

MINUTES OF THE MEETING OF THE LABOR AND EMPLOYMENT RELATIONS
COMMITTEE
January 28, 1983

The meeting was called to order at 7:00 p.m. by Chairman Williams. Roll call was taken and all members were present except Representatives Pavlovich, Smith and Thoft, who were excused.

Testimony was heard on HB 378, HB 384, and HB 390 during this meeting. Executive action was taken on HB 390.

HOUSE BILL 378

REPRESENTATIVE JOE BRAND, District 28, chief sponsor of HB 378, said HB 378 is an act to extend the veterans' appointment and employment preference to reappointment and continued employment. Representative Brand said the Montana State Legislature created veterans' preference for public employment in the year 1921. This act accomplished the legislative purpose of honoring veterans by giving them, their spouses and surviving spouses, and the other dependents of disabled veterans a slight advantage to compete for jobs in public employment. The law was further amended in 1955 to include disabled civilians, their spouses and dependents with the same preference.

The Federal Veterans' Preference Act of 1944 was passed by the 78th Congress. This law granted veterans certain job retention rights over nonveterans with similar status and performance records in the event of a reduction-in-force. House Bill 378 is being introduced for that purpose.

It might appear that the Civil Rights Act of 1964 would provide an effective vehicle for establishing a prima facie case of discrimination against women through the use of statistics. This would shift the burden to the defendant (government) to justify its practice of extending preference to veterans. However, in enacting Section 712 of the Civil Rights Act of 1964, Congress specifically exempted veterans' preference from attack under the act: "Nothing contained in this subchapter shall be construed to repeal or modify any federal, state, territorial, or local law creating special rights or preference for veterans." As a result, the Civil Rights Act has generally not been an avenue of approach for those who would challenge veterans' preference.

REPRESENTATIVE BRAND said there is no sex discrimination in the veterans' law act.

Proponents

NADIEAN JENSEN, Executive Director of the American Federation of State, County and Municipal Employees, AFL-CIO, testified in support of veterans' preference. She asked that HB 378 be amended to provide for equal treatment of veterans, minorities, and the handicapped. House Bill 378 should also be amended to provide that its provisions would not impair or abridge the obligations of employment relations contained in collective bargaining contracts.

MS. JENSEN read a prepared statement to the committee. (See EXHIBIT 1.)

BOB DURKEE, representing Veterans of Foreign Wars, testified in favor of HB 378. He said there had been a former state attorney general who said the retention part of veterans' preference is alluded to in the law. He urged the committee to adopt HB 378 as written.

TONY CUMMING, State Adjutant of the American Legion, said the group he represents supports HB 378.

DAN ANTONIETTE, State Director of the USDL-VES, said he supports the bill as proposed because the bill is compatible with the federal Veterans' Employment Act which was passed in 1942. He said Congress enacted a disabled veterans' outreach program. The job service people must hire for positions according to state guidelines but must also follow federal guidelines which apply to disabled veterans.

ROBERT BOTTERBUSCH said he is a veteran and a state employee. Mr. Botterbusch said the Montana Codes specifically say veterans' preference applies to qualified veterans. It is only logical to apply veterans' preference to the retentions, layoffs, and reductions in force.

DON GIES, a veteran of the Korean and Viet Nam Wars, asked the committee to remember that veterans are not looking to receive jobs simply because they are veterans.

ROBERT MILLER, a veteran of the Korean War, said he supports HB 378.

Opponents

DENNIS TAYLOR, Administrator of the Personnel Division, Department of Administration, testified in opposition to HB 378 as it currently reads. He said the state has been administering the Veterans' Preference Act as a tie-breaker between substantially

equal applicants, but many public agencies do not apply the act either because they are unaware of it or because the act is too vague and difficult to interpret.

The act was passed in 1921 and amended to include handicapped civilians in 1927. Because of the vagueness and lack of definition, veterans and disabled people have (at least in recent years) seldom received preference. The law talks about "preference" but does not say what it is or how it will be provided. It provides no procedure for applying preference. It includes no definitions of the terms used in the act.

Last summer, the state worked with veterans' organizations, handicapped advisory organizations, and other public employers to determine what needed to be done with the act to make it workable. The following areas were identified:

1. The nature of the preference needed to be clarified as a tie-breaker rather than an absolute preference or entitlement.
2. The procedures for applying the preference needed to be clarified.
3. Rulemaking authority was needed to effectively administer the preference.
4. Terms needed to be clearly defined.

MR. TAYLOR talked about SB 197 which would provide a law which could be affirmatively, fairly and consistently administered by public employees. He urged the committee to table HB 378 and to defer to the Senate until that body has a chance to fully consider SB 197. If the committee feels a need to act on HB 378, Mr. Taylor asked them to consider some amendments to the bill. (Those amendments are included in EXHIBIT 2.)

MR. TAYLOR also submitted copies of drafted bills dealing with clarification of the Veterans' Preference Act. He asked that those copies be included in the minutes of this meeting. (See EXHIBIT 3.)

GENE FENDERSON, business manager of Laborers Local 254, AFL-CIO, testified in opposition to HB 378. He told the committee he was not speaking against veterans' preference itself, but said there are some distinctions which must be made when addressing this issue. The concept of veterans' preference arose from a praiseworthy effort to compensate in some way the time veterans had lost from the job market because of their service during a war

or armed conflict. Giving those veterans preference has helped make up for their loss of employment opportunity while they defended their country. That concept is recognized in a resolution adopted by the Montana State AFL-CIO convention in 1982. Mr. Fenderson said HB 378 expands employment opportunities for veterans, which is not mentioned in the resolution adopted by the AFL-CIO, and the resolution specifically mentions veterans who served their country in "time of war". Veterans' preference is supposed to equalize employment opportunities for veterans, not to give them an added advantage at the expense of other groups, such as women, minorities and the handicapped.

MR. FENDERSON said many veterans who enjoy veterans' preference did not serve in time of war. They chose to serve in the armed forces to learn a specific skill or to receive certain veterans' benefits, such as the G.I. bill to further their education. Others chose the service as a full time career. These individuals were not deprived of any opportunity to gain employment. He asked the committee to vote against HB 378 which expands veterans' preference at the expense of other groups which have traditionally been denied equal employment opportunities. (See EXHIBIT 4.)

JAN GILMAN, representing the Interdepartmental Coordinating Committee for Women (ICCW), said the ICCW strongly opposes HB 378. She said the bill would provide preference in securing and retaining employment for veterans at the expense of those who have already been hindered in finding employment. She said HB 378 would impede the efforts of the state of Montana to provide equal employment opportunities for all applicants. (See EXHIBIT 5.)

KYLE OLSON, Assistant City Manager of Great Falls, said he does not feel HB 378 clarifies procedures for employment, reappointment or continued employment. He asked the committee to either table HB 378 or amend it.

CELINDA LAKE, representing the Women's Lobbyist Fund, said the Women's Lobbyist Fund does not oppose veterans' preference. They feel HB 378, in its present form, is unworkable and goes beyond the commitments that have been made and what would be fair to all disadvantaged groups. Ms. Lake said HB 378, in its current form, would make any type of affirmative action in hiring and promotion impossible. We should not, in this state, remedy one form of discrimination by de facto invoking another. (See EXHIBIT 6.)

DEBI FLENTIE, representing the Department of Revenue, said the Department of Revenue is vitally concerned with maintaining fair hiring practices. Because of this, the current veterans

and disabled civilians employment preference law has been a stumbling block for hiring officials. House Bill 378 does not offer substantial clarification on the preference issue. She said SB 197 offers new substance and clarification to the problems that now exist. Senate Bill 197 reflects compromise legislation reached by veterans' groups, handicapped groups and representatives of state and local government. She asked this committee's consideration of the provision of SB 197. (See EXHIBIT 7.)

CLAUDIA CRONEN said she was testifying on behalf of her husband because he was not able to attend the hearing. (See EXHIBIT 8.)

MARY LISA PRYNE, a veteran of the United States Navy, testified in opposition to HB 378. Ms. Pryne said HB 378 proposes to extend absolute veterans' preference beyond the scope of initial hiring. This proposed bill would have the effect of perpetuating discrimination on other minority groups. She said she has experienced job discrimination first hand, not because she is a veteran, but because she is a woman. House Bill 378 would ensure that that discrimination continues. She urged this committee to adopt an adverse committee report. (See EXHIBIT 9.)

FRED EASY, an opponent to HB 378, asked the committee to consider amending HB 378 giving a preference in appointments to be made through establishment of a uniform point scale. All veterans would be awarded ten points and veterans who have received a disability determination or purple heart would be awarded an additional ten points. He also said he supports the testimony given by Dennis Taylor.

WES KRAWCZYK, chairman of the Legal Council for the University of Montana, said the problem with the act is that the veterans' preference is in a total state of confusion. While in this state of confusion is not the proper time to extend the preference act into areas where it doesn't now exist. Because of the confusion, the ACLU of Montana has misgivings about this bill.

REPRESENTATIVE CAROL FARRIS, District 41, asked to be listed as an opponent to HB 378.

REPRESENTATIVE BRAND, in closing, said he, too, is a veteran. He never took advantage of any acts provided for veterans but he is trying to prove that veterans have to have preference.

REPRESENTATIVE BRAND said every opponent wants to water down the Veterans' Preference Act. He said he is not against women or positions they desire but he is opposed to the offered amendments.

REPRESENTATIVE BRAND said department heads are laying off people and are picking and choosing the people to be laid off. If the Veterans' Preference Act is watered down, there would be no

preference on who could still be working after a layoff. He said department heads know how to determine the act but just do not want to. We are trying to retain what is in existence.

The hearing on HB 378 was closed.

HOUSE BILL 384

REPRESENTATIVE JOE HAMMOND, District 24, sponsor of HB 384, said the bill provides protection for employees' wages will also provide for a bond to be waived if the owner of the business has complied with the provisions for three years.

REPRESENTATIVE HAMMOND said there will be some amendments offered.

Proponents

DAVE HUNTER, Commissioner of Labor and Industry, said HB 384 is a bill that has been discussed before. The act was enacted by the 1975 Legislature and attempts to repeal the act have been put before the 1977, 79 and 81 Legislatures. This time, there is a compromised legislation. He said the reason for the bonding of restaurants, bars and taverns, and not all businesses, came about is because the wage claims and high bankruptcy rate among those three businesses are much higher than with other businesses. The current act applies only to restaurant, bar or tavern owners who operate on leased or rented property. If an owner rents the property, there wouldn't be any tangible property to be collected in cases of bankruptcy or wage claims. If the owner of one of those businesses owns the property, the bank gets the property, in bankruptcy cases, so the Department of Labor and Industry still can't protect the workers.

