

HOUSE BILL NO. 700

INTRODUCED BY PAVLOVICH, MANNING, VAUGHN, STIMATZ, LEE,
ELLISON, CAMPBELL, PATTERSON, TVEIT, LYNCH, DEVLIN, NATHE,
WILLIAMS, JOHNSON, HAYNE, DRISCOLL, O'CONNELL, QUILICI,
MCCORMICK, THOMAS, SWIFT, BLOTKAMP, DAILY, MENAHAN,
GLASER, SWYSGOOD, NISBET, HARRINGTON, PHILLIPS,
HANNAH, GIACOMETTO

IN THE HOUSE

FEBRUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 18, 1989	PRINTING REPORT.
FEBRUARY 21, 1989	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 22, 1989	THIRD READING, PASSED. AYES, 81; NOES, 18.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 23, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 37; NOES, 12.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1989

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 4, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 8, 1989

CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

APRIL 8, 1989

CONFERENCE COMMITTEE REPORTED.

APRIL 10, 1989

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 11, 1989

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 11, 1989

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 11, 1989

SENT TO ENROLLING.

APRIL 14, 1989

REPORTED CORRECTLY ENROLLED.

APRIL 18, 1989

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 19, 1989

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 19, 1989

DELIVERED TO GOVERNOR.

APRIL 20, 1989

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 21, 1989

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 21, 1989

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *700* *Edmon Lee*
 2 INTRODUCED BY *Carlisle* *Richard Thompson* *Laughton* *Murphy*
 3 *Patton* *Smart* *April* *Derby* *NATH* *William Johnson* *Hayne*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT
 5 PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE
 6 RELATIVES IN APPOINTMENT TO CERTAIN POSITIONS AND IN
 7 RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE
 8 EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR
 9 ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED
 10 PERSONS' EMPLOYMENT PREFERENCE ACT; AND AMENDING SECTIONS
 11 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH
 12 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."

STATEMENT OF INTENT

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

23 It is the desire of the legislature that the department
 24 take all necessary steps in formulating, proposing, and
 25 adopting rules to ensure that the public, particularly those

1 persons and organizations that have shown past interest in
 2 the employment preference law, is afforded sufficient time
 3 and opportunity to participate in the rulemaking procedure.
 4 The department should give ample notice and hold necessary
 5 hearings to ensure adequate public participation.

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

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

NEW SECTION. Section 1. Definitions. For the purposes

14 of [sections 1 through 6], the following definitions apply:

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

19 (2) "Armed forces" means the United States:

20 (a) army, navy, air force, marine corps, and coast
 21 guard; and

22 (b) merchant marine for service recognized by the
 23 United States department of defense as active military
 24 service for the purpose of laws administered by the veterans
 25 administration.

1 (3) "Disabled veteran" means a person:

2 (a) whether or not he is a veteran as defined in this
3 section, who was separated under honorable conditions from
4 active duty in the armed forces and has established the
5 present existence of a service-connected disability or is
6 receiving compensation, disability retirement benefits, or
7 pension because of a law administered by the veterans
8 administration or a military department; or

9 (b) who has received a purple heart medal.

10 (4) "Eligible relative" means:

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

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

15 (c) the mother of a veteran who lost his life under
16 honorable conditions while serving in the armed forces if:

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

18 or

19 (ii) she is the widow of the father of the veteran and
20 has not remarried;

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

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

24 or

25 (ii) she is the widow of the father of the veteran and

1 has not remarried.

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

7 (a) a state or local elected office;

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

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

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

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

18 (6) "Public employer" means:

19 (a) a department, office, board, bureau, commission,
20 agency, or other instrumentality of the executive,
21 legislative, or judicial branches of the government of this
22 state;

23 (b) a unit of the Montana university system or a
24 vocational-technical center;

25 (c) a school district or community college; and

(d) a county, city, or town.

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

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

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

NEW SECTION. Section 2. Point preference for certain applicants. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for appointment to a position must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

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

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

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

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

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

1 claiming preference.

