

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 264

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO VETERAN PREFERENCES; AMENDING SECTION 65-502, IDAHO CODE, TO  
2 REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 65-503, IDAHO  
3 CODE, TO REVISE VERBIAGE RELATING TO PREFERENCES, TO PROVIDE A CORRECT  
4 CODE REFERENCE AND TO REMOVE PROVISIONS RELATING TO EMPLOYER OBLI-  
5 GATIONS RELATING TO VETERAN PREFERENCES; AMENDING CHAPTER 5, TITLE  
6 65, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 65-503A, IDAHO CODE,  
7 TO PROVIDE FOR EMPLOYER OBLIGATIONS RELATING TO VETERAN PREFERENCES;  
8 AMENDING SECTION 65-504, IDAHO CODE, TO REVISE PROVISIONS RELATING TO  
9 APPLICANTS WHO ARE PREFERENCE ELIGIBLE, TO PROVIDE FOR THE APPLICATION  
10 OF PREFERENCE IN CIVIL SERVICE POSITIONS, TO REVISE PROVISIONS RELAT-  
11 ING TO THE ADDITION OF POINTS TO EARNED RATINGS, TO REVISE PROVISIONS  
12 RELATING TO PLACEMENT ON THE REGISTER AND TO REVISE PROVISIONS RELAT-  
13 ING TO VETERANS DISCHARGED UNDER HONORABLE CONDITIONS WHO HAVE CERTAIN  
14 SERVICE-CONNECTED DISABILITIES; AMENDING SECTION 65-506, IDAHO CODE,  
15 TO REVISE VERBIAGE RELATING TO APPEALS, TO PROVIDE FOR NOTICE OF APPEAL,  
16 TO PROVIDE THAT CERTAIN APPLICANTS MAY FILE APPEALS DIRECTLY AND TO  
17 PROVIDE FOR COMMENCEMENT OF THE THIRTY-FIVE DAY PERIOD OF APPEAL; AND  
18 AMENDING CHAPTER 5, TITLE 65, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
19 TION 65-512, IDAHO CODE, TO PROVIDE FOR CERTAIN EDUCATION AND TECHNICAL  
20 ASSISTANCE BY THE DIVISION OF VETERANS SERVICES AND THE DEPARTMENT OF  
21 LABOR.  
22

23 Be It Enacted by the Legislature of the State of Idaho:

24 SECTION 1. That Section 65-502, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 65-502. DEFINITIONS. As used in this chapter:

27 (1) "Applicant" means an individual applying for a position with a pub-  
28 lic employer.

29 (2) "Armed forces" means the army, navy, marine corps, coast guard, air  
30 force, and the reserve components thereof.

31 (3) "Civil service position" means a position for which the public em-  
32 ployee is selected from a pool of applicants through a competitive examina-  
33 tion, a merit system or any other rating system based on experience and qual-  
34 ifications.

35 (24) "Disabled veteran" means those ~~honorably~~ veterans separated  
36 veterans under honorable conditions who:

37 (a) Qualify as disabled veterans because they have served on active  
38 duty in the armed forces and have a current service-connected disabili-  
39 ty of ten percent (10%) or more or are receiving compensation related  
40 to a service-connected disability including retirement benefits or  
41 pension from the military or the department of veterans affairs; or

42 (b) Are purple heart recipients.

1           (35) "Honorable conditions" means an honorable discharge or a general  
2 discharge "under honorable conditions."

3           (46) "Initial appointment" means the first time a qualified veteran is  
4 hired by a county or a municipal government or the state, provided however,  
5 subsequent separation from the county, municipal government or the state  
6 shall not result in the award of new preference or preference points with  
7 that governmental entity. "Initial appointment" shall not include:

8           (a) Jobs held by patients, inmates or students in or enrolled at a state  
9 institution;

10           (b) Temporary or casual employment; or

11           (c) An office filled by election.

12           (57) "Key employee" means an individual specifically hired for an "at  
13 will" ~~or nonclassified position for which there is no selection process,~~  
14 ~~such as a position as a private secretary or deputy of an official or depart-~~  
15 ~~ment who~~ that is not a civil service position and where:

16           (a) The position requires an advanced degree and the exercise of inde-  
17 pendent judgment for a majority of the public employee's duties;

18           (b) The primary duty of the position is the management of a department  
19 or subdivision of the public employer and the position requires the ex-  
20 ercise of independent judgment for a majority of position duties;

21           (c) The primary duty of the position is administrative work arising  
22 from the management of a department or subdivision of the public em-  
23 ployer or administrative work arising from the exercise of the duties of  
24 an elected official and the public employee holds a confidential rela-  
25 tionship to the appointing or employing officer or elected official; or

26           (d) The primary duty of the position is to provide advice or consulta-  
27 tion to an elected official and the public employee holds a confidential  
28 relationship to the elected official.