MR. HUNTER said HB 384 broadens the bonding protection from people in leased premises to owners of premises. The bill limits to three years, the amount of time the bond would be required. Mr. Hunter said 61% of all bars, restaurants and taverns in Montana will fail in the first three years and that is why the department wants the bond for the first three years of a business's existence.

MR. HUNTER said the Commissioner of Labor and Industry will have the option, if HB 384 passes, to go back and impose a second bond when necessary. The intention of the bill would be to require a bond for three years. After that, the bond will be waived unless the employer becomes delinquent on payments or starts having wage claims filed against him. Additional bonding could be imposed in those cases.

MR. HUNTER passed out copies of amendments proposed to HB 384. (See EXHIBIT 10.) If HB 384 is passed with the amendments, it will provide better compliance for workers who have not been paid wages; it will be more fair to employers; and the staff of the Department of Labor will be better used to target efforts to make sure the bonds are received and to retrieve wages of employees who have not been paid.

KATHY VAN HOOK said the Women's Lobbyist Fund supports HB 384 because it is a bill that protects restaurant employees, the majority of whom are women.

SEYMOUR FLANAGAN, International Organizer for Hotel Employees and Restaurant Employees, International Union AFL-CIO, read a prepared statement to the committee. (See EXHIBIT 11.)

ROLAND D. PRATT, lobbyist for the Montana Restaurant Association, said that association concurs with HB 384, as amended.

DON JUDGE, representing the Montana State AFL-CIO, said they would not support any measure which would weaken this essential wage protection, but since most failures occur in the first three years of business, and the bonding requirement for that period is now extended to all bar and restaurant employers, this is a reasonable revision of the act. He asked this committee's support of HB 384. (See EXHIBIT 12.)

MARGARET FLANAGAN, representing Hotel Employees and Restaurant Employees Local 533, rose in support of HB 384.

FRANK SULLIVAN, representing Hotel Employees and Restaurant Employees Local 457, said he supports HB 384. It is a law which needs more "teeth" which is provided for in the bill.

There were no opponents testifying on this bill.

REPRESENTATIVE JONES asked Mr. Hunter if he would agree to an amendment to bond all businesses that are on leased premises. Mr. Hunter said he would have to look at the data but the reason for only bonding restaurants and bars is because of the high bankruptcy and wage claims involved with those businesses.

The hearing on HB 384 was closed.

HOUSE BILL 390

REPRESENTATIVE KELLY ADDY, District 62, sponsor of the bill, said HB 390 is an act to define unfair labor practices by health care facilities and labor organizations representing nurses; to establish procedures for adjudicating unfair labor practices

charges; and to resolve appropriate unit and representation questions consistent with the public employees collective bargaining provisions.

Proponents

EILEEN ROBERTS, representing the Montana Nurses Association, rose in support of HB 390.

CHAD SMITH, representing the Montana Hospital Association, said they are the principal health care employers and they support the bill.

There were no opponents testifying on HB 390.

The hearing on HB 390 was closed.

CHAIRMAN WILLIAMS called the meeting into Executive Session.

EXECUTIVE SESSION

REPRESENTATIVE HARPER moved HB 390 DO PASS.

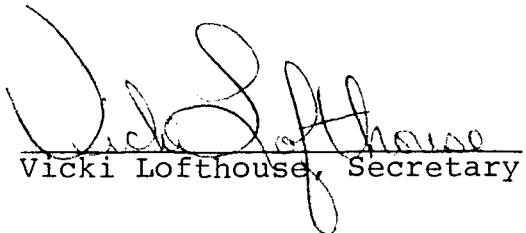
The motion was voted on and PASSED with all committee members present voting yes. Representative Pavlovich left a proxy vote, voting yes. Representative Seifert and Hannah were not present during the vote.

REPRESENTATIVE DRISCOLL said, in fairness to the minority party, this committee should not take any more executive action until all committee members were present.

CHAIRMAN WILLIAMS said he would delay any more executive action until next week because some of the bills to be voted on are controversial bills.

The meeting was adjourned at 9:00 p.m.


MEL WILLIAMS, Chairman


Vicki Lofthouse, Secretary



Montana Association Of Conservation Districts

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HB 260

Mr. Chairman, Members of the Committee:

The real question raised by HB 260 is whether the Montana Legislature should use the Resource Indemnity Trust Account to enhance the state's resource base outside of a mining area or use the funds to mitigate adverse mining impacts, or both. In the New American Webster Dictionary (c 1972), indemnity is defined as "1. what is paid as compensation or reimbursement, 2. Security against damage or loss, 3. exemption from liability." And now the legislature must decide which definition to operate under as per the intent of the drafters of HB 97 in 1973 legislature.

Larry Fasbender, sponsor of the original bill spoke about a "legacy fund" and that "we as Montanans will have to answer to future generations." The policy statement of 15-38-102 contains the sentence "therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure." From these statements I submit that the legislature may appropriate these funds to guarantee future benefits of renewable resources for the people of Montana. And renewable resources include maintaining a quality water supply and productive soil base.

The proponents speak of the RIT funds as an insurance policy against adverse impacts directly related to extraction of non-renewable resources. This in fact is a provision of the policy statement in 15-38-102.

As for the third definition of indemnity, it is doubtful that the people of Montana would collect a small tax and then say to a mine operator "you are now exempted from liability for damage you do the environment."

We feel that the statement to be added by HB 260 is redundant and therefore not needed. It is up to the legislature to decide when it meets where the RIT funds can be used to best enhance the environment and do the most good for the people of Montana.

We recommend a "Do Not Pass" on HB 260.


Steven R. Meyer
Executive Vice President

SRM:dv

Ex. 1

MONTANA STATE COUNCIL No. 9
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
Affiliated With A.F.L.-C.I.O.



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January 28, 1983

TESTIMONY ON HOUSE BILL NO. 378

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

My name is Nadean Jensen, and I am the executive director of the American Federation of State, County and Municipal Employees, AFL-CIO, Montana Council No. 9.

I am here to support veteran's preference, but to urge you to amend House Bill 378 from its present form.

I am a veteran and served during the Korean Conflict. As a veteran I know the problems that veterans have, and I know that many deserve special treatment for having served our country. But as a woman, I also know that other groups, like women, minorities and the handicapped also deserve special treatment because of past discriminatory practices in many employment situations.

And as a union leader, I know that any bill which restricts collective bargaining, as this one does, is not in the best interests of workers, however good the intention might be.

First let's look at a veteran's preference. Support for it is not just my personal opinion, it is also the position of AFSCME and of the Montana State AFL-CIO.

The Montana State AFL-CIO has consistently supported preference for veterans. The latest resolution, from the 1982 convention, states, "...this organization deplores each and every attempt to degrade, dilute or modify the historical precedent of giving job eligibility preference to those who were taken from their communities to serve their country in time of war, and that the President, the Congress of the United States, the Governor and the State Legislature of Montana reject any and all proposed legislation that would reduce employment opportunities in federal and public employment."

That resolution was submitted by the Montana State Building and Construction Trades Council, and was passed by the delegates to the 1982 Montana State AFL-CIO Convention.

But I believe that the state and national labor federations do not support veteran's preference at the expense of other groups which also deserve a break in employment, namely women, minorities and the handicapped.

Following the controversial Bakke decision in 1978, the AFL-CIO Executive Council stated: "...this is the appropriate occasion to reaffirm the AFL-CIO's long-standing commitment to affirmative action in open doors previously shut to women and minorities.

"It continues to be necessary to take affirmative steps to alleviate the historical burden of discrimination carried too long by women and minorities. We, therefore, favor aggressive, positive efforts to integrate, instead of mere passive agreement not to discriminate.

"In this context, affirmative action must include recruiting, hiring, counselling, training, upgrading and promoting minorities and women. Those words state the essence of our outreach programs to prepare for employment and to place minorities and women in occupations where they are not sufficiently represented. These programs maintain standards, accept the validity of nondiscriminatory testing, bar quotas or unfair preferential treatment. Our programs work and work well. They do so without undermining society's commitment to fair treatment to all."

There is another important reason that women and minorities in particular should not be discriminated against in favor of veterans. Such a move will certainly be challenged vigorously in the courts, on two grounds. The first charge is that this would discriminate against women and minorities. The second charge is that it would negate union contracts.

The 1972 Montana Constitution clearly states, in Article II, Section 35, that "The people declare that Montana servicemen, servicewomen and veterans may be given special considerations determined by the legislature."

I believe that all of us would support that.

But that cannot conflict with Article II, Section 4, which includes the statement, "Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." In short, Montana already has an equal rights provision for women and minorities in its constitution.

Montana also has two sections of state law, which I do believe could give rise to doubt the enforceability of House Bill 378.

Section 49-1-102, gives the right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age or national origin. It goes on to say that, "This right shall include, but not be limited to the right to obtain and hold employment without discrimination..."

And in section 49-2-303, discrimination in employment is outlawed for any of the reasons of ethnic minority status, sex and so on. So House Bill 378 would seem to open the door to lawsuits by conflicting with state law and the constitution.

The labor movement also supports equal rights at the national and the state level. The latest resolution supporting the ERA is from the 1982 Montana State AFL-CIO convention. Like the veteran's preference resolution, it also was introduced by the Montana Building and Construction Trades Council, and was passed by the Montana State AFL-CIO delegates.

Although I am a veteran, as are other women, it is true that the armed services discriminates against women. At present, women are allowed to constitute only 10% of this nation's armed forces. That means that veterans are, by national policy, 90% male. So while veterans may need special consideration in employment, to do so at the exclusion of other groups would definitely be discriminatory against women.

The other conflict with the Montana Constitution comes in Article II, Section 31. That section outlaws, among other things, "any law impairing the obligation of contracts."

I am a veteran and a women, but I am also a union leader. When we negotiate contracts in good faith, it is maddening to see the legislature try to negate those contracts.

As House Bill 378 is written, it gives preference to veterans not only in hiring, but also in "reappointment...and continued employment." That means to me that veterans would have preference over employees who had greater seniority, and who deserved to remain employed under our union contracts. Seniority has been an item that unions have fought for over the last several decades. When seniority is equal, then we support retention rights for veterans and women and minorities and the handicapped. But otherwise unions have sided with the workers who have been employed the longest.

