

MINUTES OF THE MEETING  
LABOR & EMPLOYMENT RELATIONS COMMITTEE  
MONTANA STATE SENATE

February 3, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on February 3, 1983, at 1:00 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF SENATE BILL NO. 197:

Chairman Aklestad introduced Senator Mazurek, sponsor of Senate Bill No. 197, to the Committee, and Senator Mazurek explained the bill to the Committee.

Senate Bill No. 197 is an act amending the veterans and disabled persons employment preference law to clarify the nature of the preference and the procedures for applying it.

Senator Mazurek told the Committee that there are some problems with the bill, but it is a very important bill. It involves an issue which the legislature has to address this session. The bill deals with veterans and handicapped preference.

There are some problems with the present law and it needs updating and clarification. There also is a sensitive area in dealing with women. Most of the women who were involved in the bill were in public employment.

Senator Mazurek stated that the veterans suggested that retention of employment and rehiring should be included.

PROPOSERS OF SENATE BILL NO. 197:

Dennis Taylor, representing the Personnel Division of the Department of Administration, stated that they are in support of Senate Bill No. 197. Mr. Taylor's printed testimony is attached.  
(Exhibit No. 1)

Mr. Taylor stated that this is a very complex situation, and if the legislature does not act on this legislation the state will be involved in a lot of litigation.

Robert LeMieux, representing the Governor's Committee on Employment of the Handicapped, stated they are in support of Senate Bill 197. Mr. LeMieux's printed testimony is attached.  
(Exhibit No. 2)

Representative Harper, representing House District No. 30 of Helena, stated that he supports Senate Bill 197.

Eugene Fenderson, representing Laborers Local No. 254, stated they are in support of Senate Bill 197. Mr. Fenderson's printed testimony is attached. (Exhibit No. 3)

Mr. Fenderson suggested some amendments to Senate Bill 197. These amendments are included in his printed testimony.

Dave Hunter, representing the Department of Labor, described the Hayes case to the Committee--regarding equal opportunity for women in management positions.

Virginia Jellison, representing L.I.G.H.T., Inc., stated they support Senate Bill 197 with Senator Blaylock's amendment.

Charles Briggs, representing the Governor's office, stated that he is in support of Senate Bill 197.

The Committee was forced to cut off testifying by proponents at this point due to lack of time. Those who left statements with the Committee are as follows:

Connie Flaherty Erickson, representing Mary Lisa Pryne, a Viet Nam Veteran, supports Senate Bill 197 with amendments.

Jan Gilman, representing Interdepartmental Coordinating Committee for Women, supports Senate Bill 197. J. Gilman's printed testimony is attached. (Exhibit No. 4)

Kathy Karp, representing Montana League of Women Voters, support Senate Bill 197 with amendments.

Celinda Lake, representing Women's Lobbyist Fund, support Senate Bill 197 with amendments. C. Lake's printed testimony is attached. (Exhibit No. 5)

Keith A. Phelps, representing himself, supports Senate Bill 197 with amendments.

Mary Lisa Pryne, representing herself, supports Senate Bill 197 with amendments. M. Pryne's printed testimony is attached. (Exhibit No. 6)

LeRoy H. Schramm, representing Montana University System, supports Senate Bill 197 with amendments. Mr. Schramm's printed testimony is attached. (Exhibit No. 7)

Betty Taylor, representing Hiring Authorities (Montana Department of Highways), Governor's Committee on Employment of Handicapped, supports Senate Bill 197. B. Taylor's printed testimony is attached. (Exhibit No. 8)

Charles VanHook, representing himself, supports Senate Bill 197 with amendments. Mr. VanHook's written testimony is attached. (Exhibit No. 9)

OPPONENTS OF SENATE BILL NO. 197:

Frederick MacKintosh, representing Disabled American Veterans, stated they oppose Senate Bill No. 197. Mr. MacKintosh's printed testimony is attached. (Exhibit No. 10)

Frank Lewis, representing Disabled American Veterans of Missoula, Montana, stated they oppose Senate Bill 197.

Bob Durkee, representing Veterans of Foreign Wars, stated that they oppose Senate Bill 197. They do not agree with the language in the bill. Mr. Durkee distributed a table from the Employment Service Reporting System. This table is attached. (Exhibit No. 11)

Representative Joe Brand, representing House District No. 28, Deer Lodge, Montana, spoke in opposition to Senate Bill 197 in its original form, but he does not know what the proposed amendments do.

James Shannon, representing Disabled American Veterans, spoke in opposition to Senate Bill 197. Mr. Shannon stated that he believes the Veteran's Preference Act should not be tampered with.

Senator Dorothy Eck told the Committee that another bill is coming to the Committee that is similar and she wanted them to be aware of this.

Ken Clark, representing Disabled American Veterans, Missoula, Montana, spoke in opposition to Senate Bill 197. He thinks the veterans should be in a class by themselves.

Senator Goodover read a wire from a Great Falls Chapter of D. A. V. opposing Senate Bill 197. This wire is attached. (Exhibit No. 12)

Fred Easy, representing himself, spoke in opposition to Senate Bill 197. Mr. Easy's printed testimony is attached. (Exhibit No. 13)

QUESTIONS FROM THE COMMITTEE ON SENATE BILL 197:

Senator Gage: Do you feel there should be a distinction between veterans who served in wartime as opposed to those who served in peacetime?

Fred MacKintosh: Yes, that would be alright. The main objection they have is bringing in another group.

Senator Lynch: What veterans' groups opposed this legislation at the December 1982 meeting?

Senator Mazurek: I thought every veterans' organization in the state was represented at the meeting.

Senator Lynch: Would any of you agree to this bill?

Bob Durkee: We agreed not to establish another class.

Senator Blaylock: Under this bill is there anybody who is in the service and if he is discharged, he is a veteran?

Senator Mazurek: Yes, if he is discharged it would apply, as long as he served at least 180 days.

Senator Gage: To D. A. V., does your organization know that this is an absolute preference without comparative ability?

Fred MacKintosh: We still would like to have the Veterans Preference Act for veterans only.

Senator Manning: There is a difference in veterans preference and wartime veterans. Veterans with service connected disabilities have preference over all the rest.

Senator Aklestad asked Senator Mazurek if he was aware of the amendments presented today.

Senator Mazurek made closing remarks in support of Senate Bill 197.

Chairman Aklestad called the hearing closed on Senate Bill No. 197.

CONSIDERATION OF SENATE BILL NO. 136:

Chairman Aklestad called on Senator Keating, sponsor of Senate Bill No. 136, to present the bill to the Committee.

Senator Keating distributed proposed amendments to Senate Bill 197 to the Committee. These amendments are attached.  
(Exhibit No. 14)

Senator Keating explained the bill to the Committee. He stated that the purpose of Senate Bill No. 136 principally has to do with unemployment qualifications.

Senate Bill No. 136 is an act to provide for the payment of unemployment benefits to claimants participating in a labor dispute when the dispute has continued for 12 weeks.

Senator Keating stated that the biggest abuse is that people who are striking--who leave their job voluntarily, are saying they qualify for unemployment, which was never intended by the original law.

Senator Keating stated that some 300,000 people in the state of Montana who are enrolled in the program and about 15 percent belong to unions. They are the ones that strike and draw unemployment benefits. The other 85 percent are not strikers or people who bring about labor disputes.

This bill will disqualify a striker from drawing unemployment benefits for 12 weeks if there is no work stoppage at the plant. If there is a strike and there is a work stoppage, then no one draws any unemployment compensation except for those people who are not involved in the stoppage or the labor dispute.

PROPOSERS OF SENATE BILL NO. 136:

Forrest Boles, representing Montana Chamber of Commerce, stated they are in support of Senate Bill No. 136. Mr. Bole's printed testimony is attached. (Exhibit No. 15)

Chad Smith, representing Unemployment Compensation Advisors and the Montana Hospital Association, spoke in support of Senate Bill 136. Mr. Smith stated that this was not a strike-breaker bill. He stated that the present law distorts the true relationship of collective bargaining.

He told the Committee that this was not a new proposition. This has come up in many states, and the impact of this is tremendous. He feels that this bill will serve to reduce the number of strikes. Benefits are not taxable. It is not comparable to a weekly wage on a dollar for dollar amount. They think the 12 week provision doesn't go far enough, but feel it is a step in the right direction.

Charles Paris from Billings, Montana, representing Exxon--Billings Refinery, stated they support Senate Bill 136.

Dave Goss from Billings, representing the Billings Chamber of Commerce, stated they support Senate Bill 136 as amended. Mr. Goss's printed testimony is attached. (Exhibit No. 16)

Joseph O'Toole, representing Missoula Chamber of Commerce, stated they support Senate Bill 136.

George Allen, representing Montana Retail Association, stated that they support Senate Bill 136.

Brent Hunter, representing the city of Billings, stated they are in support of Senate Bill 136.

