

1 House BILL NO. 410

2 INTRODUCED BY Ahner

3 DeBreyer

John John Parlane
Hayn

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE VETERANS' PREFERENCE LAW; REQUIRING
5 A PUBLIC EMPLOYER TO ADMINISTER A NEW TEST TO APPLICANTS OR TO REOPEN THE SELECTION
6 PROCESS UNDER CERTAIN CONDITIONS; REQUIRING PROOF OF THE USE OF A SUBSTANTIALLY
7 EQUIVALENT SELECTION PROCEDURE TO APPLY VETERANS' PREFERENCE WHENEVER A SCORED
8 PROCEDURE IS NOT USED; REQUIRING THAT VETERANS' PREFERENCE BE APPLIED IN THE SELECTION
9 PROCEDURE FOR ANY POSITION OR PROMOTION; AND AMENDING SECTIONS 39-29-102, 39-29-103,
10 AND 39-29-104, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 39-29-102, MCA, is amended to read:

15 **"39-29-102. Point preference or alternative preference in initial hiring for certain applicants --**
16 **substantially equivalent selection procedure.** (1) Subject to the restrictions in subsections (2) and (3),
17 whenever a public employer uses a scored procedure, an applicant ~~for an initial hiring, as defined in~~
18 ~~39-30-103,~~ for any position or promotion must have added to ~~his~~ the applicant's score the following
19 percentage points of the total possible points that may be granted in the scored procedure:

- 20 (a) 5 percentage points if the applicant is a veteran; and
21 (b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

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

- 24 (a) is a United States citizen; and
25 (b) received 70 or more percentage points of the total possible points that may be granted in the

26 scored procedure. A public employer shall either administer a new test or reopen the selection process if
27 no applicant receives the required minimum score of 70 percentage points.

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

30 (4) Whenever a public employer uses a selection procedure other than a scored procedure, the

1 employer shall provide proof that the procedure used to apply veterans' preference for any position or
 2 promotion was substantially equivalent to the scored procedure. As used in this subsection, "substantially
 3 equivalent" means a procedure under which an applicant receives from the employer a weighted preference
 4 factor similar to the percentage points provided for in subsection (1)."

5
 6 **Section 2.** Section 39-29-103, MCA, is amended to read:

7 **"39-29-103. Notice and claim of preference.** (1) A public employer shall, by posting or on the
 8 application form, give notice of the ~~point~~ preference provided in 39-29-102.

9 (2) A job applicant who believes ~~he~~ that the applicant is eligible to receive a ~~point~~ preference shall
 10 claim the preference in writing before the time for filing applications for the position or promotion involved
 11 has passed. Failure to make a timely preference claim for a position or promotion is a complete defense to
 12 an action instituted by an applicant under 39-29-104 with regard to that position or promotion.

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

15
 16 **Section 3.** Section 39-29-104, MCA, is amended to read:

17 **"39-29-104. Enforcement of preference.** (1) An applicant who believes ~~he~~ that the applicant is
 18 entitled to but has not been given the ~~point~~ preference provided in 39-29-102 may, within 30 days of
 19 receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a
 20 written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the
 21 request, the public employer shall give the applicant a written explanation.

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

26 (3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at
 27 a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause
 28 why the applicant was not hired for the position. At the hearing, the public employer has the burden of
 29 proving by a preponderance of the evidence that the employer applied the ~~points~~ preference under
 30 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a

1 preponderance of the evidence that ~~he~~ the applicant is a preference-eligible applicant.

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

5 (c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court
6 finds that the applicant is a preference-eligible applicant, the court shall order the public employer to comply
7 with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of
8 backpay, reasonable attorney fees, and costs.

9 (4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of
10 a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a
11 petition is filed under subsection (2), the court shall order the public employer to comply with the provisions
12 of 39-29-102.

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

15 -END-