

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

February 19, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on February 19, 1983, at 12:30 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present with the exception of Senator Blaylock who was excused.

SENATE BILL NO. 197:

Staff Attorney, John MacMaster, explained some proposed amendments to Senate Bill 197. The bill with the proposed amendments included is attached. (Exhibit No. 1)

J. MacMaster stated that he left in the bill what the administration needs to administer the law. He also stated that the tie-breaker amendment was left in the bill.

There was discussion of the amendments by the Committee.

Senator Galt made a motion to take Senate Bill No. 197 from the table. On a Roll Call Vote, the Committee voted 4-4 on the motion so SENATE BILL NO. 197 IS TABLED IN COMMITTEE. The Roll Call Vote is attached.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 1:10 p.m.



Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/19/8

[illegible]

SENATE COMMITTEE LABOR

Date 2/19/83 Senate Bill No. 197 Time 1:06

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER		✓
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH		✓
DICK MANNING		✓
GARY AKLESTAD, CHAIRMAN		✓

Marjorie Nichols
Secretary

Senator Gary C. Aklestad
Chairman

Motion: Senator Galt moved that SB #197 be taken
from the table.

(include enough information on motion—put with yellow copy of committee report.)

Exhibit 11
Submitted by Atty. J. A. Moller
February 19, 1983

Shute BILL NO. 197
Maguire

1
2 INTRODUCED BY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE VETERANS
5 AND DISABLED PERSONS EMPLOYMENT PREFERENCE LAW TO CLARIFY
6 THE NATURE OF THE PREFERENCE AND THE PROCEDURES FOR APPLYING
7 IT; AMENDING SECTIONS 10-2-201 THROUGH 10-2-206, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 ~~Section 1. Section 10-2-201, MCA, is amended to read:~~
12 ~~10-2-201. Purpose. The purpose of 10-2-201 through~~
13 ~~10-2-206 and Section 2 is to provide for preference of~~
14 ~~veterans, their certain dependents and unmarried surviving~~
15 ~~spouse of veterans, and certain disabled civilians in~~
16 ~~initial appointment and readjustment to employment and~~
17 ~~retention in employment in every public department and upon~~
18 ~~the public works of the state of Montana and of any~~
19 ~~county and city local government entity therein.~~

20 Section 1. Section 10-2-202, MCA, is amended to read:
21 "10-2-202. Definitions. For purposes of 10-2-201
22 through 10-2-206 and Section 1, the following definitions
23 apply:

24 ~~the preferred class is not a class of people who~~
25 ~~currently suffer employment discrimination or suffer discrimination~~

1 ~~the continuing effects of past discrimination against~~
2 ~~of physical or mental handicap~~
3 ~~the certain dependents of a veteran who~~
4 ~~for the spouse of a disabled veteran unable to use his~~
5 ~~preference as a result of a service-connected disability or~~
6 ~~the unmarried surviving spouse or other~~
7 ~~dependent of a veteran who died as a result of a~~
8 ~~service-connected disability or who died while on active~~
9 ~~duty.~~
10 ~~the Department means the Department of~~
11 ~~administration provided for in Title 2, Chapter 15, part 10.~~
12 ~~disability means a physical or mental condition~~
13 ~~which affects a major life activity such as walking, seeing,~~
14 ~~hearing, or speaking and which limits the person's ability~~
15 ~~to find and hold employment.~~
16 ~~disabled person means~~
17 ~~a veteran having a service-connected disability as~~
18 ~~determined by the veterans administration of the United~~
19 ~~States or~~

20 ~~the civilian having a disability as determined by~~
21 ~~the department of social and rehabilitation services~~
22 ~~the initial appointment to employment is the act of~~
23 ~~hiring a person not previously employed with that~~
24 ~~jurisdiction~~
25 ~~the public hiring authority means~~

1 (a) any department, office, board, bureau, commission,
2 agency or other instrumentality of the government of the
3 state of Montana; or
4 (b) any county, city, town, school district or other
5 unit of local government or any instrumentality of local
6 government.