Dave Hunter, representing the Department of Labor, stated that they were neither supporting nor opposing Senate Bill 136, but he presented two tables to the Committee. One table is an Analysis of Benefits for Strikers. (Exhibit No. 17) The other table is entitled, "Labor Disputes in Montana Affecting Receipt of Unemployment Benefits". (Exhibit No. 18)

OPPONENTS OF SENATE BILL NO. 136:

Eileen Robbins, representing Montana Nurses' Association, stated they oppose Senate Bill 136. E. Robbins' printed testimony is attached. (Exhibit No. 19)

James Murry, representing Montana AFL-CIO, stated they are in opposition to Senate Bill 136. Mr. Murry's printed testimony is attached. (Exhibit No. 20)

Pat McKittrick, representing Teamsters' Joint Council No. 2, stated they oppose Senate Bill 136. Mr. McKittrick stated that if you enact this bill you are taking away neutrality which they feel is most important. He stated that you do not have to have an actual cessation of work for this to come into play. The law as it exists today is a neutral concept.

Joe Rossman, representing Teamsters' Joint Council No. 2, stated that they oppose Senate Bill 136.

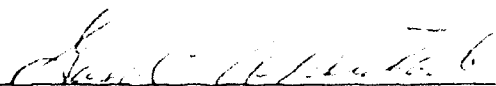
Tom Schneider, representing Montana Public Employees' Association, stated they oppose Senate Bill 136.

Mike Walker, representing the Montana State Council of Professional Firefighters, stated they oppose Senate Bill 136.

There was no time at the hearing for questions from the Committee on Senate Bill 136.

Senator Keating made closing remarks in support of Senate Bill No. 136.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 3:00 p. m.

  
Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/3/83

[illegible]

DATE

2/3/83

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jack C. Hammond	DAV	197		✓
Frank Provost	DAV	197		✓
Jennifer Fenchak	HSU, UofM	197	✓	
CHARLES W. PARIS	EXXON - BILLINGS REFINERY	136	✓	
Joseph F. J. Jones	MSA Chamber Commerce	136	✓	
Joe G. Eschler	ICCW	197	✓	
Paul Klein	ICCW	197	✓	
Virginia Johnson	C.I.C.H.T., Dub	197	✓	
David Wilson	City of Missoula	197	✓	
Hal Hays	HD 30	197	✓	
Ernie Finkler	Salmon Social 351	197	✓	
Bert Hunter	City of Billings	136	✓	
Dave Goss	Billings Chamber of Commerce	136	As amended	
Charles van Hook	Self	197	As amended	
Kath G. Hedger	Self	197	AS AMENDS	
Anthony, Elk	Senat. Deal 39	197	As amended	
Anthony Kemp	Mont. LUV	197	As amended	
Carrie Flaherty Erickson	Miss. Luv. Bynne	197	As amended	
Cedric Lake	Women's Subst. Fund	197	as amended	
Jim Hays	State Bar	197	✓	
Ellen Hays	Dept. of Revenue	197	✓	
James Hays	Mont. Institute of Handicapped Individuals (MHI)			

(Please leave prepared statement with Secretary)



## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Demirdi, Tanya	Personnel Div / DofA	197	X	
H. Buck Baces	MONTANA CHAMBER	136 <sup>AS</sup> <sup>AMEND</sup>	X	
FREDERICK J. KINTOSCH	DEPT. of MONTANA - D.A.V.	197		X
Ken Clark	Bozeman city # DAV	197		X
Lee Linnault	Bozeman, # DAV	197		X
Frank Leggett	Bozeman, # 5	197		X
John G. Jursnick	Bozeman, # 5	197		X
J.H. Jursnick	Bozeman, # 5	197		X
M. Jursnick	Bozeman, # 5	197		X
Mary A. Flaherty	Women's Libbyist Fund	197	X	With Amendments
Joe B. Cooke	DAV Relief			Oppose
Bob Durkin	Vets of Foreign Wars	197		X
Bob LeMieux	Governor's Committee on Employment of the Handicapped	197	✓	
Burt Chalk	Gov. Committee on Employment of the Handicapped	197	✓	
Betty R. Saylor	Mont. Dept. of Soc. Serv. - Handicap	197	✓	
Libs. Mentri	Self	197	X	
Marilyn Hornum	LWV	197	X	With Amendments
Vicki Harmon	Senate aide			X
Cherie McNett	Self	197		X
Jan Gelman	ICUW	197	X	
Carol Dimick	Self			X
Robert Miller	Self	197		X
Samuel Bernholt	Self	197		X
Marilyn Gready	Self	197		With Amendments
Linda Starn	Self	197		should be amended
James O. Shannon	Dept. of Montana DAV	197		X

NAME: DENNIS M. TAYLOR DATE: 2/3/85

ADDRESS: HELENA

PHONE: 449-3871

REPRESENTING WHOM? PERSONNEL DIVISION/DEPT. OF ADMIN

APPEARING ON WHICH PROPOSAL: SB 197

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

See attached  
testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: KATHLY KARP DATE: 2-3-83

ADDRESS: HELENA

PHONE: 443-4321

REPRESENTING WHOM? Mont L W V

APPEARING ON WHICH PROPOSAL: SB 197

DO YOU: SUPPORT? As Amended AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: The Mont League of Women Voters  
Supports SB 197 as amended. The League supports  
equal employment opportunities and as this bill is  
amended, this would be accomplished.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Celinda Lake DATE: 2/3

ADDRESS: 334 Fuller

PHONE: 449 7917

REPRESENTING WHOM? Women's Lobbyist Fund

APPEARING ON WHICH PROPOSAL: SB 197

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS:

See attached - printed.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: KEITH A. PHELPS DATE: 2/3/83

ADDRESS: 519 S. 3RD ST W.

PHONE: 543-4721

REPRESENTING WHOM? MYSELF

APPEARING ON WHICH PROPOSAL: SB197

DO YOU: SUPPORT? X TO INCLUDE AFFECTED CLASS  
AMEND? X OPPOSE? LANGUAGE

COMMENTS: I BELIEVE, THE INITIAL PURPOSE OF VETERANS  
PREFERENCE WAS TO RECOGNIZE THOSE WHO LACKED  
THE OPPORTUNITY TO PARTICIPATE EQUALLY IN EMPLOYMENT  
OPPORTUNITIES BY DINT OF MILITARY SERVICE, WE  
NOW RECOGNIZE THAT THERE ~~ARE~~ ARE OTHER GROUPS  
IN OUR SOCIETY WHO HAVE ALSO LACKED ~~E~~ ECONOMIC  
OPPORTUNITIES BY REASON OF RACE, SEX, AND PHYSICAL  
DISABILITIES. INCLUSION OF THE AFFECTED CLASS  
AMENDMENT IS FAIR & PROPER

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: L. Roy H. Schramm DATE: 2-3-83

ADDRESS: 1000 9th Ave. Helena

PHONE: 449-3024 (w)

REPRESENTING WHOM? Mt. Univ. System

APPEARING ON WHICH PROPOSAL: S.B. 197

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? X \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Betty R. Taylor DATE: 2/3/83

ADDRESS: 2701 Prospect Avenue

PHONE: 449-4723

REPRESENTING WHOM? Hiring Authorities (MT Dept. of Hwys)  
Governor's Committee Employment Hand-  
Called - EEO officers  
 APPEARING ON WHICH PROPOSAL: SB 797

APPEARING ON WHICH PROPOSAL: Capital - C-5B/97

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: see prepared testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Charles vanHook DATE: Feb 3, 83

ADDRESS: 517 Waukesha Helena

PHONE: 443-6408 work

REPRESENTING WHOM? Private Citizen

APPEARING ON WHICH PROPOSAL: Veterans Preference SB 197

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Support SB 197

AS AMENDED

to include "affected class language"  
on initial hiring.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: MAC KINTOSH, FREDERICK JOHN DATE: 2/3/83

ADDRESS: 6390 BIRDSEYE RD., HELENA, MONT. 59601

PHONE: 443-5540

REPRESENTING WHOM? DISABLED AMERICAN VETERANS-DEPT. of MONTANA

APPEARING ON WHICH PROPOSAL: SENATE BILL #197

DO YOU: SUPPORT? ☐ AMEND? ☐ OPPOSE? ☒

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: FRANK L. LEWIS DATE: 2/3/83

ADDRESS: 508 Patten Can. Dr. Massena, NY

PHONE: (406) 549-7794

REPRESENTING WHOM? R.A.V.

APPEARING ON WHICH PROPOSAL: 197

DO YOU: SUPPORT? No AMEND?        OPPOSE? Yes

COMMENTS: Veterans pref. ~~text~~ was written  
into law more than 100 years  
ago We are opposed to only more  
Veterans groups being written into Veterans  
Preference

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: F.H. BUCK BOLES DATE: JUL 3, 1983

ADDRESS: HELENA MT

PHONE: 442-2405

REPRESENTING WHOM? MONTANA CHAMBER OF COMMERCE

APPEARING ON WHICH PROPOSAL: SB 136

DO YOU: SUPPORT? <sup>AS</sup> X AMENDED AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: SEE ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

CHARLES W. PARIS

DATE:

2/3/83

ADDRESS:

P.O. Box 1163 BILLINGS, MT 59103

PHONE:

406 - 657-5204

REPRESENTING WHOM?

EXXON - BILLINGS REFINERY

APPEARING ON WHICH PROPOSAL:

SB 136

DO YOU:

SUPPORT?



AMEND?

OPPOSE?

COMMENTS:

This bill is an improvement over the interpretation of the current bill that requires employees to subsidize those individuals that strike against them -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE: 2-3-83

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?



AMEND?

OPPOSE?

