

Union Calendar No. 347

104TH CONGRESS
2^D SESSION

H. R. 3586

[Report No. 104-675]

A BILL

To amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes.

JULY 12, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1996

Mr. MICA introduced the following bill; which was referred to the Committee on Government Reform and Oversight

JULY 12, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 12, 1996

Additional sponsors: Mr. BURTON of Indiana, Mr. HERGER, Mr. SOLOMON, Mr. STUMP, and Mr. WATTS of Oklahoma

[For text of introduced bill, see copy of bill as introduced on June 5, 1996]

A BILL

To amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Veterans Employment*
3 *Opportunities Act of 1996”.*

4 **SEC. 2. EQUAL ACCESS FOR VETERANS.**

5 *(a) COMPETITIVE SERVICE.—Section 3304 of title 5,*
6 *United States Code, is amended by adding at the end the*
7 *following:*

8 *“(f)(1) No preference eligible, and no individual (other*
9 *than a preference eligible) who has been separated from the*
10 *armed forces under honorable conditions after 3 or more*
11 *years of active service, shall be denied the opportunity to*
12 *compete for an announced vacant position within an agen-*
13 *cy, in the competitive service or the excepted service, by rea-*
14 *son of—*

15 *“(A) not having acquired competitive status; or*

16 *“(B) not being an employee of such agency.*

17 *“(2) Nothing in this subsection shall prevent an agency*
18 *from filling a vacant position (whether by appointment or*
19 *otherwise) solely from individuals on a priority placement*
20 *list consisting of individuals who have been separated from*
21 *the agency due to a reduction in force and surplus employ-*
22 *ees (as defined under regulations prescribed by the Office).”.*

23 *(b) CIVIL SERVICE EMPLOYMENT INFORMATION.—*

24 *(1) VACANT POSITIONS.—Section 3327(b) of title*
25 *5, United States Code, is amended by striking “and”*
26 *at the end of paragraph (1), by redesignating para-*

1 *graph (2) as paragraph (3), and by inserting after*
2 *paragraph (1) the following:*

3 “(2) *each vacant position in the agency for*
4 *which competition is restricted to individuals having*
5 *competitive status or employees of such agency, ex-*
6 *cluding any position under paragraph (1), and”.*

7 (2) *ADDITIONAL INFORMATION.—Section 3327 of*
8 *title 5, United States Code, is amended by adding at*
9 *the end the following:*

10 “(c) *Any notification provided under this section shall,*
11 *for all positions under subsection (b)(1) as to which section*
12 *3304(f) applies and for all positions under subsection*
13 *(b)(2), include a notation as to the applicability of section*
14 *3304(f) with respect thereto.*

15 “(d) *In consultation with the Secretary of Labor, the*
16 *Office shall submit to Congress and the President, no less*
17 *frequently than every 2 years, a report detailing, with re-*
18 *spect to the period covered by such report—*

19 “(1) *the number of positions listed under this*
20 *section during such period;*

21 “(2) *the number of preference eligibles and other*
22 *individuals described in section 3304(f)(1) referred to*
23 *such positions during such period; and*

1 “(3) the number of preference eligibles and other
2 individuals described in section 3304(f)(1) appointed
3 to such positions during such period.”.

4 (c) *GOVERNMENTWIDE LISTS.*—

5 (1) *VACANT POSITIONS.*—Section 3330(b) of title
6 5, United States Code, is amended to read as follows:

7 “(b) The Office of Personnel Management shall cause
8 to be established and kept current—

9 “(1) a comprehensive list of all announcements
10 of vacant positions (in the competitive service and the
11 excepted service, respectively) within each agency that
12 are to be filled by appointment for more than 1 year
13 and for which applications are being or will soon be
14 accepted from outside the agency’s work force; and

15 “(2) a comprehensive list of all announcements
16 of vacant positions within each agency for which ap-
17 plications are being or will soon be accepted and for
18 which competition is restricted to individuals having
19 competitive status or employees of such agency, ex-
20 cluding any position required to be listed under para-
21 graph (1).”.

22 (2) *ADDITIONAL INFORMATION.*—Section 3330(c)
23 of title 5, United States Code, is amended by striking
24 “and” at the end of paragraph (2), by redesignating

1 paragraph (3) as paragraph (4), and by inserting
2 after paragraph (2) the following:

3 “(3) for all positions under subsection (b)(1) as
4 to which section 3304(f) applies and for all positions
5 under subsection (b)(2), a notation as to the applica-
6 bility of section 3304(f) with respect thereto; and”.

