positions in public employment.  
8 It is also the intent of the legislature that the nature of  
9 the preference is a relative one in that it is to be applied  
10 among two or more applicants for a position who have  
11 substantially equal qualifications. Substantially equal  
12 qualifications does not mean a situation in which two or  
13 more applicants are exactly equally qualified. It means a  
14 range within which two applicants must be considered to be  
15 substantially equal in view of the qualifications set for  
16 the job. Qualifications should include job-related  
17 knowledge, skills, and abilities. The legislature recognizes  
18 that public employers use a variety of scored and unscored  
19 selection procedures such as conventional written  
20 examinations, training and experience requirements,  
21 performance tests, structured oral interviews, or  
22 combinations of these. The legislature does not intend to  
23 specify the type of selection procedure to be used by a  
24 public employer.

25 A statement of intent is also required for this bill

1 because section 9 requires the department of administration  
2 to adopt rules implementing sections 1 through 10 and to  
3 consult with the department of social and rehabilitation  
4 services in formulating rules for the certification of  
5 handicapped persons.

6 The legislature intends the rules to adequately provide  
7 for the administration of the employment preference law, but  
8 to include only those rules that are reasonably necessary to  
9 implement sections 1 through 10.

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

18 Rules adopted by the department apply to all initial  
19 hirings to positions by all public employers. In formulating  
20 its rules the department should take this into consideration  
21 and adopt rules that can be used and applied by the broad  
22 spectrum of state and local public employers subject to  
23 sections 1 through 10.

24 It is the intent of the legislature that the department  
25 formulate and adopt rules relating, but not limited, to the

1 following matters and take into account the following  
2 considerations.

3 (1) Claiming preference -- documentation and  
4 verification. Rules relating to the job application process  
5 should include the manner in which a preference should be  
6 claimed when a job is applied for. They should prescribe the  
7 means by which the applicant must document and submit  
8 evidence of such things as the applicant's status as a  
9 veteran, disabled veteran, handicapped person, or eligible  
10 spouse, and the requisite residency and citizenship  
11 requirements. It is the intent of the legislature that rules  
12 for claiming and documenting a preference do not place  
13 unreasonable burdens upon applicants and that once an  
14 applicant has substantially complied with the rules, a  
15 public employer should make every reasonable attempt to  
16 verify the existence of the preference.

17 (2) Handicapped persons -- certification. The rules  
18 should provide that a person will not be denied handicapped  
19 status and certification merely because of his current or  
20 former employment, should address the matter of what  
21 constitutes a physical impairment that substantially limits  
22 one or more major life activities, and outline in what  
23 instances a physical impairment limits a person's ability to  
24 obtain, retain, or advance in employment. The department may  
25 wish to do this by a combination of a statement of general

1 principles and specific examples.

2 Rules should provide for a certification process that  
3 allows, when appropriate, permanent certification of those  
4 impairments considered to be permanent in nature. A  
5 procedure for extension or loss of certification should be  
6 provided for those instances in which a handicap is or may  
7 be temporary.

8 (3) Military conflicts. The legislature intends the  
9 rules to apply federal law to determine what constitutes a  
10 campaign or expedition for which a campaign badge is  
11 authorized by the Congress of the United States or  
12 department of defense.

13 (4) Separations and discharges. The legislature  
14 intends the rules to apply federal law and further define  
15 separations under honorable conditions and the various types  
16 of discharges.

17 (5) Hiring decision notices and explanations. The  
18 legislature intends the rules to provide for the form and  
19 content of written notices of hiring decisions, including  
20 whether the position was obtained as the result of  
21 application of the preference by the public employer,  
22 written requests for explanations of hiring decisions, and  
23 written explanations of hiring decisions.

24 (6) Reopening of selection process. The legislature  
25 intends the rules to provide for a method of reopening the



1 selection process for a job should a court order the  
2 selection process reopened; and include a method of giving  
3 notice to those who applied for the job informing them of  
4 the reopening and the reason therefor.

5 (7) Jobs subject to federal law. The legislature  
6 intends the rules to identify or provide a method of  
7 identifying work or positions to which the employment  
8 preference does not apply by virtue of section 10.

SENATE BILL NO. 2

INTRODUCED BY MAZUREK, H. HAMMOND, TVEIT, HAFEEY

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PREFERENCE IN  
PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND  
HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; ~~RECONCILING~~  
~~THE PREFERENCE STATUTES WITH THE HUMAN RIGHTS STATUTES;~~  
AMENDING ~~SECTIONS~~ SECTION 10-2-402, 49-3-103, AND 49-3-201;  
MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA;  
~~PROVIDING FOR PARTIAL RETROACTIVE EFFECT OF THE REPEAL;~~ AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1  
through 10] may be cited as the "Montana Veterans and  
Handicapped Persons Employment Preference Act".

NEW SECTION. Section 2. Purposes. The purposes of  
[sections 1 through 10] are to reward ~~RECOGNIZE~~ veterans for  
service to their country, recognize past employment  
discrimination against handicapped persons, and facilitate  
the habilitation, rehabilitation, and readjustment of  
veterans and handicapped persons.

NEW SECTION. Section 3. Definitions. For the purposes

of [sections 1 through 10], the following definitions apply:

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

(2) "Disabled veteran" means an individual who:

(a) served on active duty;

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

(c) suffers a service-connected disability determined  
by the United States veterans administration to be 30% or  
more disabling.

(3) "Eligible spouse" means:

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

(b) the spouse of:

(i) a veteran determined by the United States veterans  
administration to have a 100% service-connected disability  
who is unable to use his employment preference because of  
his disability;

(ii) a person on active duty determined by the United

1 States government to be missing in action or a prisoner of  
2 war; or

3 (iii) a handicapped person determined by the department  
4 of social and rehabilitation services to have a 100%  
5 disability who is unable to use his employment preference  
6 because of his disability.

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

14 (5) (a) "Initial hiring" means a personnel action for  
15 which applications are solicited from outside the ranks of  
16 the current employees of:

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

19 (ii) a legislative agency, such as the consumer  
20 counsel, environmental quality council, office of the  
21 legislative auditor, legislative council, or office of the  
22 legislative fiscal analyst, for a position within the  
23 legislative branch;

24 (iii) a judicial agency, such as the office of supreme  
25 court administrator, office of supreme court clerk, state

1 law library, or similar office in a state district court for  
2 a position within the judicial branch;

3 ~~{iv}-a-univ.-as-defined-in-20-25-201,--for--a--position~~  
4 ~~within-the-Montana-university-system;~~

5 ~~{v}-the-office-of-commissioner-of-higher-education-for~~  
6 ~~a-position-within-that-office;~~

7 ~~{vi}-a-college-for-a-position-within-that-college;~~

8 ~~{vii}-a-center--or--program--for-a-position-within-the~~  
9 ~~postsecondary-vocational-technical-education-system;~~

10 ~~{viii}~~(IV) a city or town for a municipal position,  
11 including a city or municipal court position; and

12 ~~{ix}~~(V) a county for a county position, including a  
13 justice's court position.

14 (b) A personnel action limited to current employees of  
15 a specific public entity identified in subsections (a)(i)  
16 through (a)~~{ix}~~(V) of this subsection (5), current employees  
17 in a reduction-in-force pool who have been laid off from a  
18 specific public entity identified in subsections (a)(i)  
19 through (a)~~{ix}~~(V) of this subsection (5), or current  
20 participants in a federally authorized employment program is  
21 not an initial hiring.

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

1 (a) a temporary position as defined in 2-18-101 for a  
2 state position or 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, COURT REPORTER, or administrative,  
7 legislative, or 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 (g) engagement as an independent contractor or  
17 employment by an independent contractor.

18 (f) (a) "Public employer" means:

19 (i) any department, office, board, bureau, commission,  
20 agency, college, ~~including a community college,~~  
21 ~~postsecondary vocational technical center or program,~~  
22 university, or other instrumentality of the executive,  
23 judicial, or legislative branch of the government of the  
24 state of Montana; and

25 (ii) any county, city, or town.

1 (b) The term does not include a school district, A  
2 COMMUNITY COLLEGE, A POSTSECONDARY VOCATIONAL-TECHNICAL  
3 CENTER OR PROGRAM, THE BOARD OF REGENTS OF HIGHER EDUCATION,  
4 THE MONTANA UNIVERSITY SYSTEM, a special purpose district,  
5 an authority, or any political subdivision of the state  
6 other than a county, city, or town.

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

13 (9) "Under honorable conditions" means a discharge or  
14 separation from active duty characterized as under honorable  
15 conditions. The term includes honorable discharges and  
16 general discharges but does not include dishonorable  
17 discharges or other administrative discharges characterized  
18 as other than honorable.

19 (10) (a) "Veteran" means a person who:

20 (i) served on active duty during time of war or  
21 declared national emergency or in a campaign or expedition  
22 for which a campaign badge was authorized by the United  
23 States congress or the United States department of defense;  
24 and

25 (ii) has been separated from service under honorable

1 conditions.

2 (b) The term does not include a person--receiving  
3 retirement--pay--from--the--United--States--based--on--length--of  
4 military--service RETIRED MEMBER OF THE UNITED STATES ARMED  
5 FORCES WHO IS ELIGIBLE FOR OR RECEIVING A MILITARY  
6 RETIREMENT ALLOWANCE BASED ON LENGTH OF SERVICE AND DOES NOT  
7 INCLUDE ANY OTHER RETIRED MEMBER OF A PUBLIC RETIREMENT  
8 SYSTEM, EXCEPT SOCIAL SECURITY, THAT IS SUPPORTED IN WHOLE  
9 OR IN PART BY TAX REVENUES.

10 (11) "War or declared national emergency" means:

11 (a) World War I, beginning on April 6, 1917, and  
12 ending on November 11, 1918, both dates inclusive;

13 (b) World War II, beginning on December 7, 1941, and  
14 ending on December 31, 1946, both dates inclusive;

15 (c) the Korean conflict, military expedition, or  
16 police action, beginning on June 27, 1950, and ending on  
17 January 31, 1955, both dates inclusive; and

18 (d) the Vietnam conflict, beginning on August 5, 1964,  
19 and ending on May 7, 1975, both dates inclusive.

20 NEW SECTION. Section 4. Employment preference in  
21 initial hiring. (1) (a) Except as provided in 10-2-402, in  
22 an initial hiring for a position, if a job applicant who is  
23 a veteran, disabled veteran, handicapped person, or eligible  
24 spouse meets the eligibility requirements contained in  
25 [section 5] and claims a preference as required by [section

1 8], a public employer shall hire the applicant over any  
2 other applicant with substantially equal qualifications who  
3 is not a preference eligible applicant.

