

## **MINUTES**

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

#### **COMMITTEE ON STATE/FEDERAL RELATIONS**

**Call to Order:** By **CHAIRMAN AUBYN CURTISS**, on March 7, 1995, at  
11:10 a.m.

#### **ROLL CALL**

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

Rep. Aubyn A. Curtiss, Chairman (R)  
Rep. Roger Somerville, Vice Chairman (Majority) (R)  
Rep. George Heavy Runner, Vice Chairman (Minority) (D)  
Rep. Matt Brainard (R)  
Rep. Bill Carey (D)  
Rep. Patrick G. Galvin (D)  
Rep. Judy Murdock (R)  
Rep. Ray Peck (D)  
Rep. William R. Wiseman (R)

**Members Excused:** None

##### **Members Absent:**

Rep. Daniel W. McGee (R)  
Rep. Robert J. "Bob" Pavlovich (D)

**Staff Present:** Patti Borneman, Committee Secretary

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

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

Hearing: SB 167  
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: 000; Comments: n/a.}

#### **HEARING ON SB 167**

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

**SENATOR STEVE BENEDICT** said this bill would require all state agencies to evaluate the federal mandates they operate under, and report to the governor their findings. After review by the governor, he would declare under executive order that the state intends not to comply with those mandates found to be outside the scope of the state's needs, in terms of cost effectiveness and public policy. The governor would report those findings to the next legislature.

**SEN. BENEDICT** said this bill simply asks the federal government to reestablish the state's rights, and make Montana more of a partner with the federal government in determining Montana's policies and needs. The bill would realign the state with "what the framers of the Constitution had in mind." He quoted James Madison from the federalist papers:

The powers delegated to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, such as war, peace, negotiations, and foreign commerce. The powers reserved to the several states will extend to all the objects, which in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the states.

**SEN. BENEDICT** said this bill is a necessary policy statement and stressed that states need to start asserting more control over their destiny and this bill would give the governor the executive power to start determining what is in the best interest of Montana. The bill also points to the 10th Amendment of the Constitution as part of this evaluation.

**Proponents' Testimony:**

**Charles Brooks, Billings Area Chamber of Commerce**, said it is time to recognize that the best government is the government that is closest to the people. He agreed with **SEN. BENEDICT'S** observation about the Constitution and said that people at the state level have lost much governing power that needs to be restored to legislative affairs and the executive branch, as well as local counties and cities. He urged them to give this bill a do pass vote.

**Jim Tutwiler, Montana Chamber of Commerce**, supported SB 167 and stated that as an advocate of big and small Montana businesses, they have been hearing that both state and federal regulations adversely impact business. This has been a growing concern for many years and this bill is a "rational and logical" way to examine regulations, priorities and costs that impact the state. He said if they don't examine these actions, businesses will suffer. He urged their serious consideration of this bill.

**Dean Randash, NAPA Auto Parts**, said he is a small business owner in Helena and has 14 employees. He stated that he had better things to do than appear before the committee, but the infringement of any government on the affairs of his employees and himself has necessitated his involvement in this issue. He described the structure of society and stated that governmental and social institutions are "less than the state, but greater than the individual." He emphasized the importance of individual freedoms and said that it is time for an intermediary to

determine and assess "what is going on and to protect the citizens who deserve to be free." He strongly urged that this bill be supported in order to start the process to give back rights and integrity to the people.

### Opponents' Testimony

**Darrell Holzer, AFL/CIO**, rose in opposition to SB 167. He said it could be more fairly titled "the resumption of the War Between the States bill," and said it amounts to nothing less than an anarchist view of government relations. If the counties of Montana got together and sent the legislature a newly adopted county policy such as this, the legislature would reject it as an unconstitutional assertion over areas in which they have no jurisdiction. He said the state legislature has no authority over federal law. If they don't like federal laws, they can pass resolutions to make their concerns and wishes known to the federal government, but cannot pass a bill that says they are simply not going to follow federal law. He said there are laws that can be argued with and regulators who don't understand the peculiarities of life and government in Montana, but that doesn't mean they have the authority to "stand up and leave the game."

**Mr. Holzer** said there are provisions in place in state and federal laws to voice their concerns and have them addressed. Section 8 of the bill reminds legislators that they are bound by sections 9 and 10 of Article 2 of the Montana Constitution. He suggested the legislature work within the system of the constitution to address concerns about federal regulations and laws. Speaking as a Marine Corps veteran, he said "this is still the absolute best country in the world, bar none, and I'm darn proud to be fortunate to live in this country."

