

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE/FEDERAL RELATIONS

Call to Order: By **CHAIRMAN AUBYN CURTISS**, on March 21, 1995, at 11:00 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: None
Executive Action: SJR 6 Discussion/Action Postponed
SB 167 Motion to request oversight
passed

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

EXECUTIVE ACTION ON SJR 6

CHAIRMAN AUBYN CURTISS told the committee that **SENATOR BOB BROWN** asked them to postpone action on this resolution. She presented letters and a stack of petitions with signatures from people asking them to not pass SJR 6. **CHAIRMAN CURTISS** said that she thought SJR 6 should rest on the table. It may be important for them to draft a committee bill, which would require an interim committee to monitor what is going on with state mandates.

She said that **SEN. BENEDICT'S** bill, SB 167, which was concurred in, will require each department which administers federal mandates to do an evaluation of those mandates and forward a report to the governor, who, in turn, will evaluate them and determine whether they are cost effective, if they're a burden on the state, and if they conform to Montana's custom and culture. After his evaluation, if he determines they are not good for Montana, he can reject them. The attorney general will be standing by to defend his decision on the mandates.

Sometimes when they pass legislation, they find upon returning to Helena two years later, that nothing has been done to implement it, and she wondered if the committee would be willing to draft a bill requiring an interim committee to further the discussion on state and federal relations with department heads in order to find out if they are implementing the legislation passed and to monitor the progress and performance of state agencies.

{Tape: 1; Side: A; Approx. Counter: 75; Comments: n/a.}

Discussion:

REP. GEORGE HEAVY RUNNER liked the idea to analyze the cost of implementing mandates, but thought the meaning of determining Montana's customs and culture was still vague and he had yet to receive a definitive answer on its meaning.

CHAIRMAN CURTISS responded that there was a fiscal note in the amount of \$11,872 on SJR 6, which would be showing up in the appropriations process somewhere. She thought this money could be applied to the operation of an interim committee.

REP. BILL WISEMAN said interim committees need to be sanctioned by the legislature, and when they are, have their own "pot of money" for this purpose, so it wouldn't matter what they did with the \$11,000.

REP. RAY PECK said **REP. WISEMAN** was correct. There is a certain amount appropriated for study committees, but with the reorganization it might be different. In the past the Legislative Council has determined how many committees they can fund. In about a month, the legislators will receive a sheet for ranking which committees should meet. If the Legislative Council can fund three committees, they will take the top three. Therefore, they would not be assured that this committee could be funded under that process.

REP. WISEMAN asked **CHAIRMAN CURTISS** why she assumed they won't be spending the \$11,000 on SJR 6. He said he's upset about the ads that were run (for a petition protesting SJR 6) in newspapers and thought the organizer spent a great deal of money. He wondered what other newspapers the ad appeared in besides the Great Falls Tribune. **EXHIBIT 1**

CHAIRMAN CURTISS assumed some came from Bozeman, but didn't know.

REP. WISEMAN said quite a few of the opponents who testified at the hearing were credible, but thought with the kind of money that was spent on the ads, "you could get all kinds of signatures on anything," and he didn't think the petitions were valid. He preferred keeping the money in SJR 6 and waiting to see what would happen.

REP. JUDY MURDOCK noticed that a great number of the signatures came from Corwin Springs, and wondered where that was.

REP. PECK said Corwin Springs is where the Church Universal and Triumphant, south of Livingston, is located, also known as CUT.

REP. WISEMAN said that gives another idea of the credibility of the signatures.

CHAIRMAN CURTISS asked the secretary if she knew where most of the signatures came from. She responded that she didn't know. **CHAIRMAN CURTISS** said that she also received a number of letters. She asked the committee how many had received mail in support of SJR 6.

REP. PECK said he had received some support as well as **REP. ROGER SOMERVILLE** and **REP. WISEMAN**. **REP. PECK** said he thought that was unusual, but that he could identify three or four groups supporting it.

REP. PECK asked if **SEN. BROWN** indicated his intention for the resolution. **CHAIRMAN CURTISS** said she briefly talked to him, and he said that he didn't have any strong feelings about it one way or another, but thought a lot of the opposition was from people who didn't totally understand the amendment. In her opinion, the amendment is insignificant, because from a constitutional perspective, there are other factors involved.

