



State Administration, Public Retirement, and Veterans' Affairs Interim Committee

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56th Montana Legislature

SENATE MEMBERS

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E.P. "PETE" EKEGREN
DON HARGROVE
GLENN A. ROUSH

HOUSE MEMBERS

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CAROL WILLIAMS

COMMITTEE STAFF

SHERI HEFFELFINGER
RESEARCH ANALYST
JOHN MacMASTER, ATTORNEY
DAVID NISS, ATTORNEY
JOANN JONES, SECRETARY

MINUTES

MILITARY AND VETERANS' AFFAIRS SUBCOMMITTEE
CAPITOL BUILDING
HELENA, MONTANA
SEPTEMBER 14, 2000

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

COMMITTEE MEMBERS PRESENT

Sen. Don Hargrove, Chairman
Sen. Glenn A. Roush
Rep. Edith J. Clark
Rep. Carol Williams

STAFF PRESENT

Sheri Heffelfinger, Research Analyst
David Niss, Attorney
Jo Ann Jones, Secretary

VISITORS

Visitors' list, Attachment #1.

COMMITTEE ACTION

- C Approved legislation to protect Montana resident status for hunting and fishing license while on active duty in another state
- C Approved legislation to amend the law so that a 100% disabled veteran can

register a truck used to haul a camper or travel trailer for the \$5 special fee

- C Approved legislation to amend current law so that a funeral home may be relieved of contingent liability in the release of unclaimed veterans remains
- C Approved legislation to amend current law so that a 100% disabled veteran may substitute the Purple Heart special plate, if qualification is met, for the special fee
- C Approved a resolution to request an interim study on veterans' issues
- C Approved a letter being sent to Montana's Congressional delegation expressing concern over the release of 89,000 VA records to the FBI

CALL TO ORDER AND ROLL CALL

Sen. Hargrove called the meeting to order at 9:05. Roll call was noted, see Attachment #2. Rep. Clark moved adoption of the August 3, 2000, minutes. The minutes were approved by acclamation.

BILL TO AMEND RESIDENT HUNTING LICENSE PROVISIONS FOR MILITARY

Exhibit #1: LC hunt

Sheri Heffelfinger, staff, said the issue first arose to Congressional staff and was transferred to staff at Legislative Services Division. The essence of the bill appears on page 2 of LC hunt and is to change Section 1 (1) (b) to "does not forfeit that status as a resident."

David Niss, staff attorney, said the bill would not now affect the legality of the possession of both a Montana resident license and a resident license from another state. The change could not be raised as a defense by any individual currently being prosecuted or at least subject to the prohibition in subsection 4 (d), that a person with a Montana resident hunting license cannot legally possess that resident hunting license and a resident hunting license from another state. The bill would not affect anyone who legally possesses a Montana hunting license today.

Sen. Hargrove asked if there would be legal or constitutional problems to make the effective date retroactive. Mr. Niss said he does not believe there to be any

constitutional difficulties with making the bill retroactive. However, the practical difficulties are that the Subcommittee doesn't know all the facts of every current case, or how many current prosecutions there are, or even if there are any. He said he cannot recommend a retroactive applicability date.

Sen. Roush said he sees no problem with keeping the applicability date as written. It may cause some unintended problems if it is made retroactive. He asked why dependents are included. Sen. Hargrove said that provision was qualified by the requirement that the other state would give hunting privileges to the dependents, too.

Mike Hankins, Lewis and Clark Veterans Council, said he believes there would be public outcry to discover that dependents no longer living at home could take advantage of this provision. He said anyone on active duty should be entitled, but not necessarily their dependents. Sen. Hargrove said it would depend on the other state's definition of dependent and whether that dependent was given hunting privileges.

Ms. Heffelfinger said current law states that dependents are still Montana residents. This law merely states that dependents would not be denied resident licenses because another state gave them resident hunting privileges.

Dan Cochrane, Vietnam Veterans of America (VVA), Chapter No. 626, said his concern involves persons on active duty in Montana and their dependents flying in to hunt. He asked how this would be monitored. Mr. Niss said the Department of Fish, Wildlife and Parks are not the prosecutory agent, so it would be difficult to monitor through the state.

Ms. Heffelfinger said the scope of this bill is limited and speaks only to Montana residents, and prevents them from losing their residency status because another states grants them privileges.

Sen. Hargrove called for the vote. The bill was approved on unanimous voice vote.

Sen. Roush volunteered to carry the legislation.