1000

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: Tom Schneider DATE: 3/3/83

ADDRESS: Box 716 Helena

PHONE: 442-4600

REPRESENTING WHOM? MPEH

APPEARING ON WHICH PROPOSAL: SB-136

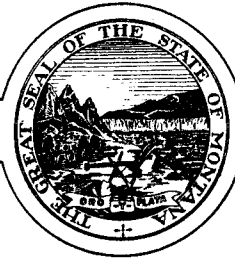
DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: This legislation would destroy the very delicate balance required to have legitimate collective bargaining. If there is no work stoppage then there is less reason for the management side to resume efforts for a settlement while the employee side is placed in a position of having to.

The receipt of unemployment insurance balances somewhat the fact that the business or government continues to operate.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DEPARTMENT OF ADMINISTRATION  
PERSONNEL DIVISION



TED SCHWINDEN, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 449-3871

HELENA, MONTANA 59620

TESTIMONY OF DENNIS M. TAYLOR, ADMINISTRATOR, PERSONNEL  
DIVISION, DEPARTMENT OF ADMINISTRATION, CONCERNING  
SENATE BILL NO. 197 PRESENTED TO THE SENATE COMMITTEE  
ON LABOR AND EMPLOYMENT RELATIONS ON FEBRUARY 3, 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 support of SB197.

Interest in legislation on the Veteran's and Handicapped Civilians Preference Act was initiated as a result of the District Court decision on Crabtree vs. State Library in the spring of 1982. This decision brought this law to everyone's attention for the first time in many years. It brought into question employers efforts to administer the required employment preference. Judge Bennet, District Court Judge in the 1st Judicial District in Helena, determined that the employment preference provided should be an absolute preference rather than a "tie-breaker" as the law has been traditionally administered. In other words, the First Judicial District ruled that if a veteran or handicapped person was minimally qualified they were entitled to the job over all other applicants regardless of qualifications. Until the Bennett decision in Crabtree, public employers had been applying the preference as a tie-breaker between applicants who were otherwise substantially equally qualified. Now public employers aren't certain what to do.

Everyone involved is confused about what this preference was intended to be and how it should be applied. The current law gave little or no guidance. Public agencies found themselves with no idea of what they had to do to comply with the law and whether attempts to comply with one law would place them in violation of other laws such as the Federal Civil Rights Act, the Montana Human Rights Act and the Code of Fair Practices. They were also concerned that an absolute preference would not allow them to hire the most qualified applicants.

If you examine the law, you will see that it is very difficult to interpret or use. The act was first adopted 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) often not received preference.

The state has been administering the act as a tie-breaker between substantially equal applicants, but some 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 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. Veterans organizations (VFW and American Legion) passed resolutions this summer supporting clarification of the law.

Starting in March of 1982, an intense effort to come up with a bill which would clarify the law and would be agreeable to all the concerned groups was initiated by the State. This effort included 3 drafts of proposed legislation that were distributed to approximately 150 concerned groups including veterans groups (VFW, DAV, American Legion and Vietnam veterans), handicapped groups, public employers (state, city, county and school district), and women's groups (ICCW) and the Governor's Committee on the Employment of Women. A working group was also formed in October, 1983 and four meetings were held to discuss the draft legislation. This effort resulted in SB197 introduced by Senator Joe Mazurek.

SB197 represents a compromise which took considerable effort on the part of all the groups to negotiate. SB197 provides clear direction to both the hiring authority and the applicant when administering employment preference. It gives rulemaking authority to a state agency to assure the preference is administered consistently and according to the intent of the Legislature. It clarifies the nature of the preference as a tie-breaker between applicants who are substantially equally qualified. It attempts to clearly define terms used in the law.

SB197 also extends preference to retention and reappointment subsequent to reduction in force. 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 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.

The retention and reappointment language was qualified by adding language protecting members of affected classes. This protection was included by the state because of potential effects retention and reappointment preference

could have on the small gains made by women in recent years.

With this language the bill provides a workable solution for all groups.

I believe it will not be in the best interests of veterans or disabled persons to leave the preference law in its present form without the clarifications provided in Senate Bill 197. 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.

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

I urge you to support this bill and vote "pass" on SB197.

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.

## 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.

TESTIMONY OF ROBERT LEMIEUX, REPRESENTATIVE, GOVERNOR'S  
COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED, CONCERNING  
SENATE BILL NO. 197 PRESENTED TO THE SENATE COMMITTEE  
ON LABOR AND EMPLOYMENT RELATIONS FEBRUARY 3, 1983

Mr. Chairman and Committee Members, my name is Robert LeMieux and I am a member of the Governor's Committee on Employment of the Handicapped. I appear before you today in support of Senate Bill 197.

The Governor's Committee on Employment of the Handicapped initiated SB197 as an attempt to clarify the Veterans and Disabled Civilians Employment Preference Law.

In the past, disabled people have seldom received employment preference as intended by the Legislature when it amended the law in 1927 to include disabled people.

I feel the main reason employment preference has not been given to disabled applicants is because the people who do public hiring do not clearly understand what they are supposed to do.

The present law is very vague and lacks definitions of terms to interpret. Therefore, it is very hard for public hiring authorities to use. The present law refers to "preference" but does not provide procedures for applying preference.

Last July, the Governor's Committee on Employment of the Handicapped decided to work with state government, veterans organizations (DAV, VFW, American Legion and Vietnam veterans), public employers, and other concerned groups (ICCW) to determine what needed to be done with the present law to make it workable. All parties agree something needed to be done during this legislative session to address the problems surrounding employment preference. As the representative from the Governor's Committee on Employment of the Handicapped, I attended at least 5 meetings last fall to come up with a bill which would clarify the law and would be agreeable to all the concerned groups. SB197 is the result of our efforts.

SB197 is a compromise bill which took a lot of effort on the part of all the concerned groups to negotiate. I feel SB197 provides direction to both the hiring authority and the disabled applicant when administering employment preference. SB197 provides clear definitions of terms used in the bill and gives rulemaking authority to a state agency to assure the intent of the law is carried out.

I believe SB197 would provide a law that would be affirmatively, fairly and consistently administered by public employers.

I believe the best interests of veterans and disabled people would be served by SB197. I also believe both veterans and disabled people would benefit through increased employment opportunities.

I urge you to support this bill and vote "pass" on Senate Bill 197.



Exhibit 3  
Submitted by Eugene Fenderson  
February 3, 1983

# **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 ON SENATE BILL 197

BEFORE THE LABOR & EMPLOYMENT RELATIONS COMMITTEE, FEB. 3, 1983

Mr. Chairman, Members of the committee, I am Gene Fenderson, Business Manager of Laborers' Local 254, Helena.

I rise as a proponent of Senate Bill 197.

Both personally and as a building tradesperson, I have and will continue to follow the positions of the Montana State Building and Construction Trades Council and the Montana State AFL-CIO in support of veterans preference.

I believe that Senator Mazurek and the Personnel Division should be commended for the admirable job they have done in attempting to put together legislation that speaks to the conflicting concerns of the people of this state on this issue.

However, although I support the legislation, I must ask for amendments to the legislation. Those amendments will insure that this act will not be in conflict with already established collective bargaining agreements. Specifically, the legislation does not provide for retention of workers through the criteria established in a collective bargaining agreement. Collective bargaining is the basic mechanism that allows management and workers to agree to the criteria through which layoffs and recall will occur. In many local, county and state government units, the workers have decided what that criteria will be.

Therefore, I am asking that the bill be amended as follows on page 3. On line 7, following the word "reappointment", insert the words "and retention". On lines 10 and 11, strike the words "because a person's previous employment in that jurisdiction was terminated as a result of"; add the words "to provide procedure for".

On page 6, line 23, add the words "reemployment and retention" so that line 23 will read, "without a claim to reemployment and retention preference under this part with".

On page 7, line 8, following the word "to", add the words "reemployment and retention".

On line 15, following the word "appointed", add the word "retained". On line 17, following the word "claim", insert the words "retention preference". On line 17, following word "preference" insert a period. Strike remainder of line 17 through line 19.

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 supports the provision in SB 197 which administers hiring preference through substantially equal qualifications and not merely through minimum qualifications. State government should not be required to hire minimally qualified individuals. We have 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.

Prior to the decision in the case of Crabtree vs. The State of Montana, veterans preference was administered without causing undue harm to women, minorities or any other member of an affected class. 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, women suffer the greatest disadvantage in finding employment; not veterans or other preferred persons.

SB 197, particularly if it were to include equal initial hiring preference for members of affected classes, aids the efforts of the State of Montana to provide equal employment opportunities to all substantially equally qualified applicants. As a minimum the ICCW supports SB 197.

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



TESTIMONY OF CELINDA C. LAKE, WOMEN'S LOBBYIST FUND, ON SB ~~197~~ BEFORE SENATE LABOR AND EMPLOYMENT COMMITTEE

The Women's Lobbyist fund supports 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. For these reasons we are a proponent of SB 197 but we strongly urge that SB 197 be amended to include affected class language for initial hire, as it does for rifting, 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. We do not believe that veterans, who as a group can first hand relate to the discrimination women have suffered, would intend for preference to be implemented in the form now expressed in SB 197 for initial hire.

Obviously, SB 197 in its current form without an amendment for initial hire 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 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. We also believe that without an amendment local governments and school systems would

have problems complying with EEOC mandates.

SB 197 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 amendment 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. We totally support this preference.

