

HOUSE BILL NO. 473

1/25 Introduced  
1/25 Referred to State Administration  
1/26 Fiscal Note Requested  
1/28 Rereferred to Judiciary  
201 Fiscal Note Received  
2/15 Hearing  
2/18 Adverse Committee Report  
2/19 Objection to Adverse Committee Report  
2/20 2nd Reading Pass As Amended  
2/20 Rereferred to Appropriations  
3/25 Hearing  
4/01 Committee Report-Bill Do Pass  
4/03 2nd Reading Do Not Pass  
4/04 Reconsideration  
4/05 2nd Reading Pass As Amended  
4/09 3rd Reading Pass

Transmitted to Senate

4/13 On Motion Rules Suspended  
    To Accept For Consideration  
4/15 Referred to Rules  
4/16 Hearing  
4/16 Rereferred to State Administration  
4/18 Hearing  
4/19 Comm Report-Bill Concurred As Amended  
4/22 2nd Reading Indefinitely Postponed

HOUSE BILL NO. 473

INTRODUCED BY *Arthur D. Brown* *Ellison*  
*Walt Sullivan* *Patricia Kiskimm* *Harold* *Stovall*  
*Peck* *Richard Manning* *Hayden* *LANE* *Ellen*  
 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN *Laerne*  
 PUBLIC EMPLOYERS TO USE SCORED PROCEDURES FOR SELECTING *Coofan*  
 PERSONS FOR APPOINTMENT TO CERTAIN POSITIONS; GRANTING *E. Smith*  
 PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE *an. ball*  
 RELATIVES IN APPOINTMENT TO THESE POSITIONS AND IN RETENTION  
 DURING REDUCTIONS IN FORCE; ELIMINATING THE PREFERENCE  
 PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE  
 MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT  
 PREFERENCE ACT AND REVISING THE PREFERENCE PROVIDED TO  
 HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES UNDER THAT  
 ACT; AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH  
 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405,  
 AND 49-3-103, MCA."

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

NEW SECTION. Section 1. Definitions. For the purposes of [sections 1 through 7], the following definitions apply:

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

(2) "Armed forces" means the United States army, navy,

air force, marine corps, and coast guard.

(3) "Disabled veteran" means a person, whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the veterans administration or a military department.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces during a period named in subsections (9)(a) through (c) if:

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(d) the mother of a service-connected permanently and totally disabled veteran if:



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1 (i) her husband is totally and permanently disabled;  
 2 (ii) she is widowed, divorced, or separated from the  
 3 father and has not remarried; or

4 (iii) she has remarried but is widowed, divorced, or  
 5 legally separated from her husband when preference is  
 6 claimed.

7 (5) "Position" means a permanent, temporary, or  
 8 seasonal position as defined in 2-18-101 for a state  
 9 position or a similar permanent, temporary, or seasonal  
 10 position with a public employer other than the state.

11 However, the term does not include:

12 (a) a state or local elected official;

13 (b) appointment by an elected official to a body such  
 14 as a board, commission, committee, or council;

15 (c) appointment by an elected official to a public  
 16 office if the appointment is provided for by law;

17 (d) a department head appointment by the governor or  
 18 an executive department head appointment by a mayor, city  
 19 manager, county commissioner, or other chief administrative  
 20 or executive officer of a local government; or

21 (e) engagement as an independent contractor or  
 22 employment by an independent contractor.

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

24 (i) any department, office, board, bureau, commission,  
 25 agency, college, including a community college,

1 postsecondary vocational-technical center or program,  
 2 university, or other instrumentality of the executive branch  
 3 of the government of the state of Montana; and

4 (ii) any county, city, town, or school district.

5 (b) The term does not include any instrumentality of  
 6 the legislative or judicial branches of the government of  
 7 the state of Montana.

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

14 (8) (a) "Veteran" means a person who was separated  
 15 under honorable conditions from active duty in the armed  
 16 forces performed:

17 (i) in a war;

18 (ii) in a campaign or expedition for which a campaign  
 19 badge has been authorized by the United States congress or  
 20 the United States department of defense;

21 (iii) during the period beginning April 28, 1952, and  
 22 ending July 1, 1955; or

23 (iv) for more than 180 consecutive days, other than for  
 24 training, any part of which occurred during the period  
 25 beginning February 1, 1955, and ending October 14, 1976.

1 (b) The term does not include a retired member of the  
2 United States armed forces who is eligible for or receiving  
3 a military retirement allowance based on length of service  
4 and does not include any other retired member of a public  
5 retirement system, except social security, that is supported  
6 in whole or in part by tax revenues.

7 (9) "War" means:

8 (a) the Spanish-American War, beginning on April 21,  
9 1898, and ending on July 4, 1902, both dates inclusive;

10 (b) World War I, beginning on April 6, 1917, and  
11 ending on July 2, 1921, both dates inclusive; and

12 (c) World War II, beginning on December 7, 1941, and  
13 ending on April 28, 1952, both dates inclusive.

14 NEW SECTION. Section 2. Scored procedures required.  
15 For the purpose of applying the point preference provided  
16 for in [section 3] and Title 39, chapter 30, a public  
17 employer shall use a scored procedure or a combination of  
18 scored procedures totaling 100 points for selecting a person  
19 for appointment to a position. Scored procedures may  
20 include written examinations, structured oral interviews,  
21 performance tests, or other quantifiable procedures that  
22 fairly test the relative capacity and fitness of an  
23 applicant for a position.

24 NEW SECTION. Section 3. Additional points for certain  
25 applicants. (1) Except as provided in subsections (2) and

1 (3), a public employer shall add the following points to the  
2 score of an applicant for appointment to a position who  
3 received 70 points or more in a scored procedure:

4 (a) five points if the applicant is a veteran; and

5 (b) ten points if the applicant is a disabled veteran  
6 or an eligible relative.

7 (2) No veteran, disabled veteran, or eligible relative  
8 is entitled to the points under subsection (1) unless the  
9 person is a United States citizen.

10 (3) A disabled veteran who receives 10 points under  
11 subsection (1)(b) is not entitled to an additional 5 points  
12 under subsection (1)(a).

13 NEW SECTION. Section 4. Notice and claim of  
14 preference. (1) A public employer shall, by posting or on  
15 the application form, give notice of the point preference  
16 provided in [section 3].

17 (2) A job applicant who believes he has a point  
18 preference shall claim the preference in writing before the  
19 time for filing applications for the position involved has  
20 passed. Failure to make a timely preference claim for a  
21 position is a complete defense to an action in regard to  
22 that position under [section 5].

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

1 claiming preference.

2 NEW SECTION. Section 5. Enforcement of preference.

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

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

17 (3) (a) Upon filing of the petition, the court shall  
18 order the public employer to appear in court at a specified  
19 time not less than 10 or more than 30 days after the day the  
20 petition was filed and show cause why the applicant was not  
21 hired for the position. At the hearing, the public employer  
22 has the burden of proving by a preponderance of the evidence  
23 that the employer applied the points under [section 3] and  
24 made a reasonable hiring decision. The applicant has the  
25 burden of proving by a preponderance of the evidence that he

1 is a preference eligible applicant.

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

7 (c) If the public employer does not carry its burden  
8 of proof under subsection (3)(a) and the court has found  
9 that the applicant is a preference eligible applicant, the  
10 court shall order the public employer to reopen the  
11 selection process for the position involved and shall grant  
12 the applicant reasonable attorney fees, court costs, and an  
13 amount equal to 150% of the wages that the applicant would  
14 have received had he been appointed to the position. The  
15 remedy provided by this section is the only remedy for a  
16 violation of this chapter, and a court may not grant any  
17 other relief in an action for violation of this chapter.

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

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

1 conflict with this section.

2 NEW SECTION. Section 6. Retention during reduction in  
3 force. (1) Except as provided in subsections (2) and (3),  
4 during a reduction in force, a public employer shall retain  
5 in a position a:

6 (a) veteran, disabled veteran, or eligible relative  
7 whose performance has not been rated unacceptable under a  
8 performance appraisal system, over other employees with  
9 similar job duties, qualifications, and length of service;  
10 and

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

17 (2) No employee is entitled to preference in retention  
18 under subsection (1) unless the person is a United States  
19 citizen.

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

23 NEW SECTION. Section 7. Adoption of rules. The  
24 department of administration shall adopt rules implementing  
25 [sections 1 through 6]. The department's rules apply to all

1 public employers, local as well as state.

2 Section 8. Section 10-2-402, MCA, is amended to read:  
3 "10-2-402. Superintendent to be given veterans'  
4 preference. In the selection of the superintendent of the  
5 Montana veterans' home, the department of institutions shall  
6 apply the preference granted to veterans and disabled  
7 veterans under [section 3], but not the preference granted  
8 to other persons, by Title 39, chapter 30."

9 Section 9. Section 39-30-101, MCA, is amended to read:  
10 "39-30-101. Short title. This chapter may be cited as  
11 the "Montana Veterans<sup>+</sup>-and Handicapped Persons' Employment  
12 Preference Act"."

13 Section 10. Section 39-30-102, MCA, is amended to  
14 read:

15 "39-30-102. Purposes. The purposes of this chapter are  
16 to ~~recognize-veterans-and-disabled-veterans-for--service--to~~  
17 ~~their--country;~~ recognize past employment discrimination  
18 against handicapped persons; and facilitate the  
19 habilitation, rehabilitation, and readjustment of ~~veterans;~~  
20 ~~disabled-veterans;-and-handicapped~~ these persons."