**Jim Jensen, Montana Environmental Information Center**, was opposed to SB 167 and while he had mixed feelings personally, his organization strongly opposed it. However, he said Montana is far superior to the United States in terms of what is contained in the state constitution and the rights afforded the citizens of the state. He said some of the rights he holds dear are those of Article 2, which include a right to know what the government is doing which is not provided in the U.S. Constitution. He said Montanans have a right to examine all public documents and observe all deliberations of meetings of government agencies in the state. There is an Equal Rights Amendment for all men and women in Montana. Montanans have a right to a clean and healthful environment. "Not one other American has that same right."

**Mr. Jensen** said Montana's Article 9, Section 2, requires that mines reclaim their land. The 1872 mining law, which governs the rest of the country, does not "hold absolute sway in Montana." He said this bill does not reinforce the good things in Montana government, but condemns the good things that the federal government is doing.

He referred to the principle of unfunded mandates and the constant debate and rhetoric that surrounds much of the discussion going on in the legislature. In Montana, environmental laws, which are the focus of this deliberation, are not unfunded mandates. "That is a fraud being perpetrated in this country." He asked them to look at the fiscal note the legislature has for HB 440 which was introduced to repeal all of Montana's environmental laws. It shows that the requirements that Montana has to meet under federal environmental laws are paid for. Out of \$25 million, Montanans would save only \$271,588 the first year and \$260,955 the second.

In reference to the bill directing the government to examine the "custom and culture" of Montana, **Mr. Jensen** stated that he does a lot of work with Native Americans on reservations. He wondered if it could left up to a few individuals to decide what the custom and culture of Montana is, which is not something that exists statewide as one entity, but changes in the different regions and communities of the state.

**CHAIRMAN CURTISS** asked **Mr. Jensen** to keep his comments to the mandates bill. He responded that he was and was referring to language in the bill. He said custom and culture must be enforced and any federal requirement that is contrary to that custom and culture must be rejected. He further submitted that would be an impossible requirement to impose on the attorney general, and would only result in conflicts.

**Deborah Smith, Helena attorney, Sierra Club**, said they are opposed to SB 167. She agreed with all the statements made in opposition to the bill. She said it is based on a flawed notion that the federal government has overstepped the bounds of its jurisdiction. She cited the 10th Amendment and read: "The powers not delegated to the United States by the constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." She said this exists in the bill of rights, and that states' rights are delegated in Articles 1 through 7 of the Constitution.

One of those powers is the one delegated to Congress--Article 1, Section 8--to regulate commerce with foreign nations and among the states. This is the power that gave authority, for example, to the U.S. Supreme Court to desegregate schools, congressional authority to enact environmental laws, and worker safety standards.

**Ms. Smith** said the bill gives the notion that the federal government has gone beyond where it was properly delegated. She said she believed the intentions of the founding fathers were to set up a strong federal government that was comprised of individual state components that could regulate everything not expressly delegated to the federal government. She noted that the proponents are currently winning in Congress. The U.S. House

of Representatives passed HR 9, "a dramatic rollback of almost every environmental law that has been passed in modern times."

**Ms. Smith** called this bill a sedition bill. "We are one country, indivisible, united under God, and we all say the pledge of allegiance. Montana is a sovereign state in the union. It's not a sovereign nation." She said to have a law that would direct the governor to issue an executive order to tell the federal government "we're not going to implement this law because it doesn't conform to Montana customs and culture and doesn't serve Montana public policy. . . is civil war." She said this is radical legislation and is not needed to get the result that is desired by the proponents. She encouraged the committee to table the bill.

{Tape: 1; Side: A; Approx. Counter: 649; Comments: n/a.}

**Christine Kaufmann, Director, Montana Human Rights Network**, stated that the Network is a private nonprofit network whose mission is to help communities counter bigotry, hatred and intolerance. She commented that they are not part of the Human Rights Commission, which is a state government agency enforcing state human rights law. She said, however, they do care about what happens in that agency, and interpreted the bill to say that instead of investigating discrimination complaints, they need to be in their offices figuring out what kind of federal mandates they have, what they're costing, and whether they apply to Montana's custom and culture.

**Ms. Kaufmann** said the history of civil rights enforcement is a history of federal intervention. The federal government has traditionally stood up for individual liberties and individual freedom. If this bill had been in force 125 years ago, she believes the federal mandate to free the slaves would have been challenged. She reminded the committee of the necessity of the federal government to enforce desegregation in public schools. The Civil War was fought over the issue of states' rights and she didn't think they needed to do that again. She read from article 6 "This constitution and the laws of the United States and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land." She urged them to kill the bill.