It should be clear from this discussion that we do not want to take away any rights that veterans have had in the past. The Crabtree court decision de facto extended veterans' preference by sector and intent from what had been practiced. Now in passing this legislation, it is important to guard veterans' rights and at the same time to guard the rights that other disadvantaged groups have had. 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 this reason we support SB 197 with amendments to extend preference when applicants are not competing against members of another disadvantaged group - i.e. an affected class.

With our concerns and with other groups' concerns about senior workers, etc. we believe, however, that Senator Eck's bill may be the most workable bill and the best compromise. This bill deals only with initial hire and has affected class language for initial hire. We support SB 197 with amendments and we strongly support Senator Eck's bill. We would encourage the committee to consider Senator Eck's bill before taking final action. We believe we need legislation which is fair to all groups, recognizes our mutual oppression, is workable, and still rewards veterans for the very real contribution that they have made to our way of life. An amended SB 197 and Senator Eck's bill both accomplish these goals.



Senate Bill 197, Testimony

February 3, 1983

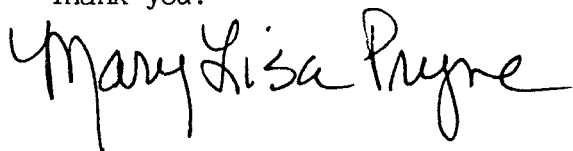
Mr. Chairman and Members of the Senate Labor and Employment Committee:

For the record my name is Mary Lisa Pryne.

I am a proponent of SB 197, but I strongly believe that it should be amended to include affected class language for initial hire. I was on active duty in the Navy for two years. I am a veteran and I am a woman and I know that I have been discriminated against in hiring and in jobs. But that discrimination was because I was a woman and not because I was a veteran. In fact, even as a member of the armed forces I was discriminated against as a woman.

I feel that it is both reasonable and important to include the amendment in SB 197 because that would allow equal opportunity in initial hiring for two discriminated groups--women and veterans. I do not believe this would take anything away from veterans that we have had in practice. As a veteran I have received other benefits for my services. I am currently going to school with money because I was a veteran. I received important medical training in the armed forces, etc. I believe that the disadvantages I face as a woman are greater than the disadvantages I face as a veteran. I believe that SB 197 should be amended so that all disadvantaged groups have a chance at that initial job.

Thank you.

A handwritten signature in cursive script that reads "Mary Lisa Pryne". The signature is written in dark ink and is positioned below the typed text "Thank you."

LeRoy H. Schramm  
Testimony on SB 197

The Problem: Absolute Preference

I am Chief Legal Counsel of the Montana University System. We agree that the 1982 decision of Lewis and Clark County District Judge Gordon Bennett (Crabtree v. Montana State Library) requires that the legislature take a new look at employment preferences for veterans and disabled persons. Judge Bennett ruled that such persons had an absolute preference. This means that even if only minimally qualified for a position they must be hired over even the most skilled and able applicant without a preference. If this practice were to become widespread in the University System we would see barely qualified instructors with masters degrees and newly minted PhDs being hired over persons with long and outstanding records of teaching and research. Of course this is absurd, but that is the spectre before us if the Supreme Court upholds the Bennett decision; by no means an unlikely possibility.

The Solution: Relative Preference

Therefore, we support the portions of SB 197 that make clear that the employment preference for veterans and disabled civilians is only a relative, rather than an absolute preference. That is, such persons would be preferred over other applicants of substantially similar qualifications. That is what most public employers in this state have thought the law meant for several years until Judge Bennett suddenly disabused us of that notion.

The relative preference balances the society's desire and obligation to aid veterans and the handicapped while at the same time preserving the public's expectation that its public servants are as highly qualified as possible. No one benefits from a public work force made up of a large number of minimally qualified individuals.

The Scope of the Preference:  
A Conflict with Affirmative Action

It appears that the theory of SB 197 was: "If we reduce the degree of the preference from absolute to relative then we must increase the scope from initial employment to also include layoff and recall. This sounds reasonable but the effect may well be to destroy any gains affirmative action hiring programs have had in increasing the employment of women, native Americans and other protected classes. The drafters of SB 197 tried to anticipate and alleviate this problem by extending the employment preference, not only to veterans and the disabled, but to anyone in an "affected class." The result is something less than satisfactory for at least five reasons.

First, the definition of affected class (p. 1, lines 24FF) is extremely broad. It includes groups that suffer no present discrimination, but have so suffered in the past. It is not clear whether it refers to discrimination (past and present) in the society at large or merely that of the public employer from whom the preference is sought.

Second, the procedure for applying the veterans and disabled preference along with the affected class preference (p. 6, line 4 through p. 7, line 13) gives absolutely no hint as to how all the preferences are to mesh or whether there is a priority among them. For example, if an employer with a majority of male employees retained a male veteran over a white female with substantially equal qualifications and seniority would the employer be in violation of this new preference law; or the Human Rights Act; or both; or neither? I don't have the vaguest idea and I expect that this broad extension of preferences would lead to an enormous amount of litigation.

Third, the use of the broad affected class preference is made universal rather than restricted to correcting instances where affected classes are underutilized. The preference would be applied where an affected class was presently "underutilized" or had been underutilized in the past! (See p. 7, lines 2 and 12) This broad preference seems inexplicable. I was Chief of the State Labor Relations Bureau for 4 years. During most of that time I supervised a small staff of 3 labor negotiators, 1 man and 2 women. Prior to that time the Bureau had been generally staffed by males. If budget restrictions had required a reduction of my staff to two, the affected class language of SB 197 may have required me to lay off the male negotiator because of the clear "past" underutilization of females in the Bureau. It should be noted, that the bill specifically defines bureaus as a separate employer unit (p. 3, line 1), many of which are very small and very few of which would have both a past and present balance of affected to non-affected classes.

Fourth, the extension of the preference to lay off and recall requires the use of factors other than merely "qualifications". The laying off employer must in addition evaluate "job duties, performance records and length of service. (P. 6, lines 24 and 25) This is what we in the labor relations business would call a "hybrid layoff clause" because it calls for the simultaneous application of multiple factors. While these clauses are not unusual they do spawn much arbitration. The question usually is something such as: "If I have a 10-year employee with an adequate performance record can I lay him/her off in favor of

an 8-year employee with an outstanding performance record, or vice versa? How about if it were 20 years and 18 years?" These are often close calls that require subjective judgment and this bill would give any affected class member a legal cause of action every time their evaluation differed from that of the employer.

Fifth and last, the addition of broad affected class preferences changes the complexion of this bill from a veterans and disabled preference bill to a major amendment to our state discrimination laws. Presently public employees (and applicants for public employment) are covered by at least three general discrimination statutes: the federal Civil Rights Act, the state Human Rights Act, and the state Governmental Code of Fair Practices. These statutes already have some overlapping and conflicting sections making the true state of our laws hard to determine. For example, the Human Rights Act has a 180-day statute of limitation and no exemption for seniority systems while the Governmental Code of Fair Practice has a 2-year statute of limitation and an exemption for seniority systems. SB 197 has a 30-day statute of limitation and a delphic exemption for seniority systems. (I think? See p. 7, lines 14-19.) A brand new preference should only be added after it is made clear what it will do over and above what our present discrimination laws do. I stand to be corrected, but I know of no other state (nor the federal government) that has adopted such a broad statutory preference as called for by the affected class language of SB 197.

#### The Best Option: A Scaled Down SB 197

All of these problems could be avoided if SB 197 were restricted to clarifying the law to give a relative preference on initial employment to veterans and the disabled. Affirmative action gains would not be thereby jeopardized if public agencies are forced to lay off employees, but veterans and the disabled would still maintain some significant preferences, especially when it is needed most: when seeking a job.

RECOMMENDED AMENDMENTS TO SB 197

Page 1, line 16: Strike "and" and "employment" and delete "reappointment to" as well as the final "and".

Page 1, line 17: Delete "retention in employment".

Page 1, line 24 through page 2, line 2: Delete in entirety and renumber succeeding subsections as needed.

Page 3, lines 7 through 12: Delete in entirety.

Page 4, line 17: Strike "and".

Page 4, line 18: Delete "reappointment to employment and retention in" and also strike "employment".

Page 4, line 24: Strike "and".

Page 5, line 3: Delete "reappointment to employment and".

Page 5, line 4: Delete "retention in employment".

Page 6, line 20 through page 7, line 13: Delete in entirety and renumber succeeding paragraphs.

Page 7, line 15: Delete "or reappointed".

Page 7, line 17: Delete "claim reemployment preference" and insert in its place "appointment to the position under established policies of the public hiring authority, including a collective bargaining agreement".

Page 7, line 19: Delete the entire line and insert "are similarly entitled under the same policy or agreement".

SB 197 With Recommended Amendments

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

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 employment in every public department and upon all public works of the state of Montana and of in any county and city local government intity 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) 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 or other dependent of a veteran who died as a result of a service-connected disability or who died while on active duty.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "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.

(4) "Disabled person" means:

(a) a veteran having a service-connected disability as determined by the veterans administration of the United States; or

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

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

(6) "Public hiring authority" means:

(a) any department, office, board, bureau, commission, agency, or other instrumentality of the government of the state of Montana; or

(b) any county, city, town, school district, or other unit of local government or any instrumentality of local government.

(7) 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.