7 ~~(c) any employment contract, agreement, or arrangement for~~
8 ~~employment or service established by the policies of~~
9 ~~jurisdiction, including a collective bargaining agreement,~~
10 ~~because a person's previous employment in that jurisdiction~~
11 ~~has been terminated as a result of a reduction in force or~~
12 ~~reorganization.~~

13 (d) the term "veteran" means persons:
14 (a) who served in the armed forces of the United
15 States in time of war or declared national emergency and who
16 have been separated from service upon under honorable
17 conditions other than dishonorable; or

18 (b) who after January 31, 1955:
19 (i) served on active military duty for more than 180
20 days or were discharged or released because of a
21 service-connected disability; and
22 (ii) were honorably discharged.

23 (e) the term "war" or declared national
24 emergency includes:
25 (i) the staff war

1 (b) The Spanish-American War
2 (c) The Philippine Insurrection
3 (d) World War I, between April 6, 1917, and
4 November 11, 1918, both dates inclusive;
5 (e) World War II, between September 16, 1940, and
6 December 31, 1946, both dates inclusive;
7 (f) The Korean conflict, military expedition, or
8 police action, between June 26, 1950, and January 31, 1955,
9 both dates inclusive; and
10 (g) The Vietnam conflict between August 5, 1964,
11 and May 7, 1975, both dates inclusive.
12 (h) the term "surviving spouse" means an unmarried
13 surviving spouse of a veteran
14 (i) the word "percent" means percent of the total
15 aggregate points of the examination referred to
16 Section A. Section 10-2-203, MCA, is amended to read:
17 "10-2-203. Preference in ~~statutory~~ appointment and
18 ~~employment to employees of the state or of any city or county of the~~
19 ~~in every public department and upon all public works of the~~
20 ~~state of Montana and of any county or city thereof the~~
21 ~~following statutory preference shall be preferred~~
22 ~~for: (1) preference shall be given to 30-2-204 in veterans~~
23 ~~disabled persons or certain dependents of veterans in~~
24 ~~statutory appointment and employment veterans their spouses~~
25 ~~and surviving spouses and the other dependents of disabled~~

-3-
End employment.

veteran (or certain
dependant of a
disabled veteran)

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1 veterans and disabled veterans recommended by the
2 rehabilitative services division of the department of social
3 and rehabilitation services. ~~Disability benefits shall be~~
4 ~~extended to applicants.~~

5 (2) Any loss of limb or other physical impairment
6 which does not in fact incapacitate does not disqualify any
7 disabled veteran or citizen provided he or she possesses
8 the business capacity, competency and education to
9 discharge the duties of the position involved.

10 (3) Those of the above described veterans who have
11 disabilities admitted by the veterans administration of the
12 United States to have been incurred in service in any of the
13 wars, military expedition or police action, whenever such
14 disabilities do not in fact incapacitate shall be given
15 preference in employment over other veterans.

16 Section 10-2-204, MCA, is amended to read:
17 "10-2-204. Credit for examination Administration of
18 preference. (1) When written or oral examinations are
19 required for employment of disabled veterans and their
20 spouses, their surviving spouses and other dependents shall
21 have added to their examination ratings a credit of 10
22 points. All other veterans, their spouses, surviving
23 spouses and dependents shall have added to their
24 examination ratings a credit of 5 points. If scored
25 procedures are used to establish an employment list and a

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1 ~~veteran or disabled person or certain dependents of~~
2 ~~veteran attain a passing score of 5 percentage points shall~~
3 ~~be added to his score unless he is a disabled person in~~
4 ~~which case 10 percentage points shall be added to his score.~~

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

11 (3) The benefits of this section are in addition to
12 and not in derogation of the preference in appointment and
13 employment or both given by 18-2-203. If scored procedures
14 are not used, a veteran, a disabled person or certain
15 dependents of veterans shall be appointed to the position
16 over others of substantially equal qualifications. Disabled
17 other persons shall be appointed to the position over veterans or non-disabled
18 certain dependents of veterans of substantially equal
19 qualifications.