BILL TO AMEND VEHICLE REGISTRATION FEE FOR 100% DISABLED VETERANS

Exhibit #2: LC haul (September 5 draft)

Exhibit #3: LC haul (September 12 draft)

Mr. Niss said the issue involves 61-1-332, MCA. The issue arose from a 100% disabled veteran who needed a vehicle to pull an RV trailer that is larger than the allowed GVW. He said the legislation hinges on definitions. In the September 5 version, he thought he had gone too far because it includes the expansion of the authorization of the \$5 plate, in addition to a passenger vehicle or truck with a 1,000 GVW, to a truck used to haul an RV. He decided not to change the definition of truck because of previous Subcommittee discuss in regard to the prohibition against someone being able to register a commercial vehicle under that statute. Raising the GVW limit still raises the possibility of the abuse of the law. Recreational vehicle is a travel trailer but is also a self-propelled vehicle. The September 12 draft states a truck used to haul a camper or travel trailer used for recreational purposes.

Sen. Hargrove asked if the word "haul" is defined in the draft. Mr. Niss said that it is not. Sen. Hargrove said "haul" can mean carried on the back of a truck, or pulled behind. A veteran might use a commercial truck once or twice a year to pull a travel trailer. Mr. Niss said the terminology is indistinct, but he can make a clearer distinction by stating that it is normally used for recreational purposes. Sen. Hargrove suggested the wording be "pull" instead of "haul" because that may imply that an item may be carried. Mr. Niss said if the word "pull" is used, then the word "camper" should be eliminated because most types included in legal definitions elsewhere in code are the cab-over types.

Sen. Hargrove asked if the term "normally used" should be included, and said that he didn't think it should be. It may complicate things, e.g., if the owner drives it down to fill it with gas, is he or she technically violating the law? Mr. Niss said the use of the word "normally" does affect other uses.

Sen. Hargrove said the intention is not to police the life of a disabled veteran and the

Subcommittee is trying to say that if a disabled needs a larger vehicle to pull an RV, Montana will allow that.

Sen. Hargrove asked if a motor home qualifies for the \$5 plate. Ms. Heffelfinger said no.

Sen. Hargrove asked how many disabled veterans are residents of Montana. Jim Jacobsen, Montana Veterans Affairs Division, said there are approximately 10,000.

Sen. Hargrove suggested leaving the wording as is and including the term "self-propelled." Mr. Niss said the September 12 draft includes self-propelled RVs.

Mr. Niss summarized the change to the wording to including a list of the vehicles falling under the \$5 fee are a motor home or a truck used to haul a travel trailer.

Sen. Hargrove asked for a vote on the amendment, and it passed on a unanimous voice vote.

Sen. Hargrove asked for a vote on the September 12 bill draft as amended. It was approved on a unanimous voice vote. Rep. Clark volunteered to sponsor the bill.

REQUEST FOR AMENDMENT IN STATUTE ALLOWING 100% DISABLED VETERANS TO PURCHASE LICENSE PLATES WITHOUT PAYING TAX

Exhibit #4: Copy of letter to editor by Herb Ballou, Military Order of the Purple Heart

Exhibit #5: Information substantiating the potential closure of Ft. Harrison by Herb Ballou

Herb Ballou, Military Order of the Purple Heart, distributed Exhibits #4 and #5, and explained that he is qualified for a disabled veteran plate on which no tax is paid because is a 100% disabled veteran, but he would prefer a Purple Heart plate. Current state law states that any special plate other than the 100% disabled veteran plate is subject to all fees and taxes of regular license plates. He said that he had to pay \$374 to license his new van in order to receive a Purple Heart plate.

Ms. Heffelfinger said there is a \$25 fee for disabled veterans plates but Purple Heart plates are subject to all fees and taxes plus an extra \$10 fee that goes to the support and maintenance of the veterans' cemeteries.

Sen. Hargrove said the Subcommittee will consider this issue later.

BILL TO RELIEVE CONTINGENT LIABILITY IN CERTAIN CIRCUMSTANCES REGARDING THE DISPOSITION OF A VETERAN'S REMAINS

Exhibit #6: LC liab

Ms. Heffelfinger said Exhibit #6 relieves funeral homes of simple negligence in situations of unclaimed remains of deceased veterans. The funeral home must maintain custody of the remains for at least 10 years, and are required to take ordinary steps to contact the next-of-kin. After that, the remains may be transferred to the custody of a recognized veterans' organization. Ms. Heffelfinger said that at least one funeral home had some concerns. Steve Yeakel, Director of the Montana Funeral Homes Association, circulated the bill draft but was unable to attend the Subcommittee meeting. Mr. Yeakel told her that he had some questions but they would not lead to opposition to the bill. The Association will not be strong supporters, but they won't be opponents, either.