Up to the present time, only one provision for amending the constitution under Article V has ever been implemented, and that was in 1787 when the first constitution was written. A second provision is in the 5th Amendment, which says that the states can ask Congress to call for a constitutional amendment. Part of the concern indicated to her, is that under this second provision, something like the Conference of the States (COS) might make it legally possible for Congress to call a constitutional convention.

She said another concern is that the COS means something different to states around the country who have their own particular problems with state and federal relations. They're all coming from different places, but are all concerned about the mandates.

REP. PECK said he memorized Article V and could not see how anyone could imagine that a constitutional convention could be created from the Conference of the States. "It just can't happen, and we had two very outstanding lawyers tell us that--Rob Natelson, a professor at the University of Montana, said it couldn't happen; and the governor of Montana, who is a well-recognized attorney, said it could not happen."

REP. SOMERVILLE concurred completely with **REP. PECK** and is still trying to find the ghost. He's replied to everyone who had written to him and stated his support of the resolution. Each state is focusing on different aspects of over-regulation and intervention and when they get together, they'll be discussing numerous issues. He wondered if they should have a conference every 20 years to re-evaluate the system. He said he would continue to support it.

REP. MATT BRAINARD played the devil's advocate on where the ghost is, and said there are currently other ways to address the states' concerns. The provision that 26 states have to pass this through their legislatures and then appoint delegates to attend, is a questionable process and he thought this is what many people were shying away from. He wondered why there must be a 26-state majority and why the participants officially delegated, when they already have venues for various state organizations to get together.

The other aspect is that while lawyers can interpret current law very well, the fact remains that states in the past have had the ability to change the written word in the constitution "on their own momentum." He said that change may not be subject to scrutiny by the U.S. Supreme Court.

{Tape: 1; Side: A; Approx. Counter: 380; Comments: n/a.}

REP. HEAVY RUNNER echoed **REP. BRAINARD** comments asking what the broad, fundamental, structural changes would be that would come about through the process. The petition that would be presented to Congress after approval by the states, should it not be approved by Congress, might cause "a heck of a fallout." He said the other issue is the apparent difficulty of this resolution to pass smoothly through other states. It told him something that the governor of Utah would take time out to testify in Montana for this resolution, that perhaps it's not as much a smooth ride as they thought.

REP. HEAVY RUNNER referred to language in the resolution stating the intention to make "broad, fundamental, structural" changes in the constitution. He predicted that the petition would state just that and thought the outcome would be very interesting. He doubted if Montana's interests were truly being considered.

REP. WISEMAN said the reason the governor of Utah came to testify is because money has been spent in the campaign. He had no idea

how many newspapers ran the aforementioned ad, but "somebody's putting some goodsized bucks in to try to scare us." He said to counter this campaign to kill the COS, the governor had to come to the hearing. The people chosen to participate would not be elected delegates, they would be appointed by the governor. He said he suspected that the "long finger of Congress" is involved in stopping the COS, because he believes that Congress wants to keep the states divided.

He discussed air quality regulation that is tied to highway funds, and the federal government's intention to keep the states apart on purpose to keep them in the dark about what other states are going through. He said they've gotten away with this for 200 years and "it's high time that the states get together" and thought they should meet every other year to discuss common viewpoints and problems and let the federal government know they're very unhappy. He said he strongly supported SJR 6.

REP. SOMERVILLE stated that he had received some calls from people in Essex who were told that the meeting was being organized to "go out and destroy the Second Amendment."

CHAIRMAN CURTISS distributed copies of the COS resolution from Texas which states to "resolve that the conference agenda extend also to common language to be used in state petition to the U.S. Congress for a constitutional amendment convention under Article V of the U.S. Constitution, incorporating within that language the text of any amendments drafted by the Conference of the States for consideration by the Constitutional Amendment Convention." **EXHIBIT 2** She said four states have currently approved the resolution, and six have rejected it: Oklahoma, New Mexico, New Hampshire, North Dakota, West Virginia, and Georgia. Idaho has approved it and are trying to rescind at this time.