20 (4) ~~During a reduction in force or reorganization~~
21 ~~veterans, a disabled person, or certain dependents of~~
22 ~~veterans shall be retained for employment over person~~
23 ~~without a claim to preference under this part with~~
24 ~~substantially equal job duties, qualifications, performance~~
25 ~~records and length of service unless the person without a~~

~~1 that a preference is a member of a class affected class any~~
~~2 this is evidence demonstrating past or present~~
~~3 underutilization of the affected class by the public hiring~~
~~4 authority involved.~~
~~5 (5) During the following a reduction in force a~~
~~6 veteran a disabled person or certain dependents of a~~
~~7 veteran shall be reappointed or employed at the same position~~
~~8 without a claim to preference under this part with~~
~~9 substantially equal qualifications, past performance and~~
~~10 length of service unless the person without a claim is~~
~~11 preferred to a member of an affected class and there is~~
~~12 evidence demonstrating past or present underutilization of~~
~~13 the affected class by the public hiring authority involved~~
~~14 for a veteran a disabled person or certain~~
~~15 dependents of veterans who not be appointed or reappointed~~
~~16 to a position over a person without a claim to preference~~
~~17 who is entitled to claim employment preference under the~~
~~18 veteran disabled person or certain dependents of a veteran~~
~~19 as set forth in this regulation.~~

20 Section 10-2-205, MCA, is amended to read:
 21 "10-2-205. ELIGIBILITY -- any of veterans established
 22 persons of certain dependents of veterans. (1) None of the
 23 benefits of 10-2-201 through 10-2-206 and Section 11 accrue
 24 to any person who refused to serve on active duty in the
 25 military service to which attached or to take up arms in the

1 defense of the United States.
 2 that no person who has not been a resident of Montana
 3 for at least a year immediately preceding an appointment to
 4 entitled to such preference
 5 13121 For a city or county employee no preference
 6 will be granted unless an applicant under 10-2-201 through
 7 10-2-206 is also a resident of the city or town or county in
 8 which employment is sought. It is the duty of a veteran a
 9 disabled person or certain dependents of a veteran to
 10 establish his eligibility for preference and to make his
 11 preference known to the public hiring authorities."
 12 Section 10-2-206, MCA, is amended to read:
 13 "10-2-206. Enforcement of preference. (1) Any person
 14 entitled to preference in 10-2-201 through 10-2-206 and
 15 Section 11 who has applied for any appointment or
 16 employment upon public works of the state of Montana or any
 17 county and city thereof or in any public department of the
 18 state and who has been denied employment or appointment and
 19 feels that the spirit of 10-2-201 through 10-2-206 has been
 20 violated and that such person is in fact qualified
 21 physically and mentally and possesses business expertise
 22 competency and education to discharge the duties of the
 23 position applied for may petition by due habeas corpus his
 24 rights under 10-2-201 through 10-2-206 and Section 11 may
 25 within 12 days of receipt of notice of the adverse decision

1 make a written request for appointment for the public hiring
2 authority. The public hiring authority shall provide written
3 explanation and shall deliver this explanation to the
4 veteran, the disabled person, or certain dependents of a
5 veteran within 30 days of the date of his request for
6 appeal.

7 (2) Within 30 days after the delivery date of the
8 written explanation, the veteran, the disabled person, or
9 certain dependents of a veteran may file a verified petition
10 with the district court of the state of Montana in the
11 county in which the work to be performed application is
12 filed. The petition shall set forth the facts of the
13 appointment, qualifications, competency, and each person's
14 honorable discharge or other qualifications warranting the
15 applicant to preference under 10-2-201 through 10-2-206 and
16 [Section 10-2-206].

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

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

5 (5) The Montana Rules of Evidence and Rules of Civil
6 Procedure apply to all court proceedings conducted under this
7 section.

8 NEW SECTION. Section 10-2-201. Rulemaking authority. The
9 department shall adopt rules to implement this part.

10 NEW SECTION. Section 10-2-202. Effective date. This act is
11 effective on passage and approval.

12 NEW SECTION. Section 10-2-203. Codification instruction.
13 Section 10-2-203 is intended to be codified as an integral part of

14 Title 10, chapter 2, part 2, and the provisions of section 10-2-204
15 apply to Title 10, chapter 2, part 2, and the provisions of

16 Title 10, chapter 2, part 2, apply to section 10-2-205.

-End-