

MINUTES OF THE  
SENATE RULES COMMITTEE

April 7, 1987

Chairman Van Valkenburg called the meeting of the Senate Rules Committee to order at 11:00 a.m. in Room 331, State Capitol. All members were present. Also present were Senator Hager, Greg Petesch, John North, Larry Fasbender, Bonnie Wallem and Peg Hartman.

Senator Van Valkenburg stated that the purpose of the meeting was to discuss the issue that Senator Hager raised and that is whether the Senate can amend an amendatory veto issued by the Governor.

Senator Hager said it was his understanding that in 1972-1973 and in 1983 that amendments were offered to the Governor's veto. He cited Joint Rule 6-32 which states, "If the Governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in Committee of the Whole...", the point being that it is reconsidered under the same rule as a bill on Committee of the Whole. Sen. Hager pointed out that this is not the same as considering House amendments; they are not part of the bill, they are the Governor's proposed amendments.

Mr. Petesch, Director of Legal Services, Legislative Council, passed out a memorandum on this issue. (Exhibit A). He stated that he specifically looked into the background of the Constitutional provision, which is implemented with the Rules. There is very little description in the transcripts of what takes place. Delegate Joyce, Chairman of the Executive Committee, stated what the provision does. He was specifically asked by Delegate Eskildsen what happened if the Legislature doesn't pass the Governor's recommendations and he said they would just have to override the Governor's amendment or send it back to him, saying that they refused to concur in his amendment. The Governor can then formally veto it or not. Petesch said that is the only discussion in the transcripts. He stated that there are indications in the transcripts that this Constitutional provision is based upon those from other states. However, the transcripts do not identify which state the provision came from. New Jersey has a provision that is very similiar to Montana. The Supreme Court of New Jersey said that the legislature is permitted a choice: it may accept the recommended amendment and enact the bill with the amendment or it may override the conditional veto as it is called in New Jersey.

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Senator Van Valkenburg asked Mr. North what the Governor's position was on this issue. Mr. North had left, and in his place, Peg Hartman answered that the Governor's position is that this is a legislative issue and as such should be decided by the Legislature.

Senator Van Valkenburg asked for questions from the Committee.

Senator Aklestad said his interpretation would be that we consider it to be the same as a bill on Committee of the Whole. In Joint Rules, 6-32, item 4A, states that you could amend the Governor's amendments and if there isn't agreement on those amendments, then you would go to a conference committee. Then that conference committee report would go back to the Governor for his reconsideration.

Senator Van Valkenburg asked Mr. Petesch if a bill is amended on second reading under our normal procedure, a subsequent amendment may be offered amending the amendment that was initially adopted. Mr. Petesch stated that was correct.

Senator Norman addressed Senator Hager, saying that in 1972-1973, the Constitution was just adopted. There was an interim committee appointed to try to recommend that statutory law be enacted to implement the Constitution. So to say that the Governor's amendment was amended may indeed be the case, but it has not happened since, except in 1983, when there was a technical difficulty. The House and the Senate and the Governor arranged to have the technical difficulties cleared up. The bill was then signed. Norman questioned if there is another precedent that Sen. Hager was aware of.

Senator Hager answered that he did not have much of a chance to confer with former Senator Lockrem, who was doing some research on the matter. Sen. Norman asked Mr. Lockrem if he knew of any other case besides the one in 1983. Mr. Lockrem answered that he he was at the Historical Society this morning, going through the records. He was of the opinion that there had been an Attorney General's opinion relating to an amendment of the Governor's amendment. He did not find the records.

Senator Norman asked Sen. Hager what he meant when he stated that a Governor's amendment is like a House amendment. Sen. Hager said as the bill goes through our system, the Senate may amend it and

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send it over to the House and the House may adopt amendments, too, which the Senate has to concur in. At the time the Senate votes on whether or not to concur in the amendments, the amendments are part of the bill. That differs from when a bill goes to the Governor and he proposes amendments. As the Governor's amendments come in on a bill, they are not on the bill.

Senator Blaylock commented that if we adopt the practice in the Legislature of changing the Governor's amendatory veto, the Governor would be very circumspect about sending up any more amendatory vetoes because they would be subject to endless change. Further, he feels that would just start the whole process over again of going through that bill. He stated that he thinks we should stick to the practice of either accepting the Governor's amendment or we should reject it.