2 **NEW SECTION. Section 4. Enforcement of preference.**

3 (1) An applicant who believes he is entitled to but has not
4 been given the point preference provided in [section 2] may,
5 within 30 days of receipt of the notice of the hiring
6 decision provided for in [section 3], 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) After following the procedure described in
12 subsection (1), the applicant may, within 90 days after
13 receipt of notice of the hiring decision, file a petition in
14 the district court in the county in which his application
15 was received by the public employer. The petition must state
16 facts that on their face entitle the applicant to a point
17 preference.

18 (3) (a) Upon filing of the petition, the court shall
19 order the public employer to appear in court at a specified
20 time not less than 5 or more than 10 days after the day the
21 petition was filed and show cause why the applicant was not
22 hired for the position. At the hearing, the public employer
23 has the burden of proving by a preponderance of the evidence
24 that the employer applied the points under [section 2] and
25 made a reasonable 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 finds that
10 the applicant is a preference eligible applicant, the court
11 shall order the public employer to comply with the
12 provisions of [section 2]. In addition, the court shall,
13 upon proper proof, grant an award of backpay, reasonable
14 attorney fees, and costs.

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

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

24 **NEW SECTION. Section 5. Retention during reduction in**
25 **force.** (1) Subject to the restriction in subsections (2) and

(3), during a reduction in force, a public employer shall retain in a position:

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

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

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

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

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

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

"10-2-402. Superintendent to be given veterans'

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

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

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

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

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

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

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

{1}--"Active-duty"--means ~~full-time-duty-other-than--for training--in--the--regular--components--of--the--United--States army,--air--force,--navy,--marine--corps,--or--coast--guard--with full--pay--and--allowances.~~ The term does not include monthly

1 drills,--summer--encampments,--initial--training,--or--other
 2 inactive--or--active-duty-for-training-in-the-national-guard
 3 or-reserves;
 4 {2}--"Disabled-veteran"--means-an-individual,--whether-or
 5 not-he-is-a-veteran-as-defined-in-this-section,--who:
 6 {a}--served-on-active-duty;
 7 {b}--has--been--separated--from--service--by--honorable
 8 discharge;--and
 9 {c}--suffers--a-service-connected-disability-determined
 10 by-the-United-States-veterans-administration-to-be--30%--or
 11 more-disabling;
 12 {3}{1} "Eligible spouse" means:
 13 {a}--the--unremarried-surviving-spouse-of-a-veteran-who
 14 died-while-on-active-duty-or-whose-death--resulted--from--a
 15 service-connected-disability;--or
 16 {b} the spouse of:
 17 {i}--a-disabled-veteran-determined-by-the-United-States
 18 veterans--administration--to--have--a-100%-service-connected
 19 disability-who-is-unable-to-use--his--employment--preference
 20 because-of-his-disability;
 21 {ii}--a-person--on-active-duty-determined-by-the-United
 22 States-government-to-be-missing-in-action-or-a-prisoner--of
 23 war;--or
 24 {iii} a handicapped person determined by the department
 25 of social and rehabilitation services to have a 100%

1 disability who is unable to use his employment preference
 2 because of his disability.
 3 {4}{2} "Handicapped person" means an individual
 4 certified by the department of social and rehabilitation
 5 services to have a physical or mental impairment that
 6 substantially limits one or more major life activities, such
 7 as writing, seeing, hearing, speaking, or mobility, and
 8 which that limits the individual's ability to obtain,
 9 retain, or advance in employment.
 10 {5}{3} (a) "Initial hiring" means a personnel action
 11 for which applications are solicited from outside the ranks
 12 of the current employees of:
 13 (i) a department, as defined in 2-15-102, for a
 14 position within the executive branch;
 15 (ii) a legislative agency, such as the consumer
 16 counsel, environmental quality council, office of the
 17 legislative auditor, legislative council, or office of the
 18 legislative fiscal analyst, for a position within the
 19 legislative branch;
 20 (iii) a judicial agency, such as the office of supreme
 21 court administrator, office of supreme court clerk, state
 22 law library, or similar office in a state district court for
 23 a position within the judicial branch;
 24 (iv) a city or town for a municipal position, including
 25 a city or municipal court position; and