21 Section 11. Section 39-30-103, MCA, is amended to  
22 read:

23 "39-30-103. Definitions. For the purposes of this  
24 chapter, the following definitions apply:

25 (i) ~~--"Active-duty"--means-full-time-duty-other-than--for~~

1 training--in--the--regular--components--of--the--United--States  
2 army,--air--force,--navy,--marine--corps,--or--coast--guard--with  
3 full--pay--and--allowances. The term does not include monthly  
4 drills,--summer--encampments,--initial--training,--or--other  
5 inactive--or--active--duty--for--training--in--the--national--guard  
6 or--reserves.

7 (2)--"Disabled-veteran"--means--an--individual,--whether--or  
8 not--he--is--a--veteran--as--defined--in--this--section,--who:

9 (a)--served--on--active--duty;

10 (b)--has--been--separated--from--service--by--honorable  
11 discharge;--and

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

15 (3)(1) "Eligible spouse" means:

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

19 (b) the spouse of:

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

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

1 war;--or

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

6 (4)(2) "Handicapped person" means an individual  
7 certified by the department of social and rehabilitation  
8 services to have a physical or mental impairment that  
9 substantially limits one or more major life activities, such  
10 as writing, seeing, hearing, speaking, or mobility, and  
11 which limits the individual's ability to obtain, retain, or  
12 advance in employment.

13 (5)(3) (a) "Initial hiring" means a personnel action  
14 for which applications are solicited from outside the ranks  
15 of the current employees of:

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

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

23 (iii) a judicial agency, such as the office of supreme  
24 court administrator, office of supreme court clerk, state  
25 law library, or similar office in a state district court for

1 a position within the judicial branch;

2 (iv) a city or town for a municipal position, including

3 a city or municipal court position; and

4 (v) a county for a county position, including a

5 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)(v) of this subsection ~~(5)~~ (3), current employees

9 in a reduction-in-force pool who have been laid off from a

10 specific public entity identified in subsections (a)(i)

11 through (a)(v) of this subsection ~~(5)~~ (3), or current

12 participants in a federally authorized employment program is

13 not an initial hiring.

14 ~~(6)~~(4) (a) "Mental impairment" means:

15 (i) suffering from a disability attributable to mental

16 retardation, cerebral palsy, epilepsy, autism, or any other

17 neurologically handicapping condition closely related to

18 mental retardation and requiring treatment similar to that

19 required by mentally retarded individuals; or

20 (ii) an organic or mental impairment that has

21 substantial adverse effects on an individual's cognitive or

22 volitional functions.

23 (b) The term mental impairment does not include

24 alcoholism or drug addiction and does not include any mental

25 impairment, disease, or defect that has been asserted by the

1 individual claiming the preference as a defense to any

2 criminal charge.

3 ~~(7)~~(5) "Position" means a permanent or seasonal

4 position as defined in 2-18-101 for a state position or a

5 similar permanent or seasonal position with a public

6 employer other than the state. However, the term does not

7 include:

8 (a) a temporary position as defined in 2-18-101 for a

9 state position or similar temporary position with a public

10 employer other than the state;

11 (b) a state or local elected official;

12 (c) employment as an elected official's immediate

13 secretary, legal advisor, court reporter, or administrative,

14 legislative, or other immediate or first-line aide;

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

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

17 (e) appointment by an elected official to a public

18 office if the appointment is provided for by law;

19 (f) a department head appointment by the governor or

20 an executive department head appointment by a mayor, city

21 manager, county commissioner, or other chief administrative

22 or executive officer of a local government; or

23 (g) engagement as an independent contractor or

24 employment by an independent contractor.

25 ~~(8)~~(6) (a) "Public employer" means:



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

(ii) any county, city, or town.

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

{9}--"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:

{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 by honorable discharge;

{b}--The term does not include a retired member 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;

{ii}--"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."

Section 12. Section 39-30-201, MCA, is amended to read:

"39-30-201. Employment Point 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 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other

~~applicant with substantially equal qualifications who is not a preference-eligible applicant~~ add five points to the score of an applicant who received 70 points or more in a scored procedure.

~~(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 qualifications.~~

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in subsection (5)(b) (3)(b) of 39-30-103 or to any other personnel action that is not an initial hiring."

Section 13. Section 39-30-202, MCA, is amended to read:

"39-30-202. Eligibility requirements. No ~~veteran, disabled veteran,~~ eligible spouse, or handicapped person is entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

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

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

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

Section 14. Section 39-30-203, MCA, is amended to read:

"39-30-203. Duration of preference. Subject to 39-30-202, 1

~~(1) a handicapped person, the or eligible spouse of a handicapped person as described in subsection (3)(b)(iii) of 39-30-103, a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of 39-30-103~~ qualifies for employment preference as long as the disabling condition exists, 1

~~(2) a veteran, as defined in 39-30-103, who is not a disabled veteran, as defined in 39-30-103, qualifies for employment preference for no longer than 15 years following separation from service or for no longer than 5 years following December 20, 1983, whichever is later;~~

~~(3) the surviving spouse of a veteran as described in subsection (3)(a) of 39-30-103 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 39-30-103 qualifies for employment preference for as long as the person is missing in action or a prisoner of war."~~

1 Section 15. Section 39-30-207, MCA, is amended to  
2 read:

3 "39-30-207. Enforcement of preference. (1) An  
4 applicant who believes he has not been accorded his rights  
5 under this chapter may, within 30 days of receipt of the  
6 notice of the hiring decision provided for in 39-30-206,  
7 submit to the public employer a written request for an  
8 explanation of the public employer's hiring decision. Within  
9 15 days of receipt of the request, the public employer shall  
10 give the applicant a written explanation.

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

17 (3) (a) Upon filing of the petition, the court shall  
18 order the public employer to appear in court at a specified  
19 time not less than 10 or more than 30 days after the day the  
20 petition was filed and show cause why the applicant was not  
21 hired for the position. At the hearing, the public employer  
22 has the burden of proving by a preponderance of the evidence  
23 that the employer applied the points under 39-30-201 and  
24 made a reasonable determination-pursuant-to-subsection-(9)  
25 of-39-30-103-and-the hiring decision. The applicant has the

1 burden of proving by a preponderance of the evidence that he  
2 is a preference eligible applicant.

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

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

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

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

1 Section 16. Section 49-2-405, MCA, is amended to read:  
 2 "49-2-405. Veterans' and handicapped persons'  
 3 employment preference. The application of ~~an--employment a~~  
 4 preference as provided for in [sections 1 through 7], Title  
 5 39, chapter 30, and 10-2-402 by a public employer as defined  
 6 in [section 1] and 39-30-103 may not be construed to  
 7 constitute a violation of this chapter."

8 Section 17. Section 49-3-103, MCA, is amended to read:  
 9 "49-3-103. Permitted distinctions. (1) Nothing in this  
 10 chapter shall prohibit any public or private employer:

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

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

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

25 (2) The application of ~~an--employment a~~ preference as

1 provided for in [sections 1 through 7], Title 39, chapter  
 2 30, and 10-2-402 by a public employer as defined in [section  
 3 1] and 39-30-103 may not be construed to constitute a  
 4 violation of this chapter."

-End-

## FISCAL NOTE

In compliance with a written request received January 26, 19 85, there is hereby submitted a Fiscal Note for H.B. 473 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 473 is an act requiring certain public employers to use scored procedures for selecting persons for certain positions; granting preference to military veterans and their eligible relatives in appointment to these positions and in retention during reductions in force; eliminating the current veteran's preference under the Montana Veterans' and Handicapped Persons' Employment Preference Act and revising the preference provided to handicapped persons and their eligible spouses.

ASSUMPTIONS:

1. To apply the scoring method (Sect. 2) to quantifiable procedures the validity of such procedures must be established.
2. The state will follow federal laws and regulations to establish the validity of hiring procedures.
3. Full implementation of the proposed legislation will take two bienniums due to the complexity of validity hiring procedures.

FISCAL IMPACT:

Using FY 85 salary matrix.

|                    | <u>FY 86</u>  | <u>FY 87</u>  |
|--------------------|---------------|---------------|
|                    | <u>5 FTE</u>  | <u>5 FTE</u>  |
| Personal Services  | \$125,800     | \$125,800     |
| Operating Expenses | <u>30,000</u> | <u>30,000</u> |
| General Fund Total | \$155,800     | \$155,800     |

This impact is only for Executive Branch agencies. The University System, judicial and legislative branch agencies set their own personnel policies. These agencies would have the same obligations but their impact is not known.

*David L. Hunter*

BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: Feb 1, 1985

HB 473

LOCAL IMPACT:

Local impact cannot be determined. Using the above assumptions the costs could be well above the state's cost due to the local governments not having the advantage of a centralized personnel division or uniform personnel policies.

TECHNICAL NOTE:

Under federal laws and regulations when scoring procedures are used for ranking candidates, the selection procedure (tests, structured interviews, etc.) must be validated. This can be a complex and time consuming task. For the Executive Branch alone, full implementation could take up to five years. For example, the state currently has only one validated test (Social Worker I). This test took over one year to structure to meet the criteria of validation. The state has 1,500 job classifications. No matter what selection procedure is used in hiring people into these jobs, validation of that procedure is mandatory.

HOUSE BILL NO. 473

INTRODUCED BY PAVLOVICH, D. BROWN, ELLISON, JACK MOORE,  
B. WILLIAMS, MILLER, PHILLIPS, PATTERSON, KITSELMAN, HANNAH,  
SANDS, PECK, MANNING, KEYSER, LYBECK, LANE,  
ELLERD, HAYNE, BOYLAN, E. SMITH, MCCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN  
PUBLIC EMPLOYERS TO USE SCORED PROCEDURES FOR SELECTING  
PERSONS FOR APPOINTMENT TO CERTAIN POSITIONS; GRANTING  
PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE  
RELATIVES IN APPOINTMENT TO THESE POSITIONS AND IN RETENTION  
DURING REDUCTIONS IN FORCE; ELIMINATING THE PREFERENCE  
PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE  
MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT  
PREFERENCE ACT AND REVISING THE PREFERENCE PROVIDED TO  
HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES UNDER THAT  
ACT; AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH  
39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405,  
AND 49-3-103, MCA."

