

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 22, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, January 22, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members of the committee were present with the exception of Rep. Budd Gould who was previously excused by the chairman.

CONSIDERATION OF HOUSE BILL NO. 111: Hearing commenced on HB 111. Rep. Dave Brown, the chief sponsor of this bill, testified before the committee. He stated this is a small housekeeping bill left over from the special session.

Joe Brand, testified in support of the bill. He stated that he in the past sessions, he has been a strong advocate of different veteran's preference acts. Mr. Brand said he feels it is ironic that there hasn't been one veteran who has opposed any affirmative action programs for women. It seems ironic that the lobbyist for the ladies come up here opposing veterans preference legislation. He doesn't understand this because he has always supported the affirmative action programs.

Rich Brown, representing the Department of Montana Disabled American Veterans, testified in support of the bill. He said that during the 1983 special session of the legislature, everyone did their very best in a very quick period of time to adopt a fair and equitable veteran and handicapped preference statute and insure that the state of Montana hire only the most qualified employees. The legislature during this special session determined that preference should only apply in a tie breaker situation or in another words where the applicants for a job were so equal that a clear choice is not obvious. He said that the disabled veterans of Montana are asking that the preference act apply the same way that any other employment law would apply in the state of Montana -- universally and through the university.

George Poston, representing the Helena chapter of Disabled American Veterans, testified in support of the bill. He stated that as everyone knows, anytime a preference is given, it discriminates against someone else. The university system comes under the affirmative action program.

In that case, you are discriminating against the veterans. He stated that was the reasons why they support the bill.

Bob Durkee, representing the Veterans for Foreign Wars, testified in support of the bill. He said he feels the bill does correct an omission that occurred in the special session.

Bill Lindsey, representing the American Legion, also wished to go on record as supporting this bill. He said that it is their feeling that as long as the university system is using tax dollars (state and federal taxes) to support the system, they should also support the state and federal laws. He said the universities are glad to receive tax dollars to educate these veterans. Yet on the other hand, they want to slap them down when it comes to hiring.

Marg Green, representing the Montana Farm Bureau Federation, wished to go on record as supporting this bill. She submitted a copy of her testimony which was marked as Exhibit B.

Vivian Crabtree, representing the Governor's Committee on Employing the Handicapped, testified in support of the bill. To bring equity to the bill, she doesn't feel that anyone should be left out. She said that people who are severely disabled have a limited number of places that they are able to work. This would open up another area of possible employment. Because of the tax dollars that go into this, no one should be exempt from the preference.

James L. Schwind, representing himself, testified before the committee in support of this bill. A copy of his testimony was submitted and has been marked as Exhibit A.

At this time, Chairman Hannah turned the chair over to Rep. Bergene. Rep. Hannah had been called to testify on a bill which was being considered in another committee.

There being no further proponents of the bill, the committee heard testimony from opponents.

LeRoy Schramm, chief legal counsel for the Board of Regents of the Montana university system, testified in opposition to this bill. He stated that he was also speaking on behalf of Howard Fry who is president of Flathead Community College. He said this bill also includes local vo-techs and community colleges. Mr. Schramm listed five reasons why

the Board of Regents oppose this bill. We feel that the issue of coverage should be left alone. He feels that it should be given a chance to work. The preference is not insubstantial. He said we should look at the reason why education was excluded in the first place. It seems to Mr. Schramm that there are two basic reasons why education was excluded. One was the subjective factor and the other one being that the job done by educators is a highly sensitive job. The third reason he gave as to why they oppose the bill is if the bill passes as is, there really is no rationale to the crazy quilt coverage it will have. He feels that there is a rationale under the present law. Another thing he is concerned about is the question of who will be covered if they are, in fact, included. The way the bill reads now would allow for coverage of all students hired. This would not be limited only to work study students, he said.

Mr. Schramm continued his testimony by saying the bill would give more benefits to a group that already has significant benefits in the university system. He informed the committee that veterans get free tuition at the universities. This bill would turn our student aide program, insofar as its job programs, on its head and give a preference to these people who have most access to other aide. That would deny aide to the more needy students.

In summary, Mr. Schramm stated that he feels the compromise reached in the 1983 special session should be left alone. He feels that equity should be maintained among all the educational institutions. He doesn't think anything should be done to weaken the supervisor's motivation provided by affirmative action programs, and he doesn't feel they should jeopardize student aide programs for the most needy students.