29           (68) "Military duty" means training and service performed by an in-  
30 ductee, enlistee or reservist or any entrant into a component of the armed  
31 forces of the United States, provided "military duty" shall not include ac-  
32 tive duty training as a reservist in the armed forces of the United States or  
33 as a member of the national guard of the United States where the call is for  
34 training only.

35           (79) "Position" means a job held by a public employee but shall not in-  
36 clude:

37           (a) A job held by a patient, inmate or student in or enrolled at a state  
38 institution;

39           (b) Temporary or casual employment; or

40           (c) An office filled by election.

41           (10) "Preference eligible" means an individual eligible for preference  
42 under section 65-503, Idaho Code.

43           (811) "Public employee" means any person holding a position in public  
44 employment.

45           (912) "Public employer" means any government, department or agency  
46 mentioned in subsection (103) of this section employing a public employee in  
47 a position.

48           (103) "Public employment" means employment ~~of~~ by the government of this  
49 state, or ~~of~~ by any county, municipality or other political subdivision of  
50 the state, including any department or agency thereof.

1 (114) "Register" means a list of names of persons who have been deter-  
 2 mined to be eligible for employment in a classified civil service position as  
 3 ~~determined on the basis of examination and merit factors as established in a~~  
 4 ~~civil service system.~~

5 (125) "Service-connected disability" means that the veteran is dis-  
 6 abled due to injury or illness that was incurred in or aggravated by military  
 7 service as certified by the federal veterans administration or an agency of  
 8 the department of defense.

9 (136) "Temporary or casual employment" means employment for a brief,  
 10 nonrecurrent period where there is no reasonable expectation that such em-  
 11 ployment will continue indefinitely or for a significant period of time.

12 (147) "Veteran" means any person who has been discharged or released  
 13 from active duty in the armed forces under honorable conditions and has:

14 (a) Served on active duty in the armed forces during a war, in a campaign  
 15 or expedition for which a campaign badge has been authorized, or during  
 16 the period beginning April 28, 1952, and ending July 1, 1955;

17 (b) Served on active duty as defined in 38 U.S.C. section 101(21) at any  
 18 time in the armed forces for a period of more than one hundred eighty  
 19 (180) consecutive days, any part of which occurred after January 31,  
 20 1955, and before October 15, 1976, not including service under 10 U.S.C.  
 21 section 12103(d) pursuant to an enlistment in the army national guard or  
 22 the air national guard or as a reserve for service in the army reserve,  
 23 naval reserve, air force reserve, marine corps reserve or coast guard  
 24 reserve;

25 (c) Served on active duty as defined in 38 U.S.C. section 101(21) in the  
 26 armed forces during the period beginning on August 2, 1990, and ending  
 27 on January 2, 1992; or

28 (d) Served as may be further defined in ~~38~~ 5 U.S.C. section ~~101(11)~~  
 29 2108.

30 SECTION 2. That Section 65-503, Idaho Code, be, and the same is hereby  
 31 amended to read as follows:

32 65-503. ELIGIBILITY FOR PREFERENCE TO BE GIVEN QUALIFIED VETERANS,  
 33 SPOUSES, WIDOWS AND WIDOWERS BY PUBLIC EMPLOYERS. (1) Eligibility The fol-  
 34 lowing individuals are eligible for preference.

35 (a~~1~~) Veterans and disabled veterans as defined in section ~~56-502~~  
 36 65-502, Idaho Code;

37 (b~~2~~) A widow or widower of any veteran as long as he or she remains un-  
 38 married;

39 (c~~3~~) The wife or husband of a service-connected disabled veteran if the  
 40 veteran cannot qualify for any public employment because of a service-con-  
 41 nected disability.

42 ~~(2) Employer obligations.~~

43 ~~(a) Public employers must give notice in all announcements and adver-~~  
 44 ~~tisements of vacancies that preference in appointment will be given to~~  
 45 ~~eligible veterans, and application forms must inquire whether the ap-~~  
 46 ~~plicant is claiming veteran's preference and whether the applicant has~~  
 47 ~~previously claimed such a preference. An applicant claiming preference~~  
 48 ~~is responsible for providing required documentation at the time of mak-~~

1        ~~ing application. The employer must inform applicants of the require-~~  
2        ~~ments for documentation.~~

3        ~~(b) In all public employment, excluding key employee positions, the~~  
4        ~~hiring official shall give preference to the employment of veterans.~~