4 (b) In an initial hiring, a public employer shall hire  
5 a disabled veteran over any other preference eligible  
6 applicant with substantially equal qualifications.

7 (2) The employment preference provided for in  
8 subsection (1) does not apply to a personnel action  
9 described in subsection (5)(b) of [section 3] or to any  
10 other personnel action that is not an initial hiring.

11 NEW SECTION. Section 5. Eligibility requirements. No  
12 veteran, disabled veteran, eligible spouse, or handicapped  
13 person is entitled to receive employment preference as  
14 provided in [section 4] unless:

15 (1) he is a United States citizen;

16 (2) he has resided continuously in the state for at  
17 least 1 year immediately before applying for employment;

18 (3) if applying for municipal or county employment, he  
19 has resided for at least 30 days immediately before applying  
20 for employment in the city, town, or county in which  
21 employment is sought; and

22 (4) he meets those requirements considered necessary  
23 by a public employer to successfully perform the essential  
24 duties of the position for which he is applying.

25 NEW SECTION. Section 6. Certification of handicapped

1 persons. The department of social and rehabilitation  
2 services shall certify persons as handicapped for the  
3 purpose of employment preference as provided in [sections 1  
4 through 10].

5 NEW SECTION. Section 7. Duration of employment  
6 preference. Subject to [section 5]:

7 (1) a handicapped person, the spouse of a handicapped  
8 person as described in subsection (3)(b)(iii) of [section  
9 3], a disabled veteran, or the spouse of a disabled veteran  
10 as described in subsection (3)(b)(i) of [section 3]  
11 qualifies for employment preference as long as the disabling  
12 condition exists;

13 (2) a veteran, as defined in [section 3], who is not a  
14 disabled veteran, as defined in [section 3], qualifies for  
15 employment preference for ~~life. However, once he has~~  
16 ~~obtained a PERMANENT position because of the application of~~  
17 ~~the employment preference he may not use the preference~~  
18 ~~again NO LONGER THAN 10 YEARS FOLLOWING SEPARATION FROM~~  
19 ~~SERVICE OR FOR NO LONGER THAN 10 YEARS FOLLOWING [THE~~  
20 ~~EFFECTIVE DATE OF THIS ACT], WHICHEVER IS LATER.~~

21 (3) the surviving spouse of a veteran as described in  
22 subsection (3)(a) of [section 3] qualifies for employment  
23 preference for as long as the spouse remains unmarried; and

24 (4) the spouse of a person described in subsection  
25 (3)(b)(ii) of [section 3] qualifies for employment

1 preference for as long as the person is missing in action or  
2 a prisoner of war.

3 NEW SECTION. Section 8. Enforcement of preference.  
4 (1) A public employer shall, by posting and QR on the  
5 application form, give notice of the preferences that  
6 [sections 1 through 10] provide in public employment.

7 (2) A job applicant who believes he has an employment  
8 preference shall claim the preference in writing before the  
9 time for filing applications for the position involved has  
10 passed. Failure to make a timely employment preference claim  
11 is a complete defense to an action under subsection (4).

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

16 (4) (a) An applicant who believes he has not been  
17 accorded his rights under [sections 1 through 10] may,  
18 within 30 days of receipt of the notice of the hiring  
19 decision, submit to the public employer a written request  
20 for an explanation of the public employer's hiring decision.  
21 within 15 days of receipt of the request, the public  
22 employer shall give the applicant a written explanation.

23 (b) The applicant may, within 90 days after receipt of  
24 notice of the hiring decision, file a petition in the  
25 district court in the county in which his application was

received by the public employer. The petition must state facts which on their face entitle the applicant to an employment preference.

(c) (i) 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. The public employer has the burden of making a clear showing that the applicant was not substantially equally qualified with the person hired.

(ii) The time to appear provided in subsection (4)(c)(i) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (4)(c)(i), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(iii) If the public employer does not carry its burden of proof under subsection (4)(c)(i), 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 [sections 1 through 10], and a court may not grant any other relief in an action for violation of [sections 1 through 10].

(d) Failure of an applicant to file a petition under subsection (4)(b) within 90 days bars the filing of a

petition. If a public employer fails to provide an explanation under subsection (4)(a) within 15 days and a petition is filed under subsection (4)(b), the court shall order the public employer to reopen the selection process.

(e) The Montana Rules of Civil Procedure apply to a proceeding under this subsection (4) to the extent that they do not conflict with this subsection (4).

**NEW SECTION.** Section 9. Adoption of rules. The department of administration shall adopt rules implementing [sections 1 through 10] and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of [sections 1 through 10]. The department of administration's rules apply to all public employers, local as well as state.

**NEW SECTION.** Section 10. Conflicts with federal law. [Sections 1 through 10] do not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

Section 11. Section 10-2-402, MCA, is amended to read:

"10-2-402. Superintendent to be given veteran's preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall ~~give preference to veterans as defined in 10-2-202~~ apply the

1 preference granted to veterans and disabled veterans, but  
 2 not the preference granted to other persons, by [sections 1  
 3 through 10]."

4 Section 12--Section 49-3-103--MCA--is amended to read:  
 5 "49-3-103--Permitted distinctions--Nothing--in--this  
 6 chapter shall prohibit any public or private employer:

7 (1)--from enforcing a differentiation based on marital  
 8 status--age--or--physical--or--mental--handicap;

9 (a)--when based on the preference provided in [sections  
 10 1 through 10];

11 (b)--when--based--on--a--bona--fide--occupational  
 12 qualification--reasonably--necessary--to--the--normal--operation  
 13 of--the--particular--business; or

14 (c)--where the differentiation is based on reasonable  
 15 factors other than age;

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

22 (3)--from discharging or otherwise disciplining an  
 23 individual for good cause"

24 Section 13--Section 49-3-201--MCA--is amended to read:  
 25 "49-3-201--Employment--of--state--and--local government

1 personnel--(1)--State Except--as--provided--in--[sections--1  
 2 through--10]--state--and--local--government--officials--and  
 3 supervisory personnel shall recruit--appoint--assign--train  
 4 evaluate--and--promote--personnel--on--the--basis--of--merit--and  
 5 qualifications--without--regard--to--race--color--religion  
 6 creed--political--ideas--sex--age--marital--status--physical  
 7 or--mental--handicap--or--national--origins

8 (2)--All--state--and--local--governmental--agencies--shall:  
 9 (a)--promulgate written directives to carry out this  
 10 policy--and--to--guarantee--equal--employment--opportunities--at  
 11 all--levels--of--state--and--local--government;

12 (b)--regularly--review--their--personnel--practices--to  
 13 assure--compliance--and

14 (c)--conduct--continuing--orientation--and--training  
 15 programs--with--emphasis--on--human--relations--and--fair  
 16 employment practices;

17 (3)--The department of administration shall insure that  
 18 the--entire--examination--process--including--appraisal--of  
 19 qualifications--is--free--from--bias;

20 (4)--Appointing--authorities--shall--exercise--care--to  
 21 insure--utilization--of--minority--group--persons;"

22 NEW SECTION. SECTION 12. THE APPLICATION OF AN  
 23 EMPLOYMENT PREFERENCE AS PROVIDED FOR IN [SECTIONS 1 THROUGH  
 24 10] AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN [SECTION  
 25 3] MAY NOT BE CONSTRUED TO CONSTITUTE A VIOLATION OF THIS



1 CHAPTER.  
2 NEW SECTION. SECTION 13. THE APPLICATION OF AN  
3 EMPLOYMENT PREFERENCE AS PROVIDED FOR IN [SECTIONS 1 THROUGH  
4 10] AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN [SECTION  
5 3] MAY NOT BE CONSTRUED TO CONSTITUTE A VIOLATION OF THIS  
6 CHAPTER.

7 NEW SECTION. SECTION 14. SUBMISSION OF DATA. EACH  
8 PUBLIC EMPLOYER SHALL SUBMIT TO EACH REGULAR SESSION OF THE  
9 LEGISLATURE A REPORT CONTAINING DATA REGARDING VETERANS'  
10 EMPLOYMENT UNDER THE PROVISIONS OF THIS ACT.

11 NEW SECTION. Section 15. Repealer. Subject to section  
12 16(3)(a) of this act, sections 10-2-201 through 10-2-206  
13 ~~NEA~~ are repeated. SECTIONS 10-2-201 THROUGH 10-2-206, MCA,  
14 ARE REPEALED. THIS REPEAL APPLIES RETROACTIVELY TO BAR ANY  
15 CLAIM OF VIOLATION OR APPLICATION OF 10-2-201 THROUGH  
16 10-2-206 THAT HAS NOT BEEN REDUCED TO JUDGMENT, WHETHER OR  
17 NOT THE JUDGMENT IS FINAL, ON [THE EFFECTIVE DATE OF THIS  
18 ACT]. CLAIMS UNDER 10-2-201 THROUGH 10-2-206 THAT HAVE BEEN  
19 REDUCED TO JUDGMENT, WHETHER OR NOT THE JUDGMENT IS FINAL,  
20 ON [THE EFFECTIVE DATE OF THIS ACT] ARE ENFORCEABLE. NO  
21 CLAIM FOR A VIOLATION OF 10-2-201 THROUGH 10-2-206 MAY BE  
22 MADE UNDER [SECTION 8] OF THIS ACT.

23 NEW SECTION. Section 16. Severability. If a part of  
24 this act is invalid, all valid parts that are severable from  
25 the invalid part remain in effect. If a part of this act is

1 invalid in one or more of its applications, the part remains  
2 in effect in all valid applications that are severable from  
3 the invalid applications.

4 NEW SECTION. Section 17. Effective date --  
5 applicability ---saving clause. (1) This act is effective on  
6 passage and approval.

7 (2) Except as provided in subsection (3)(b) SECTION 14  
8 15, this act applies only to positions that are filled after  
9 the effective date of this act.

10 (3)(a)---Subject---to---the---applicobte---statute---of  
11 limitations and to subsection (3)(c)---a claim for---violation  
12 of---10-2-201---through---10-2-206, whether or not it is pending  
13 in court on the effective date of this act, may be pursued  
14 under and must be governed by 10-2-201 through 10-2-206.

15 (b)---However---the only relief that may be granted on a  
16 claim described in subsection (3)(a)---is---that---provided---in  
17 section 8(4)(c)(iii) of this act, and the court may grant no  
18 other---relief---including---that---provided---in---10-2-206 or any  
19 judicial construction of 10-2-206.

20 (c)---A claim under 10-2-201 through 10-2-206---must---be  
21 filed---within---60 days after the effective date of this act.