Mr. Hankins said the VVA had reluctantly agreed to support this bill. They have thoroughly researched the bill and discussed it with various funeral home directors. The basic concerns the funeral home directors had were minor, and were always concerned with contingent liability issues. The proposed bill would be a great relief, generally speaking, because some unclaimed veterans' remains have been in storage for 70 years. He said the only real concern is the 10-year waiting period before release. If there is a divorce and the ex-wife does not claim the remains, there may be very minor children at home and, at some point in time after achieving their majority, may want to claim their father's remains. The 10-year period wouldn't allow those children

the opportunity to reach their majority, so the recommendation is to change the time period to 20 years.

Sen. Hargrove asked if the 10-year period had a specific reason for its inclusion. Mr. Niss said the first time period that was discussed was five years and, after discussion with a funeral home director, Brent Anderson, the period was increased to ten years. He said the extension of that time period would give the mortuary more time and more peace of mind about the release of remains. Sen. Hargrove said Mr. Hankins had raised a valid point about very minor children.

Sen. Roush asked if there is a charge involved in the storage of unclaimed ashes. Sen. Hargrove said he is not aware of any charge that might be involved. All indications are that the funeral homes would be overwhelmingly grateful for the passage of this bill. Ms. Heffelfinger said Mr. Anderson had mentioned a \$75 a month storage fee but had no answer when he was asked if the fee would be imposed if someone tried to claim remains after many years' storage, not having known the remains hadn't been claimed.

Mr. Hankins said if an indigent veteran dies at the hospital, the funeral homes split the bill, generally speaking. If there would be storage fee, although he couldn't conceive of that occurring, there would have to be a provision in the bill that the mortuary agrees to a waiver. He recommended that the mortuary not hold the veterans' organization liable for any bills.

Mr. Jacobsen said there are both federal and state benefits of which the funeral homes avail themselves when necessary. There are expenses involved in opening and closing graves but most veterans have a federal benefit that covers it. The headstone itself is free, but it has to be properly encased in concrete. There is a \$70 benefit for that from the county but the actual cost of the work is rising behind that figure. The requirement for a vault adds another \$85-\$100 cost.

Sen. Hargrove asked if the bill draft could be amended to state that by accepting the remains, the veterans' organization does not accept any monetary responsibilities. Mr. Niss said that because it is unknown whether any mortuaries are currently imposing storage fees, the inclusion of that language could interfere with a contract. By stating that the organization is not accepting liability, the contract will stand and someone will owe the money, but it won't be the veterans' organization. Sen. Hargrove said that wording would be appropriate.

Sen. Roush asked if the license fee fund could help with a rare case. Mr. Jacobsen said only one minor provision may help on a case-by-case basis to waive the opening and closing fee.

Rep. Clark asked how many remains are in storage. Mr. Hankins said there are probably 750-800 total in the state and, of those, probably less than 40 are pre-World War II veterans. He said they recognize that the organization might have to help in the event that the family took the benefit and left the veteran unburied because it has been resolved not to ask the state for money, and they have dealt with veterans' expenses before. It's not an open-and-closed situation but if funding can't be received from another charitable source, then the organization will pick up the cost for pre-WWII burials.

Mike Hampson, President, VVA, Chapter No. 626, asked if the burial benefits have to be used for burials. Mr. Jacobsen said the benefit goes to the family or the funeral home. Mr. Hampson said if it was determined that the benefit was not used for burial, possibly an attempt could be made to recoup the money.

Sen. Hargrove instructed staff to include language that the organization does not assume a monetary obligation and to change the time period to 20 years.

Sen. Hargrove called for a vote on the amendment and it passed on unanimous voice vote.

Sen. Roush said he would feel more comfortable if the funeral directors would agree to waive fees. Sen. Hargrove said you can't demand that a commercial enterprise not charge fees.

Mr. Hankins said the funeral directors only have to sign the agreement, turn over the remains to the veterans' organization, and the organization will do the rest. The funeral home will be notified when burial has taken place.

Mr. Niss said the relief of liability for the mortuary increases the standard from simple negligence to gross negligence in order to hold the mortuary liable for improper disposal of the remains. This is not an immunity-from-suit bill, not is it a bill that provides immunity from willful, wanton or malicious disposal of the remains.

Sen. Hargrove called for a vote on the bill, as amended. It was approved on a unanimous voice vote. Sen. Roush volunteered to sponsor the legislation.