5        ~~(c) An application for appointment to a public employment position will~~  
6        ~~be accepted after the closing date of the examination from a person who~~  
7        ~~was serving in the armed forces, or undergoing service-connected hospi-~~  
8        ~~talization up to one (1) year following discharge. The application must~~  
9        ~~be submitted within one hundred twenty (120) days of his or her separa-~~  
10       ~~tion from the armed forces or hospitalization and prior to the expira-~~  
11       ~~tion of any register established as a result of the examination.~~

12       ~~(d) A disabled veteran may file an application at any time up until a~~  
13       ~~selection has been made for any position for which a register is then~~  
14       ~~maintained as a source for future job openings, or for which a regis-~~  
15       ~~ter is about to be established, provided he or she has not already been~~  
16       ~~examined twice for the same position and grade for which application~~  
17       ~~is made, does not have current eligibility on that register, or is not~~  
18       ~~serving in a competitive position in the same grade for which applica-~~  
19       ~~tion is made. If a register is not used as part of the selection process,~~  
20       ~~a disabled veteran may file an application after the closing date, but~~  
21       ~~such application will only be considered if a selection has not been~~  
22       ~~made and the selection process is still active.~~

23       ~~(e) An appointing authority may refuse to accept an application from~~  
24       ~~an otherwise qualified veteran who is deemed unqualified through his or~~  
25       ~~her actions. Examples of such actions include dismissal for cause from~~  
26       ~~a public entity, a felony conviction, or conduct unbecoming a public em-~~  
27       ~~ployee. Such refusal must be supported by good cause and is appealable~~  
28       ~~pursuant to section 65-506, Idaho Code.~~

29       SECTION 3. That Chapter 5, Title 65, Idaho Code, be, and the same is  
30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
31 ignated as Section 65-503A, Idaho Code, and to read as follows:

32       65-503A. EMPLOYER OBLIGATIONS. (1) Public employers must give notice  
33 in all announcements and advertisements of vacancies that preference in ap-  
34 pointment will be given to preference applicants. Application forms must  
35 inquire whether the applicant is claiming veteran's preference and whether  
36 the applicant has previously claimed such a preference. An applicant claim-  
37 ing preference is responsible for providing required documentation at the  
38 time of making application. The employer must inform applicants of the re-  
39 quirements for documentation.

40       (2) In all public employment, excluding key employee positions, the  
41 hiring official shall give preference to preference eligible applicants.

42       (3) An application for appointment to a position will be accepted after  
43 the closing date of the examination from an applicant who was serving in the  
44 armed forces, or undergoing service-connected hospitalization up to one (1)  
45 year following discharge. The application must be submitted within one hun-  
46 dred twenty (120) days of the applicant's separation from the armed forces  
47 or hospitalization, prior to the expiration of any register established as a  
48 result of the examination, and prior to the selection for the position.

1 (4) A disabled veteran may file an application at any time up until a  
 2 selection has been made for any position for which a register is then main-  
 3 tained as a source for future job openings, or for which a register is about  
 4 to be established, provided he or she has not already been examined twice for  
 5 the same position and grade for which application is made, does not have cur-  
 6 rent eligibility on that register, or is not serving in a competitive posi-  
 7 tion in the same grade for which application is made. If a register is not  
 8 used as a part of the selection process, a disabled veteran may file an appli-  
 9 cation after the closing date, but such application will only be considered  
 10 if a selection has not been made and the selection process is still active.

11 (5) An appointing authority may refuse to accept an application from an  
 12 otherwise qualified preference eligible applicant who is deemed unqualified  
 13 through his or her actions. Examples of such actions include dismissal for  
 14 cause from a public entity, a felony conviction, or conduct unbecoming a pub-  
 15 lic employee. Such refusal must be supported by good cause and is appealable  
 16 pursuant to section 65-506, Idaho Code.

17 SECTION 4. That Section 65-504, Idaho Code, be, and the same is hereby  
 18 amended to read as follows:

19 65-504. BASIC PREFERENCE AND ADDITION OF POINTS TO COMPETITIVE EXAM-  
 20 INATION RATINGS. (1) An individual applicant who qualifies for a veteran's  
 21 employment preference is preference eligible is entitled to a preference  
 22 in initial appointment with a public employer over other applicants for the  
 23 same position who are not more qualified.

24 (2) Application of preference in civil service positions:

25 (a) Five (5) percentage points shall be added to the earned rating of  
 26 any veteran and the widow or widower of any veteran as long as he or she  
 27 remains unmarried, when required to take competitive examination for  
 28 any position in any state department, county or municipal government,  
 29 which may now or which may hereafter require competitive examination  
 30 under merit system or civil service plan of selecting employees:. The  
 31 names of all five (5) point preference eligibles resulting from any  
 32 merit system or civil service examination applicants shall be placed on  
 33 the register in accordance with their augmented rating. The additional  
 34 points added by reason of veteran's preference shall be used only for  
 35 the purpose of initial appointment and not for the purpose of any promo-  
 36 tion, transfer or reassignment.

