

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - 1st SPECIAL SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Senator Eleanor Vaughn, on January 7, 1992, at 3:05 p.m.

ROLL CALL

Members Present:

Eleanor Vaughn, Chairman (D)
Bob Pipinich, Vice Chairman (D)
John Jr. Anderson (R)
Chet Blaylock (D)
James Burnett (R)
Harry Fritz (D)
Bob Hockett (D)
Jack Rea (D)
Bernie Swift (R)

Members Excused: Bill Farrell (R)

Staff Present: David Niss (Legislative Council)

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None.

HEARING ON SENATE BILL 2

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek told the Committee Senate Bill 2 was introduced at the request of the Secretary of State's Office and the Department of Justice and the Attorney General's Office. He gave a history of the determination made based on the results of Montana's census which would eliminate one congressional seat. If the Supreme Court were to rule against Montana it would be necessary to revert back to the situation of one seat. He told the Committee Senate Bill 2 would deal with the problem created by the possibility of (in the middle of this election cycle) going from two seats to one seat.

Proponents' Testimony:

Beth Baker, Deputy Attorney General, explained about the status of the pending law suit. She explained a three judge district court in October ruled the statute which underlies this process to be unconstitutional and void. The case was appealed

directly to the United States Supreme Court. Oral arguments are scheduled for March 4, 1992. She told the Committee she anticipates it is unlikely the court will reach a final decision before the filing deadline of March 19, 1992. The court's decision will be by the end of June.

Secretary of State, Mike Cooney spoke in favor of Senate Bill 2 from prepared testimony (Exhibit #1 and Exhibit #2).

Nancy Harte, Executive Director of the Montana Democratic Central Committee spoke in favor of the bill. Ms. Harte told the Committee the Montana Democratic Party has been working with the Secretary of States office and the Attorney General's office on this issue. (Exhibit #3)

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Fritz asked Ms. Baker what the argument was being used to keep two seats. Ms. Baker explained the Constitution requires representatives be apportioned among the states according to their perspective populations. She told the Committee under that language the United States Supreme has held that "congressional districts must be as nearly equal as possible in population". Which ideally would be the countries population by 435 to obtain an ideal size district. In this case that ideal size would be 572,466. Montana with one district exceeds that ideal by 40%. She explained there is another method available to the Congress which would reduce that disparity to better achieve the ideal. In all of the Supreme Courts decisions articulating the standard of 'one person one vote' population equality per district has been the sole objective. The Supreme Court has never construed the Constitution as it applies to the duties of the United States Congress to apportion representation. It has construed the same article of the Constitution to apply to state legislatures when they divide their state into Congressional Districts. The simple argument Montana has made is there is no basis to distinguish between the duties of the Congress and the duties of the state legislatures. They both have an equal responsibility in making the districts as equal as possible.

Senator Blaylock asked if the same argument has been made and if the Supreme Court had ruled on this before. Ms. Baker stated it had not. She told the Committee the only other time with an argument similar to Montana's was the state of Massachusetts in a case currently pending. The state of Massachusetts also filed a suit which challenges the constitutionality. Their argument parallels Montana's to the extent of the 'one person one vote' rule, but they disagree in terms of which method is best to meet that standard. They have argued "method of major fractions" should be adopted.

Senator Vaughn asked Mr. Cooney what effect this would have on absentee ballots. Mr. Cooney state there would be very few problems. He deferred the question to Garth Jacobson, Chief Legal Counsel for the Secretary of State. Mr. Jacobson explained absentee balloting starts on April 17. The last day the Secretary of State will accept nomination petitions will be April 10. He explained there is a weeks period of time in which any adjustments which need to be made to the absentee ballots can be made.

Senator Vaughn asked Mr. Jacobson if the extended filing time relates strictly to the Congressional seats and no other candidate. Jacobson told the Committee that was correct. He explained it is exclusively for the Congressional races. It will have no impact on any other races.

Closing by Sponsor:

Senator Mazurek did not choose to close.

EXECUTIVE ACTION ON SENATE BILL 2

Motion:

Senator Pipinich moved Senate Bill 2 DO PASS. Senator Hockett seconded the motion.

Discussion:

NONE.

Amendments, Discussion, and Votes:

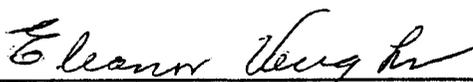
NONE.

Recommendation and Vote:

Senate Bill 2 PASSED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 3:20 p.m.