(8) 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 unmarried 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 employment. ~~{1} 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 to veterans, disabled persons, or certain dependents of veterans in initial appointment and 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-veteran-or-civilian provided-he-or-she-possesses-the-business-capacity,-competency,-and-education-to-discharge-the-duties-of-the-position-involved.~~

~~{3}-These-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-when-ever-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.~~ If scored procedures are used to establish an employment list and a veteran, a disabled person, or certain dependents of veterans attain a passing score, 5 percentage points shall be added to his score, unless he is a disabled person, in which case 10 percentage points shall be added to his score.

(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. If scored procedures are not used, a veteran, a disabled person, or certain dependents of veterans shall be appointed to the position over others of substantially equal qualifications. Disabled persons shall be appointed to the position over veterans or certain dependents of veterans of substantially equal qualifications.

(4) A veteran, a disabled person, or certain dependents of veterans need not be appointed to a position over a person without a claim to preference who is entitled to appointment to the position under established policies of the public hiring authority, including a collective bargaining agreement unless the veteran, disabled person, or certain dependents of veterans are similarly entitled under the same policy or agreement."

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

"10-2-205. Eligibility --duty of veterans, disabled persons, or certain dependents of veterans. (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.~~



~~(3) (2) For city or 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. It is the duty of a veteran, a disabled person, or certain dependents of a veteran to establish his eligibility for preference and to make his preference known to the public hiring authority."~~

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

"10-2-206. Enforcement of preference. (1) Any person entitled to preference in 10-2-201 through 10-2-206 and [section 7] 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 not been accorded his rights under 10-2-201 through 10-2-206 and [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. The public hiring authority shall provide written explanation and shall deliver this explanation to the veterans, the disabled person, or certain dependents of a veteran within 30 days of the date of his request for appeal.

(2) Within 30 days after the delivery date of the written explanation the veteran, disabled person, or certain dependents of a veteran 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 if filed. The petition shall set forth the facts of the application, qualifications, competency, and such person's honorable discharge or 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 court 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, the disabled person, or the dependent of a veteran ~~person entitled to preference~~ 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 Rules of Civil Procedure apply to all court proceedings brought under this section."

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

NEW SECTION. Section 8. Effective date. This act is effective on passage and approval.

NEW SECTION. Section 9. Codification instruction. Section 7 is intended to be codified as an integral part of Title 10, chapter 2, part 2, and the provisions of section 7 apply to Title 10, chapter 2, part 2, and the provisions of Title 10, chapter 2, part 2, apply to section 7.

TESTIMONY OF BETTY R. TAYLOR, MANAGER, CIVIL RIGHTS UNIT, DEPARTMENT OF HIGHWAYS, CONCERNING SENATE BILL 197 PRESENTED TO THE SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS ON FEBRUARY 3, 1983.

Mr. Chairman and Committee members, my name is Betty Taylor and I am the Manager of the Civil Rights Unit in the Department of Highways. In addition, I am also a member of the Governor's Committee on Employment of the Handicapped. I appear before you today in support of SB197 as it currently reads.

Interest in clarifying the legislation on the Veteran's Preference Act was initiated by Crabtree vs. State Library. Employers, veterans, and the disabled are concerned about clarifying these issues:

1. What the preference meant. (Was it absolute or a tie-breaker?)
2. What was the procedure to be used to apply the preference?

Today, I would like to speak from three different points of view regarding SB197. The viewpoints are from the hiring authority, the Governor's Committee on Employment of the Handicapped, and the Equal Employment Opportunity Officer's perspectives.

#### THE HIRING AUTHORITY'S VIEWPOINT

In the 1980's, making an employment selection has become increasingly difficult. Not only are hiring authorities dealing with unions and Affirmative Action requirements, they are also faced with the reality of selecting an applicant who can perform the workload. Here are the concerns:

1. If the absolute preference is applied, the hiring authority will not be able to select the best qualified candidate.
2. Clear procedures are needed for defining the competing preferences. Who gets preference over whom?
3. Rule-making authority is needed to set procedures to ensure the intent of the Legislature is carried out.
4. Definitions of the terms need to be clearly defined before any sort of competing preferences can be determined; i.e., What's a veteran? War-time, Retired Veteran, or Disabled American Veteran?

#### THE GOVERNOR'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED'S VIEWPOINT

The Committee is aware of all the negotiating and compromising that occurred by support groups involved in this proposed SB197 -- women's groups, veterans' groups, handicapped groups, and public employees. The Committee supports this legislation because:

1. Employment preference is extended to the disabled. This is necessary to remedy the effects of past discrimination.
2. If no legislative action is taken, the case Crabtree vs. State Library could have an immense impact on how the preference is applied. If absolute preference were required, it could possibly result in the over-inflation of minimum qualifications.

## THE EQUAL EMPLOYMENT OPPORTUNITY OFFICER'S VIEWPOINT

While SB197 is a compromise between support groups, women are losing out to some extent. However, without clearly defining the absolute preference for veterans and handicapped, women are the total losers.

1. In the last two years, the Department of Highways has just begun to see some progress in Affirmative Action. More women have been employed throughout the Department.
2. If the employment preference isn't clearly defined, it will totally close the door to continued progress in Affirmative Action for women.

I feel SB197 provides clear direction to both the hiring authority and the applicant when administering employment preference. It gives rule-making authority to a state agency to ensure the preference is administered consistently and within the intent of the Legislature. It clarifies the nature of the preference as a tie-breaker between applicants who are substantially equally qualified. It attempts to clearly define the terms used in the law.

Therefore, I urge you to support this bill and to vote "PASS" on Senate Bill 197. Thank you for listening to my comments.

BRT/sw/9E

I am Charles van Hook

I am a proponent of SB 197 amended to include "affected class language" on initial hiring.

I did not come here today to oppose veterans..  
I am a veteran of the U.S. Army, having served from 1963 to 1966.

I also support equal opportunity and affirmative action in employment for minorities and women. By my own experience I have seen that military veterans are now and will continue to be offered many good opportunities and advantages by our government and our entire society.

- ✓ In 1967 I worked at a seasonal job as a fire lookout for the Forest Service. I got that job by 6 points veterans preference. I beat many other applicants because of that veteran preference.
- ✓ I attended college for 3 years with support from the GI Bill. This gave me educational advantages I would not have otherwise.
- ✓ I entered graduate school in the Univ. of Mont. and supported myself with part time work from the Forest Service, a job I got with veterans preference.

✓ 3 years ago I and my wife bought a house in Helena through the GI loan program - I pay only 8% interest.

The Veterans Administration has given me alot of help which I choose to take advantage of. Veterans can and should continue to use these programs.

But we are talking about the Federal government and it's VA program -

The State of Montana does not need to copy the federal government. Our state government can be more responsive to the human needs of local people.

As a veteran and as a man, with all the help I have already had I can't feel justified in asking the state for special priviledges which would create unjust means of competition for employment. I have in mind a ~~Example~~ woman with several kids who finds herself a single parent who does not want public assistance. These type of people deserve a chance to compete in the job market.

# DISABLED AMERICAN VETERANS

## DEPARTMENT OF MONTANA



LYNN WALKER  
Department Commander  
Box #916  
Livingston, Montana 59047  
Phone: (406) 222-6843

JOHN E. SLOAN  
National & Department  
Service Officer  
VA Center  
Fort Harrison, MT 59636  
Phone 442-6410, Ext. 221

FREDERICK J. MacKINTOSH  
Dept. Adjutant-Treasurer  
6390 Birdseye Road  
Helena, Montana 59601  
(406) 443-5540

### TESTIMONY OF FREDERICK J. MAC KINTOSH, DISABLED AMERICAN VETERANS DEPARTMENT OF MONTANA ADJUTANT, CONCERNING SENATE BILL 197 PRESENTED TO THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

Mr. Chairman and Committee Members, my name is Frederick J. MacKintosh and I am the Department Adjutant for the Disabled American Veterans. I appear before you today in opposition to Senate Bill 197 as it currently reads.

The principle of Veterans' Preference was written into law over a century ago when, in 1865, Congress gave preference to veterans with service-incurred disabilities. Since then the national policy has been broadened and strengthened by law, executive order and regulation. In 1944, the various statutes, White House directives and Civil Service Commission regulations were unified into a single law, known as the Veterans' Preference Act, covering rights of veterans (including certain spouses, widows, widowers, and mothers of veterans).

The original laws relating to employment and preference in Montana date back to 1921, when the Montana Legislature created a Veterans' Preference for Public Employment, and there was a follow up in 1941 and 1944 with regard to re-employment of veterans and job retention rights over non-veterans written along the lines of the Federal Preference Act.

Veterans preference, of course, was originally instigated as a debt of gratitude to in some way help our honorably discharged veterans who gave up the best years of their lives for this Nation. We as veterans are unalterably opposed to any action to write into the present Veterans' Preference Act any non-veterans group, as this would weaken the present Veterans' Preference Act for obvious reasons, since the 105,000 veterans that reside in Montana include males and females and veterans of all races and colors, black, white, red, yellow and brown. We must not forget those who paid the price of peace for America. We cannot forget those with service-incurred disabilities who are still paying the price today.

The Disabled American Veterans is opposed to Senate Bill 197. We urge that you table same.