37 (3b) Ten (10) percentage points shall be added to the earned rating of  
 38 veterans discharged under honorable conditions who qualify as disabled  
 39 veterans because they have served on active duty in the armed forces at  
 40 any time and have a current service-connected disability of ten percent  
 41 (10%) or more. Alternatively, ten (10) percentage points shall be added  
 42 to the earned rating of the widow or widower of any disabled veteran as  
 43 long as he or she remains unmarried or the spouse of any eligible dis-  
 44 abled veteran who cannot qualify for any public employment because of a  
 45 service-connected disability. The names of all ten (10) point prefer-  
 46 ence eligibles resulting from any merit system or civil service exam-  
 47 ination applicants shall be placed on the register in accordance with  
 48 their augmented rating. The additional points added by reason of vet-

1           eran's preference shall be used only for the purpose of initial appoint-  
2           ment and not for the purpose of any promotion, transfer or reassignment.

3           (4c) Veterans discharged under honorable conditions who served on ac-  
4           tive duty in the armed forces at any time and have a current service-con-  
5           nected disability of thirty percent (30%) or more shall be offered an  
6           interview if they are one (1) of the ~~top ten (10)~~ qualified applicants on  
7           the register for the position. If applicants are not ranked, an inter-  
8           view must be offered to such veterans who fully meet all qualifications  
9           for the position. Notwithstanding this subsection, employers shall not  
10          be required to interview more than a total of ten (10) applicants re-  
11          gardless of the number of such qualified veteran applicants.

12          SECTION 5. That Section 65-506, Idaho Code, be, and the same is hereby  
13          amended to read as follows:

14          65-506. FAILING OR REFUSING TO GIVE PREFERENCE -- CIVIL LIABILITY. (1)  
15          ~~Individuals~~ Applicants who believe they have been denied a right or bene-  
16          fit under this chapter may file an appeal with the governing body of ~~such the~~  
17          jurisdiction or unit of government within thirty-five (35) days of the al-  
18          leged denial of preference. If an applicant has notified the public employer  
19          of the applicant's eligibility for preference pursuant to section 65-503A,  
20          Idaho Code, the public employer shall provide notice of the appeal process  
21          at the conclusion of the selection process. ~~If an~~ the public employer does  
22          ~~not initiate the appeal process does not exist for that jurisdiction or unit~~  
23          ~~of government~~ within thirty-five (35) days of a written request by the ap-  
24          plicant, the complainant applicant may file an appeal directly in district  
25          court pursuant to subsection (3) of this section. The thirty-five (35) day  
26          period for appeal shall commence upon the issuance of notice of the appeal  
27          process by the public employer. If the public employer fails to issue such  
28          notice, the thirty-five (35) day period for appeal shall commence when the  
29          applicant becomes aware that he was not selected for the position.

30          (2) The division of veterans services is authorized and directed to is-  
31          sue rules for the enforcement of this chapter. Such rules shall include, but  
32          are not limited to, procedures public employers may implement for an inter-  
33          nal process which must be exhausted prior to gaining access to the courts.

34          (3) Any public employer who deliberately or willfully refuses or fails  
35          to give preference to qualified veterans required by the provisions of this  
36          chapter shall be subject to writs of mandate pursuant to sections 7-301  
37          through 7-314, Idaho Code, and if found in violation of any such provisions  
38          shall be required to pay the costs of suit and reasonable attorney's fees  
39          incurred in such action, and may further be required to employ or reemploy  
40          the veteran, and shall be required to pay as damages such amount as the court  
41          may award, but in no event shall the amount of such damages and costs of suit  
42          exceed the sum of five thousand dollars (\$5,000) or ten percent (10%) of the  
43          annual salary of the position, whichever is higher. Such action must be  
44          commenced not more than one hundred eighty (180) days from the alleged denial  
45          of preference, provided however, applicants for classified state employment  
46          remain subject to the procedures set forth in section 67-5316, Idaho Code.  
47          If an appeal process is in place pursuant to subsection (1) of this section,  
48          the one hundred eighty (180) days will not begin until that process has been  
49          exhausted.

1           SECTION 6. That Chapter 5, Title 65, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 65-512, Idaho Code, and to read as follows:

4           65-512. EDUCATION AND TECHNICAL ASSISTANCE. To the extent of funds  
5 available therefor, the division of veterans services and the department of  
6 labor are authorized to provide programs of education and technical assis-  
7 tance to public employers, veterans and other interested parties concerning  
8 the provisions of this chapter.