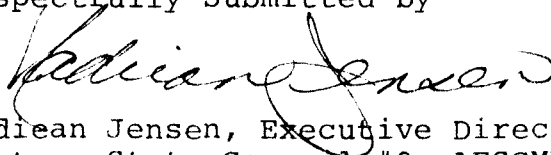
Unions do not make those decisions unilaterally, of course. Contracts are ratified by union members and signed by unions and employers alike, so the process involves a give and take. House Bill 378 would restrict the collective bargaining rights of unions even farther, and it would appear to negate contracts already signed, which we believe would be a violation of the Montana Constitution.

As a veteran I support veteran's rights. As a woman, I support women's rights, and also rights for minorities and the handicapped. But as union leader, I support the rights for union members to negotiate contracts and have them be binding, without interference from the legislature.

I support veteran's preference, but I am forced to oppose House Bill 378 In its present form, but would support this bill if it were amended to provide for equal treatment of veterans, minorities and the handicapped; and, if it were amended to provide that its provisions would not impair or abridge the obligations of employment relations contained in collective bargaining contracts.

Thank you.

Respectfully Submitted by

A handwritten signature in cursive script, appearing to read "Nadiean Jensen".

Nadiean Jensen, Executive Director
Montana State Council #9, AFSCME, AFL-CIO

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PERSONNEL DIVISION



TED SCHWINDEN, GOVERNOR

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TESTIMONY OF DENNIS M. TAYLOR, ADMINISTRATOR, PERSONNEL
DIVISION, DEPARTMENT OF ADMINISTRATION CONCERNING HOUSE
BILL NO. 378 PRESENTED TO THE HOUSE COMMITTEE ON LABOR
AND EMPLOYMENT RELATIONS ON JANUARY 28, 1983

Mr. Chairman and Committee Members, my name is Dennis Taylor and I am the Administrator of the State Personnel Division in the Department of Administration. I appear before you today in opposition to HB378 as it currently reads.

Interest in legislation on the Veteran's Preference Act was initiated by Crabtree vs. State Library in the spring of 1982. Employers and veterans were concerned about clarifying: (1) what the preference meant (was it an absolute entitlement or a tie-breaker?) and (2) the procedure for applying the preference.

Veterans organizations (VFW and American Legion) passed resolutions this summer supporting clarification of the law in these two areas.

The state has been administering the act as a tie-breaker between substantially equal applicants, but many public agencies do not apply the act either because they are unaware of it or because the act is too vague and difficult to interpret.

The act was passed in 1921 and amended to include handicapped civilians in 1927. Because of the vagueness and lack of definition, veterans and disabled people have (at least in recent years) seldom received preference.

If you examine the law, you will see that it is very difficult to interpret or use. It talks about "preference" but does not say what it is or how it will be provided. It provides no procedure for applying preference. It includes no definitions of the terms used in the act.

Last summer, the state worked with veterans organizations, handicapped advisory organizations, and other public employers to determine what needed to be done with the act to make it workable. The following areas were identified:

1. The nature of the preference needed to be clarified as a tie-breaker rather than an absolute preference or entitlement.
2. The procedures for applying the preference needed to be clarified.
3. Rulemaking authority was needed to effectively administer the preference.
4. Terms needed to be clearly defined.

All the parties agreed that something needed to be done by the 48th Legislature to clarify the preference law. HB378 addresses none of these concerns:

1. It does not define or explain what the preference is or how it will be applied.
2. It provides no procedures or definitions.

Starting last summer an intense effort was made by the state to come up with a bill which would clarify the law and would be agreeable to all the concerned groups. This effort resulted in a compromise bill introduced by Senator Joe Mazurek, SB197.

SB197 represents a compromise which took considerable effort on the part of all the groups to negotiate. A compromise which the veterans groups were informed of, had input on, and agreed to support.

SB197 includes retention and reappointment languages as does HB378. This was language the veterans wanted. The State acquiesced to this language solely to gain a compromise bill which would include the definitions and procedures needed by public employers. The State agreed to this language in good faith in order to reach a compromise position that all parties could agree to with the hope of preventing several different pieces of legislation being introduced in the 48th Legislature, thereby confusing an already complex issue.

HB378 is an attempt to include the retention and reappointment language without including any of the other compromise language needed by public employers.

This bill does nothing to address the potentially severe problems caused by the Crabtree vs. State Library case no matter which way the Montana Supreme Court may rule when that case is argued before them March 1, 1983.

I also believe it will not be in the best interests of veterans or disabled persons to leave the preference law in this form without the clarifications provided in the senate bill.

The current law is vague and ill-defined. It is a law which public employers have been unable to effectively implement. They don't know how. Without substantial amendment, HB378 does nothing to correct these problems.

SB197 would provide a law which could be affirmatively, fairly, and consistently administered by public employers. Failure to clarify this law now will mean at least two years of court battles for public employers and veterans. Some of these court battles have already begun.

I urge you to table HB378 and to defer to the Senate until that body has a chance to fully consider SB197. If, however, in your judgement you feel a need for the House to act on HB378, please include the following amendments. If these amendments were included in HB378, the State would no longer be in opposition to HB378.

SUGGESTED AMENDMENTS TO HB378 (REP. BRAND)

1. Title, line 6.

Following: "EMPLOYMENT"

Insert: "AND TO CLARIFY THE NATURE OF THE PREFERENCE AND THE PROCEDURES FOR APPLYING IT;"

2. Title, line 6.

Following: "AMENDING"

Strike: "SECTION 10-2-203"

Insert: "SECTIONS 10-2-201 THROUGH 10-2-206"

3. Page 1.

Following: line 8

Insert: "Section 1. Section 10-2-201, MCA, is amended to read:
"10-2-201. Purpose. The purpose of 10-2-201 through 10-2-206
[Section 7] is to provide for preference of veterans, their
certain dependents and--unremarried--surviving--spouses, of
veterans, and certain disabled civilians in initial appointment
and reappointment and to employment and retention in employment
in every public department and-upon-all-public-works of the
state of Montana and of in any county-and-city local government
entity thereof."

Section 2. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201
through 10-2-206, [Section 7] the following definitions apply:

(1) "Affected class" means a class of people who currently
suffer employment discrimination or suffer from the continuing
effects of past discrimination based on race, sex or physical
or mental handicap; and where there is evidence demonstrating
past or present underutilization of particular classes by the
public hiring authority.

(2) "Certain dependents of a veteran" means:

(a) the spouse of a disabled veteran unable to use his
preference as a result of a service-connected disability; or

(b) the unremarried surviving spouse and other dependent of
a veteran who died as a result of a service-connected
disability or who died while on active duty.

(3) "Department" means the department of administration
provided for in Title 2, Chapter 15, Part 33.

(4) "Disabled person" means:

(a) a veteran having a service-connected disability de-
termined by the Veterans Administration of the United States;
or

(b) a civilian having a disability determined by the
department of social and rehabilitation services.

(5) "Disability" means a physical or mental condition which
limits a major life activity such as walking, seeing, hearing,
or speaking and which limits the person's ability to find and
hold employment.

(6) "Initial appointment to employment" is the act of hir-
ing a person not currently employed with that jurisdiction.

(7) "Preferred person" means a:

- (a) veteran;
- (b) disabled person; or
- (c) certain dependents of veterans.
- (8) "Public hiring authority" means:

(a) all departments, offices, boards, bureaus, commissions, agencies, or any other instrumentalities of the government of the state of Montana; and

(b) all counties, cities, towns, school districts, and other units of local government and all instrumentalities of local government.

(9) "Reemployment preference" means a preference for employment granted under established policies of a jurisdiction because a person's previous employment in that jurisdiction was terminated as a result of a reduction in force or reorganization.

~~{1}~~ (10) ~~The-term~~ "Veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon under honorable conditions other than-dishonorable; or

(b) who after January 31, 1955:

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and

(ii) were honorably discharged.

~~{2}~~ (11) ~~The-term-~~war "War or declared national emergency" includes:

~~{a}~~ ~~The-Civil-War;~~

~~{b}~~ ~~The-Spanish-American-War;~~

~~{c}~~ ~~The-Phillipine-insurrection;~~

~~{d}~~ (a) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

~~{e}~~ (b) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive;

~~{f}~~ (c) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and

~~{g}~~ (d) The Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive.

~~{3}~~ ~~The-term-~~surviving-spouse~~-means-an-unremarried surviving-spouse-of-a-veteran-~~

~~{4}~~ ~~The-word-~~percent~~-means-percent-of-the-total-aggregate points-of-the-examination-referred-to-~~"

Renumber: subsequent section

4. Page 1, line 11.

Following: "continued employment"

Strike: "(1) In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment, and reappointment, employment, and retention in employment: veterans, their spouses and surviving spouses, and the other dependents of disabled veterans, and disabled civilians recommended by the rehabilitative services division of the department of social and rehabilitation services.

(2) Age, loss of limb or other physical impairment which does not in fact incapacitate, does not disqualify any disabled veterans or civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved.

(3) Those of the above-described veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of the wars, military expeditions, or police actions, whenever such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

Insert: ~~"In Every public-department-and-upon-all-public-works-of the-state-of-Montana-and-of-any-county-or-city-thereof,-the following public hiring authority shall be-preferred-for give preference as provided in 10-2-204 in: initial appointment and reappointment to employment and retention in employment and to employment: veterans,-their-spouses-and-surviving-spouses,-and the--other--dependents--of--disabled--veterans,-and--disabled civilians-recommended-by-the-rehabilitative-services-division of--the--department--of--social--and--rehabilitation-services to preferred persons.~~

~~{2} Age,-loss-of-limb-or-other-physical-impairment-which does-not-in-fact-incapacitate,-does-not-disqualify-any-disabled veterans-or-civilian-provided-he-or-she-possesses-the-business capacity,-competency,-and-education-to-discharge-the-duties-of the-position-involved-~~

~~{3} Those-of-the-above-described-veterans-who-have-disabil ities-admitted-by-the-veterans-administration-of-the-United States-to-have-been-incurred-in-service-in-any-of-the-wars, military--expeditions,-or--police--actions,-when-ever--such disabilities--do--not--in-fact-incapacitate,-shall-be-given preference-in-employment-over-other-veterans-~~

~~10-2-204. Credit-for-Examination: {1} When-written-or oral--examinations--are--required--for--employment,-disabled veterans-and-their-spouses,-their-surviving-spouses,-and-other dependents-shall-have-added-to-their-examination-ratings-a credit-of-10-points.-All-other-veterans,-their--spouses, surviving-spouses,-and-dependents-shall-have-added-to-their examination-ratings-a-credit-of-5-points."~~

Section 4. Section 10-2-204, MCA, is amended to read:

"10-2-204. Administration of Preference: (1) Whenever scored procedures are used to establish an employment list and a preferred person attains a passing score, ten percentage points shall be added to the score of a disabled person and five percentage points shall be added to the score of all other preferred persons.