VARIOUS APPLICANT GROUPS RECEIVING SPECIFIC SERVICES  
AS A PERCENT OF INDIVIDUALS REGISTERED

FISCAL YEAR'S 1980 - 1981 - 1982 (COMBINED)

M O N T A N A - S T A T E W I D E

3 YEAR TOTALS	COUNSELING (1) INDIVIDUALS COUNSELED AT LEAST ONE TIME	INDIVIDUALS PROVIDED APTITUDE PERFORMANCE AND SELECTION TESTING	TOTAL REFERRED TO JOBS	TOTAL INDIVIDUALS PLACED IN NON - AGRICULTURAL JOBS
TOTAL ALL APPLICANTS	10.4	7.9	45.6	30.9
FEMALE	10.3	12.8	47.9	31.5
MINORITY	14.9	7.8	39.3	26.3
ECONOMICALLY DISADVANTAGED	34.0	10.4	50.5	37.5
HANDICAPPED	27.4	9.2	43.3	28.8
VETERANS	17.1	5.0	48.1	31.2



FEB 3 8 01 AM '83

M+  
WJ AGENT HEL

WJ INFOMASTER 1-024450A033 02/02/83  
ICS IPMPTUH PTL  
7070 09462 02-02 0710P PST PTUG  
TLX 313104 WJ AGENT HEL  
RT

4-054612S033 02/02/83  
ICS IPMTZZ CSP

4064521329 NL TDMT GREAT FALLS MT 46 02-02 0936P EST  
PMS SENATOR PAT M GOODOVER RPT DLY MGM  
HELENA MT

WE, THE 540 MEMBERS OF CHAPTER 2 DAV GREAT FALLS, ARE OPPOSED TO  
SENATE BILL 197. WE FEEL THE DAV HANDICAPPED ARE BEING DISCRIMINATED  
AGAINST. PLEASE HELP US WITH YOUR VOTE AND ANY OTHER HELP YOU CAN  
AFFORD US TO HELP DEFEAT THIS BILL.

JAMES R BURDETTE, EX OFFICIO COMMANDER, DAV CHAPTER 2 (1 NICHOLAS)  
4303 THIRD AVENUE SOUTH  
GREAT FALLS MT 59405

2157 EST

NNNN

/ REPLACES CHAR(S) ON SENDERS KEYBD UNAVAIL ON YOURS

2321 EST

+  
WJ AGENT HEL

Exhibit 12

Submitted by Great Falls Chapter  
DAV

February 3, 1983

Western Union  
Telex/TWX

TESTIMONY SENATE BILL 197

Fred Easy  
PO Box 34  
Helena, MT

My name is Fred Easy, I am a resident of Helena, MT and I present this testimony in opposition to SB 197. I am representing myself and the statement made herein are my own.

I am a former US Marine, I was wounded in Vietnam and I'm the holder of a Purple Heart Medal. I am not drawing disability compensation from the federal government. I am a former state government employee who was rifted from my position due to agency reorganization within the past year. I have been unable to find reemployment within state government. I have an undergraduate degree in government from Mt State University with an additional one years graduate study in public administration.

In my past efforts to find employment I have spent considerable time in State of Montana Job Service Offices. I would like to share with you a saying commonly heard in job service offices " A copy of your DD 214 release papers and 40 cents will buy you a cup of coffee." That statement appears to be an honest appraisal of a veteran's opportunity to find employment base upon veteran preference laws.

I have reviewed the proposed bill and find it deficient. It is my opinion this bill in its existing draft doesn't have any real value. It is my position that the SB 197 should be tabled with a due not pass recommendation unless it is fundamentally revised and amended.

I propose the following language for your consideration in an attempt to clarify what I believe a veterans preference bias bill should contain.

The bill does not recognize a Purple Heart Medal within its language as deserving recognition of the receipient for his contribution upon the battlefield. Many medal holders do not claim or request compensation for their wounds acquired within the military service. I believe this committee should recognize this oversight by:

Amending Section 2 of the proposed paragraph (5) to include the underlined language, Disabled person means: (a) a veteran awarded a purple heart medal or having a service-connected disability as determined by the veterans administration of the United States.

It is my position as a rifted state employee unable to find reemployment with-in the state government that a revision needs to be made clarifying:

Amending Section 2 of the proposed paragraph (8) to include the underlined: Reemployment preference means a preference for employment granted under established employment qualification requirements and policies of a jurisdiction without formal public announcement of an employment opening.

This clarification will put public agencies on notice that they have an obligation to rehire qualified former employees

3. Section 4 on administration of preference should be strengthened to make scored employment procedures mandatory. This would allow paragraphs (3) and (4) of the section to be deleted. I propose the following amendment to paragraph (1):

(1) Scored procedures will be used to establish an employment list and reduction in force or reorganization list and a veteran, a disabled person, or certain dependents of veterans attaining a score of 5 percentage points shall be added to his score, unless he is a disabled person or a vet awarded a purple heart medal in which cases 10 percentage points will be added to his score.

4. Delete paragraphs (3) and (4).

5. Amend paragraph (5) as follows: During rehiring following a reduction in forces a veteran, a disabled person, or certain dependents of veterans shall be reappointed to employment over persons without a claim to preference under this part with substantial equal qualifications, past performance and length of service, unless the person without a claim to preference is a member of an affected class and there is a jurisdiction policy in evidence demonstrating past or present underutilization of the affected class by the public hiring authority involved. A maximum of 5 years of a veteran's military service on active duty will be added onto computation of the length of service within an agency. Rehiring preference will remain in effect for a period of not less than 2 years.

The underlined language of par (5) will clearly allow the veteran to use his active service time to offset any disadvantage military employment creates in questions arising on seniority.

6. Section 6 on enforcement of preference should be strengthened to allow the rifted individual an opportunity to request a written explanation within a more reasonable time frame. A 60 day time period would be more appropriate, The public hiring authority should be required to provide detailed data upon the evaluation process used to determine selecting the individuals layed off.

Proposed Amendments to SB 136

1. Title, line 6.

Following: "LABOR DISPUTE"

Insert: "ONLY"

Following: "THE DISPUTE"

Insert: "DOES NOT RESULT IN A WORK STOPPAGE AND"

2. Title, line 7.

Following: "WEEKS"

Insert: "OR THE DISPUTE RESULTS IN A WORK STOPPAGE THAT THE  
CLAIMANTS ARE NOT DIRECTLY INVOLVED IN"

3. Page 1, line 18.

Following: "dispute"

Insert: "that does not result in a work stoppage"

4. Page 1, lines 19 and 20.

Following: "employed"

Strike: ", "

Insert: ". "

Strike: remainder of line 19 through "if" on line 20

Insert: "(2) An individual shall be disqualified for benefits  
for any week of unemployment that is due to a labor dispute  
that results in a work stoppage at the factory, establishment,  
or other premises at which he is or was last employed unless"

Renumber: subsequent subsections

5. Page 2, line 2

Following: "stoppage"

Strike: "labor dispute"

Insert: "stoppage"

6. Page 2, line 3.

Following: "stoppage"

Strike: "labor dispute"

Insert: "stoppage"



Exhibit 15  
Submitted by Forrest H. Boles  
February 3, 1983

## MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

Testimony  
to the  
Labor & Employment Relations Committee  
Gary Aklestad, Chairman  
in support of  
SB 136  
by  
Forrest H. Boles  
President  
Montana Chamber of Commerce

February 3, 1983

It is not the intent of the business community to deny nor dispute unemployment compensation benefits to our fellow citizens who cannot work at their jobs because of situations beyond their control. There are seasons and cycles for employers which they cannot control.

Because of these accepted circumstances, the unemployment compensation programs were initiated and are supported by taxes on employers. The demand to increase these employer taxes are brought before this legislature each session.

Because of today's economic conditions, the demand on the unemployment compensation fund is at the breaking point and we are faced with borrowing monies from the federal government to supplement our own distressed program.

Senate Bill 136 asks that workers who voluntarily choose not to work because of a labor dispute be made ineligible to take

(more)

from the very fund needed to help those unemployed who had no choice. The current situation is unfair to those now dependent upon the fund and to employers who pay for it.

Montana's employer community is already faced with automatic unemployment compensation tax increases, plus other tax increases being proposed. Employers cannot avoid the .4% in tax rate ("trigger down" formula); the .1% increase for FUTA taxes, and the increase of \$200 base for state and a \$1,000 base for federal wages.

Employers have shown their concern for the unemployed Montanans by refusing to support the measure before this legislature which would have decreased benefits by five percent.

Today's economic conditions force us beyond the philosophical debate of whether employers should be taxed to provide income for those who would walk off their jobs voluntarily.

Instead, we must all be concerned with helping those who are unemployed despite their willingness to work. This help must come from our existing programs and available funds. To strain that fragile structure at this time seems inappropriate.

We would urge this committee to consider SB 136, as amended, in light of current conditions; then recommend that it pass this session. We support this bill in its amended form.

/ssg

# Billings Area

CHAMBER OF COMMERCE



## TESTIMONY IN SUPPORT OF SENATE BILL 136

The Billings Area Chamber of Commerce supports Senate Bill 136.

The Chamber realizes that involuntary unemployment has a critical impact on a worker and the worker's family, and that there is a need to assist victims of such a situation until a new job can be found.

However, the Chamber believes that to provide unemployment compensation to strikers, people who voluntarily quit working, is a violation of the basic philosophy of the unemployment insurance program and is a practice that should be halted.

This legislature is currently attempting to address the projected deficit condition of the state's unemployment insurance trust fund, a condition brought about by the high number of workers who, through no real fault of their own, have found themselves out of work. To possibly push this fund further into deficit by allowing people who have jobs but who voluntarily decide to walk off those jobs is an additional expense that should not be allowed to happen.