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

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

{6}(4) (a) "Mental impairment" means:

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

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

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

{7}(5) "Position" means a permanent or seasonal

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

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

(b) a state or local elected official;

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

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

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

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

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

{8}(5) (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

1 Montana; and

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

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

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

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

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

21 ~~(ii) has been separated from service by honorable~~
22 ~~discharge;~~

23 ~~(b) The term does not include a retired member of the~~
24 ~~United States armed forces who is eligible for or receiving~~
25 ~~a military retirement allowance based on length of service~~

1 ~~and does not include any other retired member of a public~~
2 ~~retirement system, except social security, that is supported~~
3 ~~in whole or in part by tax revenues;~~

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

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

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

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

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

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

16 "39-30-201. Employment preference in initial hiring.

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

25 (b) In an initial hiring, a public employer shall hire

1 a disabled-veteran-or handicapped person over any other
2 preference eligible applicant with substantially equal
3 qualifications.

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

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

10 "39-30-202. Eligibility requirements. No---veteran,
11 disabled--veteran, An eligible spouse, or handicapped person
12 is not entitled to receive employment preference as provided
13 in 39-30-201 unless:

14 (1) he is a United States citizen;

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

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

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

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

1 "39-30-203. Duration of preference. Subject to
2 39-30-202,

3 {1} a handicapped person, the or eligible spouse of--a
4 handicapped-person-as-described-in-subsection-(3)(b)(iii)-of
5 39-30-103,--a--disabled-veteran, or the spouse of-a-disabled
6 veteran-as-described-in-subsection--(3)(b)(i)--of--39-30-103
7 qualifies for employment preference as long as the disabling
8 condition exists,

9 {2}--a--veteran,--as-defined-in-39-30-103, who-is-not-a
10 disabled-veteran, as-defined--in--39-30-103,--qualifies--for
11 employment--preference-for-no-longer-than-15-years-following
12 separation-from-service--or--for--no--longer--than--5--years
13 following-December-20, 1983, whichever-is-later.

14 {3}--the--surviving-spouse-of-a-veteran-as-described-in
15 subsection-(3)(a)--of--39-30-103--qualifies--for--employment
16 preference--for-as-long-as-the-spouse-remains-unmarried, and

17 {4}--the-spouse-of-a--person--described--in--subsection
18 (3)(b)(ii)--of--39-30-103-qualifies-for-employment-preference
19 for-as-long-as-the-person-is-missing-in-action-or-a-prisoner
20 of-war."

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

23 "39-30-207. Enforcement of preference. (1) An
24 applicant who believes he has not been accorded his rights
25 under this chapter may, within 30 days of receipt of the

1 notice of the hiring decision provided for in 39-30-206,
2 submit to the public employer a written request for an
3 explanation of the public employer's hiring decision. Within
4 15 days of receipt of the request, the public employer shall
5 give the applicant a written explanation.

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

12 (3) (a) Upon filing of the petition, the court shall
13 order the public employer to appear in court at a specified
14 time not less than 10 or more than 30 days after the day the
15 petition was filed and show cause why the applicant was not
16 hired for the position. At the hearing, the public employer
17 has the burden of proving by a preponderance of the evidence
18 that the employer made a reasonable determination pursuant
19 to ~~subsection (9) of~~ 39-30-103(7), and the applicant has the
20 burden of proving by a preponderance of the evidence that he
21 is a preference eligible applicant.

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

1 of all of the parties, grant a continuance.

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

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

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

20 **Section 15.** Section 49-2-405, MCA, is amended to read:
21 "49-2-405. Veterans' and handicapped persons'
22 employment preference. The application of an employment
23 preference as provided for in sections 1 through 6, Title
24 39, chapter 30, and 10-2-402 by a public employer as defined
25 in section 1 and 39-30-103 may not be construed to

1 constitute a violation of this chapter."