**Ted Lang, Northern Plains Resource Council**, said they recently met to discuss the federal clean water act and how parts of that act related to nonpoint pollution. The decision they came up with was that NPRC believed that any federal standards that were established should be respected and they would urge representatives to argue for a policy in that act to make sure they are implemented at a local level. Their position is to work through the process, not outside of it. They're concerned that this bill goes outside of the process and allows the governor to say Montana shall not comply with a federal mandate.

**Mr. Lang** agreed with the statements of the other opponents and added that when federal environmental standards are established, it involves tremendous amounts of scientific research, hearings generating a good deal of public and legislative debate, and Montana doesn't have the resources to fully review federal standards development.

He said this bill would assert "sweeping responsibilities" for the state of Montana. He said recent actions of the state hard rock mining bureau (Montana Department of State Lands) have not indicated that they can be responsible for implementing laws to protect air, land and water. They are not confident that the state can protect the environment "if we throw the feds out." They are also concerned with the reference to custom and culture, and how that could possibly be defined and used in a legal setting.

**Brad Martin, Director, Montana Democratic Party**, said they are a strong supporter of states' rights and are proud of the many laws passed in Montana that actually lead the nation, such as protecting the health and safety of economic development. However, the Democratic Party is a strong opponent of SB 167 and he stated that the central question is how far they want to go. He said the bill as amended is not the first step in asserting states' rights, but is instead an attempt to change the relationship of Montana with the United States. He stated that Montana citizens are members of both constituencies, state and federal. He said they should do everything they can to make that relationship sensible, workable, and protective of all people's interests. He said the federal government "does stupid things" as well as the state government.

*{Tape: 1; Side: B; Approx. Counter: 000; Comments: While turning tape over, lost example of OSHA laws being implemented in REP. CURTISS' district that Mr. Martin believed to be unreasonable.}*

**Mr. Martin** said Montana's U.S. representatives, Max Baucus and Conrad Burns, are involved to make sure laws impacting Montana make sense. He said he didn't think the committee wished to disassociate from all laws protecting workers and children, for example. From a political party standpoint, he sensed they had more in common than not.

**Mr. Martin** cited page 3 of the bill that shows specific laws that were struck from the bill in an amendment. Page 8 shows that if there was a federal mandate they didn't want, the state would resist compliance with it. He again asked how far they want to go to undo the relationship between the state and the federal government. He interpreted the language on page 3 to mean that the state is ready to "do anything for a job, ready to do anything to our environment, to our children, to our families." He said the committee is heading somewhere they don't really want to be and gave several examples of mandates that are beneficial to the state's economic development. He didn't think they wanted

a law that would create a "pick and choose approach to the federal laws that protect the health and safety of Montana citizens." He strongly urged them to reject this bill as amended.

{Tape: 1; Side: B; Approx. Counter: 120; Comments: n/a.}

Questions From Committee Members and Responses:

**REP. PAT GALVIN** asked **SEN. BENEDICT** for his opinion on state mandates to cities and counties. **SEN. BENEDICT** replied that the bill doesn't address cities and counties, but reiterated that the best and purest form of government comes from the people. He said he'd have no problem with cities and counties, in turn, assessing their relationship to state government.

**REP. MATT BRAINARD** asked the sponsor if the states were responsible for forming the federal government, and he nodded yes. **REP. BRAINARD** then asked if the state must form enabling legislation for local government. **SEN. BENEDICT** replied basically, yes.

**REP. PECK** asked **Ms. Smith** if she was an attorney and she said she was. **REP. PECK** asked what her understanding of federal and state government was in terms of education and the relationship that should exist under the constitution. **Ms. Smith** replied that education is primarily dealt with on a local level, and the role of the federal government comes in when individual liberties, upheld by the U.S. Constitution, have been violated.

**REP. PECK** asked if she understood anything about federal government requirements imposed on special education instruction. **Ms. Smith** said she was not familiar with this area. **REP. PECK** said there are seven Democrats co-sponsoring the bill who are all strong supporters of public education, and they signed the bill for the same reason he did, which is because he's tired of the federal government dictating to local school districts "in the very minutest terms" what they must do to comply with federal law when they only contribute about 7% of the cost. He welcomed her comments in response.

**Ms. Smith** said it would be difficult for her to address that issue, since she isn't familiar with those requirements. She thought **Mr. Martin** eloquently explained that the federal government sometimes does stupid things, but said the remedy should be to use the system that is in place and go through Congress.