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

NEW SECTION. Section 1. Definitions. For the purposes  
of [sections 1 through 7], the following definitions apply:

(1) "Active duty" means full-time duty with military  
pay and allowances in the armed forces, except for training,

for determining physical fitness, or for service in the  
reserves or national guards.

(2) "Armed forces" means the United States army, navy,  
air force, marine corps, and coast guard.

(3) "Disabled veteran" means a person, whether or not  
he is a veteran as defined in this section, who was  
separated under honorable conditions from active duty in the  
armed forces and has established the present existence of a  
service-connected disability or is receiving compensation,  
disability retirement benefits, or pension because of a  
public statute administered by the veterans administration  
or a military department.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or  
disabled veteran;

(b) the spouse of a disabled veteran who is unable to  
qualify for appointment to a position;

(c) the mother of a veteran who lost his life under  
honorable conditions while serving in the armed forces  
during a period named in subsections (9)(a) through (c) if:

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the  
father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or  
legally separated from her husband when preference is

1 claimed; and

2 (d) the mother of a service-connected permanently and  
3 totally disabled veteran if:

4 (i) her husband is totally and permanently disabled;

5 (ii) she is widowed, divorced, or separated from the  
6 father and has not remarried; or

7 (iii) she has remarried but is widowed, divorced, or  
8 legally separated from her husband when preference is  
9 claimed.

10 (5) "Position" means a permanent, temporary, or  
11 seasonal position as defined in 2-18-101 for a state  
12 position or a similar permanent, temporary, or seasonal  
13 position with a public employer other than the state.

14 However, the term does not include:

15 (a) a state or local elected official;

16 (b) appointment by an elected official to a body such  
17 as a board, commission, committee, or council;

18 (c) appointment by an elected official to a public  
19 office if the appointment is provided for by law;

20 (d) a department head appointment by the governor or  
21 an executive department head appointment by a mayor, city  
22 manager, county commissioner, or other chief administrative  
23 or executive officer of a local government; or

24 (e) engagement as an independent contractor or  
25 employment by an independent contractor.

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

2 (i) any department, office, board, bureau, commission,  
3 agency, college, including a community college,  
4 ~~postsecondary--vocational-technical---center---or---program~~  
5 university, or other instrumentality of the executive branch  
6 of the government of the state of Montana; and

7 (ii) any county, city, OR town, ~~or school district~~.

8 (b) The term does not include A SCHOOL DISTRICT, A  
9 POSTSECONDARY VOCATIONAL-TECHNICAL CENTER OR PROGRAM, OR any  
10 instrumentality of the legislative or judicial branches of  
11 the government of the state of Montana.

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

18 (8) (a) "Veteran" means a person who was separated  
19 under honorable conditions from active duty in the armed  
20 forces performed:

21 (i) in a war;

22 (ii) in a campaign or expedition for which a campaign  
23 badge has been authorized by the United States congress or  
24 the United States department of defense;

25 (iii) during the period beginning April 28, 1952, and



1 ending July 1, 1955; or  
 2 (iv) for more than 180 consecutive days, other than for  
 3 training, any part of which occurred during the period  
 4 beginning February 1, 1955, and ending October 14, 1976.

5 (b) The term does not include a retired member of the  
 6 United States armed forces who is eligible for or receiving  
 7 a military retirement allowance based on length of service  
 8 and does not include any other retired member of a public  
 9 retirement system, except social security, that is supported  
 10 in whole or in part by tax revenues.

11 (9) "War" means:  
 12 (a) the Spanish-American War, beginning on April 21,  
 13 1898, and ending on July 4, 1902, both dates inclusive;  
 14 (b) World War I, beginning on April 6, 1917, and  
 15 ending on July 2, 1921, both dates inclusive; and  
 16 (c) World War II, beginning on December 7, 1941, and  
 17 ending on April 28, 1952, both dates inclusive.

18 NEW SECTION. Section 2. Scored procedures required.  
 19 For the purpose of applying the point preference provided  
 20 for in [section 3] and Title 39, chapter 30, a public  
 21 employer shall use a scored procedure or a combination of  
 22 scored procedures totaling 100 points for selecting a person  
 23 for appointment to a position. Scored procedures may  
 24 include written examinations, structured oral interviews,  
 25 performance tests, or other quantifiable procedures that

1 fairly test the relative capacity and fitness of an  
 2 applicant for a position.

3 NEW SECTION. Section 3. Additional points for certain  
 4 applicants. (1) Except as provided in subsections (2) and  
 5 (3), a public employer shall add the following points to the  
 6 score of an applicant for appointment to a position who  
 7 received 70 points or more in a scored procedure:

8 (a) five points if the applicant is a veteran; and  
 9 (b) ten points if the applicant is a disabled veteran  
 10 or an eligible relative.

11 (2) No veteran, disabled veteran, or eligible relative  
 12 is entitled to the points under subsection (1) unless the  
 13 person is a United States citizen.

14 (3) A disabled veteran who receives 10 points under  
 15 subsection (1)(b) is not entitled to an additional 5 points  
 16 under subsection (1)(a).

17 NEW SECTION. Section 4. Notice and claim of  
 18 preference. (1) A public employer shall, by posting or on  
 19 the application form, give notice of the point preference  
 20 provided in [section 3].

21 (2) A job applicant who believes he has a point  
 22 preference shall claim the preference in writing before the  
 23 time for filing applications for the position involved has  
 24 passed. Failure to make a timely preference claim for a  
 25 position is a complete defense to an action in regard to

1 that position under [section 5].

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

6 NEW SECTION. Section 5. Enforcement of preference.

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

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

21 (3) (a) Upon filing of the petition, the court shall  
22 order the public employer to appear in court at a specified  
23 time not less than 10 or more than 30 days after the day the  
24 petition was filed and show cause why the applicant was not  
25 hired for the position. At the hearing, the public employer

1 has the burden of proving by a preponderance of the evidence  
2 that the employer applied the points under [section 3] and  
3 made a reasonable hiring decision. The applicant has the  
4 burden of proving by a preponderance of the evidence that he  
5 is a preference eligible applicant.

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

11 (c) If the public employer does not carry its burden  
12 of proof under subsection (3)(a) and the court has found  
13 that the applicant is a preference eligible applicant, the  
14 court shall order the public employer to reopen the  
15 selection process for the position involved and shall grant  
16 the applicant reasonable attorney fees, court costs, and an  
17 amount equal to 150% of the wages that the applicant would  
18 have received had he been appointed to the position. The  
19 remedy provided by this section is the only remedy for a  
20 violation of this chapter, and a court may not grant any  
21 other relief in an action for violation of this chapter.

22 (4) Failure of an applicant to file a petition under  
23 subsection (2) within 90 days bars the filing of a petition.  
24 If a public employer fails to provide an explanation under  
25 subsection (1) within 15 days and a petition is filed under

1 subsection (2), the court shall order the public employer to  
2 reopen the selection process.

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

6 NEW SECTION. Section 6. Retention during reduction in  
7 force. (1) Except as provided in subsections (2) and (3),  
8 during a reduction in force, a public employer shall retain  
9 in a position a:

10 (a) veteran, disabled veteran, or eligible relative  
11 whose performance has not been rated unacceptable under a  
12 performance appraisal system, over other employees with  
13 similar job duties, qualifications, and length of service;  
14 and

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

21 (2) No employee is entitled to preference in retention  
22 under subsection (1) unless the person is a United States  
23 citizen.

24 (3) The preference in retention under subsection (1)  
25 does not apply to a position covered by a collective

1 bargaining agreement.

2 NEW SECTION. Section 7. Adoption of rules. The  
3 department of administration shall adopt rules implementing  
4 [sections 1 through 6]. The department's rules apply to all  
5 public employers, local as well as state.

6 Section 8. Section 10-2-402, MCA, is amended to read:  
7 "10-2-402. Superintendent to be given veterans'  
8 preference. In the selection of the superintendent of the  
9 Montana veterans' home, the department of institutions shall  
10 apply the preference granted to veterans and disabled  
11 veterans under [section 3], but not the preference granted  
12 to other persons, by Title 39, chapter 30."

13 Section 9. Section 39-30-101, MCA, is amended to read:  
14 "39-30-101. Short title. This chapter may be cited as  
15 the "Montana Veterans~~+-and~~ Handicapped Persons' Employment  
16 Preference Act"."

17 Section 10. Section 39-30-102, MCA, is amended to  
18 read:

19 "39-30-102. Purposes. The purposes of this chapter are  
20 to ~~recognize-veterans-and-disabled-veterans-for--service--to~~  
21 ~~their--country~~; recognize past employment discrimination  
22 against handicapped persons; and facilitate the  
23 habilitation, rehabilitation, and readjustment of ~~veterans;~~  
24 ~~disabled-veterans;-and-handicapped~~ these persons."

