

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
52nd LEGISLATURE - 1st SPECIAL SESSION**

**COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By Rep. Jan Brown, Chair, on January 9, 1992, at 9:00 a.m.

**ROLL CALL**

**Members Present:**

Jan Brown, Chair (D)  
Vicki Cocchiarella, Vice-Chair (D)  
Beverly Barnhart (D)  
Gary Beck (D)  
Ernest Bergsagel (R)  
Fred "Fritz" Daily (D)  
Ervin Davis (D)  
Jane DeBruycker (D)  
Roger DeBruycker (R)  
Gary Feland (R)  
Gary Forrester (D)  
Patrick Galvin (D)  
Harriet Hayne (R)  
Betty Lou Kasten (R)  
Richard Simpkins (R)  
Jim Southworth (D)  
Wilbur Spring (R)  
Carolyn Squires (D)

**Members Excused:** Rep. John Phillips

**Members Absent:** None

**Staff Present:** Dave Bohyer, Legislative Council  
Jeanne Krumm, Committee Secretary

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

**HEARING ON SB 2**

**Presentation and Opening Statement by Sponsor:**

**SEN. JOE MAZUREK** said SB 2 was introduced by the leadership of both houses as a request from the Secretary of State and the Attorney General. SB 2 will allow the state to deal with the situation that has arisen as a result of the census and the question of whether Montana loses a congressional seat or not. When the state was notified that it would be losing a congressional seat, Attorney General Racicot filed suit against the United States Congress on behalf of the Governor and

Montana's congressional delegation. The Attorney General's suit contended that the reapportionment method used to allocate seats in the United States Congress is unconstitutional and a federal 3-judge panel ruled in Montana's favor, i.e., that the reapportionment formula is unconstitutional. SB 2 finds that the state is bound and obligated to follow that decision, and therefore, Montana still has two seats until the United States Supreme Court deals with the issue, which is scheduled to be heard March 4, 1992.

SB 2 will put in place a process, whereby the Secretary of State and other elected officials will deal with the situation if the Supreme Court overrules or upholds the decision of the federal 3-judge panel. The proposal in SB 2 requests the Districting and Apportionment Commission to proceed as if Montana has two seats in Congress.

In the event the United States Supreme Court overrules the decision and Montana does lose a seat, an alternative process is provided. If the Supreme Court were to rule that Montana will only have one seat, then candidates for Congress will have until March 19, 1992, or three days after the Court ruling, whichever comes last, to file for a single congressional seat. If the decision were to come down between April 8 and August 10, then the respective political parties would, as they do under current law, nominate a candidate for a single congressional seat and will have 30 days to do so. If the decision didn't come until August 11 or later, then the parties would have to act much more quickly and select a candidate within five days following the court's decision.

#### Proponents' Testimony:

Beth Baker, Attorney General's Office, said the federal statute underlying the apportionment of the United States Congress has been declared unconstitutional and void by the District Court in Montana. The case has been appealed by the United States government directly to the United States Supreme Court. The Court has set the schedule and oral arguments for March 4, 1992. In view of that, the Attorney General's office does not anticipate that the decision will come prior to March 19, 1992.

Mike Cooney, Secretary of State, submitted written testimony.

EXHIBIT 1

Nancy Harte, Montana Democratic Party, said this bill is a good attempt to clarify this confusing subject for the voters. There have been many alternatives discussed and this bill is the result.

Opponents' Testimony: None

Questions From Committee Members:

REP. SIMPKINS asked if this will mess up the apportionment system because of one rule made by Congress that Congressional Districts cannot cross state lines. Marc Racicot, Attorney General, said there is no danger or risk that the rule can be changed because of Constitutional guarantees.

REP. KASTEN asked if it is physically possible to meet the dates discussed. Mr. Cooney said that there is no question that we are pushing this time limit. In determining those dates, we have had lengthy discussions with many election administrators around the state. Nobody likes having to do this, but everyone has agreed that there would be enough time in this short time period to make the adjustment.

Closing by Sponsor: SEN. MAZUREK closed by requesting the Committee's concurrence in SB 2.

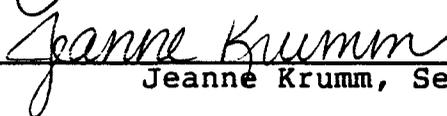
EXECUTIVE ACTION ON SB 2

Motion/Vote: REP. KASTEN moved SB 2 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 9:15 a.m.

  
\_\_\_\_\_  
JAN BROWN, Chair

  
\_\_\_\_\_  
Jeanne Krumm, Secretary

JA/jk

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE

1-9-92

NAME	PRESENT	ABSENT	EXCUSED
REP. VICKI COCCHIARELLA, VICE-C.	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS			✓
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		
REP. JAN BROWN, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

January 9, 1992

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report  
that SB 2 (third reading copy -- blue) be concurred in.

