

HOUSE BILL NO. 422

INTRODUCED BY C. JUNEAU

A BILL FOR AN ACT ENTITLED: "AN ACT CODIFYING CURRENT FEDERAL LAW THAT REQUIRES A SCHOOL DISTRICT THAT RECEIVES A FEDERAL CONTRACT OR GRANT FOR THE BENEFIT OF INDIANS TO APPLY, TO THE GREATEST EXTENT FEASIBLE, AN INDIAN PREFERENCE FOR TRAINING AND EMPLOYMENT IN ADMINISTERING THE CONTRACT OR GRANT; AUTHORIZING A BOARD OF TRUSTEES IN A SCHOOL DISTRICT LOCATED WHOLLY WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION OR A SCHOOL DISTRICT THAT HAS AN ENROLLMENT OF GREATER THAN 50 PERCENT INDIAN STUDENTS TO ADOPT A POLICY ESTABLISHING AN EMPLOYMENT PREFERENCE FOR AN INDIAN WITH SUBSTANTIALLY EQUAL QUALIFICATIONS 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 preference for training or employment positions funded by federal contract or grant -- authorizing school district employment policy for on-reservation positions.

(1) (a) A school district that applies for and receives a contract or grant awarded under the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)) for the benefit of Indians shall, to the greatest extent feasible, provide a preference and opportunity for training and employment connected to the administration of the contract or grant to an Indian applicant who is a resident of the state of Montana and who has substantially equal qualifications for the position.

(b) For all other employment positions of a school district that is located within the boundaries of an Indian reservation or that has an enrollment composed of greater than 50% Indian students, the school district may adopt or amend a policy providing a preference in employment with the school district to an Indian who is a resident of the state of Montana 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 20-3-107 and 20-3-210.

(3) For 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) (i) "Position" means a vacant permanent, temporary, or seasonal position filled by the district.

(ii) The term does not include:

(A) a school superintendent;

(B) a district clerk;

(C) appointment by an elected official to a body, including but not limited to a board, commission, or council;

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

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

(c) "Substantially equal qualifications" means the qualifications of two or more persons between whom the school district board of trustees 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.

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

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

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

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

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or

indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

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

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

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

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

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse."

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

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

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

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