REP. PECK said the governor of Utah stated that 12 states had approved it. He said they were finding things in the resolution he couldn't find. He agreed with every one of the whereas clauses which essentially said that the federal government is on their back, and they are not treated as equal partners as they should be. He read from page 3, line 15, where it described what the COS will accomplish and how it will do it.

{Tape: 1; Side: A; Approx. Counter: 610; Comments: n/a.}

REP. BRAINARD said he agreed with **REP. WISEMAN** and wondered if there might be someone who would find it in their best interest if the states didn't get together, and thought it was a legitimate consideration. He said he found it disturbing because they don't know whose pulling whose chain, and they're operating in the dark. If they did go after the Second Amendment, for instance, they should consider how this would impact the country.

He asked the governor of Utah at the hearing what he had done in his state to reject federal mandates, and thought it was fairly

important for them to consider. Who are the people involved in SJR 6 and what is their track record? He said there is a process through the 10th Amendment to resist what the federal government is doing. He asked if they, as representatives, have the resolve individually in their states to resist, or will it take coming together to accomplish their goals.

REP. BRAINARD mentioned questions asked by **REP. DAN MCGEE** at the hearing about what would happen if they don't participate in the COS, are they shut out of the process and don't have any say, which he thought was a scary alternative.

REP. HEAVY RUNNER said there would then, be 26 states speaking for 50. **REP. SOMERVILLE** said there would only be 26 speaking for 26, for themselves. **REP. PECK** said they are reading things into it and that these states would be doing what is outlined in the resolution. He went on to say that the sponsor is one of the most honorable men in the legislature and is a teacher of government and history in the public schools, and wondered if he could be suspected of involvement in some kind of conspiracy.

REP. WISEMAN said governors meet regionally and nationally, and that's okay, but because they want to take along four legislators, now it's a conspiracy. He suggested at the next governors' conference that they each bring along four legislators, to see if that would "stir up this nest."

REP. BILL CAREY said it seemed to him this isn't the only way the states can get together to talk about their problems. SJR 6 is so charged with unanswered questions, that now it's so controversial that it might be better to seek ways that wouldn't be so worrisome.

REP. PECK said that the problem that seemed to arise was that even though these individual entities have ways to meet, they have never come together to discuss this issue with one voice.

REP. CAREY wondered why these two organization can't just get together to discuss this issue without using the resolution process, because it has become so fraught with all kinds of concerns about who's behind it and what the hidden agenda is.

REP. PECK said the answer to that is if they don't do it in a formal, open manner, people are then going to think that's a conspiracy and they'll get the same response, and they won't have had the full participation of the legislature in setting it up. He said this is the open, honest way to do it.

REP. SOMERVILLE said there are fearmongers trying to control this resolution. He has listened to ultra-conservative people on the radio who are concerned the entire state will be surrounded shortly with the national guard and will have to defend the state's borders against Russians invading from Canada, and he

said it's amazing what the fearmongers have brought up about this resolution.

{Tape: 1; Side: A; Approx. Counter: 848; Comments: n/a.}

REP. HEAVY RUNNER asked the chairman if she might want to communicate to SEN. BROWN that this committee is ready to vote on SJR 6, and thought they should get it out on the floor.

{Tape: 1; Side: B; Approx. Counter: 70; Comments: n/a.}

CHAIRMAN CURTISS told the committee that they would wait and take executive action on SJR on March 23.

REP. PECK suggested they should carry on with the resolution.

REP. BRAINARD commented on the interim committee, and said whether or not they have SJR 6, would be a good idea. The interim committee for SB 167 would be valuable and wouldn't be a substitution for SJR 6, other than the funding. He said he'd be glad to work on a bill on an interim committee.

Motion: REP. MATT BRAINARD MOVED THAT AN INTERIM COMMITTEE BE FORMED TO LOOK AT SB 167.

Discussion:

REP. PECK said he thought it would detract from the effort of SJR 6, so he opposed it, and thought they should make the decision that they are either in the game or out of it. They have standing committees, such as Legislative Finance, to whom they could forward a request to include SB 167 on their work agenda.

REP. BRAINARD thought that would be acceptable.