STUDY BILL FOR NEXT INTERIM

Exhibit #7: LC reso

Ms. Heffelfinger said discussion during the last meeting was whether a bill or a resolution should be the vehicle. She said that she has now been informed that a bill requires its own fiscal note, but not required as a resolution. Sen. Hargrove asked if a resolution was required. Ms. Heffelfinger said that was a decision for the Subcommittee because a resolution is a request to the Legislative Council, but is not binding.

Ms. Heffelfinger summarized the "whereas" clauses in Exhibit #7, and said that she has not had the opportunity to conduct research to confirm that the Veterans' Administration (VA) has released records to the FBI. Sen. Bartlett said she has verified that this has been done. She has requested that a Congressional research paper be done to compare the term "incompetent" in the Brady Bill as to how the VA utilizes that term.

Ms. Heffelfinger said six study goals are listed in the "Be It Resolved" section of Exhibit #7. She said she has received VA budget figures that are nationwide in scope, and has received nothing specific for the VA facility in Helena. Scott Seacat, Legislative Auditor, told her that finding the shift of costs for mental health care to Warm Springs would be like finding a needle in the haystack but his office would pursue it, if desired. Sen. Hargrove said he wanted that included in the bill.

Ms. Heffelfinger said Mr. Seacat told her that they have information on grant programs for every state and it would be very easy to comply with the provision on designing a grant program to support Montana's veteran services.

Ms. Heffelfinger said the rest of the bill allows non-legislative members to serve on a subcommittee, advisory committee, or study group.

Sen. Hargrove called for a vote on the resolution. It was approved by unanimous voice vote. Sen. Roush agreed to sponsor it.

OTHER BUSINESS

Mr. Hankins invited the Subcommittee to attend the Homeless Outreach Project 2000 to be held at Memorial Park on September 15. He said their operating budget is \$630.45 and he has no idea of what the attendance may be. He said that if this project is to continue, it is going to have to get some help from somewhere.

Sen. Hargrove said it may be appropriate to insert a clause regarding homeless veterans in Exhibit #7.

Sen. Hargrove recommended a letter be drafted to Congressional members expressing concerns over the release of personal information to the FBI from the VA. Subcommittee consensus was that the letter be drafted.

Mr. Hankins said one ramification of that information release is that a veteran who has a VA-determined mental deficiency will always have that designation on file. He said he has had phone calls from all over the country expressing concern. One call was from a minister in Washington who was judged mentally deficient in 1958 and now, although he has successfully completed higher education and holds a position of responsibility in his city, was prohibited from purchasing a shotgun as a gift for his 12-year-old son because of that earlier designation.

Sen. Hargrove instructed staff to include that provision in the letter, too.

Ms. Heffelfinger asked if Subcommittee intention was just to express concern, or to ask for information. Sen. Hargrove said just express concern. Ms. Heffelfinger said she would forward a draft for consideration and recommended that Subcommittee members sign it individually.

Pat Crowley, Veterans Service Officer, said the adjudication of mental deficiency could affect even the purchase of insurance.

Dan Cochrane, VVA, said that it may also affect the acquisition of a drivers license, a passport, and voting.

Dan Antoniette, state legislative chairman, VFW, said that Kosovo veterans should be included under the provisions of HB 13 from 1997, and should be included under the Veterans' Preference Act. Sen. Hargrove asked if that could be done. Ms. Heffelfinger said she would have to research the issues. Sen. Hargrove requested that she report back directly to him.

Sen. Hargrove said adding the People Heart people to the list of those who qualify for disabled veterans plates creates a problem because there is a wide spectrum of injuries that qualify for a Purple Heart. He asked the Subcommittee if there would be objection to change the wording that a 100% disabled veteran can have either that plate

or a Purple Heart plate, if that qualification is met. There were no objections. Ms. Heffelfinger pointed out there are several more categories for special plates for veterans. Without objection, Sen. Hargrove instructed her to draft the language that a 100% disabled veteran can substitute a Purple Heart special plate for the disabled veteran plate, if qualification is met. Rep. Clark said she would carry the bill.

Sen. Hargrove said Montana law allows certain disabled persons to hunt from a vehicle. Some counties are denying the option while others are allowing it. The strict interpretation is that the disabled person must be in a wheelchair. He said Rep. Shockley will bring the issue forward during the next session.

Mr. Cochrane said he had a special permit by doctor's order that he be no further than 300 feet from his vehicle because of previous hip surgeries. His doctor has informed him that if he breaks his hip again, there will be fixing it again. He said that not all disabilities show on the outside to the casual observer.

Mr. Hampson said one reason the veterans' organizations are asking to participate with the committee next interim is so there will be a legacy of veteran involvement left for the younger ones coming up.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 11:40.

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