

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES
April 12, 1983

The House Labor and Employment Relations Committee convened at 1 p.m., April 12, 1983, in Room 224K of the State Capitol, with Vice-Chairman Dozier presiding and all members present except Reps. Ellerd, Seifert and Thoft, who were absent. Vice-Chairman Dozier opened the meeting to a hearing on HJR 41.

HOUSE JOINT RESOLUTION 41

REPRESENTATIVE J. MELVIN WILLIAMS, District 70, chief sponsor, said this is an important piece of legislation. He said there is considerable disagreement about many of the different issues we face when talking about veterans' preference. Rep. Williams read the issues to be addressed in the study from the bill. A copy of further comments by Rep. Williams is Exhibit 1 of the minutes.

MORRIS BRUSETT, Department of Administration, said he was the member of a broad based committee appointed by the Governor to encourage employment of the handicapped. He said the committee had met today and had voted to support this resolution because they believe that issue needs to be clarified and settled before we can move ahead. He said they asked him to appear before the committee and go on record as supporting this bill.

ROBERT LeMieax, Great Falls, Governor's Committee on Employment for the Handicapped, talked with his hands while an interpreter interpreted what he was saying. He supported the bill.

BOB DURKEE, Veterans of Foreign Wars, said they support the resolution. He said at a previous meeting they had committed themselves to supporting a study and they feel it is important. He said he would like to remind the committee that the federal preference act which was passed in 1944 and challenged by various groups was upheld by the United States Supreme Court. He said the Montana act is a moderate veterans preference in comparison to some of the other states. He said they were looking forward to working with the interim committee assigned to do this study.

TONY CUMMING, American Legion, said they support the resolution. He said to his knowledge there has never been a study on this, and so it is about time especially this year with so much controversy over the other three bills.

JAMES SHANNON, DAV, said they were in support of the resolution. He said there are many issues to be resolved and so fully support the study.

DAN ANTONIETTI, USDL-VES, said there are many issues to be answered. He said the federal preference is more stringent than the Montana law. He felt it was important that this issue be addressed and said he was looking forward to working with the committee.

CELINDA LAKE, Women's Lobbyist Fund, spoke in support. She said the bill does a good job of identifying the problems. She felt a study is the appropriate way to approach the problem.

DENNIS TAYLOR, State Personnel Division, Department of Administration, spoke in support. He said the public employers and local government encourage the study of this problem.

JOYCE BROWN, Personnel and Labor Relations Commission, said she had some background information that she would leave for the record and which would be useful to this study. She said this includes what is done in other states. This is Exhibit 2 of the minutes.

There were no opponents.

REPRESENTATIVE WILLIAMS closed. He said this area needs careful research - information needs to be gathered so we can become well informed. Then a report would be made to the 49th Legislature on the facts of the situation and hopefully some suggested legislation that everyone can agree on. Rep. Williams said this is the only way to establish a clear, public policy in this area. He said the problem will need to be resolved in 1985.

Vice-Chairman Dozier closed the hearing on this bill and Chairman Williams took the chair and opened the meeting to an executive session on this bill.

EXECUTIVE SESSION

HOUSE JOINT RESOLUTION 41 Rep. Jones moved DO PASS.
Rep. Driscoll questioned on page 4, lines 8 and 9 if government should be included. Chairman Williams said all should be included for input and the intent was not to leave anyone out.

The question was called and the motion carried unanimously with all present (absent were Reps. Ellerd, Seifert and Thoft).

Meeting adjourned at 2 p.m.

Respectfully submitted,


J. MELVIN WILLIAMS, CHAIRMAN

Emelia A. Satre, Sec.