(2) The fact that an applicant has claimed a veterans¹ credit preference may not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit preference.

~~{3} The-benefits-of-this-section-are-in-addition-to-and-not~~

~~in derogation of the preference in appointment and employment or both given by 10-2-203.~~

(3) Whenever scored procedures are not used, a preferred person shall be appointed to the position over others of substantially equal qualifications. Disabled persons shall be appointed to the position over other preferred persons of substantially equal qualifications.

(4) During a reduction in force or reorganization, a preferred person shall be retained for employment over non-preferred persons with substantially equal job duties, qualifications, performance records, and length of service; unless the non-preferred person is a member of an affected class.

(5) During rehiring following a reduction in force, a preferred person shall be reappointed to employment over non-preferred persons with substantially equal qualifications, past performance and length of service, except where the non-preferred person is a member of an affected class.

(6) A preferred person need not be appointed to the position over a non-preferred person who is entitled to claim reemployment preference, except where the preferred person is also entitled to claim reemployment preference."

Section 5. Section 10-2-205, MCA, is amended to read:

"10-2-205. Eligibility. (1) None of the benefits of 10-2-201 through ~~10-2-206~~ [Section 7] accrue to any person who refused to serve on active duty in the military service ~~to which attached or to take up arms~~ in the defense of the United States.

~~(2) No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment is entitled to such preference.~~

(2) It is the preferred person's duty to establish his eligibility for preference and to make his preference known to the public hiring authority.

~~(3) For city and county employment, no preference will be granted unless an applicant under 10-2-201 through 10-2-206 is also a resident of the city or town or county in which employment is sought.~~

Section 6. Section 10-2-206, MCA, is amended to read:

"10-2-206. Enforcement of Preference. (1) Any preferred person ~~entitled to preference in~~ under ~~10-2-201 through 10-2-206~~ who has ~~applied for any initial appointment or to employment upon public works of the state of Montana or with any county and city thereof or in any public department of the state public hiring authority and who has been denied employment or appointment and feels that the spirit of 10-2-201 through 10-2-206 has been violated and that such person is in fact qualified physically and mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for~~ may petition by initial appointment to employment and has not been accorded his rights under 10-2-201 through ~~10-2-206~~ [Section 7] may within 15 days of receipt of notice of the adverse decision make a written request for

appeal to the public hiring authority. ~~to-which-employment application--was~~ made. The public hiring authority shall provide written explanation and shall deliver this explanation to the preferred person within 30 days of the date of his request for appeal.

(2) Within 30 days after the delivery date of the written explanation, the preferred person may file a verified petition with the district court of the state of Montana in the county in which the ~~work-is-to-be-performed~~ application is filed. The petition shall set forth the facts ~~of--the--application, qualifications,--competency,--and--such--person's--honorable discharge-of-other-qualifications~~ warranting the applicant to preference under 10-2-201 through ~~10-2-206~~ [Section 7].

(3) Upon filing of such petition, any judge in the county shall issue an order ~~to-show-cause~~ to the ~~appointing~~ public hiring authority directing the ~~appointing~~ public hiring authority to appear in the court at a specified time and place, not less than 5 ~~10~~ or more than 20 ~~10~~ days after the filing of the verified petition, to show cause, if any exists, why the veteran or person entitled to preference should not be employed by the ~~appointing~~ public hiring authority.

(4) The district court has jurisdiction upon the proper showings to issue its order directing and ordering the ~~appointing~~ public hiring authority to comply with this law in giving the preference provided for.

(5) The Montana Rules of Evidence and Civil Procedure shall be applicable to all court proceedings brought under this section."

NEW SECTION. Section 7. Rulemaking authorized. The department must adopt rules to implement [Title 10, Chapter 2, part 2.]

Section 8. Codification instruction. Section 7 is intended to be codified as an integral part of Title 10, Chapter 2, part 2, and the provisions of Title 10, Chapter 2, part 2, apply to section 7."

-End-

Veteran's and Handicapped Civilian's Preference Bill Drafting Procedure

March, 1982. Following the decision of Crabtree vs. Montana State Library, the Personnel Division, Department of Administration, recognizing the need to clarify the nature and application of the statutory preference law, drafted an issue paper and circulated it to cabinet officers and elected officials of the executive branch. The Division then identified the basic areas that had to be addressed in order to make the statute acceptable to public employers. They include:

- (1) The nature of the preference needed to be clarified as a tie breaker preference between applicants of substantially equal qualifications.
- (2) The procedures for applying the preference needed to be clarified.
- (3) Rule making authority needed to be included to allow effective administration of the Act.
- (4) Terms used in the statute needed to be clearly defined.

In April, 1982, David Hunter, Commissioner of Labor and Industry and Dennis Taylor, Personnel Division Administrator, met with representatives of various veterans organizations to discuss the need for clarifying the existing law. This meeting included Dan Antonietti, Department of Labor, Bob Durkee, VFW and Tony Cumming, American Legion. These veteran organizations requested that draft resolutions be prepared for submittal to their annual conventions calling for the clarification of the preference and the procedures for administering the preference. These resolutions were subsequently passed by the annual conventions of the represented veteran groups during the summer months.

May/June, 1982. A staff report on the veterans and handicapped preference was presented to the Personnel and Labor Relations Study Commission. By unanimous vote, the Study Commission formally adopted the recommendations that:

- (1) the preference be a tie-breaker (Commission Recommendation 24);
- (2) the relationships between the Act and other preferences be clarified (Commission Recommendation 25);
- (3) the veterans preference should not supersede RIF preference; and
- (4) the preference should be limited to initial appointment.

After receiving input from these various sources, the Personnel Division researched the statute and prepared a first draft of legislation

designed to revise the existing statutes. This first draft was widely circulated to interested individuals and organizations for public comment and review. Approximately 150 copies of the draft were circulated. Twenty-five written comments were received from public employers, handicapped groups, women's organizations, and interested individuals.

The majority of the general comments received supported the need to amend the present statute for clarity and administrative purposes. The comments received also supported the administration of preference "over others of substantially equal qualifications." General comments were received both supporting and questioning the fact that the proposed changes give disabled civilians the same preference status as disabled veterans. Several commentators suggested that preference be administered consistent with affirmative action requirements.

July, 1982. The Governor's Committee on Employment of the Handicapped discussed the preference act and agreed to draft a formal legislative proposal to change the law.

September, 1982. After reviewing the written comments and the discussion of the Governor's Committee on Employment of the Handicapped, the Personnel Division prepared a second draft of the legislation. This draft was distributed on September 30 to the same organizations and individuals as the first draft. Two written comments were received.

October, 1982. A working group representing the major groups concerned with the employment preference issue was formed and a meeting was held on October 20, 1982. The working group members were:

- Senator Joe Mazurek - Meeting Facilitator
- John Mahan - representing veterans organizations
- Bob LeMieux - representing the Governor's Committee on Employment of the Handicapped and handicapped advisory organizations
- Alex Hanson - representing local government
- Dennis Taylor - representing state government
- Mark Cress - Chief, Employee Relations Bureau
- Barb Charlton - Handicapped Employment Coordinator
- Pat Schaeffer - Legal Counsel, Department of Administration

The purpose of the meeting was to come to mutual agreement on revisions to the bill for presentation to the 48th Legislature. The working group agreed to all changes except the group could not agree whether the preference should be limited to initial appointment or should also extend to retention and reemployment during reduction in force. The working group asked the Personnel Division to draft alternate language extending preference to retention and rehire during reduction in force for further discussion.

The Personnel Division then prepared a third draft and an alternate third draft. The alternate extended the preference to reductions in force. Copies of these drafts were sent to the Governor's Committee on

Employment of the Handicapped (GCEH), the Intergovernmental Coordinating Committee for Women (ICCW), the Governor's Committee on Women and Employment, and the various veteran's organizations.

The GCEH discussed the revised drafts at their October 26, 1982 meeting. They voted to support both drafts but preferred the third draft alternative by a one vote margin.

November, 1982. The Governor's Committee on Women and Employment and the ICCW reviewed the drafts in early November and submitted comments to the Governor. They supported the third draft but recommended that protections for affected class members be included in initial appointment sections. They also indicated that the third draft alternative would be preferable to the existing statute.

On November 11, 1982, Dennis Taylor met with Jack Mahan representing the veteran's organization. Mr. Mahan indicated that the veteran's groups were reconsidering their position. A second meeting of the working group was scheduled for early December.

December, 1982. The working group met again on December 13, 1982. The veterans representative raised objections to the use of the term "preferred person," the limitation regarding retired military personnel, and the affected class language. Local government representatives raised concerns regarding reemployment rights and asked that language be included to insure that collective bargaining agreements would be considered policies of a jurisdiction. Agreement could not be reached at that meeting. Therefore, another meeting was held between the members of the working group and representatives from various veterans organizations. The meeting participants were:

Dennis Taylor - Personnel Division Administrator
Mark Cress - Employee Relations Bureau Chief
Robert LeMieux - Governor's Committee on Employment of the Handicapped
Senator Joe Mazurek
Bob Durkee - Veterans of Foreign Wars
Fred MacIntosh - DAV
Dan Antonietti - Department of Labor
Tony Cumming - American Legion
David Armstrong - Administrator, Veterans Affairs Division

The meeting participants agreed to the changes reflected in LC240, the "compromise" fourth draft that was prepared for introduction into the 48th Legislature. The DAV stated they could not actively support the bill unless it dealt only with disabled veterans. However, they agreed not to oppose LC240. All other involved groups - handicapped, veteran, local government and state government agreed to the compromise. Senator Joe Mazurek agreed to sponsor the proposed legislation.

January 11, 1983. The Governor's Committee on Employment of the Handicapped met at a regular meeting and unanimously endorsed LC240.