7 (3) CONFORMING AMENDMENT.—Section 3330(d)
8 of title 5, United States Code, is amended by striking
9 “The list” and inserting “Each list under subsection
10 (b)”.

11 **SEC. 3. SPECIAL PROTECTIONS FOR PREFERENCE ELIGI-**
12 **BLES IN REDUCTIONS IN FORCE.**

13 Section 3502 of title 5, United States Code, as amend-
14 ed by section 1034 of the National Defense Authorization
15 Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat.
16 430), is amended by adding at the end the following:

17 “(g)(1) A position occupied by a preference eligible
18 shall not be placed in a single-position competitive level if
19 the preference eligible is qualified to perform the essential
20 functions of any other position at the same grade (or occu-
21 pational level) in the competitive area. In such cases, the
22 preference eligible shall be entitled to be placed in another
23 competitive level for which such preference eligible is quali-
24 fied. If the preference eligible is qualified for more than one

1 *competitive level, such preference eligible shall be placed in*
2 *the competitive level containing the most positions.*

3 *“(2) For purposes of paragraph (1)—*

4 *“(A) a preference eligible shall be considered*
5 *qualified to perform the essential functions of a posi-*
6 *tion if, by reason of experience, training, or education*
7 *(and, in the case of a disabled veteran, with reason-*
8 *able accommodation), a reasonable person could con-*
9 *clude that the preference eligible would be able to per-*
10 *form those functions successfully within a period of*
11 *150 days; and*

12 *“(B) a preference eligible shall not be considered*
13 *unqualified solely because such preference eligible does*
14 *not meet the minimum qualification requirements re-*
15 *lating to previous experience in a specified grade (or*
16 *occupational level), if any, that are established for*
17 *such position by the Office of Personnel Management*
18 *or the agency.*

19 *“(h) In connection with any reduction in force, a pref-*
20 *erence eligible whose current or most recent performance*
21 *rating is at least fully successful (or the equivalent) shall*
22 *have, in addition to such assignment rights as are pre-*
23 *scribed by regulation, the right, in lieu of separation, to*
24 *be assigned to any position within the agency conducting*
25 *the reduction in force—*

1 “(1) for which such preference eligible is quali-
2 fied under subsection (g)(2)—

3 “(A) that is within the preference eligible’s
4 commuting area and at the same grade (or occu-
5 pational level) as the position from which the
6 preference eligible was released, and that is then
7 occupied by an individual, other than another
8 preference eligible, who was placed in such posi-
9 tion (whether by appointment or otherwise)
10 within 6 months before the reduction in force if,
11 within 12 months prior to the date on which
12 such individual was so placed in such position,
13 such individual had been employed in the same
14 competitive area as the preference eligible; or

15 “(B) that is within the preference eligible’s
16 competitive area and that is then occupied by an
17 individual, other than another preference eligible,
18 who was placed in such position (whether by ap-
19 pointment or otherwise) within 6 months before
20 the reduction in force; or

21 “(2) for which such preference eligible is quali-
22 fied that is within the preference eligible’s competitive
23 area and that is not more than 3 grades (or pay lev-
24 els) below that of the position from which the pref-
25 erence eligible was released, except that, in the case of

1 *a preference eligible with a compensable service-con-*
2 *ected disability of 30 percent or more, this para-*
3 *graph shall be applied by substituting ‘5 grades’ for*
4 *‘3 grades’.*

5 *In the event that a preference eligible is entitled to assign-*
6 *ment to more than 1 position under this subsection, the*
7 *agency shall assign the preference eligible to any such posi-*
8 *tion requiring no reduction (or, if there is no such position,*
9 *the least reduction) in basic pay. A position shall not, with*
10 *respect to a preference eligible, be considered to satisfy the*
11 *requirements of paragraph (1) or (2), as applicable, if it*
12 *does not last for at least 12 months following the date on*
13 *which such preference eligible is assigned to such position*
14 *under this subsection.*

15 *“(i) A preference eligible may challenge the classifica-*
16 *tion of any position to which the preference eligible asserts*
17 *assignment rights (as provided by, or prescribed by regula-*
18 *tions described in, subsection (h)) in an action before the*
19 *Merit Systems Protection Board.*

20 *“(j)(1) As soon as practicable, but not later than 120*
21 *days, after the date of the enactment of this subsection, each*
22 *agency shall establish an agencywide priority placement*
23 *program to facilitate employment placement for preference*
24 *eligibles who—*

1 “(A) are scheduled to be separated from service
2 due to a reduction in force; or

3 “(B) are separated from service due to a reduc-
4 tion in force.