Signed: \_\_\_\_\_

*Jan Brown*  
Jan Brown, Chairman

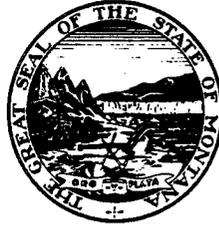
RT.

# SECRETARY OF STATE

STATE OF MONTANA

EXHIBIT 1  
DATE 1-9-92  
SB 2

Mike Cooney  
Secretary of State



Montana State Capitol  
Helena, MT 59620

Testimony before the House State Administration Committee  
Secretary of State Mike Cooney  
January 9, 1992

Madam Chair and members of the Committee, for the record my name is Mike Cooney and I appear before you today in support of Senate Bill 2.

As you no doubt are aware, this measure has been developed as a result of Montana's lawsuit to maintain two seats in the United States Congress. Montana's case is currently before the United States Supreme Court, and oral arguments are set for March 4th, 1992.

In the meantime, it is the intent of this legislation to develop a plan for the administration of the filing and election process to allow the 1992 election to proceed with as little disruption as possible.

The legislation has three parts. First, it stipulates that pending a final, contrary determination, Montana will conduct elections for two congressional seats in 1992.

Second, it establishes a filing schedule for congress in the event that a ruling is made prior to April 7th, 1992.

And Third, it establishes a method for appointment of party candidates if a final determination is not made in time to properly administer a primary election for one seat.

Let me give you a brief explanation of how the bill will work. For an overview of the primary election schedule, I would refer you to the timeline on page four of the background handout I placed on your desks prior to this hearing.

As you can see, candidate filing for all offices remains January 21st through March 19th. If a final determination is made that Montana is only entitled to one congressional seat during this time, declarations for nomination for the two seats will be voided, and declarations for nomination will be accepted for the resulting at-large seat.

Testimony of Secretary of State Mike Cooney  
January 7, 1992

In order to allow for some additional time to change the primary ballot for congress, the bill also provides for a window for re-opening nominations for an at-large congressional district, should that final determination be made. The last possible date for this to occur without significantly jeopardizing absentee balloting, and the proper printing and distribution of ballots, is Tuesday, April 7th, 1992. If a final determination is made that Montana is entitled to only one congressional seat at any time prior to or on April 7th, the declarations for nomination for the two congressional seats will be void and a filing period for the resulting, at-large seat will open, and will remain open for a period of three days.

If a final determination that Montana is entitled to only one seat is not made by April 7th, then the primary election will be run using two congressional districts.

In the event that a final determination is not made by April 7th, the discussion then shifts to the general election. If a final determination that Montana is entitled to only one at large district is made between April 8th and the general election, the parties will nominate candidates to appear on the general election ballot.

In the process of developing this plan, the Attorney General and I have met with representatives of both political parties, both members of congress, the reapportionment commission, and other interested parties. In addition, my office has solicited advice from election administrators, printers and others involved in the election process.

I thank the committee for its time during this busy session, and I ask that you recommend to the full body that Senate Bill 2 do pass. I will be happy to answer any questions you may have.

SENATE BILL NO. *20*  
*Montana Legislative Council*  
BY REQUEST OF THE SECRETARY OF STATE  
AND THE DEPARTMENT OF JUSTICE

1 became law; and  
2 WHEREAS, on May 22, 1991, the Attorney General of  
3 Montana filed a lawsuit in the United States District Court  
4 for the District of Montana against the United States  
5 Department of Commerce and its Secretary, the United States  
6 Bureau of the Census and its Director, and the Clerk of the  
7 United States House of Representatives, challenging the  
8 apportionment formula and the resulting loss of one of  
9 Montana's two congressional representatives; and  
10 WHEREAS, on October 18, 1991, a three-judge United  
11 States District Court for the District of Montana found that  
12 the apportionment violates the rights of Montana voters to  
13 equal representation and declared unconstitutional and void  
14 2 U.S.C. 2a, upon which the certificate of entitlement was  
15 predicated; and  
16 WHEREAS, the decision of the United States District  
17 Court for the District of Montana has been appealed to the  
18 United States Supreme Court, which has noted probable  
19 jurisdiction and has scheduled oral arguments for March 4,  
20 1992; and  
21 WHEREAS, the Legislature of the State of Montana finds  
22 that the decision of the United States District Court for  
23 the District of Montana is law unless and until it is  
24 overturned, that the judgment has rendered invalid the  
25 Districting and Apportionment Commission's April 1991 plan