22 NEW SECTION. SECTION 18. CODIFICATION INSTRUCTION.  
23 (1) SECTION 12 IS INTENDED TO BE CODIFIED AS AN INTEGRAL  
24 PART OF TITLE 49, CHAPTER 2, AND THE PROVISIONS OF TITLE 49,  
25 CHAPTER 2, APPLY TO SECTION 12.

1        (2) SECTION 13 IS INTENDED TO BE CODIFIED AS AN  
2        INTEGRAL PART OF TITLE 49, CHAPTER 3, AND THE PROVISIONS OF  
3        TITLE 49, CHAPTER 3, APPLY TO SECTION 13.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 2

3  
4 (Strike entire statement of intent and insert:)

5 A statement of intent is provided to address the nature  
6 of the employment preference granted in the bill. The  
7 legislature intends that public employers seek and hire the  
8 most qualified persons for positions in public employment.  
9 It is also the intent of the legislature that the nature of  
10 the preference is a relative one in that it is to be applied  
11 as a "tie breaker" among two or more applicants for a  
12 position who have substantially equal qualifications.  
13 Substantially equal qualifications does not mean a situation  
14 in which two or more applicants are exactly equally  
15 qualified. It means a range within which two applicants must  
16 be considered to be substantially equal in view of the  
17 qualifications set for the job. WHERE APPLICABLE ON SCORED  
18 EXAMS OR STRUCTURED INTERVIEWS, THE RANGE FOR SUBSTANTIALLY  
19 EQUAL WILL BE WITHIN 5 PERCENTAGE POINTS. Qualifications  
20 should include job-related knowledge, skill, and abilities.  
21 The legislature recognizes that public employers use a  
22 variety of scored and unscored selection procedures such as  
23 conventional written examinations, training and experience  
24 requirements, performance tests, structured oral interviews,  
25 or combinations of these. The legislature does not intend to

1 specify the type of selection procedure to be used by a  
2 public employer.

3 A statement of intent is also required for this bill  
4 because section 9 requires the department of administration  
5 to adopt rules implementing sections 1 through 10 and to  
6 consult with the department of social and rehabilitation  
7 services in formulating rules for the certification of  
8 handicapped persons.

9 The legislature intends the rules to adequately provide  
10 for the administration of the employment preference law, but  
11 to include only those rules that are reasonably necessary to  
12 implement sections 1 through 10.

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

21 Rules adopted by the department apply to all initial  
22 hirings to positions by all public employers. In formulating  
23 its rules the department should take this into consideration  
24 and adopt rules that can be used and applied by the broad  
25 spectrum of state and local public employers subject to

1 sections 1 through 10.

2 It is the intent of the legislature that the department  
3 formulate and adopt rules relating, but not limited, to the  
4 following matters and take into account the following  
5 considerations.

6 (1) Claiming preference -- documentation and  
7 verification. Rules relating to the job application process  
8 should include the manner in which a preference should be  
9 claimed when a job is applied for. They should prescribe the  
10 means by which the applicant must document and submit  
11 evidence of such things as the applicant's status as a  
12 Montana resident when he entered the service, veteran,  
13 disabled veteran, handicapped person, or eligible spouse.  
14 It is the intent of the legislature that rules for claiming  
15 and documenting a preference do not place unreasonable  
16 burdens upon applicants.

17 (2) Handicapped persons -- certification. The rules  
18 should provide that a person will not be denied handicapped  
19 status and certification merely because of his current or  
20 former employment, should address the matter of what  
21 constitutes a physical or mental impairment that  
22 substantially limits one or more major life activities, and  
23 outline in what instances a physical or mental impairment  
24 limits a person's ability to obtain, retain, or advance in  
25 employment. The department may wish to do this by a

1 combination of a statement of general principles and  
2 specific examples.

3 Rules should provide for a certification process that  
4 allows, when appropriate, permanent certification of those  
5 impairments considered to be permanent in nature. A  
6 procedure for extension or loss of certification should be  
7 provided for those instances in which a handicap is or may  
8 be temporary.

9 (3) Military conflicts. The legislature intends the  
10 rules to apply federal law to determine what constitutes a  
11 campaign or expedition for which a campaign badge is  
12 authorized by the Congress of the United States or  
13 department of defense.

14 (4) Honorable discharges. The legislature intends the  
15 rules to apply federal law in defining honorable discharges.

16 (5) Hiring decision notices and explanations. The  
17 legislature intends the rules to provide for the form and  
18 content of written notices of hiring decisions, including  
19 whether the position was obtained as the result of  
20 application of the preference by the public employer,  
21 written requests for explanations of hiring decisions, and  
22 written explanations of hiring decisions.

23 (6) Reopening of selection process. The legislature  
24 intends the rules to provide for a method of reopening the  
25 selection process for a job should a court order the

1 selection process reopened, and include a method of giving  
2 notice to those who applied for the job informing them of  
3 the reopening and the reason therefor.

4 (7) Jobs subject to federal law. The legislature  
5 intends the rules to identify or provide a method of  
6 identifying work or positions to which the employment  
7 preference does not apply by virtue of section 10.

SENATE BILL NO. 2

INTRODUCED BY MAZUREK, H. HAMMOND, TVEIT, HAFLEY  
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PREFERENCE IN  
PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND  
HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; RECONCILING  
THE PREFERENCE STATUTES WITH THE HUMAN RIGHTS STATUTES;  
AMENDING SECTIONS SECTION 10-2-402, ~~49-3-103~~, AND ~~49-3-201~~;  
MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA;  
PROVIDING FOR PARTIAL RETROACTIVE EFFECT OF THE REPEAL; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1  
through 10] may be cited as the "Montana Veterans and  
Handicapped Persons Employment Preference Act".

NEW SECTION. Section 2. Purposes. (1) The purposes of  
[sections 1 through 10] are to reward ~~RECOGNIZE~~ veterans AND  
~~DISABLED VETERANS~~ for service to their country; recognize  
past employment discrimination against handicapped persons;  
and facilitate the habilitation, rehabilitation, and  
readjustment of veterans, ~~DISABLED VETERANS~~, and handicapped  
persons.

~~(2) THE PROVISIONS OF [SECTIONS 1 THROUGH 8], EXCEPT  
FOR COSTS AND ATTORNEY FEES, ARE INTENDED TO REMEDY THE  
UNCERTAINTY, HINDRANCES, BURDEN ON THE COURTS, BURDEN ON THE  
STATE TREASURY, AND PUBLIC CONCERN CAUSED BY THE  
INTERPRETATION OF THE FORMER PREFERENCE PROVISIONS IN  
CONFLICT WITH LONG-ESTABLISHED CUSTOMS AND PRACTICES BY  
PUBLIC HIRING AUTHORITIES. IT IS THE LEGISLATURE'S FINDING  
THAT THE PROVISIONS OF [SECTIONS 1 THROUGH 8], EXCEPT FOR  
COSTS AND ATTORNEY FEES, DECLARE THE ORIGINAL INTENT OF  
10-2-201 THROUGH 10-2-206.~~

NEW SECTION. Section 3. Definitions. For the purposes  
of [sections 1 through 10], the following definitions apply:

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

(2) "Disabled veteran" means an individual, ~~WHETHER OR  
NOT HE IS A VETERAN AS DEFINED IN THIS SECTION~~, who:

(a) served on active duty;

(b) has been separated from service under honorable  
conditions BY HONORABLE DISCHARGE; and

(c) suffers a service-connected disability AS

determined by the United States veterans administration to be ~~30% or more disabling.~~

(3) "Eligible spouse" means:

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

(b) the spouse of:

(i) a DISABLED veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(4) "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 which limits the individual's ability to obtain, retain, or advance in employment.

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

(i) a department, as defined in 2-15-102, for a position within the executive 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 unit as defined in 20-25-201 for a position within the Montana university system;~~

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

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

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

(IV) A UNIT, AS DEFINED IN 20-25-201, FOR A POSITION WITHIN THE MONTANA UNIVERSITY SYSTEM;

(V) THE OFFICE OF COMMISSIONER OF HIGHER EDUCATION FOR A POSITION WITHIN THAT OFFICE;

1 (VI) A COLLEGE FOR A POSITION WITHIN THAT COLLEGE;

2 ~~(viii) a city or town for a municipal~~  
3 ~~position, including a city or municipal court position; and~~

4 ~~(ix) a county for a county position, including~~  
5 ~~a justice's court position.~~

6 (b) A personnel action limited to current employees of  
7 a specific public entity identified in subsections (a)(i)  
8 through (a)~~(ix)(viii)~~ of this subsection (5), current  
9 employees in a reduction-in-force pool who have been laid  
10 off from a specific public entity identified in subsections  
11 (a)(i) through (a)~~(ix)(viii)~~ of this subsection (5), or  
12 current participants in a federally authorized employment  
13 program is not an initial hiring.

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

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

21 (b) a state or local elected official;

22 (c) employment as an elected official's immediate  
23 secretary, legal advisor, COURT REPORTER, or administrative,  
24 legislative, or other immediate or first-line aide;

25 (d) appointment by an elected official to a body such

1 as a board, commission, committee, or council;

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

4 (f) a department head appointment by the governor or  
5 an executive department head appointment by a mayor, city  
6 manager, county commissioner, or other chief administrative  
7 or executive officer of a local government; or

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

10 (7) (a) "Public employer" means:

11 (i) any department, office, board, bureau, commission,  
12 agency, ~~college---including---a---community---college~~  
13 ~~postsecondary---vocational-technical---center---or---program~~  
14 ~~university~~, COLLEGE, INCLUDING A COMMUNITY COLLEGE,  
15 UNIVERSITY, or other instrumentality of the executive,  
16 judicial, or legislative branch of the government of the  
17 state of Montana; and

18 (ii) any county, city, or town.

19 (b) The term does not include a school district, a  
20 ~~COMMUNITY-COLLEGE, A POSTSECONDARY VOCATIONAL-TECHNICAL~~  
21 ~~CENTER OR PROGRAM, THE BOARD OF REGENTS OF HIGHER EDUCATION,~~  
22 ~~THE MONTANA UNIVERSITY SYSTEM,~~ a special purpose district,  
23 an authority, or any political subdivision of the state  
24 other than a county, city, or town.

25 (8) "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. IN A SCORED SELECTION PROCEDURE THE RANGE FOR SUBSTANTIALLY EQUAL WILL BE WITHIN 5 PERCENTAGE POINTS.