5 “(2) Each agencywide priority placement program
6 shall include provisions under which a vacant position shall
7 not be filled by the appointment or transfer of any individ-
8 ual from outside of that agency (other than a former em-
9 ployee previously separated from that agency due to a re-
10 duction in force) or by any promotion, reassignment, or
11 other personnel action involving any individual from with-
12 in that agency (other than a preference eligible or, as de-
13 fined under regulations prescribed by the Office, a surplus
14 employee) if—

15 “(A) there is then available any individual de-
16 scribed in paragraph (3) who is qualified for the posi-
17 tion; and

18 “(B) the position—

19 “(i) is at the same grade (or pay level) or
20 not more than 2 grades (or pay levels) below that
21 of the position last held by such individual before
22 placement in the new position; and

23 “(ii) is within the same commuting area as
24 the individual’s residence or last-held position.

1 “(3) For purposes of an agencywide priority place-
2 ment program under this subsection, an individual shall
3 be considered to be described in this paragraph if such indi-
4 vidual’s most recent performance rating was at least fully
5 successful (or the equivalent), and such individual is ei-
6 ther—

7 “(A) a preference eligible of such agency who is
8 scheduled to be separated, as described in paragraph
9 (1)(A); or

10 “(B) a preference eligible who became a former
11 employee of such agency as a result of a separation,
12 as described in paragraph (1)(B).

13 “(4) A preference eligible shall cease to be eligible to
14 participate in a program under this subsection upon the
15 earlier of—

16 “(A) the end of the 24-month period beginning
17 on the date on which the preference eligible first be-
18 comes eligible to participate under paragraph (3); or

19 “(B) the date on which the individual accepts or
20 declines a bona fide offer (or, if the individual does
21 not act on the offer, the last day for accepting such
22 offer) from the affected agency of a position described
23 in paragraph (2)(B).”.

1 **SEC. 4. IMPROVED REDRESS FOR VETERANS.**

2 (a) *IN GENERAL.*—Subchapter I of chapter 33 of title
3 5, United States Code, is amended by adding at the end
4 the following:

5 **“§ 3330a. Administrative redress**

6 “(a)(1) Any preference eligible or other individual de-
7 scribed in section 3304(f)(1) who alleges that an agency has
8 violated such individual’s rights under any statute or regu-
9 lation relating to veterans’ preference, or any right afforded
10 such individual by section 3304(f), may file a complaint
11 with the Secretary of Labor.

12 “(2) A complaint under this subsection must be filed
13 within 60 days after the date of the alleged violation, and
14 the Secretary shall process such complaint in accordance
15 with sections 4322 (a) through (e)(1) and 4326 of title 38.

16 “(b)(1) If the Secretary of Labor is unable to resolve
17 the complaint within 60 days after the date on which it
18 is filed, the complainant may elect to appeal the alleged
19 violation to the Merit Systems Protection Board in accord-
20 ance with such procedures as the Merit Systems Protection
21 Board shall prescribe, except that in no event may any such
22 appeal be brought—

23 “(A) before the 61st day after the date on which
24 the complaint is filed under subsection (a); or

1 “(B) later than 15 days after the date on which
2 the complainant receives notification from the Sec-
3 retary of Labor under section 4322(e)(1) of title 38.

4 “(2) An appeal under this subsection may not be
5 brought unless—

6 “(A) the complainant first provides written noti-
7 fication to the Secretary of Labor of such complain-
8 ant’s intention to bring such appeal; and

9 “(B) appropriate evidence of compliance with
10 subparagraph (A) is included (in such form and
11 manner as the Merit Systems Protection Board may
12 prescribe) with the notice of appeal under this sub-
13 section.

14 “(3) Upon receiving notification under paragraph
15 (2)(A), the Secretary of Labor shall not continue to inves-
16 tigate or further attempt to resolve the complaint to which
17 such notification relates.

18 “(c) This section shall not be construed to prohibit a
19 preference eligible from appealing directly to the Merit Sys-
20 tems Protection Board from any action which is appealable
21 to the Board under any other law, rule, or regulation, in
22 lieu of administrative redress under this section.