**REP. PECK** apologized for being late to the meeting and heard only a portion of the opponents' testimony, and he thought he heard because the federal government does some good, they should not be questioned or challenged and wondered if he misinterpreted what he heard. **Ms. Smith** said that was not what she intended to convey, but said she believed they should be challenged under the

current system that exists under the Constitution. She said the problem with this bill is the mechanism that is used to challenge the federal government's authority.

**Ms. Smith** cited debates she has watched on C-SPAN and in national news media, that show a movement toward a "vulcanized" world. She said Montana cannot compete on its own without the "massive federal subsidies" it currently receives. She stated her belief in the system of government that has worked for 200 years.

*{Tape: 1; Side: B; Approx. Counter: 120; Comments: n/a.}*

**REP. PECK** stated that sometimes the federal government has threatened individual units of government with the loss of all federal funds because they are in violation of one program. He asked if that was acceptable to her. **Ms. Smith** said in the incidence of environmental laws where highway construction funds can be withheld, this is for the purpose of enforcement. She asked how else can the federal government get compliance. She said there is a valid movement away from litigation toward more collaboration.

*{Tape: 1; Side: B; Approx. Counter: 240; Comments: n/a.}*

**REP. BILL WISEMAN** asked the sponsor if he knew of other states with similar legislation, either pending or in effect. **SEN. BENEDICT** said the states of Colorado, Utah, and California have passed similar legislation and described the differences from state to state. He explained why SB 167 does not have a huge fiscal note.

**REP. WISEMAN** then said the reason the federal government has been able to exert so much power is because they keep the states divided and have no mechanism to get together. He asked if they passed this law, what avenues would they have in Montana to inform other states that they've passed the law as well. **SEN. BENEDICT** responded that the Council of State Governments is organizing a gathering of the states in the summer of 1995 to talk about federal and state relations, and bills such as this one will be discussed at that gathering.

**REP. WISEMAN** told **Mr. Lang** that he wanted his reaction to an air monitoring project that took place in Great Falls. He said Great Falls has been considered a noncompliance city with polluted air, and now they are in compliance, and he asked **Mr. Lang** for his interpretation of this. **Mr. Lang** said that different "bureaucratic pathways" have been used to assess communities compliance with such laws.

**REP. WISEMAN** told a story about an EPA sensing van that was placed in the worst possible place in the city, 10th Avenue South and 9th Street. This resulted in a reading that Great Falls was a polluted city. The property owners then all agreed not to lease to the sensing van to keep them out of the two block area



around this intersection, and upon moving the van to 26th Street, they found that Great Falls was no longer polluted. He said they kept looking for ways to return to the more polluted area. This incident made him very angry because it appeared as though the federal government was trying to justify their actions and he said would do everything he could to get this bill passed.

**REP. BILL CAREY** told the sponsor that he believed this bill and others like it could put the state into a "dangerous game" and he wondered whether he had considered the possible dangers that could result and if so, how did he think the state could avoid them. **SEN. BENEDICT** replied that he feared if they didn't do something, they would be on a dangerous course. The reason he introduced this bill was to redefine their role in a balance of power between the federal government and the states. He said that one member out of 435 in the U.S. House of Representatives does not provide true representation to protect Montana's interests.

**REP. CAREY** said one of the reasons he thought it was dangerous is because he can foresee a time when Americans might take up arms against one another again over states' rights. He asked **SEN. BENEDICT** if he thought that could happen. **SEN. BENEDICT** replied that he didn't think his bill would contribute to that possibility and if it did, the federal government probably was guilty of overstepping its relations with the people. He said the "sky is not falling" with this bill and doesn't require the government to order the state militia to protect the borders against federal intrusion or protect the schools, and is not a threat.

**REP. GEORGE HEAVY RUNNER** alluded to C-SPAN and discussion about the Contract With America being implemented by the current U.S. House of Representatives. He said that tribes are visiting Washington, D.C. to remind them that they, too, have a contract with America called treaties. He cited Article 1 of the constitution that is a compact saying that all lands owned or held by Indians or Indian tribes would be under the jurisdiction or control of the Congress of the United States, and would not be revoked unless there was a certain majority vote by U.S. and state citizens.

**REP. HEAVY RUNNER** said that Montana tribes have had a relationship with the federal government that is older than statehood. He asked the sponsor if there was any language in his bill that would cause tribes to have to re-invest in their "treasures" to protect their rights. He said there are many decisions being made that would impact tribes, for example, what is currently happening in Flathead County. He asked if the state might have to vigorously defend itself for protection.