~~{9}--"Under-honorable-conditions"--means-a-discharge--or separation-from-active-duty-characterized-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~~

~~{10}{21}~~ (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

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

(b) The term does not include a person receiving retirement pay from the United States based on length of military service. RETIRED MEMBER OF A REGULAR COMPONENT OF THE UNITED STATES ARMED FORCES WHO IS ELIGIBLE FOR OR RECEIVING A MILITARY RETIREMENT ALLOWANCE BASED ON LENGTH OF

SERVICE AND DOES NOT INCLUDE ANY OTHER RETIRED MEMBER OF A PUBLIC RETIREMENT SYSTEM, EXCEPT SOCIAL SECURITY, THAT IS SUPPORTED IN WHOLE OR IN PART BY TAX REVENUES.

~~{11}{101}~~ "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

NEW SECTION. Section 4. 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 veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in [section 5] and claims a preference as required by [section 8], 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 disabled veteran OR HANDICAPPED PERSON over any other preference eligible applicant with substantially equal

1 qualifications.

2 (2) The employment preference provided for in  
3 subsection (1) does not apply to a personnel action  
4 described in subsection (5)(b) of [section 3] or to any  
5 other personnel action that is not an initial hiring.

6 NEW SECTION. Section 5. Eligibility requirements. (1)  
7 No veteran, disabled veteran, eligible spouse, or  
8 handicapped person is entitled to receive employment  
9 preference as provided in [section 4] unless:

10 (1) ~~he is a United States citizen~~

11 (2) ~~he has resided continuously in the state for at~~  
12 ~~least 1 year immediately before applying for employment~~

13 (3) ~~if applying for municipal or county employment he~~  
14 ~~has resided for at least 30 days immediately before applying~~  
15 ~~for employment in the city, town, or county in which~~  
16 ~~employment is sought and~~

17 (4) he meets those requirements considered necessary  
18 by a public employer to successfully perform the essential  
19 duties of the position for which he is applying.

20 (2) IN ADDITION TO THE ELIGIBILITY REQUIREMENT  
21 PROVIDED IN SUBSECTION (1), ANY VETERAN WHOSE SERVICE IN THE  
22 ARMED FORCES FORMS THE BASIS OF AN EMPLOYMENT PREFERENCE  
23 UNDER [SECTIONS 1 THROUGH 10] MUST HAVE CLAIMED MONTANA AS  
24 HIS HOME OF RECORD AT ENTRY INTO THE ARMED FORCES, AS  
25 INDICATED ON HIS CERTIFICATE OF RELEASE OR DISCHARGE FROM

1 ACTIVE DUTY (DD FORM 214).

2 NEW SECTION. Section 6. Certification of handicapped  
3 persons. The department of social and rehabilitation  
4 services shall certify persons as handicapped for the  
5 purpose of employment preference as provided in [sections 1  
6 through 10].

7 NEW SECTION. Section 7. Duration of employment  
8 preference. Subject to [section 5]:

9 (1) a handicapped person, the spouse of a handicapped  
10 person as described in subsection (3)(b)(iii) of [section  
11 3], a disabled veteran, or the spouse of a disabled veteran  
12 as described in subsection (3)(b)(i) of [section 3]  
13 qualifies for employment preference as long as the disabling  
14 condition exists;

15 (2) a veteran, as defined in [section 3], who is not a  
16 disabled veteran, as defined in [section 3], qualifies for  
17 employment preference for ~~life~~. ~~However, once he has~~  
18 ~~obtained a PERMANENT position because of the application of~~  
19 ~~the employment preference, he may not use the preference~~  
20 ~~again NO LONGER THAN 10 YEARS FOLLOWING SEPARATION FROM~~  
21 ~~SERVICE OR FOR NO LONGER THAN 10 5 10 YEARS FOLLOWING [THE~~  
22 ~~EFFECTIVE DATE OF THIS ACT], WHICHEVER IS LATER.~~

23 (3) the surviving spouse of a veteran as described in  
24 subsection (3)(a) of [section 3] qualifies for employment  
25 preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of [section 3] qualifies for employment preference for as long as the person is missing in action or a prisoner of war.

NEW SECTION. Section 8. Enforcement of preference.

(1) A public employer shall, by posting and ~~OR~~ on the application form, give notice of the preferences that [sections 1 through 10] provide in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim ~~FOR A POSITION~~ is a complete defense to an action IN REGARD TO THAT POSITION under subsection (4).

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

(4) (a) An applicant who believes he has not been accorded his rights under [sections 1 through 10] may, within 30 days of receipt of the notice of the hiring decision, 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.

(b) 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 which on their face entitle the applicant to an employment preference.

(c) (i) 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. ~~The~~ AT THE HEARING, THE public employer has the burden of ~~making-a-clear-showing-that-the~~ applicant-was-not-substantially-equally-qualified-with-the person-hired PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE EMPLOYER MADE A REASONABLE DETERMINATION PURSUANT TO SUBSECTION (1) OF [SECTION 3], AND THE APPLICANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS A PREFERENCE ELIGIBLE APPLICANT.

(ii) The time to appear provided in subsection (4)(c)(i) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (4)(c)(i), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(iii) If the public employer does not carry its burden of proof under subsection (4)(c)(i) AND THE COURT HAS FOUND

1 ~~THAT THE APPLICANT IS A PREFERENCE ELIGIBLE APPLICANT,~~ the  
 2 court shall order the public employer to reopen the  
 3 selection process for the position involved and shall grant  
 4 the applicant reasonable attorney fees and court costs. The  
 5 remedy provided by this section is the only remedy for a  
 6 violation of [sections 1 through 10], and a court may not  
 7 grant any other relief in an action for violation of  
 8 [sections 1 through 10].

9 (d) Failure of an applicant to file a petition under  
 10 subsection (4)(b) within 90 days bars the filing of a  
 11 petition. If a public employer fails to provide an  
 12 explanation under subsection (4)(a) within 15 days and a  
 13 petition is filed under subsection (4)(b), the court shall  
 14 order the public employer to reopen the selection process.

15 (e) The Montana Rules of Civil Procedure apply to a  
 16 proceeding under this subsection (4) to the extent that they  
 17 do not conflict with this subsection (4).

18 NEW SECTION. Section 9. Adoption of rules. The  
 19 department of administration shall adopt rules implementing  
 20 [sections 1 through 10] and shall consult with the  
 21 department of social and rehabilitation services in adopting  
 22 rules governing certification of handicapped persons for  
 23 purposes of [sections 1 through 10]. The department of  
 24 administration's rules apply to all public employers, local  
 25 as well as state.

1 NEW SECTION. Section 10. Conflicts with federal law.  
 2 [Sections 1 through 10] do not apply to work or positions  
 3 subject to federal laws or regulations if application of the  
 4 employment preference conflicts with those laws or  
 5 regulations.

6 Section 11. Section 10-2-402, MCA, is amended to read:  
 7 "10-2-402. Superintendent to be given veteran's  
 8 preference. In the selection of the superintendent of the  
 9 Montana veterans' home, the department of institutions shall  
 10 ~~give preference to veterans as defined in 10-2-202 apply the~~  
 11 ~~preference granted to veterans and disabled veterans, but~~  
 12 ~~not the preference granted to other persons, by [sections 1~~  
 13 ~~through 10]."~~

14 ~~Section 12. Section 49-3-103, MCA, is amended to read:~~  
 15 ~~"49-3-103. Permitted distinctions. Nothing in this~~  
 16 ~~chapter shall prohibit any public or private employer~~

17 ~~(1) from enforcing a differentiation based on marital~~  
 18 ~~status, age, or physical or mental handicap~~

19 ~~(2) when based on the preference provided in [sections~~  
 20 ~~1 through 10]~~

21 ~~(3) when based on a bona fide occupational~~  
 22 ~~qualification reasonably necessary to the normal operation~~  
 23 ~~of the particular business; or~~

24 ~~(4) where the differentiation is based on reasonable~~  
 25 ~~factors other than age~~

~~(2) 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, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or~~

~~(3) from discharging or otherwise disciplining an individual for good cause.~~

~~Section 13. Section 49-3-201, MCA, is amended to read:~~  
~~"49-3-201. Employment of state and local government personnel--(1) State Except as provided in sections 1 through 10, state and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.~~

~~(2) All state and local government agencies shall:~~

~~(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;~~

~~(b) regularly review their personnel practices to assure compliance; and~~

~~(c) conduct continuing orientation and training programs with emphasis on human relations and fair~~

employment practices.

~~(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.~~

~~(4) Appointing authorities shall exercise care to insure utilization of minority group persons.~~

~~NEW SECTION. SECTION 12. THE APPLICATION OF AN EMPLOYMENT PREFERENCE AS PROVIDED FOR IN SECTIONS 1 THROUGH 10 AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN SECTION 31 MAY NOT BE CONSTRUED TO CONSTITUTE A VIOLATION OF THIS CHAPTER.~~

~~NEW SECTION. SECTION 13. THE APPLICATION OF AN EMPLOYMENT PREFERENCE AS PROVIDED FOR IN SECTIONS 1 THROUGH 10 AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN SECTION 31 MAY NOT BE CONSTRUED TO CONSTITUTE A VIOLATION OF THIS CHAPTER.~~

~~NEW SECTION. SECTION 14. SUBMISSION OF DATA--EACH PUBLIC EMPLOYER SHALL SUBMIT TO EACH REGULAR SESSION OF THE LEGISLATURE A REPORT CONTAINING DATA REGARDING VETERANS' EMPLOYMENT UNDER THE PROVISIONS OF THIS ACT.~~

~~NEW SECTION. Section 14. Repealer. Subject to section 16(3)(a) of this act, sections 10-2-201 through 10-2-206, MCA, are repealed. SECTIONS 10-2-201 THROUGH 10-2-206, MCA, ARE REPEALED. THIS REPEAL APPLIES RETROACTIVELY TO BAR ANY CLAIM OF VIOLATION OR APPLICATION OF 10-2-201 THROUGH~~

1 ~~10-2-206 THAT HAS NOT BEEN REDUCED TO JUDGMENT, WHETHER OR~~  
 2 ~~NOT THE JUDGMENT IS FINAL, ON [THE EFFECTIVE DATE OF THIS~~  
 3 ~~ACT], CLAIMS UNDER 10-2-201 THROUGH 10-2-206 THAT HAVE BEEN~~  
 4 ~~REDUCED TO JUDGMENT, WHETHER OR NOT THE JUDGMENT IS FINAL,~~  
 5 ~~ON [THE EFFECTIVE DATE OF THIS ACT] ARE ENFORCEABLE. NO~~  
 6 ~~CLAIM FOR A VIOLATION OF 10-2-201 THROUGH 10-2-206 MAY BE~~  
 7 ~~MADE UNDER [SECTION 8] OF THIS ACT.~~

8 NEW SECTION. Section 15. Severability. If a part of  
 9 this act is invalid, all valid parts that are severable from  
 10 the invalid part remain in effect. If a part of this act is  
 11 invalid in one or more of its applications, the part remains  
 12 in effect in all valid applications that are severable from  
 13 the invalid applications.