23 **“§ 3330b. Judicial redress**

24 “(a) In lieu of continuing the administrative redress
25 procedure provided under section 3330a(b), a preference eli-

1 gible or other individual described in section 3304(f)(1)
2 may elect, in accordance with this section, to terminate
3 those administrative proceedings and file an action with
4 the appropriate United States district court not later than
5 60 days after the date of the election.

6 “(b) An election under this section may not be made—

7 “(1) before the 121st day after the date on which
8 the appeal is filed with the Merit Systems Protection
9 Board under section 3330a(b); or

10 “(2) after the Merit Systems Protection Board
11 has issued a judicially reviewable decision on the
12 merits of the appeal.

13 “(c) An election under this section shall be made, in
14 writing, in such form and manner as the Merit Systems
15 Protection Board shall by regulation prescribe. The election
16 shall be effective as of the date on which it is received, and
17 the administrative proceeding to which it relates shall ter-
18minate immediately upon the receipt of such election.

19 **“§ 3330c. Remedy**

20 “(a) If the Merit Systems Protection Board (in a pro-
21 ceeding under section 3330a) or a court (in a proceeding
22 under section 3330b) determines that an agency has vio-
23 lated a right described in section 3330a, the Board or court
24 (as the case may be) shall order the agency to comply with
25 such provisions and award compensation for any loss of

1 *wages or benefits suffered by the individual by reason of*
 2 *the violation involved. If the Board or court determines that*
 3 *such violation was willful, it shall award an amount equal*
 4 *to backpay as liquidated damages.*

5 “(b) A preference eligible or other individual described
 6 in section 3304(f)(1) who prevails in an action under sec-
 7 tion 3330a or 3330b shall be awarded reasonable attorney
 8 fees, expert witness fees, and other litigation expenses.”.

9 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 10 *the beginning of chapter 33 of title 5, United States Code,*
 11 *is amended by adding after the item relating to section 3330*
 12 *the following:*

“3330a. *Administrative redress.*

“3330b. *Judicial redress.*

“3330c. *Remedy.*”.

13 **SEC. 5. EXTENSION OF VETERANS' PREFERENCE.**

14 (a) *AMENDMENT TO TITLE 5, UNITED STATES*
 15 *CODE.*—*Paragraph (3) of section 2108 of title 5, United*
 16 *States Code, is amended by striking “the Federal Bureau*
 17 *of Investigation and Drug Enforcement Administration*
 18 *Senior Executive Service, or the General Accounting Of-*
 19 *fice;” and inserting “or the Federal Bureau of Investigation*
 20 *and Drug Enforcement Administration Senior Executive*
 21 *Service;”.*

22 (b) *AMENDMENTS TO TITLE 3, UNITED STATES*
 23 *CODE.*—

1 (1) *IN GENERAL.*—Chapter 2 of title 3, United
2 States Code, is amended by adding at the end the fol-
3 lowing:

4 **“§ 115. Veterans’ preference**

5 “(a) Subject to subsection (b), appointments under sec-
6 tions 105, 106, and 107 shall be made in accordance with
7 section 2108, and sections 3309 through 3312, of title 5.

8 “(b) Subsection (a) shall not apply to any appoint-
9 ment to a position the rate of basic pay for which is at
10 least equal to the minimum rate established for positions
11 in the Senior Executive Service under section 5382 of title
12 5 and the duties of which are comparable to those described
13 in section 3132(a)(2) of such title or to any other position
14 if, with respect to such position, the President makes certifi-
15 cation—

16 “(1) that such position is—

17 “(A) a confidential or policy-making posi-
18 tion; or

19 “(B) a position for which political affili-
20 ation or political philosophy is otherwise an im-
21 portant qualification; and

22 “(2) that any individual selected for such posi-
23 tion is expected to vacate the position at or before the
24 end of the President’s term (or terms) of office.

1 *Each individual appointed to a position described in the*
2 *preceding sentence as to which the expectation described in*
3 *paragraph (2) applies shall be notified as to such expecta-*
4 *tion, in writing, at the time of appointment to such posi-*
5 *tion.”.*

6 (2) *CLERICAL AMENDMENT.—The table of sec-*
7 *tions at the beginning of chapter 2 of title 3, United*
8 *States Code, is amended by adding at the end the fol-*
9 *lowing:*

“115. Veterans’ preference.”.