Senator Himsl said that he is concerned about the separation of powers. The Legislature has sent the bill through the entire process and then it goes to the Governor. Through the Constitution the Governor has been given the courtesy of the flexibility that he may either veto it or accept it. Himsl said he doesn't see how you can amend his amendment, which comes from the the legislative branch and either we accept it or we don't.

Senator Hager responded that one of the reasons he brought this before the Rules Committee was that the Governor's amendments are quite broad. The question of whether or not the Commissioner of Insurance should review the claim was a matter of discussion in both the Senate and the House committees. Also the second half of the third amendment where the Governor takes the bill and applies it not only to the publicly funded jobs, but also to private contracts goes far beyond any of the previous discussion. Sen. Hager stated that he feels this to be an extenuating circumstance.

Senator Aklestad stated that the Legislature had done this three other times, so we would not be setting a precedent.

Senator Norman responded that he didn't think it is proper to say that in 1973, the Legislature did it because at that time we were struggling to get the statutory law in compliance with the Constitution. There were a lot of technical difficulties.

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Senator McCallum asked Sen. Hager if his main concern was if this language is inserted, that it then goes beyond the scope of the bill? Sen. Hager answered yes, because the new language was never a part of the discussion in either the House or the Senate committees.

Senator Van Valkenburg stated that his problem with this is that our Rules and the statute and our precedent are clearly in conflict with the Constitution. He is disappointed to hear that the Governor doesn't want to take the position that the Legislature is not allowed under the Constitution to amend an amendatory veto. He thinks the Governor ought to take that stand and then there would be a clear cut case. Sen. Van Valkenburg cited the Constitution, Section 10 sub 2, saying that to amend is not in accordance with the Governor's recommendation and the Constitutional language is very clear.

Senator Blaylock said he feels we either accept or reject, otherwise we open the whole process again.

MOTION: Senator Blaylock moved that the Senate Rules Committee recommend to the Senate that an amendment may not be offered to a Governor's amendment. Question called. With Senators McCallum, Aklestad and Farrell voting yes, and Senators Van Valkenburg, Norman, Jacobson, Blaylock and Himsl voting no, the motion passed 5-3.

NEXT ORDER OF BUSINESS; Senator Van Valkenburg said that House Bills 581 and 886 are bills that came over from the House after the 45th day transmittal deadline and before the 72nd day transmittal deadline. The President of the Senate has received a letter from the Speaker of the House stating that in his opinion, these bills are appropriation bills. The bills have been considered in a bipartisan Senate leadership meeting and there was not a unanimous agreement as to whether or not they were appropriation bills; therefore they were referred to the Rules Committee for a determination as to whether they are in fact appropriation bills. Sen. Van Valkenburg said he had spoken to the Speaker of the House since the bipartisan leadership meeting about these two bills. The Speaker advises that House Bill 581 was in the House Appropriations Committee on the 45th day, but was inadvertently left off a list of bills that he considered to be appropriation bills. The implication was that the sponsor and the members of the House thought that because the bill had been referred to the House Appropriation Committee, it would be treated as an appropriation bill and therefore no effort was made in the House to move the bill over before the 45 day transmittal deadline.

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In addition, regarding House Bill 886, the Speaker advises that it is his recollection that this is a bill that came in under the new rule that we adopted this session that allows a committee to request a bill to implement the provisions of an appropriations act up until the 68th day. Sen. Van Valkenburg said that he doesn't think that rule carries with it any particular transmittal deadline.

Mr. Petesch said the transmittal of those bills implementing the general appropriations bills is covered in Rule 6-34 sub 4. They are treated the same as appropriations bills. Sen. Van Valkenburg asked Petesch if House Bill 886 fell in that category. Petesch said he believes this bill was requested by the Appropriations Committee to implement the general appropriations bill.

MOTION; Senator Norman moved that House Bill 886 be regarded as an appropriation bill. Senator Aklestad stated that he was the one in the leadership meeting who felt the bill didn't qualify as an appropriation and now that the Rules Committee has had this discussion, he has changed his mind. Question called. With all members voting yes, the motion carried unanimously.