14 NEW SECTION. Section 16. Effective date --  
 15 applicability ---savings-clause. (1) This act is effective on  
 16 passage and approval.

17 (2) Except as provided in ~~subsection (3)(b)~~ SECTION 14  
 18 ~~15~~ 14, this act applies only to positions that are filled  
 19 after the effective date of this act.

20 ~~(3)(a) Subject to the applicable statute of~~  
 21 ~~limitations and to subsection (3)(c), a claim for violation~~  
 22 ~~of 10-2-201 through 10-2-206, whether or not it is pending~~  
 23 ~~in court on the effective date of this act, may be pursued~~  
 24 ~~under and must be governed by 10-2-201 through 10-2-206.~~

25 ~~(b) However, the only relief that may be granted on a~~

1 ~~claim described in subsection (3)(a) is that provided in~~  
 2 ~~section 8(4)(c)(iii) of this act, and the court may grant no~~  
 3 ~~other relief, including that provided in 10-2-206 or any~~  
 4 ~~judicial construction of 10-2-206.~~

5 ~~(c) A claim under 10-2-201 through 10-2-206 must be~~  
 6 ~~filed within 60 days after the effective date of this act.~~

7 NEW SECTION. SECTION 17. CODIFICATION INSTRUCTION.  
 8 (1) SECTION 12 IS INTENDED TO BE CODIFIED AS AN INTEGRAL  
 9 PART OF TITLE 49, CHAPTER 2, AND THE PROVISIONS OF TITLE 49,  
 10 CHAPTER 2, APPLY TO SECTION 12.

11 (2) SECTION 13 IS INTENDED TO BE CODIFIED AS AN  
 12 INTEGRAL PART OF TITLE 49, CHAPTER 3, AND THE PROVISIONS OF  
 13 TITLE 49, CHAPTER 3, APPLY TO SECTION 13.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 2

3  
4 (Strike entire statement of intent and insert:)5 A statement of intent is provided to address the nature  
6 of the employment preference granted in the bill. The  
7 legislature intends that public employers seek and hire the  
8 most qualified persons for positions in public employment.9 It is also the intent of the legislature that the nature of  
10 the preference is a relative one in that it is to be applied  
11 as a "tie-breaker" among two or more applicants for a  
12 position who have substantially equal qualifications.  
13 Substantially equal qualifications does not mean a situation  
14 in which two or more applicants are exactly equally  
15 qualified. It means a range within which two applicants must  
16 be considered to be substantially equal in view of the  
17 qualifications set for the job. ~~WHERE APPLICABLE ON SCORED~~18 ~~EXAMS OR STRUCTURED INTERVIEWS, THE RANGE FOR SUBSTANTIALLY~~  
19 ~~EQUAL WILL BE WITHIN 5 PERCENTAGE POINTS.~~ Qualifications  
20 should include job-related knowledge, skill, and abilities.21 The legislature recognizes that public employers use a  
22 variety of scored and unscored selection procedures such as  
23 conventional written examinations, training and experience  
24 requirements, performance tests, structured oral interviews,  
25 or combinations of these. The legislature does not intend to1 specify the type of selection procedure to be used by a  
2 public employer.3 A statement of intent is also required for this bill  
4 because section 9 requires the department of administration  
5 to adopt rules implementing sections 1 through 10 and to  
6 consult with the department of social and rehabilitation  
7 services in formulating rules for the certification of  
8 handicapped persons.9 The legislature intends the rules to adequately provide  
10 for the administration of the employment preference law, but  
11 to include only those rules that are reasonably necessary to  
12 implement sections 1 through 10.13 It is the desire of the legislature that the department  
14 take all necessary steps in formulating, proposing, and  
15 adopting rules to ensure that the public, particularly those  
16 persons and organizations that have shown past interest in  
17 the employment preference law, is afforded sufficient time  
18 and opportunity to participate in the rulemaking procedure.  
19 The department should give such notice and hold such  
20 hearings as will ensure adequate public participation.21 Rules adopted by the department apply to all initial  
22 hirings to positions by all public employers. In formulating  
23 its rules the department should take this into consideration  
24 and adopt rules that can be used and applied by the broad  
25 spectrum of state and local public employers subject to

1 sections 1 through 10.

2 It is the intent of the legislature that the department  
3 formulate and adopt rules relating, but not limited, to the  
4 following matters and take into account the following  
5 considerations.

6 (1) Claiming preference -- documentation and  
7 verification. Rules relating to the job application process  
8 should include the manner in which a preference should be  
9 claimed when a job is applied for. They should prescribe the  
10 means by which the applicant must document and submit  
11 evidence of such things as the applicant's status as a  
12 Montana resident ~~when--he--entered--the--service,~~ veteran,  
13 disabled veteran, handicapped person, or eligible spouse.  
14 It is the intent of the legislature that rules for claiming  
15 and documenting a preference do not place unreasonable  
16 burdens upon applicants.

17 (2) Handicapped persons -- certification. The rules  
18 should provide that a person will not be denied handicapped  
19 status and certification merely because of his current or  
20 former employment, should address the matter of what  
21 constitutes a physical or mental impairment that  
22 substantially limits one or more major life activities, and  
23 outline in what instances a physical or mental impairment  
24 limits a person's ability to obtain, retain, or advance in  
25 employment. The department may wish to do this by a

1 combination of a statement of general principles and  
2 specific examples.

3 Rules should provide for a certification process that  
4 allows, when appropriate, permanent certification of those  
5 impairments considered to be permanent in nature. A  
6 procedure for extension or loss of certification should be  
7 provided for those instances in which a handicap is or may  
8 be temporary.

9 (3) Military conflicts. The legislature intends the  
10 rules to apply federal law to determine what constitutes a  
11 campaign or expedition for which a campaign badge is  
12 authorized by the Congress of the United States or  
13 department of defense.

14 (4) Honorable discharges. The legislature intends the  
15 rules to apply federal law in defining honorable discharges.

16 (5) Hiring decision notices and explanations. The  
17 legislature intends the rules to provide for the form and  
18 content of written notices of hiring decisions, including  
19 whether the position was obtained as the result of  
20 application of the preference by the public employer,  
21 written requests for explanations of hiring decisions, and  
22 written explanations of hiring decisions.

23 (6) Reopening of selection process. The legislature  
24 intends the rules to provide for a method of reopening the  
25 selection process for a job should a court order the



1 selection process reopened, and include a method of giving  
2 notice to those who applied for the job informing them of  
3 the reopening and the reason therefor.

4 (7) Jobs subject to federal law. The legislature  
5 intends the rules to identify or provide a method of  
6 identifying work or positions to which the employment  
7 preference does not apply by virtue of section 10.

SENATE BILL NO. 2

INTRODUCED BY MAZUREK, H. HAMMOND, TVEIT, HAFNEY  
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PREFERENCE IN  
PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND  
HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; RECONCILING  
THE PREFERENCE STATUTES WITH THE HUMAN RIGHTS STATUTES;  
AMENDING ~~SECTIONS~~ SECTION 10-2-402, 49-3-103, AND 49-3-201  
MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA;  
PROVIDING FOR PARTIAL RETROACTIVE EFFECT OF THE REPEAL; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1  
through 10] may be cited as the "Montana Veterans and  
Handicapped Persons Employment Preference Act".

NEW SECTION. Section 2. Purposes. ~~It~~ The purposes of  
[sections 1 through 10] are to reward RECOGNIZE veterans AND  
DISABLED VETERANS for service to their country, recognize  
past employment discrimination against handicapped persons,  
and facilitate the habilitation, rehabilitation, and  
readjustment of veterans, DISABLED VETERANS, and handicapped  
persons.

~~(2) THE PROVISIONS OF [SECTIONS 1 THROUGH 10], EXCEPT  
FOR COSTS AND ATTORNEY FEES, ARE INTENDED TO REMEDY THE  
UNCERTAINTY, UNIFORMITY, BURDEN ON THE COURTS, BURDEN ON THE  
STATE TREASURY, AND PUBLIC CONCERN CAUSED BY THE  
INTERPRETATION OF THE FORMER PREFERENCE PROVISIONS IN  
CONFLICT WITH LONG ESTABLISHED CUSTOMS AND PRACTICES BY  
PUBLIC HIRING AUTHORITIES. IT IS THE LEGISLATURE'S FINDING  
THAT THE PROVISIONS OF [SECTIONS 1 THROUGH 10], EXCEPT FOR  
COSTS AND ATTORNEY FEES, REELECT THE ORIGINAL INTENT OF  
10-2-201 THROUGH 10-2-206.~~

NEW SECTION. Section 3. Definitions. For the purposes  
of [sections 1 through 10], the following definitions apply:

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

(2) "Disabled veteran" means an individual, WHETHER OR  
NOT HE IS A VETERAN AS DEFINED IN THIS SECTION, who:

- (a) served on active duty;
- (b) has been separated from service under honorable  
conditions BY HONORABLE DISCHARGE; and
- (c) suffers a service-connected disability AS

1 determined by the United States veterans administration to  
2 ~~be 30% or more disabling TO BE 30% OR MORE DISABLING.~~

3 (3) "Eligible spouse" means:

4 (a) the unremarried surviving spouse of a veteran who  
5 died while on active duty or whose death resulted from a  
6 service-connected disability; or

7 (b) the spouse of:

8 (i) a DISABLED veteran determined by the United States  
9 veterans administration to have a 100% service-connected  
10 disability who is unable to use his employment preference  
11 because of his disability;

12 (ii) a person on active duty determined by the United  
13 States government to be missing in action or a prisoner of  
14 war; or

15 (iii) a handicapped person determined by the department  
16 of social and rehabilitation services to have a 100%  
17 disability who is unable to use his employment preference  
18 because of his disability.

19 (4) "Handicapped person" means an individual certified  
20 by the department of social and rehabilitation services to  
21 have a physical OR MENTAL impairment that substantially  
22 limits one or more major life activities, such as writing,  
23 seeing, hearing, speaking, or mobility, and which limits the  
24 individual's ability to obtain, retain, or advance in  
25 employment.