SENATOR ELEANOR VAUGHN, Chairman



LINDA CASEY, Secretary

ROLL CALL

STATE ADMINISTRATION COMMITTEE

January 7, 1992

DATE

52nd LEGISLATIVE SESSION (Special session)

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ANDERSON	X		
SENATOR BLAYLOCK	X		
SENATOR BURNETT	X		
SENATOR FARRELL		ABS	EXCUSED
SENATOR FRITZ	X	ABS	
SENATOR HOCKETT	X		
SENATOR REA	X		
SENATOR SWIFT	X		
SENATOR PIPINICH, V. Chair	X		
SENATOR VAUGHN, Chair	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 7, 1992

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 2 (first reading copy -- white), respectfully report that Senate Bill No. 2 do pass.

Signed: _____
Eleanor Vaughn, Chairman

[Signature]
1-7-92
And. Coord.

[Signature]
1-7-92 4:02
Sec. of Senate

SECRETARY OF STATE
STATE OF MONTANA

Exhibit # 1
1/7/92 SB 2



Mike Cooney
Secretary of State

Montana State Capitol
Helena, MT 59620

Testimony before the Senate State Administration Committee
Secretary of State Mike Cooney
January 7, 1992

Madam Chair and members of the Committee, for the record my name is Mike Cooney and I appear before you today in support of Senate Bill 2.

As you no doubt are aware, this measure has been developed as a result of Montana's lawsuit to maintain two seats in the United States Congress. Montana's case is currently before the United States Supreme Court, and oral arguments are set for March 4th, 1991.

In the meantime, it is the intent of this legislation to develop a plan for the administration of the filing and election process to allow the 1992 election to proceed with as little disruption as possible.

The legislation has three parts. First, it stipulates that pending a final, contrary determination, Montana will conduct elections for two congressional seats in 1992.

Second, it establishes a filing schedule for congress in the event that a ruling is made prior to April 7th, 1992.

And Third, it establishes a method for appointment of party candidates if a final determination is not made in time to properly administer a primary election for one seat.

Let me give you a brief explanation of how the bill would work. For an overview of the primary election schedule, I would refer you to the timeline on page four of the background handout I placed on your desks prior to this hearing.

As you can see, candidate filing for all offices remains January 21st through March 19th. If a final determination is made that Montana is only entitled to one congressional seat made during this time, declarations for nomination for the two seats will be voided, and declarations for nomination will be accepted for the resulting at-large seat.

EXHIBIT #1
STATE ADMIN. COMM
1/7/92 11C

Testimony of Secretary of State Mike Cooney
January 7, 1992

In order to allow for some additional time to change the primary ballot for congress, the bill also provides for a window for re-opening nominations for an at-large congressional district, should that final determination be made. The last possible date for this to occur without significantly jeopardizing absentee balloting, and the proper printing and distribution of ballots, is Tuesday, April 7th, 1992. If a final determination is made that Montana is entitled to only one congressional seat at any time prior to or on April 7th, the declarations for nomination for the two congressional seats will be void and a filing period for the resulting, at-large seat will open, and be open for a period of three days.

If a final determination that Montana is entitled to only one seat is not made by April 7th, then the primary election will be run using two congressional districts.

In the event that a final determination not made by April 7th, the discussion then shifts to the general election. If a final determination that Montana is entitled to only one at large district is made between April 8th and the general election, the parties will nominate candidates to appear on the general election ballot.

In the process of developing this plan, the Attorney General and I have met with representatives of both political parties, both members of congress, the reapportionment commission, and other interested parties. In addition, my office has solicited advice from election administrators, printers and others involved in the election process.

I thank the committee for its time during this busy session, and I ask that you recommend to the full body that Senate Bill 2 do pass. I will be happy to answer any questions you may have.

BACKGROUND

Since 1912, the state of Montana has had two Representatives in the United States Congress. However, last January Congress formally announced that, as of this year, Montanans would be entitled to elect only one Representative. The Attorney General, the Secretary of State, the Governor, and the Congressional delegation filed a lawsuit on May 22 challenging the apportionment formula that was used to determine that Montana should only receive one seat.

On October 18, 1991, the U.S. District Court for the District of Montana found that the apportionment system violated the principle of equal representation, declaring unconstitutional and void the statute (2 USC 2) on which the apportionment determination was predicated. The effect of this ruling is that Montana keeps its two Congressional seats unless the Supreme Court overturns the District Court's ruling or unless Congress issues a new reapportionment of seats.

The United State Justice Department has appealed the District Court's decision to the Supreme Court, which has scheduled for briefs on the case to be filed in late January and early February. The Court will hear oral arguments on March 4 and is expected to issue a decision on the case possibly as soon as April or as late as June.

Unless the Supreme Court rules or Congress acts otherwise, the State of Montana will retain its two Representatives. In the meantime, the Secretary of State will continue to conduct the June 2 primary under the current standing, with candidates able to run for either the First or Second Congressional Districts.

The Secretary of State and the Attorney General have prepared legislation for the special session of the legislature that would allow the election process to continue should the Supreme Court overturn the District Court's ruling. (See page 2 for further description of legislation.)