Veteran's and Handicapped Civilian's Preference Act
Comparison of Legislation to Existing Statute

The major objectives of the bill are:

- (1) to clarify the nature of the preference as a tie breaker between applicants who are substantially equally qualified;
- (2) to clarify the procedures for applying the preference;
- (3) to provide for rule making authority; and
- (4) to define terms used in the Act.

Throughout the bill language has been added, deleted or modified to clarify the uncertain meaning of "shall be preferred."

Section 1:

This section clarifies the purpose of the bill by specifically naming the situations in which the preference is to apply. It also eliminates the "upon all the public works language" which technically could force private sector businesses into applying preference in employment when contracting with a public employer. It finally makes clerical changes to the definitions and terminology consistent throughout the bill.

Section 2:

- (1) The affected class definition refers to new sections added in Section 4 of the bill.
- (2) The definition of what dependents are granted preference includes the following changes:
 - (a) The preference currently granted to "spouses of veterans" has been replaced with language which grants preference only to spouses of veterans who died due to service connected reasons or are otherwise unable to personally use the preference because of disability. Other spouses were removed from the definition because of the probable conflict with marital status discrimination law.
- (3) Sections 3 through 9 define terms used in the text of the bill. No major changes are represented. Terms defined include Department, Disabled Person, Initial Appointment to Employment, Reemployment Preference, and Veteran.
- (4) The definition of "war or declared national emergency" has been updated by elimination of the Civil War, Spanish American War, and the Philippine Insurrection.

Section 3:

The application of preference to initial hiring, rehiring and retention in employment has been specifically clarified. Preference would not apply in promotions or other personnel actions.

Sub-section 2 of the current statute would be eliminated by the bill as the point is adequately covered by the Human Rights Act and federal law.

Sub-section 3 of the current statute would also be eliminated although the concept of disabled persons having preference over others is reflected in new language in Section 4.

Section 4:

This section has been rewritten to allow for the application of preference both under scored and unscored procedures.

Sub-section 3 of the current statute would be eliminated with this bill clarifying the concept that the addition of points satisfies the Preference Act.

New sub-sections 4 and 5 have been added to clarify that preference would apply in a reduction in force and subsequent rehires where equal job duties, qualifications, performance records and length of service exist and the breaking of a tie in favor of the preferred person will not create or continue unlawful discrimination.

New sub-section 6 allows the agencies to recall a person with re-employment preference resulting from a reduction in force without violating this statute where there is no veteran or handicapped person with statutory preference and re-employment preference.

Section 5:

Sub-section 2 (one year residency) of the existing statute has been eliminated because of the practical problems associated with verification of residency and the potential conflict with federal law and the U.S. Constitution.

New sub-section 2 puts an affirmative burden on the preferred person to make the preference claim known. This provision is to avoid situations of court action resulting from failure to grant preference where the hiring authority was not aware of the claim to preference.

Section 6:

New sub-sections add an agency level-administrative level review to the enforcement mechanism. New sub-section 3 extends the time limits for the show cause hearing.

New Section 7:

Grants rulemaking authority to the Department of Administration to issue rules to clarify procedure and definitions.

----- BILL NO. -----

INTRODUCED BY -----

AT THE REQUEST OF -----

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE VETERANS AND DISABLED PERSONS PREFERENCE ACT TO CLARIFY THE NATURE OF THE PREFERENCE AND THE PROCEDURES FOR APPLYING IT; AMENDING SECTIONS 10-2-201 THROUGH 10-2-206, MCA."

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

Section 1. Section 10-2-201, MCA, is amended to read:

"10-2-201. Purpose. The purpose of 10-2-201 through 10-2-206 and [section 7] is to provide for preference of veterans, ~~their~~ certain dependents ~~and-unremarried-surviving spouses,~~ of veterans, and certain disabled civilians in initial appointment ~~and~~ to employment in every public department ~~and-upon-all-public-works~~ of the state of Montana and ~~of~~ in any ~~county--and-city~~ local government entity thereof."

Section 2. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201 through 10-2-206 and [section 7], the following definitions apply:

(1) "Affected class" means a class of people who currently suffer employment discrimination or suffer from the continuing effects of past discrimination based on race, sex or physical or mental handicap.

(2) "Certain dependents of a veteran" means:

(a) the spouse of a disabled veteran unable to use his preference as a result of a service-connected disability; or

(b) the unremarried surviving spouse and other dependent of a veteran who died as a result of a service-connected disability or who died while on active duty.

(3) "Department" means the department of administration provided for in Title 2, Chapter 15, part 33.

(4) "Disabled person" means:

(a) a veteran having a service-connected disability determined by the Veterans Administration of the United States; or

(b) a civilian having a disability determined by the department of social and rehabilitation services.

(5) "Disability" means a physical or mental condition which limits a major life activity such as walking, seeing, hearing, or speaking and which limits the person's ability to find and hold employment.

(6) "Initial appointment to employment" is the act of hiring a person not currently employed with that jurisdiction.

(7) "Preferred person" means a:

(a) veteran;

(b) disabled person; or

(c) certain dependents of veterans.

(8) "Public hiring authority" means:

(a) all departments, offices, boards, bureaus, commissions, agencies, or any other instrumentalities of the government of the state of Montana; and

(b) all counties, cities, towns, school districts, and other units of local government and all instrumentalities of local government.

(9) "Reemployment preference" means a preference for employment granted under established policies of a jurisdiction, including a collective bargaining agreement, because a person's previous employment in that jurisdiction was terminated as a result of a reduction in force or reorganization.

(10) ~~††~~ The ~~term~~ "veterans" "Veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon under honorable conditions other-than-dishonorable; or

(b) who after January 31, 1955:

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and

(ii) were honorably discharged.

(11) ~~(2)~~ ~~The term "war~~ "War or declared national emergency" includes:

~~(a)~~ ~~The Civil War;~~

~~(b)~~ ~~The Spanish-American War;~~

~~(c)~~ ~~The Philippine insurrection;~~

~~(d)~~ (a) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

~~(e)~~ (b) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive;

~~(f)~~ (c) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and

~~(g)~~ (d) The Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive.

~~(3)~~ ~~The term "surviving spouse" means an unremarried surviving spouse of a veteran.~~

~~(4)~~ ~~The word "percent" means percent of the total aggregate points of the examination referred to.~~

Section 3. Section 10-2-203, MCA, is amended to read:

"10-2-203. Preference in initial appointment and to employment. ~~In Every public department and upon all public~~

~~works-of-the-state of-Montana-and-of-any-county-or-city thereof,-the-following~~ Every public hiring authority shall be-preferred-for give preference as provided in 10-2-204 in initial appointment and to employment: to veterans,-their spouses-and-surviving-spouses,-and-the-other-dependents-of disabled-veterans,-and-disabled-civilians-recommended-by-the rehabilitative-services-division-of-the-department-of-social and-rehabilitation-services preferred persons.

(2) ~~Age,-loss-of-limb-or-other-physical-impairment which-does-not-in-fact-incapacitate,-does-not-disqualify-any disabled-veterans-or-civilian-provided-he-or-she-possesses the-business-capacity,-competency,-and-education-to discharge-the-duties-of-the-position-involved.~~

(3) ~~Those-of-the-above-described-veterans-who-have disabilities-admitted-by-the-veterans-administration-of-the United-States-to-have-been-incurred-in-service-in-any-of-the wars,-military-expeditions,-or-police-actions,-whenever-such disabilities-do-not-in-fact-incapacitate,-shall-be-given preference-in-employment-over-other-veterans.~~

Section 4. Section 10-2-204, MCA, is amended to read:

"10-2-204. ~~Credit-for-Examination.~~ Administration of preference. (1) ~~When-written-or-oral-examinations-are required-for-employment,-disabled-veterans-and-their spouses,-their-surviving-spouses,-and-other-dependents-shall have-added-to-their-examination-ratings-a-credit-of-10~~

~~points.---All---other---veterans,---their---spouses,---surviving spouses,---and---dependents---shall---have---added---to---their examination-ratings-a-credit-of-5-points.~~ (1) Whenever scored procedures are used to establish an employment list and a preferred person attains a passing score, ten percentage points shall be added to the score of a disabled person and five percentage points shall be added to the score of all other preferred persons. Such percentage points may not be used to appoint a preferred person over a substantially equally qualified non-preferred person who is a member of an affected class, where there is evidence demonstrating past or present underutilization of the affected class by the public hiring authority involved.

(2) The fact that an applicant has claimed a veterans' credit preference may not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's-credit preference.

~~(3) The-benefits-of-this-section-are-in-addition-to and-not-in-derogation-of-the-preference-in-appointment-and employment--or--both--given--by--10-2-203.~~ Whenever scored procedures are not used, a preferred person shall be appointed to the position over non-preferred persons of substantially equal qualifications except where the non-preferred person is a member of an affected class and

there is evidence demonstrating past or present under-utilization of the affected class by the public hiring authority involved. Disabled persons shall be appointed to the position over other preferred persons of substantially equal qualifications.

(4) A preferred person need not be appointed to the position over a non-preferred person who is entitled to claim reemployment preference, except where the preferred person is also entitled to claim reemployment preference."

Section 5. Section 10-2-205, MCA, is amended to read:

"10-2-205. Eligibility -- duty of preferred person.

(1) None of the benefits of 10-2-201 through 10-2-206 and [section 7] accrue to any person who refused to serve on active duty in the military service ~~to which attached or to take-up arms~~ in the defense of the United States.

(2) ~~No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment is entitled to such preference.~~ It is the preferred person's duty to establish his eligibility for preference and to make his preference known to the public hiring authority.

(3) ~~For city and county employment, no preference will be granted unless an applicant under 10-2-201 through 10-2-206 is also a resident of the city or town or county in which employment is sought.~~ Retired members of the armed forces are not eligible for preference, unless they are a disabled person."

Section 6. Section 10-2-206, MCA, is amended to read:

"10-2-206. Enforcement of preference. (1) Any ~~preferred person entitled to preference in--10-2-201 through~~ 10-2-206 who has ~~applied for any appointment or employment upon public works of the state of Montana or any county and city thereof or in any public department of the state and who has been denied employment or appointment and feels that the spirit of 10-2-201 through 10-2-206 has been violated and that such person is in fact qualified physically and mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for may petition by~~ has not been accorded his rights under 10-2-201 through 10-2-206 [section 7] may within 15 days of receipt of notice of the appointment decision make a written request for appeal to the public hiring authority to which employment application was made. The public hiring authority shall provide written explanation and shall deliver this explanation to the preferred person within 30 days of the date of his request for appeal.