1 (5) (a) "Initial hiring" means a personnel action for  
2 which applications are solicited from outside the ranks of  
3 the current employees of:

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

6 (ii) a legislative agency, such as the consumer  
7 counsel, environmental quality council, office of the  
8 legislative auditor, legislative council, or office of the  
9 legislative fiscal analyst, for a position within the  
10 legislative branch;

11 (iii) a judicial agency, such as the office of supreme  
12 court administrator, office of supreme court clerk, state  
13 law library, or similar office in a state district court for  
14 a position within the judicial branch;

15 ~~(iv) a unit as defined in 20-25-201 for a position~~  
16 ~~within the Montana university system;~~

17 ~~(v) the office of commissioner of higher education for~~  
18 ~~a position within that office;~~

19 ~~(vi) a college for a position within that college;~~

20 ~~(vii) a center or program for a position within the~~  
21 ~~postsecondary vocational technical education system;~~

22 ~~(iv) a unit as defined in 20-25-201 for a position~~  
23 ~~within the Montana university system;~~

24 ~~(v) the office of commissioner of higher education for~~  
25 ~~a position within that office;~~

~~(vii) a college for a position within that college;~~

~~(viii) a city or town for a municipal position, including a city or municipal court position; and~~  
~~(ix) 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)~~(ix)~~~~(viii)~~(v) of this subsection (5), 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)~~(ix)~~~~(viii)~~(v) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring.

(c) "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; or

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

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

(i) any department, office, board, bureau, commission, agency, ~~college~~~~including a community college,~~ ~~postsecondary vocational technical center or program,~~ ~~university,~~ ~~college,~~ ~~including a community college,~~ ~~university,~~ 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 community college, a postsecondary vocational technical center or program, the board of regents of higher education,~~ ~~the Montana university system, 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,

1 city, or town.

2 (8) "Substantially equal qualifications" means the  
3 qualifications of two or more persons among whom the public  
4 employer cannot make a reasonable determination that the  
5 qualifications held by one person are significantly better  
6 suited for the position than the qualifications held by the  
7 other persons. ~~IN A SCORED SELECTION PROCEDURE THE RANGE FOR~~  
8 ~~SUBSTANTIALLY EQUAL WILL BE WITHIN 5 PERCENTAGE POINTS.~~

9 ~~(9) "Under honorable conditions" means a discharge or~~  
10 ~~separation from active duty characterized as under honorable~~  
11 ~~conditions. The term includes honorable discharges and~~  
12 ~~general discharges but does not include dishonorable~~  
13 ~~discharges or other administrative discharges characterized~~  
14 ~~as other than honorable.~~

15 ~~(10) (a) "Veteran" means a person who:~~

16 ~~(i) served on active duty during time of war or~~  
17 ~~declared national emergency or in a campaign or expedition~~  
18 ~~for which a campaign badge was authorized by the United~~  
19 ~~States congress or the United States department of defense;~~  
20 ~~and~~

21 ~~(ii) has been separated from service under honorable~~  
22 ~~conditions BY HONORABLE DISCHARGE.~~

23 ~~(b) The term does not include a person receiving~~  
24 ~~retirement pay from the United States based on length of~~  
25 ~~military service RETIRED MEMBER OF A REGULAR COMPONENT OF~~

1 ~~THE UNITED STATES ARMED FORCES WHO IS ELIGIBLE FOR OR~~  
2 ~~RECEIVING A MILITARY RETIREMENT ALLOWANCE BASED ON LENGTH OF~~  
3 ~~SERVICE AND DOES NOT INCLUDE ANY OTHER RETIRED MEMBER OF A~~  
4 ~~PUBLIC RETIREMENT SYSTEM, EXCEPT SOCIAL SECURITY, THAT IS~~  
5 ~~SUPPORTED IN WHOLE OR IN PART BY TAX REVENUES.~~

6 ~~(11) (a) "War or declared national emergency" means:~~

7 ~~(a) World War I, beginning on April 6, 1917, and~~  
8 ~~ending on November 11, 1918, both dates inclusive;~~

9 ~~(b) World War II, beginning on December 7, 1941, and~~  
10 ~~ending on December 31, 1946, both dates inclusive;~~

11 ~~(c) the Korean conflict, military expedition, or~~  
12 ~~police action, beginning on June 27, 1950, and ending on~~  
13 ~~January 31, 1955, both dates inclusive; and~~

14 ~~(d) the Vietnam conflict, beginning on August 5, 1964,~~  
15 ~~and ending on May 7, 1975, both dates inclusive.~~

16 ~~(11) (A) "MENTAL IMPAIRMENT" MEANS:~~

17 ~~(I) SUFFERING FROM A DISABILITY ATTRIBUTABLE TO MENTAL~~  
18 ~~RETARDATION, CEREBRAL PALSY, EPILEPSY, AUTISM, OR ANY OTHER~~  
19 ~~NEUROLOGICALLY HANDICAPPING CONDITION CLOSELY RELATED TO~~  
20 ~~MENTAL RETARDATION AND REQUIRING TREATMENT SIMILAR TO THAT~~  
21 ~~REQUIRED BY MENTALLY RETARDED INDIVIDUALS; OR~~

22 ~~(II) AN ORGANIC OR MENTAL IMPAIRMENT THAT HAS~~  
23 ~~SUBSTANTIAL ADVERSE EFFECTS ON AN INDIVIDUAL'S COGNITIVE OR~~  
24 ~~VOLITIONAL FUNCTIONS.~~

25 ~~(B) THE TERM MENTAL IMPAIRMENT DOES NOT INCLUDE~~

1 ALCOHOLISM OR DRUG ADDICTION AND DOES NOT INCLUDE ANY MENTAL  
 2 IMPAIRMENT, DISEASE, OR DEFECT THAT HAS BEEN ASSERTED BY THE  
 3 INDIVIDUAL CLAIMING THE PREFERENCE AS A DEFENSE TO ANY  
 4 CRIMINAL CHARGE.

5 NEW SECTION. Section 4. Employment preference in  
 6 initial hiring. (1) (a) Except as provided in 10-2-402, in  
 7 an initial hiring for a position, if a job applicant who is  
 8 a veteran, disabled veteran, handicapped person, or eligible  
 9 spouse meets the eligibility requirements contained in  
 10 [section 5] and claims a preference as required by [section  
 11 8], a public employer shall hire the applicant over any  
 12 other applicant with substantially equal qualifications who  
 13 is not a preference eligible applicant.

14 (b) In an initial hiring, a public employer shall hire  
 15 a disabled veteran OR HANDICAPPED PERSON over any other  
 16 preference eligible applicant with substantially equal  
 17 qualifications.

18 (2) The employment preference provided for in  
 19 subsection (1) does not apply to a personnel action  
 20 described in subsection (5)(b) of [section 3] or to any  
 21 other personnel action that is not an initial hiring.

22 NEW SECTION. Section 5. Eligibility requirements. (1)  
 23 No veteran, disabled veteran, eligible spouse, or  
 24 handicapped person is entitled to receive employment  
 25 preference as provided in [section 4] unless:

1 ~~{1}-he-is-a-United-States-citizen~~  
 2 ~~{2}-he-has-resided-continuously-in-the-state-for-at~~  
 3 ~~least-1-year-immediately-before-applying-for-employment~~  
 4 ~~{3}-if-applying-for-municipal-or-county-employment,he~~  
 5 ~~has-resided-for-at-least-30-days-immediately-before-applying~~  
 6 ~~for-employment-in-the-city-town-or-county-in-which~~  
 7 ~~employment-is-sought-and~~

8 {1} HE IS A UNITED STATES CITIZEN;  
 9 {2} HE HAS RESIDED CONTINUOUSLY IN THE STATE FOR AT  
 10 LEAST 1 YEAR IMMEDIATELY BEFORE APPLYING FOR EMPLOYMENT;  
 11 {3} IF APPLYING FOR MUNICIPAL OR COUNTY EMPLOYMENT, HE  
 12 HAS RESIDED FOR AT LEAST 30 DAYS IMMEDIATELY BEFORE APPLYING  
 13 FOR EMPLOYMENT IN THE CITY, TOWN, OR COUNTY IN WHICH  
 14 EMPLOYMENT IS SOUGHT; AND

15 ~~{4}{4} he meets those requirements considered~~  
 16 ~~necessary by a public employer to successfully perform the~~  
 17 ~~essential duties of the position for which he is applying.~~

18 ~~{2}-IN-ADDITION-TO-THE-ELIGIBILITY-REQUIREMENT~~  
 19 ~~PROVIDED-IN-SUBSECTION-1,ANY-VETERAN-WHOSE-SERVICE-IN-THE~~  
 20 ~~ARMED-FORCES-FRMS-THE-BASIS-OF-AN-EMPLOYMENT-PREFERENCE~~  
 21 ~~UNDER-SECTIONS-1-THROUGH-103-MUST-HAVE-CLAIMED-MONTANA-AS~~  
 22 ~~HIS-HOME-OF-RECORD-AT-ENTRY-INTO-THE-ARMED-FORCES,AS~~  
 23 ~~INDICATED-ON-HIS-CERTIFICATE-OF-RELEASE-OR-DISCHARGE-FROM~~  
 24 ~~ACTIVE-DUTY-100-FORM-2141~~

25 NEW SECTION. Section 6. Certification of handicapped

1 persons. The department of social and rehabilitation  
2 services shall certify persons as handicapped for the  
3 purpose of employment preference as provided in [sections 1  
4 through 10].

5 NEW SECTION. Section 7. Duration of employment  
6 preference. Subject to [section 5]:

7 (1) a handicapped person, the spouse of a handicapped  
8 person as described in subsection (3)(b)(iii) of [section  
9 3], a disabled veteran, or the spouse of a disabled veteran  
10 as described in subsection (3)(b)(i) of [section 3]  
11 qualifies for employment preference as long as the disabling  
12 condition exists;

13 (2) a veteran, as defined in [section 3], who is not a  
14 disabled veteran, as defined in [section 3], qualifies for  
15 employment preference for ~~life~~---However, once he has  
16 obtained a PERMANENT position because of the application of  
17 the employment preference, he may not use the preference  
18 again NO LONGER THAN 10 15 YEARS FOLLOWING SEPARATION FROM  
19 SERVICE OR FOR NO LONGER THAN 10 5 10 5 YEARS FOLLOWING [THE  
20 EFFECTIVE DATE OF THIS ACT], WHICHEVER IS LATER.

21 (3) the surviving spouse of a veteran as described in  
22 subsection (3)(a) of [section 3] qualifies for employment  
23 preference for as long as the spouse remains unmarried; and

24 (4) the spouse of a person described in subsection  
25 (3)(b)(ii) of [section 3] qualifies for employment

1 preference for as long as the person is missing in action or  
2 a prisoner of war.