1 INTRODUCED BY  
2  
3  
4  
5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADDRESS THE  
7 PROBLEMS, ALTERNATIVES, AND CONTINGENCIES ARISING FROM THE  
8 STATE'S SUIT FOR RELIEF FROM A CONGRESSIONAL APPORTIONMENT  
9 THAT ALLOCATED ONLY ONE CONGRESSIONAL SEAT TO THE STATE OF  
10 MONTANA; TO DETERMINE THE ALTERNATIVE PROCEDURES FOR PRIMARY  
11 FILING AND FOR THE PRIMARY AND GENERAL ELECTIONS IF A FINAL  
12 DETERMINATION IS MADE THAT MONTANA IS ENTITLED TO ONLY ONE  
13 CONGRESSIONAL REPRESENTATIVE; AND PROVIDING AN IMMEDIATE  
14 EFFECTIVE DATE."  
15  
16 WHEREAS, on January 16, 1991, the Clerk of the United  
17 States House of Representatives issued a certificate of  
18 entitlement to the Governor of Montana containing notice  
19 that the State of Montana is entitled to one congressional  
20 representative in the 103rd Congress; and  
21 WHEREAS, pursuant to that certificate and in accordance  
22 with Article V, section 14, of the Montana Constitution, the  
23 Montana Districting and Apportionment Commission prepared  
24 and filed its final plan for one congressional district with  
25 the Secretary of State of Montana in April 1991 and the plan



1 congressional representative shall file a petition for  
 2 nomination within the time provided by this subsection for  
 3 political parties to file their candidate nominations with  
 4 the secretary of state.

5 (2) If a final determination is made on or before April  
 6 7, 1992, that Montana is entitled to only one congressional  
 7 representative in the 103rd United States congress, the  
 8 secretary of state shall accept declarations of nomination  
 9 for the office of congressional representative for only one  
 10 district until March 19, 1992, or for a period of 3 working  
 11 days from the date of the final determination, whichever is  
 12 later, and shall place only one congressional representative  
 13 office on the ballot for the 1992 primary election. If the  
 14 final determination is made after March 19, 1992, and before  
 15 April 7, 1992, the filing deadline in 13-10-201(6) does not  
 16 apply.

17 (3) (a) As soon as is practical after [the effective  
 18 date of this act], the Montana districting and apportionment  
 19 commission shall prepare and hold a hearing on a plan for  
 20 two congressional districts based on the official 1990  
 21 census data. For purposes of subsection (1)(a), the plan  
 22 must be used by the secretary of state to determine the  
 23 congressional district in which an elector resides.

24 (b) If a final determination results in Montana being  
 25 entitled to two congressional representatives, the

1 commission shall immediately file the two-district plan with  
 2 the secretary of state. Upon filing, the two-district plan  
 3 becomes law and applies retroactively to the date that the  
 4 one-district plan was filed. The two-district plan must  
 5 state that under the authority of the commission, the  
 6 two-district plan supersedes the one-district plan filed in  
 7 April 1991.

8 NEW SECTION. Section 2. Severability. If a part of  
 9 [this act] is invalid, all valid parts that are severable  
 10 from the invalid part remain in effect. If a part of [this  
 11 act] is invalid in one or more of its applications, the part  
 12 remains in effect in all valid applications that are  
 13 severable from the invalid applications.

14 NEW SECTION. Section 3. Effective date. [This act] is  
 15 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0002, as introduced.

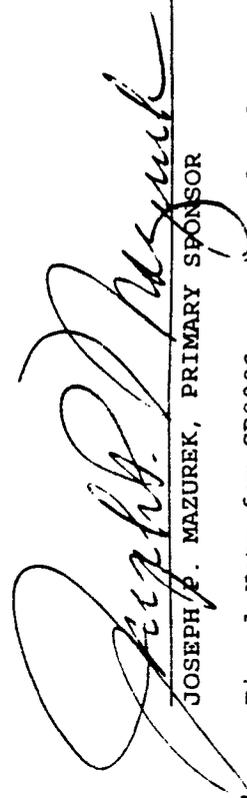
DESCRIPTION OF PROPOSED LEGISLATION:

An act to address the problems, alternatives, and contingencies arising from the state's suit for relief from a congressional apportionment that allocated only one congressional seat to the State of Montana, to determine the alternative procedures for primary filing and for the primary and general elections if a final determination is made that Montana is entitled to only one congressional representative.

FISCAL IMPACT:

No fiscal impact.

  
STEVE YEAKEL, BUDGET DIRECTOR  
Office of Budget and Program Planning  
DATE 1/7/92

  
JOSEPH P. MAZUREK, PRIMARY SPONSOR  
DATE 1/8/92  
Fiscal Note for SB0002, as introduced

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

State Administration COMMITTEE BILL NO. SB 2  
 DATE 1-9-92 SPONSOR(S) SEN. MAZUREK

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Beth Baker	Attorney General	SB2		✓
Nancy J. Hart	Mt. Democratic Party	SB2		✓
MIKE CONVEY	SECRETARY OF STATE	SB2		✓

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