The Chamber urges your support of Senate Bill 136.

Testimony Presented By:  
David G. Goss, Director  
Governmental/Political Affairs  
Billings Area Chamber of Commerce

ANALYSIS OF BENEFITS FOR STRIKERS  
(1979 through 1982)

<u>Description</u>	<u>Number of Disputes</u>	<u>Estimated Benefits Paid</u>
All Labor Disputes	51	\$2,483,000
No Stoppage of Work	22	1,356,000
With Disqualification of:		
12 weeks	6	215,000
11	14	274,000
10	15	344,000
9	16	414,000
8	16	484,000
7	19	633,000
6	21	790,000
5	21	949,000
4	23	1,156,000
3	26	1,372,000
2	31	1,645,000
1	38	1,949,000



VARIOUS APPLICANT GROUPS RECEIVING SPECIFIC SERVICES  
AS A PERCENT OF INDIVIDUALS REGISTERED

FISCAL YEAR'S 1980 - 1981 - 1982 (COMBINED)

MONTANA - STATEWIDE

3 YEAR TOTALS	COUNSELING (1) INDIVIDUALS COUNSELED AT LEAST ONE TIME	INDIVIDUALS PROVIDED APTITUDE PERFORMANCE AND SELECTION TESTING	TOTAL REFERRED TO JOBS	TOTAL INDIVIDUALS PLACED IN NON - AGRICULTURAL JOBS
TOTAL ALL APPLICANTS	10.4	7.9	45.6	30.9
FEMALE	10.3	12.8	47.9	31.5
MINORITY	14.9	7.8	39.3	26.3
ECONOMICALLY DISADVANTAGED	34.0	10.4	50.5	37.5
HANDICAPPED	27.4	9.2	43.3	28.8
VETERANS	17.1	5.0	48.1	31.2

SOURCE: Employment Service Automated Reporting System (ESARS) Table 22 A

Exhibit A-1

LABOR DISPUTES IN MONTANA AFFECTING  
RECEIPT OF UNEMPLOYMENT BENEFITS  
1979

<u>Date Strike Started</u>	<u>Strike Settled</u>	<u>Employer</u>	<u>Union</u>	<u>Authority Issuing Last Decision</u>	<u>Decision</u>	<u>Weeks</u>	<u>Claimants</u>	<u>Potential Benefits Paid</u>
02-04-79	02-17-79	Department of Institutions	AFSCME	Board	No Work Stoppage	6	522	\$230,400
03-31-79	Unknown	Montana Red Cross Blood Center	Teamsters	Deputy	No Work Stoppage	Unknown	5	\$5,300
04-01-79	Unknown	Truck Management, Inc. (Garrett, Salt Creek, & Pacific International)	Teamsters	Board <sup>1</sup>	No Work Stoppage	2	18	\$1,600
04-26-79	06-19-79	Safeway, Buttrey, Albertson's Super Save, Keller Enterprises	Meatcutters	Board <sup>1</sup>	No Work Stoppage	8	121	\$74,780
05-23-79	07-02-79	Great Falls Gas Company	Plumbers & Pipefitters Machinists, Laborers Construction	Board <sup>1</sup>	No Work Stoppage	6	23	\$10,150
08-13-79	08-20-79	Anaconda-Deer Lodge Co.	Machinists	Deputy	Work Stoppage	1	15	-
08-14-79	Unknown	Green's Disposal	Laborers	Deputy	Violated Col- lective Bar- gaining Laws	Unknown	5	\$5,300
08-21-79	08-30-79	Bourke Motors	Teamsters	Deputy	Work Stoppage	1	5	-
08-27-79	06-04-80	Colstrip Public School	Operating Engineers	Deputy	No Work Stoppage	26+	11	\$24,280
09-10-79	Unknown	Hughes Air West	Airline Employees Assoc.	Deputy	Work Stoppage	Unknown	5	\$5,300*
09-17-79	09-24-79	Sam Wallace Construction	Plumbers	Deputy	Work Stoppage	1	6	-
10-23-79	10-29-79	Anaconda School District	Operating Engineers	Deputy	Work Stoppage	1	42	-
12-06-79	01-14-80	Business Machines	Machinists & Aerospace Workers	Board	No Work Stoppage	5	6	\$2,100
12-08-79	Unknown	<u>Nordco Drum</u>	Sheetmetal Workers	Deputy	Directly interested in dispute	Unknown	1	\$1,100*

LABOR DISPUTES IN MONTANA AFFECTING  
RECEIPT OF UNEMPLOYMENT BENEFITS  
1980

<u>Date Strike Started</u>	<u>Strike Settled</u>	<u>Employer</u>	<u>Union</u>	<u>Authority Issuing Last Decision</u>	<u>Decision</u>	<u>Weeks</u>	<u>Claimants</u>	<u>Potential Benefits Paid</u>
01-08-80	03-04-80	Exxon, Farmer's Union, Conoco Westco, Phillips	Oil, Chemical & Atomic Workers	Deputy	No Work Stoppage	9	530	\$415,350
01-08-80	03-10-80	Westco, Cut Bank	Oil, Chemical, & Atomic Workers	Deputy	Work Stoppage	9	39	\$30,600*
01-14-80	03-14-80	Eastern Montana College, MSU & U of M	Laborers, Plumbers & Electricians	Deputy	No Work Stoppage	9	217	\$170,100
01-31-80	02-12-80	Kaiser Engineering	Craft	Deputy	Work Stoppage	2	4	\$400*
02-05-80	04-28-80	Gallatin Homes	Construction & General Laborers	Board	Lock-out	12	101	\$203,971 <sup>3</sup>
03-18-80	04-05-80	Coca Cola Bottling	Teamsters	Appeals Referee	Work Stoppage	3	22	\$4,300*
04-03-80	05-07-80	Northern Erectors Fred Early	Operating Engineers	Deputy	Work Stoppage	5	9	\$3,500*
04-04-80	04-19-80	Kaiser Engineering & Stratford Steel	Butte Building Trades	Deputy	Work Stoppage	2	3	\$300*
04-24-80	05-10-80	City of Billings	Teamsters	District Court <sup>2</sup>	Work Stoppage	2	325	\$31,800*
05-01-80	09-05-80	Great Falls Garages	Machinists & Aerospace Workers	Appeals Referee	Work Stoppage	19	106	\$186,900*
05-05-80	05-27-80	Billings Contractors	Laborers, Carpenters	Deputy	Work Stoppage	4	108	\$31,700*
05-19-80	05-31-80	Combustion Engineering	Boilermakers	Deputy	Found lack of work, not labor dispute	2	26	\$2,500
06-15-80	06-21-80	Anaconda (Wild Cat Strike)	Steelworkers Boilermakers	Appeals Referee	Work Stoppage	1	9	-
07-01-80	11-11-80	Anaconda	Steelworkers, Electrical Workers, Operating Engineers, Boilermakers	Appeals Referee	Work Stoppage	20	1200	\$2,233,500*

## 1980 (CONTINUED)

<u>Date Strike Started</u>	<u>Strike Settled</u>	<u>Employer</u>	<u>Union</u>	<u>Authority Issuing Last Decision</u>	<u>Decision</u>	<u>Weeks</u>	<u>Claimants</u>	<u>Potential Benefits Paid</u>
07-01-80	07-17-80	Assoc. Ind., Blgs. Truck Center, Yellowstone Ford, Town & Country, GMC Motor, Power Equip, Big Sky Inter.	Machinists	Deputy	Work Stoppage	3	13	\$2,500*
07-15-80	Unknown	Midland Dodge	Machinists	Deputy	No Work Stoppage	Unknown	16	\$18,800
08-15-80	09-15-80	Decker Coal	Mine Workers	District Court <sup>2</sup>	Work Stoppage	4	344	\$101,100*
09-22-80	10-10-80	Montana Power Company	Operating Engineers	Deputy	Work Stoppage	3	19	\$3,700*
09-22-80	10-18-80	Idaho Pole	Lumber Prod. & Industrial Workers	Board	No Work Stoppage	3	10	\$1,559 <sup>3</sup>
11-18-80	01-30-81	Rosauers Food	United Food & Commercial Workers	Board	No Work Stoppage	11	4	\$3,900

LABOR DISPUTES IN MONTANA AFFECTING  
RECEIPT OF UNEMPLOYMENT BENEFITS  
1981

<u>Date Strike Started</u>	<u>Strike Settled</u>	<u>Employer</u>	<u>Union</u>	<u>Authority Issuing Last Decision</u>	<u>Decision</u>	<u>Weeks</u>	<u>Claimants</u>	<u>Potential Benefits Paid</u>
01-15-81	02-18-81	Peabody Coal	UMW	Deputy	Work Stoppage	5	69	\$30,400*
03-04-81	03-13-81	Harlem S.D.	Harlem Education Assoc.	Deputy	No Work Stoppage	2	30	\$3,300
03-26-81	Unknown	Cummins N.W. Diesel	Teamsters	Deputy	Work Stoppage	Unknown	6	\$7,900*
04-03-81	06-02-81	Clawsen Manufacturing	Lumber Products Industrial Workers	Deputy	No Work Stoppage	8	11	\$8,500
05-11-81	08-22-81	Missoula County High School District	Missoula County High School Educ. Assoc.	Board	Work Stoppage	15	353	\$583,800*
05-17-81	06-05-81	Helena Auto Dealers	Machinists	Deputy	Participating & directly interested in the dispute	3	5	\$1,100*
06-01-81	06-16-81	Billings Contractors	Bricklayers	Appeals Referee	Work Stoppage	3	19	\$4,200*
06-30-81	Unknown	Town Pantry	United Food & Commercial Workers	Deputy	Work Stoppage	Unknown	9	\$11,900*
08-03-81	10-22-81	FAA	PATCO	Board <sup>1</sup>	No Work Stoppage	Union Decert.	28	\$126,563 <sup>3</sup>
10-26-81	12-05-81	Central Bus Company	Teamsters	Board	Violations of collective bar- gaining provisions	2	10	\$1,100
11-01-81	Unknown	H. F. Johnson	Teamsters	Deputy	No Work Stoppage	26	12	\$33,000

