

MINUTES OF THE MEETING  
SENATE RULES  
47th Legislative Special Session II  
June 23, 1982

The first meeting of Senate Rules Committee of the 1982 Special Session II was called to order by Chairman Stan Stephens at 10:35 a.m. on the above date in Room 331 of the State Capitol.

ROLL CALL:

Members present were: Senators Hazelbaker, V. Chairman, Turnage, Smith, Blaylock, Boylan, Kolstad, Galt, Norman, Graham, and Chairman Stephens.

Chairman Stephens began by explaining that the meeting was scheduled for the purpose of hearing SJR 1, introduced at the request of the Revenue Oversight Committee by Senator Towe, et al. The meeting was opened to discussion.

Senator Towe addressed the question before the committee. He explained that SJR 1 would convene the legislature into a concurrent special session to consider liquor prices. This was necessitated through the language in H.B. 500 (Attachment I) passed in the 1981 regular session which makes it mandatory for the Department of Revenue to deposit not less than \$13 million of liquor profits to the general fund during the 1981 biennium. He stated that had the prolonged recession been anticipated this would not have become law, but now, the legislature has to take the responsibility for its action. He also noted that the vote of the Revenue Oversight Committee was 5 to 6 to introduce this resolution after two public hearings were held to study this issue. He read a portion of the letter from Barbara Conrad, Staff Attorney, Legislative Council, (Attachment II) sighting the two courses of conduct permissible for calling a concurrent special session.

Chairman Stephens asked if there were other proponents or opponents

Senator Pat Ryan made the comment that the only answer as he sees it is to raise the prices.

Senator Turnage noted that the legislature, by its action in H.B. 500, has placed the Department of Revenue in the position of being a money-making operation, and went one step further and mandated it. He pointed out that H.B. 500 talks about the biennium which means two fiscal years and he interprets this to mean they have until June 30, 1983 to come up with the required deposit. He suggested we adopt a Rules Committee Report, voted on by the entire Senate body which will be only a guideline for the 1983 regular session, suggesting that the language mandating this be removed from H.B. 500.

Senator Boylan asked if the Department of Revenue would be penalized if they do not meet the mandate?

Senator Turnage stated the department could be made to raise the liquor prices by court action. There is no penalty if they fail to make the \$13 million deposit but they could be held in contempt of court if they fail to obey the mandate.

The possibility of the beverage industry licensees being tempted to fight the increase in prices by other means such as bootlegging could present a problem.

John Clark, Deputy Director of the Department of Revenue stated that the position of the Director is that the law is there as plain as your face, and they will have to follow it.

Senator Boylan reiterated what Senator Turnage said about the Rules Committee writing a report for the entire Senate to act on and if it is favorably received a Joint Rules Committee meeting should be called.

Chairman Stephens stated that this committee is obviously very sympathetic and the dilemma is clearly an unfortunate mistake, but he is not clear in his own mind about calling a concurrent special session.

The methods of calling a concurrent special session were discussed. Senator Towe quoted from the Constitutional Convention framers' minutes, and Chapter 3, 5-3-101, 5-3-102, Montana Codes.

Senator Towe stated that he wants the Department of Revenue to agree not to raise liquor prices, and until they do agree he cannot accept a non-binding statement by the legislature.

Senator Smith expressed that some of the problem at the Department of Revenue is mismanagement, and he feels this makes any kind of adjustment twice as hard.

Senator Blaylock thinks we have to ask ourselves if a vote in writing had been taken would a special session have been called to handle this question. He feels it should be left alone.

Senator Turnage stated that technically the Department will not be in violation until June 30, 1983, but that Senator Towe did what he had to do because the Revenue Oversight Committee instructed him.

Motion was made by Senator Turnage that this committee find that the proposed bill SJR 1 of Special Session II not be accepted for consideration because it does not fall within either the call of the Governor or in written form from a majority of legislators.

Further, that the Senate Rules Committee report as follows:

WHEREAS, House Bill 500, passed in the 47th regular legislative session, requires the Department of Revenue to deposit not less than \$13 million of liquor profits to the general fund during the 1983 biennium; and

WHEREAS, House Bill 500 allows the Department of Revenue to raise or lower the liquor pricing formula to achieve the deposit requirement of \$13 million; and

WHEREAS, the Department has proposed to raise liquor prices by approximately 8% to meet the deposit requirement; and

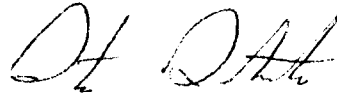
WHEREAS, the Revenue Oversight Committee has studied this issue at two public meetings and concluded that the deposit requirement was incorporated into House Bill 500 before the Legislature realized what would happen to the economy; and

WHEREAS, under the present circumstances an increase in liquor prices is unnecessary and inappropriate and may be counter-productive; and

Further, that the Department of Revenue withhold any increase in liquor prices for the purpose of projecting a total revenue of \$13 million for the fiscal year ending June 30, 1983, and that the 1983 session of the Legislature remove the deposit limit imposed on the Department of Revenue in House Bill 500.