There being no further opponents to the bill, Rep. Brown made a few comments in closing.

It was Rep. Brown's feeling that the one opponent who testified against this bill didn't offer any significant reasons as to why this legislation should not pass. The argument, as he understands it, is those people with veteran's preference aren't as qualified. Again, he emphasized that this preference is not applied until there is a tie-breaker situation involved.

Rep. Brown further pointed out that there are 9,762 employees of state government either working as full-time or part-time people who are covered by the preference law. There are 4,510 employees either in the administration faculty or classified sections of the university system who are not covered by veteran's preference. The argument involves the question as to how do we split up the local level education system from the university system. Rep. Brown feels this is an argument that has both political as well as factual overtones. He said that the bottom line is that we have created a situation amongst state employment that is distinctly not equal. All this bill does is to attempt to bring it back in line.

Rep. Keyser directed a question to Mr. Schramm. In this university system, in dealing with federal contracts over \$10,000, you are required by federal statute to basically state how you are going to give the preference to the Vietnam veteran. Can you tell us how the university system complies with that? Mr. Schramm said he could not give that requested information; however, he said that the federal statute referred to has two requirements. One is non-discrimination against veterans. Secondly, the affirmative action requirement does not enter into the hiring decision itself. It requires posting of all jobs where veterans are most likely to hear about the job.

Rep. Keyser asked if it doesn't state in the section of law that there shall be some requirements on the part of the entity entering into that contract. Mr. Schramm couldn't tell him the essence of the affirmative action program except that it doesn't say that you have to prefer veterans.

Rep. O'Hara wanted to know why the women's groups are not supporting these preference bills as referred to in earlier testimony. Rep. Brown stated although these groups do not oppose this legislation, they do not necessarily take a position. He feels they just don't want to get involved in this issue.

Rep. Darko wanted to know out of the 4,500 employees in the university system, how many of those are classified as employees who are not certified. Mr. Schramm stated that approximately 2,183 are classified as not certified.

Rep. Montayne said he has a little difficulty in that the universities have a student preference hiring program and we have a veteran's hiring program. He asked which one does the university solicit the most? He sees this as a double

standard. Mr. Schramm said they don't have to solicit students. There is no need to add any sort of affirmative action program for students.

Rep. Eudaily questioned whether any reference made to vo-tech centers in the bill should be deleted. Rep. Brown said that was the only questionable portion of the bill he could see.

There being no further discussion, hearing on HB 111 was concluded. Rep. Hannah resumed the chair and called for an executive session.

ACTION ON HB 111: Rep. Brown moved that HB 111 DO PASS. The motion was seconded by Rep. Montayne and discussion on the motion followed.

Rep. Brown gave a brief description as to what happened with this legislation in the special session. Basically, the original legislation that came into the special session precluded all that is in HB 111. This discussion points to much of the same arguments that were had during the special session. In addition, the original bill also applied to public schools. Rep. Brown did state that he would agree to delete the language dealing with vocational technical centers from the bill.

Rep. Addy expressed concern as to how the employee's preference will operate within the context of qualitative decision making on choices of professors.

Rep. Krueger moved to amend the bill by excluding any references to the vo-tech centers. The motion was seconded by Rep. Brown and carried unanimously. Discussion followed on HB 111 as amended.

Rep. Rapp-Svrcek stated that he has a problem with the student positions. He feels that if this bill were to pass, veterans could make a strong case that they would be qualified for virtually any position and, thus, would enjoy a monopoly on student positions.

At this time, Rep. Brown moved that HB 111 DO PASS AS AMENDED. The motion was seconded by Rep. Montayne.

Rep. Keyser said he had a few misgivings of what was done in the special session in regards to this bill. He thinks

that classification was placed in the bill when it shouldn't have been. He went on to say that one of the things that should be raised is the subjectivity of the people doing the hiring. He said this is only used in the case of a tie-break. Rep. Keyser feels strongly that the interviewer who is doing the hiring wants a particular person, that person will, in fact, be hired.

Following further discussion, the question was called and the motion to pass the bill as amended carried 16 to 2. Representatives Addy and Rapp-Svrcek voted against the motion.

ADJOURN: There being no further business, and a motion having been moved and seconded, the meeting was adjourned at 9:45 a.m.