25 Section 11. Section 39-30-103, MCA, is amended to

1 read:

2 "39-30-103. Definitions. For the purposes of this  
3 chapter, the following definitions apply:

4 ~~{1}--"Active-duty" means full-time-duty other than--for  
5 training--in--the--regular--components--of--the--United--States  
6 army, air force, navy, marine corps,--or--coast--guard--with  
7 full--pay--and--allowances. The term does not include monthly  
8 drills,--summer--encampments,--initial--training,--or--other  
9 inactive--or--active-duty-for-training-in-the-national-guard  
10 or-reserves.~~

11 ~~{2}--"Disabled-veteran" means an individual, whether or  
12 not he is a veteran as defined in this section, who:~~

13 ~~{a)--served-on-active-duty;~~

14 ~~{b)--has--been--separated--from--service--by--honorable  
15 discharge; and~~

16 ~~{c)--suffers--a--service-connected-disability-determined  
17 by-the-United-States-veterans-administration-to-be--30%--or  
18 more-disabling;~~

19 ~~{3}{1} "Eligible spouse" means:~~

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

23 ~~{b) the spouse of:~~

24 ~~{i)--a-disabled-veteran-determined-by-the-United-States  
25 veterans--administration--to--have--a--100%--service-connected~~

1 ~~disability who is unable to use his employment preference  
2 because of his disability;~~

3 ~~{ii)--a--person--on-active-duty-determined-by-the-United  
4 States-government-to-be-missing-in-action-or-a--prisoner--of  
5 war; or~~

6 ~~{iii} a handicapped person determined by the department  
7 of social and rehabilitation services to have a 100%  
8 disability who is unable to use his employment preference  
9 because of his disability.~~

10 ~~{4}{2} "Handicapped person" means an individual  
11 certified by the department of social and rehabilitation  
12 services to have a physical or mental impairment that  
13 substantially limits one or more major life activities, such  
14 as writing, seeing, hearing, speaking, or mobility, and  
15 which limits the individual's ability to obtain, retain, or  
16 advance in employment.~~

17 ~~{5}{3} (a) "Initial hiring" means a personnel action  
18 for which applications are solicited from outside the ranks  
19 of the current employees of:~~

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

22 ~~(ii) a legislative agency, such as the consumer  
23 counsel, environmental quality council, office of the  
24 legislative auditor, legislative council, or office of the  
25 legislative fiscal analyst, for a position within the~~

1 legislative branch;

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

6 (iv) a city or town for a municipal position, including  
7 a city or municipal court position; and

8 (v) a county for a county position, including a  
9 justice's court position.

10 (b) A personnel action limited to current employees of  
11 a specific public entity identified in subsections (a)(i)  
12 through (a)(v) of this subsection ~~(5)~~ (3), current employees  
13 in a reduction-in-force pool who have been laid off from a  
14 specific public entity identified in subsections (a)(i)  
15 through (a)(v) of this subsection ~~(5)~~ (3), or current  
16 participants in a federally authorized employment program is  
17 not an initial hiring.

18 ~~(6)~~(4) (a) "Mental impairment" means:

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

24 (ii) an organic or mental impairment that has  
25 substantial adverse effects on an individual's cognitive or

1 volitional functions.

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

7 ~~(7)~~(5) "Position" means a permanent or seasonal  
8 position as defined in 2-18-101 for a state position or a  
9 similar permanent or seasonal position with a public  
10 employer other than the state. However, the term does not  
11 include:

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

15 (b) a state or local elected official;

16 (c) employment as an elected official's immediate  
17 secretary, legal advisor, court reporter, or administrative,  
18 legislative, or other immediate or first-line aide;

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

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

23 (f) a department head appointment by the governor or  
24 an executive department head appointment by a mayor, city  
25 manager, county commissioner, or other chief administrative

1 or executive officer of a local government; or

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

4 ~~(8)~~(6) (a) "Public employer" means:

5 (i) any department, office, board, bureau, commission,  
6 agency, or other instrumentality of the executive, judicial,  
7 or legislative branch of the government of the state of  
8 Montana; and

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

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

16 ~~(9)~~--"Substantially equal qualifications"--means--the  
17 qualifications of two or more persons among whom the public  
18 employer cannot make a reasonable determination that the  
19 qualifications held by one person are significantly better  
20 suited for the position than the qualifications held by the  
21 other persons:

22 ~~(10)~~--(a)--"Veteran"--means a person who:

23 ~~(i)~~--served on active duty during time of war or  
24 declared national emergency or in a campaign or expedition  
25 for which a campaign badge was authorized by the United

1 States--congress or the United States department of defense,  
2 and

3 ~~(ii)~~--has been separated from service by honorable  
4 discharge:

5 ~~(b)~~--The term does not include a retired member of the  
6 United States armed forces who is eligible for or receiving  
7 a military retirement allowance based on length of service  
8 and does not include any other retired member of a public  
9 retirement system, except social security, that is supported  
10 in whole or in part by tax revenues:

11 ~~(ii)~~--"War or declared national emergency"--means:

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

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

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

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

21 Section 12. Section 39-30-201, MCA, is amended to  
22 read:

23 "39-30-201. Employment Point preference in initial  
24 hiring. (1) ~~(a)~~ Except as provided in 10-2-402, in an  
25 initial hiring for a position, if a job applicant who is a

1 ~~veteran; disabled veteran~~, handicapped person, or eligible  
 2 spouse meets the eligibility requirements contained in  
 3 39-30-202 and claims a preference as required by 39-30-206,  
 4 a public employer shall ~~hire the applicant over any other~~  
 5 ~~applicant with substantially equal qualifications who is not~~  
 6 ~~a preference eligible applicant~~ add five points to the score  
 7 of an applicant who received 70 points or more in a scored  
 8 procedure.

9 ~~{b}--in an initial hiring, a public employer shall hire~~  
 10 ~~a disabled veteran or handicapped person over any other~~  
 11 ~~preference eligible applicant with substantially equal~~  
 12 ~~qualifications.~~

13 (2) The employment preference provided for in  
 14 subsection (1) does not apply to a personnel action  
 15 described in subsection ~~{5}{b}~~ {3}{b} of 39-30-103 or to any  
 16 other personnel action that is not an initial hiring."

17 Section 13. Section 39-30-202, MCA, is amended to  
 18 read:

19 "39-30-202. Eligibility requirements. No ~~veteran;~~  
 20 ~~disabled veteran~~, eligible spouse, or handicapped person is  
 21 entitled to receive employment preference as provided in  
 22 39-30-201 unless:

- 23 (1) he is a United States citizen;
- 24 (2) he has resided continuously in the state for at  
 25 least 1 year immediately before applying for employment;

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

5 (4) he meets those requirements considered necessary  
 6 by a public employer to successfully perform the essential  
 7 duties of the position for which he is applying."

8 Section 14. Section 39-30-203, MCA, is amended to  
 9 read:

10 "39-30-203. Duration of preference. Subject to  
 11 39-30-202,

12 ~~{1} a handicapped person, the or eligible spouse of--a~~  
 13 ~~handicapped person as described in subsection {3}{b}{iii} of~~  
 14 ~~39-30-103, a disabled veteran, or the spouse of a disabled~~  
 15 ~~veteran as described in subsection {3}{b}{i} of 39-30-103~~  
 16 ~~qualifies for employment preference as long as the disabling~~  
 17 ~~condition exists.~~

18 ~~{2} a veteran as defined in 39-30-103, who is not a~~  
 19 ~~disabled veteran as defined in 39-30-103, qualifies for~~  
 20 ~~employment preference for no longer than 15 years following~~  
 21 ~~separation from service or for no longer than 5 years~~  
 22 ~~following December 20, 1983, whichever is later.~~

23 ~~{3} the surviving spouse of a veteran as described in~~  
 24 ~~subsection {3}{a} of 39-30-103, 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)(iii) of 39-30-103 qualifies for employment preference for as long as the person is missing in action or a prisoner of war."~~

Section 15. Section 39-30-207, MCA, is amended to read:

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

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

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer

has the burden of proving by a preponderance of the evidence that the employer applied the points under 39-30-201 and made a reasonable determination pursuant to subsection (9) of 39-30-103 and the hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

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

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

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



1 reopen the selection process.

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

5 Section 16. Section 49-2-405, MCA, is amended to read:

6 "49-2-405. Veterans' and handicapped persons'  
7 employment preference. The application of ~~an--employment a~~  
8 preference as provided for in [sections 1 through 7], Title  
9 39, chapter 30, and 10-2-402 by a public employer as defined  
10 in [section 1] and 39-30-103 may not be construed to  
11 constitute a violation of this chapter."

12 Section 17. Section 49-3-103, MCA, is amended to read:

13 "49-3-103. Permitted distinctions. (1) Nothing in this  
14 chapter shall prohibit any public or private employer:

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

21 (b) from observing the terms of a bona fide seniority  
22 system or any bona fide employee benefit plan, such as a  
23 retirement, pension, or insurance plan, which is not a  
24 subterfuge to evade the purposes of this chapter, except  
25 that no such employee benefit plan shall excuse the failure

1 to hire any individual; or

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

4 (2) The application of ~~an-employment a~~ preference as  
5 provided for in [sections 1 through 7], Title 39, chapter  
6 30, and 10-2-402 by a public employer as defined in [section  
7 1] and 39-30-103 may not be construed to constitute a  
8 violation of this chapter."

-End-

HOUSE BILL NO. 473

INTRODUCED BY PAVLOVICH, D. BROWN, ELLISON, JACK MOORE,

B. WILLIAMS, MILLER, PHILLIPS, PATTERSON, KITSELMAN, HANNAH,

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN PUBLIC EMPLOYERS TO USE SCORED PROCEDURES FOR SELECTING PERSONS FOR APPOINTMENT TO CERTAIN POSITIONS; GRANTING PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN APPOINTMENT TO THESE POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT AND REVISING THE PREFERENCE PROVIDED TO HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES UNDER THAT ACT; AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."

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

NEW SECTION. Section 1. Definitions. For the purposes of [sections 1 through 7], the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training,

for determining physical fitness, or for service in the reserves or national guards.

(2) "Armed forces" means the United States army, navy, air force, marine corps, and coast guard.

