

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN RICHARD SIMPKINS**, on January 13, 1995, at 9:00 a.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Richard D. Simpkins, Chairman (R)  
Rep. Matt Denny, Vice Chairman (Majority) (R)  
Rep. Dore Schwinden, Vice Chairman (Minority) (D)  
Rep. Matt Brainard (R)  
Rep. Patrick G. Galvin (D)  
Rep. Dick Green (R)  
Rep. Antoinette R. Hagener (D)  
Rep. Harriet Hayne (R)  
Rep. Sam Kitzenberg (R)  
Rep. Gay Ann Masolo (R)  
Rep. William Rehbein, Jr. (R)  
Rep. George Heavy Runner (D)  
Rep. Susan L. Smith (R)  
Rep. Jay Stovall (R)  
Rep. Lila V. Taylor (R)  
Rep. Joe Tropila (D)

**Members Excused:** Rep. Bonnie Martinez (R)  
Rep. Carolyn Squires (D)

**Members Absent:** none

**Staff Present:** Sheri Heffelfinger, Legislative Council  
Christen Vincent, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 119  
Executive Action: HB 119 DO PASS

#### **HEARING ON HB 119**

##### **Opening Statement by Sponsor:**

**REP. JOE QUILICI, HD 76**, opened by stating that this bill is a clean up bill that gives the Adjutant General the right to adopt rules and regulations. The way the law is written, now before

the Adjutant General can adopt any rules he is required to get clearance from the governor's office. This has caused a lot of trouble and sometimes doesn't get to the governor's office because they have to adopt to the rules according to the federal guidelines. The federal guidelines give the General this right to adopt rules. What this bill is intended to do is change the law to say that the Adjutant General can adopt these rules and make it specific so that the Adjutant General isn't breaking the law. He said that he thought that this is a good clean-up bill.

**Proponents' Testimony:**

**Brigadier General Gary Hindoién, Montana National Guard**, spoke in favor of this bill. He stated that this bill is a housekeeping bill. He gave some history stating that this legislation was developed early last year and went through the governor's department legislative process. This piece of legislation has gone through his staff and legal council and was approved by the governor's staff and the governor as a necessary piece of legislation. He stated that the members of the National Guard wear two hats. They are responsible to the state and the federal governments. The Department of Defense and the Department of the Army and the Department of the Air Force have delegated the Adjutant General as the rulemaking authority as it pertains to the National Guard in the state of Montana. The Adjutant General is routinely issued Department of Military Affairs rules and regulations. They felt that if they could pass this legislation they could eliminate the question of whether or not it will be pertinent if there is a situation that is "hair splitting." He urged a do pass by the committee.

**Mike McCabe, Lieutenant Colonel, Montana National Guard**, stated that he is the full-time judge advocate officer for the Montana National Guard. He explained that the judge advocate handles the legal matters that come up. He stated that this bill was reviewed by all of the JAG officers and was recommended to be put forth to the legislature to remove the uncertainty that **General Hindoién** addressed. He explained that the uncertainty is premised under article seven, section thirteen in the militia clause in the Constitution. This states that the governor is the commander in chief of the Montana National Guard. In the military context as the commander in chief of the Montana National Guard, the governor can adopt all rules and regulations that apply to the National Guard and run those down the chain of command. The way they customarily do all their military orders is by having a signature line that is done by the Adjutant General that is done for or by order of the governor of the State of Montana. One of the JAG officers was concerned that relying on the order of the governor and empowering the Adjutant General to adopt these rules and regulations may not be statutorily correct. It is their concern that with the adoption of the rules and regulations that are a daily part of life they are thick and extensive. Under section 10-1-1-105 by law they are required to adopt these regulations through the federal government as they apply to the

military and conform to those requirements. In that connection there is concern about continuing to have to come back to the legislature and asking to have their rules and regulations approved in order to satisfy the old Montana Supreme Court case and its ruling which says that a person can't adopt prospective laws as changes. This rulemaking authority will satisfy the requirements of the Adjutant General on an annual basis and adopt the rule currently at that point so that it is clear for all members of the militia and the legislature and the governor as to what rules are applicable at that time. He stated that he urges the adoption of this bill.

**Roger Hagan, Montana National Guard**, submitted written testimony.  
[EXHIBIT 1]

Opponents' Testimony: none

Informational Testimony: none

Questions From Committee Members and Responses:

**REP. SIMPKINS** asked **REP. QUILICI** if there would be a problem with this bill's rule-making authority and **REP. CLARK'S** stated concerns on the floor of the House.

**REP. QUILICI** stated that he didn't see a problem.

**REP. SIMPKINS** stated that he would want to check with **REP. CLARK**.

**REP. QUILICI** stated that he would check with **REP. CLARK**. He stated that this bill is just amending a law to make it conform with something that is already in the federal law and regulations.

