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*House* BILL NO. 487  
*Whitehead*

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

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARDS OF TRUSTEES IN SCHOOL DISTRICTS THAT ARE PARTIALLY OR WHOLLY LOCATED WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION TO ADOPT A POLICY ESTABLISHING AN EMPLOYMENT PREFERENCE FOR INDIAN RESIDENTS FOR SCHOOL DISTRICT POSITIONS WITHIN THE RESERVATION; AMENDING SECTION 49-2-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Indian hiring preference for on-reservation school district employment**

**authorized.** (1) A school district that is located partially or wholly within the boundaries of an Indian reservation may adopt, amend, or discontinue a policy providing a preference in employment with the school district to an Indian who is a resident of the reservation and who has substantially equal qualifications for the position.

(2) A challenge related to the failure of a school district to comply with a policy adopted under this section is a controversy within the meaning of 20-3-210 and must be reviewed as provided in 20-3-210 and 20-3-107.

(3) For the purposes of this section, the following definitions apply:

(a) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of a recognized Indian tribe domiciled in the United States.

(b) "Position" means a vacant permanent, temporary, or seasonal employed position when filled by the district. The term does not include:

- (i) a school superintendent;
- (ii) a district clerk;
- (iii) appointment by an elected official to a body, including but not limited to a board, commission, or council;
- (iv) appointment by an elected official to a public office if the appointment is provided for by law;

or



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

2 (c) "Substantially equal qualifications" means the qualifications of two or more persons between  
3 whom the school district board of trustees cannot make a reasonable determination that the qualifications  
4 held by one person are significantly better suited for the positions than the qualifications held by the other  
5 persons.

6

7 **Section 2.** Section 49-2-303, MCA, is amended to read:

8 **"49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

9 (a) an employer to refuse employment to a person, to bar a person from employment, or to  
10 discriminate against a person in compensation or in a term, condition, or privilege of employment because  
11 of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital  
12 status, or sex when the reasonable demands of the position do not require an age, physical or mental  
13 disability, marital status, or sex distinction;

14 (b) a labor organization or joint labor management committee controlling apprenticeship to exclude  
15 or expel any person from its membership or from an apprenticeship or training program or to discriminate  
16 in any way against a member of or an applicant to the labor organization or an employer or employee  
17 because of race, creed, religion, color, or national origin or because of age, physical or mental disability,  
18 marital status, or sex when the reasonable demands of the program do not require an age, physical or  
19 mental disability, marital status, or sex distinction;

20 (c) an employer or employment agency to print or circulate or cause to be printed or circulated a  
21 statement, advertisement, or publication or to use an employment application that expresses, directly or  
22 indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental  
23 disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based  
24 upon a bona fide occupational qualification;

25 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to  
26 discriminate against any individual because of sex, marital status, age, physical or mental disability, race,  
27 creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

28 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must  
29 be strictly construed.

30 (3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not

1 be construed as a violation of this section.

2 (4) The application of a hiring preference as provided for in 2-18-111 ~~and~~ 18-1-110, and [section  
3 1] may not be construed to be a violation of this section.

4 (5) It is not a violation of the prohibition against marital status discrimination in this section for an  
5 employer or labor organization to provide greater or additional contributions to a bona fide group insurance  
6 plan for employees with dependents than to those employees without dependents or with fewer  
7 dependents."

8

9 NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send  
10 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little  
11 Shell band of Chippewa.

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13 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an  
14 integral part of Title 20, and the provisions of Title 20 apply to [section 1].

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16 NEW SECTION. Section 5. Effective date -- applicability. [This act] is effective on passage and  
17 approval, and applies to contracts for employment offered on or after [the effective date of this act].

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