(3) "Disabled veteran" means a person, whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the veterans administration or a military department.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces during a period named in subsections (9)(a) through (c) if:

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is



1 claimed; and  
 2 (d) the mother of a service-connected permanently and  
 3 totally disabled veteran if:  
 4 (i) her husband is totally and permanently disabled;  
 5 (ii) she is widowed, divorced, or separated from the  
 6 father and has not remarried; or  
 7 (iii) she has remarried but is widowed, divorced, or  
 8 legally separated from her husband when preference is  
 9 claimed.  
 10 (5) "Position" means a permanent, temporary, or  
 11 seasonal position as defined in 2-18-101 for a state  
 12 position or a similar permanent, temporary, or seasonal  
 13 position with a public employer other than the state.  
 14 However, the term does not include:  
 15 (a) a state or local elected official;  
 16 (b) appointment by an elected official to a body such  
 17 as a board, commission, committee, or council;  
 18 (c) appointment by an elected official to a public  
 19 office if the appointment is provided for by law;  
 20 (d) a department head appointment by the governor or  
 21 an executive department head appointment by a mayor, city  
 22 manager, county commissioner, or other chief administrative  
 23 or executive officer of a local government; or  
 24 (e) engagement as an independent contractor or  
 25 employment by an independent contractor.

1 (6) (a) "Public employer" means:  
 2 (i) any department, office, board, bureau, commission,  
 3 agency, college, including a community college,  
 4 ~~postsecondary--vocational--technical--center--or--program,~~  
 5 university, or other instrumentality of the executive branch  
 6 of the government of the state of Montana; and  
 7 (ii) any county, city, OR ~~town--or--school--district.~~  
 8 (b) The term does not include A SCHOOL DISTRICT, A  
 9 POSTSECONDARY VOCATIONAL-TECHNICAL CENTER OR PROGRAM, OR any  
 10 instrumentality of the legislative or judicial branches of  
 11 the government of the state of Montana.  
 12 (7) "Under honorable conditions" means a discharge or  
 13 separation from active duty characterized as under honorable  
 14 conditions. The term includes honorable discharges and  
 15 general discharges but does not include dishonorable  
 16 discharges or other administrative discharges characterized  
 17 as other than honorable.  
 18 (8) (a) "Veteran" means a person who was separated  
 19 under honorable conditions from active duty in the armed  
 20 forces performed:  
 21 (i) in a war;  
 22 (ii) in a campaign or expedition for which a campaign  
 23 badge has been authorized by the United States congress or  
 24 the United States department of defense;  
 25 (iii) during the period beginning April 28, 1952, and

1 ending July 1, 1955; or

2 (iv) for more than 180 consecutive days, other than for  
3 training, any part of which occurred during the period  
4 beginning February 1, 1955, and ending October 14, 1976.

5 (b) The term does not include a retired member of the  
6 United States armed forces who is eligible for or receiving  
7 a military retirement allowance based on length of service  
8 and does not include any other retired member of a public  
9 retirement system, except social security, that is supported  
10 in whole or in part by tax revenues.

11 (9) "War" means:

12 (a) the Spanish-American War, beginning on April 21,  
13 1898, and ending on July 4, 1902, both dates inclusive;

14 (b) World War I, beginning on April 6, 1917, and  
15 ending on July 2, 1921, both dates inclusive; and

16 (c) World War II, beginning on December 7, 1941, and  
17 ending on April 28, 1952, both dates inclusive.

18 NEW SECTION. Section 2. Scored procedures required.  
19 For the purpose of applying the point preference provided  
20 for in [section 3] and Title 39, chapter 30, a public  
21 employer shall use a scored procedure or a combination of  
22 scored procedures totaling 100 points for selecting a person  
23 for appointment to a position. Scored procedures may  
24 include written examinations, structured oral interviews,  
25 performance tests, or other quantifiable procedures that

1 fairly test the relative capacity and fitness of an  
2 applicant for a position.

3 NEW SECTION. Section 3. Additional points for certain  
4 applicants. (1) Except as provided in subsections (2) and  
5 (3), a public employer shall add the following points to the  
6 score of an applicant for appointment to a position who  
7 received 70 points or more in a scored procedure:

8 (a) five points if the applicant is a veteran; and

9 (b) ten points if the applicant is a disabled veteran  
10 or an eligible relative.

11 (2) No veteran, disabled veteran, or eligible relative  
12 is entitled to the points under subsection (1) unless the  
13 person is a United States citizen.

14 (3) A disabled veteran who receives 10 points under  
15 subsection (1)(b) is not entitled to an additional 5 points  
16 under subsection (1)(a).

17 NEW SECTION. Section 4. Notice and claim of  
18 preference. (1) A public employer shall, by posting or on  
19 the application form, give notice of the point preference  
20 provided in [section 3].

21 (2) A job applicant who believes he has a point  
22 preference shall claim the preference in writing before the  
23 time for filing applications for the position involved has  
24 passed. Failure to make a timely preference claim for a  
25 position is a complete defense to an action in regard to

1 that position under [section 5].

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

6 NEW SECTION. Section 5. Enforcement of preference.

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

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

21 (3) (a) Upon filing of the petition, the court shall  
22 order the public employer to appear in court at a specified  
23 time not less than 10 or more than 30 days after the day the  
24 petition was filed and show cause why the applicant was not  
25 hired for the position. At the hearing, the public employer

1 has the burden of proving by a preponderance of the evidence  
2 that the employer applied the points under [section 3] and  
3 made a reasonable hiring decision. The applicant has the  
4 burden of proving by a preponderance of the evidence that he  
5 is a preference eligible applicant.

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

11 (c) If the public employer does not carry its burden  
12 of proof under subsection (3)(a) and the court has found  
13 that the applicant is a preference eligible applicant, the  
14 court shall order the public employer to reopen the  
15 selection process for the position involved and shall grant  
16 the applicant reasonable attorney fees, court costs, and an  
17 amount equal to 150% of the wages that the applicant would  
18 have received had he been appointed to the position. The  
19 remedy provided by this section is the only remedy for a  
20 violation of this chapter, and a court may not grant any  
21 other relief in an action for violation of this chapter.

22 (4) Failure of an applicant to file a petition under  
23 subsection (2) within 90 days bars the filing of a petition.  
24 If a public employer fails to provide an explanation under  
25 subsection (1) within 15 days and a petition is filed under

1 subsection (2), the court shall order the public employer to  
2 reopen the selection process.

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

6 NEW SECTION. Section 6. Retention during reduction in  
7 force. (1) Except as provided in subsections (2) and (3),  
8 during a reduction in force, a public employer shall retain  
9 in a position a:

10 (a) veteran, disabled veteran, or eligible relative  
11 whose performance has not been rated unacceptable under a  
12 performance appraisal system, over other employees with  
13 similar job duties, qualifications, and length of service;  
14 and

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

21 (2) No employee is entitled to preference in retention  
22 under subsection (1) unless the person is a United States  
23 citizen.

24 (3) The preference in retention under subsection (1)  
25 does not apply to a position covered by a collective

1 bargaining agreement.

2 NEW SECTION. Section 7. Adoption of rules. The  
3 department of administration shall adopt rules implementing  
4 [sections 1 through 6]. The department's rules apply to all  
5 public employers, local as well as state.

6 Section 8. Section 10-2-402, MCA, is amended to read:  
7 "10-2-402. Superintendent to be given veterans'  
8 preference. In the selection of the superintendent of the  
9 Montana veterans' home, the department of institutions shall  
10 apply the preference granted to veterans and disabled  
11 veterans under [section 3], but not the preference granted  
12 to other persons, by Title 39, chapter 30."

13 Section 9. Section 39-30-101, MCA, is amended to read:  
14 "39-30-101. Short title. This chapter may be cited as  
15 the "Montana Veterans<sup>1</sup>-and Handicapped Persons' Employment  
16 Preference Act"."

17 Section 10. Section 39-30-102, MCA, is amended to  
18 read:

19 "39-30-102. Purposes. The purposes of this chapter are  
20 to ~~recognize-veterans-and-disabled-veterans-for--service--to~~  
21 ~~their--country~~; recognize past employment discrimination  
22 against handicapped persons; and facilitate the  
23 habilitation, rehabilitation, and readjustment of ~~veterans;~~  
24 ~~disabled-veterans;-and-handicapped~~ these persons."

25 Section 11. Section 39-30-103, MCA, is amended to

1 read:

2 "39-30-103. Definitions. For the purposes of this  
3 chapter, the following definitions apply:

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

11 (2) ~~"Disabled veteran" means an individual, whether or~~  
12 ~~not he is a veteran as defined in this section, who:~~

13 (a) ~~served on active duty;~~

14 (b) ~~has been separated from service by honorable~~  
15 ~~discharge; and~~

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

19 (3)(1) "Eligible spouse" means:

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

23 (b) the spouse of:

24 (i) ~~a disabled veteran determined by the United States~~  
25 ~~veterans administration to have a 100% service-connected~~

1 ~~disability who is unable to use his employment preference~~  
2 ~~because of his disability;~~

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

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

10 (4)(2) "Handicapped person" means an individual  
11 certified by the department of social and rehabilitation  
12 services to have a physical or mental impairment that  
13 substantially limits one or more major life activities, such  
14 as writing, seeing, hearing, speaking, or mobility, and  
15 which limits the individual's ability to obtain, retain, or  
16 advance in employment.

17 (5)(3) (a) "Initial hiring" means a personnel action  
18 for which applications are solicited from outside the ranks  
19 of the current employees of:

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

22 (ii) a legislative agency, such as the consumer  
23 counsel, environmental quality council, office of the  
24 legislative auditor, legislative council, or office of the  
25 legislative fiscal analyst, for a position within the

1 legislative branch;

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

6 (iv) a city or town for a municipal position, including  
 7 a city or municipal court position; and

8 (v) a county for a county position, including a  
 9 justice's court position.