10 (c) *LEGISLATIVE BRANCH APPOINTMENTS.—*

11 (1) *IN GENERAL.—Subject to paragraph (3), ap-*
12 *pointments to positions in the legislative branch of*
13 *the Government shall be made in accordance with sec-*
14 *tion 2108, and sections 3309 through 3312, of title 5,*
15 *United States Code.*

16 (2) *REDUCTIONS IN FORCE.—Subject to para-*
17 *graph (3), reductions in force in the legislative branch*
18 *of the Government shall provide preference eligibles*
19 *with protections substantially similar to those pro-*
20 *vided under subchapter I of chapter 35 of title 5,*
21 *United States Code.*

22 (3) *EXCLUSIONS.—Paragraphs (1) and (2) shall*
23 *not apply to—*

24 (A) *an appointment made by the President*
25 *with the advice and consent of the Senate;*

1 (B) an appointment made by a Member of
2 Congress or by a committee or subcommittee of
3 either House of Congress; or

4 (C) an appointment to a position, the du-
5 ties of which are equivalent to those of a Senior
6 Executive Service position (within the meaning
7 of section 3132(a)(2) of title 5, United States
8 Code).

9 (4) *REDRESS PROCEDURES.*—The Board of Di-
10 rectors of the Office of Compliance (established by sec-
11 tion 301 of the Congressional Accountability Act of
12 1995) shall prescribe regulations, as soon as prac-
13 ticable after the date of the enactment of this Act, to
14 provide preference eligibles in the legislative branch of
15 the Government with administrative and judicial re-
16 dress procedures for alleged violations of any rights
17 provided by this subsection. Such procedures shall be
18 substantially similar to the procedures established by
19 the amendments made by section 4. The regulations
20 shall provide that the General Counsel of the Office of
21 Compliance (appointed under section 302(c) of the
22 Congressional Accountability Act of 1995) shall per-
23 form the functions assigned to the Secretary of Labor
24 under sections 4322 and 4326(a) of title 38, United
25 States Code.

1 (d) *JUDICIAL BRANCH APPOINTMENTS.*—

2 (1) *IN GENERAL.*—Subject to paragraph (2), ap-
3 pointments to positions in the judicial branch of the
4 Government shall be made in accordance with section
5 2108, and sections 3309 through 3312, of title 5,
6 United States Code.

7 (2) *REDUCTIONS IN FORCE.*—Subject to para-
8 graph (2), reductions in force in the judicial branch
9 of the Government shall provide preference eligibles
10 with protections substantially similar to those pro-
11 vided under subchapter I of chapter 35 of title 5,
12 United States Code.

13 (3) *EXCLUSIONS.*—Paragraphs (1) and (2) shall
14 not apply to—

15 (A) an appointment made by the President,
16 with the advice and consent of the Senate;

17 (B) an appointment as a judicial officer;

18 (C) an appointment as a law clerk or sec-
19 retary to a justice or judge of the United States;
20 or

21 (D) an appointment to a position, the du-
22 ties of which are equivalent to those of a Senior
23 Executive Service position (within the meaning
24 of section 3132(a)(2) of title 5, United States
25 Code).

1 (4) *REDRESS PROCEDURES.*—*The Judicial Con-*
2 *ference of the United States shall prescribe regulations*
3 *under which redress procedures (substantially similar*
4 *to the procedures established by the amendments made*
5 *by section 4) shall be available for alleged violations*
6 *of any rights provided by this subsection.*

7 (5) *DEFINITIONS.*—*For purposes of this sub-*
8 *section—*

9 (A) *the term “judicial officer” means a jus-*
10 *tice, judge, or magistrate judge listed in subpara-*
11 *graph (A), (B), (F), or (G) of section 376(a)(1)*
12 *of title 28, United States Code; and*

13 (B) *the term “justice or judge of the United*
14 *States” has the meaning given such term by sec-*
15 *tion 451 of such title 28.*

16 **SEC. 6. VETERANS’ PREFERENCE REQUIRED FOR REDUC-**
17 **TIONS IN FORCE IN THE FEDERAL AVIATION**
18 **ADMINISTRATION.**

19 *Section 347(b) of the Department of Transportation*
20 *and Related Agencies Appropriations Act, 1996 (109 Stat.*
21 *460) is amended by striking “and” at the end of paragraph*
22 *(6), by striking the period at the end of paragraph (7) and*
23 *inserting “; and”, and by adding at the end the following:*

24 “(8) *sections 3501–3504, as such sections relate*
25 *to veterans’ preference.”.*