REP. PECK said there would be no cost and it would be cheaper to make a formal request of the standing committee.

CHAIRMAN CURTISS clarified the motion suggested by REP. PECK, to make a recommendation to the Legislative Finance Committee to consider putting on their work agenda to oversee the implementation of SB 167.

CHAIRMAN CURTISS said if this bill passes, there will need to be some oversight. She said the only reason she mentioned SJR 6 was because of the funding, because she didn't know if funding would be necessary.

Motion: REP. PECK MADE A SUBSTITUTE MOTION THAT THIS COMMITTEE MAKE A FORMAL REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE TO PUT ON THEIR WORK AGENDA THE MONITORING AND IMPLEMENTATION OF SB 167 IF IT PASSES. The motion carried unanimously.

{Tape: 1; Side: B; Approx. Counter: 165; Comments: Meeting adjourned.}

ADJOURNMENT

Adjournment: 11:35 a.m.


AUBYN CURTISS, Chairman


PATTI BORNEMAN, Secretary

AC/pb

HOUSE OF REPRESENTATIVES

State/Federal Relations

ROLL CALL

DATE 3/21/95

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	✓		

AN URGENT MESSAGE TO ALL CITIZENS OF MONTANA

Are you aware that our federal Constitution is in jeopardy because of a resolution before the 1995 Montana House of Representatives?

The facts are these:

- The Montana Senate has just passed a resolution (SJR 6) calling for a Conference of States and the resolution is now before the Montana House;
- The Conference of States has the power to turn itself into a Constitutional Convention by resolution;
- The assembled delegates are considered to be representatives of the people not the legislatures, and legal experts warn they may, therefore, disobey or ignore prior instructions, such as state amendments trying to ward off a Constitutional Convention;
- SJR 6 is a sleeper because it hides the power of dynamite to rock the nation (a Constitutional Convention) cloaked under the guise of something good (a conference to reassert states' rights). A good alternative for those seeking stronger states' rights is the Tenth Amendment Movement. It is not necessary to call a Conference of the States.
- Former Chief Justice Warren Burger has said: "There's no way to put a muzzle on a Constitutional Convention;"
- A Constitutional Convention, therefore, would open the way for special-interest forces who wish to rewrite our Constitution, and anything could happen.

If you revere our Constitution and are appalled by this extraordinary situation, please arouse your friends, neighbors and colleagues to sign the petition below and mail it immediately to Representative Aubyn Curtiss, Chairman, House State/Federal Relations Committee, Capital Station, Helena 59620. This Committee is currently studying the resolution and plans to hold a public hearing on it on Tuesday, March 14th, at the State Capitol. You may call Representative Curtiss at 444-4800. You are encouraged to attend the hearing!

* * * * *

WE, THE UNDERSIGNED CITIZENS OF MONTANA, LOVE AND REVERE OUR CONSTITUTION AND CONSIDER IT OUR SACRED DUTY TO DEFEND IT. WE ALSO CONSIDER IT THE SACRED DUTY OF OUR LEGISLATORS, BOTH FEDERAL AND STATE, TO DEFEND THE UNITED STATES CONSTITUTION.

WE, THEREFORE, OPPOSE THE RESOLUTION BEFORE THE MONTANA HOUSE CALLING FOR A CONFERENCE OF STATES BECAUSE IT WOULD PLACE OUR CONSTITUTION AT RISK AND WE STRONGLY URGE THE MONTANA HOUSE TO VOTE AGAINST THAT RESOLUTION (SJR 6)!

(Note: All residents are eligible to sign, regardless of age or voting status.)