10 (b) A personnel action limited to current employees of  
 11 a specific public entity identified in subsections (a)(i)  
 12 through (a)(v) of this subsection ~~(5)~~ (3), current employees  
 13 in a reduction-in-force pool who have been laid off from a  
 14 specific public entity identified in subsections (a)(i)  
 15 through (a)(v) of this subsection ~~(5)~~ (3), or current  
 16 participants in a federally authorized employment program is  
 17 not an initial hiring.

18 ~~(6)~~(4) (a) "Mental impairment" means:

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

24 (ii) an organic or mental impairment that has  
 25 substantial adverse effects on an individual's cognitive or

1 volitional functions.

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

7 ~~(7)~~(5) "Position" means a permanent or seasonal  
 8 position as defined in 2-18-101 for a state position or a  
 9 similar permanent or seasonal position with a public  
 10 employer other than the state. However, the term does not  
 11 include:

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

15 (b) a state or local elected official;

16 (c) employment as an elected official's immediate  
 17 secretary, legal advisor, court reporter, or administrative,  
 18 legislative, or other immediate or first-line aide;

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

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

23 (f) a department head appointment by the governor or  
 24 an executive department head appointment by a mayor, city  
 25 manager, county commissioner, or other chief administrative



1 or executive officer of a local government; or  
 2 (g) engagement as an independent contractor or  
 3 employment by an independent contractor.

4 ~~(8)~~(6) (a) "Public employer" means:

5 (i) any department, office, board, bureau, commission,  
 6 agency, or other instrumentality of the executive, judicial,  
 7 or legislative branch of the government of the state of  
 8 Montana; and

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

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

16 ~~(9)~~--"Substantially equal qualifications"--means--the  
 17 qualifications of two or more persons among whom the public  
 18 employer cannot make a reasonable determination that the  
 19 qualifications held by one person are significantly better  
 20 suited for the position than the qualifications held by the  
 21 other persons:

22 ~~(10)~~-(a) "Veteran" means a person who:

23 (i) served on active duty during time of war or  
 24 declared national emergency or in a campaign or expedition  
 25 for which a campaign badge was authorized by the United

1 States--congress or the United States department of defense;  
 2 and

3 (ii) has been separated from service by honorable  
 4 discharge;

5 (b) The term does not include a retired member of the  
 6 United States armed forces who is eligible for or receiving  
 7 a military retirement allowance based on length of service  
 8 and does not include any other retired member of a public  
 9 retirement system, except social security, that is supported  
 10 in whole or in part by tax revenues;

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

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

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

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

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

21 Section 12. Section 39-30-201, MCA, is amended to  
 22 read:

23 "39-30-201. Employment Point preference in initial  
 24 hiring. (1) (a) Except as provided in 10-2-402, in an  
 25 initial hiring for a position, if a job applicant who is a

1 ~~veteran--disabled--veteran~~, handicapped person, or eligible  
 2 spouse meets the eligibility requirements contained in  
 3 39-30-202 and claims a preference as required by 39-30-206,  
 4 a public employer shall ~~hire-the-applicant--over--any--other~~  
 5 ~~applicant-with-substantially-equal-qualifications-who-is-not~~  
 6 ~~a--preference--eligible--applicant~~ add five 10 points to the  
 7 score of an applicant who received 70 points or more in a  
 8 scored procedure.

9 ~~(b)--in-an-initial-hiring, a public employer shall hire~~  
 10 ~~a--disabled--veteran--or--handicapped--person-over-any-other~~  
 11 ~~preference--eligible--applicant--with--substantially--equal~~  
 12 ~~qualifications-~~

13 (2) The employment preference provided for in  
 14 subsection (1) does not apply to a personnel action  
 15 described in subsection ~~(5)(b)~~ (3)(b) of 39-30-103 or to any  
 16 other personnel action that is not an initial hiring."

17 Section 13. Section 39-30-202, MCA, is amended to  
 18 read:

19 "39-30-202. Eligibility requirements. No ~~veteran,~~  
 20 ~~disabled--veteran~~, eligible spouse, or handicapped person is  
 21 entitled to receive employment preference as provided in  
 22 39-30-201 unless:

23 (1) he is a United States citizen;

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

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

5 (4) he meets those requirements considered necessary  
 6 by a public employer to successfully perform the essential  
 7 duties of the position for which he is applying."

8 Section 14. Section 39-30-203, MCA, is amended to  
 9 read:

10 "39-30-203. Duration of preference. Subject to  
 11 39-30-202,

12 ~~(1) a handicapped person, the or eligible spouse of a~~  
 13 ~~handicapped-person-as-described-in-subsection-(3)(b)(iii)-of~~  
 14 ~~39-30-103, a disabled-veteran, or the spouse of a disabled~~  
 15 ~~veteran--as--described--in-subsection-(3)(b)(i)-of-39-30-103~~  
 16 ~~qualifies for employment preference as long as the disabling~~  
 17 ~~condition exists.~~

18 ~~(2) a veteran, as defined in 39-30-103, who is not a~~  
 19 ~~disabled--veteran, as defined in 39-30-103, qualifies for~~  
 20 ~~employment-preference-for-no-longer-than-15-years--following~~  
 21 ~~separation--from--service--or--for--no--longer--than-5-years~~  
 22 ~~following-December-20, 1983, whichever is later.~~

23 ~~(3) the surviving spouse of a veteran as described in~~  
 24 ~~subsection--(3)(a)--of--39-30-103--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--39-30-103--qualifies--for--employment--preference  
 for--as--long--as--the--person--is--missing--in--action--or--a--prisoner  
 of--war--"~~

Section 15. Section 39-30-207, MCA, is amended to read:

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

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

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer

has the burden of proving by a preponderance of the evidence that the employer applied the points under 39-30-201 and made a reasonable determination pursuant to subsection (9) of 39-30-103 and the hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

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

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

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

1 reopen the selection process.

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

5 Section 16. Section 49-2-405, MCA, is amended to read:  
6 "49-2-405. Veterans' and handicapped persons'  
7 employment preference. The application of an-employment a  
8 preference as provided for in [sections 1 through 7], Title  
9 39, chapter 30, and 10-2-402 by a public employer as defined  
10 in [section 1] and 39-30-103 may not be construed to  
11 constitute a violation of this chapter."

12 Section 17. Section 49-3-103, MCA, is amended to read:  
13 "49-3-103. Permitted distinctions. (1) Nothing in this  
14 chapter shall prohibit any public or private employer:

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

21 (b) from observing the terms of a bona fide seniority  
22 system or any bona fide employee benefit plan, such as a  
23 retirement, pension, or insurance plan, which is not a  
24 subterfuge to evade the purposes of this chapter, except  
25 that no such employee benefit plan shall excuse the failure

1 to hire any individual; or

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

4 (2) The application of an-employment a preference as  
5 provided for in [sections 1 through 7], Title 39, chapter  
6 30, and 10-2-402 by a public employer as defined in [section  
7 1] and 39-30-103 may not be construed to constitute a  
8 violation of this chapter."

-End-

STATEMENT OF INTENT

HOUSE BILL 473

A statement of intent is required for this bill because section 7 requires the department of administration to adopt rules implementing sections 1 through 6. The legislature intends the rules to adequately provide for the administration of the point preference provided for in section 3 and the retention preference provided for in section 6, but to include only those rules that are reasonably necessary.

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

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

It is the intent of the legislature that the department

formulate and adopt rules relating but not limited to the following matters and take into account the following considerations:

(1) Claiming preference -- documentation and verification. Rules relating to the job application process should include the manner in which a preference should be claimed when a job is applied for. They should prescribe the means by which the applicant must document and submit evidence of such things as the applicant's status as a veteran, disabled veteran, eligible relative, and United States citizen. It is the intent of the legislature that rules for claiming and documenting a preference do not place unreasonable burdens upon applicants and that once an applicant has substantially complied with the rules a public employer should make every reasonable attempt to verify the existence of the preference.

(2) Military conflicts. The legislature intends the rules to apply federal law to determine what constitutes a campaign or expedition for which a campaign badge is authorized by the congress of the United States or department of defense.

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



1       (4) Hiring decision notices and explanations. The  
2 legislature intends the rules to provide for the form and  
3 content of written notices of hiring decisions, including  
4 whether the position was obtained as the result of  
5 application of the point preference by the public employer,  
6 written requests for explanations of hiring decisions, and  
7 written explanations of hiring decisions.

8       (5) Reopening of selection process. The legislature  
9 intends the rules to provide for a method of reopening the  
10 selection process for a job should a court order the  
11 selection process reopened and include a method of giving  
12 notice to those who applied for the job informing them of  
13 the reopening and the reason therefor.

14       (6) Appraisal methods. The legislature intends the  
15 rules to assist public employers in developing methods of  
16 appraising employee performance for the purpose of applying  
17 the retention preference.

## 1 HOUSE BILL NO. 473

2 INTRODUCED BY PAVLOVICH, D. BROWN, ELLISON, JACK MOORE,  
 3 B. WILLIAMS, MILLER, PHILLIPS, PATTERSON, KITSELMAN, HANNAH,  
 4 SANDS, PECK, MANNING, KEYSER, LYBECK, LANE,  
 5 ELLERD, HAYNE, BOYLAN, E. SMITH, MCCALLUM

6  
 7 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN  
 8 PUBLIC EMPLOYERS TO USE SCORED PROCEDURES FOR SELECTING  
 9 PERSONS FOR APPOINTMENT TO CERTAIN POSITIONS; GRANTING  
 10 PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE  
 11 RELATIVES IN APPOINTMENT TO THESE POSITIONS AND IN RETENTION  
 12 DURING REDUCTIONS IN FORCE; ELIMINATING THE PREFERENCE  
 13 PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE  
 14 MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT  
 15 PREFERENCE ACT AND REVISING THE PREFERENCE PROVIDED TO  
 16 HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES UNDER THAT  
 17 ACT; AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH  
 18 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405,  
 19 AND 49-3-103, MCA."