3 NEW SECTION. Section 8. Enforcement of preference.  
4 (1) A public employer shall, by posting ~~and~~ OR on the  
5 application form, give notice of the preferences that  
6 [sections 1 through 10] provide in public employment.

7 (2) A job applicant who believes he has an employment  
8 preference shall claim the preference in writing before the  
9 time for filing applications for the position involved has  
10 passed. Failure to make a timely employment preference claim  
11 FOR A POSITION is a complete defense to an action IN REGARD  
12 TO THAT POSITION under subsection (4).

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

17 (4) (a) An applicant who believes he has not been  
18 accorded his rights under [sections 1 through 10] may,  
19 within 30 days of receipt of the notice of the hiring  
20 decision, submit to the public employer a written request  
21 for an explanation of the public employer's hiring decision.  
22 Within 15 days of receipt of the request, the public  
23 employer shall give the applicant a written explanation.

24 (b) The applicant may, within 90 days after receipt of  
25 notice of the hiring decision, file a petition in the

1 district court in the county in which his application was  
2 received by the public employer. The petition must state  
3 facts which on their face entitle the applicant to an  
4 employment preference.

5 (c) (i) Upon filing of the petition, the court shall  
6 order the public employer to appear in court at a specified  
7 time not less than 10 or more than 30 days after the day the  
8 petition was filed and show cause why the applicant was not  
9 hired for the position. ~~The AT THE HEARING, THE~~ public  
10 employer has the burden of ~~making-a-clear-showing-that-the~~  
11 ~~applicant-was-not-substantially-equally-qualified-with-the~~  
12 ~~person-hired~~ PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT  
13 THE EMPLOYER MADE A REASONABLE DETERMINATION PURSUANT TO  
14 SUBSECTION (8) OF [SECTION 3] AND THE APPLICANT HAS THE  
15 BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT HE  
16 IS A PREFERENCE ELIGIBLE APPLICANT.

17 (ii) The time to appear provided in subsection  
18 (4)(c)(i) may be waived by stipulation of the parties. If a  
19 time to appear has been specified pursuant to subsection  
20 (4)(c)(i), the court may, on motion of one of the parties or  
21 on stipulation of all of the parties, grant a continuance.

22 (iii) If the public employer does not carry its burden  
23 of proof under subsection (4)(c)(i) AND THE COURT HAS FOUND  
24 THAT THE APPLICANT IS A PREFERENCE ELIGIBLE APPLICANT, the  
25 court shall order the public employer to reopen the

1 selection process for the position involved and shall grant  
2 the applicant reasonable attorney fees and court costs. The  
3 remedy provided by this section is the only remedy for a  
4 violation of [sections 1 through 10], and a court may not  
5 grant any other relief in an action for violation of  
6 [sections 1 through 10].

7 (d) Failure of an applicant to file a petition under  
8 subsection (4)(b) within 90 days bars the filing of a  
9 petition. If a public employer fails to provide an  
10 explanation under subsection (4)(a) within 15 days and a  
11 petition is filed under subsection (4)(b), the court shall  
12 order the public employer to reopen the selection process.

13 (e) The Montana Rules of Civil Procedure apply to a  
14 proceeding under this subsection (4) to the extent that they  
15 do not conflict with this subsection (4).

16 NEW SECTION. Section 9. Adoption of rules. The  
17 department of administration shall adopt rules implementing  
18 [sections 1 through 10] and shall consult with the  
19 department of social and rehabilitation services in adopting  
20 rules governing certification of handicapped persons for  
21 purposes of [sections 1 through 10]. The department of  
22 administration's rules apply to all public employers, local  
23 as well as state.

24 NEW SECTION. Section 10. Conflicts with federal law.  
25 [Sections 1 through 10] do not apply to work or positions



1 subject to federal laws or regulations if application of the  
2 employment preference conflicts with those laws or  
3 regulations.

4 Section 11. Section 10-2-402, MCA, is amended to read:  
5 "10-2-402. Superintendent to be given veteran's  
6 preference. In the selection of the superintendent of the  
7 Montana veterans' home, the department of institutions shall  
8 give preference to veterans as defined in 10-2-202 apply ~~the~~  
9 preference granted to veterans and disabled veterans, ~~but~~  
10 not the preference granted to other persons, by [sections 1  
11 through 10]."

12 Section 12. Section 49-3-103, MCA, is amended to read:  
13 "49-3-103. Permitted distinctions. Nothing in this  
14 chapter shall prohibit any public or private employer:

15 (1) from enforcing a differentiation based on marital  
16 status, age or physical or mental handicap;

17 (2) when based on the preference provided in [sections  
18 1 through 10];

19 (3) when based on a bona fide occupational  
20 qualification reasonably necessary to the normal operation  
21 of the particular business; or

22 (4) where the differentiation is based on reasonable  
23 factors other than age;

24 (5) from observing the terms of a bona fide seniority  
25 system or any bona fide employee benefit plan, such as a

1 retirement, pension, or insurance plan, which is not a  
2 subterfuge to evade the purposes of this chapter, except  
3 that no such employee benefit plan shall excuse the failure  
4 to hire any individual; or

5 (6) from discharging or otherwise disciplining an  
6 individual for good cause."

7 Section 13. Section 49-3-201, MCA, is amended to read:

8 "49-3-201. Employment of state and local government  
9 personnel. (1) State. Except as provided in [sections 1  
10 through 10], state and local government officials and  
11 supervisory personnel shall recruit, appoint, assign, train,  
12 evaluate and promote personnel on the basis of merit and  
13 qualifications without regard to race, color, religion,  
14 creed, political ideas, sex, age, marital status, physical  
15 or mental handicap or national origin.

16 (2) All state and local governmental agencies shall:  
17 (a) promulgate written directives to carry out this  
18 policy and to guarantee equal employment opportunities at  
19 all levels of state and local government;

20 (b) regularly review their personnel practices to  
21 assure compliance; and

22 (c) conduct continuing orientation and training  
23 programs with emphasis on human relations and fair  
24 employment practices;

25 (3) The department of administration shall insure that

~~the entire examination process, including appraisal of qualifications, is free from bias.~~

~~(4) Appointing authorities shall exercise care to insure utilization of minority group persons."~~

NEW SECTION. SECTION 12. THE APPLICATION OF AN EMPLOYMENT PREFERENCE AS PROVIDED FOR IN [SECTIONS 1 THROUGH 10] AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN [SECTION 3] MAY NOT BE CONSTRUED TO CONSTITUTE A VIOLATION OF THIS CHAPTER.

NEW SECTION. SECTION 13. THE APPLICATION OF AN EMPLOYMENT PREFERENCE AS PROVIDED FOR IN [SECTIONS 1 THROUGH 10] AND 10-2-402 BY A PUBLIC EMPLOYER AS DEFINED IN [SECTION 3] MAY NOT BE CONSTRUED TO CONSTITUTE A VIOLATION OF THIS CHAPTER.

~~NEW SECTION. SECTION 14. SUBMISSION OF DATA. EACH PUBLIC EMPLOYER SHALL SUMMIT TO EACH REGULAR SESSION OF THE LEGISLATURE A REPORT CONTAINING DATA REGARDING VETERANS' EMPLOYMENT UNDER THE PROVISIONS OF THIS ACT.~~

NEW SECTION. Section 14. Repealer. Subject to section 16(3)(a) of this act, sections 10-2-201 through 10-2-206, MCA, are repealed. THIS REPEAL APPLIES RETROACTIVELY TO BAR ANY CLAIM OF VIOLATION OR APPLICATION OF 10-2-201 THROUGH 10-2-206 THAT HAS NOT BEEN REDUCED TO JUDGMENT, WHETHER OR NOT THE JUDGMENT IS FINAL, ON [THE EFFECTIVE DATE OF THIS

ACT]. CLAIMS UNDER 10-2-201 THROUGH 10-2-206 THAT HAVE BEEN REDUCED TO JUDGMENT, WHETHER OR NOT THE JUDGMENT IS FINAL, ON [THE EFFECTIVE DATE OF THIS ACT] ARE ENFORCEABLE. NO CLAIM FOR A VIOLATION OF 10-2-201 THROUGH 10-2-206 MAY BE MADE UNDER [SECTION 8] OF THIS ACT.

NEW SECTION. Section 15. 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.

NEW SECTION. Section 16. Effective date -- applicability -- saving clause. (1) This act is effective on passage and approval.

(2) Except as provided in subsection (3)(b), SECTION 14, this act applies only to positions that are filled after the effective date of this act.

(3)(a) Subject to the applicable statute of limitations and to subsection (3)(c), a claim for violation of 10-2-201 through 10-2-206, whether or not it is pending in court on the effective date of this act, may be pursued under and must be governed by 10-2-201 through 10-2-206.

(b) However, the only relief that may be granted on a claim described in subsection (3)(a) is that provided in section 8(4)(e)(iii) of this act, and the court may grant no

1 other-relief-including-that-provided--in--18-2-206--or--any  
2 judicial-construction-of-18-2-206-

3 {c)--A--claim--under--18-2-201-through-18-2-206-must-be  
4 filed-within-60-days-after-the-effective-date-of--this--act-

5 NEW SECTION. SECTION 17. CODIFICATION INSTRUCTION.  
6 (1) SECTION 12 IS INTENDED TO BE CODIFIED AS AN INTEGRAL  
7 PART OF TITLE 49, CHAPTER 2, AND THE PROVISIONS OF TITLE 49,  
8 CHAPTER 2, APPLY TO SECTION 12.

9 (2) SECTION 13 IS INTENDED TO BE CODIFIED AS AN  
10 INTEGRAL PART OF TITLE 49, CHAPTER 3, AND THE PROVISIONS OF  
11 TITLE 49, CHAPTER 3, APPLY TO SECTION 13.

-End-

BERGENE

# COMMITTEE OF THE WHOLE AMENDMENT

1:10 p.m.  
12-15-83

MR. CHAIRMAN: I MOVE TO AMEND SENATE Bill No. 2

THIRD reading copy ( BLUE )  
color

AS FOLLOWS:

Page 8, line 5

Following: "veteran"

Insert: "or handicapped person"

ADOPT

REJECT

*Toni R. Bergene*  
BERGENE

STATE PUB. CO.  
Helena, Mont.

JOURNAL

# COMMITTEE OF THE WHOLE AMENDMENT

1:15 p.m.  
12-15-83

MR. CHAIRMAN: I MOVE TO AMEND SENATE Bill No. 2

THIRD reading copy ( BLUE )  
color

AS FOLLOWS:

Amend House Judiciary

Committee Amendments 12-15

On page 3 of 10 under "duration of preference" on insertion line

Strike: "5"

Insert: "10"

ADOPT

REJECT

*Pavlovich*  
PAVLOVICH

STATE PUB. CO.  
Helena, Mont.