(2) Within 30 days after the delivery date of the written explanation, the preferred person may file a verified petition with the district court of the state of Montana in the county in which the work is to be performed application is filed. The petition shall set forth the ~~facts of the application, qualifications, competency, and such person's honorable discharge of other qualifications~~

warranting the applicant to preference under 10-2-201 through 10-2-206 and [section 7].

(3) Upon filing of such petition, any judge in the county shall issue an order ~~to-show-cause~~ to the ~~appointing~~ public hiring authority directing the ~~appointing~~ public hiring authority to appear in the court at a specified time and place, not less than 5 10 or more than ~~10~~ 20 days after the filing of the verified petition, to show cause, if any exists, why the veteran or person entitled to preference should not be employed by the ~~appointing~~ public hiring authority.

(4) The district court has jurisdiction upon the proper showings to issue its order directing and ordering the ~~appointing~~ public hiring authority to comply with this law in giving the preference provided for.

(5) The Montana Rules of Evidence and Civil Procedure shall be applicable to all court proceedings brought under this section."

NEW SECTION. Section 7. Rulemaking authority. The department must adopt rules to implement this part.

NEW SECTION. Section 8. Codification instruction. Section 7 is intended to be codified as an integral part of Title 10, Chapter 2, part 2, and the provisions of Title 10, Chapter 2, part 2, apply to section 7.

-End-



Ex. 4

Laborers' International Union of North America, AFL-CIO

Local No. 254

P. O. BOX 702
110 N. WARREN
HELENA, MT 59624
(406) 442-1441

Testimony of Eugene Fenderson, before the House Committee on Labor and Employment Relations, on House Bill 378, January 28, 1983

I am Gene Fenderson, business manager of Laborers Local 254, AFL-CIO. I am here to speak against House Bill 378 which would extend the veterans' appointment and preference act to include reappointment and continued employment.

First of all, I would emphasize that I am not speaking against veterans preference itself, but I believe there are some distinctions which must be made when addressing this issue. The concept of veterans preference arose from a praiseworthy effort to compensate in some way the time veterans had lost from the job market because of their service during a war or armed conflict. Giving these veterans preference has helped make up for their loss of employment opportunity while they defended their country.

That concept is recognized in a resolution submitted by the 31st annual convention of the Montana State Building and Construction Trades Council, AFL-CIO, and adopted by the Montana State AFL-CIO convention in 1982. The resolution states:

"... that this organization deplores each and every attempt to degrade, dilute or modify the historical precedent of giving job eligibility preference to those who were taken from their communities to serve their country in time of war [emphasis added] and that the President, the Congress of the United States, the Governor, and the State Legislature of Montana reject any and all proposed legislation that would reduce employment opportunities for veterans in federal and public employment."

There are two points I would like to make regarding that resolution. First of all, this bill expands employment opportunities for veterans, a measure which is not addressed in the resolution. Secondly, the resolution specifically mentions veterans who served their country in "time of war".

Veterans preference is supposed to equalize employment opportunities for veterans, not to give them an added advantage at the expense of other groups, such as women, minorities and the handicapped.

Many veterans who enjoy veterans preference did not serve in time of war. They chose to serve in the armed forces to learn a specific skill or to receive certain veterans benefits, such as the G.I. bill to further their education. Others chose the service as a full-time career. These individuals were not deprived of any opportunity to gain employment. They made the choice of their own free will. Some retired career veterans utilize veterans preference to obtain employment with government agencies, while at the same time they are drawing military retirement and other benefits.

I ask that you vote against House Bill 378 which expands veterans' preference at the expense of other groups which have traditionally been denied equal employment opportunities.

Thank you.

My name is Jan Gilman and I represent the Interdepartmental Coordinating Committee for Women (ICCW) a committee formed by the Governor to identify policies and procedures in state government which directly or indirectly result in discrimination against women. The ICCW has been closely following the issue of employment preference for veterans and handicapped individuals. We feel it is imperative to support a more equitable approach to employment preference than that which resulted from the decision in the case of Crabtree vs. The State of Montana. This decision requires the State of Montana to hire a preferred person as long as that person is minimally qualified for the position.

The ICCW strongly opposes HB 378. This bill would provide preference in securing and retaining employment for veterans at the expense of those who have already been hindered in finding employment. Department of Labor and Industry statistics show that even when veterans are at a disadvantage in finding employment, it is women who are at an even greater disadvantage than any other group of applicants. (Source: Montana Annual Planning Information 1983.)

Figures for FY 1980 show that among applicants using the state's Job Service offices, the proportion of persons placed in non-agricultural jobs relative to the number of referrals is 72.9% statewide. Handicapped persons, veterans, and Vietnam-era veterans all have placement-to-referral rates which are comparable to the statewide rate. Women, on the other hand, have a placement-to-referral rate of

69.7%, which is significantly lower than the statewide rate. (p-value much less than 0.025)

Figures for FY 1981 show that Vietnam-era veterans have a placement-to-referral rate comparable to the statewide figure of 69.7%. Veterans, handicapped persons, and women, with rates of 68.0%, 67.4%, and 65.1% respectively, are placed at rates significantly lower than the statewide average, with women being placed at a rate which is substantially less than any other group. (p-value much less than 0.025)

Thus we see that among the groups of Job Service applicants, it is the women who are at a disadvantage in finding employment and not veterans or other preferred persons.

In addition, statewide figures showing the starting hourly wages of persons placed by Montana's Job Service offices dramatically illustrate the fact that women continue to fill the lower paying jobs in Montana. In FY 1980, 97.6% of all women placed by the Job Service were hired at rates of less than \$6.00 per hour, whereas only 88.9% of the men were hired at this salary level. On a percentage basis, 4.6 times as many men as women were hired at \$6.00 or more an hour. Figures for FY 1981 show no particular improvement.

Because it applies largely to men, veterans' preference, particularly when administered using the "minimum qualification" criterion, will serve to accentuate this disparity.

State government should not be required to hire and retain minimally qualified individuals. The ICCW has gone on record supporting preference in initial hire for veterans and handicapped individuals as long as substantially equally qualified members of affected classes shown to be underutilized by the public hiring authority are given equal preference. Preference claims should be used as tie-breakers in situations where there are a number of substantially equally qualified applicants for a position.

We do not believe that veterans preference should be a factor in reduction in force, promotion, recall, reorganization or retention decisions.

The state's EEO/Affirmative Action report states (pg. 7) that "because of the operation of seniority-based layoffs, minorities, women and handicapped persons recently hired will likely suffer disproportionately from the federally inspired (reduction in force) actions." Veterans' preference, since it applies mostly to men, will continue the erosion of affirmative action gains made in the past few years. If such preference were to be administered on a "minimally qualified" basis, EEO and Affirmative Action programs in Montana could be set back many years.

HB 378 would impede the efforts of the State of Montana to provide equal employment opportunities for all applicants. For these reasons, the ICCW opposes this bill.

TABLE 33

SELECTED EMPLOYMENT SERVICE STATISTICS

MONTANA: FISCAL YEAR 1980

	Total	Female	Economically Disadvantaged	Minority	Handicapped	Veteran	Vietnam Era Veteran	Under Age 22	Over Age 45
Applicant Active Anytime in Fiscal Year 1980	113,120	51,414	22,040	10,000	7,312	18,576	6,355	35,680	12,107
Counseling	11,124	4,921	5,390	1,399	1,709	2,703	955	3,749	1,053
Testing	6,698	4,766	1,573	557	504	627	224	2,100	446
Referral to Job Non-Agricultural	46,222 44,166	21,399 20,982	8,434 8,083	3,660 3,366	2,804 2,664	7,586 7,071	2,702 2,576	17,251 16,559	4,066 3,702
Placements Non-Agricultural Over 150 Days	34,224 32,195 20,842	15,042 14,633 10,970	6,874 6,508 4,343	2,856 2,563 1,516	2,064 1,926 1,302	5,615 5,102 3,239	2,032 1,905 1,231	13,540 12,868 7,559	2,910 2,540 1,569

Highest School Grade Completed

Total

0-7
8-11
12
Over 12

1,825
28,710
49,046
33,539

Residence

Urban
Rural

66,982
46,138

SOURCE: Employment Service Automated Reporting System (ESARS) Tables 8 and 91.

TABLE 34
SELECTED EMPLOYMENT SERVICE STATISTICS
MONTANA: FISCAL YEAR 1981

	Total	Female	Economically Disadvantaged	Minority	Handicapped	Veteran	Vietnam Era Veteran	Under Age 22	Over Age 45
Applicant Active Anytime in Fiscal Year 1981	113,257	51,036	19,501	9,515	6,581	17,681	5,869	33,330	12,441
Counseling	10,831	4,581	5,004	1,296	1,614	2,674	875	2,991	1,087
Testing	8,733	6,431	1,690	730	571	854	330	2,422	647
Referral to Job	46,431	21,872	6,864	3,165	2,371	7,180	2,537	16,480	4,039
Non-Agricultural	44,241	21,277	6,577	2,855	2,270	6,742	2,417	15,652	3,695
Placements	33,084	14,452	5,301	2,393	1,646	5,077	1,797	12,923	2,673
Non-Agricultural	30,831	13,848	4,983	2,066	1,529	4,586	1,658	12,102	2,317
Over 150 Days	20,036	10,700	3,204	1,222	1,015	2,810	1,035	7,163	1,480

Highest School Grade Completed

Total	1,774
0-7	26,654
8-11	50,471
12	34,358
Over 12	

Residence

Urban	67,653
Rural	45,604

Source: Employment Service Automated Reporting System (ESARS)

TABLE 37
INDIVIDUALS PLACED IN JOBS BY SEX AND WAGE
MONTANA: FISCAL YEAR 1980

	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>% Female</u>
Under \$2.90	1,190	1,452	2,642	55.0
\$2.90 - \$3.10	6,457	5,860	12,323	47.6
\$3.11 - \$3.49	2,916	3,529	6,445	54.7
\$3.50 - \$3.99	3,550	2,514	6,064	41.5
\$4.00 - \$4.49	3,988	1,792	5,780	31.0
\$4.50 - \$4.99	1,246	492	1,738	28.3
\$5.00 - \$5.49	2,353	407	2,760	14.7
\$5.50 - \$5.99	519	152	671	22.6
\$6.00 Plus	2,772	405	3,177	12.7

SOURCE: ESARS Table 15.