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

22 NEW SECTION. Section 1. Definitions. For the purposes  
 23 of [sections 1 through 7], the following definitions apply:

24 (1) "Active duty" means full-time duty with military  
 25 pay and allowances in the armed forces, except for training,

1 for determining physical fitness, or for service in the  
 2 reserves or national guards.

3 (2) "Armed forces" means the United States army, navy,  
 4 air force, marine corps, and coast guard.

5 (3) "Disabled veteran" means a person, whether or not  
 6 he is a veteran as defined in this section, who was  
 7 separated under honorable conditions from active duty in the  
 8 armed forces and has established the present existence of a  
 9 service-connected disability or is receiving compensation,  
 10 disability retirement benefits, or pension because of a  
 11 public statute administered by the veterans administration  
 12 or a military department.

13 (4) "Eligible relative" means:

14 (a) the unmarried surviving spouse of a veteran or  
 15 disabled veteran;

16 (b) the spouse of a disabled veteran who is unable to  
 17 qualify for appointment to a position;

18 (c) the mother of a veteran who lost his life under  
 19 honorable conditions while serving in the armed forces  
 20 during a period named in subsections (9)(a) through (c) if:

21 (i) her husband is totally and permanently disabled;

22 OR

23 (ii) she is widowed,--divorced,--or-separated from the  
 24 father and has not remarried; or AND

25 ~~(iii) she has remarried but is--widowed,--divorced,--or~~

1 ~~legally separated from her husband when preference is~~  
2 ~~claimed, and~~

3 (d) the mother of a service-connected permanently and  
4 totally disabled veteran if:

5 (i) her husband is totally and permanently disabled;

6 OR

7 (ii) she is widowed, divorced, or separated from the  
8 father and has not remarried, or

9 ~~(iii) she has remarried but is widowed, divorced, or~~  
10 ~~legally separated from her husband when preference is~~  
11 ~~claimed.~~

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

17 (a) a state or local elected official;

18 (b) appointment by an elected official to a body such  
19 as a board, commission, committee, or council;

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

22 (d) a department head appointment by the governor or  
23 an executive department head appointment by a mayor, city  
24 manager, county commissioner, or other chief administrative  
25 or executive officer of a local government; or

1 (e) engagement as an independent contractor or  
2 employment by an independent contractor.

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

4 (i) any department, office, board, bureau, commission,  
5 agency, college, including a community college,  
6 postsecondary vocational technical center or program,  
7 university, or other instrumentality of the executive branch  
8 of the government of the state of Montana; and

9 (ii) any county, city, OR town, or school district.

10 (b) The term does not include A SCHOOL DISTRICT, A  
11 POSTSECONDARY VOCATIONAL-TECHNICAL CENTER OR PROGRAM, OR any  
12 instrumentality of the legislative or judicial branches of  
13 the government of the state of Montana.

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

20 (8) (a) "Veteran" means a person who was separated  
21 under honorable conditions from active duty in the armed  
22 forces performed:

23 (i) in a war;

24 (ii) in a campaign or expedition for which a campaign  
25 badge has been authorized by the United States congress or



1 the United States department of defense;

2 (iii) during the period beginning April 28, 1952, and  
3 ending July 1, 1955; or

4 (iv) for more than 180 consecutive days, other than for  
5 training, any part of which occurred during the period  
6 beginning February 1, 1955, and ending October 14, 1976.

7 (b) The term does not include a retired member of the  
8 United States armed forces who is eligible for or receiving  
9 a military retirement allowance based on length of service  
10 and does not include any other retired member of a public  
11 retirement system, except social security, that is supported  
12 in whole or in part by tax revenues.

13 (9) "War" means:

14 (a) the Spanish-American War, beginning on April 21,  
15 1898, and ending on July 4, 1902, both dates inclusive;

16 (b) World War I, beginning on April 6, 1917, and  
17 ending on July 2, 1921, both dates inclusive; and

18 (c) World War II, beginning on December 7, 1941, and  
19 ending on April 28, 1952, both dates inclusive.

20 NEW SECTION. Section 2. Scored procedures required.  
21 For the purpose of applying the point preference provided  
22 for in [section 3] and Title 39, chapter 30, a public  
23 employer shall use a scored procedure or a combination of  
24 scored procedures totaling 100 points for selecting a person  
25 for appointment to a position. Scored procedures may

1 include written examinations, structured oral interviews,  
2 performance tests, or other quantifiable procedures that  
3 fairly test the relative capacity and fitness of an  
4 applicant for a position.

5 NEW SECTION. Section 3. Additional points for certain  
6 applicants. (1) Except as provided in subsections (2) and  
7 (3), a public employer shall add the following points to the  
8 score of an applicant for appointment to a position who  
9 received 70 points or more in a scored procedure:

10 (a) five points if the applicant is a veteran; and

11 (b) ten points if the applicant is a disabled veteran  
12 or an eligible relative.

13 (2) No veteran, disabled veteran, or eligible relative  
14 is entitled to the points under subsection (1) unless the  
15 person is a United States citizen.

16 (3) A disabled veteran who receives 10 points under  
17 subsection (1)(b) is not entitled to an additional 5 points  
18 under subsection (1)(a).

19 NEW SECTION. Section 4. Notice and claim of  
20 preference. (1) A public employer shall, by posting or on  
21 the application form, give notice of the point preference  
22 provided in [section 3].

23 (2) A job applicant who believes he has a point  
24 preference shall claim the preference in writing before the  
25 time for filing applications for the position involved has

1 passed. Failure to make a timely preference claim for a  
2 position is a complete defense to an action in regard to  
3 that position under [section 5].

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

8 NEW SECTION. Section 5. Enforcement of preference.

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

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

23 (3) (a) Upon filing of the petition, the court shall  
24 order the public employer to appear in court at a specified  
25 time not less than 10 or more than 30 days after the day the

1 petition was filed and show cause why the applicant was not  
2 hired for the position. At the hearing, the public employer  
3 has the burden of proving by a preponderance of the evidence  
4 that the employer applied the points under [section 3] and  
5 made a reasonable hiring decision. The applicant has the  
6 burden of proving by a preponderance of the evidence that he  
7 is a preference eligible applicant.

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

13 (c) If the public employer does not carry its burden  
14 of proof under subsection (3)(a) and the court has found  
15 that the applicant is a preference eligible applicant, the  
16 court shall order the public employer to reopen the  
17 selection process for the position involved and shall grant  
18 the applicant reasonable attorney fees, AND court costs, and  
19 ~~an amount equal to 150% of the wages that the applicant~~  
20 ~~would have received had he been appointed to the position.~~  
21 The remedy provided by this section is the only remedy for a  
22 violation of this chapter, and a court may not grant any  
23 other relief in an action for violation of this chapter.

24 (4) Failure of an applicant to file a petition under  
25 subsection (2) within 90 days bars the filing of a petition.

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

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

8 NEW SECTION. Section 6. Retention during reduction in  
9 force. (1) Except as provided in subsections (2) and (3),  
10 during a reduction in force, a public employer shall retain  
11 in a position a:

12 (a) veteran, disabled veteran, or eligible relative  
13 whose performance has not been rated unacceptable under a  
14 performance appraisal system, over other employees with  
15 similar job duties, qualifications, and SAME length of  
16 service; and

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

23 (2) No employee is entitled to preference in retention  
24 under subsection (1) unless the person is a United States  
25 citizen.

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

4 NEW SECTION. Section 7. Adoption of rules. The  
5 department of administration shall adopt rules implementing  
6 [sections 1 through 6]. The department's rules apply to all  
7 public employers, local as well as state.

8 Section 8. Section 10-2-402, MCA, is amended to read:  
9 "10-2-402. Superintendent to be given veterans'  
10 preference. In the selection of the superintendent of the  
11 Montana veterans' home, the department of institutions shall  
12 apply the preference granted to veterans and disabled  
13 veterans under [section 3], but not the preference granted  
14 to other persons, by Title 39, chapter 30."

15 Section 9. Section 39-30-101, MCA, is amended to read:  
16 "39-30-101. Short title. This chapter may be cited as  
17 the "Montana Veterans<sup>+</sup> and Handicapped Persons' Employment  
18 Preference Act"."

19 Section 10. Section 39-30-102, MCA, is amended to  
20 read:

21 "39-30-102. Purposes. The purposes of this chapter are  
22 to recognize veterans and disabled veterans for service to  
23 their country, recognize past employment discrimination  
24 against handicapped persons, and facilitate the  
25 habilitation, rehabilitation, and readjustment of veterans,

1 disabled veterans, and handicapped these persons."

2 Section 11. Section 39-30-103, MCA, is amended to  
3 read:

4 "39-30-103. Definitions. For the purposes of this  
5 chapter, the following definitions apply:

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

13 (2) "Disabled veteran" means an individual, whether or  
14 not he is a veteran as defined in this section, who:

15 (a) served on active duty;

16 (b) has been separated from service by honorable  
17 discharge; and

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

21 (3)(1) "Eligible spouse" means:

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

25 (b) the spouse of:

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

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

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

12 (4)(2) "Handicapped person" means an individual  
13 certified by the department of social and rehabilitation  
14 services to have a physical or mental impairment that  
15 substantially limits one or more major life activities, such  
16 as writing, seeing, hearing, speaking, or mobility, and  
17 which limits the individual's ability to obtain, retain, or  
18 advance in employment.