JOURNAL

# COMMITTEE OF THE WHOLE AMENDMENT

4:30 p.m.  
12-15-83

MR. CHAIRMAN: I MOVE TO AMEND SENATE Bill No. 2  
THIRD reading copy (BLUE) AS FOLLOWS:  
color

1) House Judiciary Committee Amendments of 12-15, under  
"Remove residency/citizenship" on page 2 of 10:  
Strike: Amendment #1

2) Page 8, line 11  
Following: "requirements."  
Insert: "(1)"

3) Page 8, line 14  
Following: "unless"  
Strike: ":" through "(4)" on line 22

4) Page 8, following line 24  
Insert: "(2) In addition to the eligibility requirement  
provided in subsection (1), any veteran whose service in the  
armed forces forms the basis of an employment preference  
under [sections 1 through 10] must have claimed Montana as  
his home of record at entry into the armed forces, as indicated on  
his certificate of release or discharge from active duty  
(DD form 214)."

Amendments to Statement of Intent

House Judiciary Committee Page 6 of 10, line 16:

Following: "job."  
Insert: "Where applicable on scored exams or structured  
interviews, the range for substantially equal will be within  
5 percentage points."

ADOPT

REJECT

ADOPT

REJECT

KITSELMAN

STATE PUB. CO.  
Helena, Mont.

JOURNAL

STATE PUB. CO.  
Helena, Mont.

BRAND

Chairman

*FORM*  
**COMMITTEE OF THE WHOLE AMENDMENT**

1:30 p.m.  
12-15-83

MR. CHAIRMAN: I MOVE TO AMEND SENATE Bill No. 2

THIRD reading copy ( BLUE ) AS FOLLOWS:  
color

Page 6, line 12

Following: "persons."

Insert: "In a scored selection procedure the range for  
substantially equal will be within 5 percentage points."

Amendments to Statement of Intent attached.

ADOPT

REJECT

*Joe Brand*  
BRAND

## STANDING COMMITTEE REPORT

December 15, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 2

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PREFERENCE IN PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; AMENDING SECTIONS 10-2-402, 49-3-103, AND 49-3-201, MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

Respectfully report as follows: That SENATE Bill No. 2

be amended as follows: (See attached sheets 1 through 10)

Amend HB 8 as follows:

### Remove Residency/Citizenship

- Page 8, line 14.  
Following: "unless"  
Strike: ":" through "(4)" on line 22.  
Insert: "he entered the service while residing within the state of Montana and"

### Eligibility/non-regular components

- Page 7, line 4  
Following: "OF"  
Insert: "a regular component of"

### Remove 30% disability

- Page 2, line 13.  
Following: "disability"  
Insert: "as"
- Page 2, lines 14 and 15.  
Strike: "to be 30% or more disabling"


### Honorable discharge

- Page 2, line 11.  
Strike: "under honorable conditions"  
Insert: "by honorable discharge"
- Page 6, following line 12  
Strike: subsection (9) in its entirety  
Renumber: subsequent subsections

### Mental impairment

- Page 3, line 9.  
Following: "physical"  
Insert: "or mental"

DO PASS

  
DAVE BROWN, Chairman.

3 of 10

Include university system

1. Page 4, following line 9.  
 Insert: "(iv) a unit, as defined in 20-25-201, for a position within the Montana university system;  
 (v) the office of commissioner of higher education for a position within that office;  
 (vi) a college for a position within that college;"  
 Renumber: subsequent subsections.

2. Page 4, line 16.  
 Strike: "(V)"  
 Insert: "(viii)"

3. Page 4, line 19.  
 Strike: "(V)"  
 Insert: "(viii)"

4. Page 5, line 22.  
 Following: "university,"  
 Insert: "college, including a community college, university,"

5. Page 6, lines 1 and 2.  
 Strike: "A COMMUNITY COLLEGE,"

6. Page 6, lines 3 and 4.  
 Strike: "THE" through "SYSTEM," on line 4.

Remove compliance report

1. Page 15, following line 6.  
 Strike: Section 14 in its entirety  
 Renumber: subsequent sections

2. Page 16, line 8.  
 Strike: "15"  
 Insert: "14"

Duration of preference

1. Page 9, line 19.  
 Strike: "10"  
 Insert: "5"

Technical amendments

1. Page 1, line 20.  
 Following: "veterans"  
 Insert: "and disabled veterans"

2. Page 1, line 24.  
 Following: "veterans"  
 Insert: ", disabled veterans,"

3. Page 2, line 9.  
 Following: "individual"  
 Insert: ", whether or not he is a veteran as defined in this section,"

4. Page 2, line 21.  
 Following: "a"  
 Insert: "disabled"

Legislative intent

1. Page 1, line 19.  
 Following: "Purposes."  
 Insert: "(1)"

2. Page 1.  
 Following: line 24  
 Insert: "(2) The provisions of [sections 1 through 8], except for costs and attorney fees, are intended to remedy the uncertainty, windfalls, burden on the courts, burden on the state treasury, and public concern caused by the interpretation of the former preference provisions in conflict with long-established customs and practices by public hiring authorities. It is the legislature's finding that the provisions of [sections 1 through 8], except for costs and attorney fees, declare the original intent of 10-2-201 through 10-2-206."

Clarification of bar to enforcement action

1. Page 10, line 10.  
 Following: "claim"  
 Insert: "for a position"

2. Page 10, line 11  
 Following: "action"  
 Insert: "in regard to that position"



5 of 10

48th Legislature

6 of 10  
no 2

Show cause hearing evidentiary standard

1. Page 11, line 8.

Strike: "The"

Insert: "At the hearing, the"

2. Page 11, line 9.

Following: "of"

Strike: remainder of line 9 through "hired" on line 10.

Insert: "proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to subsection (8) of [section 3] and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant"

3. Page 11, line 17.

Following: "(4) (c) (i)"

Insert: "and the court has found that the applicant is a preference eligible applicant."

AND AS AMENDED,  
BE CONCURRED IN

House Judiciary Committee Amendments to Senate Bill 2  
Statement of Intent: Strike entire Senate version.

1 Insert: STATEMENT OF INTENT

2 ~~SENATE BILL 2~~

3

4 A statement of intent is provided to address the nature  
5 of the employment preference granted in the bill. The  
6 legislature intends that public employers seek and hire the  
7 most qualified persons for positions in public employment.  
8 It is also the intent of the legislature that the nature of  
9 the preference is a relative one in that it is to be applied  
10 as a "tie breaker" among two or more applicants for a  
11 position who have substantially equal qualifications.  
12 Substantially equal qualifications does not mean a situation  
13 in which two or more applicants are exactly equally  
14 qualified. It means a range within which two applicants must  
15 be considered to be substantially equal in view of the  
16 qualifications set for the job. WHERE APPLICABLE ON SCORED  
17 EXAMS OR STRUCTURED INTERVIEWS, THE RANGE FOR SUBSTANTIALLY  
18 EQUAL WILL BE WITHIN 5 PERCENTAGE POINTS. Qualifications  
19 should include job-related knowledge, skill, and abilities.  
20 The legislature recognizes that public employers use a  
21 variety of scored and unscored selection procedures such as  
22 conventional written examinations, training and experience  
23 requirements, performance tests, structured oral interviews,  
24 or combinations of these. The legislature does not intend to  
25 specify the type of selection procedure to be used by a

1 public employer.

2 A statement of intent is also required for this bill  
3 because section 9 requires the department of administration  
4 to adopt rules implementing sections 1 through 10 and to  
5 consult with the department of social and rehabilitation  
6 services in formulating rules for the certification of  
7 handicapped persons.

8 The legislature intends the rules to adequately provide  
9 for the administration of the employment preference law, but  
10 to include only those rules that are reasonably necessary to  
11 implement sections 1 through 10.

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

20 Rules adopted by the department apply to all initial  
21 hirings to positions by all public employers. In formulating  
22 its rules the department should take this into consideration  
23 and adopt rules that can be used and applied by the broad  
24 spectrum of state and local public employers subject to  
25 sections 1 through 10.

1 It is the intent of the legislature that the department  
2 formulate and adopt rules relating, but not limited, to the  
3 following matters and take into account the following  
4 considerations.

5 (1) Claiming preference -- documentation and  
6 verification. Rules relating to the job application process  
7 should include the manner in which a preference should be  
8 claimed when a job is applied for. They should prescribe the  
9 means by which the applicant must document and submit  
10 evidence of such things as the applicant's status as a  
11 Montana resident when he entered the service,  
A veteran, disabled veteran, handicapped person, or eligible  
12 spouse. It is the intent of the legislature that rules for  
13 claiming and documenting a preference do not place  
14 unreasonable burdens upon applicants.

15 (2) Handicapped persons -- certification. The rules  
16 should provide that a person will not be denied handicapped  
17 status and certification merely because of his current or  
18 former employment, should address the matter of what  
19 constitutes a physical or mental impairment that  
20 substantially limits one or more major life activities, and  
21 outline in what instances a physical or mental impairment  
22 limits a person's ability to obtain, retain, or advance in  
23 employment. The department may wish to do this by a  
24 combination of a statement of general principles and  
25 specific examples.

~~10 of 10~~  
10 of 10

~~10 of 10~~  
10 of 10

1 Rules should provide for a certification process that  
2 allows, when appropriate, permanent certification of those  
3 impairments considered to be permanent in nature. A  
4 procedure for extension or loss of certification should be  
5 provided for those instances in which a handicap is or may  
6 be temporary.

7 (3) Military conflicts. The legislature intends the  
8 rules to apply federal law to determine what constitutes a  
9 campaign or expedition for which a campaign badge is  
10 authorized by the Congress of the United States or  
11 department of defense.

12 (4) Honorable discharges. The legislature intends the  
13 rules to apply federal law in defining honorable discharges.

14 (5) Hiring decision notices and explanations. The  
15 legislature intends the rules to provide for the form and  
16 content of written notices of hiring decisions, including  
17 whether the position was obtained as the result of  
18 application of the preference by the public employer,  
19 written requests for explanations of hiring decisions, and  
20 written explanations of hiring decisions.

21 (6) Reopening of selection process. The legislature  
22 intends the rules to provide for a method of reopening the  
23 selection process for a job should a court order the  
24 selection process reopened, and include a method of giving  
25 notice to those who applied for the job informing them of

1 the reopening and the reason therefor.

2 (7) Jobs subject to federal law. The legislature  
3 intends the rules to identify or provide a method of  
4 identifying work or positions to which the employment  
5 preference does not apply by virtue of section 10.