VISITOR'S REGISTER

HOUSE LABOR AND EMPLOYMENT REL. COMMITTEEBILL HJR 41DATE 4/12/83SPONSOR WILLIAMS

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Bats Drucker	VFW	Helena	X	
Pony Cumming	Helena	American Legion	X	
Dan Antonieth	"	USDL - VES	X	
Robert LeMieux	Great Falls			
Robert LeMieux	Great Falls	Gov. Committee ^{on employ.} _{for the day}	X	
Jim Shannon	DAV/Helena	DAV	X	
Dennis M. Taylor	Helena	State Personnel Div/DNA	X	
M. M. Lash	Butte	State Bldg. Tech.	X	
Ed Ross	Butte	transp.	X	
Ed Winkler	"	Myself	X	
Catherine Winters	"	Myself	X	
Wm. Lash	Helena	Personnel Div. Bldg. Tech.	X	
Calvin LaTak	Helena	NLF	X	
Phil Salzwald	Helena	Self	X	

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HB-379
SB-197
SB-377
Exhibit 1

REMARKS ON JOINT RESOLUTION
ON MONTANA'S EMPLOYMENT PREFERENCE LAWS

All of us, at one time or another during the course of this legislative session, have heard discussion of employment preference for veterans. It has been an area of considerable concern for public agencies, for veterans, for disabled people and for women. Three separate bills have been introduced on the topic. Two in the senate and one in the house. The house bill was tabled in a house committee. One senate bill was similarly tabled. The remaining bill, SB 197, has had most of its substantive provisions amended out by the senate and was passed over to us. So far, the Labor and Employee Relations Committee has not addressed the bill.

Basically this means this legislature has failed to address most of the questions raised about employment preference.

The issue of employment preference is complex and controversial because not only does it apply to veterans, and their spouses and dependents, but it also affects disabled civilians and can have a significant effect on the employment of women.

There is currently considerable disagreement among public agencies, veteran's groups, women's groups and labor organizations as to the correct interpretation of the current preference law. Much of this disagreement stems from a district court case in the 1st Judicial District in Helena last spring. Judge Gordon Bennett interpreted the law in a way considerably different from the way the law has been applied in recent years.

It is difficult to determine what the intent of the legislature was in 1921 when this law was first passed. The language in the law is very vague and gives us little guidance. More importantly, however, is what the legislatures intent would be when dealing with a modern hiring environment. In past sessions, this body has made some significant policy decisions which have effected how public agencies hire people. We have passed laws promoting hiring based on merit and prohibiting discrimination based on race or sex. —

Insert Comments (C) + etc

Note

This combination of a 1921 law and 1980 hiring policies has created a confusing situation for public agencies. Add to this the recent court case that has interpreted the law differently then its been applied for years and you have a significant problem area. A problem this legislature must address.

This session, however, we have been unable to effectively address employment preference. Unable to, primarily because we lack information and understanding about the impact of this legislation on public agencies, veterans, disabled people and women. We don't know the kinds of hiring problems various changes to the law could cause. We don't know the legal implication of conflicts with our human rights laws.

I believe we must deal with this preference issue more completely in 1985. To do so we need carefully researched information and alternatives. This resolution provides for an interim committee to study the veterans preference law and report to the 49th legislature. This is the only way this legislature can do an effective job of establishing a clear public policy in this area in 1985.

WITNESS STATEMENT

Name James Brown Committee On Labor
 Address Wichita Building Date 4-12-83
 Representing Personnel at Labor Rel. Study Comm. Support X
 Bill No. HJR 41 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The Personnel at Labor Relations Study Commission
studied this question, and has materials available
See attached!
2. Personnel at Labor Relations Study Commission
Staff Report No. 16
Procedure Procedures at Issue
- 3.
- 4.

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

PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

STAFF REPORT NO. 16

PREFERENCE PROCEDURES AND ISSUES

Objective: As a supplement to Staff Report No. 15 (Selection and Recruitment), to provide the Personnel and Labor Relations Study Commission with information on current preference administration practices and make recommendations on how preferences should be applied.

Prepared by:

Jim Nys
Acting EEO Coordinator
State Personnel Division

May 24, 1982

I. PREFERENCE PROCEDURES AND ISSUES

As a result of a recent district court opinion, there has been considerable attention focused on the establishment of justified minimum qualifications for a job and the procedure to be followed in according the various and often seemingly conflicting employment preferences created by law, public policy and administrative rule.

Currently there are several groups of persons who have been given employment preference through statutory or administrative action. They are as follows:

1. Disabled veterans, veterans, spouses of veterans, dependants of disabled or deceased veterans and handicapped civilians recommended by the Department of Social and Rehabilitation Services are to be preferred in appointment or employment in all public sector jobs in the state by virtue of 10-2-201 et seq MCA.

