

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Eleanor Vaughn, on January 8, 1991,
at 10:05 a.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 Absent: Bill Farrell (R)

Members Excused: None

Staff Present: David Niss (Legislative Council).

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

Announcements/Discussion: Everyone should sign in to be able to
testify. Give written testimony to the secretary.

No smoking will be allowed during committee hearings.

Cross talk between committee members and witnesses should be
limited to question time. Closing by the sponsor will be
after the question and answer period.

HEARING ON SENATE BILL # 4

Presentation and Opening Statement by Sponsor:

Senator Hager representing District 48, Billings brings this
bill that is a constitutional amendment that would allow a
legislator to be appointed to a state office upon his resignation
from his legislative seat. Section 1 of the bill is the actual
change in the constitution, Section 2 is the effective date, and

Section 3 is the submission to the electorate, which a constitutional amendment requires.

Senator Hager stated that most governors started in the legislature and are aware of the talents of their co-legislators. The governor should be allowed to use the expertise that resides in experienced law makers. This legislation is good and I'm asking you to pass this bill.

Proponents Testimony:

Steve Yaekel, Governor's Chief of Staff, appeared briefly in support of passage of Senate Bill 4. Present language appears to protect against manipulation between the legislative and administrative branches. This creates an obstacle to the executive branch availing itself of some good talent which resides in the legislative branch when looking for the right administrator. They look for someone who has indepth knowledge of an issue, has the ability to get things done in the legislative process, and is close to the people of the state.

Mr. Yaekel pointed out two important safeguards that may not have been appreciated when the constitution was written. The first is the indepth and incisive coverage of the media, which discloses abuses in government, making abuses impossible to conceal. The second safeguard is the Senate confirmation process, which gives a full scrutiny to the governor's nominees for their ability to hold the office. The governor encourages support of this legislation.

Opponents Testimony:

C. B. Pearson, Executive Director of Common Cause/Montana spoke in opposition to Senate Bill 4. He handed everyone a copy of his testimony. (See Exhibit #1)

Questions From Committee Members:

Senator Pipinich asked Senator Hager to respond to the part of Mr. Pearson's testimony taken from the context of the Constitutional Convention on Article V, Section 9. There could be a deal made between a governor and a legislator.

Senator Hager responded that the governor needs to operate the state and implement the programs that he proposed during his campaign and getting the most knowledgeable people for those jobs is important. The governor is very cognizant that he needs to keep his political party in the House and Senate in order to accomplish the legislation he favors, so he wouldn't decimate the legislature.

Senator Blaylock explained that through the years methods have been found to circumvent this constitutional provision. He favors leaving it the way it is.

Senator Swift asked Mr. Yaekel about the common cause comments regarding appointments from the standpoint of safeguards.

Mr. Yaekel acknowledged the sentiment of the concern, but government has changed so much, media and communication has changed. The governor has only 15 departments heads to appoint. Some legislators are zealous for the cause without regard for payment. To give a leadership roll to someone who doesn't support the governor's program is not reinforcing what needs to be accomplished. The work load is heavy, the pressure is intense, information moves much more quickly, so department directorships aren't a cavalier consideration.

Senator Swift asked Steve Yaekel how a legislator can accept a state appointment. Mr. Yaekel responded that the person can resign his elected legislative position and be given an acting directorship with a lesser salary. When his elective term expires then he can become director. This is a cumbersome process.

Senator Fritz asked if civil offices include judicial offices? Senator Hager responded that it does apply to judicial appointments as well as civil.

Senator Vaughn noted that when an elected official resigns his position and another is appointed to complete that term, are the people at home being served?

Senator Hager felt the best representation would come from another election but they are costly. The political party of the elected resigning legislator submits 3 names to the county commissioners and they then pick from that list. County commissioners are also elected, so that's the fairest handling possible without an election.

Closing by Sponsor:

Senator Hager closed by saying that the electorate should have an opportunity to decide if they want to change this part of the constitution. That will happen if you pass this bill.

Chairman Vaughn asked the committee if they were ready to take executive action. Senator Blaylock suggested that, because of the controversy, we wait until the next time the committee meets. Committee will take executive action tomorrow, January 9.

Committee Policies

David Niss, Legislative Staff Attorney, gave the committee a list of the services he can give the committee. He emphasized that his counsel is non-partisan to all committee members, and would like amendments to be sponsored by a committee member. (See Exhibit 2) If a lengthy amendment is given to the committee he requests time to study it.

If a committee person has a bill to present this committee, he should remain in the bill presentation process without resuming his seat on the committee.

If a committee member want to testify on a bill, unless he has some very strong testimony, he should simply say that they oppose or approve the bill. Everyone has a right to speak on the bills and that is a given.

The idea of a Consent Calendar has been mentioned and Chairman Vaughn asked Attorney Niss to explain the process to put legislation in that process. Mr. Niss explained the rules for putting a bill on the Consent Calendar are: A bill must have 2 approval votes. First, the committee has to pass the bill itself unanimously, secondly, a unanimous vote on a motion to place it on the calendar is required. By putting a bill on the consent calendar, the second reading on the floor is eliminated. Senators can ask questions about these bills.

If a committee member knows he will miss a committee hearing, he is asked to notify the secretary or chairman Vaughn.

Proxy vote. The committee decided that if an absent member has been unable to sign a written proxy vote, he would still be allowed to vote with a phone call, but that vote must be followed up with a written proxy form. If a committee member has left a proxy vote and the bill is amended, the proxy vote will not be cast until the committee member would have a chance to review the amendments. Action on the bill would be delayed 2 days but no longer. A vote would then be taken, not using the proxy vote unless so directed by the committee member.