On a roll call vote the motion was adopted unanimously.

The meeting adjourned at 11:20 a.m.



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Chairman Stan Stephens

SJK-1

ROLL CALL  
RULES COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 6-23

NAME	PRESENT	ABSENT	EXCUSED
Stan Stephens, Chairman	✓		
Frank Hazelbaker, V. Chrm.	✓		
Jean Turnage	✓		
Allen Kolstad	✓		
Ed Smith	✓		
Jack Galt	✓		
Chet Blaylock	✓		
Bill Norman	✓		
Carol Graham	✓		
Paul Boylan	✓		

Each day attach to minutes.

## HB            500            Liquor Prices

In addition to those amounts appropriated above, there are appropriated to the liquor division funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor monopoly. The division shall deposit not less than \$13 million of liquor profits to the general fund during the 1981 biennium. During the 1983 biennium, profits may not be less than 15% of net liquor sales and not less than \$13 million. Net liquor sales are gross liquor sales less discounts and all taxes collected.

The operational expenses of the liquor merchandising system may not exceed 15% of net liquor sales. Operational expenses may not include product or freight costs. The liquor division has full authority to determine store operating hours and the number and location of stores and employees and may raise or lower the liquor pricing formula to achieve the deposit requirement.

Nonprofitable state stores should be closed or converted to agency stores in an orderly manner. A nonprofitable store is one that shows a net loss or is less profitable than if run at agency store status after reducing gross revenues by all state excise and license taxes and by deducting therefrom all normal operating expenses, which include a pro rata share, based on gross sales, of central administrative office expenses.



## Montana Legislative Council

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TO: Revenue Oversight Committee  
FROM: Barbara Conrad, Staff Attorney. *BC*  
RE: Constitutionality of convening an additional special session.  
DATE: June 22, 1982

On May 24, 1982, Governor Ted Schwinden issued a proclamation calling the Legislature into special session to address issues pertaining to Montana State Prison. A desire exists among members of the Revenue Oversight Committee to deal with issues outside the call of the Governor's proclamation. Two courses of conduct are permissible:

- 1) The Legislature could call itself into special session AFTER the prison-related special session is adjourned; or
- 2) The Legislature could call itself into special session CONCURRENTLY with the prison-related special session.

### OPTION 1

Article V, § 6 of the 1972 Montana Constitution provides that "[t]he legislature may be convened in special sessions by the governor or at the written request of a majority of the members." Since the legislature clearly has the constitutional authority to convene itself into a special session, and since a

special session convened after the prison-related special session would in no way interfere with that session, Option 1 appears to be constitutionally permissible. (The procedural mechanics of convening an additional session remain to be determined.)

## OPTION 2

In addition to Article V, § 6, of the Constitution quoted above, Article VI, § 11, provides that "[w]henver the governor considers it in the public interest, he may convene the legislature." These two Articles clearly give both the legislature and the governor the power to convene special sessions. The coordination or potential clash of the legislature's and the governor's authority is not addressed by the Montana Constitution.

To the extent the Governor has convened the special session to deal with a confined area, it would appear, logically, that the Legislature may convene itself to act in other areas. Such action would not interfere with a consideration of prison-related matters in light of the myriad of subjects the Legislature must deal with in a regular session. Additionally, a concurrent consideration of subjects would be financially expedient.

Under the 1889 Montana Constitution, special sessions convened by the governor were restricted to the subject matter set forth in the proclamation. This restriction does not exist in the 1972 Constitution. The Constitutional Convention minutes explain why this restriction was dropped:

We have deleted, however, from the Governor's power the power he now has to limit the consideration of bills or subject matter. And the reason, of course, we have done that is that since the Legislature -- once it's

called back into special session by a simple majority vote -- can resolve themselves into a special session of their own, that there's no point in providing for a futile act. And so the Governor can call them back into special session, and he can say, "Here's what I would like you gentlemen to consider, but, of course, if you wish, you can consider anything else."