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

3 **"49-3-103. Permitted distinctions.** (1) Nothing in this
4 chapter ~~shall--prohibit~~ prohibits any public or private
5 employer:

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

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

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

20 (2) The application of an employment preference as
21 provided for in [sections 1 through 6], Title 39, chapter
22 30, and 10-2-402 by a public employer as defined in [section
23 1] and 39-30-103 may not be construed to constitute a
24 violation of this chapter."

25 **NEW SECTION. Section 17.** Extension of authority. Any

1 existing authority to make rules on the subject of the
2 provisions of [this act] is extended to the provisions of
3 [this act].

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

1 *House* BILL NO. *700, Ellison Lee*
 2 INTRODUCED BY *Carlisle, Hanning, Laughlin, Swartz*
 3 *Swartz, Smith, Spitz, Becki, NAPA, Johnson, Hayne*
 4 A BILL FOR AN ACT ENTITLED "AN ACT GRANTING AN EMPLOYMENT
 5 PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE
 6 RELATIVES IN APPOINTMENT TO CERTAIN POSITIONS AND IN
 7 RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE
 8 EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR
 9 ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED
 10 PERSONS' EMPLOYMENT PREFERENCE ACT; AND AMENDING SECTIONS
 11 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH
 12 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."
 13

STATEMENT OF INTENT

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

23 It is the desire of the legislature that the department
 24 take all necessary steps in formulating, proposing, and
 25 adopting rules to ensure that the public, particularly those

There is no change on HB 700 and will not
 be reprinted. Please refer to introduced
 (white) for complete text.

SECOND READING
 HB 700

1 *House* BILL NO. *700, E. H. Anderson*
 2 INTRODUCED BY *Sen. Fred Schuchman, Chairman, Senate*
 3 *Committee on Veterans' Affairs*
 4 A BILL FOR AN ACT ENTITLED "AN ACT GRANTING AN EMPLOYMENT
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SENATE STANDING COMMITTEE REPORT

March 23, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 700 (third reading copy -- blue), respectfully report that HB 700 be amended and as so amended be concurred in:

Sponsor: Pavlovich (Nathe)

1. Page 22.

Following: line 3

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

AND AS AMENDED BE CONCURRED IN

Signed: _____


Gary C. Aklestad, Chairman

Statement of Intent adopted.

SENATE
HB 700

1 HOUSE BILL NO. 700

2 INTRODUCED BY PAVLOVICH, MANNING, VAUGHN, STIMATZ, LEE,
3 ELLISON, CAMPBELL, PATTERSON, TVEIT, LYNCH, DEVLIN, NATHE,
4 WILLIAMS, JOHNSON, HAYNE, DRISCOLL, O'CONNELL, QUILICI,
5 MCCORMICK, THOMAS, SWIFT, BLOTKAMP, DAILY, MENAHAN,
6 GLASER, SWYSGOOD, NISBET, HARRINGTON, PHILLIPS,
7 HANNAH, GIACOMETTO

8
9 A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT
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23 legislature intends the rules to adequately provide for the
24 administration of the point preference provided for in
25 [section 2] and the retention preference provided for in

1 [section 5], but to include only those rules that are
2 reasonably necessary.

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

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. **Section 1.** Definitions. For the purposes
19 of [sections 1 through 6], the following definitions apply:

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

24 (2) "Armed forces" means the United States:

25 (a) army, navy, air force, marine corps, and coast

1 guard; and

2 (b) merchant marine for service recognized by the
3 United States department of defense as active military
4 service for the purpose of laws administered by the veterans
5 administration.

6 (3) "Disabled veteran" means a person:

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

14 (b) who has received a purple heart medal.

15 (4) "Eligible relative" means:

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

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

20 (c) the mother of a veteran who lost his life under
21 honorable conditions while serving in the armed forces if:

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

23 or

24 (ii) she is the widow of the father of the veteran and
25 has not remarried;

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

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

5 (ii) she is the widow of the father of the veteran and
6 has not remarried.