NEXT ORDER OF BUSINESS; House Bill 581. Senator Aklestad said this bill is the one he had questioned previously. He doesn't think that there is any place in the bill where money is appropriated or where it repeals a section of the law that had appropriated money in a past session. He believed that it had to do one or the other.

Senator Van Valkenburg stated that he takes the opposite view. He thinks this one bill fell through the cracks. If there had been twenty or thirty bills that fell into this category, it would be a different story. The bipartisan membership of the House treated this as an appropriation bill, the Speaker thought it was an appropriation bill - it apparently didn't make the list. There were all kinds of bills on that list that were not technically appropriation bills. If you read them, you would not find the word "appropriate" in them. They were allowed to come over after the 45th day because of the general agreement we had with the House. He suggested amending that agreement to include this bill out of courtesy to the sponsor and to the House of Representatives.

Senator Himsl asked about the history of this bill. Senator Norman said it originally went to Human Services in the House. Then in February it went to Appropriations in the House.

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Senator Blaylock said this technically doesn't fit an appropriation but as a courtesy to the House, we should say that it meets the qualifications of the agreement.

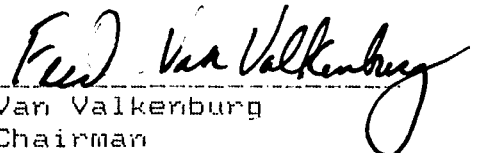
MOTION; Senator Jacobson moved that the Senate Rules Committee recommend that House Bill 581 be added to the list of the bills that were accepted as appropriation bills.

Senator Aklestad asked what would happen if we got other bills like these two, would they have to go through the criteria? Sen. Van Valkenburg answered that the President of the Senate will look at each bill and if he has a question, he would state so or would refer the bill to the Rules Committee.

Question called. Motion carried unanimously.

Senator Van Valkenburg stated that he would make a motion on the floor to refer House Bills No. 581 and No. 886 to the Finance and Claims Committee.

ADJOURNMENT; The Senate Rules Committee adjourned at 11:40 a.m.

  
\_\_\_\_\_  
Van Valkenburg  
Chairman



ROLL CALL VOTE

SENATE COMMITTEE RULES

Date 4/7 Bill No. SB 103 Time \_\_\_\_\_

NAME	YES	NO
SENATOR FRED VAN VALKENBURG		✓
SENATOR GEORGE MC CALLUM	✓	
SENATOR BILL NORMAN		✓
SENATOR GARY AKLESTAD	✓	
SENATOR JUDY JACOBSON		✓
SENATOR BILL FARRELL	✓	
SENATOR CHET BLAYLOCK		✓
SENATOR MATT HIMSL		✓

Thea Van Nice  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Blaylock moved that no amendment may be offered  
to a Governor's amendment.

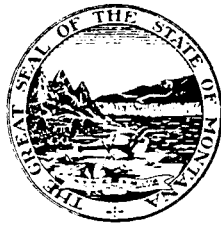


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April 7, 1987

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DIRECTOR, LEGISLATIVE SERVICES

HELEN J. MACPHERSON  
DIRECTOR, SECRETARIAL SERVICES

TO: Senate Rules Committee

FROM: Gregory J. Petesch, Director *GP*  
Legal Services Division

RE: Amendatory Veto

You have asked for information as to the procedure the Senate may use in dealing with an amendatory veto. Article VI, Section 10, subsection (2) of the Constitution provides:

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

At the Constitutional Convention, Delegate Joyce, Chairman of the Executive Committee, in explaining the amendatory veto stated:

Subsection 2 says that the Governor may return any bill to the Legislature with his recommendations for an amendment. This is the amendatory veto. And if the Legislature passes the bill in accordance with the Governor's recommendation, it sends the bill back to the Governor for his recommendation. The Governor may not, however, return the bill a second time for an amendment. And the theory here is that this is apparently the amendatory veto; we've taken it out of another state. Our discussion indicates that it works well in the other states in that it enables the Governor to pick up some errors that may have inadvertently been overlooked by the Legislature, and they simply concur in his amendments, send it back, and he signs it without any fuss. In not requiring two-thirds to override it, they just

make the amendment by a simple majority. It seems sensible. It seems to encourage cooperation between the Governor and the Lieutenant Governor -- the Governor and the Legislature -- and maybe as a device to save the Governor's head.