It appears that the framers of the 1972 Constitution acknowledged the possibility of concurrent special sessions -- one called by the governor and one by the legislature. (Again, the procedural mechanics of convening a concurrent special session remain to be determined. The governor also, undoubtedly, will have political objections to concurrent sessions.)

BC:hm



SENATE COMMITTEE Rules

Date 6-23-82 Bill No. SJR 1 Time 10:45

NAME	YES	NO
FRANK HAZELBAKER, V. CHRM.	✓	
JEAN TURNAGE	✓	
ALLEN KOLSTAD	✓	
ED SMITH	✓	
JACK GALT	✓	
CHET BLAYLOCK	✓	
BILL NORMAN	✓	
CAROL GRAHAM	✓	
PAUL BOYLAN	✓	
STAN STEPHENS, CHRM.	✓	
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Neil McKay  
Secretary

Stan Stephens  
Chairman

Motion: See Minutes

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

STANDING COMMITTEE REPORT

June 23, 1982

MR. PRESIDENT

We, your committee on SENATE RULES

having had under consideration SENATE JOINT RESOLUTION Bill No. 1

Respectfully report as follows: That SENATE JOINT RESOLUTION Bill No. 1

Move that this committee recommend that the proposed bill SJR 1 of Special Session II not be accepted for consideration because it does not fall within either the call of the Governor or in written form from a majority of legislators.

Further, that the Senate Rules Committee report as follows:

WHEREAS, House Bill 500, passed in the 47th regular legislative session, requires the Department of Revenue to deposit not less than \$13 million of liquor profits to the general fund during the 1983 biennium; and

WHEREAS, House Bill 500 allows the Department of Revenue to raise or lower the liquor pricing formula to achieve the deposit requirement of \$13 million; and

WHEREAS, the Department has proposed to raise liquor prices by approximately 8% to meet the deposit requirement; and

DO PASS

**Standing Committee Report - Rules Committee**  
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**WHEREAS, the Revenue Oversight Committee has studied this issue at two public meetings and concluded that the deposit requirement was incorporated into House Bill 500 before the Legislature realized what would happen to the economy; and**

**WHEREAS, under the present circumstances an increase in liquor prices is unnecessary and inappropriate and may be counterproductive; and**

**Further, that the Department of Revenue withhold any increase in liquor prices for the purpose of projecting a total revenue of \$13 million for the fiscal year ending June 30, 1983, and that the 1983 session of the legislature remove the deposit limit imposed on the Department of Revenue in House Bill 500.**

**DO NOT PASS**

*Special Session # II*  
*Seate* JOINT RESOLUTION NO. 1

INTRODUCED BY *Sen Robertson* *Repur Williams*  
*Freeman*  
BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATURE CONVENE ITSELF INTO A CONCURRENT SPECIAL SESSION TO CONSIDER THE QUESTION OF LIQUOR PRICES.

WHEREAS, Article V, section 6, of the Montana Constitution provides that the Legislature may be convened in special sessions at the written request of a majority of the members of the Legislature; and

WHEREAS, House Bill 500, passed in the 47th regular legislative session, requires the Department of Revenue to deposit not less than \$13 million of liquor profits to the general fund during the 1983 biennium; and

WHEREAS, House Bill 500 allows the Department of Revenue to raise or lower the liquor pricing formula to achieve the deposit requirement of \$13 million; and

WHEREAS, the Department has proposed to raise liquor prices by approximately 8% to meet the deposit requirement; and

WHEREAS, the Revenue Oversight Committee has studied this issue at two public meetings and concluded that the

1 deposit requirement was incorporated into House Bill 500  
2 before the Legislature realized what would happen to the  
3 economy; and

4 WHEREAS, under the present circumstances an increase in  
5 liquor prices is unnecessary and inappropriate and may be  
6 counterproductive; and

7 WHEREAS, while the Governor declined to include the  
8 liquor price increase issue in his call for a special  
9 session, he did note that if there are other matters that  
10 are deserving of deliberation during the session the  
11 Legislature has the authority to call themselves into  
12 special session to address those matters of concern.

13 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
14 OF REPRESENTATIVES OF THE STATE OF MONTANA:

15 That the Legislature be convened in special session in  
16 the Capitol, in Helena, at the hour of 10 a.m., the 23rd day  
17 of June, 1982, to run concurrently with the second special  
18 session called by the Governor.

19 BE IT FURTHER RESOLVED, that the special session called  
20 by the Legislature is limited to considering amendments to  
21 House Bill 500 only for the sole purpose of removing the  
22 deposit requirement imposed on the Department of Revenue in  
23 House Bill 500.

-End-