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. The
11 term does not include:

12 (a) a state or local elected office;

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) "Public employer" means:

24 (a) a department, office, board, bureau, commission,
25 agency, or other instrumentality of the executive,

1 legislative, or judicial branches of the government of this
2 state;

3 (b) a unit of the Montana university system or a
4 vocational-technical center;

5 (c) a school district or community college; and
6 a county, city, or town.

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

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

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

22 NEW SECTION. Section 2. Point preference IN INITIAL
23 HIRING for certain applicants. (1) Subject to the
24 restrictions in subsections (2) and (3), whenever a public
25 employer uses a scored procedure, an applicant for

1 appointment-to-a-position AN INITIAL HIRING, AS DEFINED IN
2 39-30-103, must have added to his score the following
3 percentage points of the total possible points that may be
4 granted in the scored procedure:

5 (a) 5 percentage points if the applicant is a veteran;
6 and

7 (b) 10 percentage points if the applicant is a
8 disabled veteran or an eligible relative.

9 (2) A veteran, disabled veteran, or eligible relative
10 may not receive the percentage points provided for in
11 subsection (1) unless the person:

12 (a) is a United States citizen; and

13 (b) received 70 or more percentage points of the total
14 possible points that may be granted in the scored procedure.

15 (3) A disabled veteran who receives 10 percentage
16 points under subsection (1)(b) may not receive an additional
17 5 percentage points under subsection (1)(a).

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

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

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

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 4. Enforcement of preference.**

9 (1) An applicant who believes he is entitled to but has not
10 been given the point preference provided in [section 2] may,
11 within 30 days of receipt of the notice of the hiring
12 decision provided for in [section 3], 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) After following the procedure described in
18 subsection (1), the applicant may, within 90 days after
19 receipt of notice of the hiring decision, file a petition in
20 the district court in the county in which his application
21 was received by the public employer. The petition must state
22 facts that on their face entitle the applicant to a point
23 preference.

24 (3) (a) Upon filing of the petition, the court shall
25 order the public employer to appear in court at a specified

1 time not less than 5 or more than 10 days after the day the
2 petition was filed and show cause why the applicant was not
3 hired for the position. At the hearing, the public employer
4 has the burden of proving by a preponderance of the evidence
5 that the employer applied the points under [section 2] and
6 made a reasonable 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 finds that
16 the applicant is a preference eligible applicant, the court
17 shall order the public employer to comply with the
18 provisions of [section 2]. In addition, the court shall,
19 upon proper proof, grant an award of backpay, reasonable
20 attorney fees, and costs.

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

1 comply with the provisions of [section 2].

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

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

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

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

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

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

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

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

13 **Section 8.** 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 9.** Section 39-30-102, MCA, is amended to read:

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

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

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

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

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

{a}--served--on--active-duty;

{b}--has--been--separated--from--service--by--honorable discharge;--and

{c}--suffers--a--service-connected-disability--determined by--the--United--States-veterans-administration--to--be--30%--or more-disabling;

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

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

{b} the spouse of:

{i}--a-disabled-veteran-determined-by-the-United-States veterans-administration--to--have--a--100%--service-connected disability--who--is--unable--to--use--his--employment-preference

because-of-his-disability;

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

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

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

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

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

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

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

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

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

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

17 ~~(6)~~(4) (a) "Mental impairment" means:

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

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

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

6 ~~(7)~~(5) "Position" means a permanent or seasonal
7 position as defined in 2-18-101 for a state position or a
8 similar permanent or seasonal position with a public
9 employer other than the state. However, the term does not
10 include:

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

14 (b) a state or local elected official;

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

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

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

22 (f) 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

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

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

~~(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;~~

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

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

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

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

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

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

"39-30-201. Employment preference in initial hiring.

(1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse

1 meets the eligibility requirements contained in 39-30-202
2 and claims a preference as required by 39-30-206, a public
3 employer shall hire the applicant over any other applicant
4 with substantially equal qualifications who is not a
5 preference eligible applicant.

6 (b) In an initial hiring, a public employer shall hire
7 a disabled--veteran--or handicapped person over any other
8 preference eligible applicant with substantially equal
9 qualifications.