19 (5)(3) (a) "Initial hiring" means a personnel action  
20 for which applications are solicited from outside the ranks  
21 of the current employees of:

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

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

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

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

8 (iv) a city or town for a municipal position, including  
 9 a city or municipal court position; and

10 (v) a county for a county position, including a  
 11 justice's court position.

12 (b) A personnel action limited to current employees of  
 13 a specific public entity identified in subsections (a)(i)  
 14 through (a)(v) of this subsection ~~(5)~~ (3), current employees  
 15 in a reduction-in-force pool who have been laid off from a  
 16 specific public entity identified in subsections (a)(i)  
 17 through (a)(v) of this subsection ~~(5)~~ (3), or current  
 18 participants in a federally authorized employment program is  
 19 not an initial hiring.

20 ~~(6)~~(4) (a) "Mental impairment" means:

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

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

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

9 ~~(7)~~(5) "Position" means a permanent or seasonal  
 10 position as defined in 2-18-101 for a state position or a  
 11 similar permanent or seasonal position with a public  
 12 employer other than the state. However, the term does not  
 13 include:

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

17 (b) a state or local elected official;

18 (c) employment as an elected official's immediate  
 19 secretary, legal advisor, court reporter, or administrative,  
 20 legislative, or other immediate or first-line aide;

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

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

25 (f) a department head appointment by the governor or

1 an executive department head appointment by a mayor, city  
 2 manager, county commissioner, or other chief administrative  
 3 or executive officer of a local government; or

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

6 (8)(6) (a) "Public employer" means:

7 (i) any department, office, board, bureau, commission,  
 8 agency, or other instrumentality of the executive, judicial,  
 9 or legislative branch of the government of the state of  
 10 Montana; and

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

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

18 (9)--"Substantially--equal--qualifications"--means--the  
 19 qualifications-of-two-or-more-persons-among-whom-the--public  
 20 employer--cannot--make--a--reasonable-determination-that-the  
 21 qualifications-held-by-one-person-are--significantly--better  
 22 suited--for-the-position-than-the-qualifications-held-by-the  
 23 other-persons-

24 (10)-(a)-"Veteran"-means-a-person-who-

25 (i)--served-on--active--duty--during--time--of--war--or

1 declared--national--emergency-or-in-a-campaign-or-expedition  
 2 for-which-a-campaign-badge--was--authorized--by--the--United  
 3 States--congress-or-the-United-States-department-of-defense,  
 4 and

5 (ii)-has--been--separated--from--service--by--honorable  
 6 discharge-

7 (b)--The--term--does--not--include--a--retired-member-of-the  
 8 United-States-armed-forces-who-is-eligible-for-or--receiving  
 9 a--military--retirement-allowance-based-on-length-of-service  
 10 and--does--not--include--any-other-retired-member--of--a--public  
 11 retirement-system,-except-social-security,-that-is-supported  
 12 in-whole-or-in-part-by-tax-revenues-

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

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

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

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

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

23 Section 12. Section 39-30-201, MCA, is amended to  
 24 read:

25 "39-30-201. Employment Point preference in initial

1 hiring. (1) ~~(a)~~ Except as provided in 10-2-402, in an  
 2 initial hiring for a position, if a job applicant who is a  
 3 ~~veteran, disabled veteran,~~ handicapped person, or eligible  
 4 spouse meets the eligibility requirements contained in  
 5 39-30-202 and claims a preference as required by 39-30-206,  
 6 a public employer shall ~~hire the applicant over any other~~  
 7 ~~applicant with substantially equal qualifications who is not~~  
 8 ~~a preference eligible applicant~~ add five 10 points to the  
 9 score of an applicant who received 70 points or more in a  
 10 scored procedure.

11 ~~(b) In an initial hiring, a public employer shall hire~~  
 12 ~~a disabled veteran or handicapped person over any other~~  
 13 ~~preference eligible applicant with substantially equal~~  
 14 ~~qualifications.~~

15 (2) The employment preference provided for in  
 16 subsection (1) does not apply to a personnel action  
 17 described in subsection ~~(5)(b)~~ (3)(b) of 39-30-103 or to any  
 18 other personnel action that is not an initial hiring."

19 Section 13. Section 39-30-202, MCA, is amended to  
 20 read:

21 "39-30-202. Eligibility requirements. No ~~veteran,~~  
 22 ~~disabled veteran,~~ eligible spouse, or handicapped person is  
 23 entitled to receive employment preference as provided in  
 24 39-30-201 unless:

25 (1) he is a United States citizen;

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

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

7 (4) he meets those requirements considered necessary  
 8 by a public employer to successfully perform the essential  
 9 duties of the position for which he is applying."

10 Section 14. Section 39-30-203, MCA, is amended to  
 11 read:

12 "39-30-203. Duration of preference. Subject to  
 13 39-30-202,

14 ~~(1) a handicapped person, the or eligible spouse of a~~  
 15 ~~handicapped person as described in subsection (3)(b)(iii) of~~  
 16 ~~39-30-103, a disabled veteran, or the spouse of a disabled~~  
 17 ~~veteran as described in subsection (3)(b)(i) of 39-30-103~~  
 18 ~~qualifies for employment preference as long as the disabling~~  
 19 ~~condition exists,~~

20 ~~(2) a veteran, as defined in 39-30-103, who is not a~~  
 21 ~~disabled veteran, as defined in 39-30-103, qualifies for~~  
 22 ~~employment preference for no longer than 15 years following~~  
 23 ~~separation from service or for no longer than 5 years~~  
 24 ~~following December 20, 1983, whichever is later.~~

25 ~~(3) the surviving spouse of a veteran as described in~~

1 ~~subsection (3)(a) of 39-30-103 qualifies for employment~~  
 2 ~~preference for as long as the spouse remains unmarried, and~~  
 3 ~~(4) the spouse of a person described in subsection~~  
 4 ~~(3)(b)(ii) of 39-30-103 qualifies for employment preference~~  
 5 ~~for as long as the person is missing in action or a prisoner~~  
 6 ~~of war."~~

7 Section 15. Section 39-30-207, MCA, is amended to  
 8 read:

9 "39-30-207. Enforcement of preference. (1) An  
 10 applicant who believes he has not been accorded his rights  
 11 under this chapter may, within 30 days of receipt of the  
 12 notice of the hiring decision provided for in 39-30-206,  
 13 submit to the public employer a written request for an  
 14 explanation of the public employer's hiring decision. Within  
 15 15 days of receipt of the request, the public employer shall  
 16 give the applicant a written explanation.

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

23 (3) (a) Upon filing of the petition, the court shall  
 24 order the public employer to appear in court at a specified  
 25 time not less than 10 or more than 30 days after the day the

1 petition was filed and show cause why the applicant was not  
 2 hired for the position. At the hearing, the public employer  
 3 has the burden of proving by a preponderance of the evidence  
 4 that the employer applied the points under 39-30-201 and  
 5 made a reasonable determination pursuant to subsection (9)  
 6 of 39-30-103 and the hiring decision. The applicant has the  
 7 burden of proving by a preponderance of the evidence that he  
 8 is a preference eligible applicant.

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

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

23 (4) Failure of an applicant to file a petition under  
 24 subsection (2) within 90 days bars the filing of a petition.  
 25 If a public employer fails to provide an explanation under



1 subsection (1) within 15 days and a petition is filed under  
 2 subsection (2), the court shall order the public employer to  
 3 reopen the selection process.

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

7 Section 16. Section 49-2-405, MCA, is amended to read:

8 "49-2-405. Veterans' and handicapped persons'  
 9 employment preference. The application of an-employment a  
 10 preference as provided for in [sections 1 through 7], Title  
 11 39, chapter 30, and 10-2-402 by a public employer as defined  
 12 in [section 1] and 39-30-103 may not be construed to  
 13 constitute a violation of this chapter."

14 Section 17. Section 49-3-103, MCA, is amended to read:

15 "49-3-103. Permitted distinctions. (1) Nothing in this  
 16 chapter shall prohibit any public or private employer:

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

23 (b) from observing the terms of a bona fide seniority  
 24 system or any bona fide employee benefit plan, such as a  
 25 retirement, pension, or insurance plan, which is not a

1 subterfuge to evade the purposes of this chapter, except  
 2 that no such employee benefit plan shall excuse the failure  
 3 to hire any individual; or

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

6 (2) The application of an-employment a preference as  
 7 provided for in [sections 1 through 7], Title 39, chapter  
 8 30, and 10-2-402 by a public employer as defined in [section  
 9 1] and 39-30-103 may not be construed to constitute a  
 10 violation of this chapter."

-End-



# STANDING COMMITTEE REPORT

## SENATE

.....April 19,..... 19..85...

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION.....

having had under consideration..... HOUSE BILL..... No. 473.....

third reading copy ( blue )  
color

(Senator Lynch will carry)

**GRANTING PREFERENCE TO VETERANS IN CERTAIN EMPLOYMENT SITUATIONS**

Respectfully report as follows: That..... HOUSE BILL No. 473.....

be amended as follows:

1. Page 3, line 25.

Following: "government;"

Strike: "or"

2. Page 4, line 2.

Following: "contractor"

Strike: "."

Insert: "; or"

3. Page 4, line 3.

Following: line 2

Insert: "(f) a position held by a student under the Montana work-study program provided for in Title 20, chapter 25, Part 7, or under a student employment program administered by the Montana university system or a community college."

*Go*

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

.....*Jack Haffey*.....  
Chairman.

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