**REP. SIMPKINS** asked if the Governor's office had approved the bill.

**REP. QUILICI** stated that they had approved the bill.

**REP. BRAINARD** asked if the governor was the commander in chief.

**General Hindoién** stated that the governor was the commander in chief.

**REP. BRAINARD** asked if this bill will in any way affect his status as commander in chief.

**General Hindoién** stated that the governor appoints the Adjutant General by law. He stated that he didn't think that this would usurp his authority because the governor still controls who sits in the chair. The Adjutant General serves at the will of the governor. The power would still be with the governor. This bill deals with the routine execution of military rules and

regulations. The Adjutant General, with this authority, will not change the Constitution of the state of Montana.

**REP. BRAINARD** stated that he was unclear as to why the governor's office should not be involved or at least aware of these changes.

**General Hindoiem** stated that what they were addressing in this bill are things such as the organizations inspection program, and things adapted to meet the needs of the National Guard. This bill deals with the routine instances. All of the things that they do in this routine daily pattern deal with the rules and regulations that are reformed in this bill. They are trying to alleviate the time that it takes for the adjutant general to change from wearing his state hat to wearing his federal hat.

**REP. SIMPKINS** stated that this bill does not take away any authority of the governor. Right now there is a question of law as to how our administrative rules and procedures blend at the military line. Normally in the military, directives are signed by an Adjutant below the command line. In the Montana National Guard, the command line would be by order of the Governor, and signed by the Adjutant General. Montana is the only state in the region that doesn't have this authority. There is a question whether or not they can legally carry this out in the name of the governor without having it statutorily approved for rule making authority. The governor would still have the authority to cancel something. The governor is still in charge. The bill says that no one should be able to challenge the rule in a military manner by stating the rule has no authority because it wasn't implemented in accordance to law.

**REP. REHBEIN** asked why the law needs to be made retroactive to the law made back in 1974.

**REP. SIMPKINS** stated that they are trying to make a broad sweep and legalize all the acts from the law in 1974 so that no one could challenge the rules still on the books. Otherwise they will have to reenact all of them. The legality of all the rules made in the past have come up in discussion, whether the Adjutant General had the authority to make the rules or not.

**REP. REHBEIN** asked if any rules have been challenged to this point.

**Mr. McCabe** stated that as JAG officer there are no challenges at this point to any of these rules or regulations. This is a housekeeping manner that will keep this from happening in the future. He stated that this bill, as **REP. SIMPKINS** stated, will clarify the rulemaking authority from the year 1974 to this date.

**REP. SIMPKINS** said that they are legalizing all other rules so there are no loopholes.

**Mr. McCabe** stated that a review was done by states and the law around Montana as to the states. Montana was one of the few states, if not the only one, that didn't have this power statute for rulemaking. It was determined that it was good for the other states. This brought about looking at this for the state of Montana.

**REP. GREEN** asked if these things in question are fairly minor and basically just house keeping rules that they would be dealing with.

**Mr. McCabe** stated that they are required by law to adapt the federal rules and regulations procedures and usages of doing things. The majority of these circumstances are covered.

**Closing by Sponsor:**

**REP. QUILICI** stated that under the Montana Administrative Procedures Act doesn't apply to the Department of Military Affairs. One of the reasons for the retroactive date for this change is to encompass all regulations that have been established by the department since the new constitution. He submitted written testimony. [EXHIBIT 2]

**EXECUTIVE ACTION ON HB 119**

**Discussion:**

**Sheri Heffelfinger** said that a statement of intent is generally needed on any bills that deal with rulemaking authority, but that only applies to MAPA agencies. Since the Department of Military Affairs is not covered under MAPA, it does not need to have a statement of intent.

**REP. SIMPKINS** stated that it is a unique situation with state versus federal laws. With military matters they don't need to comply with Montana law. However, when the military takes off the federal hat and puts on the state hat they will need to comply not only with the federal statutes but also with the state laws. The National Guard isn't really state protected because all the federal government has to do is activate them and they comply with the federal wishes.

**REP. REHBEIN** asked if this would effectively change the role of two hats on some of these issues so that under some of these situations the guard would be used for the state and they would no longer have to comply with the federal guidelines.

**REP. SIMPKINS** stated that they try to comply with certain laws in Montana, but only those which deal with support time and not operation time. If the guard is activated then the state government has lost control of the guard. He explained that if

the governor calls the guard to duty they are not federalized and can be taken from the state's control by order of the president.

**REP. REHBEIN** asked if the governor calls the guard to duty and the federal government needed them, could they call them away from their state duties?

**General Hindoien** gave the example of the riots in Los Angeles. When the riots started, the governor of the state of California mobilized the National Guard and put those units on active duty in the streets of Los Angeles. Forty-eight hours later the President federalized those troops. The chain of command changed from the Governor of the state of California to the federal government. This can happen in the middle of that process because the units wear two hats.

**REP. REHBEIN** stated that the job that they were doing did not change, just the direction changed. He stated that what he was asking was if the federal government can pull the troops right out of the situation that they are presently in.

**General Hindoien** said that it was called a Perpich decision where they split the control with state and federal governments. In that decision, it was said unless the governor had an immediate and necessary need, the federal government had the right to determine if it pertains to the national defense. If it does pertain to national defense, the president's call takes precedence over the governor's.