**SEN. BENEDICT** responded that he didn't think it would, but that the bill is a state/federal relations bill, and as he understands it, compacts and tribal agreements might be enhanced if tribes

took a page from this type of bill to establish something for themselves, because they consider themselves sovereign nations dealing with the federal government and he didn't see how it would conflict with tribal relations with the federal government.

**REP. HEAVY RUNNER** wondered if it would conflict with state relations. **SEN. BENEDICT** didn't think it would, but would only relate to states and the federal government. **REP. HEAVY RUNNER** wanted to know why there wasn't a fiscal note. **SEN. BENEDICT** said when it was first introduced, it was more ambitious and required more branches of state government to be involved. They pared it down considerably and the departments that would be required to work together--Budget Office, LFA, Legislative Council, Justice Department--were cut from the bill because the fiscal note was too "spendy." It currently requires the individual state agencies to produce the information they're already producing, and to present it to the governor.

**REP. HEAVY RUNNER** said there is a potential fiscal impact when the state could request information, develop detailed description of records to analyze, and request assistance of staff employees, and it sounded to him like additional duties would be imposed by the legislature. **SEN. BENEDICT** said that funding is already provided to the justice department to do just what the bill asks.

**REP. HEAVY RUNNER** then cited page 8 where it states that the prioritizing would be delegated to the legislature to gather and analyze the information from state agencies. **SEN. BENEDICT** said that all the legislature would do is receive a report from the governor.

*{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}*

**REP. PECK** said he disagreed with **SEN. BENEDICT'S** last statement and said on page 8, lines 22-25, the New Section 8 of the bill says "In exercising its authority as an equal branch of state government the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of sections 1 through 8." He said that suggested to him that the legislature could create a study committee or assign the LFA staff to do some of this work, and there would be some costs associated that are difficult to estimate.

**SEN. BENEDICT** said this requirement would affect the 55th Legislature when the report would be made to the legislature and then, just as they do with any legislature, it may require some funding, but this bill doesn't require it. **REP. PECK** agreed that it doesn't require it, but down the line there is a strong possibility that funding would be needed.

**Closing by Sponsor:**

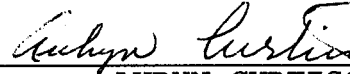
**SEN. BENEDICT** congratulated the loyal opponents of the bill for following it to the House, in spite of the bipartisan support

showed by the Senate. He said they were not successful in killing the bill with the same arguments. He said the language in the bill is not rhetoric or inflammatory, but is just a statement that the people of Montana are not comfortable with the encroachment by the federal government on affairs that should be left to Montana. It won't be settled in the years to come, but "the people of Montana are restless and they want less government interference in their lives. This bill is just a tool for the state to help develop its strategy in restoring the balance of powers between state and federal government." He said they wouldn't require the ignoring of mandates, but would begin to assess where they should resist burdensome and unnecessary federal rules and regulations, toward development of programs that meet the needs of the state.

Adjourned. 12:12 p.m.

ADJOURNMENT

Adjournment: 12:12 p.m.



AUBYN CURTISS, Chairman



PATTI BORNEMAN, Secretary

AC/pb

# HOUSE OF REPRESENTATIVES

## State/Federal Relations

**ROLL CALL**

DATE 3/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Aubyn Curtiss, Chairman	✓		
Rep. Roger Somerville, Vice Chair, Majority	✓		
Rep. George Heavy Runner, Vice Chair, Min.	✓		
Rep. Matt Brainard	✓		
Rep. Bill Carey	✓		
Rep. Pat Galvin	✓		
Rep. Daniel McGee		✓	
Rep. Judy Rice Murdock	✓		
Rep. Bob Pavlovich		✓	
Rep. Ray Peck	✓		
Rep. Bill Wiseman	✓		

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

State/Federal Relations

DATE 3/7/95

BILL NO. SB 167 SPONSOR(S) Gen. Steve Benedict

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Harrell Holzer	AFL-CIO		X
Bradi Martin	MT Demo Party		X
Deborah Smith	Seneca Club		X
Deon Roodish	NAPA auto parts	X	
Charles R. Brooks	Billing, chambers	X	
Jim Jensen	MEIC		X
Jim Tutwiler	MT Chamber	✓	
J.V. Bennett	Mont PERG		✓

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

HR:1993

wp:visbcom.man

CS-14