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

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

16 "39-30-202. Eligibility requirements. No--veteran,
17 disabled-veteran, An eligible spouse, or handicapped person
18 is not entitled to receive employment preference as provided
19 in 39-30-201 unless:

- 20 (1) he is a United States citizen;
- 21 (2) he has resided continuously in the state for at
22 least 1 year immediately before applying for employment;
- 23 (3) if applying for municipal or county employment, he
24 has resided for at least 30 days immediately before applying
25 for employment in the city, town, or county in which

1 employment is sought; and

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

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

7 "39-30-203. Duration of preference. Subject to
8 39-30-202, 1

9 {1} a handicapped person, the or eligible spouse of a
10 handicapped person as described in subsection-{3}{b}{iii}-of
11 39-30-103, a disabled-veteran, or the spouse of a--disabled
12 veteran--as--described--in-subsection-{3}{b}{i}-of-39-30-103
13 qualifies for employment preference as long as the disabling
14 condition exists; 1

15 {2} a-veteran, as defined in 39-30-103, who is not a
16 disabled--veteran, as defined in 39-30-103, qualifies for
17 employment preference for no longer than 15 years--following
18 separation--from--service--or--for--no--longer--than-5-years
19 following-December-20, 1983, whichever is later; 1

20 {3} the surviving spouse of a veteran as described in
21 subsection--{3}{a}-of--39-30-103--qualifies--for employment
22 preference for as long as the spouse remains unmarried; and
23 {4} the spouse of a person described in subsection
24 {3}{b}{iii}-of-39-30-103-qualifies-for employment--preference
25 for as long as the person is missing in action or a prisoner

1 of-war."

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

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

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

18 (3) (a) Upon filing of the petition, the court shall
19 order the public employer to appear in court at a specified
20 time not less than 10 or more than 30 days after the day the
21 petition was filed and show cause why the applicant was not
22 hired for the position. At the hearing, the public employer
23 has the burden of proving by a preponderance of the evidence
24 that the employer made a reasonable determination pursuant
25 to ~~subsection (9) of~~ 39-30-103(7), and 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 finds that the applicant is a preference eligible applicant,
11 the 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."

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

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

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

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

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

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

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

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

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

NEW SECTION. SECTION 18. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

-End-

Conference Committee
on HOUSE BILL 700
Report No. 1, April 6, 1989

Page 1 of 1

Mr. Speaker:

We, your Conference Committee on HOUSE BILL 700 met and considered:


House Bill 700 (reference copy -- salmon) in its entirety.


We recommend that HOUSE BILL 700 (reference copy -- salmon) be amended as follows:

Accept the Senate amendments (pink sheet) to House Bill 700.

And that this Conference Committee Report be adopted.

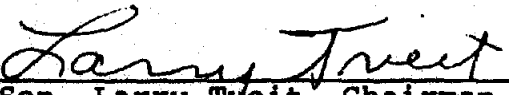
For the House:

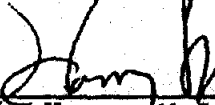

Rep. Bob Pavlovich, Chairman


Rep. Dorothy Bradley


Rep. John Mercer

For the Senate:


Sen. Larry Tveit, Chairman


Sen. Harry McLane


Sen. Chet Blaylock

ADOPT

REJECT

HB 700

GOVERNOR'S AMENDMENTS
TO HOUSE BILL 700
REFERENCE COPY (AS AMENDED)
April 20, 1989

1. Title, line 17.
Following: "MCA"
Insert: "AND PROVIDING FOR A TERMINATION DATE"
2. Page 22
Following line 15
Insert: "NEW SECTION. Section 19. Termination date.
[This Act] terminates on July 1, 1991."