According to the opinion and order of Judge Gordon Bennett in the case of Crabtree vs Montana State Library (1982) the preference accorded by this law is absolute. According to Judge Bennett a person who meets the minimum qualifications for a job shall be preferred by selection for employment (regardless of relative level of qualifications). The state has appealed the decision of Judge Bennett claiming that the preference should take the form of a tie breaker over others of substantially equivalent qualifications.

2. Persons who have been separated from state employment due to reductions in force have been granted a one year employment preference. This preference is established by state policy and a corresponding administrative rule adopted by the State Personnel Division after consultation with agency representatives on the best method for utilizing the skills of persons laid off from state employment.
3. Persons who are members of groups which have historically been victims of discrimination in employment have been given a form of a tie breaking preference in the affirmative action plans of most state agencies. Under the guidelines established by the U. S. Supreme Court in the 1979 Weber decision, agencies may undertake voluntary race or sex conscious measures to correct the effects of discrimination where 1) the actions taken are temporary, 2) they are based on documented evidence of past discrimination and 3) they do not bar employment opportunities to the majority group. Guidelines for the lawful use of such procedures are contained in case law and the Montana EEO Guidelines published by the State Personnel Division under the authority of Executive Order 2481.

Such measures not only correct the effects of discrimination but also reduce the state's liability.

4. Various other procedures which amount to an employment preference exist in Merit System rules, collective bargaining agreements and other agency practices and procedures as follows:
 - A. Merit rules provide for:
 1. a three year reemployment preference
 2. non-competitive rules
 - B. Collective bargaining agreements often contain language which grants preferential consideration for certain persons based on bargaining unit membership, bargaining unit seniority, geographical preference.
 - C. Agency procedures often grant "preference" to current agency employees by limiting consideration to current employees for promotion.
 - D. Some agencies grant a form of preference to residents of Montana by refusing to consider applications from out of state applicants.

There are two major unresolved preference issues:

- 1) What is the nature of the various preferences accorded by law, rule or policy? and
- 2) What is the procedure for applying preference when competing preferred persons are in a single pool of candidates?

II. RECOMMENDATIONS:

1. The nature of all preferences accorded by law or administrative rule should be of a tie breaking nature. It is essential to good government that state agency management be allowed to seek out the most qualified individuals available and hire from among that group.

By breaking a tie in favor of a preferred person where all other qualifications are substantially equal, the state can fulfill its mandates for efficiently conducting state government and assisting persons with special employment problems.

Preferences should be applied as follows:

- a. Statutory preferences resulting from state or federal law should be applied before those resulting from administrative law or agency policy.

Currently the veterans' and handicapped civilian preference act is the only such act applicable to all state agencies.

- b. 10-2-203 should be amended by the addition of the following language:

"nothing in this act prohibits an agency from employing a person granted preference due to a reduction in force."

This provision would allow agencies to recall non-veteran/non-handicapped employees terminated within the same jurisdiction due to reduction in force actions.

- c. 10-2-201 (et seq) should be amended to clarify that preferences are applicable only to initial appointments and employment. This allows agencies to promote and retain the most capable employees without violating the statute.
- d. The term "handicapped civilian" should be defined through amendment of the statute or administrative rule. Due to the large number of differing and often conflicting state and federal definitions of "handicapped", there is confusion as to what constitutes "disabled" for purposes of the preference.

STANDING COMMITTEE REPORT

April 12, 19 83

SPEAKER:

MR.

LABOR AND EMPLOYMENT RELATIONS

We, your committee on

HOUSE JOINT RESOLUTION

having had under consideration Bill No. 41

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color

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S
EMPLOYMENT PREFERENCE LAWS CONCERNING VETERANS, VETERANS' SPOUSES AND
DEPENDENTS, AND DISABLED CIVILIANS; AND REQUIRING A REPORT OF THE
FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 49TH LEGISLATURE.

HOUSE JOINT RESOLUTION

Respectfully report as follows: That Bill No. 41

~~DO PASS~~