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REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/22/85

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NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/22/85 BILL NO. HB 111 TIME 9:45

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Brown moved that HB 111 DO PASS AS AMENDED. The  
motion was seconded by Rep. Montayne and carried 16 to 2.

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Exhibit A  
HB 111  
1-22-85

Name: James L. Schwind

Date: January 22, 1985

Address: 1918 Wilder, Helena, Montana, 59601

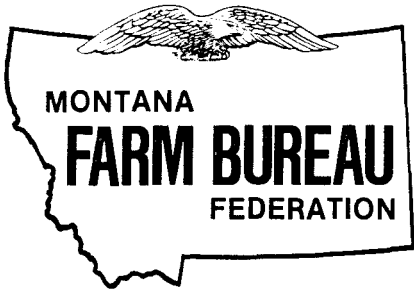
I do not represent anyone.

I support HB 111.

There are two types of rules in our society: written and unwritten. HB 111 is a written set of rules dealing with employment. I'd like to ~~talk~~ talk about some of the unwritten rules of employment. Some of them are not very pretty, but, I think are facts of life. There is more that goes in a personell man's decision on who he is going to hire than just education, experience, and attitude and that is a gut feeling of preference. Another way of saying this is "It isn't what you know, it's who you know." If I were to be hired for a job, I want to be wanted, ~~with~~ points or no points.

I would have problems if I were to force myself into a job through the courts. They have ways to make life uncomfortable for me. If I were five minutes late for work, they could fire me. I would be last in line for promotions. If I wanted to attend a funeral at 2 p.m., they wouldn't have to let me go.

James L. Schwind



HB 111  
502 South 19th  
Bozeman, Montana 59715  
Phone (406) 587-3153

EXHIBIT B  
1/22/85

TESTIMONY BY: Marg Green  
BILL # HB 111 DATE Jan 22 Jan 85  
SUPPORT X OPPOSE \_\_\_\_\_

The Montana Farm Bureau is in favor of HB 111. Our policy states we desire a Veterans Preference Bill that is as similiar as possible to the Federal Veterans Preference Bill. This bill is the nearest we have seen to that position. The Montana Farm Bureau wishes to go on record in favor of HB 111 and we urge this committee to give it a "Do Pass".

Thank You

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SIGNED

VISITOR'S REGISTER

HOUSE JUDICIARY

COMMITTEE

HOUSE BILL 111

DATE 1/22/85

SPONSOR Rep. Dave Brown

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Doc Bradford	812 Saddle Drive	Self	X	
W. Bell Lindsay	1210 Holman Rd	American Legion	X	
Tim Brown	1101 8th Helena	DAV	X	
Richard Wacker	P.O. 9455 Missoula	Western College Coalition		X
John ...	PO. 11, Helena	Montana Farm Bureau	X	
George Poston	6010 N. 12 West	DAV	X	
McKormey	622 Hillside	Board of Regents		X
Bob Durkee	Helena	UFEW	X	
Quinn Eromann	Helena	Mont. School Bd Assoc.	<del>NO</del>	POSITION
Jim Schwinn	1918 Wilder	Self	X	
Chris ...	515 8th Helen	Mont Fed of Teachers		

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# STANDING COMMITTEE REPORT

January 22

85

19.....

Page 1 of 2

**SPEAKER:**

MR. ....

**JUDICIARY**

We, your committee on .....

**HOUSE**

having had under consideration ..... Bill No. **111**

**FIRST** reading copy ( **WHITE** )  
color

**UNIVERSITIES, COLLEGES, & VO-TECHS TO APPLY EMPLOYMENT PREFERENCE**

**HOUSE**

Respectfully report as follows: That ..... Bill No. **111**

be amended as follows:

1. Title, line 5.

Following: "EDUCATION,"

Insert: "AND"

2. Title, line 6.

Strike: ", AND" through "PROGRAMS" on line 7.

3. Page 3, following line 21.

Strike: subsection (vii) in its entirety.

Reletter subsequent subsections.

4. Page 4, line 5.

Strike: "(ix)"

Insert: "(viii)"

~~DO PASS~~

(continued)

Page 2 of 2

5. Page 4, line 3.

Strike: "(ix)"

Insert: "(viii)"

6. Page 5, line 24.

Strike: "postsecondary" through "program,"

7. Page 6, line 7.

Following: "system"

Insert: "a postsecondary vocational technical center or program,"

AND AS AMENDED,  
DO PASS