NAME

ADDRESS

Pd for by Eleanor Schieffelin, P.O. Box 39, Emigrant, MT 59027

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution of laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

03/08/95 10:48 FAX 7023580737

EAGLE FORUM

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1-r-07-95 12:52P TX EAGLE*ADAMS,H&C

214 380-2853

P.01

Texas COS - Con/Con Resolution *crh*

see pages 3+4

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LEGISLATIVE INFORMATION SYSTEM 74(R)
BILL TEXT REPORT
HCR 18 INTRODUCED VERSION

DATE: 02/13/9
TIME: 12:00:1
PAGE:

By Chisum

H.C.R. No. 18

74R1867 CCK-D

intro rnf 11-5 Feb

CONCURRENT RESOLUTION

WHEREAS, The history of the adoption of the United States Constitution and Bill of Rights makes clear that the framers of those documents intended a system of federalism in which the national government and states were to be equal partners in achieving the goals of American self-governance; and

WHEREAS, In The Federalist Papers, James Madison and Alexander Hamilton clarified that the assumption of new powers by the national government would leave the states still sovereign in areas of authority outside those constitutionally enumerated as possessed by the national government; and

WHEREAS, The Tenth Amendment, the last item in a Bill of Rights promised to appease anti-federalist sentiment, reiterated the principle stated by Madison and Hamilton, providing that "(T)he 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"; and

WHEREAS, Over the last two centuries, the courts have provided little substantive interpretation of that amendment, while the government in Washington, D.C., has expanded its powers by proactive constitutional interpretation, leading to a situation in which issues tend toward a single national solution and the opportunity for experimental democracy by the 50 states is relentlessly eroded; and

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WHEREAS, Increasingly, the states are saddled with unfunded federal mandates, the implementation of which robs them of revenue that might otherwise be applied to alternative, and more innovative, public investment as determined by the voters and leadership of each state; and

WHEREAS, In 1989, the Intergovernmental Partnership Task Force of the Council of State Governments issued a Report containing proposals for restoring greater balance to America's system of federalism; and

WHEREAS, More recently, the National Governors' Association, the National Conference of State Legislatures, and the United States Advisory Commission on Intergovernmental Relations have called for summit meetings on the subject of federalism; and

WHEREAS, Recognizing that the collective voice of the 50 states is geographically dispersed, concerned state officials have proposed an informal and bipartisan Conference of the States for the summer of 1995, to be attended by delegations from the several states; and

WHEREAS, Delegates would focus narrowly on the subject of structural reform in the system of federalism, and the product of their deliberations would be submitted to the legislatures and governors of the 50 states for their formal consideration; and

WHEREAS, The Republican and Democratic governors of Utah and Nebraska, respectively, are working toward gathering support for the Conference of the States proposal, and the Council of State Governments has agreed to serve as coordinator and sponsor of the effort; now, therefore, be it

EXHIBIT 2DATE 3-21-95SJR 6

03/08/95 10:48 FAX 7023580737

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LEGISLATIVE INFORMATION SYSTEM 74(R)

DATE: 02/13/95

BILL TEXT REPORT

TIME: 12:00:11

HCR 18

INTRODUCED VERSION

PAGE:

RESOLVED, That the 74th Legislature of the State of Texas hereby authorize a delegation to represent Texas at a Conference of the States for the purpose of reexamining this nation's system of federalism and devising means to constitutionally reassert the principle of state sovereignty; and, be it further

RESOLVED, That the governor and presiding officers of the legislature have authority to determine the size, composition, membership, and chair of the Texas delegation to the conference; and, be it further

RESOLVED, That Texas agree to parliamentary rules adopted by the conference, provided that those rules entitle each state delegation, regardless of size, to one vote, and provided that each vote by the Texas delegation be in accordance with the majority of its members present and voting internally within the delegation; and, be it further

RESOLVED, That the conference agenda extend, if supported by participants, to the drafting of one or more potential amendments to the United States Constitution reaffirming and strengthening state sovereignty under the American system of federalism; and, be it further

RESOLVED, That the conference agenda extend also to common language to be used in state petitions to the United States Congress for a constitutional amendment convention under Article V of the United States Constitution, incorporating within that language the text of any amendments drafted by the Conference of the States for consideration by the constitutional amendment convention; and, be it further

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RESOLVED, That the Texas delegation report fully on the proceedings of the conference to the Texas Legislature and the governor, including any action plan, constitutional amendment drafts, or constitutional amendment convention petitions receiving the support of conference participants; and, be it further

RESOLVED, That copies of this resolution be forwarded to the president of the United States, to the speaker of the house of representatives and the president of the senate of the United States Congress, to the members of the Texas delegation to the congress, and to the presiding officers of the legislatures of the other 49 states.