Verbatim Transcript, Vol. IV, p. 955

In responding to a question from Delegate Eskildsen as to what happens if the legislature fails to pass the governor's recommendations, Delegate Joyce said:

Well, if the Legislature fails to concur, in effect, in the Governor's amendment, then the motion would have to be made to override the Governor's amendment, or they could just send it back up to him, I suppose, (Inaudible) telling him that they refuse to concur in his amendment, and then he can formally veto it or not. And I'd -- I would think that would be the procedure; and then if he does formally veto it, it comes back down, then they have to override him by two-thirds.

Verbatim Transcript, Vol. IV, p. 955

The legislature has implemented the amendatory veto power through 5-4-304, MCA. It provides:

**5-4-304. Amendatory veto.** The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(2) If both houses approve the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(4) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee:

(a) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time.

Joint Rule 6-30(2) restates Article VI, section 10(2), and Joint Rule 6-32 restates 5-4-304, MCA.

The Constitutional Convention transcripts indicate that the amendatory veto provision was taken from other states, but do not identify the source.

Article V, Sec. I, par. 14(b) of the 1947 Constitution of New Jersey states:

The Governor, in returning with his objections a bill for reconsideration at any general or special session of the Legislature, may recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend and re-enact the bill. If a bill be so amended and re-enacted, it shall be presented again to the Governor, but shall become a law only if he shall sign it within ten days after presentation; and no bill shall be returned by the Governor a second time.

In Application of McGlynn, 155 A.2d 289 (N.J. 1959), the New Jersey Supreme Court, while discussing that it was unclear how the provision had come to be included in the Constitution, said,

The Legislature is permitted a choice: it may accept the recommended amendments and enact the bill with them, or it may override the conditional veto.

The court went on to say,

Although paragraph 14(b) does not speak of what should be done if the bill is not "so amended," one cannot reasonably conclude that the Legislature is thereby foreclosed from acting on the bill. To imply any limitation upon the Legislature in choosing to disregard the Governor's objections and recommendations and passing the bill by a two-thirds vote of each House over his objections, would lead to a result certainly not within the contemplation of those who drafted the new Constitution of 1947. To erect such a limitation would, by inference, create an executive power that could arbitrarily frustrate the legislative authority.

The court held the Legislature could pass the bill its original form.

Article V, Sec. 124 of the Alabama Constitution clearly indicates that the Legislature cannot amend the Governor's amendatory veto.

Article of Amendment LVI of the Massachusetts Constitution reads:

The governor, within five days after any bill or resolve shall have been laid before him, shall have the right to return it to the branch of the general court in which it originated with a recommendation that any amendment or amendments specified by him be made therein. Such bill or resolve shall thereupon be before the general court and subject to amendment and re-enactment. If such bill or resolve is re-enacted in any form it shall again be laid before the governor for his action, but he shall have no right to return the same a second time with a recommendation to amend.

In five opinions of the Attorney General 1919, the Massachusetts Attorney General held that under this provision the General court is not restricted to considering the amendment proposed by the Governor.

The Virginia Constitution also has a provision for an amendatory veto.

I contacted former Senator Steve Brown, who informed me that he would look through his files for a memorandum he prepared for Governor Tom Judge concerning the legislative implementation of the amendatory veto. Mr. Brown informed me that he had urged the Governor to veto the provision because he felt that it improperly implemented the constitutional provision. I will provide this information to the Rules Committee if I am able.

7097a/C:JEANNWP:jj

# STANDING COMMITTEE REPORT

April 2 87

19.....

MR. PRESIDENT

**Senate Rules**

We, your committee on.....

**Senate Bill**

**103**

having had under consideration..... No.....

reference reading copy ( salmon )  
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## CLARIFIES METHOD FOR PAYMENT OF THE STANDARD PREVAILING RATE OF WAGES

**103**

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

**The Senate Rules Committee recommends that the Governor's amendments to Senate Bill No. 103 are properly within the subject of the bill.**

~~XXXXXX~~

~~XXXXXXXXXX~~

*V. Valkenburg*  
.....  
Van Valkenburg

Chairman.