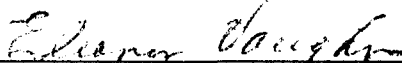
Senator Swift made a motion that a committee member could leave his written vote with Chairperson Vaughn or the secretary with the plan as outlined above. The VOTE was UNANIMOUS IN FAVOR of this motion. The secretary was instructed to have a written proxy vote form available at committee hearings.

State Administration is a class A committee and thus meets 5 days per week if there is business to transact.

Attorney Niss offered to do summaries of bills for this committee. After discussion, the committee decided that Chairman Vaughn would ask for a summary when necessary.

ADJOURNMENT

Adjournment At: 11:15 a.m.


ELEANOR VAUGHN, Chairman


DOLORES HARRIS, Secretary

EV/dh

ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE January 8, 1991

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ELEANOR VAUGHN	✓		
SENATOR BOB PIPINICH	✓		
SENATOR JOHN ANDERSON	✓		
SENATOR CHET BLAYLOCK	✓		
SENATOR JAMES BURNETT	✓		
SENATOR "BILL" FARRELL		✓	
SENATOR HARRY FRITZ	✓		
SENATOR BOB HOCKETT	✓		
SENATOR JACK "DOC" REA	✓		
SENATOR BERNIE SWIFT	✓		

Each day attach to minutes.

DATE January 8, 1991

COMMITTEE ON State Administration

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)



SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE JANUARY 8-1991
BILL NO. SB#4

TESTIMONY OF COMMON CAUSE/MONTANA

IN OPPOSITION TO SENATE BILL 4

8 JANUARY 1991

P.O. Box 623
Helena, MT
59624
406/442-9251

Madame Chairwoman and members of the Senate State Administration Committee, for the record, I am C.B. Pearson, Executive Director of Common Cause/Montana. I am here today on behalf of the members of Common Cause in Montana to speak in opposition to Senate Bill 4.

We oppose this legislation because it would dramatically change a portion of the Montana Constitution designed to prevent "deal-making" among elected officials. When we reviewed this proposal we researched the history of the discussion by the members of the Constitutional Convention on Article V, Section 9 of the Constitution. We wish to present some of that discussion to show the logic and reasoning for this provision of the Constitution. It is clear that the framers knew what they were doing and, in their wisdom, addressed a very real and important problem.

(page 596 transcript)

Delegate Berg speaking in opposition to the motion to delete Article V, Section 9:

"I believe that it is essential in any constitution that there be a provision prohibiting legislators from holding any other civil office during the term of their office, and I think that's perfectly consistent with the fundamental principle of a separation of powers."

(page 597 transcript)

Delegate Aronow in opposition to the motion to delete Article V, Section 9:

"Mr. Chairman, I rise in opposition of the motion to delete Section 9 for this reason, that I look at this thing as a matter of morals and principles and separation of powers. I think it's one of the most corrupt things that can be done to the Legislature and to the people of the State of Montana to allow a member of the Legislature to accept an appointment to another office while he's a member of the Legislature. Suppose the Governor came to Joe Blow who is in the Legislature and said, "There's a vacancy on the Supreme Court, or on the District Court, but I want this program put through the Legislature and when you've accomplished this job, you'll get this appointment." And under the present language of Section 9 that could be done. I don't want to delete Section 9. I want to amend it to put back in the language of the present Constitution, which has been interpreted by the Supreme Court, which forbids that type of an evil. That thing can be carried on to all types of things and pressures, and the principles of good government and morals doesn't change with changing times or liberalism. Those basic things remain basic and I want to keep them that way in this Constitution. Thank you."

(page 1577 transcript)

Chairman Graybill responds to some discussion over intent of Article V, Section 9:

"For your information, when we debated it the other day, I recall the point being made that the reason is to prohibit the Governor or someone else from offering a job to a legislator in order to get something done and then have him resign and appoint him to an office. Now, that's the purpose of the language, and the language that's been proposed does clear up Section 9, as amended. But you have to decide now what to do."

Article V, Section 9 of the Constitution is an important and valuable good government policy. One that should remain. We, therefore, urge a "do not pass" on SB 4.

TO: Senate State Administration Committee
FROM: David S. Niss, Staff Attorney
RE: Services Available to Committee Members

I will perform the following functions in support of the Senate State Administration Committee:

- (1) review proposed legislation entering the Committee and advise the Committee concerning constitutionality, internal consistency, possibility of conflict or duplication with existing provisions of law, and compliance with the bill drafting standards of the Legislative Council (such as grammar, punctuation, word choice and statutory sentence structure);
- (2) review all amendments proposed to the Committee for the same purposes as review of bills under (1) above;
- (3) draft Committee bills when requested by the Committee;
- (4) draft proposed amendments upon request of individual Committee members prior to Committee action on any legislation;
- (5) attend subcommittee meetings when requested by the Chair of the Committee or subcommittee, to perform appropriate functions listed herein;
- (6) assist the Committee or individual Committee members with factual and/or legal research pertaining to legislation and amendments before the Committee;
- (7) attend conference committee deliberations when requested by the Committee Chair, to perform appropriate functions listed herein;
- (8) review all amendments adopted by the Committee for the same purpose as review of bills under (1) above and, with the authorization of the Committee Chair, make changes to conform the amendment to the bill drafting standards of the Legislative Council which do not affect the substance of the amendment;
- (9) draft proposed amendments to be moved on second reading upon request of any Committee member; and
- (10) draft statements of legislative intent or obtain those statements from executive branch agencies, upon request of the Committee.