TABLE 38
INDIVIDUALS PLACED IN JOBS BY SEX AND WAGE
MONTANA: FISCAL YEAR 1981

	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>% Female</u>
Under \$3.10	1,544	1,661	3,205	51.8
\$3.10 - \$3.34	2,128	2,327	4,455	52.2
\$3.35 - \$3.49	4,403	4,825	9,228	52.3
\$3.50 - \$3.99	4,100	3,274	7,374	44.4
\$4.00 - \$4.49	3,760	1,973	5,733	34.4
\$4.50 - \$4.99	1,480	672	2,152	31.2
\$5.00 - \$5.49	2,803	601	3,404	17.7
\$5.50 - \$5.99	632	183	815	22.5
\$6.00 Plus	3,567	603	4,170	14.5

SOURCE: ESARS Table 15.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



TESTIMONY OF CELINDA C. LAKE, WOMEN'S LOBBYIST FUND, ON HB 378 BEFORE HOUSE LABOR AND EMPLOYMENT COMMITTEE

The Women's Lobbyist fund does not oppose veterans' preference. We recognize that veterans like other discriminated groups deserve recognition of the disadvantages they face in hiring. As members of another discriminated class in this society, women fully recognize the discrimination that veterans may face in coming back to civilian life, particularly after something like the Vietnam conflict. Furthermore we as a society have a commitment to veterans who have served us all in good faith and we need to live by that commitment.

We do, however, believe that HB 378 is in its current form unworkable and goes beyond the commitments that have been made, the very real rewards which are deserved, and what would be fair to all disadvantaged groups. In its current form this bill would extend veterans' preference in transfer, promotion, and hiring to all who are only minimally qualified. The courts have been very lenient in their interpretations of what constitutes minimal qualifications. Particularly, in these economic times of high unemployment and layoffs in government, HB 378 in its current form would make it impossible to retain women or minorities in government. Departments would be forced to make lists of veterans and lists of nonveterans and lay off every nonveteran before a single veteran at any level were laid off. We do not believe that veterans, who as a group can first hand relate to the discrimination women have suffered, could possibly intend for preference to be implemented in this form. Thus we believe that HB 378 should be amended to award preference only among substantially equally qualified applicants.

Obviously, HB 378 in its current form would make any type of affirmative action in hiring and promotion impossible. We should not in this state remedy one form of discrimination by de facto invoking another. Veterans' preference would extend to both male and female veterans. But what that ignores is that women have been systematically excluded from military and combat service. We have always been held to a fixed percentage participation in the armed services. Recently, only 10% of the armed forces could be women. In 1971 only 1.5% of the armed forces were female. Furthermore the Reagan administration has moved back from an initiative to involve more women in the armed forces -- limiting women's participation to fewer branches of the service and freezing recruitment to levels below the past administration's level.

What we do about Veterans' preference is particularly important in this state because of the high proportion of Montana men and (when possible) women who have served this country. According to the Veterans' Office we have the third highest per capita rate of veteran status in the nation in Montana. How we formulate veterans' preference will have enormous implications for the employment of other groups.

Also, veterans' preference extends to state government, local government, universities, and schools. These arenas have traditionally been some of the fastest growing, most important sectors -- providing equitable opportunities for women. If we inadvertently operationalize veterans' preference in such a way that it de facto eliminates the possibility of hiring, keeping, and promoting women -- we will

irretrievably set back economic justice in this state. In addition we will tremendously impact our children's well-being and our families' well-being, since 16% of American families are headed by women and 66% of women work for the basic economic necessities of their families.

In Montana's Constitution we can be proud that we have strong language guaranteeing equality between the sexes in employment and other arenas. Because women have been and are systematically excluded from participation in the armed forces and thus from obtaining veterans' preference, veterans' preference in some forms would be illegal given our constitutional commitment to economic equality.

For this reason we further recommend that HB 378 be amended to include affected class language for initial hire, hiring, promotion, and transfer. That is that veterans' preference would only be granted among substantially equal applicants when the competition were not against a member of "an affected class" -- in which event neither applicant would receive preference. We would define affected class as a group which is underutilized in the existing job, compared to their availability in the labor pool.

HB 378 also deals with preference for disabled and handicapped persons -- to whom we have not yet referred. There is no other group in our society which is currently discriminated against as much as handicapped persons. With our amendments handicapped persons would be given preference among substantially equally qualified applicants both because of their specific reference in the bill and because of their being members of an affected class.

In this society veterans, women, and handicapped persons have all suffered discrimination in employment. We believe that we need to recognize each others' mutual disadvantage. For these reasons we support amending HB 378 to include provisions that preference should be granted in initial hire, hiring, transfer, or promotion only among substantially equally qualified applicants and only if the applicants are not competing against members of another disadvantaged group - i.e. an affected class. If these amendments to the current bill do not seem possible, we would urge the committee to pass a bill which did include these provisions. We believe these provisions are fair to all groups, recognize our mutual oppression, are workable, and still reward veterans for the very real contribution that they have made to our way of life.

OPPOSITION - Department of Revenue

HB 378 - AMENDING VETERANS AND DISABLED CIVILIANS PREFERENCE LAW

The Department of Revenue is vitally concerned with maintaining fair hiring practices. Because of this, the current veterans and disabled civilians employment preference law has been a stumbling block for hiring officials. HB 378 does not offer substantial clarification on the preference issue.

We are faced with the ambiguous language of the current preference; and on the other hand, we have the Montana Human Rights Act which prohibits discrimination of protected classes. We are at odds there on the application of preference. Even if the Crabtree vs. Montana State Library decision is upheld in the Montana Supreme Court, we will not have gained further understanding on application of preference in light of the Human Rights Act.

In order to continue affording equal opportunity to all job applicants, clarification on the intent and administration of the current law is desperately needed. HB 378 does not eliminate the problems faced by hiring officials. Expensive litigation is a potential result of any hiring accomplished without sharply defined preference guidelines.

SB 197, which addresses the same issue, offers new substance and clarification to the problems that now exist. SB 197 reflects compromise legislation reached by veteran groups, handicapped groups and representatives of state and local government.

We would like to see legislation that would correct confusion in interpretation of the current law. HB 378 does not assist us in achieving fair hiring practices, therefore we do not support HB 378. However, we would urge your consideration of the provisions of SB 197.

The Chair, members of the committee. My name is Richard Cronen, I am a Vietnam era veteran. I respectfully request you to accept the following testimony and that you vote do not pass on HB378.

I believe that such extensive preferential treatment, as has been proposed here, may have constitutional deficiencies; and, at a time of extraordinarily high unemployment and economic instability, it will certainly face many challenges in our courts. In any event, I believe all segments of the public should have an equal opportunity to compete for publicly funded jobs. In addition, preference is of questionable value to the veteran who lacks the skills and training necessary to compete for the jobs.

If this legislature wishes to recognize the service of the state's veterans, I submit that there is more value, to the veteran as well as the employer, in extending job training and re-training benefits, waiving tuition at the state's Universities and Vo-Tech centers, or building upon the skills acquired in the service. The Federal Government has fallen short in providing recognition and needed services to the country's veterans.

Based on recent activity at Fort Harrison, here in Helena, the Federal Government is still reluctant to meet the needs of the veteran. The state can and should take the lead in assessing and meeting the needs of the veteran, including non-job related support and services. Vote yes for veterans and no for HB 378.

Thank you.

Richard W Cronen

1/28/83

January 28, 1983

My name is Mary Lisa Pryne. I am a native of Montana, and a veteran of the United States Navy. I served on active duty for over two years, and on Reserve status for an additional four years. I would like to address the issue of veteran's preference for employment, as defined by Section 10-2-203, MCA.

The traditional intent of statutes granting employment preference to veterans has been twofold: to provide an orderly transition from military to civilian life, and to thank the veteran for time spent in service to his/her country. I believe that these goals have been accomplished quite adequately under existing state and federal laws. Veterans are afforded the opportunity to return to college or vocational-technical school with financial assistance (as much as \$12,000 for a single person), given low-interest home loans, guaranteed re-employment at their former job with no loss of seniority, granted extra points on Civil Service and state qualifying examinations, and given hiring preference over non-veterans.

HB 378 proposes to extend a veteran's preference beyond the scope of initial hiring. This proposed bill would have the effect of perpetuating discrimination on other minority groups. Women, who are excluded by federal law from full participation in the Armed Forces, are also excluded in part from the benefits of veteran's preference. Ethnic and racial minorities have never been afforded full employment opportunities, and their prospects would be further diminished by HB 378. Older workers, often with many years of service to an employer, would be laid off or terminated in preference to a veteran.

I have experienced job discrimination first hand, not because I'm a veteran, but because I'm a woman. HB 378 would ensure that that discrimination continues. I urge you to adopt an adverse committee

House Bill 384

Restaurant, Bar and Tavern Bill Amendments

The amendements to the original printed bill are found on page 4, section 4.

On line 7, the word "may" is changed to "will". Line 7 would then read "commissioner will waive the provisions of 39-3-640 for any".

On lines 17 and 18 delete "commissioner deems it necessary for the protection of the state of Montana or the employees of a".

On line 19 after the word "tavern" insert "defaults on the payment of wages, payroll taxes, or workers' compensation premiums."

Line 17 through the end of section four would then read "the person operating a restaurant, bar or tavern defaults on the payment of wages, withholding taxes or workers' compensation premiums".

TESTIMONY OF: SEYMOUR J. FLANAGAN ON HOUSE BILL 384 BEFORE THE HOUSE
LABOR & EMPLOYMENT RELATIONS .
JANUARY 29, 1983

I am Seymour J. Flanagan, International Organizer for the Hotel Employees and Restaurant Employees International Union AFL CIO .
I am here to testify in support of House Bill 384, a bill which amends the current restaurant, bar and tavern wage protective act.

The current law requires that anyone not owning the building in which he operates a bar, restaurant or tavern must post a bond with the Commissioner of Labor and Industry equal to at least double the amount of the amount of the projected semi-monthly payroll. This law was enacted to provide wage protection to employees who work in these businesses. The failure rate in the Bar and Restaurant business is high, and employees sometimes find themselves without the wages which they have earned when the business goes broke. Our Union has always been in strong support of the wage protection act.

The problem we had with the act was that we felt it needed better enforcement. I would like to take this opportunity to commend the Commissioner of Labor and his staff for their successful efforts in improving enforcement. In January of 1981, only 132 businesses had posted the required bond. Right now, almost 400 businesses have posted the bond. That is a significant improvement.