-END-

HOUSE BILL NO. 700

INTRODUCED BY PAVLOVICH, MANNING, VAUGHN, STIMATZ, LEE,
ELLISON, CAMPBELL, PATTERSON, TVEIT, LYNCH, DEVLIN, NATHE,
WILLIAMS, JOHNSON, HAYNE, DRISCOLL, O'CONNELL, QUILICI,
MCCORMICK, THOMAS, SWIFT, BLOTKAMP, DAILY, MENAHAN,
GLASER, SWYSGOOD, NISBET, HARRINGTON, PHILLIPS,
HANNAH, GIACOMETTO

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

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 6] requires the department of administration to
adopt rules to implement [sections 1 through 5]. The
legislature intends the rules to adequately provide for the
administration of the point preference provided for in

[section 2] and the retention preference provided for in
[section 5], but to include only those rules that are
reasonably necessary.

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

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

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

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

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

(2) "Armed forces" means the United States:

1 (a) army, navy, air force, marine corps, and coast
2 guard; and

3 (b) merchant marine for service recognized by the
4 United States department of defense as active military
5 service for the purpose of laws administered by the veterans
6 administration.

7 (3) "Disabled veteran" means a person:

8 (a) whether or not he is a veteran as defined in this
9 section, who was separated under honorable conditions from
10 active duty in the armed forces and has established the
11 present existence of a service-connected disability or is
12 receiving compensation, disability retirement benefits, or
13 pension because of a law administered by the veterans
14 administration or a military department; or

15 (b) who has received a purple heart medal.

16 (4) "Eligible relative" means:

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

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

21 (c) the mother of a veteran who lost his life under
22 honorable conditions while serving in the armed forces if:

23 (i) her husband is totally and permanently disabled;
24 or

25 (ii) she is the widow of the father of the veteran and

1 has not remarried;

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 or

6 (ii) she is the widow of the father of the veteran and
7 has not remarried.

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

13 (a) a state or local elected office;

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

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

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

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

24 (6) "Public employer" means:

25 (a) a department, office, board, bureau, commission,

1 employer uses a scored procedure, an applicant for
 2 ~~appointment--to--a-position~~ AN INITIAL HIRING, AS DEFINED IN
 3 39-30-103, must have added to his score the following
 4 percentage points of the total possible points that may be
 5 granted in the scored procedure:

6 (a) 5 percentage points if the applicant is a veteran;
 7 and

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

10 (2) A veteran, disabled veteran, or eligible relative
 11 may not receive the percentage points provided for in
 12 subsection (1) unless the person:

13 (a) is a United States citizen; and

14 (b) received 70 or more percentage points of the total
 15 possible points that may be granted in the scored procedure.

16 (3) A disabled veteran who receives 10 percentage
 17 points under subsection (1)(b) may not receive an additional
 18 5 percentage points under subsection (1)(a).

19 NEW SECTION. Section 3. 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 2].

23 (2) A job applicant who believes he is eligible to
 24 receive a point preference shall claim the preference in
 25 writing before the time for filing applications for the

1 agency, or other instrumentality of the executive,
 2 legislative, or judicial branches of the government of this
 3 state;

4 (b) a unit of the Montana university system or a
 5 vocational-technical center;

6 (c) a school district or community college; and

7 (d) a county, city, or town.

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

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

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

23 NEW SECTION. Section 2. Point preference IN INITIAL
 24 HIRING for certain applicants. (1) Subject to the
 25 restrictions in subsections (2) and (3), whenever a public

position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

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

NEW SECTION. Section 4. Enforcement of preference.

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

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

(3) (a) Upon filing of the petition, the court shall

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

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

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

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

subsection (2), the court shall order the public employer to comply with the provisions of [section 2].

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

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

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

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

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

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

bargaining agreement.

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

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

Section 8. Section 39-30-101, MCA, is amended to read: "39-30-101. Short title. This chapter may be cited as the "Montana Veterans¹-and Handicapped Persons' Employment Preference Act"."

Section 9. Section 39-30-102, MCA, is amended to read: "39-30-102. Purposes. The purposes of this chapter are to ~~recognize-veterans-and-disabled-veterans-for--service--to~~ ~~their--country~~; recognize past employment discrimination against handicapped persons; and facilitate the habilitation, rehabilitation, and readjustment of ~~veterans~~; ~~disabled-veterans~~; and handicapped persons."