LABOR DISPUTES IN MONTANA AFFECTING  
RECEIPT OF UNEMPLOYMENT BENEFITS  
1982

<u>Date Strike Started</u>	<u>Strike Settled</u>	<u>Employer</u>	<u>Union</u>	<u>Authority Issuing Last Decision</u>	<u>Decision</u>	<u>Weeks</u>	<u>Claimants</u>	<u>Potential Benefits Paid</u>
04-17-82	05-15-82	Gallatin Homes	Construction & Laborers	Deputy	Work Stoppage	4	71	\$25,600*
05-03-82	05-22-82	Assoc. General Contractors	Teamsters, Operating Engineers, Laborers, Carpenters, Painters, Cement Masons	Deputy	Work Stoppage	3	160	\$38,400*
05-13-82	Unknown	Greens Disposal	Teamsters	Deputy	No Work Stoppage	26	3	\$9,000
05-17-82	06-12-82	John R. Daily, Inc.	United Food & Commercial Workers	Board	No Work Stoppage	4	13	\$4,700
05-21-82	06-16-82	Northwest Airlines	Machinists & Aerospace Workers	Board	Work Stoppage	4	23	\$8,300*
06-28-82	07-12-82	Sirco Manufacturing	Lumber & Sawmill Workers	Deputy	Work Stoppage	2	3	\$400*
08-25-82	09-04-82	Butte Schools	Butte Teachers Union	Deputy	Work Stoppage	2	94	\$11,300*

- 1 - Appeal pending in District Court  
2 - Appeal pending in Supreme Court  
3 - Actual benefits paid from benefit statuses

\*Represents potential benefits paid only; no benefits were paid for this strike.

NOTE: When length of strike unknown, assume 13 week average duration of unemployment benefits.

- FOR PROJECTED BENEFITS CALCULATION -

Assume AWBA as follows: CY 1979 = \$88.29  
1980 = \$97.96  
1981 = \$110.26  
1982 = \$120.00

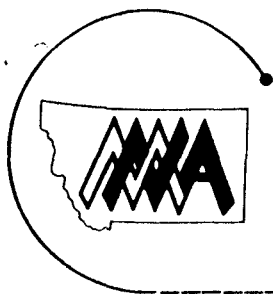
Assume 1 waiting week in which no benefits are paid.

## YEARLY AND GRAND TOTALS

YEAR	Number of Strikes	Authority Issuing Last Decision	Decision	Weeks	Claimants	Potential Benefits Paid
CY 1979	14	5 - Board 9 - Deputy	Paid: 7 - No Work Stoppage 1 - Violation of Law Not Paid: 5 - Work Stoppage 1 - Directly Interested	109	785	Est. Actual Paid: <sup>1</sup> \$353,910 Est. Not Paid: \$6,400 Total Pot. Paid: \$360,310
CY 1980	20	2 - District Court 3 - Board 4 - Appeals Referee 11 - Deputy	Paid: 5 - No Work Stoppage 1 - Lockout 1 - Layoff Not Paid: 13 - Work Stoppage	136	3105	Est. Actual Paid: <sup>1</sup> \$816,180 Est. Not Paid: \$2,630,300 Total Pot. Paid: \$3,446,480
CY 1981	11	3 - Board 1 - Appeals Referee 7 - Deputy	Paid: 4 - No Work Stoppage 1 - Violation of Law Not Paid: 5 - Work Stoppage 1 - Directly Interested	116	552	Est. Actual Paid: <sup>1</sup> \$172,463 Est. Not Paid: \$639,300 Total Pot. Paid: \$811,763
CY 1982	7	2 - Board 5 - Deputy	Paid: 2 - No Work Stoppage Not Paid: 5 - Work Stoppage	45	367	Est. Actual Paid: <sup>1</sup> \$13,700 Est. Not Paid: \$84,000 Total Pot. Paid: \$97,700
GRAND TOTAL	52	2 - District Court 13 - Board 5 - Appeals Referee 32 - Deputy	Paid: 18 - No Work Stoppage 2 - Violation of Law 1 - Lockout 1 - Layoff Not Paid: 28 - Work Stoppage 2 - Directly Interested	406	4809	Est. Actual Paid: <sup>1</sup> \$1,356,253 Est. Not Paid: \$3,360,000 Total Pot. Paid: \$4,716,253

NOTE: Total Potential Benefits Paid represents benefits paid regardless of the Department's determination to award benefits.

1 - Est. Actual Paid Benefits = those claimants determined eligible for benefits under labor dispute provisions of UI law x number of weeks minus 1 waiting week x AWBA.



# Montana Nurses' Association

2001 ELEVENTH AVENUE

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

## TESTIMONY SB 136

The Montana Nurses' Association strongly opposes this bill. The right to strike as a means of economic pressure on an employer is a fundamental right of all organized workers of America; it is sometimes the only way to persuade an employer to reach agreement on a contract. To arbitrarily deny unemployment benefits to workers involved in a strike is unfair, and puts undue pressure on employees to reach settlement prior to strike at any cost.

Employees who decide to withhold services from an employer do not make the decision to do so lightly; only after much consideration of the status of negotiations. Almost always a mediator is involved in the bargaining process prior to a decision to strike. He/she assists the parties to attempt resolution of differences; if unsuccessful, impasse results. Organized employees then have only two choices: accept the employer's last offer or strike.

If the decision to strike is made employees must retain the right to unemployment benefits as long as a stoppage of work does not result from the strike. If there is no work being done by the employer, no unemployment benefits need be paid. However, if the employer keeps the business going and refuses work to employees on strike by refusing to bargain further on contract proposals, then striking employees must be paid unemployment benefits.

At this point a striking employees only leverage is the strike; if the right to strike is denied them by refusing earned unemployment benefits, collective bargaining is no longer equal between the employees and employers.

I urge you to kill this bill.

Respectfully submitted,

Eileen C. Robbins  
February 3, 1983





Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 136, BEFORE THE SENATE COMMITTEE ON  
LABOR AND EMPLOYMENT RELATIONS, FEBRUARY 3, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO.

I am here today in strong opposition to Senate Bill 136. This bill disqualifies workers on strike from unemployment insurance compensation for a twelve-week period.

This bill would be extremely damaging to labor-management relations in our state. Under current law, striking workers do not automatically receive unemployment insurance benefits. If striking workers cause a stoppage of work, they are not eligible for unemployment benefits. Both the employer and the striking workers suffer, so there is a good incentive for both sides to try to reach a satisfactory agreement. The current law does not give an advantage to either labor or management.

However, if an employer uses strike breakers so that the business goes on substantially as usual, then the striking workers are eligible for unemployment benefits.

This bill distorts the collective bargaining process by upsetting the balance between labor and management which is maintained under the present law. Employers would be encouraged to hire strike breakers and would be given a definite advantage over striking workers. Nobody likes strikes, so the best law is the one which encourages a fair and rapid settlement. Current law provides for that.

TESTIMONY OF JIM MURRY  
SENATE BILL 136  
FEBRUARY 3, 1983

While this bill does not totally disqualify striking workers from unemployment benefits in the event of no work stoppage, it does disqualify them for twelve weeks, in addition to the existing one week waiting period. According to the Department of Labor, from 1979 through 1982, there were 52 strikes in Montana where unemployment insurance was an issue. The average duration of those strikes was a little over seven weeks. Only six of them were over twelve weeks, so in the majority of cases striking workers would not have received any unemployment benefits, even if they were entitled to them under the law. This bill would therefore clearly tip the balance to management during a strike.

What this bill really does is emphasize and distort the negative aspect of labor-management relations. It dwells on the instances where we cannot agree, and the result is a labor dispute.

But the truth is that labor-management negotiations go very well in Montana and in the nation. The overwhelming majority of those negotiations are settled with absolutely no labor dispute.

The 101 affiliated international unions of the National AFL-CIO are made up of more than 48,000 local unions. These local unions have negotiated more than 150,000 collective bargaining contracts. According to the United States Department of Labor, 98 percent of these contracts run their course without a strike or other interruption of work.

While we do not have the capabilities to make those kinds of statistical studies in Montana, we are convinced that our record is as good or better than the national record. Montana is a highly unionized state, and the result has been a very positive relationship between unions and the business community. The Montana State AFL-CIO is very proud of that.

TESTIMONY OF JIM MURRY  
SENATE BILL 136  
FEBRUARY 3, 1983

The current law works and works well for both labor and management.

Please retain the good balance which the law provides by voting against

Senate Bill 136.

Thank you.