The new bill amends that law so that anyone operating a bar, restaurant or tavern, must post the bond, but the Commissioner may waive the bond requirement after three years, just so long as the employer is in compliance with other provisions of the Fair Labor Standards Act. This amendment makes good sense to us. The three year period is a pretty good indication of whether or not the business is going to succeed, and whether or not the employer is making every effort to comply with the Fair Labor Standards Act. The Wage Protection Act was never intended to punish fair employers who were successful in their businesses. It was intended to protect the wages of some of the lowest paid employees in the state. This amendment puts all employers on an equal footing to post the bond, but also allows the waiver after three years for fair and successful employers.

This amendment was supported in a convention resolution by the State Convention of the Montana State Council of Hotel Employees and Restaurant Employees AFL CIO and subsequently by the Montana State AFL CIO Convention. It protects employees and it is fair to employers.

In closing, I urge your support for House Bill 384, to ensure wage Protection to employees who work in one of the lowest paid industries in the nation.

Thank you.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARYZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE --
ON HOUSE BILL 384 -- JANUARY 28, 1983

Mr. Chairman, members of the committee; my name is Don Judge and I'm here today representing the Montana State AFL-CIO. The Montana State AFL-CIO supports House Bill 384, which revises the Restaurant, Bar and Tavern Wage Protection Act to allow the Commissioner of Labor and Industry to waive the bonding requirement for these businesses after the first three years of operation. The bill also provides that the business must be in compliance with other provisions of the Fair Labor Standards Act, in order to qualify for the waiver.

Policies and positions of the Montana State AFL-CIO are set by elected delegates of the Montana State AFL-CIO Annual Conventions, by democratic process. In 1982, a resolution supporting this amendment to the Wage Protection Act was submitted by the State Convention of the Montana State Council of Hotel Employees and Restaurant Employees, AFL-CIO and the convention voted concurrence.

The resolution points out that there have been considerable enforcement problems with the amended Restaurant, Bar and Tavern Wage Protection Act. We believe this bill will make the act more enforceable and will provide an incentive to employers to comply with all provisions of the Fair Labor Standards Act in order to qualify for the bond waiver. The Act will still protect hotel and restaurant employees who work in low paying jobs, in an industry which experiences a high rate of business failures.

We would not support any measure which would weaken this essential wage protection, but since most failures occur in the first three years of business, and the bonding requirement for that period is now extended to all bar and restaurant employers, this is a reasonable revision of the act.

We ask you support of House Bill 384.

Thank you.

WITNESS STATEMENT

Name Robert F. Butterbusch Committee On Labor
Address 215 Wash St, Helena MS Date _____
Representing Self Support ☒
Bill No. HB 378 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Only a logical conclusion that Veterans Preference be continued for qualified veterans from being through retention.*

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Claudia Kuro ^{House} Committee On ^{LABOR &} EMPLOYMENT
Address 819 GILBERT Date 1/28/83
Representing HUSBAND Support _____
Bill No. ^{HB} 378 Oppose X
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- 1.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME Delia Hester BILL No. 378
ADDRESS Delens DATE 1-28-85
WHOM DO YOU REPRESENT Dept. of Revenue
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

See attached sheet.

WITNESS STATEMENT

NAME Mary Lisa Payne BILL No. HB 378
ADDRESS 23 S. Rodney, Helena DATE 1-28-83
WHOM DO YOU REPRESENT Self
SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

written testimony submitted

WITNESS STATEMENT

NAME DAN ANTONIETTI BILL No. H.B. 378
ADDRESS 5 WOOD COURT DATE 1-28-83
WHOM DO YOU REPRESENT U.S. Department of Labor - VES
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Appearing at request of Chief Sponsor
of the Bill and in my position of a
Federal Employee.

WITNESS STATEMENT

NAME Jan Gilman BILL No. HB 378

ADDRESS 36 S. Davis Helena DATE 1-28-82

WHOM DO YOU REPRESENT Interdepartmental Coordinating Committee for Women

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

Name Nadrian Jensen Committee On Labor
Address Helena, MT Date 1-28-83
Representing AFSCME, AFL-CIO Support X
Bill No. HB 378 Oppose _____
Amend ~~X~~

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Testimony submitted to committee*

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name WES. KRAWCZYK
Address Helena
Representing A.C.L.U. of Mont
Bill No. _____

Committee On Home Labor
Date _____
Support _____
Oppose X HB 378
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WE OPPOSE HB 378. THIS BILL CREATES A SPECIAL CLASS OF VETERANS WHO ARE BASICALLY / + mostly white males
2. Thank you Mr. Chairman — members of the Committee
3. _____
4. _____

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME FRED EASY BILL No. HB 378
ADDRESS PO BOX 34 DATE Jan 28
WHOM DO YOU REPRESENT Self
SUPPORT ~~XX~~ OPPOSE AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

amend add the following

(4) Preference in appointments to
be made through establishment of a
uniform point scale. All veterans
to be awarded 10 points and
veterans in receipt of a disability
determination or purple heart to
be awarded an addition 10 points.

VISITOR'S REGISTER

HOUSE Labor Employment Relations COMMITTEEBILL HB 378DATE 1/28SPONSOR Brown

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
<i>Myrnescott</i>	<i>Clancy</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>Cornie Flaherty Erickson</i>	<i>Helena</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>John Harper</i>	<i>Helena</i>	<i>Self</i>		<input checked="" type="checkbox"/>
KYLE B. OLSON	GT. FALLS	CITY OF GT. FALLS		<input checked="" type="checkbox"/>
<i>John Clark</i>	<i>Clancy</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>Kathy Apple</i>	<i>Helena</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>Don Phillips</i>	<i>Helena</i>	<i>Self</i>	<input checked="" type="checkbox"/>	
<i>MRS. KRAWCZYK</i>	<i>Helena</i>	<i>A.C.L.U. of Mont</i>		<input checked="" type="checkbox"/>
<i>Chene McKeith</i>	<i>Bozeman</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>Carol Annich</i>	<i>Billings</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>Eugene Timmer</i>	<i>Helena</i>	<i>Laborers 2254</i>		<input checked="" type="checkbox"/>
<i>Frank Bottel</i>	<i>Helena</i>	<i>Self</i>	<input checked="" type="checkbox"/>	
<i>Caro Herber</i>	<i>Helena</i>	<i>ICCW</i>		<input checked="" type="checkbox"/>
<i>Gundy Anders</i>	<i>Helena</i>	<i>ICCW</i>		<input checked="" type="checkbox"/>
<i>Janine Taylor</i>	<i>Helena</i>	<i>Personnel Div/DJFA</i>		<input checked="" type="checkbox"/>
<i>Laurie Lamson</i>	<i>Helena</i>	<i>ICCW</i>		<input checked="" type="checkbox"/>

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 378

DATE 1/28

SPONSOR BRAND

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
San Gilman	Helena	ICCW		X
Lynnda Steele	Helena	self		X
Barbara Chaston	Helena	self		X
Bob Durkee	Helena	VFW	X	
Van Antonieth	Helena	USDL-VES	X	
Debi Hentley	Helena	Dept. of Revenue		X
Mary Ann Barrett	"	ICCW		X
Mike Hines	Helena	SELF	X	
Cynthia Lake	Helena	Women's Lobbyist Fund		
Carol Schuler	"	ICCW		X
Almy Cunningham	Helena	Commerce Dept.	X	
Harvey Cunningham	Helena		X	
FRED EASY	Helena	SELF	X	
Mary Lisa Payne	Helena	Self		✓
A. Nathan Jensen	Helena	AFSCME	X	
Claudia Rinn	Helena	Self		X
Steve Heberty	Helena	Women's Lobbyist Fund		
Jim Mep	Helena	Self		X
Robert Miller	East Helena	Self	X	
Hal BURT	Helena	Self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Kathy A. van Hook Committee On HB 384
Address 517 Waukegan Date 1/28/83
Representing Women's Lobbyist Fund Support ✓
Bill No. HB 384 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The Women's Lobbyist Fund Supports HB 384 because it is a bill that protects restaurant employees, the majority of whom are women.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 384

DATE 1/28

SPONSOR HAMMOND

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 390

DATE 1/28

SPONSOR ADDY

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Luis Loftstrom	701 No. DAVIS ^{city}	Pers. & Labor Rel. Co.	X	
Marie Cronin	Helena	ICCW		X
Jean Lusk	Helena	ICCW		X
Eileen Roberts	Helena	M.H.A.	X	
Walter Hunt	GT Fork	101-11		
Carol Serber	415 N Benton Helena	ICCW		X
Pat Harper	301 S. Gates, Helena	Serf		X
Lynne Scott	BST 147			
CHAD SMITH	HELENA	MWA	X	
Rose Skoog	Helena	mt Health Care Assoc	X	
Cathy Olson	Helena	mt. Nurses Assoc	X	
Donna Small	Billings	mt Nurses Assoc	X	
Sharon Riege	Dr. Falls	mt Nurses Assoc		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

January 31, 19 83

MR. **SPEAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **384**

First reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT TO REQUIRE THE BONDING OF ALL RESTAURANTS, BARS, AND TAVERNS; ALLOWING THE COMMISSIONER OF LABOR AND INDUSTRY TO WAIVE THE BONDING REQUIREMENT; PROVIDING A GRANDFATHER CLAUSE; AMENDING SECTIONS 39-3-602 THROUGH 39-3-605, 39-3-607, AND 39-3-608, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **384**
be amended as follows:

1. Page 4, line 7.

Strike: "may"

Insert: "shall"

2. Page 4, lines 17 and 18.

Strike: "commissioner deems it necessary for the protection of the state of Montana or the employees of a"

3. Page 4, line 19.

Following: "tavern"

Insert: "defaults on the payment of wages, payroll taxes, or workers' compensation premiums"

AND AS AMENDED
DO PASS

XXXXXX
DO PASS

NEL WILLIAMS

Chairman.

STANDING COMMITTEE REPORT

January 28, 19 83

SPEAKER:

MR.

LABOR AND EMPLOYMENT RELATIONS

We, your committee on

having had under consideration HOUSE 399 Bill No.

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE UNFAIR LABOR PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS; AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109, MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND 39-32-111, MCA."

Respectfully report as follows: That HOUSE 390 Bill No.

DO PASS

STATE PUB. CO.
Helena, Mont.

..... MEL WILLIAMS

Chairman.

COMMITTEE SECRETARY