Section 10. 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 that limits the individual's ability to obtain,
16 retain, or 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

or executive officer of a local government; or

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

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

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

"39-30-201. Employment preference in initial hiring.

(1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran,

1 ~~disabled--veteran~~, handicapped person, or eligible spouse
 2 meets the eligibility requirements contained in 39-30-202
 3 and claims a preference as required by 39-30-206, a public
 4 employer shall hire the applicant over any other applicant
 5 with substantially equal qualifications who is not a
 6 preference eligible applicant.

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

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

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

17 "39-30-202. Eligibility requirements. No---veteran,
 18 ~~disabled--veteran~~, An eligible spouse, or handicapped person
 19 is not entitled to receive employment preference as provided
 20 in 39-30-201 unless:

21 (1) he is a United States citizen;

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

24 (3) if applying for municipal or county employment, he
 25 has resided for at least 30 days immediately before applying

1 for employment in the city, town, or county in which
 2 employment is sought; and

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

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

8 "39-30-203. Duration of preference. Subject to
 9 39-30-202,

10 ~~{1} a handicapped person, the or eligible spouse of--a~~
 11 ~~handicapped-person-as-described-in-subsection (3)(b){iii}-of~~
 12 ~~39-30-103,--a--disabled-veteran, or the spouse of a disabled~~
 13 ~~veteran-as-described-in-subsection--(3)(b){i}--of--39-30-103~~
 14 qualifies for employment preference as long as the disabling
 15 condition exists,

16 ~~{2}--a--veteran,--as-defined-in-39-30-103, who is not a~~
 17 ~~disabled-veteran, as-defined--in--39-30-103,--qualifies--for~~
 18 ~~employment--preference-for-no-longer-than-15-years-following~~
 19 ~~separation-from-service--or--for--no--longer--than--5--years~~
 20 ~~following-December-20, 1983, whichever is later;~~

21 ~~{3}--the--surviving-spouse-of-a-veteran-as-described-in~~
 22 ~~subsection (3)(a)--of--39-30-103--qualifies--for--employment~~
 23 ~~preference--for-as-long-as-the-spouse-remains-unmarried; and~~

24 ~~{4}--the-spouse-of-a--person--described--in--subsection~~
 25 ~~(3)(b){ii}--of-39-30-103-qualifies-for-employment-preference~~

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

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

5 "39-30-207. Enforcement of preference. (1) An
6 applicant who believes he has not been accorded his rights
7 under this chapter may, within 30 days of receipt of the
8 notice of the hiring decision provided for in 39-30-206,
9 submit to the public employer a written request for an
10 explanation of the public employer's hiring decision. Within
11 15 days of receipt of the request, the public employer shall
12 give the applicant a written explanation.

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

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

1 to ~~subsection-(9)-of~~ 39-30-103(7), and the applicant has the
2 burden of proving by a preponderance of the evidence that he
3 is a preference eligible applicant.

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

9 (c) If the public employer does not carry its burden
10 of proof under subsection (3)(a) and the court ~~has--found~~
11 finds that the applicant is a preference eligible applicant,
12 the court shall order the public employer to reopen the
13 selection process for the position involved and shall grant
14 the applicant reasonable attorney fees and court costs. 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 **Section 15.** Section 49-2-405, MCA, is amended to read:

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

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

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

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

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

25 (c) from discharging or otherwise disciplining an

1 individual for good cause.

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

7 NEW SECTION. **Section 17.** Extension of authority. Any
8 existing authority to make rules on the subject of the
9 provisions of [this act] is extended to the provisions of
10 [this act].

11 NEW SECTION. **SECTION 18.** SEVERABILITY. IF A PART OF
12 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
13 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
14 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
15 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
16 SEVERABLE FROM THE INVALID APPLICATIONS.

17 NEW SECTION. **SECTION 19.** TERMINATION DATE. [THIS ACT]
18 TERMINATES JULY 1, 1991.

-End-