**REP. GREEN** asked if the governor of California could federalize the troops.

**REP. SIMPKINS** stated that the governor could request the President to federalize the troops but could not do it himself.

**General Hindoien** stated that the governor of the state of California didn't request the President to federalize the troops. He called the guard to state active duty in the state of California as the commander in chief. They were there on the streets and then because of the intensity and what was happening they declared it a national disaster area. The President then called them to federal active duty.

**Motion:** **REP. HARRIET HAYNE** MOVED THAT HB 119 DO PASS.

**Vote:** The motion carried unanimously.

HOUSE STATE ADMINISTRATION COMMITTEE

January 13, 1995

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ADJOURNMENT

Adjournment: 10:00 A.M.

  
RICHARD SIMPKINS, Chairman

  
CHRISTEN VINCENT, Secretary

RS/cdv

# HOUSE OF REPRESENTATIVES

## State Administration

ROLL CALL

DATE *January 13, 1995*

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	✓		
Rep. Matt Denny, Vice Chairman, Majority	✓		
Rep. Dore Schwinden, Vice Chair, Minority	✓		
Rep. Matt Brainard	✓		
Rep. Pat Galvin	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Sam Kitzenberg	✓		
Rep. Bonnie Martinez			✓
Rep. Gay Ann Masolo	✓		
Rep. Bill Rehbein	✓		
Rep. Susan Smith	✓		
Rep. Jay Stovall	✓		
Rep. Carolyn Squires			✓
Rep. Lila Taylor	✓		
Rep. Joe Tropila	✓		





## HOUSE STANDING COMMITTEE REPORT

January 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that **House Bill 119** (first reading copy -- white) **do pass**.

Signed: *Dick Simpkins*  
Dick Simpkins, Chair

Committee Vote:  
Yes 17, No 0.

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# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### State Administration

DATE 1-13-95 BILL NO. HB NUMBER 119

MOTION: Rep. Hayne moved to Pass

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires <i>By Proxy</i>	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

COMMITTEE PROXY

Date

1/13/94

I request to be excused from the

State Ad

Committee meeting this date because of other commitments. I

desire to leave my proxy vote with

Vice Chair - Minority  
Doree Shwunden

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

*on all bills & amendments*

HOUSE BILL/AMENDMENT AYE NO

119	✓	

SENATE BILL/AMENDMENT AYE NO


Rep.

Carmen B. [Signature]  
(Signature)

# TESTIMONY IN SUPPORT OF HOUSE BILL 119

House State Administration Committee

1/13/95

*Presented by:*

**ROGER A. HAGAN**

**Officer/Enlisted Associations of the Montana National Guard**

Mr. Chairman, members of the committee, for the record my name is MSGT Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to provide comment in support of House Bill Number 119, a bill to authorize the Adjutant General to adopt rules governing the armed forces of the state and the Department of Military Affairs.

Our Associations concur with this bill as presented today. It is important that the Adjutant General has the authority to establish regulations in the course of administering the Montana Army and Air National Guard. Several military regulations direct or delegate the Adjutant General as the rule making authority of each state. This change will merely serve to support the directives of the Army, Air Force, and National Guard Bureau.

Our associations urge the adoption of this legislation. Thank you for your favorable consideration.

EXHIBIT 020  
DATE 1-13-95  
HB 119

# **DEPARTMENT OF MILITARY AFFAIRS**

## **SUMMARY SHEET**

**HB-119**

### **SHORT TITLE:**

**"AUTHORIZE ADJUTANT GENERAL TO ADOPT RULES"**

The following is provided as background information relating to the introduction of this legislation.

**CURRENT SITUATION:** 10-1-105 of the Montana Code provides that the Governor is the only person authorized to prescribe rules to carry out functions and duties of this state. However, controlling United States Army and Air Force regulations delegate to the Adjutants General, thru the National Guard Bureau, the authority to establish regulations and policy pertaining to the operation of the Army and Air National Guard. A copy of the current regulations pertaining to the operation of the National Guard was provided to the bill sponsor, Representative Joe Quilici.

**REQUESTED CHANGE:** The language of this bill will provide The Adjutant General the authority to adopt rules governing the armed forces of the state and to carry out his duties and the duties of the department. It is important to note that this change will only apply to rules related to the military matters.

The Montana Administrative Procedures Act (MAPA) does not apply to the Department of Military Affairs. (Reference MCA 2-4-102(a) and 2-3-102(1)(d)). Since the MAPA does not apply, there is no requirement for a Statement of Intent for this bill.

The retroactive date of this change is necessary to encompass the regulations that have been established by the Department since the new Montana Constitution was established.

Point of Contact for this bill is:

MSGT Roger A. Hagan  
444-7971 or Cell Phone 431-0700

EXHIBIT two  
DATE 1-13-95  
HB 119

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

*State Administration*

COMMITTEE

DATE *January 13, 1993*

BILL NO. *HB 119*

SPONSOR(S) *Quilici*

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
GARY HINDOEN	MONTANA NATIONAL GUARD	X	
MIKE McCABE	MT NATL GUARD	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14