If Supreme Court rules that Montana has one Congressional seat:

<u>Between:</u>	<u>Effect of legislation:</u>
1/21 and 4/7	Candidates for Congress will have until March 19 or three days after the court ruling, whichever comes last, to file for the single Congressional seat.
4/8 and 8/10	Parties will have between 6/3 and 8/20 to nominate a candidate for the Congressional seat. MCA, 13-10-326 and 13-10-327
8/11 and 11/3	Parties have five days to nominate a candidate for the Congressional seat. MCA, 13-10-327

EXHIBIT # 2
STATE ADMIN. COMM.
1/2/92/lc

OVERVIEW

Under the legislation to be proposed:

- establishes a comprehensive plan for dealing with possible change to one Congressional seat;
- the legislature would find that the decision of the U.S. District Court for the District of Montana is binding and entitles Montana to two Congressional districts;
- instructs the Montana districting and apportionment commission to prepare a new districting plan for the election of two Congressional offices; and
- retains current filing period for all other races.

SECTION-BY-SECTION ANALYSIS

Section 1. Contingent primary filing and primary election for, and redistricting of, congressional districts.

1. Directs the Secretary of State to accept filings for the two Congressional districts for the 1992 primary;
 - a. if the determination occurs after April 7, but before eighty-five days before the general election (August 10), the affected political parties shall appoint a candidate by August 20, as provided by MCA, 13-10-326 and 13-10-327; and
 - b. if the determination occurs after September 10, the affected political parties shall appoint a candidate within five days, as provided by MCA 13-10-327.
2. If the determination occurs on or before April 7, the Secretary of State will accept filing for the at-large Congressional District and conduct a primary election for that office.
3. Directs the Montana Districting and Apportionment Commission to prepare and hold hearings for a two district plan, which will be submitted to the Secretary of State as soon as possible.
4. If it is finally determined that Montana is entitled to two seats, then the Districting and Apportionment Commission is filed and becomes law.

Section 2. Severability. (standard language)

Section 3. Effective date. (upon passage and approval)

Some questions and answers about the proposed legislation

If the Court rules before the primary, will candidates who do not run for the at-large seat get a refund on their filing fee?

Yes, candidates who have filed for one of the two Congressional seats will have their filing fee refunded.

If the Court rules after the primary, will candidates get a refund on their filing fee if they won the primary, but were not chosen by their party to run for the at-large seat?

Yes.

If the Court rules after the close of filing (March 19), can candidates who filed for one of the seats file for a different office?

No, once the filing deadline is closed, it will remain closed, with the three day exception for the at-large seat.

Can a person file for a Congressional seat and a different office as well?

Yes. Montana law does not prohibit a person from filing for two offices, but this has not occurred before on a state level. The Montana Constitution does prohibit serving as a Member of Congress and state legislator.

If the final determination occurs after April 7 and parties are allowed to nominate candidates, can a person file as an independent?

Status of independent candidates remains unchanged by the proposed law. Independent filings will be accepted by the Secretary of State until June 1 or the date the parties must file their nomination of candidate with the Secretary of State. Petitions must be submitted to the appropriate county election administrator at least one week in advance of this deadline.

Will the presidential preference primary be affected?

No.

How will the party selection process work?

Parties will nominate according to the adopted rules of the party.

What if the Court upholds that Montana is entitled to two seats, but Congress considers legislation that would strip the state of one of its Representatives again?

Until such legislation is signed into law, the election process would continue as planned. It would not be feasible to try to anticipate how Congress might act.

What happens if the Court rules after September 18?

If the Court rules after the ballot is approved and printed, then, as provided by MCA 13-12-204, labels can be printed and affixed on the ballots if necessary.

Timeline

-6

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Special
Session

1-21

3-19

4-7 4-10

Candidate Filing
Period

Window for
Ballot
Change

* Special 3 day filing period
for at-large Congressional Sea
if decision is made 4-7-91.

4-1

4-16

Printing of
Ballots

4-17

6-1

Absentee Voting
Underway**

** Federal law stipulates
a 45 day period for
Absentee Voting.

Affected Statutes

13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If the death or withdrawal occurs less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.

13-10-327. Vacancy after primary and prior to general election.

(1) If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7th day of January, 1992

Name: Nancy J. Harte

Address: P.O. Box 802
Helena MT 59624

Telephone Number: 442-9520

Representing whom?

Montana Democratic Party

Appearing on which proposal?

SB 2

Do you: Support? Amend? Oppose?

Comments:

SB 2 is a workable solution to a
complex situation. The Attorney General's
office and the Secretary of State's office has
worked with us on this proposal. We
encourage passage of SB 2.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

~~EXHIBIT~~ #3

1/7/92 lue

SB 2

